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Last Updated: 04/03/2024

WSS - 7/3/87

File

Ozone

U.S. Negotiators Seek Sharp Reduction In Chemicals That Erode Ozone Layer

By EDWARD SUSSMAN

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—President Reagan has authorized U.S. negotiators to seek a steep reduction of chemicals that erode the Earth's natural barrier against cancer-causing rays.

The U.S. presented its position at a meeting this week in Brussels, Belgium, with representatives of other major producers of chlorofluorocarbons. According to officials familiar with the talks, the U.S. joined Canada, New Zealand and Norway in seeking a 50% cutback in production by 1996 from the 1986 level.

But these countries won't go along with any agreement unless it's ratified by at least nine nations, representing a minimum of 60% of the world's chlorofluorocarbon production, according to Victor Buxton, Canada's negotiator at the talks.

At a meeting of the White House Domestic Policy Council last week, President Reagan reviewed and approved the State Department's negotiating stance in Brussels, U.S. officials said. Administration officials declined to comment on the president's instructions.

The silence on the negotiations stems from a sharp dispute among administration officials as to whether the reductions are needed.

In international negotiations, the U.S. has for several months been seeking a steep curtailment of chemicals that damage the ozone layer, an invisible shield against ultraviolet radiation sitting about 12 miles above the planet's surface.

But in May, Interior Secretary Donald Hodel and White House Science Adviser William Graham suggested that advances in medical technology and changes in be-

havior patterns—including the wearing of more hats, sunscreen and sunglasses—might make a costly ban unnecessary.

Mr. Hodel also raised concerns that the U.S. might commit itself to an ineffective international treaty, putting a stranglehold on American production of chemicals. About 70% of ozone-depleting chemicals are produced outside the U.S.

"I am extremely pleased that after he had an opportunity to consider the issues concerning ozone-depleting chemicals, the president issued clear instructions to the U.S. negotiators, directing them to seek an effective international agreement," he said through a spokesman.

Also present at the talks were representatives of Japan, the Soviet Union and the European Community. These nations, which have a substantial economic stake in chemical production, sought a longer time period for phasing down the chlorofluorocarbons, Mr. Buxton said.

Although Mr. Buxton said no firm international agreement was reached, he added that substantial progress had been made and predicted chances were excellent for a treaty ratification at a United Nations-sponsored conference in September in Montreal.

The U.S., Canada, New Zealand and Norway pushed for a freeze of chlorofluorocarbons at 1986 production levels by 1989, followed by a 20% reduction by 1992 and an additional 30% reduction by 1996. The nations propose a freeze at 1986 levels for the production of halons, another group of chemicals that damage the ozone layer. Trade sanctions are proposed for non-complying nations.

Because the amount of chlorofluorocarbon production has risen, the overall reduction would actually be greater than 50%. Geoff Webb, Director of International

Affairs for Friends of the Earth, estimated the overall reduction at between 60% and 65% of 1987 production levels. He said such a cutback would encourage the development of alternatives to the ozone-depleting chemicals.

PRESERVATION COPY

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Mr. Gilbert A. St. John
4220 Los Palos Avenue
Palo Alto, California 94306

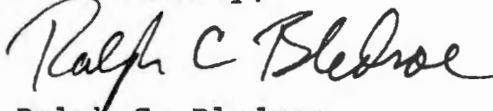
Dear Mr. St. John:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

As you may know by now, an intensive inter-agency review has resulted in the President recently affirming U.S. support of an effective international protocol to control ozone-depleting chemicals. The U.S. delegation to the international ozone negotiations is pursuing this objective, and it is anticipated that an acceptable agreement can be signed in Montreal in September. It truly will take an effort by the large individual countries to protect the stratospheric ozone layer.

Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Mr. Richard A. Moyer
872 Fielding Drive
Palo Alto, California 94303

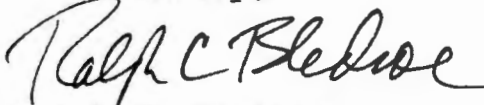
Dear Mr. Moyer:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

T. Flaherty
32 Willow
Menlo Park, California 94025

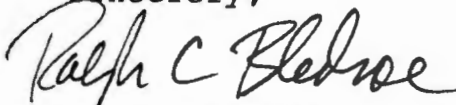
Dear T. Flaherty:

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Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Ms. Joan MacDonald
519 Emmons Drive
Mountain View, California 94043

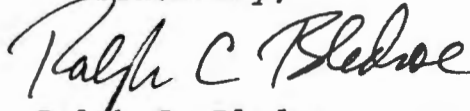
Dear Ms. MacDonald:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Ms. Mary Campbell
3946 Louis Road
Palo Alto, California 94303

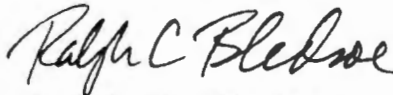
Dear Ms. Campbell:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Mr. Fred Schimscheimer
1662 Peacock Avenue
Sunnyvale, California 94087

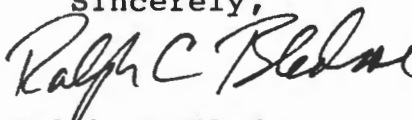
Dear Mr. Schimscheimer:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Ms. Loretta McCoy
2148 Deodora Drive
Los Altos, California 94022

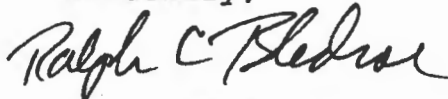
Dear Ms. McCoy:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Mr. Michael Schaller
580 Ahwanee SP #82
Sunnyvale, California 94086

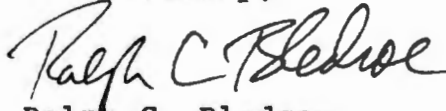
Dear Mr. Schaller:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Ms. Anna Schuppin
352 Ruth Avenue
Mountain View, California 94043

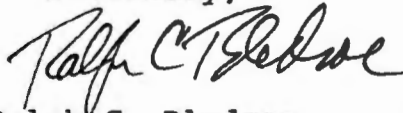
Dear Ms. Schuppin:

Thank you for the petition signed by you and eleven of your neighbors requesting strong U.S. support for an international agreement to prevent depletion of the ozone layer. At President Reagan's direction, the U.S. Government has ratified the Vienna Convention for the Protection of the Ozone Layer and is continuing to lead the ongoing international negotiations toward a protocol on the control of ozone-depleting chemicals.

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1987

Ms. Laura St. John
4220 Los Palos Avenue
Palo Alto, California 94306

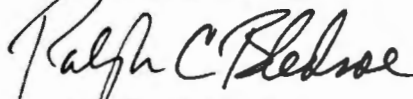
Dear Ms. St. John:

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Again, thank you for expressing your concern to us on this important issue.

Sincerely,



Ralph C. Bledsoe
Special Assistant to the President

File - Ozone

THE WHITE HOUSE
WASHINGTON

July 10, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM:

VICKI MASTERMAN

Vicki Masterman

SUBJECT:

Stratospheric Ozone -- Public Statement

The State Department is providing a final draft public statement on the status of the ozone negotiations this afternoon. This draft should reflect EPA's comments and our comments on the draft you received yesterday from Richard Benedick. A copy of yesterday's draft with our comments is attached.

Mr. Benedick is scheduled to appear on two USIA "Worldnet" programs next week to discuss the ozone negotiations. Mr. Benedick would like to use this draft statement in the Worldnet programs, in responding to inquiries from interested parties, and possibly in congressional briefings. According to State, the Worldnet programs were scheduled a long time ago.

I relayed to Mr. Benedick's staff the information I received from Hanns -- that no public statements would be made until we receive the Chairman's Text. They were not aware of this and noted that Mr. Benedick's appearances on Worldnet may precede our receipt of the Chairman's Text. I asked them to let us know if this will be the case.

Attachment

cc: Ralph Bledsoe ✓
Hanns Kuttner

DRAFT

STATEMENT ON STATUS OF OZONE NEGOTIATIONS

Program is continuing in the ongoing
Efforts ~~are proceeding at a satisfactory pace~~ to conclude by September an international agreement to protect the atmosphere from ozone-depleting chemicals by regulating the production and use of certain chlorofluorocarbons (CFCs) and halons. The United Nations Environment Programme (UNEP), under the able leadership of Dr. Mostafa Tolba, continues to play an important role in bringing together governments from around the world to address these global concerns, including all nations which are major producers and consumers of CFCs and halons.

These negotiations were resumed last year following a stalemate in 1985 between ~~those~~ *two groups of* ~~governments~~ *one group*, including the United States, which believed that further significant actions were needed to protect the ozone layer, and others, notably the European Community, Japan and the Soviet Union, which were hesitant to undertake additional measures at that time because of economic considerations and scientific uncertainties.

Since 1985, the public both here and abroad ^{has} gained increased understanding of the threat to the ozone layer, and therefore to the health and well-being of future generations, posed by these chemicals. ^{Comprehensive} International reviews of the ~~state of~~ scientific knowledge, of technical alternatives for addressing the problem, and of the economic impacts of various regulatory options, have ^{been undertaken} ~~been careful and comprehensive.~~

Although it would not be appropriate to discuss details of the negotiations at this stage, the U.S. Government believes that the ^{key points of the} draft protocol text produced by Dr. Tolba, following international negotiations in Brussels last month, represents a balanced and reasonable approach to these complex issues. We believe Dr. Tolba's approach is fully supported both by the scientific evidence and by any reasonable analysis of the economic benefits and costs involved.

Requirement

~~the countries~~ that the major producers and consumers of CFCs must ratify before ³⁻ the protocol enters into force;

Dr. Tolba's text reflects elements of an international accord which the United States considers absolutely essential. These include: a near-term freeze at 1986 levels of production and consumption of the principal ozone-depleting CFCs and halons; scheduled substantial reductions of the CFCs in subsequent years, both to protect the atmosphere and to encourage development of alternative chemicals; periodic assessments of scientific, technical and economic considerations to ensure that the control measures are soundly grounded or are revised to take account of evolving understanding; and a stated ultimate objective of eventually eliminating realistic threats to the ozone layer from man-made chemicals, as determined by the regularly scheduled scientific assessments.

The U.S. further believes that the protocol must contain trade restrictions ^{applied to} against CFC-related imports from countries which do not join or comply with the protocol, ~~provisions~~, in order to ensure that nations, ^{not accepting} ~~which do not accept~~ their share of this global responsibility do not profit by such a decision. In order to encourage participation by all countries, the U.S. also favors some limited grace period for developing countries.

Finally, the U.S. believes that the protocol should contain strong provisions for reporting, monitoring and enforcement, and that future decisions under the protocol should be made under a system of voting that gives appropriate weight to the significant producing and consuming countries.

The negotiations continue to be difficult, and much work remains to be done. Nevertheless, the United States ^{no} hopes that the other principal producer and consuming countries, notably the European Community, Japan, and the Soviet Union, will join with us and others in Montreal in September to sign an effective and meaningful international accord.

[Handwritten signature]

[Handwritten signature]

→ Believes it essential that

either cut sentence to say the U.S. considers it essential that these other countries join.

Ozone

THE WHITE HOUSE
WASHINGTON



July 13, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM: VICKI MASTERMAN *VM*

SUBJECT: Ozone Report and Statement

Attached is a State Department re-draft of the public statement on the status of the ozone negotiations. Richard Benedick intends to use the statement in his congressional briefing tomorrow afternoon and in two "Worldnet" television shows this week (one is scheduled for tomorrow morning).

The State Department is still working on their detailed report to the President on the last round of negotiations.

Ralph, Hanns and I have discussed this draft and propose to relay the following comments to State:

1. The U.S. delegation report to the President should precede public statements. Since it does not appear that State will provide a report to the President before making public statements, then the public statements should not contain any reaction or commentary on what is likely to appear in the Chairman's Text.
2. We should not comment on the Chairman's Text before we have seen it. The State Department has drafted an anticipated version of the Chairman's Text based upon discussions with Chairman Tolba; however, Chairman Tolba's text has not been completed.
3. Additional comments are marked on the attached draft statement.

Attachment

cc: Ralph Bledsoe
Hanns Kuttner

DRAFT

STATEMENT ON STATUS OF OZONE NEGOTIATIONS

Progress continues to be made in efforts to negotiate, and to conclude in mid-September, an international agreement to protect the stratosphere from ozone-depleting chemicals by regulating the production and use of certain chlorofluorocarbons (CFCs) and halons. The United Nations Environment Programme (UNEP), under the leadership of Dr. Mostafa Tolba, is playing the central role in bringing together governments from around the world to address this global concern, including all nations which are major producers and consumers of CFCs and halons, as well as developing countries.

The negotiations were resumed last year following a stalemate in 1985. At that time, the United States, Canada and the Nordic nations believed that further significant actions were needed to protect the ozone layer, while others, notably the European Community, Japan and the Soviet Union, were hesitant to undertake additional measures because of economic considerations and scientific uncertainties.

Since 1985, comprehensive international reviews of the scientific knowledge, of technical alternatives for addressing the problem, and of the economic impacts of various regulatory options, have been undertaken. The public both here and abroad has gained increased understanding of the threat to the ozone layer, and to the health and well-being of future generations, posed by these chemicals.

Although it would not be appropriate to discuss details of the negotiations at this stage, the U.S. Government believes that the key points of the draft protocol text produced by Dr. Tolba following international negotiations in Brussels last month represent a balanced and reasonable approach to these complex issues. We believe Dr. Tolba's approach is fully consistent with the state of scientific knowledge and reflects a balance of the economic and social benefits, risks and costs involved.

The essential

~~Dr. Tolba's text contains~~ elements of an international accord which ~~the United States considers absolutely essential.~~ These include: ratification by the major producers and consumers of CFCs before the protocol enters into force; a near-term freeze at 1986 levels of production and consumption of the principal ozone-depleting CFCs and halons; ~~periodic assessments of scientific, technical, and economic~~ *and environmental* considerations to ensure that the control measures are soundly grounded or are revised to take account of evolving understanding; substantial, phased reductions of the CFCs in subsequent years, both to protect the atmosphere and to encourage development of alternative chemicals; and a stated ultimate goal of eventually eliminating realistic threats to the ozone layer from man-made chemicals, as determined by the regularly scheduled scientific assessments.

The U.S. further believes that the protocol must contain trade restrictions applied to CFC-related imports from countries which do not join or comply with the protocol, in order to ensure that nations not accepting their share of this global responsibility do not profit by such a decision. The U.S. also favors some limited grace period for developing countries, in recognition of their special circumstances and to encourage their participation.

Finally, the U.S. believes that the protocol should contain strong provisions for reporting, monitoring and enforcement, and that future decisions under the protocol should be made under a system of voting that gives appropriate weight to the significant producing and consuming countries.

The negotiations continue to be difficult, and much work remains to be done. Nevertheless, the United States believes that it is essential that ^{all} the other principal producer and consumer countries, notably ~~the European Community, Japan, and the Soviet Union,~~ join with us in an effective international control regime. We are working hard to achieve agreement on a meaningful international accord which can be signed in Montreal in September as currently scheduled.

File
Ozone

THE WHITE HOUSE
WASHINGTON

July 13, 1987

MEMORANDUM FOR NANCY J. RISQUE
FROM: VICKI MASTERMAN *VM*
SUBJECT: Ozone Statement Update

I provided our comments on the draft ozone public statement to the State Department. In particular, I explained that the President should receive a detailed report on the last round of negotiations before the members of Congress receive a briefing.

Benedick's staff said they could delay the congressional briefing; apparently they were having scheduling problems with tomorrow's meeting anyway.

They anticipate having a draft report from the delegation for the President ready within the next two days. I explained that we wish to review the draft not for clearance but for coverage.

They also agreed with our proposed changes to the draft public statement. They hoped, however, that the public statement could be revised after transmittal of the report to the President to include enough information to brief the interested members of Congress.

cc: Ralph Bledsoe
Hanns Kuttner

ARTICLE 2: CONTROL MEASURES¹⁾

1. Each Party shall ensure that within one year of the entry into force of this Protocol, production in and imports into its jurisdiction of the controlled substances* do not exceed the level of production and the level of imports respectively in 1986. This paragraph shall remain in effect until four years after the entry into force of this Protocol.²⁾

-
- 1) All of the figures in this Article, whether or not in square brackets, were inserted by the Executive Director after his informal consultations in Brussels 29-30 June. The structure of the draft text was prepared by the Legal Drafting Group, which was mandated to deal with "outstanding legal and institutional matters."
 - 2) In the opinion of the Legal Drafting Group, the formulation of paragraphs 1, 2 and 3 does not make it sufficiently clear how the control measures are to apply to States which became Parties to the Protocol after its entry into force. This question could be dealt with by adding a paragraph, at any appropriate place in the Protocol, along the following lines: "Any State or regional economic integration organization which becomes a Party to this Protocol after its entry into force, shall fulfill forthwith the sum of the obligations under Article 2, subject to Article 7, that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force."

* Ed. Note: "Controlled substance" is defined in Article 1 as a substance listed in Annex A to this Protocol whether existing alone or together with any other substance, but not including a product or a mixture where the substance listed in Annex A constitutes less than 20 percent, by weight or volume, of the product or mixture. The substances currently listed in Annex A are CFC 11, 12, 113, 114, and 115.

[2. Each Party shall ensure that within three years of the entry into force of this Protocol, production in and imports into its jurisdiction of Halons 1211 and 1301 do not exceed the level of production and the level of imports respectively in 1986.]³⁾

3. Each Party shall ensure that within four years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed eighty percent of the level of production and the level of consumption respectively in 1986.⁴⁾

-
- 3) The Legal Drafting Group did not attempt to revise the formulation of Article 2 paragraph 2. Questions remain regarding whether and, if so, how Halons should be dealt with in the Protocol. For example, should the control measures which apply to CFCs apply to Halons also? An alternative to this paragraph in the form of a resolution of the Montreal Conference has been proposed as follows:

Recognizing that there is serious concern about the likely adverse effects on the ozone layer of Halons 1211 and 1301, and that there is need for more data and information regarding their use, emission rates and ozone depleting potential,

Alternative 1

[Decides that these compounds shall be frozen at their 1986 production levels within the scope of the Protocol, at the first meeting of the Parties following the first scientific review in 1990.]

Alternative 2

[Decides that a decision on the freeze of these compounds at their 1986 production levels, within the scope of the Protocol, shall be made at the first meeting of the Parties to be held after the first scientific review in 1990.]

A question is also raised regarding whether the reference to the year 1990 in the first and second alternatives for the second paragraph of this draft resolution is correct. Article 6 suggests that perhaps the date for the first scientific review should be 1989.

- 4) The Legal Drafting Group notes that in paragraphs 3 and 4 of Article 2, the year "1986" is used as the base year for calculating production and consumption controls. However, the possibility of using "1990" as the base year for consumption controls was included as an option by the Formula sub-working group. If it is decided in Montreal to use 1990 as the base year for consumption controls, some re-drafting of these paragraphs will be necessary.

4. Each Party shall ensure that within [eight] [ten] years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed [fifty] percent of the level of production and the level of consumption respectively in 1986, unless the Parties decide otherwise by a two-thirds majority representing at least [fifty] percent of global consumption⁵⁾ of those substances in the light of the assessments referred to in Article 6. Such decision shall be taken not later than [four] years after entry into force of the Protocol.

5. Based on assessments made pursuant to Article 6, Parties shall decide by [two-thirds majority] [a majority vote] representing at least [fifty] percent of global consumption:

- (a) whether substances should be added to or removed from Annex A;
- (b) whether further reduction from 1986 levels should be undertaken with the objective of eventual elimination of production and consumption of the controlled substances except for uses for which no substitutes are commercially available.⁶⁾

[6. Productions are permitted to transfer from one country to another if these transmissions are certain not to cause an increase of production.]

7. The provisions contained in this Article do not prevent Parties from taking more stringent measures than those required by this Article.

5) The Legal Drafting Group notes that it would be unlikely that global consumption figures would be available since data would not necessarily be available from non-Parties. In Article 2 paragraphs 4 and 5 "total consumption of the Parties" could be substituted for "global consumption." See also Article 15, paragraph 1.

6) The Legal Drafting Group notes that sub-paragraph (a) does not indicate what control measures should apply to substances to be added to Annex A. It further notes that paragraph 5 does not deal with the question of the entry into force of any changes to Annex A decided by the Parties. It is unclear whether changes adopted by majority vote are intended to bind all Parties, or whether the intent is that such changes would bind only Parties that have agreed to them.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES 1)

1. Within [one] year of the entry into force of this Protocol, each party shall ban the import [and export] of the controlled substances from [or to] any State not Party to this Protocol.

2. Alternative 1

[Within [four] years of the entry into force of this Protocol, each Party shall ban imports of products identified in Annex B containing controlled substances from any State not Party to this Protocol. The Parties shall periodically review, and if necessary, amend Annex B.]²⁾

Alternative 2

[Within [four] years of the entry into force of this Protocol, each Party shall ban or restrict imports of products containing controlled substances from any State not Party to this Protocol. At least one year prior to the time such measures take effect the Parties shall elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by all Parties.]

-
- 1) Incorporates results of consultations of the Trade sub-group in Brussels, 29-30 June 1987. It was agreed by that group that the years in paragraphs 1 and 2 of this Article should be the same as the years used in paragraphs 1 and 3 of Article 2 respectively.
 - 2) There are a number of provisions in the draft text -- e.g., Article 2 paragraph 5 and Article 4 -- where changes or amendments to Annexes and the adoption of new annexes are envisaged. It was not clear from the draft text what procedures were intended by the adoption of such changes. The Convention provides procedures for the amendment and adoption of annexes and for amendments to protocols. [See Articles 9 and 10 of the Convention.] The Legal Group noted that Article 10 paragraph 1 of the Convention provides that annexes "shall be restricted to scientific, technical and administrative matters," and it would be up to the meeting in Montreal to decide whether the proposed annexes are of that character; or indeed whether these matters could be dealt with in the main body of the Protocol or could be considered as a normal implementation of the Protocol. There was also discussion among the legal experts as to, inter alia, if procedures other than those specifically provided for in the Convention are adopted by the Parties, the extent to which they can vary from the Convention provisions on this point. These issues should be addressed in Montreal.

3. Within [four-six] years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting imports of products produced with controlled substances from any State not Party to this Protocol. If determined feasible, the Parties shall ban or restrict such products and elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by the Parties.

4. Each Party shall discourage the export of technology to any State not Party to this Protocol for producing and using the controlled substances.

5. Parties shall not conclude new agreements to provide to States not Party to this Protocol bilateral or multilateral subsidies, aid, credits, guarantees or insurance programmes for the export of products, equipment, plants or technology for producing the controlled substances.

6. The provisions of paragraphs 4 and 5 shall not apply to products, equipment, plants or technology which improve the containment, recovery, recycling or destruction of the controlled substances, or otherwise contribute to the reduction of emissions of these substances.

7. Notwithstanding the provisions of this Article; imports referred to in paragraphs 1, 2 and 3 may be permitted from any [State not Party] [signatory] to this Protocol for a period not to exceed [two] [three] years from entry into force of the Protocol if that State is in full compliance with Article 2 and this Article and has submitted data to that effect, as specified in Article 7. [Extension of the exemption period beyond 2-3 years shall be granted by Parties only upon a determination at a meeting of the Parties that: (a) all conditions specified in this paragraph have been met, and (b) such extension for an additional period not to exceed [two-three] years is fully consistent with the objectives of this Protocol to protect the ozone layer.]³

3) The Legal Drafting Group considers that further work to define the objectives of this paragraph needs to be carried out before satisfactory legal drafting can be done.

ARTICLE 6: REVIEW AND ASSESSMENT OF CONTROL MEASURES

Beginning in 1990¹⁾, and every four years thereafter, the Parties shall assess the control measures provided for in Article 2, based on available scientific, environmental, technical, and economic information. At least one year before each of these assessments, the Parties shall convene a panel of scientific experts, with composition and terms of reference determined by the Parties, to review advances in scientific understanding of modification of the ozone layer, and the potential health, environmental and climatic effects of such modification.

-
- 1) The Legal Drafting Group noted that the requirement to hold the first assessment in 1990 is dependent on the Protocol being in force by that date.

ARTICLE 7: REPORTING OF DATA*

1. Each Party shall provide to the Secretariat, within three months of becoming a Party, data on its production, imports and exports of the controlled substances for the year 1986 or estimates of that data where actual data are not available.

2. Each Party shall provide data on its production, exports, imports and destruction of these substances for the calendar year during which it becomes a Party and for each year thereafter.¹⁾

1) There was some discussion as to whether the fact that such data would be collected and submitted to the Secretariat on a calendar year basis would create an ambiguity for measuring compliance with the control measures which, as currently drafted would take effect a certain number of years after entry into force of the Protocol. As Article 2 is currently drafted, it is not clear whether a Party would measure its compliance to a reduction step by the data for that previous calendar year or data for the year in which the particular obligation takes effect.

* Ed. Note: See also Article 10 on Meetings of the Parties and Article 11 on Functions of the Secretariat. Provisions of those Articles relevant to reporting of data also are reproduced infra.

ARTICLE 10: MEETINGS OF THE PARTIES

. . . .

4. The functions of the meetings of the Parties shall be. . . .

(b) to establish, where necessary, guidelines or procedures for reporting information as provided for in Articles 7 and 8.*

* Ed. Note: Article 8 relates to research, development and exchange of information on best practicable technologies for reducing emissions of the controlled substances, possible substitutes for those substances, and costs/benefits of control strategies.

ARTICLE 11: SECRETARIAT

The Secretariat shall. . . .

- (b) Distribute annually to the Parties data received pursuant to Article 7;
- (c) Prepare and distribute to the Parties regularly a report based on information received pursuant to Articles 7 and 8.

ARTICLE 15: ENTRY INTO FORCE

1. The Protocol shall enter into force on the same date as the Convention enters into force, provided that at least [nine] instruments of ratification, acceptance, or approval of or accession to the Protocol have been deposited [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances.¹⁾ In the event that [nine] such instruments have not been deposited by the date of entry into force of the Convention, this Protocol shall enter into force of the [ninetieth]²⁾ day following the date of deposit of the [ninth] instrument of ratification, acceptance, or approval of or accession to the Protocol [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].¹⁾
2. For the purposes of paragraph 1, any instrument deposited by a regional economic integration organization referred to in Article 12 of the Convention shall not be counted as additional to those deposited by member States of such organizations.
3. After the entry into force of this Protocol, any State or regional economic integration organization referred to in Article 12 of the Convention shall become a Party to it on the [ninetieth]²⁾ day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

1) Resulting from Executive Director's consultations in Brussels on 29-30 June 1987. The Executive Director has requested Governments to submit data regarding their estimated imports. If sufficient data are available for the preliminary session in Montreal, a certain percentage of imports could be added to this provision.

A proposal was made to the Legal Drafting Group that would have the effect of applying similar provisions to the entry into force of amendments, additional annexes, or amendments to annexes to this Protocol. This proposal was not discussed fully because of time constraints and limited country representation. Also, a view was expressed that the proposal raised new substantive issues.

2) The Convention provides that a State or regional economic integration organization may not become a Party to a Protocol unless it is, or becomes at the same time, a Party to the Convention (Article 16). It also provides that the Convention enters into force on the ninetieth day after the deposit of the twentieth instrument of deposit of ratification, and (after it has entered into force) for each ratifying State on the ninetieth day after the deposit of that State's instrument of ratification [Article 17). To prevent a situation arising in which a State's (or organization's) ratification of the Protocol might appear to be effective before the State (or organization) had become a Party to the Convention, it was necessary to substitute "thirtieth" for "ninetieth" in the Article on Entry into Force in the Protocol. This might also be desirable in order to avoid the possibility that the Protocol might appear to enter into force before the Convention.

July 20, 1987

MEMORANDUM FOR RALPH C. BLEDSOE

FROM: VICKI MASTERMAN

SUBJECT: Stratospheric Ozone -- Chairman's Text

Attached is the seventh Chairman's draft international ozone protocol. The draft contains 15 articles, an annex listing the controlled substances, and footnotes from the Legal Drafting group with questions and suggested clarifications.

Briefly, the Chairman's text contains the following provisions:

Article 1 -- Definitions.

Article 2 -- Control Measures. The draft protocol provides for the following controls of CFCs 11, 12, 113, 114 and 115: freeze of production and imports at 1986 levels within one to two years of entry into force; 20 percent reduction of production and consumption from 1986 levels within four years of entry into force; 30 percent reduction of production and consumption from 1986 levels within eight or ten years after entry into force unless a two-thirds majority representing at least fifty percent of global consumption decides otherwise.

The draft has a paragraph in brackets which would freeze production and imports of Halons 1211 and 1301 at 1986 levels within three years of entry into force.

The text includes a voting provision for decisionmaking on whether substances should be added to or removed from the controlled substances list, and whether further reductions of controlled chemicals should be required with the objective of eventual elimination. Such decisions would be made by either a two-thirds majority or a majority vote representing at least fifty percent of global consumption.

Article 3 -- Calculation of Control Levels. This article provides formulas for calculating each party's levels of production, imports, exports and consumption of the controlled substances.

Article 4 -- Control of Trade With Non-Parties. This article provides for a ban on imports of controlled substances in bulk within one year of entry into force. The article includes two alternative provisions for import controls of products containing controlled substances within four years of entry into force, and a provision for the future consideration of

restricting imports of products produced with the controlled substances.

Article 5 -- Low Consuming Countries. This article contains a grace period of either five or ten years from a base year to be determined for countries with low consumption of controlled substances.

Article 6 -- Review and Assessment of Control Measures. Provides for assessments of scientific, technological, economic and environmental information every four years, beginning in 1990.

Article 7 -- Reporting of Data. Requires parties to provide production, imports and exports data to UNEP.

Article 8 -- Research, Development, Exchange of Information and Public Awareness.

Article 9 -- Technical Assistance.

Article 10 -- Meetings of the Parties.

Article 11 -- Secretariat.

Article 12 -- Financial Provisions.

Article 13 -- Relationship of this Protocol to the Convention

Article 14 -- Signature.

Article 15 -- Entry Into Force. This article contains a paragraph in brackets providing for entry into force upon the ratification of at least nine States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances. The protocol cannot, of course, enter into force prior to the entry into force of the Vienna Convention.

THE WHITE HOUSE

WASHINGTON

July 20, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM: RALPH C. BLEDSOE 

SUBJECT: Status Memo on Stratospheric Ozone

Attached is a proposed memorandum from you to the President on the status of the stratospheric ozone negotiations. Also attached are an advance copy of the Chairman's text and a memorandum from you (or me) to the DPC, circulating the draft protocol.

Attachments

THE WHITE HOUSE

WASHINGTON

July 20, 1987

MEMORANDUM FOR THE PRESIDENT

FROM: NANCY J. RISQUE

SUBJECT: Status of Stratospheric Ozone Negotiations

Background: On June 25, 1987, you provided instructions to the U.S. delegation negotiating an international protocol for the control of ozone-depleting chemicals, mainly chlorofluorocarbons (CFCs). The head of the U.S. delegation has since met with heads of delegations from some of the other countries, and is now preparing for the final negotiations in Montreal in September.

From the latest meetings, the Chairman of the United Nations Environment Program has drafted a proposed international protocol. This draft protocol includes many, but not all, of the provisions you directed the delegation to seek.

Status: The Chairman's draft protocol text includes these provisions consistent with your instructions: a grace period for developing countries; a voting mechanism for protocol decisions favoring the major consuming countries; a freeze of CFCs at 1986 levels, within one to two years after entry into force; required reporting procedures; regular scientific assessments; CFCs reduction of 20 percent within four years after entry into force and an additional 30 percent within eight or ten years after entry into force; a trade provision; and a provision for future reduction decisions.

The most important provision requiring additional negotiation is the requisite level of international participation for the protocol to enter into force. You instructed the delegation to seek participation by countries responsible for a "substantial majority" of the production/consumption of ozone-depleting chemicals. Specifically, you noted this proportion should be well above a majority of the major producing/consuming countries. The Chairman's text introduces this concept, but with a tentative requirement of ratification by sixty percent of the producing countries. The U.S. delegation will seek to include a provision requiring eighty percent of the producing and consuming countries for entry into force. Also, the Chairman's text does not include Halons 1201 and 1311 in the freeze at 1986 levels.

Action: The U.S. delegation is negotiating with individual countries to ensure that the desired participation provisions and a freeze of Halons are included in the final protocol.

THE WHITE HOUSE

WASHINGTON

July 20, 1987

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF ENERGY
THE SECRETARY OF EDUCATION
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
U.S. TRADE REPRESENTATIVE
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

FROM: NANCY J. RISQUE
Cabinet Secretary

SUBJECT: Status of Stratospheric Ozone Negotiations

Attached is an advance copy of the most recent Chairman's draft protocol for the control of ozone-depleting chemicals. This text is the result of the June 29-30, 1987 meeting of the heads of delegations of selected countries participating in the UNEP negotiations.

Briefly, the Chairman's text contains the following provisions: a freeze of CFCs (11, 12, 113, 114 and 115) at 1986 levels within one to two years after entry into force; a 20 percent reduction of these CFCs within four years after entry into force; an additional 30 percent reduction of these CFCs within eight or ten years after entry into force unless a two-thirds majority representing at least fifty percent of global consumption decides otherwise; a grace period for developing countries; a trade provision banning the import of bulk CFCs within one year after entry into force; two alternative trade provisions for import controls of products containing controlled substances within four years of entry into force; a trade provision for future consideration of products produced with CFCs; reporting procedures; a voting mechanism for additional reduction decisions and chemical coverage decisions emphasizing consuming countries; and regular scientific assessments.

An important provision that may require additional consideration is the requisite level of international participation for the protocol to enter into force. The Chairman's text introduces the concept of making entry into force contingent upon a specified level of participation, but with a tentative requirement of ratification by sixty percent of the producing countries. Also, in this version of the Chairman's text, the provision for a freeze of Halons 1201 and 1311 is in brackets.

The U.S. delegation will be working with other countries prior to the final negotiating sessions and Diplomatic Conference, both scheduled for Montreal in September. Any comments you may have on the attached text should be directed to Deputy Secretary John C. Whitehead at the Department of State.

THE WHITE HOUSE

WASHINGTON

July 20, 1987

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: RALPH C. BLEDSOE
Executive Secretary

SUBJECT: Status of Stratospheric Ozone Negotiations

Attached is an advance copy of the most recent Chairman's draft protocol for the control of ozone-depleting chemicals. This text is the result of the June 29-30, 1987 meeting of the heads of delegations of selected countries participating in the UNEP negotiations.

Briefly, the Chairman's text contains the following provisions: a freeze of CFCs (11, 12, 113, 114 and 115) at 1986 levels within one to two years after entry into force; a 20 percent reduction of these CFCs within four years after entry into force; an additional 30 percent reduction of these CFCs within eight or ten years after entry into force unless a two-thirds majority representing at least fifty percent of global consumption decides otherwise; a grace period for developing countries; a trade provision banning the import of bulk CFCs within one year after entry into force; two alternative trade provisions for import controls of products containing controlled substances within four years of entry into force; a trade provision for future consideration of products produced with CFCs; reporting procedures; a voting mechanism for additional reduction decisions and chemical coverage decisions emphasizing consuming countries; and regular scientific assessments.

An important provision that may require additional consideration is the requisite level of international participation for the protocol to enter into force. The Chairman's text introduces the concept of making entry into force contingent upon a specified level of participation, but with a tentative requirement of ratification by sixty percent of the producing countries. Also, in this version of the Chairman's text, the provision for a freeze of Halons 1201 and 1311 is in brackets.

The U.S. delegation will be working with other countries prior to the final negotiating sessions and Diplomatic Conference, both scheduled for Montreal in September. Any comments you may have on the attached text should be directed to Deputy Secretary John C. Whitehead at the Department of State.



United Nations
Environment
Programme



Distr.
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Conference of Plenipotentiaries on the
Protocol on Chlorofluorocarbons to the
Vienna Convention for the Protection of
the Ozone Layer

Montreal, 14-16 September 1987

Seventh Revised Draft Protocol on [Chlorofluorocarbons]
{and Other Ozone Depleting Substances}

SEVENTH REVISED DRAFT PROTOCOL ON [CHLOROFLUOROCARBONS]
[AND OTHER OZONE DEPLETING SUBSTANCES]*

PREAMBLE

Being Parties to the Vienna Convention for the Protection of the Ozone Layer, adopted at Vienna on 22nd March 1985,

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer,

Recognizing the possibility that world-wide emissions of fully halogenated chlorofluorocarbons can significantly deplete and otherwise modify the ozone layer, which is likely to result in adverse effects on human health and the environment,

Recognizing also the potential climatic effects of chlorofluorocarbons emissions,

Determined to protect the ozone layer by taking precautionary measures to control total global emissions of chlorofluorocarbons,

Mindful of the precautionary measures for controlling emissions of chlorofluorocarbons that have already been taken at the national and regional levels,

Aware that measures taken to protect the ozone layer from modifications due to the use of chlorofluorocarbons should be based on relevant scientific and technical considerations,

Mindful that special provision needs to be made in regard to the production and use of chlorofluorocarbons for the needs of developing countries and low-consuming countries,

* Draft prepared by the Legal Drafting Group during its meeting in The Hague 6-9 July 1987 on the basis of the Sixth Revised Draft Protocol on Chlorofluorocarbons, Vienna, 27 February 1987 (UNEP/WG.167/2, Annex 1), together with Articles proposed at the Third Session of the Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer (Vienna Group), Geneva 27-30 April 1987 (UNEP/WG.172/2) and taking into account the results of Brussels, 29-30 June 1987, and Geneva, 1-4 July 1987 Informal consultations.

Considering the importance of promoting international co-operation in the research and development of science and technology on the control and reduction of chlorofluorocarbons emissions, bearing in mind, in particular, the needs of developing countries and low-consuming countries,

HAVE AGREED AS FOLLOWS:

ARTICLE I: DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted at Vienna on 22nd March 1985;
2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol;
3. "Secretariat" means the secretariat of the Convention;
- [4. "Chlorofluorocarbon" or "CFC" means any fully halogenated chlorofluoroalkane.]
5. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or together with any other substance, but does not include a product or a mixture where the substance listed in Annex A constitutes less than (20) percent, by weight or volume, of the product or mixture.
6. "Production" means the amount of controlled substances produced minus the amount destroyed by techniques approved by the Parties.
7. "Consumption" means production plus imports minus exports of controlled substances.

ARTICLE 2: CONTROL MEASURES^{1/}

1. Each party shall ensure that within one year of the entry into force of this Protocol, production in and imports into its jurisdiction of the controlled substances do not exceed the level of production and the level of imports respectively in 1986. This paragraph shall remain in effect until four years after the entry into force of this Protocol^{2/}.

[2. Each party shall ensure that within three years of the entry into force of this Protocol, production in and imports into its jurisdiction of Halons 1211 and 1301 do not exceed the level of production and the level of imports respectively in 1986]^{3/}.

1/ All of the figures in this Article, whether or not in square brackets, were inserted by the Executive Director after his informal consultations in Brussels, 29-30 June. The structure of the draft text was prepared by the Legal Drafting Group, which was mandated to deal with "outstanding legal and institutional matters".

2/ In the opinion of the Legal Drafting Group, the formulation of paragraph 1, 2 and 3 does not make it sufficiently clear how the control measures are to apply to States which became Parties to the Protocol after its entry into force. This question could be dealt with by adding a paragraph, at an appropriate place in the Protocol, along the following lines: "Any State or regional economic integration organization which becomes a Party to this Protocol after its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, subject to Article 5, that apply at the date to the States and regional economic integration organization that became Parties on the date the Protocol entered into force".

3/ The Legal Drafting Group did not attempt to revise the formulation of Article 2 paragraph 2. Questions remain regarding whether and, if so, how Halons should be dealt with the Protocol. For example should the control measures which apply to CFCs apply to Halons also? An alternative to this paragraph in the form of a resolution of the Montreal Conference has been proposed as follows:

Recognizing that there is serious concern about the likely adverse effects on the ozone layer of Halons 1211 and 1301, and that there is a need for more data and information regarding their use, emission rates and ozone depleting potential,

Alternative 1

[Decides that these compounds shall be frozen at their 1986 production levels within the scope of the Protocol, at the first meeting of the Parties following the first scientific review in 1990].

Alternative 2

[Decides that a decision on the freeze of these compounds at their 1986 production levels, within the scope of the Protocol, shall be made at the first meeting of the Parties to be held after the first scientific review in 1990.]

3. Each party shall ensure that within four years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed eighty percent of the level of production and the level of consumption respectively in 1986.^{4/}

4. Each Party shall ensure that within [eight] [ten] years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed fifty percent of the level of production and the level of consumption respectively in 1986, unless the Parties decide otherwise by a two-thirds majority representing at least fifty percent of global consumption^{5/} of those substances in the light of the assessments referred to in Article 6. Such decision shall be taken not later than four years after entry into force of the Protocol.

5. Based on assessments made pursuant to Article 6, Parties shall decide by [two-thirds majority] [a majority] vote representing at least fifty percent of global consumption:

- (a) whether substances should be added to or removed from Annex A;
- (b) whether further reduction from 1986 levels should be undertaken with the objective of eventual elimination of production and consumption of the controlled substances except for uses for which no substitutes are commercially available.^{6/}

[6. Productions are permitted to transfer from one country to another if these transmissions are certain not to cause an increase of production.]^{7/}

^{4/} The Legal Drafting Group notes that in paragraph 3 and 4 of Article 2, the year "1986" is used as the base year for calculating production and consumption controls. However, the possibility of using "1990" as the base year for consumption controls was included as an option by the Formula sub-working group. If it is decided in Montreal to use 1990 as the base year for consumption controls, some re-drafting of these paragraphs will be necessary.

^{5/} The Legal Drafting Group notes that it would be unlikely that global consumption figures would be available since data would not necessarily be available from non-Parties. In Article 2 paragraphs 4 and 5 "total consumption of the Parties" could be substituted for "global consumption". See also Article 5 paragraph 1.

^{6/} The Legal Drafting Group notes that sub-paragraph (a) does not indicate what control measures should apply to substances to be added to Annex A. It further notes that paragraph 5 does not deal with the question of the entry into force of any changes to Annex A decided by the Parties. It is unclear whether changes adopted by majority vote are intended to bind all Parties, or whether the intent is that such changes would bind only Parties that have agreed to them.

^{7/} This paragraph, which originally appeared in the revised reduction formula developed by the Trade Group, was only briefly discussed by the Legal Drafting Group as it was realized that the idea behind this provision required further elaboration.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles [] each Party shall calculate its levels of:

- (a) production, imports, and exports of the controlled substances, by:
 - (i) multiplying its annual production, imports and exports of each controlled substance by the ozone depletion potential specified in Annex A; and
 - (ii) adding together the multiplication products from subparagraph (i);
- (b) Consumption of the controlled substances, by adding together its levels of production and imports and subtracting its level of exports.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES^{8/}

1. Within [one] year of the entry into force of this Protocol, each Party shall ban the import [and export] of the controlled substances from [or to] any State not Party to this Protocol.

2. Alternative 1

[Within [four] years of the entry into force of this Protocol, each Party shall ban imports of products identified in Annex B containing controlled substances from any State not Party to this Protocol. The Parties shall periodically review, and if necessary, amend Annex B].^{9/}

^{8/} Incorporates results of consultations of the Trade subgroup in Brussels, 29-30 June 1987. It was agreed by the group that the years in paragraphs 1 and 2 of this Article should be the same as the years used in paragraphs 1 and 3 of Article 2 respectively.

^{9/} There are a number of provisions in the draft text - see Article 2 paragraph 5 and Article 4 - where changes or amendments to Annexes and the adoption of new annexes are envisaged. It was not clear from the draft text what procedures were intended by the drafters for the adoption of such changes. The Convention provides procedures for the amendment and adoption of annexes and for amendments to Protocols. (See Articles 9 and 10 of the Convention). The Legal Drafting Group noted that Article 10 paragraph 1 of the Convention provides that annexes "shall be restricted to scientific, technical and administrative matters", and it would be up to the meeting in Montreal to decide whether the proposed annexes are of that character; or indeed whether these matters could be dealt with in the main body of the Protocol or could be considered as part of the normal implementation of the Protocol. There was also discussion among the legal experts as to, inter alia, if the procedures other than those specifically provided for in the Convention are adopted by the Parties, how far they can vary from the Convention provisions on this point. These issues should be addressed in Montreal.

Alternative 2

[Within [four] years of the entry into force of this Protocol, each Party shall ban or restrict imports of products containing controlled substances from any State not Party to this Protocol. At least one year prior to the time such measures take effect the Parties shall elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by all Parties].

3. Within [four-six] years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting imports of products produced with controlled substances from any State not Party to this Protocol. If determined feasible, the Parties shall ban or restrict such products and elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by the Parties.

4. Each Party shall discourage the export of technology to any State not Party to this Protocol for producing and using the controlled substances.

5. Parties shall not conclude new agreements to provide to States not Party to this Protocol bilateral or multilateral subsidies, aid, credits, guarantees or insurance programmes for the export of products, equipment, plants or technology for producing the controlled substances.

6. The provisions of paragraphs 4 and 5 shall not apply to products, equipment, plants or technology which improve the containment, recovery, recycling or destruction of the controlled substances, or otherwise contribute to the reduction of emissions of these substances.

7. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 2 and 3 may be permitted from any [State not Party] [signatory] to this Protocol for a period not to exceed [two] [three] years from entry into force of the Protocol if that State is in full compliance with Article 2 and this Article and has submitted data to that effect, as specified in Article 7. [Extension of the exemption period beyond 2-3 years shall be granted by Parties only upon a determination at a meeting of the Parties that: (a) all conditions specified in this paragraph have been met and (b) such extension for an additional period not to exceed [two-three] years is fully consistent with the objectives of this Protocol to protect the ozone layer].^{10/}

^{10/} The Legal Drafting Group considered that further work to defined the objectives of this paragraph needs be carried out before satisfactory legal drafting can be done.

ARTICLE 5: LOW CONSUMING COUNTRIES 11/

1. Any Party whose consumption in 1986 of the controlled substances was less than [0.1] [0.2] kg. per capita shall be entitled to delay its compliance with the provisions of paragraphs 1 to 4 of Article 2 by [five] [ten] years after that specified in that Article and to substitute [] in place of 1986 as the base year. 12/
2. The Parties shall make all possible efforts to assist Parties referred to in paragraph 1 to make expeditious use of environmentally safe alternative chemicals and technology.
3. The parties shall encourage^{13/} bilateral and multilateral subsidies, aid, guarantees or insurance programmes to the developing countries for the use of alternative technology and substitute products.

11/ - The Legal Drafting Group, was aware of the importance of the Article on the low consuming countries but noted that the substantive work had not been completed on this Article. The Group, therefore, confined itself to the material available at the time of its meeting and merely introduced necessary drafting improvements. The Group draws attention to the need for this Article to be given a special priority by the preparatory meeting in Montreal and to be addressed at an early stage.

- It was decided during the Brussels consultations to retain in brackets the following provisions, taken from the revised reduction formula developed by the Trade Group, pending completion of the Article on Low Consuming Countries;

[Any [developing] country, or group of [developing] countries, not producing CFCs at the time of the signing of the Protocol shall be permitted to produce or have produced for it by any Party to the Protocol, substances referred to in Article 2, to a level not exceeding its/their controlled level of imports/aggregated level of imports, as the case may be. The level of production and imports at any time will not be permitted to exceed the controlled level of imports.]

12/ The Legal Drafting Group suggested this paragraph to replace the paragraphs 2 and 2 of the draft prepared in Geneva 27-30 April 1987 as a purely drafting improvement.

13/ The meeting in Montreal may wish to consider a more precise expression than the word "encourage".

ARTICLE 6: REVIEW AND ASSESSMENT OF CONTROL MEASURES

Beginning in 1990,^{14/} and every four years therefore, the Parties shall assess the control measures provided for in Article 2, based on available scientific, environmental, technical, and economic information. At least one year before each of these assessment, the Parties shall convene a panel of scientific experts, with composition and terms of reference determined by the Parties, to review advances in scientific understanding of modification of the ozone layer, and the potential health, environmental and climatic effects of such modification.

ARTICLE 7: REPORTING OF DATA

1. Each Party shall provide to the secretariat, within three months of becoming a Party, data on its production, imports and exports of the controlled substances for the year 1986 or estimates of that data where actual data are not available.
2. Each Party shall provide data on its production, exports, imports and destruction of these substances for the calendar^{15/} year during which it becomes a Party and for each year thereafter.

^{14/} The Legal Drafting Group noted that the requirement to hold the first assessment in 1990 is dependent on the Protocol being in force by that date.

^{15/} There was some discussion as to whether the fact that such data would be collected and submitted to the secretariat on a calendar year basis would create an ambiguity for measuring compliance with the control measures which, as currently drafted, would take effect a certain number of years after entry into force of the Protocol. As Article 2 is currently drafted it is not clear whether a Party would measure its compliance to a reduction step by the data for that previous calendar year or data for the year in which the particular obligation takes effect.

**ARTICLE 8: RESEARCH, DEVELOPMENT, EXCHANGE OF INFORMATION
AND PUBLIC AWARENESS**

1. The Parties shall co-operate in promoting, directly and through competent international bodies, bearing in mind the needs of developing countries, research, development and exchange of information on:

- (a) Best practicable technologies for reducing emissions of the controlled substances;
- (b) Possible alternatives to the controlled substances;
- (c) Costs and benefits of relevant control strategies

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of CFCs and other ozone modifying substances.

3. Each Party shall submit biennially to the Secretariat a summary of activities conducted pursuant to this Article.

ARTICLE 9: TECHNICAL ASSISTANCE

1. The Parties shall co-operate, taking into account in particular the needs of developing countries, in promoting, in the context of the provisions of article 4 of the Convention, technical assistance to facilitate participation in and implementation of this Protocol.

2. Any Party or Signatory to this Protocol in need of technical assistance in implementing it may submit a request to the Secretariat.

3. At their first meeting, the Parties shall begin deliberations on the ways and means of fulfilling the obligations set out in Article 8 and 9 above, including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. Non-Parties to the Protocol should be encouraged to participate in activities outlined in such workplans.

ARTICLE 10: MEETINGS OF THE PARTIES

1. The Parties shall hold meetings at regular intervals. The Secretariat shall convene the first meeting of the Parties not later than one year after entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.

2. Subsequent ordinary meetings of the Parties shall be held, unless the Parties otherwise decided, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary at a meeting of the Parties, or at the written request of any of them, provided that, within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. At their first meeting the Parties shall:
 - (a) adopt by consensus rules of procedure for their meetings;
 - (b) prepare workplans pursuant to paragraph 3 of Article 9;
 - (c) adopt by consensus such rules as required by paragraph 2 of Article 12.

4. The functions of the meetings of the Parties shall be:
 - (a) to review the implementation of this Protocol;
 - (b) to establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and 8;
 - (c) to review requests for technical assistance provided for in Article 9;
 - (d) to review requests received from the Secretariat pursuant to Article 11;
 - (e) to reassess, pursuant to Article 3, the control measures provided for in Article 2;
 - (f) to consider and adopt proposals for amendment of this Protocol [in conformity with Articles 9 and 10 of the Convention]
 - (g) to consider and adopt the budget for implementation of this Protocol;
 - (h) to consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Protocol, may be represented at meetings of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the Secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

ARTICLE 11: SECRETARIAT

The Secretariat shall:

- (a) Arrange for and service meetings of the Parties provided for in article 10;
- (b) Prepare and distribute to the Parties regularly a report based and information received pursuant to article 7 and 8;
- (c) Notify the Parties

- provision of such assistance to the extent possible;
- (d) Perform such other functions for the achievement of the purposes of the Protocol as may be assigned to it by the Parties;
 - (e) Where possible, encourage Non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of the Protocol;
 - (f) Where possible, provide the information referred to in sub-paragraphs (b), (c) and (d) above to such Non-Party observers.

ARTICLE 12: FINANCIAL PROVISIONS

1. The funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.
2. The Parties at their first meeting shall adopt by consensus financial rules for the operation of this Protocol, including rules for assessing contributions from the Parties, taking into account the special situation of the developing countries.

ARTICLE 13: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

The provisions of the Convention relating to its protocols shall apply to this Protocol, unless otherwise decided.

ARTICLE 14: SIGNATURE

This Protocol shall be open for signature at Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at U.N. Headquarters in New York from 17 January 1988 to 16 September 1988.

ARTICLE 15: ENTRY INTO FORCE

1. The Protocol shall enter into force on the same date as the Convention enters into force, provided that at least [nine] instruments of ratification, acceptance, approval of or accession to the Protocol have been deposited [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].^{16/} In the event that [nine] such instruments have not been deposited by the date of entry into force of the Convention, this Protocol shall enter into force on the [ninetieth] ^{17/} day following the date of deposit of the [ninth] instrument of ratification, acceptance, approval of or accession to the Protocol [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].^{16/}

2. For the purposes of paragraph 1, any instrument deposited by a regional economic integration organization referred to in Article 12 of the Convention shall not be counted as additional to those deposited by member States of such organizations.

3. After the entry into force of this Protocol, any State or regional economic integration organization referred to in Article 12 of the Convention shall become a Party to it on the [ninetieth] ^{17/} day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

^{16/} Resulting from Executive Director's consultations in Brussels on 29-30 June 1987. The Executive Director has requested Governments to submit data regarding their estimated imports. If sufficient data are available for the preliminary session in Montreal, a certain percentage of imports could be added to this provision.

A proposal was made to the Legal Drafting Group that would have the effect of applying similar provisions to the entry into force of amendments, additional annexes, or amendments to annexes to this Protocol. This proposal was not discussed fully because of time constraints and limited country representation. Also, a view was expressed that the proposal raised new substantive issues.

^{17/} The Convention provides that a State or regional economic integration organization may not become a Party to a Protocol unless it is, or becomes at the same time, a Party to the Convention (Article 16). It also provides that the Convention enters into force on the ninetieth day after the deposit of the twentieth instrument of ratification, and (after it has entered into force) for each ratifying State on the ninetieth day after the deposit of that State's instrument of ratification (Article 17). To prevent a situation arising in which a State's (or organization's) ratification of the Protocol might appear to be effective before the State (or organization) had become a Party to the Convention, it was necessary to substitute "thirtieth" for "ninetieth" in the article on entry into force in the Protocol. This might also be desirable in order to avoid the possibility that the Protocol might appear to enter into force before the Convention.

Final footnote

A proposal was made to the Legal Drafting Group for an Article under which, for purposes of certain Protocol articles, the geographic area of a regional economic integration organization shall be treated as a single unit. The proposal was not discussed fully because of time constraints and limited country representation. Also a view was expressed that the proposal raised new substantive issues.

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ANNEX A
CONTROLLED SUBSTANCES

GROUP	Chemical	Calculated Ozone Depleting ^a Potential (ODP)
(a) Fully halogenated Chlorofluorocarbons	CFC-11	1.0
	CFC-12	1.0
	CFC-113	0.8
	CFC-114	1.0**
	CFC-115	0.6**
[(b) Halons	Halon-1301	10**]
	Halon-1211	3**]

* ODP values are preliminary estimates subject to further scientific review.

** The ODP values for Halons 1211 and 1301, CFC-114, and CFC-115 are not as well established as the value for the other chemical compounds in the above table. Hence, the recommended ODP values for these chemical compounds should be considered provisional.

THE WHITE HOUSE
WASHINGTON

July 22, 1987

TO: Nancy Risque

FROM: Ralph Bledsoe

Attached is the first draft
options paper for the
President's response to
Canada.

THE WHITE HOUSE
WASHINGTON

July 22, 1987

TO: Steve Galebach

FROM: Ralph Bledsoe

Attached is the first draft
options paper for the
President's response to
Canada.



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

July 17, 1987

MEMORANDUM

TO: Members of U.S. Section, BACG

FROM: John D. Negroponte, Chairman *JDN*

SUBJECT: Meeting of the U.S. Section of the BACG

I propose that the U.S. section of the BACG meet on July 27 at 9:30 a.m. in Room 7835, State Department. The purposes of the meeting are to (a) review activities to date responding to Canada's initial proposals for an acid rain accord, and (b) decide on a program and timetable for completing the review.

Attached you will find a draft paper outlining four conceptual approaches for responding to the Canadian proposal, which was developed by a drafting group of the BACG. This paper is provided for your information only at this point. Lee Thomas has suggested that consideration of the conceptual framework for a U.S. response to Canada should await completion of acceptable analysis of specific control options and their costs and benefits as EPA proposed to the DPC working group on ENR&E on June 30. There is merit in this suggestion, but it may delay a U.S. response to Canada. The BACG needs to decide on how best to organize and schedule continuing review.

EPA has underway two efforts : (1) an analysis of the Canadian proposal, and (2) a more detailed study of the Canadian air program than that already provided to Congressman Dingell. I have asked EPA to brief us on both items at the July 27 meeting.

The small technical level meeting which we agreed with Canada to hold, is scheduled for July 28 in Ottawa. The purposes of the meeting are to (a) seek any necessary clarification of the Canadian proposal, and (b) to maintain a dialogue while the Administration develops its response. John Rouse will provide more details on the proposed agenda for the meeting and would welcome BACG suggestions.

Attachment:
Draft Paper as stated

*From —
Send a copy of this
to Nancy w/ note that
it is final draft options
paper for President's
response to Canada. JR*

Options for Responding to Canada's Acid Rain Proposal

The options for a U.S. response, including suboptions, fall into four conceptual approaches:

1. Seek to negotiate a broad framework agreement, perhaps including specific acid deposition or SO₂ targets at this time, but expandable to cover other pollutants, along the lines of the Great Lakes Water Quality Agreement. The Canadian proposal is modeled on this approach. The President's comments in Ottawa and subsequently suggest that he may have this type of approach in mind.
2. Narrow our response to specific proposals for limiting transboundary flows, or emissions, of SO₂ within a projected time frame. Levels and schedule could be set to meet our domestic concerns or the agreement could be based on stimulating more rapid introduction of improved controls, perhaps on a consistent basis in the two countries.
3. Agree to a process leading to a possible agreement (e.g. data collection and reconciliation, or reference to the International Joint Commission for findings and recommendations) before controls are negotiated.
4. Take unilateral action (e.g. control legislation or regulatory initiatives) which has positive impacts on Canada but without undertaking a specific bilateral commitment.

Whatever approach is pursued, we will want to be sure that related activities underway such as the innovative control technology demonstration program, the Vice President's regulatory review and the NAPAP scientific assessment are appropriately taken into account. These activities can be factored into any of the four negotiating approaches and are not themselves proposed as the basis for a U.S. negotiating position. Also a simple turn-down of the GOC proposal has not been considered as an option. While negotiations may not lead to agreement, failure to address the issue seriously and substantively would not be consistent with the President's undertaking.

Option 1: Framework Agreement.

Sub-option A: Pattern an accord closely on the Great Lakes Water Quality Agreement (GLWQA). Established under the Boundary Waters Treaty of 1909, the Agreement was signed by the

U.S. and Canada in 1972 and revised in 1978. The Agreement established a framework for addressing a broad range of pollution problems as well as a number of specific control objectives which for the most part are treated as targets and not explicit requirements. The specific objectives were based on many years of coordinated research and negotiation and the Agreement provides for their amendment. The Agreement assigned major oversight responsibilities to the International Joint Commission (IJC). The Agreement provides for the possibility of resolving jointly accepted problems by binding arbitration. The IJC reports progress and makes recommendations on all aspects of the Agreement biennially.

Attributes:

- o a broad framework with specific control objectives set for one or more pollutants
- o a known, tested, and basically successful approach to transboundary water issues
- o may or may not involve commitment now to specific emission reductions or specific control technology agreements
- o ultimately cedes significant oversight and dispute resolution authority to an independent body
- o creates the expectation of on-going and expanding joint air pollution control action that could go beyond acid rain issues

Sub-option B: Negotiate within the framework of the Canadian proposal, which is patterned on the GLWQA. The proposal provides a framework for addressing a broad range of transboundary air problems but the central elements are: (a) ceilings on transboundary flows of sulfur dioxide set by the receiving country, (including a U.S. reduction to 2 million tons per year); (b) an agreed timetable and periodic review of compliance; (c) the means of compliance left to each government; and (d) performance auditing by an independent body and binding disputes settlement. The major points of negotiation are (i) whether to include pollutants other than SO₂, (ii) whether to address localized transborder problems as well as regional scale problems such as acid rain, (iii) the timeframe for achieving the reductions, and (iv) what to ask of Canada regarding reduction of their transboundary SO₂ flows. A major difference between the Canadian proposal and the GLWQA is that the specific Canadian objective of a reduction in U.S. transboundary flows of SO₂ to 2 million tons per year is not

based on a common understanding of the relevant science, as are the specific objectives contained in the GLWQA. Another important difference is that the GLWQA does not contain dates by which the specific objectives are to be achieved.

Attributes:

- o a broad framework
- o numerous elements for negotiation
- o requires acceptance of a number of Canadian views regarding the science of acid rain with which the U.S. differs strongly
- o meets the basic Canadian objective of substantially reduced transboundary flows of SO₂ to Canada
- o ultimately cedes significant dispute resolution authority to an independent body

Option 2: Narrow SO₂ Reduction Agreement.

Sub-option A: Commit to maintain a downward trend in SO₂ emissions. Annual SO₂ emission levels in the U.S. declined 26 percent from 1970 to 1985, including a decline of 11 percent from 1980 to 1985. Maintaining a downward trend even at a reduced rate may be important for domestic reasons and feasible with economic and technological developments (probably with some governmental encouragement). Progress could be measured on a multi-year basis with no commitment to a specific numerical objective. Alternatively the U.S. could commit to specific numerical objectives over a specific timeframe.

Attributes:

- o a clear focus on emission reductions
- o addresses Canadian concerns but provides no special treatment for Canada
- o recognizes and builds on existing U.S. emission trends
- o some evidence that a downward trend will continue, especially if innovative controls are deployed
- o may have a flexible bottom line

Sub-option B: Commit now to a short term reduction in emissions, e.g., 2-3 million tons nationally by 1992-94, with future, unspecified steps depending on scientific and technological developments.

Attributes:

- o limited, clear objective
- o may occur anyway (although EPA forecasts do not support this view)
- o major added commitments linked to future scientific and technological developments
- o may be regarded by Congress and/or Canada as a token gesture

Option 3: Process Agreement.

Sub-option A: Develop a framework accord with principles, purpose, general objectives, and institutional mechanisms but with quantitative commitments dependent upon the results of a series of activities such as the Presidential Task Force on Regulatory Policy's review of federal and state economic and regulatory programs, NAPAP, and the Innovative Control Technology Program.

Attributes:

- o a broad framework for setting added controls later
- o commits to a process for further progress
- o specific emission reduction objectives linked to a series of future scientific, technological and administrative/regulatory results
- o falls far short of Canadian objectives

Sub-option B: Build a framework accord around a bilateral technical and scientific program for establishing the basis for quantitative control actions. A similar approach was taken with the 1980 Memorandum of Intent Between the U.S. and Canada on Transboundary Air Pollution. Negotiations under the MOI ceased in 1982 because of U.S. opposition to Canada's proposal for a 50 percent reduction in transboundary flows of SO₂ and associated differences between U.S. and Canadian experts over the cause and effect relationship between acidic deposition and its effect on aquatic ecosystems.

Attributes:

- o consistent with U.S. policy and views of the science
- o control actions based on evolving but objective scientific analysis
- o a similar approach has already failed
- o will be perceived by Canada and others as calling for more study to avoid real action

Sub-option C: Agree to establish consistent technological standards and programs. The major sources of emissions in each country could be identified and common emission control standards established; supporting programs for testing and monitoring could also be specified. At present, U.S. emission control standards and programs are generally technologically more stringent than those in Canada.

Attributes:

- o clear and specific commitments
- o recognizes and builds on the U.S.'s effective, technology based control programs
- o equivalent requirements for facilities in competitive industries
- o the timing for Canada to fully respond to some of their requirements should allow U.S. facilities to benefit from deployment of anticipated technological developments
- o intrudes significantly into the details of both countries' air programs

Sub-option D: Develop and prepare a joint reference of the issues to the International Joint Commission for findings and recommendations.

Attributes:

- o a respected, independent body
- o IJC is heavily engaged and its report would take a year or more
- o politically difficult not to accept the IJC recommendations whatever they may be

Option 4: Unilateral Action

Sub-option A: Seek new legislation for a program to either (a) reduce transboundary emission flows; (b) reduce total loadings nationally,; or (c) address domestic environmental problems that would have a concurrent beneficial effect on emission flows to Canada.

Attributes:

- o allows full political review of the costs and benefits of a control program

- 6 -

- o eliminates the need for a separate accord with Canada
- o offers significant flexibility in terms of the provisions to be sought regarding objectives, timing and implementing measures
- o final outcome may contain unwanted surprises
- o may involve significant delay

Sub-option B: Take action under existing authorities.

Continued implementation of the Clean Air Act may result in actions which will reduce flows of SO₂ emissions into Canada. Additionally, DOE's clean coal and innovative control technology programs may be expected to result in emission reductions, slowly at first but gaining greater reductions in out years. Finally, the Presidential Task Force on Regulatory Policy's review of federal and state economic and regulatory programs should identify opportunities for further reducing emissions.

Attributes:

- o consistent with U.S. policy and views of the science on acid rain
- o will be perceived by Canada and others as no progress or even a step back