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United States Department of State

Washington, D. C. 20520 8733385

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'87 NOV 19 PM 2:07 November 18, 1987

ACTION MEMORANDUM S/S

RELEASED IN FULL

TO: The Secretary

FROM: L - Abraham D. Sofaer  
OES - John D. Negroponte

G.P.3

SUBJECT: Transmittal to the Senate of the Montreal Protocol on Substances that Deplete the Ozone Layer

ISSUE FOR DECISION

Whether to sign the attached report to the President, including a proposed message from the President to the Senate seeking its advice and consent to ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol").

ESSENTIAL FACTORS

The attached report to the President (Tab A) and proposed message from the President to the Senate (Tab B) have been prepared for the purpose of transmitting the Montreal Protocol (Tab C) to the Senate for its advice and consent to ratification.

The Montreal Protocol was signed by the United States on September 16, 1987 in Montreal, Canada. For the United States to become a Party to the Protocol, it must deposit an instrument of ratification with the Secretary-General of the United Nations, the depositary for this agreement.

The Protocol provides for measures to control emissions of substances that deplete the stratospheric ozone layer. Domestically, these measures will be implemented by EPA regulations under the Clean Air Act. During the negotiations, we coordinated with all relevant agencies and consulted closely with the Congress, industry and environmental groups. U.S. signature of the protocol was done with the concurrence of each key agency, as well as the Domestic Policy Council staff. Congressional support for this protocol also has been broad-based. Some members of the public (including a number of user industries) would have preferred that the Protocol be less stringent; others (including some environmental

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groups and some Senators) would have preferred that it be more stringent. Still, there is general agreement that multilateral measures are preferable to unilateral measures for control of ozone-depleting substances and that the United States should ratify the protocol as adopted.

Entry into force of the Protocol requires ratification, acceptance, approval or accession by eleven nations representing at least two-thirds of global consumption of the controlled substances. Ratification by the United States, which consumes approximately thirty percent of the global total, (and by the European Community, which accounts for another thirty percent) thus is in effect a prerequisite for entry into force. Early ratification by the United States will demonstrate our commitment to implementation of the Protocol and encourage adherence by other nations whose implementation of the control measures required under the protocol is also essential to achieve effective global protection.

RECOMMENDATION

21 NOV 1987

That you sign the report to the President (Tab A).

Attachments:

- Tab A. Report to the President
- Tab B. Message from the President to the Senate
- Tab C. Protocol Text

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WASHINGTON

November 21, 1987

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The President:

RELEASED IN FULL

I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, the Montreal Protocol on Substances that Deplete the Ozone Layer.

The Protocol is an important instrument for the protection of a critical global environmental resource. The stratospheric ozone layer prevents harmful amounts of ultraviolet radiation from reaching the earth. Depletion of stratospheric ozone by atmospheric pollutants could result in significant adverse impacts on human health, including an increase in skin cancer rates and suppression of human immune responses. Environmental effects of stratospheric ozone depletion could include reduced crop yields, adverse effects on aquatic ecosystems, including fisheries, and potentially significant climatic changes.

A multilateral regulatory regime, which is established by this protocol, is necessary to control emissions of ozone-depleting substances, since such emissions anywhere affect the ozone layer globally. United States ratification is necessary for entry

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The President,

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into force and effective implementation of the Protocol. Early ratification by the United States will encourage ratification by other nations whose participation is also essential. Ratification of the Protocol is consistent with our foreign policy and economic and environmental interests.

The Protocol, negotiated under the auspices of the United Nations Environment Program, is a supplemental agreement to the Vienna Convention for the Protection of the Ozone Layer, adopted in March 1985 and ratified by the United States in August 1986. The Convention provides for research, monitoring, and information exchange, and a framework for the adoption of one or more protocols. While control measures were considered during the Convention negotiations, agreement on a coordinated control regime could not be achieved at that time. The current Protocol is the result of negotiations beginning in December 1986 and concluding in September 1987.

In negotiating the Protocol, the Department of State coordinated with all relevant federal agencies and consulted closely with the Congress, industry and environmental organizations. Signature of the Protocol by the United States was endorsed by all interested agencies and the Domestic Policy Council staff. Congressional support is also broad. While some would have preferred that the Protocol's

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provisions be more stringent or less stringent, there is widespread agreement among these groups that multilateral rather than unilateral measures are necessary for effective control of ozone-depleting substances, that adoption of the Protocol is a significant achievement, and that the United States should ratify the Protocol.

Two principal features of the Protocol are an obligation to limit consumption and production of ozone-depleting substances (Article 2) and the restriction of trade in controlled substances with States not party to the Protocol (Article 4).

On control measures, Article 2 requires:

- o A freeze at 1986 levels on annual consumption of chlorofluorocarbons 11, 12, 113, 114 and 115 beginning in the seventh month after entry into force, and of halons 1211, 1301 and 2402 beginning three years after entry into force.
- o Long-term scheduled reductions (of twenty percent by 1994, and of fifty percent by 1999) of chlorofluorocarbon annual consumption.
- o Periodic assessments of the control provisions, based upon scientific, environmental, technical and economic information, which could result in addition or removal of chemicals from the list of

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controlled substances or a change in the reduction schedule or reduction target.

Production of the controlled substances by Parties to the Protocol in individual countries is also controlled, but allowed to remain somewhat above consumption in individual countries, in order to maintain sufficient supply for developing countries and to achieve economic efficiencies or to respond to supply shortages. The Parties' total production can be no greater than their total allowed consumption.

Article 2 also contains specific provisions for Parties whose production in 1986 was less than twenty-five kilotons (paragraph 5); Parties which had production facilities under construction before adoption of the Protocol (paragraph 6); and Parties that are members of a regional economic integration organization (REIO) (paragraph 7).

In particular, paragraph 5 of Article 2 permits a Party whose 1986 production of the controlled substances was less than twenty-five kilotons to transfer to or receive from another Party production as long as the combined production of the Parties concerned does not exceed their combined production limits as set by the Protocol. It would allow, for example, U.S. producers to maintain production beyond our allowed consumption level in order to supply Canadian users if small Canadian plants are closed because they have become inefficient as a result of

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Under paragraph 6, a Party is permitted to add to its 1986 base the amount produced by facilities under construction or contracted for and provided for in national legislation before adoption of the Protocol, provided its annual consumption of the controlled substances does not exceed .5 kilograms per capita. This paragraph would allow the Soviet Union to include in its 1986 base year level expanded production foreseen in its five year plan; with this adjusted base level, it would freeze and begin reducing along with other Protocol Parties.

Paragraph 7 permits Parties that are member States of a REIO to fulfill jointly their obligations regarding consumption, as long as their total combined level of consumption does not exceed the limits specified in Article 2 and provided all member States of the REIO and the organization itself are Parties to the Protocol. This provision would allow the European Economic Community (EEC) to fulfill jointly its obligation respecting consumption, provided all twelve EEC members join the Protocol. Each EEC-member State that is a party to the Protocol would still be required to comply individually with the Protocol's production limits.

The procedure for calculating "production" and "consumption" is outlined in Article 3. The calculation takes into account the relative ozone-depleting potentials of the various chemicals.

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With respect to trade with non-parties, Article 4 provides for:

- o A ban on imports from non-parties of the controlled substances within one year of the Protocol's entry into force.
- o A ban on imports from non-parties of products containing the controlled substances starting in the fourth year following the Protocol's entry into force. Within three years of entry into force, the Parties are to elaborate a list of products subject to this provision.
- o Consideration within five years of entry into force of restrictions on imports from non-parties of products produced with (but not containing) the controlled substances.
- o A prohibition against concluding new agreements which provide non-parties with financial assistance for producing the controlled substances.

Article 5 provides a ten-year grace period from compliance with the control measures for low-consuming developing countries that adhere to the Protocol, in order to encourage the broadest possible participation in the Protocol.

Article 6 specifies that beginning in 1990 and at least every four years thereafter, the Parties shall assess the control measures on the basis of



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available scientific, environmental, technical and economic information. It provides for expert panels, which are to report to the Parties, to be convened at least one year before each assessment.

Article 7 requires an annual report by each Party of its production, imports and exports of controlled substances. Article 8 requires the adoption of procedures and institutional mechanisms for determining non-compliance and for treatment of Parties found to be in non-compliance. Articles 9 and 10 provide for cooperation in research and exchange of information on alternative substances, products and technologies to reduce emissions of the controlled substances; cooperation in promoting public awareness; and technical assistance to facilitate participation in and implementation of the Protocol. Article 11 provides for meetings of the Parties, which will normally be held in conjunction with meetings of the Parties to the Convention. Article 12 defines the functions of the Secretariat, which will be carried out by the Secretariat established by the Convention.

Article 13 provides that funds required for the operation of the Protocol will be charged against contributions from its Parties, and that financial rules are to be adopted by consensus. Thus, the Protocol itself contains no mandatory financial obligations, but would commit the United States in

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principle to payment of its fair share of the future expenses of the secretariat, meetings of the parties, and panels of experts. Costs associated with these activities are likely to be relatively small and are capable of being covered with presently projected agency budgets.

Article 14 states that provisions of the Convention relating to its protocols shall apply to this Protocol. Article 15 sets out the dates and places where the Protocol is open for signature.

To ensure that the Protocol is effective and the economic burden of the controls is equitably shared, Article 16 provides that the Protocol will enter into force only when eleven countries representing at least two-thirds of global consumption have ratified the agreement. The Protocol is to enter into force on January 1, 1989, provided these conditions have been fulfilled and the Convention has entered into force. In the event these stipulations have not been fulfilled by that date, the Protocol will enter into force ninety days after the conditions have been met. The effective date of the freeze would in that case be delayed, but the specified dates for the reduction steps would remain effective.

The obligations the United States would assume under the Protocol will require implementing regulations. EPA is to issue proposed regulations on December 1, 1987 and intends to issue a final set of

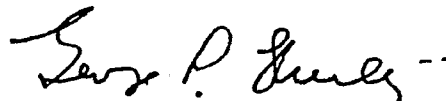
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regulations by August 1, 1988. The effective date of the regulations would be tied to the entry into force of the Protocol. Section 157 of the Clean Air Act grants the Administrator of the Environmental Protection Agency authority to regulate substances, practices, processes, or activities which he finds 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. This broad authority provides the statutory basis for implementing the Protocol, including its trade provisions.

An environmental impact statement will be separately forwarded to the Senate for its information.

I recommend that the Montreal Protocol for Protection of the Ozone Layer be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,



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Ozone transmittal ltr. to President, Secretary of State and Senate

Drafter: OES/ENV:SB<sup>MS</sup>utcher;L/OES:DK<sup>DK</sup>ennedy  
OESENH#201 647-9312;647-1370 10/14/87 rev. 10/27/87

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E:MBailey<sup>ADS</sup>  
EUR:PGarland<sup>ADS</sup>  
EB:ASundquist  
M/MO:JLange<sup>ADS</sup>  
M/COMP:JHLinnemann<sup>ADS</sup>  
IO:HGlazer<sup>MG</sup>  
H:LRosenblatt<sup>MS</sup>  
EPA/OIA:BLlong<sup>BLL</sup>  
USTR:RReinstein<sup>RR</sup>  
Energy:MWalker  
Commerce:JRSpradley<sup>ADS</sup>  
Justice:THookano  
OMB:DGibbons<sup>MS</sup>  
Interior:BN<sup>MS</sup>Dunlop<sup>MS</sup>  
DOD:CJSchafer, Jr.<sup>ADS</sup>  
CEQ:AHill<sup>ADS</sup>  
OSTP:BBerger<sup>ADS</sup>

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TO THE SENATE OF THE UNITED STATES:

I transmit herewith, for the advice and consent of the Senate to ratification, the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on September 16, 1987. The report of the Department of State is also enclosed for the information of the Senate.

The Montreal Protocol provides for internationally-coordinated control of ozone-depleting substances, in order to protect public health and the environment from potential adverse effects of depletion of stratospheric ozone. The Protocol was negotiated under the auspices of the United Nations Environment Program, pursuant to the Vienna Convention for the Protection of the Ozone Layer, which was ratified by the United States in August 1986.

In this historic agreement, the international community undertakes cooperative measures to protect a vital global resource. The United States played a leading role in the negotiation of the Protocol. United States ratification is necessary for entry into force and effective implementation of the Protocol. Early ratification by the United States

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will encourage similar action by other nations whose participation is also essential.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

THE WHITE HOUSE,

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