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WITHDRAWAL SHEET

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Collection: BLEDSOE, RALPH: Files
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 (September 1987) [1]

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FOIA ID: F00-013, Metzger
Date: 08/18/2000

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	John Negroponte to Mr. Wallis, Circular 175, 8p <i>R 12/10/02 F2000-013 #18</i>	nd	P1/F1
2. memo	Arthur Culvahouse to Bledsoe, re authority to enter international agreement, 3p	9/1/87	P5
3. memo	Draft of item #1, 8p <i>A 12/10/02 F2000-013 #19</i>	nd	P1/F1

RESTRICTIONS

P-1 National security classified information [(a)(1) of the PRA].
 P-2 Relating to appointment to Federal office [(a)(2) of the PRA].

P-3 Release would violate a Federal statute [(a)(3) of the PRA].
 P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
 P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
 P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

F-1 National security classified information [(b)(1) of the FOIA].
 F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
 F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
 F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
 F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
 F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
 F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
 F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

BUREAU EUROPEEN DE L'ENVIRONNEMENT

EUROPEAN ENVIRONMENTAL BUREAU

Vautierstraat 31, B - 1040 Brussels

Tel. 02 / 647 01 99

REF C/98/87

Brussels, September 1, 1987

COMMUNIQUÉ DE PRESSE / PRESS RELEASE

EEB CALLS UPON EUROPEAN COMMUNITY

TO TAKE BOLD STEP

AT UPCOMING OZONE-NEGOTIATIONS

The European Environmental Bureau (EEB) - the Brussels-based coalition of the 100 major environmental organizations from the Twelve Member States of the European Community - today called upon the European Community to take a bold step at the upcoming ozone negotiations in Montreal.

From 14-16 September 1987 a Conference of Plenipotentiaries will be held in Montreal (Canada) to sign a Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer. A preliminary session to finalize outstanding matters will commence on Tuesday, 8 September 1987 and will conclude on Friday, 11 September 1987. Until now the European Community has taken the position to have a freeze of CFC's 11, 12 and 113-production at 1986 levels, plus a reduction of these CFC's with 20% two years after the Protocol has become effective (e.g. by 1992). This position is largely shared by Japan. The U.S.A., Canada and the Nordic countries are all in favour of a near phase-out (95% reduction) of all ozone depleting substances within 10-15 years. This position is shared by the world NGO (=Non-Governmental Organizations) community.

The debate in Montreal will mainly centre on (1) the percentage of the reduction of CFC's and related compounds, (2) which substances should be included in a Protocol (only the CFC's or also the halons) and (3) a regulation of imports and exports from non-signatory countries. It is clear that the current EC-position is not nearly half-way the position of the USA, Canada and the Nordic countries and is thus likely to impede the signature by all Contracting Parties of a meaningful Protocol to the Vienna Convention later on this month. On the other hand it was recently confirmed, at an EEB-seminar under the title 'The Sky Is The Limit: ozone depletion and the role of the EC' (Brussels, June 22, 1987), by scientists both from the USA and Europe that a 85% cut in CFC emissions is necessary merely to stabilize the effect of these substances on the Earth's ozone layer.

A meaningful compromise in Montreal would have to be a Protocol covering all ozone depleting substances, a freeze of production of these substances on 1986 levels plus a 50% reduction in the short term. Periodic scientific reviews should be held in order to determine the exact time-table necessary to arrive at an eventual phase-out of all ozone depleting substances, unless scientific findings prove this to be unnecessary.

CFC's in aerosols are already banned in several countries: in the U.S.A. (in 1978), Canada, Sweden (as of July 1, 1979) and recently in Denmark (as of January 1, 1987). Most recently the German Minister for the Environment, Töpfer, has received the written agreement from the German Aerosol Industry that the 'use of dangerous CFC's' in aerosols will be reduced by up to 75% for December 1988, and up to 90% by 1989. Only medical sprays may still contain CFC's. The implementation of this 'gentlemen's agreement' will be checked by an independent audit firm.

Labelling of spray cans containing CFC's already exists in: the Netherlands and in the Federal Republic of Germany. In the Netherlands spray cans containing CFC's must provide a 'warning' to the user. Without specific legislation banning CFC's, the use of CFC's in aerosols has been reduced by up to 90% in this country. In the FRG the 'Environment' label is given to CFC-free cans.

Substitutes exist for most CFC-uses and are held by several European companies (like ICI, Hoechst, Atochem, Bayer) as well as by American and Japanese firms.

The question therefore arises why certain countries - like the United Kingdom, France, Spain and Italy - are so obstinate that they are blocking moves to a meaningful Protocol, while the manufacturers in their country possess the patents of substitutes for CFC's.

It is high time for the European Community to take a bold step in Montreal and agree to a meaningful Protocol as outlined above and for the European Commission to come forward with a proposal for a Community Directive banning the use of CFC's and related compounds in all but the essential uses. This could be done on the basis of the already existing Danish legislation and taking into account the elements of the German gentlemen's agreement.

Last but not least, one might expect some help on this subject from the present (Danish) and future (German) Presidency of the Council.

For more information, contact:

Ernst R. Klatte, Secretary-General of the EEB (32) (2) 647.01.99
as from September 16, 1987 : (32) (2) 514.14.32 / 514.12.50

ROUTING AND TRANSMITTAL SLIP

Date

September 1, 1987

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Ben Cohen		
2. White House: Counsel's Office		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

SUBJECT: OZONE PROTOCOL: Summary of
Negotiation and Ratification
Process

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg. 6420 State
	Phone No. 647-1370

L/OES - Debbie Kennedy



United States Department of State

Washington, D.C. 20520

September 1, 1987

MEMORANDUM

TO: Ben Cohen
White House: Counsel's Office

FROM: Debbie Kennedy *DK*
State: Legal Adviser's Office

SUBJECT: Ozone Protocol: Summary of Negotiation and
Ratification Process

The attached document briefly describes the remaining steps of the international negotiations on the Ozone protocol and the process of U.S. ratification of the agreement. Feel free to call me if you have any further questions on this subject.

cc: Richard Benedick

Procedural Steps of Ozone Protocol
Negotiations and of U.S. Ratification Process

A. Domestic Process Prior to Signature

1. Request for Authorization to Sign the Agreement. This request takes the form of an action memorandum (typically from the Assistant Secretary of the bureau with substantive responsibility for the subject to which the agreement relates) addressed to the Secretary or, except when a Full Power is to be issued at the same time, any other Principal to whom such authority has been delegated -- i.e., the Deputy Secretary or an Under Secretary. The memorandum is cleared with various State Department bureaus and any other agency which has primary responsibility or a substantial interest in the subject matter.

2. Request for Issuance of Full Power. The full power is formal evidence of the authority of a particular representative, named in the instrument, to sign the agreement on behalf of his/her government. It is used only for the signing of treaties. The full power is prepared by the State Department's Office of the Assistant Legal Adviser for Treaty Affairs, and must be signed by the Secretary or Acting Secretary of State. It normally is requested at the same time the request for authority to sign the agreement is made.

B. Remaining Steps of International Negotiations

1. September 7: Meeting of legal experts and informal meeting between UNEP Executive Director and selected heads of delegations to the Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Ozone-Depleting Substances to the Vienna Convention for the Protection of the Ozone Layer.

2. September 8 - 11: Meeting of Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Ozone-Depleting Substances to the Vienna Convention for the Protection of the Ozone Layer. The objective is to have a virtually complete draft of the protocol (the Eighth Revised Draft Protocol) ready by the end of the session on Sept. 11 for review by governments over the weekend.

3. September 14 - 16: Conference of Plenipotentiaries on the Protocol: Consideration by conference of the draft protocol and the report of the Ad hoc Working Group. Discussion of unresolved issues and finalization of the agreement. Adoption of the final text by the conference. (Adoption is the process by which the content of the proposed agreement is settled by the delegates; it is not an expression of a State's agreement to be bound by the agreement, which

occurs only upon specific expression of its consent -- e.g., through ratification, accession, acceptance.) Adoption of the Final Act of the Conference. (The Final Act may contain a summary of the conference proceedings, names of the States that participated, and resolutions adopted by the conference. It does not contain any international commitments.)

C. U.S. Signature of the Agreement

1. Available Time Period: Under Article 14 of the Seventh Revised Draft Protocol, the protocol will be open for signature in Montreal on September 16 -- at the conclusion of the Conference of Plenipotentiaries. Thereafter, it will be open for signature in Ottawa from September 17, 1987 to January 16, 1988 and at the UN Headquarters in New York from January 17, 1988 to September 16, 1988. If the U.S. does not sign the protocol in Montreal, it could sign subsequently in Ottawa or New York.

2. Significance: Signature connotes a State's intent to seek in good faith the necessary domestic authorization for ratification or acceptance and any implementing legislation or regulations. A signatory State is obliged to refrain from acts which would defeat the object and purpose of the treaty until it makes its intention clear not to become a party to the treaty.

D. U.S. Ratification Process

Because of the breadth and importance of the proposed protocol, a preliminary decision has been made to conclude it as a treaty pursuant to Article II, Section 2 of the Constitution. After U.S. signature of the protocol, the following steps would be those taken in connection with U.S. ratification of the agreement. The consent of the U.S. to be bound by the treaty is expressed by its ratification of the agreement.

1. The Department of State would prepare a treaty package consisting of (a) an explanatory report signed by the Secretary or Acting Secretary of State providing background information on the protocol and an analysis of its provisions; (b) a message to be signed by the President transmitting the protocol to the Senate for its advice and consent to ratification; and (c) a certified copy of the protocol itself.

2. After the report is signed by the Secretary of State, the package is submitted to the White House (via the National Security Council) to obtain the President's signature of the message. The package is then transmitted by the White House to the Senate, where it would be referred to the Senate Foreign Relations Committee (SFRC) for appropriate action.

3. Related documents could be sent to the Hill under separate cover. For example, the environmental impact statement (EIS) may be sent directly to the SFRC by the Department of State. Proposed legislation deemed necessary to implement the protocol, if any, would be transmitted to the Congress through normal OMB procedures.

4. The Committee probably would schedule hearings on the protocol.

5. The Committee would then schedule the protocol on its calendar for a vote, and should the Committee report favorably on the protocol, it would be considered for advice and consent by the full Senate. The Senate normally takes action on treaties in the form of a resolution of ratification.

6. Once approved by a two-thirds vote of those present, the Senate's resolution of ratification is then returned with the certified copy of the treaty to the State Department, at which time an instrument of ratification is prepared in duplicate, forwarded to the White House for the President's signature, returned to State where it is also sealed and signed by the Secretary of State.

7. The protocol, as envisaged, does not appear to require additional legislation for U.S. implementation. The promulgation of additional regulations will be required, however, in order for the U.S. to implement the agreement. Pursuant to the terms of a court order issued in litigation against the EPA Administrator by the Natural Resources Defense Council, EPA must publish by December 1, 1987 a proposed decision on the need for further domestic regulation under the Clean Air Act of certain ozone-depleting chemicals. A final EPA decision is required by August 1, 1988.

8. After the promulgation of implementing regulations, the U.S. instrument of ratification would be deposited with the Secretary General of the United Nations, the depositary for the Ozone Convention and protocol.

9. The protocol would enter into force for the United States according to the provisions on entry into force specified in the protocol.

10. The final step of the U.S. treaty process is the issuance of a proclamation signed by the President, which declares that on and after the protocol's entry into force, it shall be observed and fulfilled by the U.S., its citizens, and persons subject to U.S. jurisdiction. The proclamation is prepared by the Department of State for the President's signature and printed in the Federal Register.

Drafted:L/T:MBrandt;L/OES:DKennedy:647-1370:22830

Clearance:L/T:HCollums



United States Department of State

Washington, D.C. 20520

~~CONFIDENTIAL~~

TO: The Acting Secretary
THRU: E - Mr. Wallis
FROM: OES - John D. Negroponte
SUBJECT: Circular 175: Request for Authority to Sign a
Protocol on Chlorofluorocarbons and Other
Ozone-Depleting Substances

ISSUE FOR DECISION:

Whether to authorize and issue full power for signature by the United States of the Protocol on Chlorofluorocarbons and Other Ozone-Depleting Substances ("protocol") to the Vienna Convention for the Protection of the Ozone Layer ("Convention").

ESSENTIAL FACTORS:

Background

On November 28, 1986, authority was granted by Under Secretary Wallis to negotiate a protocol to the Vienna Convention for the Protection of the Ozone Layer to control emissions of ozone-depleting substances. Depletion of stratospheric ozone by certain chemicals, such as certain chlorofluorocarbons (CFCs) and some bromine compounds, pose significant risks for human health and the environment. A description of the ozone-depletion problem and the international process leading up to the negotiations is contained in the November 1986 Circular 175 action memorandum.

Negotiations on the protocol, which have been conducted under the auspices of the United Nations Environment Program (UNEP), are nearing completion. A final negotiating session is scheduled for September 8 - 11 in Montreal. A Conference of Plenipotentiaries, at which it is planned the protocol will be adopted and opened for signature, will take place in Montreal September 14 - 16. EPA Administrator Lee Thomas will head the U.S. delegation to the Conference.

DECLASSIFIED / RELEASED

NLS F 2000 - 013 #18

BY smf, NARA, DATE 12/10/02

~~CONFIDENTIAL~~

Key Elements of the Protocol

The United States has played a leadership role in these negotiations, influencing the policies of many nations which were initially opposed to effective international controls. As a result, the current draft protocol text (Tab __) is very close to the U.S. position as outlined in the November 1986 Circular 175 request and instructions issued by the President on June 25, 1987 to guide the U.S. delegation (Tab __).

The two principal features of the draft text are the obligations relating to the control of emissions of ozone-depleting substances (Article 2) and the restriction of trade in the controlled substances with States not party to the protocol (Article 4). On control measures, the text provides for

--a near-term freeze on emissions of the major ozone-depleting substances (CFC 11, 12, 113, 114, and 115 and Halons 1211 and 1301),

--long-term scheduled reductions (of first twenty, then fifty percent) of CFC emissions,

--periodic assessments of the control provisions, based upon scientific, environmental, technical and economic information, which could result in addition or removal of chemicals or a change in the reduction schedule or the emission reduction target.

With respect to trade with non-parties, the draft protocol includes

--a ban on imports from (and potentially exports to) non-parties of the controlled substances in bulk within one year of the protocol's entry into force (e.i.f.),

--a ban or restrictions on imports of products containing controlled substances from non-parties within four years of e.i.f.,

--future consideration of restriction on imports of products produced with controlled substances from non-parties, and

--a prohibition against concluding new agreements which provide non-parties with financial assistance for producing the controlled substances.

On other issues, the proposed text contains (consistent with the President's instructions) reporting procedures, a limited grace period from compliance with the control measures for low-consuming countries, and voting and entry-into-force provisions that require, respectively, the agreement and participation of States representing a substantial percentage of relevant production/consumption.

Principal Outstanding Issues

Several key U.S.-supported provisions of the draft text are still the subject of debate in the negotiations -- viz., (1) the fifty-percent reduction in CFC emissions; (2) the freeze on emissions of Halons 1211 and 1301; (3) a ban or restrictions on imports from non-parties of products containing the controlled substances; and (4) the requirement of agreement or adherence by countries comprising a substantial percentage of production/consumption for, respectively, decision-making and entry into force of the protocol.

The European Community, joined to some extent by Japan and the USSR, has been our principal adversary on the first three points, although the country position of several EC-member States (FRG, Denmark, Belgium) is close to the U.S. stance. The last issue -- production/consumption percentages for voting and entry into force -- has elicited concern from many of the participating countries, including some States (e.g., Canada, Norway, Sweden, New Zealand) that otherwise agree with the United States on the other issues.

The U.S. delegation's objective in Montreal will be to protect gains achieved thus far and to secure agreement on these critical issues. It is probable that most, if not all, of these issues will be resolved favorably, although at this point we cannot assure this result. The delegation will consult closely with Washington to ensure appropriate coordination and clearances in the resolution of all outstanding issues.

The delegation will also try to supplement or modify the attached text in ways that will accomplish the objectives outlined the President's June memorandum and result in a more effective agreement, with increased protection of U.S. interests. In particular, the delegation will seek

--an increase in the percentage of global production/consumption (sixty percent in the current draft) required to be represented among Parties ratifying,

accepting, approving or acceding to the protocol before its entry into force.

--an increase in the percentage of production/consumption required to be represented among the majority needed to adjust the control measures or to amend the protocol. In this connection, there is a need to have a decision-making process that protects the United States from being bound by future decisions contrary to its interests.

--the addition of an article that would treat Parties not in compliance as non-parties -- e.g., for purposes of trade and voting.

--the use of consumption (defined in Article 1 of the attached text) of the controlled substances as the control criterion. Controlling consumption alone (as opposed to controlling consecutively production/imports and production/consumption as envisaged under the current text) will provide the freest possible movement of trade and capital among Parties in response to market forces, within overall limits to protect the ozone layer.

--a provision to count exports of the controlled substances to non-parties as part of domestic consumption. This would permit some exports to non-parties, avoiding a total ban which would in effect require non-parties to build their own production capacity, but it would provide an incentive for parties to export to parties rather than to non-parties and for parties to encourage their trading partners to join. This proposal is consistent with the President's general directives to protect the ozone layer, to encourage participation by all countries, and to ensure that U.S. industry is not disadvantaged through U.S. participation.

The Commission of the European Communities has proposed that regional economic integration organizations ("reios") be considered a single producing unit for purposes of the two principal articles of the protocol -- control measures and trade with non-parties. The Commission's proposal, if accepted, would mean that an EC-member State that is party to the protocol could exceed the protocol emissions limits if the emissions reduction of another EC country offset the excess. Non-EC member States that are parties would not have similar flexibility; each of them would be required to ensure that its

national emissions did not exceed the protocol limits. This proposal is at odds with the protocol's intent that no party increase its emissions. It also allows some State parties to enjoy the political benefits of adhering to the protocol without being equally subjected to its disciplines. Discussion of the legal ramifications of the proposal is contained in the attached legal memorandum. (See Tab ____.)

The delegation will strongly resist the Commission's proposal. It is probable, however, that the EC will not completely concede this issue. An acceptable alternative, which alleviates some of our concerns, is to limit treatment as a "single unit" to reios with exclusive competence over the matters covered by the protocol, none of whose member States are also party to the agreement. Because of the precedential nature of the Commission's proposal, the delegation will keep the Department apprised on the discussion relating to this issue.

In light of the number of outstanding issues, the final text of the agreement will be transmitted to Washington for approval by the Department (in particular OES, E, L, EB, and EUR), the White House (the Domestic Policy Council staff), and key agencies prior to U.S. signature of the agreement.

Character of the Agreement

As discussed in the attached legal memorandum, the protocol, as envisioned, is consistent with existing legislation, but the promulgation of domestic regulations will be required to implement the protocol. Because of its breadth and importance, the protocol will be concluded as a treaty pursuant to Article II, Section 2 of the Constitution and will be submitted to the Senate for its advice and consent to ratification.

Environmental Impact Statement

Since the protocol includes measures that will significantly affect the ozone layer (albeit positively), it was determined to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. and Executive Order 12114 of January 4, 1979, Environmental Effects Abroad of Major Federal Actions. An EIS is under preparation and will be submitted to the Senate in conjunction with the ratification process.

Funding

The protocol itself contains no mandatory financial obligations. Financial rules are to be adopted by the Parties at their first meeting by consensus. In signing the protocol, the United States would be making a commitment in principle to payment of its fair share of the future expenses of the secretariat, meeting of the parties, and a panel of scientific experts. For several reasons, however, the financial costs associated with these services and activities are likely to be relatively insubstantial and capable of being covered with presently projected agency budgets.

First, secretariat services for the protocol will be provided by the secretariat established by the Convention, although incremental costs for services related to the protocol would be charged against contributions from Parties to the protocol. The UNEP Secretariat estimates that the additional annual expense to the United States for services relating to the protocol rendered by the secretariat would be approximately \$10,000. Second, ordinary meetings of the Conference of the Parties to the protocol will be held, unless the Parties decide otherwise, in conjunction with meetings of the Conference of the Parties to the Convention, minimizing additional travel costs. Third, as a Party to the Convention, the U.S. is already committed to participation in cooperative scientific research, monitoring and information exchange. NASA, NOAA, EPA and other technical agencies will seek funding as appropriate within their own priorities to participate in the scientific panel and any other cooperative programs resulting from the protocol. EPA will be responsible for reports to the secretariat, participation in technical reviews, and other commitments of a technical nature assumed under the protocol.

Public and Congressional Consultations

There have been extensive consultations with various agencies, members of Congress and their staff, environmental groups, and affected producer and user industries. We believe that there is broad support for effective international regulation of ozone-depleting chemicals, although some industries, notably the plastics industry, are concerned about the effects on them of reductions imposed by the protocol. The concerns that they have expressed were taken into account in EPA's assessment of the risks and costs of the proposed controls and in the extensive interagency review process preceding the President's decision on the U.S. negotiating position.

Domestic Regulatory Activities

Background on prospective domestic regulatory action is included in the November 1986 Circular 175 request. Under the terms of a revised schedule issued by the court in NRDC v. Thomas and reflecting an agreement reached by the litigants, EPA must publish by December 1, 1987 a proposed decision on the need for further domestic regulation of CFCs under the Clean Air Act. A final EPA decision is required by August 1, 1988.

As noted in the attached legal memorandum, additional regulations will be necessary for the U.S. to implement the protocol. The U.S. would not deposit its instrument of ratification of the protocol until such regulations have been promulgated.

RECOMMENDATIONS:

1. That you authorize signature by the United States of a protocol that is based on the attached text and meets the President's negotiating guidelines, subject to the concurrence of appropriate Department elements (OES, E, EB, EUR, L), key agencies, and the Domestic Policy Council staff in the final text.

Approve _____ Disapprove _____

2. That you sign the attached full power (Tab ___) authorizing Lee M. Thomas, Administrator of the Environmental Protection Agency, or in his absence, Richard E. Benedick, Principal United States Negotiator, or alternatively, Thomas Niles, U.S. Ambassador to Canada, to sign the protocol on behalf of the United States.

Drafted:OES/ENH:SButcher;L/OES:DKennedy

Clearances:OES/E:REBenedick
L:EVERville
E:MBailey
EUR:J.Wilkinson
EB:RJohnson
M/MO:CEDillery
M/COMP:JHLinneman
IO:SVogelgesang
H:Joyer
DPC:RBeldsoe
EPA/OIA:BLong
USTR:RReinstein
Energy:MWalker
Commerce:BSmart
Justice:THookano
OMB:DGibbons
Interior:BNdunlop

#22720

THE WHITE HOUSE
WASHINGTON
September 1, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM:

RALPH BLEDSOE 

SUBJECT:

Advice from Legal Counsel on Ozone Protocol

Nancy, following discussions with Ben Cohen of the White House Counsel's Office, we felt the following action is appropriate, given the State Department's need for authority to proceed with the signing of the final protocol by Lee Thomas. First, Lee will have to be given signing authority by the Secretary of State, and the State lawyers say this must be done prior to Lee's departure. (Since Secretary Shultz will be meeting with his Soviet counterpart on September 16, it was felt this should be done as soon as possible because of the preparation for that meeting.)

Ben Cohen thinks that we can communicate to State that we have no problem with them seeking interagency clearance according to the Circular 175 process, provided:

- o There is no circulation of the President's negotiating instructions.
- o It is made clear that comments will not be entertained which reopen issues already settled by the President's instructions.
- o The memorandum to Secretary Shultz requesting his approval reflects that exercise of the full power, including signing, depends on concurrence in the final text by interested agencies.
- o Distribution includes at least the agencies represented on the delegation (State, EPA, Commerce, USTR, Justice, DOE) plus Interior and OMB; and at most includes agencies that received the President's negotiating instructions.

Given Lee Thomas' intent to personally interact with the key people interested in this issue, and the representation on both the negotiating and signing delegations of most of the major parties, this process should work out without having to reopen all the previous discussions.

Richard Benedick is having a meeting of the negotiating delegation tomorrow, Wednesday, September 2, at 4 p.m. I suggested he also invite Interior and OMB. I will also attend.

THE WHITE HOUSE

WASHINGTON

September 1, 1987

CLOSE HOLD

MEMORANDUM FOR RALPH C. BLEDSOE
SPECIAL ASSISTANT TO THE PRESIDENT FOR
POLICY DEVELOPMENT

FROM: ARTHUR B. CULVAHOUSE, JR. 
COUNSEL TO THE PRESIDENT

SUBJECT: Stratospheric Ozone--Authority to Enter
International Agreement

You have asked for my advice concerning whether the President's negotiating instructions regarding the protocol for control of ozone-depleting chemicals, promulgated after review by the Domestic Policy Council, obviate the need for the Secretary of State to follow the requirements of Foreign Affairs Manual Circular 175 in granting full powers to the United States negotiators in Montreal. Alternatively, you have suggested that a Circular 175 memorandum could be sent to the Secretary of State without the concurrence of other interested agencies. For the reasons set forth below, I do not believe either alternative is advisable.

Circular 175, as codified at Chapter 710 et seq. of the Foreign Affairs Manual, recites that it "is intended solely as a general outline of measures and procedures ordinarily followed which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this chapter will not invalidate actions taken by officers nor affect the validity of negotiations engaged in or of treaties or other agreements concluded." 11 FAM 710. This provision therefore by its own terms preserves the discretion of the Secretary of State to determine the circumstances and procedures under which, subject to the direction of the President, he may

grant full powers to a person or persons to sign international agreements on behalf of the United States. 1/ As a strictly legal matter, therefore, either the President or the Secretary could grant full powers without following all, or any, of the requirements of Circular 175.

As a matter of policy, however, I strongly advise against either course. Robert Dalton, the Assistant Legal Adviser for Legal Treaties, has informed us that he is unaware of any occasion on which a treaty has been signed by anyone other than the President or the Secretary of State in which full powers were not granted pursuant to Circular 175, which dates back to the 1950's. 2/ To depart from such a settled course of practice could create misunderstanding of the reasons for the extraordinary procedure among the interested agencies or the public. Moreover, as a practical matter, the decision whether to depart from the requirements of Circular 175 would rest with the President or the Secretary of State. The Secretary has already indicated his desire to follow the full Circular 175 procedures. To elevate the issue to the President would again create the potential for misunderstanding or misconstruction of the Administration's decision-making process. It is also possible that such a truncated deliberative process would be objectionable to the other interested agencies.

My staff has discussed intensively with you and the Legal Adviser's Office a third alternative: that the United States Delegation could be granted full powers pursuant to a full Circular 175 clearance procedure after the conclusion of the final round of negotiations on September 8-11 and before the signing ceremony on September 16. Such a procedure would avoid two clearances of the document--one before the final September 8-11 negotiating session pursuant to Circular 175, to confer the full powers, and one after that session, to determine whether to exercise them. It also would ensure that the interested agencies were passing on a more nearly final document than the nonfinal draft protocol that the State Department proposes to circulate at this time.

1/ Thus, I believe that those cases which hold that agencies must comply with regulations while they are in force, even though such regulations are wholly revocable, would not constrain the Secretary to follow the procedures set forth in Circular 175. In addition, the treaty-making power is so central a part of the President's exclusive constitutional authority in foreign affairs that it is questionable whether it could constitutionally be constrained by internal Executive branch regulations. See United States v. Curtiss-Wright Export Corp.

2/ Under international law, the President and the Secretary of State do not require full powers to sign international agreements.

After consultation with the State Department, however, I have concluded that such a procedure would be inadvisable. First, the State Department has strongly stated that it would deny the U.S. Delegation the leverage in negotiations that would be conferred by possession of full powers to sign before the opening of the final negotiating session. Second, the State Department has advised that Secretary Shultz's meeting with the Soviet Foreign Minister on September 16 will make it impossible for the Secretary to approve the grant of full powers during the September 12-September 15 period available between meetings in Montreal. Finally, the Department has stated that a two-step consideration of the draft protocol is necessary to ensure appropriate consideration of the many complex issues raised by the protocol. It does not believe that the interested agencies will be able adequately to consider the final draft of the protocol over the Labor Day weekend unless they have earlier had the opportunity to consider the issues in the context of approval of a grant of full powers.

Though I believe that the State Department's objections to all of these proposals are substantially correct, I appreciate your concern that protracted interagency clearance of the protocol could complicate rather than simplify the final decision on the agreement. I also agree with your views of the importance that should be attached to maintaining the confidentiality of the President's negotiating instructions. Accordingly, my staff has informed the Assistant Legal Adviser of your decision that neither the President's decisional memorandum nor his negotiating instructions should be attached to or referenced in the Circular 175 memorandum.

Thank you for bringing this matter to my attention.



United States Department of State

Washington, D.C. 20520

DRAFT

~~CONFIDENTIAL~~

TO: The Acting Secretary
THRU: E - Mr. Wallis
FROM: OES - John D. Negroponte
SUBJECT: Circular 175: Request for Authority to Sign a Protocol on Chlorofluorocarbons and Other Ozone-Depleting Substances

ISSUE FOR DECISION:

Whether to authorize and issue full power for signature by the United States of the Protocol on Chlorofluorocarbons and Other Ozone-Depleting Substances ("protocol") to the Vienna Convention for the Protection of the Ozone Layer ("Convention").

ESSENTIAL FACTORS:

Background

On November 28, 1986, authority was granted by Under Secretary Wallis to negotiate a protocol to the Vienna Convention for the Protection of the Ozone Layer to control emissions of ozone-depleting substances. Depletion of stratospheric ozone by certain chemicals, such as certain chlorofluorocarbons (CFCs) and some bromine compounds, pose significant risks for human health and the environment. A description of the ozone-depletion problem and the international process leading up to the negotiations is contained in the November 1986 Circular 175 action memorandum.

Negotiations on the protocol, which have been conducted under the auspices of the United Nations Environment Programme (UNEP), are nearing completion. A final negotiating session is scheduled for September 8 - 11 in Montreal. A Conference of Plenipotentiaries, at which it is planned the protocol will be adopted and opened for signature, will take place in Montreal September 14 - 16. EPA Administrator Lee Thomas will head the U.S. delegation to the Conference.

DECLASSIFIED / RELEASED

NLS F 2000-013 #19

BY smf, NARA, DATE 12/10/02

~~CONFIDENTIAL~~

Key Elements of the Protocol

The United States has played a leadership role in these negotiations, influencing the policies of many nations which were initially opposed to effective international controls. As a result, the current draft protocol text (Tab ___) is very close to the U.S. position as outlined in the November 1986 Circular 175 request and instructions issued by the President on June 25, 1987 to guide the U.S. delegation (Tab ___).

The two principal features of the draft text are the obligations relating to the control of emissions of ozone-depleting substances (Article 2) and the restriction of trade in the controlled substances with States not party to the protocol (Article 4). On control measures, the text provides for

--a near-term freeze on emissions of the major ozone-depleting substances (CFC 11, 12, 113, 114, and 115 and Halons 1211 and 1301),

--long-term scheduled reductions (of first twenty, then fifty percent) of CFC emissions,

--periodic assessments of the control provisions, based upon scientific, environmental, technical and economic information, which could result in addition or removal of chemicals or a change in the reduction schedule or the emission reduction target.

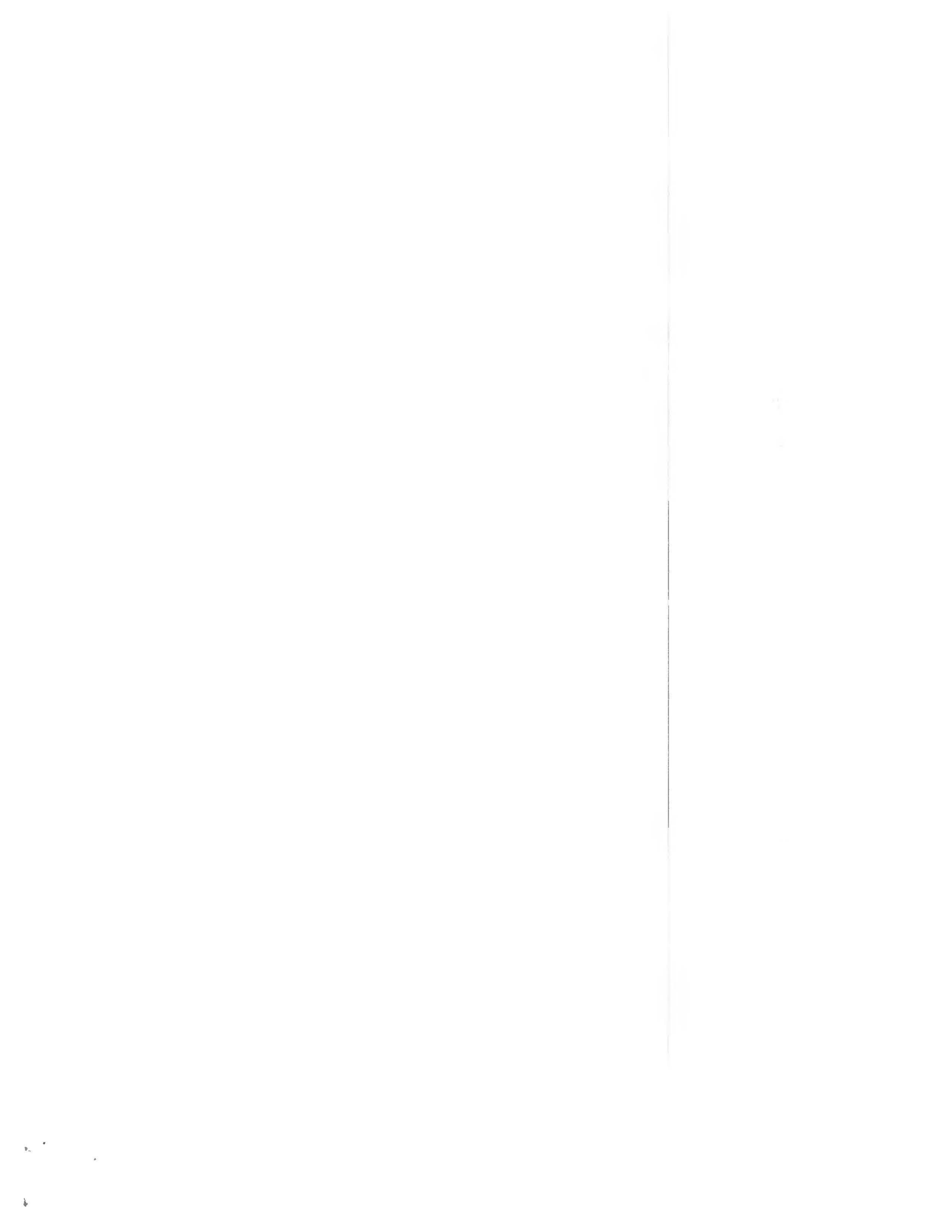
With respect to trade with non-parties, the draft protocol includes

--a ban on imports from (and potentially exports to) non-parties of the controlled substances in bulk within one year of the protocol's entry into force (e.i.f.),

--a ban or restrictions on imports of products containing controlled substances from non-parties within four years of e.i.f.,

--future consideration of restriction on imports of products produced with controlled substances from non-parties, and

--a prohibition against concluding new agreements which provide non-parties with financial assistance for producing the controlled substances.



On other issues, the proposed text contains (consistent with the President's instructions) reporting procedures, a limited grace period from compliance with the control measures for low-consuming countries, and voting and entry-into-force provisions that require, respectively, the agreement and participation of a substantial percentage of relevant production/consumption.

Principal Outstanding Issues

Several key U.S.-supported provisions of the draft text are still the subject of debate in the negotiations -- viz., the fifty-percent reduction in CFC emissions; the freeze on emissions of Halons 1211 and 1301; a ban or restrictions on imports from non-parties of products containing the controlled substances; and the requirement of agreement or participation by a substantial percentage of the producing/consuming countries for, respectively, decision-making and entry into force of the protocol.

The European Community, joined to some extent by Japan and the USSR, has been our principal adversary on the first three points, although the country position of several EC-member States (FRG, Denmark, Belgium) is close to the U.S. stance. The last issue -- production/consumption percentages for voting and entry into force -- has elicited concern from many of the participating countries, including some States (e.g., Canada, Norway, Sweden, New Zealand) that otherwise agree with the United States on the other issues.

The U.S. delegation's objective in Montreal will be to protect gains achieved thus far and to secure agreement on these critical issues. It is probable that most, if not all, of these issues will be resolved favorably, although at this point we cannot assure this result. However, the delegation will not concede on these issues without prior consultation with Washington for appropriate clearances.

The delegation will also try to supplement or modify the attached text in ways that will accomplish the objectives outlined in the President's June memorandum and result in a more effective agreement, with increased protection of U.S. interests. In particular, the delegation will seek

--an increase in the percentage of global production/consumption (sixty percent in the current draft) required to be represented among Parties ratifying,

accepting, or approving the protocol before its entry into force.

--an increase in the percentage of production/consumption required to be represented among the majority needed to adjust the control measures or to amend the protocol. (Assuming ratification by the major producers/consumers, a protocol requirement of sixty-six percent of consumption would enable the United States to have a veto over these decisions.)

80%

--the addition of an article that would treat Parties not in compliance as non-parties -- e.g., for purposes of trade and voting.

--the use of consumption (defined in Article 1 of the attached text) of the controlled substances as the control criterion. Controlling consumption alone (as opposed to controlling consecutively production/imports and production/consumption as envisaged under the current text) will provide the freest possible movement of trade and capital among Parties in response to market forces, within overall limits to protect the ozone layer.

Must use both

--a provision to count exports of the controlled substances to non-parties as part of domestic consumption. This would permit some exports to non-parties, avoiding a total ban which would in effect require non-parties to build their own production capacity, but it would provide an incentive for parties to export to parties rather than to non-parties and for parties to encourage their trading partners to join. This proposal is consistent with the President's general directives to protect the ozone layer, to encourage participation by all countries, and to ensure that U.S. industry is not disadvantaged through U.S. participation.

The Commission of the European Communities has proposed that regional economic integration organizations be considered a single producing unit for purposes of the two principal articles of the protocol -- control measures and trade with non-parties. The Commission's proposal, if accepted, would mean that an EC-member State that is party to the protocol could exceed the protocol emissions limits if the emissions reduction of another EC country offset the excess. Non-EC member States that are parties would not have similar flexibility; each of them would be required to ensure that its

national emissions did not exceed the protocol limits. This proposal is at odds with the protocol's intent that no party increase its emissions. It also allows some State parties to enjoy the political benefits of adhering to the protocol without being equally subjected to its disciplines. Discussion of the legal ramifications of the proposal is contained in the attached legal memorandum. (See Tab ____.)

The delegation will strongly resist the Commission's proposal. It is probable, however, that the EC will not completely concede this issue. One alternative, which alleviates some of our concerns, is to limit treatment as a "single unit" to reios with exclusive competence over the matters covered by the protocol, none of whose member States are also party to the agreement. Because of the precedential nature of the Commission's proposal, the delegation will keep the Department, in particular L, apprised on the discussion relating to this issue.

In light of the number of outstanding issues, the final text of the agreement will be transmitted to Washington for approval by the Department (in particular, OES, E, L, EB, and EUR), the White House (OMB, the Domestic Policy Council staff), and key agencies -- i.e., agencies represented on the U.S. delegation (EPA, USTR, Commerce, Justice, Interior, and Energy) -- prior to U.S. signature of the agreement.

Character of the Agreement

As discussed in the attached legal memorandum, the protocol, as envisioned, is consistent with existing legislation, but the promulgation of domestic regulations will be required to implement the protocol. Because of its breadth and importance, the protocol will be concluded as a treaty pursuant to Article II, Section 2 of the Constitution and will be submitted to the Senate for its advice and consent to ratification.

Environmental Impact Statement

Since the protocol includes measures that will significantly affect the ozone layer (albeit positively), it was determined to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. and Executive Order 12114 of January 4, 1979, Environmental Effects Abroad of Major Federal Actions. An EIS is under preparation and will be submitted to the Senate in conjunction with the ratification process.

Funding

The protocol itself contains no mandatory financial obligations. Financial rules are to be adopted by the Parties at their first meeting by consensus. In signing the protocol, the United States would be making a commitment in principle to payment of its fair share of the future expenses of the secretariat, meeting of the parties, and a panel of scientific experts. For several reasons, however, the financial costs associated with these services and activities are likely to be relatively insubstantial and capable of being covered with presently projected agency budgets.

First, secretariat services for the protocol will be provided by the secretariat established by the Convention, although incremental costs for services related to the protocol would be charged against contributions from Parties to the protocol. The UNEP Secretariat estimates that the additional annual expense to the United States for services relating to the protocol rendered by the secretariat would be approximately \$10,000. Second, ordinary meetings of the Conference of the Parties to the protocol will be held, unless the Parties decide otherwise, in conjunction with meetings of the Conference of the Parties to the Convention, minimizing additional travel costs. Third, as a Party to the Convention, the U.S. is already committed to participation in cooperative scientific research, monitoring and information exchange. NASA, NOAA, EPA and other technical agencies will seek funding as appropriate within their own priorities to participate in the scientific panel and any other cooperative programs resulting from the protocol. EPA will be responsible for reports to the secretariat, participation in technical reviews, and other commitments of a technical nature assumed under the protocol.

Public and Congressional Consultations

There have been extensive consultations with various agencies, members of Congress and their staff, environmental groups, and affected producer and user industries. We believe that there is broad support for effective international regulation of ozone-depleting chemicals, although some industries, notably the plastics industry, are concerned about the effects on them of reductions imposed by the protocol. The concerns that they have expressed were taken into account in EPA's assessment of the risks and costs of the proposed controls and in the extensive interagency review process preceding the President's decision on the U.S. negotiating position.

Domestic Regulatory Activities

Background on prospective domestic regulatory action is included in the November 1986 Circular 175 request. Under the terms of a revised schedule issued by the court in NRDC v. Thomas and reflecting an agreement reached by the litigants, EPA must publish by December 1, 1987 a proposed decision on the need for further domestic regulation of CFCs under the Clean Air Act. A final EPA decision is required by August 1, 1988.

As noted in the attached legal memorandum, additional regulations will be necessary for the U.S. to implement the protocol. The U.S. would not deposit its instrument of ratification of the protocol until such regulations have been promulgated.

RECOMMENDATIONS:

1. That you authorize signature by the United States of a protocol that is based on the attached text and meets the President's negotiating guidelines, subject to the concurrence of appropriate Departmental bureaus (OES, E, EB, EUR, L) and agencies (EPA, USTR, Commerce, Justice, Energy, Interior), OMB, and the Domestic Policy Council staff in the final text.

Approve _____

Disapprove _____

2. That you sign the attached full power (Tab ___) authorizing Lee M. Thomas, Administrator of the Environmental Protection Agency, or in his absence, Richard E. Benedick, Principal United States Negotiator, or alternatively, Thomas Niles, U.S. Ambassador to Canada, to sign the protocol on behalf of the United States.

Drafted:OES/ENH:SButcher;L/OES:DKennedy

Clearances:OES/E:REBenedick

L:EVERville

E:MBailey

EUR:J.Wilkinson

EB:RJohnson

M/MO:CEDillery

M/COMP:JHLinneman

IO:SVogelgesang

H:Joyer

DPC:RBeldsoe

EPA/OIA:BLong

USTR:RReinstein

Energy:MWalker

Commerce:BSmart

Justice:THookano

OMB:DGibbons

Interior:BNdunlop

#22720

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United States Department of State

Washington, D.C. 20520

September 1, 1987

MEMORANDUM

TO: Ben Cohen
White House: Counsel's Office

FROM: Debbie Kennedy *DK*
State: Legal Adviser's Office

SUBJECT: Ozone Protocol: Summary of Negotiation and
Ratification Process

The attached document briefly describes the remaining steps of the international negotiations on the Ozone protocol and the process of U.S. ratification of the agreement. Feel free to call me if you have any further questions on this subject.

cc: Richard Benedick

Procedural Steps of Ozone Protocol
Negotiations and of U.S. Ratification Process

A. Domestic Process Prior to Signature

1. Request for Authorization to Sign the Agreement. This request takes the form of an action memorandum (typically from the Assistant Secretary of the bureau with substantive responsibility for the subject to which the agreement relates) addressed to the Secretary or, except when a Full Power is to be issued at the same time, any other Principal to whom such authority has been delegated -- i.e., the Deputy Secretary or an Under Secretary. The memorandum is cleared with various State Department bureaus and any other agency which has primary responsibility or a substantial interest in the subject matter.

2. Request for Issuance of Full Power. The full power is formal evidence of the authority of a particular representative, named in the instrument, to sign the agreement on behalf of his/her government. It is used only for the signing of treaties. The full power is prepared by the State Department's Office of the Assistant Legal Adviser for Treaty Affairs, and must be signed by the Secretary or Acting Secretary of State. It normally is requested at the same time the request for authority to sign the agreement is made.

B. Remaining Steps of International Negotiations

1. September 7: Meeting of legal experts and informal meeting between UNEP Executive Director and selected heads of delegations to the Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Ozone-Depleting Substances to the Vienna Convention for the Protection of the Ozone Layer.

2. September 8 - 11: Meeting of Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Ozone-Depleting Substances to the Vienna Convention for the Protection of the Ozone Layer. The objective is to have a virtually complete draft of the protocol (the Eighth Revised Draft Protocol) ready by the end of the session on Sept. 11 for review by governments over the weekend.

3. September 14 - 16: Conference of Plenipotentiaries on the Protocol: Consideration by conference of the draft protocol and the report of the Ad hoc Working Group. Discussion of unresolved issues and finalization of the agreement. Adoption of the final text by the conference. (Adoption is the process by which the content of the proposed agreement is settled by the delegates; it is not an expression of a State's agreement to be bound by the agreement, which

occurs only upon specific expression of its consent -- e.g., through ratification, accession, acceptance.) Adoption of the Final Act of the Conference. (The Final Act may contain a summary of the conference proceedings, names of the States that participated, and resolutions adopted by the conference. It does not contain any international commitments.)

C. U.S. Signature of the Agreement

1. Available Time Period: Under Article 14 of the Seventh Revised Draft Protocol, the protocol will be open for signature in Montreal on September 16 -- at the conclusion of the Conference of Plenipotentiaries. Thereafter, it will be open for signature in Ottawa from September 17, 1987 to January 16, 1988 and at the UN Headquarters in New York from January 17, 1988 to September 16, 1988. If the U.S. does not sign the protocol in Montreal, it could sign subsequently in Ottawa or New York.

2. Significance: Signature connotes a State's intent to seek in good faith the necessary domestic authorization for ratification or acceptance and any implementing legislation or regulations. A signatory State is obliged to refrain from acts which would defeat the object and purpose of the treaty until it makes its intention clear not to become a party to the treaty.

D. U.S. Ratification Process

Because of the breadth and importance of the proposed protocol, a preliminary decision has been made to conclude it as a treaty pursuant to Article II, Section 2 of the Constitution. After U.S. signature of the protocol, the following steps would be those taken in connection with U.S. ratification of the agreement. The consent of the U.S. to be bound by the treaty is expressed by its ratification of the agreement.

1. The Department of State would prepare a treaty package consisting of (a) an explanatory report signed by the Secretary or Acting Secretary of State providing background information on the protocol and an analysis of its provisions; (b) a message to be signed by the President transmitting the protocol to the Senate for its advice and consent to ratification; and (c) a certified copy of the protocol itself.

2. After the report is signed by the Secretary of State, the package is submitted to the White House (via the National Security Council) to obtain the President's signature of the message. The package is then transmitted by the White House to the Senate, where it would be referred to the Senate Foreign Relations Committee (SFRC) for appropriate action.

3. Related documents could be sent to the Hill under separate cover. For example, the environmental impact statement (EIS) may be sent directly to the SFRC by the Department of State. Proposed legislation deemed necessary to implement the protocol, if any, would be transmitted to the Congress through normal OMB procedures.

4. The Committee probably would schedule hearings on the protocol.

5. The Committee would then schedule the protocol on its calendar for a vote, and should the Committee report favorably on the protocol, it would be considered for advice and consent by the full Senate. The Senate normally takes action on treaties in the form of a resolution of ratification.

6. Once approved by a two-thirds vote of those present, the Senate's resolution of ratification is then returned with the certified copy of the treaty to the State Department, at which time an instrument of ratification is prepared in duplicate, forwarded to the White House for the President's signature, returned to State where it is also sealed and signed by the Secretary of State.

7. The protocol, as envisaged, does not appear to require additional legislation for U.S. implementation. The promulgation of additional regulations will be required, however, in order for the U.S. to implement the agreement. Pursuant to the terms of a court order issued in litigation against the EPA Administrator by the Natural Resources Defense Council, EPA must publish by December 1, 1987 a proposed decision on the need for further domestic regulation under the Clean Air Act of certain ozone-depleting chemicals. A final EPA decision is required by August 1, 1988.

8. After the promulgation of implementing regulations, the U.S. instrument of ratification would be deposited with the Secretary General of the United Nations, the depositary for the Ozone Convention and protocol.

9. The protocol would enter into force for the United States according to the provisions on entry into force specified in the protocol.

10. The final step of the U.S. treaty process is the issuance of a proclamation signed by the President, which declares that on and after the protocol's entry into force, it shall be observed and fulfilled by the U.S., its citizens, and persons subject to U.S. jurisdiction. The proclamation is prepared by the Department of State for the President's signature and printed in the Federal Register.

Drafted:L/T:MBrandt;L/OES:DKennedy:647-1370:22830

Clearance:L/T:HCollums



United Nations
Environment
Programme



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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]
[Certain Ozone Depleting Substances]

SEVENTH REVISED DRAFT PROTOCOL ON [CHLOROFLUOROCARBONS]
[CERTAIN OZONE DEPLETING SUBSTANCES]^{1/}

PREAMBLE

The Parties to this Protocol,

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 [chlorofluorocarbons] [certain ozone depleting substances] 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][certain ozone depleting substances] emissions,

Determined to protect the ozone layer by taking precautionary measures to control total global emissions of [chlorofluorocarbons] [certain ozone depleting substances],

Mindful of the precautionary measures for controlling emissions of [chlorofluorocarbons] [certain ozone depleting substances] 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] [certain ozone depleting substances] 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] [certain ozone depleting substances] for the needs of developing countries and low-consuming countries,

^{1/} Draft Articles 1 - 7 and 15 were 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. The remaining Articles are as included in the Sixth Revised Draft but with the incorporation by the secretariat where relevant of formulations resulting from the above meetings as well as other minor changes of a stylistic nature.

Considering the importance of promoting international co-operation in the research and development of science and technology on the control and reduction of [chlorofluorocarbon] [certain ozone depleting substances] emissions, bearing in mind, in particular, the needs of developing countries and low-consuming countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: DEFINITIONS AND SCOPE

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. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or together with any other substance. This does not apply to a product or a mixture where the substance listed in Annex A constitutes less than [20] per cent by weight or volume of the product or mixture.
5. "Production" means the amount of controlled substances produced minus the amount destroyed by techniques approved by the Parties.
6. "Consumption" means production plus imports minus exports of controlled substances.

ARTICLE 2: CONTROL MEASURES^{2/}

1. Each Party shall ensure that within one year of the entry into force of this Protocol, neither production in nor imports into its jurisdiction of the controlled substances in Group I 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^{3/}.

[2. Each Party shall ensure that within three years of the entry into force this Protocol, neither production in nor imports into its jurisdiction of controlled substances in Group II exceed the level of production and the level of imports respectively in 1986]^{4/}.

^{2/} 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".

^{3/} 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 new Article after Article 2 along the following lines:

"Subject to Article 5, 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 that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force".

^{4/} The Legal Drafting Group did not attempt to revise the formulation of Article 2 paragraph 2. 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.]

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.]

3. Each Party shall ensure that within four years of the entry into force of this Protocol, neither production nor consumption in its jurisdiction of the controlled substances in Group I do not exceed eighty per cent of the level of production and the level of consumption respectively in 1986.^{5/}

4. Each Party shall ensure that within [eight] [ten] years of the entry into force of this Protocol, neither production nor consumption in its jurisdiction of the controlled substances in Group I 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^{6/} 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 per cent 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.^{7/}

[6. Productions are permitted to transfer from one country to another if these transmissions are certain not to cause an increase of production.]^{8/}

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 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.

^{6/} 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.

^{7/} 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.

^{8/} This paragraph, which originally appeared in the revised reduction formula developed by the Trade sub-working group, was only briefly discussed by the Legal Drafting Group as it was realized that the idea behind this

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles 2, 5 and 7 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 respect of it 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^{9/}

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/} Incorporates results of consultations of the Trade subgroup 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.

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 define 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, through bilateral and multilateral channels, the provision of 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 sub-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 paragraphs 1 and 2 of the draft prepared in Geneva 27-30 April 1987 as a purely drafting improvement.

ARTICLE 6: REVIEW AND ASSESSMENT OF CONTROL MEASURES

Beginning in 1990,^{13/} 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.

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 annual production, exports, imports and destruction of these substances for the year during which it becomes a Party and for each year thereafter.

^{13/} 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 8: RESEARCH, DEVELOPMENT, EXCHANGE OF INFORMATION
AND PUBLIC AWARENESS**

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, 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 the controlled substances and other ozone depleting substances.
3. Each Party shall submit biennially to the secretariat a summary of its 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 for the purposes of implementing or participating in it, may submit a request to the secretariat.
3. At their first meeting, the Parties shall begin deliberations on the means of fulfilling the obligations set out in Article 8 above, and paragraphs 1 and 2 of this Article including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. States not party to the Protocol should be encouraged to participate in activities specified 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 by a meeting of the Parties, or at the written request of any Party, 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 the rules required by paragraph 2 of Article 12.

4. The functions of the meetings of the Parties shall be to:
 - (a) review the implementation of this Protocol;
 - (b) establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 8;
 - (c) review requests for technical assistance provided for in paragraph 2 of Article 9;
 - (d) review requests notified by the secretariat pursuant to Article 11 (c);
 - (e) assess, in accordance with Article 6, the control measures provided for in Article 2;
 - (f) consider and adopt as required proposals for amendment of this Protocol [in conformity with Articles 9 and 10 of the Convention];
 - (g) consider and adopt the budget for implementation of this Protocol;
 - (h) consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. [The Parties shall decide within [two] years of entry into force of this Protocol how to count exports to countries not party to the Protocol].

6. 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

For the purposes of this Protocol the secretariat shall:

- (a) arrange for and service meetings of the Parties as provided for in Article 10;
- (b) receive and make available, upon request by a Party data provided pursuant to Article 7;

- (c) prepare and distribute to the Parties regularly reports based on information received pursuant to Articles 7 and 8;
- (d) notify the Parties of any request for technical assistance received pursuant to Article 9 so as to facilitate the provision of such assistance;
- (e) encourage non-parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of the Protocol;
- (f) provide, as appropriate, the information referred to in sub-paragraphs (c), (d) and (g) above to such non-party observers;
- (g) perform such other functions for the achievement of the purposes of the Protocol as may be assigned to it by the Parties.

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

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

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 United Nations Headquarters in New York from 17 January 1988 to 16 September 1988.

ARTICLE 15: ENTRY INTO FORCE

1. This 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 per cent of 1986 global production of the controlled substances]. 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] 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 per cent of 1986 global production of the controlled substances].^{14/}

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] ^{15/} day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

^{14/} 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.

^{15/} 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 "ninetieth" for "thirtieth" 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.

ARTICLE 16: RESERVATIONS

[No reservations may be made to this Protocol.]

ARTICLE 17: AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF THE UNDERSIGNED, BEING DULY AUTHORIZED TO THAT EFFECT HAVE SIGNED THIS PROTOCOL,

DONE AT MONTREAL

THIS..... DAY OF

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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 Potential (ODP)*
Group I		
Fully halogenated Chlorofluorocarbons	CFC-11 <chem>CCl3F</chem>	1.0
	CFC-12 <chem>CCl2F2</chem>	1.0
	CFC-113 <chem>CCl2FCClF2</chem>	0.8
	CFC-114 <chem>CClF2CClF2</chem>	1.0*
	CFC-115 <chem>CClF2CF3</chem>	0.6*
Group II		
[Halons	Halon-1301 <chem>CF3Br</chem>	10*
	Halon-1211 <chem>CBrClF2</chem>	3*]

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