
AMENDMENTS TO THE MONTREAL PROTOCOL ON
SUBSTANCES THAT DEplete THE OZONE LAYER

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Mr. BIDEN, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Docs. 106-10 and 106-32]

The Committee on Foreign Relations, to which were referred the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted at Montreal on September 15-17, 1997 by the Ninth Meeting of the Parties to the Montreal Protocol; and the Amendment to the Montreal Protocol, adopted at Beijing on December 3, 1999 by the Eleventh Meeting of the Parties to the Montreal Protocol, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof as set forth in this report and the accompanying resolutions of advice and consent to ratification.

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I. PURPOSE

The purposes of the 1997 amendment (hereafter the “Montreal Amendment”) are the expansion of trade controls to include methyl bromide and the addition of a licensing requirement for trade in certain controlled substances. The purposes of the 1999 amendment (hereafter the “Beijing Amendment”) are the addition of bromochloromethane as a controlled substance, along with associated control measures; the addition of a freeze in the level of production of hydrochlorofluorocarbons (“HCFCs”) from January 1, 2004; the addition of a ban on trade with non-Parties in HCFCs

from January 1, 2004; and the addition of reporting requirements on the annual use of methyl bromide for quarantine and pre-shipment purposes.

II. BACKGROUND

The Letters of Submittal from the Secretary of State to the President, dated September 10, 1999 and set forth in Treaty Document 106–10 (for the Montreal Amendment) and March 24, 2000 and set forth in Treaty Document 106–32 (for the Beijing Amendment) provide background to these treaties. Below is additional background to the underlying Montreal Protocol and the pending amendments to the Protocol.

Vienna Convention. In 1985, the discovery of a rapid decrease in the stratospheric ozone layer over Antarctica led to the negotiation and ratification of the Vienna Convention on the Protection of the Ozone Layer, a framework treaty setting forth the general obligations of the Parties and creating a structure for addressing the problem. It identified a number of chemical substances thought to have the potential of affecting the ozone layer and committed its Parties to a program of research into the causes and effects of ozone depletion and to cooperative efforts to limit “human activities” found to contribute to any adverse effects. It contemplated the future negotiation and adoption of protocols and annexes that would impose more specific obligations as scientific knowledge about the causes and effects of ozone depletion increased. The Senate gave its advice and consent to the Convention in 1986 and the United States ratified the agreement later that year. It has now been ratified by 184 countries.

Montreal Protocol. In 1987, the Conference of the Parties to the Convention (the assembly of states that ratified it) negotiated the Montreal Protocol on Substances That Deplete the Ozone Layer, with Annexes. The Protocol identified chlorofluorocarbons (CFCs) and halons as substances that needed to be controlled because of their contribution to the depletion of the ozone layer. Annex A required Parties to the Protocol to reduce their consumption and production of these “controlled substances” by 50 percent from their 1986 level by 1999, and, within one year of the Protocol’s entry into force, to eliminate trade in such substances with states that are not Parties to the Protocol. The Protocol also conferred on the Conference of Parties the authority to make adjustments in the schedule of reduction in the production and consumption of the controlled substances without further reference to the State Parties for ratification. In addition, the Protocol authorized the Conference to make recommendations on what additional chemicals should be included on the list of substances needing to be controlled and what schedule of reductions in production and use should be applied. The Protocol made such additions subject to ratification by two-thirds of the State Parties. The Senate gave its advice and consent to the Protocol in March 1988; the President ratified the agreement on April 5, 1988. The Protocol entered into force in early 1989; to date, it has been ratified by 183 countries.

Since entry into force of the Protocol, several amendments have been agreed to by the Conference of the Parties to the Protocol. The

amendments are cumulative, in that a nation may not become a party to one without being party to the prior amendments.

London Amendment. In 1990, the Conference of Parties to the Protocol agreed to apply the Protocol to additional substances believed to contribute to the depletion of the ozone layer and to accelerate the phase-out of all of the identified substances. The London Amendment added fully halogenated CFCs, carbon tetrachloride, and methyl chloroform to the list of substances needing to be controlled because of their effect on the ozone layer (Annexes A and B); mandated the elimination of the production and consumption of CFCs, halons, and carbon tetrachloride by January 1, 2000, and of methyl chloroform by January 1, 2005 (except for certain essential uses); barred trade in these substances with countries that are not Parties to the Protocol; created a separate timetable of reductions for developing countries and established a special fund to help developing countries meet their obligations. The Senate gave its advice and consent to the Amendment in November 1991. The London Amendment entered into force in 1992 and has now been ratified by 163 countries.

Copenhagen Amendment. Another amendment to the Montreal Protocol was agreed to at Copenhagen in 1992 after several countries (including the United States) had unilaterally decided to accelerate the phase-out of ozone-depleting substances beyond what was mandated by the London Amendment. The Copenhagen Amendment provided for phase-out of consumption and production of CFCs (including fully halogenated CFCs), methyl chloroform, and carbon tetrachloride by January 1, 1996, and of halons by January 1, 1994. Hydrobromofluorocarbons (HBFCs) and methyl bromide were also added to the controlled substances list, with the former scheduled for developed-state phase-out by January 1, 1996, and consumption and production of the latter to be frozen at 1991 levels. Finally, HCFCs were added to the controlled substances list and required to be phased out gradually by 2030. The Senate gave its advice and consent to the Copenhagen Amendment in November 1993. The amendment entered into force in 1994 and has now been ratified by 141 countries.

Vienna Accord. In 1995, the Conference of the Parties to the Montreal Protocol agreed to phase out consumption of methyl bromide in developed states by 2010. The Conference also made modest adjustments in the phase-out schedule for HCFCs. These changes (known as the Vienna Accord) were within the existing authority of the Conference of the Parties under Article 2 of the Protocol and did not need to be submitted to the Senate for its advice and consent.

Montreal Amendment. The Montreal Amendment was negotiated at a 1997 Conference of the Parties to the Montreal Protocol. This amendment would include methyl bromide in the ban on trade in controlled substances with countries that are not Parties to the Montreal Protocol. As a means of helping to prevent unlawful trade, it would also obligate all Parties to institute a system of licensing for the import and export of all new, used, recycled, and reclaimed controlled substances, including methyl bromide.

Beijing Amendment. The Beijing Amendment was adopted in Beijing on December 3, 1999, at a meeting of the Parties to the Montreal Protocol. The amendment would add bromochloromethane to the list of substances needing to be controlled and phase-out its production and use by 2002; impose a freeze on the consumption of HCFCs beginning in 2004; ban all trade of HCFCs and bromochloromethane between Parties to the amendment and non-Parties; and require each State Party to submit statistical data on the amount of methyl bromide used for quarantine and pre-shipment applications. The Beijing Amendment requires prior or simultaneous ratification of the Montreal Amendment as a precondition to its ratification.

III. ENTRY INTO FORCE

Both the Montreal Amendment and the Beijing Amendment have entered into force, having attained the requisite 20 ratifications. The Montreal Amendment entered into force on November 10, 1999, and to date has been ratified by 83 countries. The Beijing Amendment entered into force on February 25, 2002, and has so far been ratified by 36 countries.

If the United States ratifies the two treaties, they will enter into force 90 days after the deposit of the instrument of ratification.

IV. COMMITTEE ACTION AND COMMENTS

The Committee held a hearing to review the two treaties on May 7, 2002 (S. Hrg. 107–594). On August 1, 2002, the Committee ordered them favorably reported by unanimous voice votes, and recommended that the Senate give its advice and consent to each treaty.

One issue deserves mention. A prior adjustment to the obligations regarding consumption of HCFCs provided for a compliance grace period ending in 2016 for “Article 5” countries, that is, those countries considered by Article 5 of the Montreal Protocol to be “developing” countries. That adjustment also established the baseline year as 2015 for those developing countries. The Beijing Amendment applies the same rules to HCFC production.

While some limited grace period measured from the time of signature of the amendment may be justified, the establishment of a baseline period 15 years into the future is longer than the decade-long grace periods established in the original Protocol and the London amendment. Moreover, the grace periods in the original Protocol and the London amendment included limits on the baseline—either averages of production and consumption in future years, or per capita limits. The establishment of a baseline year far into the future without any upper limits on the baseline consumption or production opens the door to unwarranted increases in production and consumption, which, if significant, would thereby undermine the purpose of controlling the substances in question. The Committee urges that this practice not be continued in subsequent amendments to the Protocol.

V. TEXTS OF RESOLUTIONS OF ADVICE AND CONSENT TO
RATIFICATION

MONTREAL AMENDMENT

Resolved (two-thirds of the Senators present concurring therein),
That the Senate advise and consent to the ratification of the
Amendment to the Montreal Protocol on Substances that Deplete
the Ozone Layer, adopted at Montreal on September 15–17, 1997,
by the Ninth Meeting of the Parties to the Montreal Protocol (Trea-
ty Doc. 106–10).

BEIJING AMENDMENT

Resolved (two-thirds of the Senators present concurring therein),
That the Senate advise and consent to the ratification of the
Amendment to the Montreal Protocol on Substances that Deplete
the Ozone Layer, adopted at Beijing on December 3, 1999, by the
Eleventh Meeting of the Parties to the Montreal Protocol (Treaty
Doc. 106–32).

