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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	John Negroponte to Wallis, re circular 175, 3 p R 12/10/02 NLSF00-013 # 104	11/28/86	P1/F1
2. memo	Ronald Reagan to the Vice President et al, re international protocol, 2p R 6/26/02 " # 105	6/25/87	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].

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

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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

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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
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#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

Nancy Ketcham-Colwill
Attorney
Air and Radiation Division (LE-132A)

cc: Bill Long
Jim Losey
Dwain Winters
John Hoffman
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EPA'S AUTHORITY TO IMPOSE TRADE RESTRICTIONS TO PROTECT STRATOSPHERIC OZONE

The Clean Air Act, 42 U.S.C. §7401 et sec., 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 sec., 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 statospheric ozone depletion will likely occur and that its occurance 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 15e, 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

710
PURPOSE AND DISCLAIMER

711 PURPOSE

(TL: POL-36 2-25-85)
(State Only)

a. The purpose of this chapter is to facilitate the application of orderly and uniform measures and procedures for the negotiation, signature, publication, and registration of treaties and other international agreements of the United States. It is also designed to facilitate the maintenance of complete and accurate records on treaties and agreements and the publication of authoritative information regarding them.

b. The chapter is not a catalog of all the essential guidelines or information pertaining to the making and application of international agreements. It is limited to guidelines or information necessary for general guidance.

712 DISCLAIMER

This chapter 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.

713 through 719 (Unassigned)

720
NEGOTIATION AND SIGNATURE

720.1 Circular 175 Procedure

(TL: POL-36 3-1-85)

This subchapter is a codification of the substance of Department Circular No. 175, December 13, 1955, as amended, on the negotiation and signature of treaties and other international agreements. It may be referred to for convenience and continuity as the "Circular 175 Procedure."

720.2 General Objectives

The objectives are:

a. That the making of treaties and other international agreements for the United States is carried out within constitutional and other appropriate limits;

b. That the objectives to be sought in the negotiation of particular treaties and other international agreements are approved by the Secretary or an officer specifically authorized by him for that purpose;

c. That timely and appropriate consultation is had with congressional leaders and committees on treaties and other international agreements;

d. That where, in the opinion of the Secretary of State or a designee, the circumstances permit, the public be given an opportunity to comment on treaties and other international agreements;

e. That firm positions departing from authorized positions are not undertaken without the approval of the Legal Adviser and interested assistant secretaries or their deputies;

f. That the final texts developed are approved by the Legal Adviser and the interested assistant secretaries or their deputies and, when required, brought a reasonable time before signature to the attention of the Secretary or an officer specifically designated by the Secretary for that purpose;

g. That authorization to sign the final text is obtained and appropriate arrangements for signature are made; and

h. That there is compliance with the requirements of *1 U.S.C. 112b, as amended,* on the transmission of the texts of international agreements other than treaties to the Congress (section 724); the law on the publication of treaties and other international agreements (see section 725); and treaty provisions on registration (see section 750.3-3).

721 EXERCISE OF THE INTERNATIONAL AGREEMENT POWER

721.1 Determination of Type of Agreement

The following considerations will be taken into account along with other relevant factors in determining whether an international agreement shall be dealt with by the United States as a treaty to be brought into force with the advice and consent of the Senate or as an agreement to be brought into force on some other constitutional basis.

721.2 Constitutional Requirements

There are two procedures under the Constitution through which the United States becomes a party to international agreement. Those procedures and the constitutional parameters of each are:

a. Treaties

International agreements (regardless of their title, designation, or form) whose entry into force with respect to the United States takes place only after the Senate has given its advice and consent are "treaties." The President, with the advice and consent of two-thirds of the Senators present, may enter into an international agreement on any subject genuinely of concern in foreign relations, so long as the agreement does not contravene the United States Constitution; and

b. International Agreements Other Than Treaties

International agreements brought into force with respect to the United States on a constitutional basis other than with the advice and consent of the Senate are "international agreements other than treaties." (The term "executive agreement" is appropriately reserved for agreements made solely on the basis of the constitutional authority of the President.) There are three constitutional bases for international agreements other than treaties as set forth below. An international agreement may be concluded pursuant to one or more of these constitutional bases:

(1) Agreements Pursuant to Treaty

The President may conclude an international agreement pursuant to a treaty brought into force with the advice and consent of the Senate, the provisions of which constitute authorization for the agreement by the Executive without subsequent action by the Congress;

(2) Agreements Pursuant to Legislation

The President may conclude an international agreement on the basis of existing legislation or subject to legislation to be enacted by the Congress; and

(3) Agreements Pursuant to the Constitutional Authority of The President

The President may conclude an international agreement on any subject within his constitutional authority so long as the agreement is not inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority. The constitutional sources of authority for the President to conclude international agreements include:

(a) The President's authority as Chief Executive to represent the nation in foreign affairs;

(b) The President's authority to receive ambassadors and other public ministers;

(c) The President's authority as "Commander-in-Chief"; and

(d) The President's authority to "take care that the laws be faithfully executed."

721.3 Considerations for Selecting Among Constitutionally Authorized Procedures

In determining a question as to the procedure which should be followed for any particular international agreement, due consideration is given to the following factors along with those in section 721.2:

a. The extent to which the agreement involves commitments or risks affecting the nation as a whole;

b. Whether the agreement is intended to affect State laws;

c. Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;

d. Past U.S. practice as to similar agreements;

e. The preference of the Congress as to a particular type of agreement;

f. The degree of formality desired for an agreement;

g. The proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and

h. The general international practice as to similar agreements.

In determining whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty, the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the Senate, the Congress as a whole, or the President.

21.4 Questions as to Type of Agreement to be Used; Consultation with Congress

a. All legal memorandums accompanying Circular 175 requests (see section 722.3h) will discuss thoroughly the bases for the type of agreement recommended.

b. When there is any question whether an international agreement should be concluded as a treaty or as an international agreement other than a treaty, the matter is brought to the attention of the Legal Adviser of the Department. If the Legal Adviser considers the question to be a serious one that may warrant congressional consultation, a memorandum will be transmitted to the Assistant Secretary for Legislative and Intergovernmental Affairs and other officers concerned. Upon receiving their views on the subject, the Legal Adviser shall, if the matter has not been resolved, transmit a memorandum thereon to the Secretary for a decision. Every practicable effort will be made to identify such questions at the earliest possible date so that consultations may be completed in sufficient time to avoid last-minute consideration.

c. Consultations on such questions will be held with concessional leaders and committees as may be appropriate. Arrangements for such consultations shall be made by the Assistant Secretary for Legislative and Intergovernmental Affairs and shall be held with the assistance of the Office of the Legal Adviser and such other offices as may be determined. Nothing in this section shall be taken as derogating from the requirement of appropriate consultations with the Congress in accordance with section 723.1e in connection with the initiation of, and developments during negotiations for international agreements, particularly where the agreements are of special interest to the Congress.

2 ACTION REQUIRED IN NEGOTIATION AND/OR SIGNATURE OF TREATIES AND AGREEMENTS

2.1 Authorization Required to Undertake Negotiations

Negotiations of treaties, or other international agreements on matters of substance, or for their extension or revision, are not to be undertaken, nor any exploratory discussions undertaken with representatives of another government, until authorized in writing by the Secretary or an officer specifically authorized by the Secretary for that purpose. Notification of the termination of any treaty or other international agreement on matters of substance requires similar authorization.

722.2 Scope of Authorization

Approval of a request for authorization to negotiate a treaty or other international agreement does not constitute advance approval of the text nor authorization to agree upon a date for signature or to sign the treaty or agreement. Authorization to agree upon a given date for, and to proceed with, signature must be specifically requested in writing, as provided in section 722.3. This applies to treaties and other agreements to be signed abroad as well as those to be signed at Washington. Special instructions may be required, because of the special circumstances involved, for multilateral conventions or agreements to be signed at international conferences.

722.3 Request for Authorization to Negotiate and/or Sign Action Memorandum

a. A request for authorization to negotiate and/or sign a treaty or other international agreement takes the form of an action memorandum addressed to the Secretary *or other Principal to whom such authority has been delegated, as appropriate, and cleared with the Office of the Legal Adviser (including the Assistant Legal Adviser for Treaty Affairs)*, the Office of the Assistant Secretary for Legislative and Intergovernmental Affairs, other appropriate bureaus, and any other agency (such as Defense, Commerce, etc.) which has primary responsibility or a substantial interest in the subject matter. It is submitted through the Executive Secretariat.

b. The action memorandum may request one of the following: (1) authority to negotiate, (2) authority to sign, or (3) authority to negotiate and sign. The request in each instance states that any substantive changes in the draft text will be cleared with the Office of the Legal Adviser and other specified regional and/or functional bureaus before definitive agreement is reached. Drafting offices should consult closely with the Office of the Legal Adviser to insure that all legal requirements are met.

c. The action memorandum indicates what arrangements are planned as to: (1) congressional consultation, and (2) opportunity for public comment on the treaty or agreement being negotiated, signed, or acceded to.

d. The action memorandum shall indicate: (1) whether a proposed treaty or agreement embodies a commitment to furnish funds, goods, or services beyond or in addition to those authorized in an approved budget, and if so, (2) arrangements planned or carried out concerning consultation with the Office of Management and Budget (OMB) for such commitment.

e. The Department will not authorize such commitments without confirmation that the relevant budget approved by the President requests or provides funds adequate to fulfill the proposed commitment or that the President has made a determination to seek the required funds.

f. Where it appears that there may be obstacles to the immediate public disclosure of the text upon its entry into force, the action memorandum shall include an explanation thereof (see sections 723.2 and 723.3).

g. An action memorandum dealing with an agreement that has a potential for adverse environmental impact should contain a statement indicating whether the agreement will significantly affect the quality of the human environment.

h. The action memorandum is accompanied by: (1) *the U.S. draft, if available, of any agreement or other instrument in-*

tended to be negotiated, or (2) the text of any agreement and related exchange of notes, agreed minutes or other document to be signed (with appropriate clearances, including the Assistant Legal Adviser for Treaty affairs), and (3) a memorandum of law prepared in the Office of the Legal Adviser.

i. These provisions shall apply whether a proposed international agreement is to be concluded in the name of the U.S. Government, or in the name of a particular agency of the U.S. Government. However, in the latter case, the action memorandum may be addressed to the interested Assistant Secretary or Secretaries of State, or their designees in writing, unless such official(s) judge that consultation with the Secretary, Deputy Secretary or an Under Secretary is necessary. (See 22 CFR 181.4.)

722.4 Separate Authorizations

When authorization is sought for a particular treaty or other agreement, either multilateral or bilateral, the action memorandum for this purpose outlines briefly and clearly the principal features of the proposed treaty or other agreement, indicates any special problems which may be encountered and, if possible, the contemplated solutions of those problems.

722.5 Blanket Authorizations

In general, blanket authorizations are appropriate only in those instances where, in carrying out or giving effect to provisions of law or policy decisions, a series of agreements of the same general type is contemplated; that is, a number of agreements to be negotiated according to a more or less standard formula (for example, Public Law 480 Agricultural Commodities Agreements; Educational Exchange Agreements; Investment Guaranty Agreements; Weather Station Agreements, etc.) or a number of treaties to be negotiated according to a more or less standard formula (for example, consular conventions, extradition treaties, etc.). Each request for blanket authorization shall specify the office or officers to whom the authority is to be delegated. *The basic precepts under section 722.3 and 722.4 apply equally to requests for blanket authorizations. The specific terms of any blanket authorization, e.g., that the text of any particular agreement shall be cleared by the Office of the Legal Adviser and other interests bureaus before signature, shall be observed in all cases.*

722.6 Certification of Foreign-Language Text

a. Before any treaty or other agreement containing a foreign-language text is laid before the Secretary (or any person authorized by the Secretary) for signature, either in the Department or at a post, a signed memorandum must be obtained from a responsible language officer of the Department certifying that the foreign-language text and the English-language text are in conformity with each other and that both texts have the same meaning in all substantive respects. A similar certification must be obtained for exchanges of notes that set forth the terms of an agreement in two languages.

b. In exceptional circumstances the Department can authorize the certification to be made at a post.

722.7 Transmission of Texts to the Secretary

The texts of treaties and other international agreements must be completed and approved in writing by all responsible officers concerned sufficiently in advance to give the Secretary, or the person to whom authority to approve the text has been delegated, adequate time before the date of signing to examine the text and dispose of any questions that arise. Posts must transmit the texts to the Department as expeditiously as feasible to assure adequate time for such consideration. Except as otherwise specifically authorized by the Secretary, a complete text of a treaty or other international agreement must be delivered to the Secretary, or other person authorized to approve the text, before any such text is agreed upon as final or any date is agreed upon for its signature.

723 RESPONSIBILITY OF OFFICE OR OFFICER CONDUCTING NEGOTIATIONS

723.1 Conduct of Negotiations

The office of officer responsible for any negotiations keeps in mind:

a. That during the negotiations no position is communicated to a foreign government or to an international organization as a U.S. position that goes beyond any existing authorization or instructions;

b. That no proposal is made or position is agreed to beyond the original authorization without appropriate clearance (see section 722.3a);

c. That all significant policy-determining memorandums and instructions to the field on the subject of the negotiations have appropriate clearance (see section 722.3a);

d. That the Secretary *or other Principal, as appropriate,* is kept informed in writing of important policy decisions and developments, including any particularly significantly departures from substantially standard drafts that have been evolved;

e. That with the advice and assistance of the Assistant Secretary for Legislative and Intergovernmental Affairs, the appropriate congressional leaders and committees are advised of the intention to negotiate significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting them, including especially whether any legislation is considered necessary or desirable for the implementation of the new treaty or agreement. Where the proposal for any especially important treaty or other international agreement is contemplated, the Office of the Assistant Secretary for Legislative and Intergovernmental Affairs will be informed as early as possible by the office responsible for the subjects;

f. That the interest of the public be taken into account and, where in the opinion of the Secretary of State or his designee the circumstances permit, the public be given an opportunity to comment;

g. That in no case, after accord has been reached on the substance and wording of the texts to be signed, do the negotiators sign an agreement or exchange notes constituting an agreement until a request under section 722.3 for authorization to sign has been approved and, if at a post abroad, until finally instructed by the Department to do so as stated in section 730.3. If an agreement is to be signed in two languages, each language text must be cleared in full with the Language Services Division or, if at a post abroad, with the Department before signature, as stated in section 722.6;

h. That due consideration is given also to the provisions of sections 723.2 through 723.9, 730.3 and 731 of this chapter; and

i. That, in any case where any other department or agency is to play a primary or significant role or has a major interest in negotiation of an international agreement, the appropriate official or officials in such department or agency are informed of the provisions of this subchapter.

723.2 Avoiding Obstacles to Publications and Registration

The necessity of avoiding any commitment incompatible with the law requiring publication (1 U.S.C. 112a) and with the treaty provisions requiring registration (see section 750.3-3) should be borned in mind by U.S. negotiators. Although negotiations may be conducted on a confidential basis, every practicable effort must be made to assure that any definitive agreement or commitment entered into will be devoid of any aspect which would prevent the publication and registration of the agreement.

723.3 Questions on Immediate Public Disclosure

In any instance where it appears to the officer or office in the Department responsible for the negotiations or to the U.S. representatives that the immedate public disclosure upon its entry into force of an agreement under negotiations would be prejudicial to the national security of the United States, the pertinent circumstances shall be reported to the Secretary of State and his decision awaited before any further action is taken. Where such circumstances are known before authorization to negotiate or to sign is requested, they shall be included in the request for authorization. All such reports and requests are to be cleared with the Office of the Legal Adviser.

723.4 Public Statements

No public statement is to be made indicating that agreement on a text has been reached, or that negotiations have been successfully completed, before authorization is granted to sign the treaty or other agreement. If such authorization has been granted subject to a condition that no substantive change in the proposed text is made without appropriate clearance (see section 722.3a), no such public statement is to be made until definitive agreement on the text has been reached and such clearance has been received. Normally, such a public statement is made only at the time a treaty or other agreement is actually signed, inasmuch as it remains possible that last-minute changes will be made in the text. Any such statement prior to that time must have the appropriate clearance, and the approval of the Secretary or the Department principal who originally approved the action memorandum request under "Circular 175 Procedure."

723.5 English-Language Text

Negotiators will assure that every bilateral treaty or other international agreement to be signed for the United States contains an English-language text. If the language of the other country concerned is one other than English, the text is done in English and, if desired by the other country, in the language of that country. A U.S. note that constitutes part of an international agreement effected by exchange of notes is always in the English language. If it quotes a foreign *government* note, the quotation is to be rendered in English translation. A U.S. note is not in any language in addition to English, unless specifically authorized *(with the clearance of the Assistant Legal Adviser for Treaty Affairs)*. The note of the other government concerned may be in whatever language that government desires.

723.6 Transmission of Signed Texts to Assistant Legal Adviser for Treaty Affairs

a. The officer responsible for the negotiation of a treaty or other agreement at any post is responsible for insuring the most expeditious transmission of the signed original text, together with all accompanying papers such as agreed minutes, exchanges of notes, plans, etc. *(indicating full names of persons who signed)*, to the Department for the attention of the Assistant Legal Adviser for Treaty Affairs; *Provided*, that where originals are *not* available accurate certified copies are obtained and transmitted as in the case of the original. (See sections 723.7, 723.8, and 723.9.) The transmittal is by airgram, *not* by transmittal slip or operations memorandum.

b. Any officer in the Department having possession of or receiving from any source a signed original or certified copy of a treaty or agreement or of a note or other document constituting a part of a treaty or agreement must forward such documents immediately to the Assistant Legal Adviser for Treaty Affairs.

723.7 Transmission of Certified Copies to the Department

When an exchange of diplomatic notes between the mission and a foreign government constitutes an agreement or has the effect of extending, modifying, or terminating an agreement to which the United States is a party, a properly certified copy of the note from the mission to the foreign government, and the signed original of the note from the foreign government are sent, as soon as praticable *(indicating full names of persons who signed)* to the Department for attention of the Assistant Legal Adviser for the Treaty Affairs. The transmittal is by airgram, *not* by transmittal slip or operations memorandum.

Likewise, if, in addition to the treaty or other agreement signed, notes related thereto are exchanged (either at the same time, beforehand, or thereafter), a properly certified copy (copies) of the note(s) from the mission to the foreign government are transmitted with the signed original(s) of the note(s) from the foreign government.

In each instance, the mission retains for its files certified copies of the note exchanged. The U.S. note is prepared in accordance with the rules prescribed in the *Correspondence Handbook*. The note of the foreign government is prepared in accordance with the style of the foreign ministry and usually in the language of that country. Whenever practicable, arrangements are made for the notes to bear the same date.

723.8 Certification of Copies

If a copy of a note is a part of an international agreement, such copy is certified by a duly commissioned and qualified Foreign Service Officer either (a) by a certification on the document itself, or (b) by a separate certification attached to the document. A certification on the document itself is placed at the end of the document. It indicates, either typed or rubber stamped, that the document is a true copy of the original signed (or initialed) by *(INSERT FULL NAME OF OFFICER WHO SIGNED DOCUMENT)*, and it is signed by the certifying officer. If a certification is typed on a separate sheet of paper, it briefly describes the document certified and states that it is a true copy of the original signed (or initialed) by *(FULL NAME)*

and it is signed and dated by the certifying officer. The certification may be stapled to the copy of the note.

723.9 Preparation of Copies for Certification

For purposes of accuracy of the Department's records and publication and registration, a certified copy must be an exact copy of the signed original. It must be made either by typewriter (ribbon or carbon copy) or by facsimile reproduction on white durable paper (not by the duplimat method) and must be *CLEARLY LEGIBLE*. In the case of notes, the copy shows the letterhead, the date and, if signed, an indication of the signature or, if merely initialed, the initials which appear on the original. It is suggested that, in the case of a note from the mission to the foreign government, the copy for certification and transmission to the Department be made at the same time the original is prepared. If the copy is made at the same time, the certificate prescribed in section 723.8 may state that the document is a true and correct copy of the signed original. If it is not possible to make a copy at the same time the original is prepared, the certificate indicates that the document is a true and correct copy of the copy on file in the mission. The word "(Copy)" is not placed on the document which is being certified; the word "(Signed)" is not placed before the indication of signatures. Moreover, a reference to the transmitting airgram, such as "Enclosure 1 to Airgram No. 18 (ect.)", is not placed on the certified document. The identification of such a document as an enclosure to an airgram may be typed on a separate slip of paper and attached to the document, but in such a manner that it may be easily removed without defacing the document.

724 TRANSMISSION OF INTERNATIONAL AGREEMENTS OTHER THAN TREATIES TO CONGRESS: COMPLIANCE WITH THE *CASE-ZABLOCKI ACT*

All officers will be especially diligent in cooperating to assure compliance with Public Law 92-403 "An Act to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within sixty days after the execution thereof. "That Act, *popularly known as the Case-Zablocki Act*, approved August 22, 1972 (86 Stat. 619; 1 U.S.C. 112b), provides as follows:

> The Secretary of State shall transmit to the Congress the text of any international agreement other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.

725 PUBLICATION OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES

The attention of all officers is directed to the requirements of the Act of September 23, 1950 (64 Stat. 979; 1 U.S.C. 112a), which provides as follows:

> The Secretary of State shall cause to be compiled, edited, indexed, and published, beginning as of January 1, 1950, a compilation entitled "United States Treaties and Other International Agreements," which shall contain all treaties to which the United States is a party that have been proclaimed during each calendar year, and all international agreements other than treaties to which the United States is a party that have been signed, proclaimed, or with reference to which any other final formality has been executed, during each calendar year. The said United States Treaties and Other International Agreements shall be legal evidence of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and agreements, therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

726 through 729 (Unassigned)

~~CONFIDENTIAL~~

THE WHITE HOUSE

WASHINGTON

June 25, 1987

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

The negotiation of an international protocol for regulation of chemicals believed capable of future depletion of stratospheric ozone is of great importance in our efforts to adopt sound environmental policies. Pursuant to this, and after considering the extensive work and recommendations of the Domestic Policy Council over the past several months, the following will guide the U.S. delegation in its negotiating activities leading to an international protocol on protection of the ozone layer, which we hope to be able to conclude later this year.

It is important that all nations that produce or use ozone-depleting chemicals participate in efforts to address this problem. The U.S. delegation will attempt, therefore, to ensure that the protocol enters into force only when a substantial proportion of the producing/consuming countries have signed and ratified it. I expect this to be well above a majority of the major producing/consuming countries.

In order to encourage participation by all countries, it is recognized that lesser developed nations should be given a limited grace period, up to the year 2000, to allow some increases in their domestic consumption. And, the U.S. delegation will seek to negotiate a system of voting for protocol decisions that gives due weight to the significant producing and consuming countries.

~~CONFIDENTIAL~~

To achieve a majority of the health and environmental benefits derived from retention of the ozone layer, and to spur industry to develop substitutes for chemicals in question, the U.S. delegation will seek a freeze at 1986 levels on production/-consumption of all seriously ozone-depleting chemicals, including chloroflurocarbons (CFCs) 11, 12, 113, 114, 115; and Halons 1201 and 1311, to take effect one or two years after the protocol entry into force. The earliest expected date for entry into force is 1988.

The U.S. delegation will also seek strong provisions for monitoring, reporting, and enforcement to secure the best possible compliance with the protocol, but they need not seek a system of credits for emissions reduction resulting from the 1978 U.S. ban of non-essential aerosols.

In addition to a freeze, the U.S. delegation will seek a 20% reduction from 1986 levels of CFCs 11, 12, 113, 114 and 115 four years after entry into force of the protocol, and following a 1990 international review of updated scientific evidence. The 20% reduction should take place automatically, unless reversed by a 2/3 vote of the parties. The U.S. delegation will seek a second-phase CFC reduction of an additional 30% from 1986 levels, which would occur about eight years after entry into force of the protocol, and following scientific review. This would occur automatically, unless reversed by a 2/3 vote of parties.

The U.S. delegation will seek a trade provision in the protocol 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. It is our policy to insure that countries not be able to profit from not participating in the international agreement, and to insure that U.S. industry is not disadvantaged in any way through participation.

It is the U.S. position that the ultimate objective is protecting the ozone layer by eventual elimination of realistic threats from man-made chemicals, and that we support actions determined to be necessary based on regularly scheduled scientific assessments.

United Nations Environment Programme

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15 July 1987

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

Montreal, 14-16 September 1987

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

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

PREAMBLE

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

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

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

Recognizing also the potential climatic effects of chlorofluorocarbons emissions,

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

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

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

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

---

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

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

HAVE AGREED AS FOLLOWS:

ARTICLE I: DEFINITIONS

For the purposes of this Protocol:,

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted at Vienna on 22nd March 1985;

2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol;

3. "Secretariat" means the secretariat of the Convention;

[4. "Chlorofluorocarbon" or "CFC" means any fully halogenated chlorofluoroalkane.]

5. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or together with any other substance, but does not include a product or a mixture where the substance listed in Annex A constitutes less than [20] percent, by weight or volume, of the product or mixture.

6. "Production" means the amount of controlled substances produced minus the amount destroyed by techniques approved by the Parties.

7. "Consumption" means production plus imports minus exports of controlled substances.

ARTICLE 2: CONTROL MEASURES[1/]

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

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

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

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

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

> Recognizing that there is serious concern about the likely adverse effects on the ozone layer of Halons 1211 and 1301, and that there is a need for more data and information regarding their use, emission rates and ozone depleting potential,
>
> Alternative 1
> [Decides that these compounds shall be frozen at their 1986 production levels within the scope of the Protocol, at the first meeting of the Parties following the first scientific review in 1990].
>
> Alternative 2
> [Decides that a decision on the freeze of these compounds at their 1986 production levels, within the scope of the Preotocol, shall be made at the first meeting of the Parties to be held after the first scientific review in 1990.]

A question is also rais[illegible]

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

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

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

(a) whether substances should be added to or removed from Annex A;

(b) whether further reduction from 1986 levels should be undertaken with the objective of eventual elimination of production and consumption of the controlled substances except for uses for which no substitutes are commercially available.[6/]

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

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

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

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

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

ARTICLE 3: CALCULATION OF CONTROL LEVELS

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

(a) production, imports, and exports of the controlled substnces, by:

(i) multiplying its annual production, imports and exports of each controlled substance by the ozone depletion potential specified in Annex A; and

(ii) adding together the multiplication products from subparagraph (i);

(b) Consumption of the controlled substances, by adding together its levels of production and imports and substracting its level of exports.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES[8/]

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

2. Alternative 1

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

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

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

Alternative 2

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

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

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

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

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

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

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

ARTICLE 5: LOW CONSUMING COUNTRIES 11/

1. Any Party whose consumption in 1986 of the controlled substances was less than [0.1] [0.2] kg. per capita shall be entitled to delay its compliance with the provisions of paragraphs 1 to 4 of Article 2 by [five] [ten] years after that specified in that Article and to substitute [ ] in place of 1986 as the base year. 12/

2. The Parties shall make all possible efforts to assist Parties referred to in paragraph 1 to make expeditious use of environmentlly safe altenative chemicals and technology.

3. The parties shall encourage13/ bilateral and multilateral subsidies, aid, guarantees or insurance programmes to the developing countries for the use of alternative technology and substitute products.

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

- It was decided during the Brussels consultations to retain in brackets the following provisions, taken from the revised reduction formula developed by the Trade Group, pending completion of the Article on Low Consuming Countries;
[Any [developing] country, or group of [developing] countries, not producing CFCs at the time of the signing of the Protocol shall be permitted to produce or have produced for it by any Party to the Protocol, substances referred to in Article 2, to a level not exceeding its/their controlled level of imports/aggregated level of imports, as the case may be. The level of production and imports at any time will not be permitted to exceed the controlled level of imports.]

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

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

ARTICLE 6: REVIEW AND ASSESSMENT OF CONTROL MEASURES

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

ARTICLE 7: REPORTING OF DATA

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

2. Each Party shall provide data on its production, exports, imports and destruction of these substances for the calendar[15/] year during which it becomes a Party and for each year thereafter.

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

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

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

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

(a) Best practicable technologies for reducing emissions of the controlled substances;

(b) Possible alternatives to the controlled substances;

(c) Costs and benefits of relevant control strategies

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

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

ARTICLE 9: TECHNICAL ASSISTANCE

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

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

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

ARTICLE 10: MEETINGS OF THE PARTIES

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

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

3. At their first meeting the Parties shall:

(a) adopt by consensus rules of procedure for their meetings;

(b) prepare workplans pursuant to paragraph 3 of Article 9;

(c) adopt by consensus such rules as required by paragraph 2 of Article 12.

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

(a) to review the implementation of this Protocol;

(b) to establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and 8;

(c) to review requests for technical assistance provided for in Article 9;

(d) to review requests received from the Secretariat pursuant to Article 11;

(e) to reassess, pursuant to Article 3, the control measures provided for in Article 2;

(f) to consider and adopt proposals for amendment of this Protocol [in conformity with Articles 9 and 10 of the Convention]

(g) to consider and adopt the budget for implementation of this Protocol;

(h) to consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

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

ARTICLE 11: SECRETARIAT

The Secretariat shall:

(a) Arrange for and service meetings of the Parties provided for in article 10;

(b) Prepare and distribute to the Parties regularly a report based and information received pursuant to article 7 and 8;

provision of such assistance to the extent possible;

(d) Perform such other functions for the achievement of the purposes of the Protocol as may be assigned to it by the Parties;

(e) Where possible, encourage Non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of the Protocol;

(f) Where possible, provide the information referred to in sub-paragraphs (b), (c) and (d) above to such Non-Party observers.

ARTICLE 12: FINANCIAL PROVISIONS

1. The funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.

2. The Parties at their first meeting shall adopt by consensus financial rules for the operation of this Protocol, including rules for assessing contributions from the Parties, taking into account the special situation of the developing countries.

ARTICLE 13: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

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

ARTICLE 14: SIGNATURE

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

ARTICLE 15: ENTRY INTO FORCE

1. The Protocol shall enter into force on the same date as the Convention enters into force, provided that at least [nine] instruments of ratification, acceptance, approval of or accession to the Protocol have been deposited [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].16/ In the event that [nine] such instruments have not been deposited by the date of entry into force of the Convention, this Protocol shall enter into force on the [ninetieth] 17/ day following the date of deposit of the [ninth] instrument of ratification, acceptance, approval of or accession to the Protocol[by States or regional economic integration organizations representing at least sixt4y percent of 1986 global productiong of the controlled substances].16/

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

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

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

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

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

Final footnote

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

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ANNEX A

CONTROLLED SUBSTANCES

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

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

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

THE WHITE HOUSE

WASHINGTON

August 28, 1987

Dear Mr. Turner:

Thank you for your letter conveying concerns about the U.S. position for the UNEP negotiations on an international protocol involving chlorofluorocarbons. I have communicated these to the heads of the U.S. delegations for the final sessions on this subject. The issue of domestic production and its relationship to imports is one we have discussed at length. Thus, your views will be helpful as we enter the final stages of the negotiations.

Thank you for your interest and assistance to the Administration in this matter.

Sincerely,

Ralph C. Bledsoe

Ralph C. Bledsoe
Special Assistant to the President

Mr. Marshall R. Turner
Vice President, Manufacturing
RACON Inc.
P. O. Box 198
Wichita, Kansas 67201

cc: Nancy Risque
John Whitehead
Lee Thomas