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ACTION MEMORANDUM
S/S

November 28, 1986

TO: E - Mr. Wallis

FROM: OES - John D. Negroponte *JN*

SUBJECT: Circular 175: Request for Authority to Negotiate
a Protocol to the Convention for the Protection
of the Ozone Layer

ISSUE FOR DECISION:

Whether to authorize negotiation of a protocol to the Vienna Convention for the Protection of the Ozone Layer which would control emissions of ozone-depleting substances.

ESSENTIAL FACTORS:

The Problem

There is general scientific agreement that human activities are substantially altering the chemistry of the atmosphere in ways which threaten both the quantity and the vertical distribution of ozone. Certain chlorine and bromine substances, when emitted into the atmosphere, act as catalysts in a series of chemical reactions resulting in a depletion of ozone. Ozone depletion, by permitting greater quantities of harmful ultra-violet radiation to reach the earth's surface, will pose significant, even if currently difficult to quantify, risks for health and ecosystems. Given the complex chemistry and dynamics of the atmosphere, scientific uncertainties currently prevent a conclusive determination of safe levels of emissions. Because of the long atmospheric lifetime of these molecules, emissions affect the ozone layer for decades. The nature of the ozone layer requires international action if protective measures are to be effective.

The chemicals at issue for this protocol -- chlorofluorocarbons ("CFCs") and some bromine compounds -- have substantial economic and social value, being widely used in refrigeration, foam-blowing, fire-extinguishers, as solvents, and in most countries as aerosols. (Their use in non-essential aerosols was banned in the United States in 1978.) The U.S., Japan and EC countries currently account for about 90% of world production and consumption.

The International Process

The Vienna Convention for the Protection of the Ozone Layer, adopted under auspices of the U.N. Environment Program (UNEP) on March 22, 1985 and ratified by the United States on August 14, 1986, provides for cooperation in research, monitoring and information exchange. The Convention obliges the Parties to cooperate in taking 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. The Diplomatic Conference which adopted the Convention did not reach agreement, however, on a protocol to control emissions of ozone-depleting substances. The final act of the Diplomatic Conference called for a series of scientific and economic workshops on the atmospheric science, effects of ozone depletion, and alternative control measures, followed by resumption of negotiations, looking toward adoption of a control protocol in 1987 if possible. Negotiations are to resume December 1, 1986, with a diplomatic conference to conclude the protocol tentatively scheduled for April 1987.

The Domestic Setting

The Environmental Protection Agency, under terms of a court order approving a settlement reached in a lawsuit against the EPA Administrator by the Natural Resources Defense Council, must publish in the Federal Register by May 1, 1987 a proposed decision on the need for further domestic regulation of CFCs under Sec. 157 of the Clean Air Act. Compared to other environmental laws, the Act sets a low threshold for required action by EPA: "the Administrator shall propose regulations for the control of any substance, practice, process, or activity...which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare." In this connection, EPA is going through an extensive risk assessment process. A final EPA decision is required by the court order by November 1, 1987.

An important goal in seeking an early and effective international agreement (in addition to the goal of more effectively protecting the ozone layer) is to avoid disadvantage to U.S. industry as a result of unilateral U.S. regulatory action required by the Clean Air Act. Unilateral U.S. action in advance of international agreement could undercut the global control effort.

The principal producer- and user-industry group, the "Alliance for Responsible CFC Policy," has reversed its previous total opposition to controls, issuing a statement September 16, 1986 that "responsible policy dictates, given the scientific uncertainties, that the U.S. government work in cooperation with the world community...to consider establishing a reasonable global limit on the future rate of growth of fully halogenated CFC production capacity."

Proposed Position

Our approach in the international negotiations is intended to influence those negotiations to achieve the most effective international agreement possible. It does not prejudge the EPA Administrator's decision on domestic regulation.

Although considerable evidence exists linking certain chlorine and bromine substances to depletion of ozone, remaining scientific uncertainties prevent any conclusive statement concerning safe levels of emissions. As a result, the Administrator of EPA recommends an international risk management strategy which would give a strong incentive for rapid development and employment of emission controls, recycling practices and safer substitute chemicals. We should therefore seek a protocol that explicitly or in effect provides for:

I. A near-term freeze on the combined emissions of the most ozone-depleting substances;

II. A long-term scheduled reduction of emissions of these chemicals down to the point of eliminating emissions from all but limited uses for which no substitutes are commercially available (such reduction could be as much as 95%), subject to III; and

III. Periodic review of the protocol provisions based upon regular assessment of the science. The review could remove or add chemicals, or change the schedule or the emission reduction target.

These elements would provide a desirable margin of safety against harm to the ozone layer while scientific research continues. At the same time, this approach would provide as

much certainty as possible for industrial planning in order to minimize the costs of reducing reliance on these chemicals, while allowing adequate time for adjustment.

The timing, stringency and scope of the phased reductions will have to be negotiated. We would promote a scheme which allows flexibility for each nation to determine how it will implement domestically its international obligation. In response to UNEP's invitation, we have prepared for discussion purposes the attached draft text for the operative paragraphs of a protocol.

We would favor setting national limits at or near current levels, in order to avoid increases in emissions from any Party. Elimination of most emissions would obviate the difficult question of equity -- the view that developing countries have a right to a fair share of world markets if a global limit on emissions is set: developing countries will have less reason to seek to expand use of products which will be obsolete in the foreseeable future and they will benefit from the development of substitutes and of recycling and containment techniques.

We will seek to include in the protocol measures to regulate relevant trade between parties and non-parties in order to create incentives for nations to adhere to the protocol's emissions limits. These measures will have an ancillary effect of protecting U.S. industry from unfair competition. We will assure that any trade provisions included in the protocol are consistent with the General Agreement on Tariffs and Trade (GATT) and other aspects of U.S. trade policy.

We have undertaken extensive consultations with industry and environmental groups and will continue to do so as the negotiations progress.

Legal Authority and Funding

We expect that no additional legislation will be required to implement the provisions of a protocol specifying the regulation of ozone-depleting substances. As discussed in the attached legal memorandum, EPA has authority under the Clean Air Act to regulate ozone-depleting substances which may reasonably be expected to endanger public health or welfare and is currently conducting the risk assessment required to determine the need for additional regulation.

It has not yet been determined whether this protocol would be concluded as an executive agreement or as a treaty subject to the advice and consent of the Senate. This will depend, in part, on the content of the protocol and nature of the undertakings therein. The requirements of the National Environmental Policy Act (NEPA) and E.O. 12114 on Environmental Effects Abroad of Major Federal Actions are currently being considered.

Costs related to implementation of a protocol will depend on the requirements of the protocol. As a party to the Vienna Convention for the Protection of the Ozone Layer, we are already committed to the establishment of a Secretariat (in an existing international organization such as UNEP or WMO) and Conference of the Parties when that agreement enters into force. Any additional costs to administer the protocol will be incremental. We will seek to minimize the services required of the Secretariat and any requirement for funding to support such services, and we will make every effort to ensure that necessary support staff are provided within existing levels. EPA will be responsible for reports to the Secretariat, participation in technical reviews, and other commitments of a technical nature assumed under the protocol.

Financial support for a cooperative science program to form the basis for periodic review of the protocol provisions will need to be considered. EPA, NASA, NOAA and other technical agencies would participate in any cooperative science program resulting from the protocol with their own funds. The U.S. already has a dynamic and extensive program on both the atmospheric science and effects science, and as such is already by far the largest contributor to international scientific cooperation in these areas. The protocol may be a means to draw additional commitments from other nations to contribute to scientific efforts. It will be possible to assess the need for any additional U.S. support in this area only as the negotiations progress. We will consult with and obtain the approval of OMB regarding any commitment that could not be satisfied out of currently appropriated funds.

RECOMMENDATION:

That you authorize negotiation of a protocol to the Vienna Convention for the Protection of the Ozone Layer which would control emissions of those substances which are the most

significant contributors to ozone depletion in accordance with the principles outlined above. Subsequent authority will be sought to conclude any international agreement resulting from these negotiations.

Approve _____ Disapprove _____

Attachments:

- A. Legal Memorandum
- B. Draft protocol text

Circular 175: Protocol for Protection of Ozone Layer

Drafter: OES/ENH:SB^{LB}utcher
11/16/86 647-9312 0936T
Revised 11/26/86 16:00

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EPA:BLLong
NASA:JFletcher
NOAA:JFletcher
Commerce:MTKelly
USTR:APorges/RReinstein
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CEQ:CNee
DOE:EWilliams
OMB:JIrwin/DGibbons





United States Department of State

Washington, D.C. 20520

MEMORANDUM OF LAW

SUBJECT: Authority to Negotiate a Protocol to the Convention for the Protection of the Ozone Layer to Control Emissions of Ozone-depleting Substances

The accompanying action memorandum from OES requests authorization to negotiate a protocol to the Vienna Convention for the Protection of the Ozone Layer which would control emissions of substances, such as certain chlorine and bromine substances, that deplete stratospheric ozone. As indicated in the action memorandum, the United States is supportive of a protocol that would impose a freeze on emissions of most ozone-depleting substances, followed by a long-term scheduled reduction of emissions of these substances to a point of eliminating all but limited uses for which there are no commercially available substitutes -- subject to periodic review of the protocol, and if scientifically warranted, modification of its provisions.

Legal authority to negotiate such a protocol derives from the constitutional authority of the President to conduct foreign relations and the statutory authority of the Secretary of State, 22 U.S.C. §2656, to manage the foreign affairs of the United States on a day-to-day basis. There is also ample statutory authority for the negotiation of international environmental agreements specifically.

For example, section 102(F) of the National Environmental Policy Act of 1969 directs all agencies of the federal government to "recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment." 42 U.S.C. §4332(F). Likewise, section 2 of the United Nations Environment Program Participation Act of 1973 provides that "[i]t is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern." 22 U.S.C. §287 note. The participation of the United States in the negotiation of the proposed protocol would be consistent with that policy.

With respect to the development of international agreements for the protection of the stratosphere, section 156 of the Clean Air Act grants the President the authority "to enter into international agreements to foster cooperative research ... and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States." 42 U.S.C. §7456. This section further authorizes the President, through the Secretary of State and the Assistant Secretary for Oceans and International Environmental and Scientific Affairs, to "negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums." Id.

The key aspect of the protocol will be the parties' commitment to control their emissions of certain ozone-depleting substances. Under section 157 of the Clean Air Act, 42 U.S.C. §7457, EPA currently has the statutory authority to regulate such substances where they may reasonably be expected to endanger public health or welfare. Thus, it is anticipated that this obligation would be within the purview of existing U.S. legislation, although it may be necessary for EPA to promulgate additional regulations to implement specific control measures. Other statutory authorities under which regulations related to the protection of stratospheric ozone have been issued--e.g., the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq.; the Consumer Product Safety Act, 15 U.S.C. §2051 et seq.; and the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.--also may provide, if necessary, a supplemental basis for meeting U.S. obligations under the protocol.

Final determination of whether the protocol should be concluded as a treaty or an executive agreement and whether it is consistent with existing U.S. laws obviously is dependent upon a final text. In the event the final text of the protocol imposes obligations on the United States that exceed existing laws, the protocol most likely will need to be concluded as a treaty, subject to the advice and consent of the Senate to ratification. It may also be necessary to seek new legislation permitting the implementation of the protocol before its entry into force.

While the provisions to be included in the protocol are still in an evolutionary stage, the action memorandum and attached drafted protocol text indicates that the U.S. delegation will propose for incorporation in the protocol measures regulating the trade of ozone-depleting chemicals and technologies for producing those chemicals between parties to

the protocol and non-parties. (There is currently no definitive U.S. position with respect to additional trade controls.) Under section 157 of the Clean Air Act, the Administrator of the Environmental Protection Agency has authority to promulgate regulations for the control of any substance, practice, process or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. §7457. The language of section 157 appears to be broad enough to permit the issuance of regulations by EPA to implement a protocol provision requiring trade restrictions to protect against ozone depletion and its attendant deleterious effects.

However, if the authority granted pursuant to section 157 is insufficient for this purpose, section 6 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2605, generally authorizes the EPA Administrator to prohibit or limit by rule the manufacture (defined to include importation) and distribution in commerce of a chemical substance or mixture presenting an unreasonable risk of injury to health or the environment, such as the ozone-depleting substances at issue here.^{1/} Correlatively, section 13 of TSCA requires the Secretary of Treasury to refuse entry into the Customs territory of the United States any chemical substance or mixture, or article containing a chemical substance or mixture, offered for entry in violation of a rule issued under section 6 of TSCA. See 15 U.S.C. §2612.

EPA's authority to regulate the export of such substances, mixtures, or articles under TSCA is somewhat circumscribed. With the exception of certain labelling, notification, reporting and information-retention requirements, TSCA is inapplicable to a chemical substance or mixture, or article containing a chemical substance or mixture, that is manufactured, processed, or distributed in commerce solely for export from the United States unless the Administrator finds that it presents an unreasonable risk of injury to health within the United States or to the environment of the United States. TSCA section 12, 15 U.S.C. §2611. In this case, because the environmental problem is global in nature and consequently requires corrective measures universally, it is likely that such a finding could be made--i.e., that such

^{1/} EPA may exercise its regulatory authority under TSCA if the Administrator finds that a risk of injury to health or the environment could not be effectively eliminated under another statute administered by EPA or by another federal agency. TSCA sections 6(c) and 9(a), 15 U.S.C. §§2605(c) and 2608(a).

exports in the long-run will have adverse health or environmental effects within the United States. Indeed, EPA made such a finding in 1978 when it prohibited (subject to an exception for certain essential uses and uses in articles exempted under section 3 of TSCA, 15 U.S.C. §2602) the processing of chlorofluorocarbons (CFCs) into aerosol propellant articles intended for export.^{2/} 43 Fed. Reg. at 11,319 and 11,321 (1978).^{3/}

The validity of a restriction on relevant trade with non-parties in relation to the obligations of the United States under the General Agreement on Tariffs and Trade (GATT) has also been examined. The GATT normally bans quantitative restrictions on imports or exports and prohibits import charges in excess of tariff concessions. However, in consultation with the United States Trade Representative, we have concluded that a trade restriction could be drafted appropriately to fall within the general exception to the GATT contained in Article XX(b) which permits the adoption or enforcement of measures by contracting parties necessary to protect human, animal or plant life or health. Article XX(g) of the GATT also contains a general exception for the adoption or enforcement of measures "relating to the conservation of exhaustible natural resources if such resources are made effective in conjunction with restrictions on domestic production or consumption which could also be applicable." Ozone-related trade measures could be justified under Article XX(g) as relating to the conservation of the ozone layer, an exhaustible natural resource, since the parties to the agreement would presumably be applying restrictions on domestic production or consumption. It should be noted, however, that these exceptions to the GATT are

2/ EPA's 1978 ban prohibited all non-essential aerosol propellant uses of CFCs--a suspected ozone-depleting chemical. EPA's action was proposed and initiated under TSCA before the addition of section 157 (the stratospheric ozone protection provisions) to the Clean Air Act. In the Federal Register notice of its action, EPA observed that "[b]ecause chlorofluorocarbon emissions anywhere in the world deplete the ozone layer and adversely affect health and the environment of the United States, the Administrator finds that chlorofluorocarbon discharges from aerosol propellant articles made in the United States and shipped abroad also cause an unreasonable risk of injury." 43 Fed. Reg. 11,319 (1978).

3/ The Export Administration Act, 50 U.S.C. App. 2401 et. seq., could also provide a vehicle for regulating the export of protocol-covered chemicals and technologies related to their production.

subject to the requirement that measures not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. GATT, Article XX.

In light of the above, there is no legal objection to the negotiation of a protocol to the Vienna Convention for the Protection of the Ozone Layer as outlined in the accompanying action memorandum, subject to the concurrence of L and other interested bureaus in the final text of the protocol and provided additional Circular 175 authority is obtained for conclusion of the protocol. ★



David A. Colson
Assistant Legal Adviser for
Oceans, International
Environmental and Scientific Affairs

Drafted: L/OES:DKennedy *DK*
11/20/86 x71370

Clearance: L/T:HCollums
L/EBC:GRosen (draft)
EPA/OGC:NKetcham-Colwill
USTR/OGC:APorges } *DK*

#16960



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 24, 1986

OFFICE OF
GENERAL COUNSEL

Amy Porges
Associate General Counsel
United States Trade Representative
600 17th Street NW
Washington, D.C. 20506

Dear Ms. Porges,

I am writing in response to your question regarding the Environmental Protection Agency's (EPA's) authority to impose trade restrictions to protect stratospheric ozone. I have enclosed a paper that reviews EPA's authority under statutes the Agency implements, but does not consider whether other statutes, treaties or U.S. trade policy effectively limit that authority.

I hope this answers your question. If I can be of further help, please call me at 382-7635.

Sincerely,

Nancy Ketcham-Colwill
Attorney

Air and Radiation Division (LE-132A)

cc: Bill Long
Jim Losey
Dwain Winters
John Hoffman
Steve Seidel
Steve Anderson
Suzanne Butcher
Debbie Kennedy

EPA'S AUTHORITY TO IMPOSE TRADE RESTRICTIONS
TO PROTECT STRATOSPHERIC OZONE

The Clean Air Act, 42 U.S.C. §7401 et seq., grants EPA broad authority to control whatever threatens the stratospheric ozone layer by whatever means the Agency finds efficacious. The statute does not expressly provide for the imposition of trade restrictions, but its grant of regulatory authority seems broad enough to encompass trade restrictions designed to protect the ozone layer. To the extent the Clean Air Act does not provide EPA with the authority needed to protect the ozone layer, the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601, et seq., provides EPA with stop-gap authority to enact measures to control substances that threaten stratospheric ozone. TSCA explicitly authorizes restrictions on the importation of substances which present an unreasonable risk to health or the environment, and also permits export controls if the Agency finds that a substance destined for export will threaten health or the environment within the United States.

The Clean Air Act

Under the Clean Air Act, the Administrator of EPA is authorized to issue "regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control." Section 157(b), 42 U.S.C. §7457(b).

Two aspects of this grant of regulatory authority are notable. First, the Administrator is not required to prove that a "substance, practice, process, or activity" does in fact deplete stratospheric ozone before he may regulate it. In 1977 when the ozone protection provisions were added to the Clean Air Act, Congress recognized that scientists were not certain whether stratospheric ozone was being depleted and what was causing any depletion that did occur. See, e.g., H.R. Rep. No. 294, 95th Cong., 1st Sess. 98-99 (1977). However, Congress also recognized the potentially serious health and environmental consequences of ozone depletion if it were occurring, and authorized EPA to act in the face of scientific uncertainty to protect against those adverse consequences. Id. Thus, the Administrator may regulate on the basis of "his judgment" that the subject of regulation "may be reasonably anticipated" to affect the stratosphere and that the effect "may be reasonably anticipated to endanger public health and welfare."

Second, the Administrator is given broad latitude to choose what and how to regulate. He is not limited to controlling ozone-depleting substances themselves; he may also regulate any "practice, process, or activity" that threatens the ozone layer. Nor is he limited to a particular control strategy. Besides an implicit requirement that regulations be efficacious, the statute requires only that they take into account the cost and technological feasibility of achieving the required level of control. In short, EPA is largely free to employ the regulatory options it finds appropriate to control threats to the stratospheric ozone that in turn threaten public health and welfare.

Several types of trade restrictions might be appropriate under section 157. Assuming EPA finds that stratospheric ozone depletion will likely occur and that its occurrence would likely endanger public health and the environment, imposition of restrictions on exports or imports of ozone-depleting substances could provide a means of reducing their use and production. Further reductions could be obtained by restricting exports or imports of products made with ozone-depleting substances, since their consumption contributes to demand for ozone-depleting substances and their decay in some cases releases the harmful substances. Also appropriate might be restrictions on imports of ozone-depleting substances or products made with those substances from countries that fail to sign or abide by an international protocol for the control of ozone-depleting substances. To the extent a country did not observe the limits established by such a protocol, a ban on the importation of its ozone-threatening products would reduce its market incentive to exceed those limits. Other trade restrictions might also reduce any threat to the ozone layer; which trade restrictions would prove most effective is a policy matter.

EPA's Clean Air Act authority appears sufficiently broad to encompass trade restrictions applicable to a "substance, practice, process, or activity" that threatens stratospheric ozone. While neither the statute nor its legislative history specifies the availability of trade restrictions, neither suggests any reason why such restrictions would not be permissible. Indeed, both clearly indicate that Congress meant to confer on EPA broad powers to develop an effective regulatory plan.

Toxic Substances Control Act

To the extent EPA lacks authority under the Clean Air Act to restrict trade of substances threatening stratospheric ozone, the Agency is granted that authority under TSCA. EPA may exercise its TSCA authority if the Administrator finds that a risk of injury to health or the environment could not

be more efficaciously eliminated under another federal law administered by EPA. Section 6(c), 15 U.S.C. §§2605(c).

Under section 6 of TSCA, if "the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply" one or more of seven specific requirements to the substance "to the extent necessary to protect adequately against such risks using the least burdensome requirements."

Among the requirements EPA may impose are trade restrictions. Sections 6(a)(1) and (2) of TSCA authorize prohibitions or limits on the "manufacturing, processing, or distribution in commerce" of the harmful substance. Section 3(7) includes in its definition of "manufacture" "to import into the customs territory of the United States." 15 U.S.C. §2602(7). Section 13(a) provides for enforcement of import restrictions by the Secretary of the Treasury." 15 U.S.C. §2612(a). Thus, TSCA provides explicit authority to impose import restrictions on substances which may deplete stratospheric ozone, if depletion presents an unreasonable risk to health or the environment.

In addition, TSCA appears to provide authority to restrict exports. Section 12(a) provides that Section 6 restrictions shall not apply to any substance, mixture, or article intended for export, unless "the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States." 15 U.S.C. §2611(a). That is, section 6 restrictions may apply to such exports if the Administrator does so find.

EPA has in fact exercised its authority under TSCA to place trade restrictions on an ozone-depleting gas. EPA's 1978 ban (43 Fed. Reg. 11,318) on the non-essential aerosol applications of freon was promulgated under section 6 of TSCA. (Before Congress added the stratospheric ozone protection provisions to the Clean Air Act, EPA had proposed the ban under TSCA. In amending the Clean Air Act, Congress provided that EPA could promulgate the ban under TSCA, notwithstanding the Agency's new Clean Air Act authority. Section 156, 42 U.S.C. §7458.) As part of the ban, EPA promulgated a regulation providing that "[a]fter December 15, 1978, no person may import into the customs territory of the United States any fully halogenated chlorofluoroalkane, whether as a chemical substance or as a component of a mixture or article, for any aerosol propellant" with certain exceptions applicable to domestic producers as well. 40 C.F.R. Part 762.11(b) (1978). EPA likewise restricted the processing of

chlorofluorocarbons into aerosol propellant articles intended for export. 40 C.F.R. Part 762.12(b) (1978).

Nancy Ketcham-Colwill, 11/21/86

THE WHITE HOUSE

WASHINGTON

June 12, 1987

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: RALPH C. BLEDSOE *Ralph Bledsoe*
Executive Secretary

SUBJECT: Stratospheric Ozone

As requested at the June 11 Council meeting, a draft of a decision memorandum that will be sent to the President is attached for your review. It was prepared following a meeting of a small group of Council principals appointed by the Chairman Pro Tempore.

You are asked to comment on the accuracy and general format of the memorandum, and provide your department or agency position on the issues for which you have a view. Comments should be returned or telephoned to my office, (Room 200 OEOB -- 456-6640), no later than noon on Monday, June 15, 1987. If you have any questions, please call Vicki Masterman or me at that number.

We will notify you immediately if there is need for a Domestic Policy Council meeting to further discuss this issue. Otherwise, the decision memo will be forwarded to the President.

Attachment

THE WHITE HOUSE

WASHINGTON

June 12, 1987

MEMORANDUM FOR THE PRESIDENT

FROM: THE DOMESTIC POLICY COUNCIL

SUBJECT: Stratospheric Ozone

Issue: What guidance should the U.S. delegation be given for the next stages of international negotiation of an agreement for regulation of chemicals believed capable of future depletion of stratospheric ozone?

Background

During the 1970's, concerns were expressed in the scientific community that continued growth in the use of certain chemicals would result in future depletion of stratospheric ozone, which some scientists predict would cause such adverse health and environmental effects as increased skin cancer deaths, cataracts, crop damage and aquatic impacts. Others, however, believe that some of the scientific assumptions and projections, which extend as far as the year 2165, do not accurately account for future technological and scientific developments that may occur.

Most scientists, however, predict that significant ozone depletion will occur unless international action is taken to control the chemicals at issue, even though there are numerous medical and scientific uncertainties about the potential impacts of such depletion. Ideally, any freeze or reduction in CFCs should be based on reliable scientific evidence that use of CFCs causes depletion of stratospheric ozone. While there are differing views within the Council on the reliability of the scientific evidence available at this time, the irreversibility of CFC accumulations and consequent ozone depletion argues for strong action to secure some form of international agreement this year, with provision for future scientific assessment.

Concern over these predictions led Congress to add an ozone protection section to the Clean Air Act in 1977 and to ban aerosols in 1978. Similar actions were taken by other countries. Currently, there is strong judicial and congressional pressure for action to protect the ozone layer. Both the Senate and the House have passed resolutions supporting international negotiations. If an effective international agreement is not reached, Congress and the courts are likely to require unilateral domestic reductions of the chemicals in question. Such unilateral U.S. action would not protect the ozone layer and would likely disadvantage American businesses in world markets.

The U.S. is currently a party to the 1985 Vienna Convention for Protection of the Ozone Layer. Your ratification message to the Senate stated that this Convention addresses stratospheric ozone depletion "primarily by providing for international cooperation in research and exchange of information . . . and could also serve as a framework for negotiation of regulatory measures that might in the future be considered necessary. . . ." The U.S. has been a leader in the three Convention meetings held thus far to develop an international agreement on control of the chemicals in question. The U.S. delegation has been guided by a Circular 175 approved by the State Department. The next meeting is scheduled for June 29, 1987 with plans to conclude the negotiations in Montreal by September.

In a recent cost benefit analysis done by CEA, the potential benefits of taking some actions to protect the ozone layer were found to be much greater than the costs of controlling the relevant chemicals. For example, a freeze plus a 20-percent reduction of emissions of selected chemicals was concluded to be clearly economically justified. Further reductions may also be economically justified under other scenarios considered, although further information and evaluation of these benefits and costs would be needed. The chemicals in question are used in the production of refrigerators, mobile air-conditioners, computers, foam insulation, fire extinguishers, and electronic industry. Some of them also have national defense applications.

Discussion

The most recent negotiations have produced a Chairman's Text for an agreement, which each country has been asked to review prior to the June 29 meetings. The Domestic Policy Council met on May 20 and June 11 to discuss the Chairman's Text, as well as the overall negotiations. The Council agreed that we should continue with negotiations based on the general framework of the Circular 175. Several members felt, however, that the delegation should be given further specific instructions, which are covered in the following issues and options. Your decisions on these are requested.

ISSUE 1 -- FREEZE

Should the delegation seek a freeze at 1986 levels on production/consumption of all seriously ozone-depleting chemicals (CFCs 11, 12, 113, 114, 115; Halons 1201 and 1311), to take effect one or two years after the protocol entry into force (EIF)?

Yes _____ No _____

This proposal is contained in the Chairman's Text and has unanimous support of the Council.

ISSUE 2 -- SCHEDULED 20% REDUCTION

Should the delegation agree to a 20% reduction from 1986 levels of CFCs 11, 12, 113, 114 and 115, two to four years after EIF, following an international review of updated scientific evidence?

The Council supports this option, but it is divided over the following options for how the reductions should be implemented:

_____ Option 1. The 20% reduction should occur regardless of a scientific review.

This proposal is contained in the current Chairman's Text and is supported by.....

_____ Option 2. The 20% reduction should take place following a scientific review, unless 2/3 of the parties vote against.

This option is supported by.....

_____ Option 3. The 20% reduction should take place only if a majority vote in favor, following a scientific review.

This option is supported by.....

ISSUE 3 -- SCHEDULED FURTHER REDUCTIONS

Should the delegation seek further CFC reductions, more or less than 50% cumulative, from 1986 levels? These would occur 8 or more years after EIF?

_____ Option 1. Yes, and such reductions should be specified to occur automatically at designated points in time.

This option is supported by.....

_____ Option 2. Yes, and such reductions should occur only after further scientific reviews, and if a majority of the protocol parties vote in favor.

This is consistent with the Chairman's Text and is supported by

_____ Option 3. Further reductions should not occur unless the parties enter into an additional protocol based on scientific evidence not now available.

This option is supported by.....

ISSUE 4 -- ENTRY INTO FORCE AND PARTICIPATION

Ideally, all nations should participate in the protocol for it to globally address the ozone depletion problem. Recognizing that this is not likely, the Council feels we should nevertheless seek maximum participation.

Should the delegation agree to entry into force of a freeze and any future reductions only when a sufficient number of countries have signed and ratified the protocol?

_____ Option 1. Yes, and this determination should be made by the U.S. delegation.

This option is supported by.....

_____ Option 2. Yes, and determination should be according to a formula that takes into account population, production, consumption and other factors about the parties.

This option is supported by.....

_____ Option 3. No, but reassess U.S. actions after other countries have signed.

This option is supported by.....

ISSUE 5 -- GRACE PERIOD FOR LESSER DEVELOPED COUNTRIES

To encourage their participation, lesser developed nations should be given a grace period up to the year 2000?

_____ Option 1. Yes

This option is supported by.....

_____ Option 2. No

This option is supported by.....

ISSUE 6 -- LONG RANGE OBJECTIVE

Should the delegation seek a statement that the ultimate objective is to substantially eliminate all potential threats to the stratospheric ozone layer from man-made chemicals, as determined by regularly scheduled scientific assessments.

Yes _____

No _____

This proposal has unanimous support of the Council.

ISSUE 7 -- VOTING

Should the delegation seek to negotiate a system of voting that gives due weight to the significant producing and consuming countries?

Yes _____ No _____

This proposal has unanimous support of the Council.

ISSUE 8 -- CREDITS FOR PREVIOUS ACTIONS

Should the delegation seek a system of credits for previous emissions reductions, such as the 1978 U.S. ban of non-essential aerosols.

_____ Option 1. Definitely propose such a system.

This option could provide an advantage to the U.S. in meeting any reduction targets, and is supported by.....

_____ Option 2. Let the delegation decide.

This option is supported by.....

_____ Option 3. Do not propose such a system. In previous negotiations, other countries objected to this proposal, claiming that we are still the largest producer of CFCs.

This option is supported by.....

ISSUE 9 -- MONITORING

Should the delegation seek strong provisions for monitoring and reporting to secure the best possible compliance with the protocol?

Yes _____ No _____

This proposal has unanimous support of the Council.

Edwin Meese III
Chairman Pro Tempore

Attachment

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)

Third Session
Geneva, 27-30 April 1987

TEXT PREPARED BY A SMALL SUB-WORKING GROUP OF
HEAD OF DELEGATIONS

ARTICLE II: CONTROL MEASURES

1. Each party, under the jurisdiction of which CFC 11, CFC 12, CFC 113, (CFC 114, CFC 115) are produced shall ensure that within (2) years after the entry into force of this Protocol the (combined annual production and imports) (combined adjusted annual production) of these substances do not exceed their 1986 level.
2. Each party, under the jurisdiction of which substances referred to in paragraph 1 are not produced at the time of the entry into force of this Protocol, shall ensure that within (2) years from the entry into force of this Protocol (its combined annual production and imports) (its combined adjusted annual production) do not exceed the levels of imports in 1986.
3. Each party shall ensure, that within (4) years after the entry into force of this Protocol levels of substances referred to in paragraph 1 attained in accordance with paragraphs 1 and 2 will be reduced by 20 per cent.
4. Each party shall ensure that within (6) (a), (8) (b) years after the entry into force of this Protocol, the 1986 levels of substances referred to in paragraphs 1 and 2 will be further reduced (by 30 per cent), (a) (if the majority of the parties so decide, (b) (unless parties by a two-third majority otherwise decide), in the light of assessments referred to in Article III, such decision should be taken not later than (2) (4) years after entry into force.

5. Parties shall decide by (two-third majority) (a majority vote)
- whether substances should be added to or removed from the reduction schedule
 - whether further reductions of 1986 levels should be undertaken (with the objective of eventual elimination of these substances).

These decisions shall be based on the assessments referred to in Article III.

Note: A second paragraph reading as follows has to be added to Article III.
Beginning 1990, ^{and} every four years thereafter, the parties shall review the control measures provided for in Article II. At least one year before each of these reviews, 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.

THE WHITE HOUSE

WASHINGTON

June 12, 1987

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: RALPH C. BLEDSOE *Ralph Bledsoe*
Executive Secretary

SUBJECT: Stratospheric Ozone

As requested at the June 11 Council meeting, a draft of a decision memorandum that will be sent to the President is attached for your review. It was prepared following a meeting of a small group of Council principals appointed by the Chairman Pro Tempore.

You are asked to comment on the accuracy and general format of the memorandum, and provide your department or agency position on the issues for which you have a view. Comments should be returned or telephoned to my office, (Room 200 OEOB -- 456-6640), no later than noon on Monday, June 15, 1987. If you have any questions, please call Vicki Masterman or me at that number.

We will notify you immediately if there is need for a Domestic Policy Council meeting to further discuss this issue. Otherwise, the decision memo will be forwarded to the President.

Attachment

DRAFT

THE WHITE HOUSE

WASHINGTON

June 12, 1987

MEMORANDUM FOR THE PRESIDENT

FROM: THE DOMESTIC POLICY COUNCIL

SUBJECT: Stratospheric Ozone

Issue: What guidance should the U.S. delegation be given for the next stages of international negotiation of an agreement for regulation of chemicals believed capable of future depletion of stratospheric ozone?

Background

During the 1970's, concerns were expressed in the scientific community that continued growth in the use of certain chemicals would result in future depletion of stratospheric ozone, which some scientists predict would cause such adverse health and environmental effects as increased skin cancer deaths, cataracts, crop damage and aquatic impacts. Others, however, believe that some of the scientific assumptions and projections, which extend as far as the year 2165, do not accurately account for future technological and scientific developments that may occur.

Most scientists, however, predict that significant ozone depletion will occur unless international action is taken to control the chemicals at issue, even though there are numerous medical and scientific uncertainties about the potential impacts of such depletion. Ideally, any freeze or reduction in CFCs should be based on reliable scientific evidence that use of CFCs causes depletion of stratospheric ozone. While there are differing views within the Council on the reliability of the scientific evidence available at this time, the irreversibility of CFC accumulations and consequent ozone depletion argues for strong action to secure some form of international agreement this year, with provision for future scientific assessment.

Concern over these predictions led Congress to add an ozone protection section to the Clean Air Act in 1977 and to ban aerosols in 1978. Similar actions were taken by other countries. Currently, there is strong judicial and congressional pressure for action to protect the ozone layer. Both the Senate and the House have passed resolutions supporting international negotiations. If an effective international agreement is not reached, Congress and the courts are likely to require unilateral domestic reductions of the chemicals in question. Such unilateral U.S. action would not protect the ozone layer and would likely disadvantage American businesses in world markets.

The U.S. is currently a party to the 1985 Vienna Convention for Protection of the Ozone Layer. Your ratification message to the Senate stated that this Convention addresses stratospheric ozone depletion "primarily by providing for international cooperation in research and exchange of information . . . and could also serve as a framework for negotiation of regulatory measures that might in the future be considered necessary. . . ." The U.S. has been a leader in the three Convention meetings held thus far to develop an international agreement on control of the chemicals in question. The U.S. delegation has been guided by a Circular 175 approved by the State Department. The next meeting is scheduled for June 29, 1987 with plans to conclude the negotiations in Montreal by September.

In a recent cost benefit analysis done by CEA, the potential benefits of taking some actions to protect the ozone layer were found to be much greater than the costs of controlling the relevant chemicals. For example, a freeze plus a 20-percent reduction of emissions of selected chemicals was concluded to be clearly economically justified. Further reductions may also be economically justified under other scenarios considered, although further information and evaluation of these benefits and costs would be needed. The chemicals in question are used in the production of refrigerators, mobile air-conditioners, computers, foam insulation, fire extinguishers, and electronic industry. Some of them also have national defense applications.

Discussion

The most recent negotiations have produced a Chairman's Text for an agreement, which each country has been asked to review prior to the June 29 meetings. The Domestic Policy Council met on May 20 and June 11 to discuss the Chairman's Text, as well as the overall negotiations. The Council agreed that we should continue with negotiations based on the general framework of the Circular 175. Several members felt, however, that the delegation should be given further specific instructions, which are covered in the following issues and options. Your decisions on these are requested.

ISSUE 1 -- FREEZE

Should the delegation seek a freeze at 1986 levels on production/consumption of all seriously ozone-depleting chemicals (CFCs 11, 12, 113, 114, 115; Halons 1201 and 1311), to take effect one or two years after the protocol entry into force (EIF)?

Yes _____

No _____

This proposal is contained in the Chairman's Text and has unanimous support of the Council.

ISSUE 2 -- SCHEDULED 20% REDUCTION

Should the delegation agree to a 20% reduction from 1986 levels of CFCs 11, 12, 113, 114 and 115, two to four years after EIF, following an international review of updated scientific evidence?

The Council supports this option, but it is divided over the following options for how the reductions should be implemented:

_____ Option 1. The 20% reduction should occur regardless of a scientific review.

This proposal is contained in the current Chairman's Text and is supported by.....

_____ Option 2. The 20% reduction should take place following a scientific review, unless 2/3 of the parties vote against.

This option is supported by.....

_____ Option 3. The 20% reduction should take place only if a majority vote in favor, following a scientific review.

This option is supported by.....

ISSUE 3 -- SCHEDULED FURTHER REDUCTIONS

Should the delegation seek further CFC reductions, more or less than 50% cumulative, from 1986 levels? These would occur 8 or more years after EIF?

_____ Option 1. Yes, and such reductions should be specified to occur automatically at designated points in time.

This option is supported by.....

_____ Option 2. Yes, and such reductions should occur only after further scientific reviews, and if a majority of the protocol parties vote in favor.

This is consistent with the Chairman's Text and is supported by

_____ Option 3. Further reductions should not occur unless the parties enter into an additional protocol based on scientific evidence not now available.

This option is supported by.....

ISSUE 4 -- ENTRY INTO FORCE AND PARTICIPATION

Ideally, all nations should participate in the protocol for it to globally address the ozone depletion problem. Recognizing that this is not likely, the Council feels we should nevertheless seek maximum participation.

Should the delegation agree to entry into force of a freeze and any future reductions only when a sufficient number of countries have signed and ratified the protocol?

_____ Option 1. Yes, and this determination should be made by the U.S. delegation.

This option is supported by.....

_____ Option 2. Yes, and determination should be according to a formula that takes into account population, production, consumption and other factors about the parties.

This option is supported by.....

_____ Option 3. No, but reassess U.S. actions after other countries have signed.

This option is supported by.....

ISSUE 5 -- GRACE PERIOD FOR LESSER DEVELOPED COUNTRIES

To encourage their participation, lesser developed nations should be given a grace period up to the year 2000?

_____ Option 1. Yes

This option is supported by.....

_____ Option 2. No

This option is supported by.....

ISSUE 6 -- LONG RANGE OBJECTIVE

Should the delegation seek a statement that the ultimate objective is to substantially eliminate all potential threats to the stratospheric ozone layer from man-made chemicals, as determined by regularly scheduled scientific assessments.

Yes _____

No _____

This proposal has unanimous support of the Council.

ISSUE 7 -- VOTING

Should the delegation seek to negotiate a system of voting that gives due weight to the significant producing and consuming countries?

Yes _____ No _____

This proposal has unanimous support of the Council.

ISSUE 8 -- CREDITS FOR PREVIOUS ACTIONS

Should the delegation seek a system of credits for previous emissions reductions, such as the 1978 U.S. ban of non-essential aerosols.

_____ Option 1. Definitely propose such a system.

This option could provide an advantage to the U.S. in meeting any reduction targets, and is supported by.....

_____ Option 2. Let the delegation decide.

This option is supported by.....

_____ Option 3. Do not propose such a system. In previous negotiations, other countries objected to this proposal, claiming that we are still the largest producer of CFCs.

This option is supported by.....

ISSUE 9 -- MONITORING

Should the delegation seek strong provisions for monitoring and reporting to secure the best possible compliance with the protocol?

Yes _____ No _____

This proposal has unanimous support of the Council.

Edwin Meese III
Chairman Pro Tempore

Attachment

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)

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TEXT PREPARED BY A SMALL SUB-WORKING GROUP OF
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ARTICLE II: CONTROL MEASURES

1. Each party, under the jurisdiction of which CFC 11, CFC 12, CFC 113, (CFC 114, CFC 115) are produced shall ensure that within (2) years after the entry into force of this Protocol the (combined annual production and imports) (combined adjusted annual production) of these substances do not exceed their 1986 level.
2. Each party, under the jurisdiction of which substances referred to in paragraph 1 are not produced at the time of the entry into force of this Protocol, shall ensure that within (2) years from the entry into force of this Protocol (its combined annual production and imports) (its combined adjusted annual production) do not exceed the levels of imports in 1986.
3. Each party shall ensure, that within (4) years after the entry into force of this Protocol levels of substances referred to in paragraph 1 attained in accordance with paragraphs 1 and 2 will be reduced by 20 per cent.
4. Each party shall ensure that within (6) (a), (8) (b) years after the entry into force of this Protocol, the 1986 levels of substances referred to in paragraphs 1 and 2 will be further reduced (by 30 per cent), (a) (if the majority of the parties so decide, (b) (unless parties by a two-third majority otherwise decide), in the light of assessments referred to in Article III, such decision should be taken not later than (2) (4) years after entry into force.

5. Parties shall decide by (two-third majority) (a majority vote)
- whether substances should be added to or removed from the reduction schedule
 - whether further reductions of 1986 levels should be undertaken (with the objective of eventual elimination of these substances).

These decisions shall be based on the assessments referred to in Article III.

Note: A second paragraph reading as follows has to be added to Article III.
Beginning 1990, ^{and} every four years thereafter, the parties shall review the control measures provided for in Article II. At least one year before each of these reviews, 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.

Final

THE WHITE HOUSE

WASHINGTON

June 18, 1987

MEMORANDUM FOR THE PRESIDENT

FROM: THE DOMESTIC POLICY COUNCIL

SUBJECT: Stratospheric Ozone

ISSUE: What guidance should the U.S. delegation be given for the next stages of international negotiation of an agreement for regulation of chemicals believed capable of future depletion of stratospheric ozone?

BACKGROUND:

Beginning in the 1970's, concerns were expressed in some parts of the scientific community that continued growth in the use of certain chemicals would result in future depletion of stratospheric ozone. Scientists' models predict this could cause adverse health and environmental effects, including increased skin cancer deaths, cataracts, effects on the immune system, damage to crops and materials and impacts on aquatic life. Other scientists believe that some of these projections, which extend as far as the year 2165, do not accurately account for numerous scientific uncertainties and for future technological, scientific, medical and behavioral changes that may occur. The chemicals in question, chlorofluorocarbons (CFCs) and Halons, are used commercially in refrigerators, building and mobile air-conditioners, foam insulation and fire extinguishers, and by the electronics industry. Some of them have important national defense applications for which there are currently no substitutes.

Based on their models, most scientists now believe that significant ozone depletion is likely to occur by the year 2040 unless global action is taken to control the chemicals at issue, even though there are numerous medical and scientific uncertainties about the potential impacts of such depletion. Ideally, any freeze or reduction in CFCs should be based on reliable scientific evidence that use of CFCs will cause depletion of stratospheric ozone. While there are differing views within the Council on the reliability of the scientific evidence available at this time, the long life of CFC accumulations, and the consequent risk assessments associated with projected ozone depletion argue for strong action to secure an international agreement this year, with provision for future scientific assessment. Since U.S. participation in an international agreement will require domestic regulations, the Domestic Policy Council will address these and potential non-regulatory options as additional policy guidance is needed.

Congressional Interest. Concern over the predicted depletion of ozone led Congress to add an ozone protection section to the Clean Air Act in 1977 and led EPA to ban CFC aerosols in 1978. Some other countries subsequently implemented partial bans of CFC aerosol use. Currently, there is strong congressional pressure for additional action to protect the ozone layer. The Senate has passed a resolution calling for a strong international agreement, and urging an automatic reduction in CFC production of fifty percent. If an effective international agreement is not reached, and we fail to secure firm and concrete commitments from other countries, Congress and the courts may require unilateral domestic reductions of the chemicals in question. Such U.S. action, alone, would not protect the ozone layer and would disadvantage American businesses in world markets.

International Negotiations. The U.S. is a party to the 1985 Vienna Convention for Protection of the Ozone Layer. (Note: Although the Convention is not in effect yet, we expect it will be ratified by a sufficient number of countries.) Your ratification message to the Senate stated that this Convention addresses stratospheric ozone depletion "primarily by providing for international cooperation in research and exchange of information . . . and could also serve as a framework for negotiation of regulatory measures that might in the future be considered necessary. . . ." The U.S. has received considerable credit by some in Congress for its leadership role in the three negotiating sessions held thus far to develop an international agreement on control of the chemicals in question. However, some are concerned that not all emerging industrialized nations have participated in the negotiations. The U.S. interagency delegation has been guided by a Circular 175 approved under the authority of the Secretary of State, following approval by some agencies at various staff levels. The next negotiating session is scheduled for June 29, 1987 with a plenipotentiary conference scheduled in Montreal in September to sign the agreement.

Cost-Benefit. In a cost benefit analysis relying on EPA estimates of ozone depletion effects on cancer deaths through 2165, the potential benefits of taking some actions to protect the ozone layer were found to be substantially greater than the costs of controlling the relevant chemicals. Cost benefit analysis suggests that both a freeze and a further 20-percent reduction of the ozone-depleting chemicals are economically justified. Further reductions are also indicated in a majority of cases, depending on information that will be acquired prior to taking such steps.

DISCUSSION: The most recent international negotiations have produced a Chairman's Text for an agreement based on the structure presented by the U.S. Each country has been asked to review this Text prior to the June 29 meetings. The Domestic Policy Council met on May 20 and June 11 to discuss the Chairman's Text, as well as the overall negotiations. The Council agreed that we should continue with negotiations; however, your further guidance on the following issues and options is requested.

ISSUE 1 -- PARTICIPATION AND ENTRY INTO FORCE OF THE PROTOCOL

Ideally, all nations that produce or use ozone-depleting chemicals should participate in the protocol if it is to address globally the ozone depletion problem. Otherwise, production of CFCs by nonparticipants could eventually offset reductions by the participating countries. The Council believes we should seek maximum participation.

Which of the following positions should the U.S. delegation seek with regard to entry into force (EIF) and continuing effect of the protocol?

_____ Option 1. Entry into force of the protocol should occur only when a substantial proportion of producing/consuming countries as determined by the U.S. delegation have signed and ratified it.

This option is supported by State, EPA, DOD, DOE and HHS.

_____ Option 2. Entry into force should occur only when a substantial proportion of producing countries, as determined by an established formula, have signed and ratified it.

This option is supported by Interior, Commerce, Justice, CEQ and OSTP.

ISSUE 2 -- GRACE PERIOD FOR LESSER DEVELOPED COUNTRIES

To encourage participation by all countries, should lesser developed nations be given a limited grace period up to the year 2000, to allow some increases in their domestic consumption? This has been the U.S. position and is unanimously supported by the Council.

Yes _____

No _____

ISSUE 3 -- VOTING

Should the U.S. delegation seek to negotiate a system of voting for protocol decisions that gives due weight to the significant producing and consuming countries? This proposal has unanimous support of the Council.

Yes _____

No _____

ISSUE 4 -- MONITORING AND ENFORCEMENT

Should the U.S. delegation seek strong provisions for monitoring, reporting, and enforcement to secure the best possible compliance with the protocol? This proposal has unanimous support of the Council.

Yes _____

No _____

ISSUE 5 -- CREDITS FOR PREVIOUS ACTION

Should the delegation seek a system of credits for emissions reduction, resulting from the 1978 U.S. ban of non-essential aerosols? In previous negotiations, other countries rejected this proposal, claiming that the U.S. is still the largest consumer of CFCs.

_____ Option 1. Yes.

This would assure the consideration of previous actions taken to deal with ozone depletion and is supported by Interior, CEQ and OSTP.

_____ Option 2. No.

State is convinced that seeking credits would stalemate the negotiations, and will stimulate unnecessary proposals from other parties. This option is supported by State, EPA, Justice, HHS, DOE and USTR.

ISSUE 6 -- FREEZE

Should the U.S. delegation seek a freeze at 1986 levels on production/consumption of all seriously ozone-depleting chemicals (CFCs 11, 12, 113, 114, 115; Halons 1201 and 1311), to take effect one or two years after the protocol entry into force? This proposal is consistent with the Chairman's Text and has unanimous support of the Council.

Yes _____

No _____

A freeze will achieve a majority of the health and environmental benefits derived from retention of the ozone layer. Interior, Commerce, OSTP and CEQ feel that it will also spur industry to develop substitutes for ozone-depleting chemicals. Halons are not presently mentioned in the Chairman's Text, but it is intended that they will be included. The earliest expected entry into force (EIF) date is 1988.

ISSUE 7 -- SCHEDULED 20% REDUCTION

Should the U.S. delegation seek a 20% reduction from 1986 levels of CFCs 11, 12, 113, 114 and 115, four years after EIF, about 1992, following the 1990 international review of updated scientific evidence? The Council supports this action, but is divided over options for how the reductions should be implemented:

_____ Option 1. The 20% reduction should take place automatically, unless reversed by a 2/3 vote of the parties.

This is consistent with the Chairman's Text and the Circular 175. It is supported by EPA, State, Justice, CEQ, HHS, DOE and USTR. Commerce and DOD support this option for all chemicals except CFC 113; 113 has national defense applications for which there are currently no available substitutes.

_____ Option 2. The 20% reduction should take place only if a majority of the parties vote in favor following the 1990 scientific review.

This option is supported by Interior.

_____ Option 3. Further reductions should not be scheduled at this time. We may later decide to seek these in light of future scientific evidence.

This option is supported by OSTP.

ISSUE 8 -- SECOND PHASE REDUCTION

Should the U.S. delegation seek a second-phase CFC reduction of an additional 30% from 1986 levels, consistent with the Chairman's Text? This would occur about 8 years after EIF (about 1996).

_____ Option 1. Yes, and this should occur automatically, unless reversed by a 2/3 vote of parties, following scientific review.

This is supported by EPA and State.

_____ Option 2. Yes, and this should occur only if a majority of the protocol parties vote in favor, following scientific reviews.

HHS, Justice, DOE, DOD, CEQ and USTR support this.

_____ Option 3. Further reductions should not be scheduled at this time. We may later decide to seek these in light of scientific evidence not now available about the results of a freeze and any other reduction.

This would curtail future reductions, and require a new protocol. Commerce, Interior and OSTP support this.

ISSUE 9 -- LONG RANGE OBJECTIVE

Should the U.S. delegation support the ultimate objective of protecting the ozone layer by eventual elimination of realistic threats from man-made chemicals, and support actions determined to be necessary based on regularly scheduled scientific assessments. This proposal is consistent with the Chairman's Text and the U.S. delegation's previous position, and has unanimous support of the Council members.

Yes _____

No _____

ISSUE 10 -- TRADE PROVISIONS

The international negotiations have focused on a trade provision 1) to insure that countries are not able to profit from not participating in the international agreement, and 2) to insure that U.S. industry is not disadvantaged in any way through participation.

What should be the nature of any trade article sought for the protocol by the U.S. delegation?

_____ Option 1. Seek a provision that will best protect U.S. industry in world markets, by authorizing trade restrictions against CFC-related imports from countries that do not join or comply with the protocol provisions.

This option is supported by Justice, Interior, OSTP, EPA, DOE, USTR, HHS and State. Note: Commerce is against the use of trade restrictions unless there is no other way to protect U.S. industry.

_____ Option 2. Do not seek a trade article for the protocol.


Ralph C. Bledsoe
Executive Secretary
Domestic Policy Council

Attachment: Chairman's Text

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)

Third Session
Geneva, 27-30 April 1987

TEXT PREPARED BY A SMALL SUB-WORKING GROUP OF
HEAD OF DELEGATIONS

ARTICLE II: CONTROL MEASURES

1. Each party, under the jurisdiction of which CFC 11, CFC 12, CFC 113, (CFC 114, CFC 115) are produced shall ensure that within (2) years after the entry into force of this Protocol the (combined annual production and imports) (combined adjusted annual production) of these substances do not exceed their 1986 level.
2. Each party, under the jurisdiction of which substances referred to in paragraph 1 are not produced at the time of the entry into force of this Protocol, shall ensure that within (2) years from the entry into force of this Protocol (its combined annual production and imports) (its combined adjusted annual production) do not exceed the levels of imports in 1986.
3. Each party shall ensure, that within (4) years after the entry into force of this Protocol levels of substances referred to in paragraph 1 attained in accordance with paragraphs 1 and 2 will be reduced by 20 per cent.
4. Each party shall ensure that within (6) (a), (8) (b) years after the entry into force of this Protocol, the 1986 levels of substances referred to in paragraphs 1 and 2 will be further reduced (by 30 per cent), (a) (if the majority of the parties so decide, (b) (unless parties by a two-third majority otherwise decide), in the light of assessments referred to in Article III, such decision should be taken not later than (2) (4) years after entry into force.

5. Parties shall decide by (two-third majority) (a majority vote)

- whether substances should be added to or removed from the reduction schedule
- whether further reductions of 1986 levels should be undertaken (with the objective of eventual elimination of these substances).

These decisions shall be based on the assessments referred to in Article III.

Note: A second paragraph reading as follows has to be added to Article III.
Beginning 1990, ^{and} every four years thereafter, the parties shall review the control measures provided for in Article II. At least one year before each of these reviews, 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.

CFC Producers
in Order of
Production

EEC*
United States*
Japan
Soviet Union
Australia
Canada

*Together comprise
80% of production

CFC Consumers
in Order of
Consumption

United States
EEC
Japan

Countries
Participating
in Negotiations

Argentina
Australia
Austria
Belgium
Canada
Colombia
Denmark
Egypt
Finland
France
FRG
Ghana
Hungary
Italy
Japan
Kenya
Luxembourg
Malaysia
Mexico
Netherlands
New Zealand
Nigeria
Norway
Philippines
Poland
Portugal
Spain
Sweden
Switzerland
Thailand
USSR
U.S.
UK
Venezuela
Yugoslavia

THE WHITE HOUSE

WASHINGTON

August 11, 1987

Dear Mr. Rosenthal:

In "Protecting the Ozone Layer" (Op-Ed, August 6, 1987), Michael Oppenheimer and Daniel Dudek suggest the "President's public leadership ... could be vital to clinching the deal to save the ozone layer." They also note correctly that the final ozone agreement is due to be signed this September "with critical details still undecided, the delicate consensus could easily evaporate."

Everyone acquainted with the ozone issue recognizes that ozone protection can only come from global efforts. Yet in the final stages of these sensitive international negotiations, Dudek and Oppenheimer would have the President proclaim publicly his negotiating strategy and leave his State Department negotiators without any room to maneuver. The point of the negotiations is not to win the hearts and minds of the public in countries that produce and consume ozone depleting chemicals, but rather is to achieve the best international agreement. The U.S. would not be dealing from a position of strength if its negotiating strategy were known to all parties.

The Reagan Administration has publicly called for a strong and effective international agreement to protect the ozone layer. And the President has personally instructed his negotiators on the details of a negotiating strategy toward such an agreement.

Finally, I was most disappointed to see Oppenheimer and Dudek perpetuate a falsehood regarding Interior Secretary Donald Hodel's views on ozone protection. Unlike anyone who has written about "sunglasses and hats" to date, I attended the meeting where Secretary Hodel purportedly embraced such measures. That was not his position.

Sincerely,

Nancy J. Risque
Assistant to the President
and Cabinet Secretary

Mr. Jack Rosenthal
Editorial Page Editor
New York Times
229 West 43d Street
New York, New York 10036

THE WHITE HOUSE

WASHINGTON

August 10, 1987

MEMORANDUM FOR NANCY J. RISQUE

FROM: HANNS KUTTNER
VICKI MASTERMAN *VM*

SUBJECT: Response to NYT Ozone Editorial

Attached is a draft response to the August 6, 1987 New York Times editorial by David Dudek and Michael Oppenheimer on stratospheric ozone. A copy of their editorial is also attached.

THE WHITE HOUSE

WASHINGTON

Dear Mr. _____:

In their August 6, 1987 Times editorial, Michael Oppenheimer and Daniel Dudek suggest the "President's public leadership ... could be vital to clinching the deal to save the ozone layer." They also note correctly that the final ozone agreement is due to be signed this September "with critical details still undecided, the delicate consensus could easily evaporate."

Everyone acquainted with the ozone issue recognizes that ozone protection can only come from global efforts. Yet in the final stages of these sensitive international negotiations, Dudek and Oppenheimer would have the President proclaim publicly his negotiating strategy and leave his State Department negotiators without any room to maneuver. The point of the negotiations is not to win the hearts and minds of the public in countries which produce and consume ozone depleting chemicals, but rather is to achieve the best international agreement. The U.S. would not be dealing from a position of strength if its negotiating strategy were known to all parties.

The Administration has publicly called for a strong and effective international agreement to protect the ozone layer. And the President has personally instructed his negotiators on the details of a negotiating strategy toward such an agreement.

Finally, I was most disappointed to see Oppenheimer and Dudek perpetuate a falsehood regarding Interior Secretary Donald Hodel's views. Unlike any party who has written about the "sunglasses and hats" statement to date, I attended the meeting where Secretary Hodel purportedly suggested such measures. He said no such thing.

Sincerely,

Nancy J. Risque
Assistant to the President

Protecting the Ozone Layer

By Michael Oppenheimer
and Daniel J. Dudek

After a third bout with skin cancer, President Reagan's nose, as he noted, is a "billboard" warning against excessive exposure to the sun. Something else he should loudly proclaim is, "Protect the ozone layer." The message could be vital to cementing an international agreement to stop ozone depletion, which threatens to vastly increase already high levels of skin cancers — some of which, unlike Mr. Reagan's, will be fatal.

Michael Oppenheimer is a senior scientist, and Daniel J. Dudek is senior economist, with the Environmental Defense Fund.

The stratosphere's ozone layer, the first line of defense against the sun's ultraviolet rays, is beginning to thin because of industrial gases. Sun screens and protective clothing are important weapons in combating rising rates of skin cancer.

But Donald Hodel, the Interior Secretary, took this notion to an extreme two months ago when he recommended their use in lieu of regulations to protect the ozone layer. The suggestion, akin to issuing gas masks to mitigate air pollution, met with appropriate derision. But the Administration has never renounced Mr. Hodel's logic.

Scientists have known for more than a decade that industrial chemicals called chlorofluorocarbons are responsible for the damage to the ozone layer. Chlorofluorocarbons are widely used in refrigerators, air conditioners, plastics manufacturing, aerosols and as solvents.

Substitute chemicals or processes are readily available — or could be, with a nudge from governments. But international negotiations to solve the problem languished until an ozone hole was discovered over Antarctica.

With recent findings pointing at chlorofluorocarbons as the likely culprit, about two dozen nations have moved rapidly toward an accord that would sharply reduce production of these chemicals over the next decade. In fact, negotiators moved to the brink of agreement at a bargaining session in Geneva last April, before Mr. Hodel entered the fray.

A final protocol is due to be signed at a September meeting in Montreal, and with critical details still undecided, the delicate consensus could easily evaporate.

The President's public leadership, sharpened by his personal medical history, could be vital to clinching the deal to save the ozone layer.