

OZONE LAYER PROTECTION BILL

EXPLANATORY NOTE

THIS Bill provides further protection for the ozone layer.

The importation of certain chlorofluorocarbons is already prohibited under the Customs Import Prohibition (Chlorofluorocarbons) Order 1988. That order came into force on 1 July 1988 and gave effect to commitments New Zealand had under the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

In May 1989, New Zealand agreed to the Helsinki Declaration, which recognises that the Montreal Protocol requires strengthening.

The purpose of this Bill is to provide for the phasing out in New Zealand by the year 2000 of all but essential uses of substances that deplete the ozone layer.

Part I of the Bill imposes restrictions on the importation of bulk controlled substances. Controlled substances are specified in the *First* Schedule to the Bill, and consist of certain chlorofluorocarbons and halons. That Schedule is based on Annex A of the Montreal Protocol.

Part II prohibits the importation of certain goods that contain, or are designed to use, ozone depleting substances.

Part III prohibits the manufacture in New Zealand of controlled substances and certain goods that contain, or are designed to use, ozone depleting substances.

Part IV prohibits the sale in New Zealand of certain goods that contain, or are designed to use, ozone depleting substances.

The restrictions imposed by *Parts I to IV* of the Bill take effect from various dates. Regard has been had to the time at which alternative substances to ozone depleting substances are or will become available.

Part V provides for the granting of exemptions from obligations imposed by or under the Bill. Various constraints are placed on the exercise of the power to grant exemptions.

Part VI contains various miscellaneous provisions relating, among other things, to offences and penalties, enforcement, and appeals.

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incl. GST \$6.50

OZONE LAYER PROTECTION

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A BILL INTITULED

An Act—

- (a) To provide for the phasing out in New Zealand by the year 2000 of all but essential uses of substances that deplete the ozone layer; and
- (b) To further implement in New Zealand the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Ozone Layer Protection Act 1989.

(2) Except as provided in section 47 (2) of this Act, this Act shall come into force on the 1st day of January 1990.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Aerosol spray” and “aerosol” means any substance packed under pressure in a container with a device for releasing it as a foam or fine spray:

“Blowing agent” means any gas or volatile liquid introduced into liquid plastic to create bubbles for the purpose of forming plastic foam:

“Bulk controlled substance”—

(a) Means any controlled substance that is acquired in a non-processed form whether alone or in a mixture; but

(b) Excludes any controlled substance that is in a manufactured product other than a container used for the transportation or storage of the substance:

“Controlled substance” means any substance specified or described in the First Schedule to this Act:

“Group A plastic foam”—

(a) Means any plastic foam in respect of which—
(i) A controlled substance has been used as a blowing agent; and

- (ii) No alternative blowing agent (other than another controlled substance) is available at the commencement of this Act; and
- 5 (b) Includes, without limiting the generality of paragraph (a) of this definition, rigid polyurethane foam, moulded flexible polyurethane foam, and slabstock flexible polyurethane foam:
- “Group B plastic foam”—
- 10 (a) Means any plastic foam in respect of which—
- (i) A controlled substance has been used as a blowing agent; and
- (ii) An alternative blowing agent (other than another controlled substance) is available at the commencement of this Act; and
- 15 (b) Includes, without limiting the generality of paragraph (a) of this definition, extruded polystyrene foam and polystyrene boardstock:
- “Importation” or “import” has the same meaning as in section 47 of the Customs Act 1966:
- 20 “Import permit” or “permit” means any permit issued under this Act in respect of the importation of any bulk controlled substance:
- “Industry group” means any industry group that is specified in the **Second** Schedule to this Act:
- 25 “Minister” means the Minister of Commerce:
- “1986 consumption level”, in relation to any person, means the amount determined by the Minister in accordance with **section 8** of this Act to be the amount of controlled substances consumed by the person
- 30 during the year 1986:
- “Officer” means—
- (a) Any person employed in the service of the Ministry of Commerce and designated as an officer for the purposes of this Act; and
- 35 (b) Any Customs Officer:
- “Ozone depleting substance” and “substance” means—
- (a) Any controlled substance; or
- (b) Any other substance that has an ozone depletion potential of 0.01 or greater:
- 40 “Ozone depletion potential” means the steady-state ozone reduction calculated for each unit mass of gas emitted into the atmosphere relative to that for a unit mass emission of CFC-11:
- 45 “Plastic foam” means any plastics in a cellular mass which are formed by the use of blowing agents:

“Reduction timetable”, in relation to any industry group, means the timetable prescribed in respect of that group in the **Second** Schedule to this Act:

“Sale” means every method of disposition for valuable consideration, including barter; and includes— 5

(a) The disposition to an agent for sale on consignment; and

(b) Offering or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or 10 permitting to be sold, offered, or exposed for sale; and

(c) Disposal by way of raffle, lottery, or other game of chance,—

and “sell” and “sold” have corresponding meanings: 15

“Solvent” means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, 20 Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing on the 25th day of December in any year and ending with the 15th day of January in the following year: 25

“Year” means, unless the context otherwise requires, the period of 12 months commencing on the 1st day of July in any year and ending with the 30th day of June in the following year.

3. Act to bind the Crown—This Act shall bind the Crown. 30

4. Purpose of Act—(1) The purpose of this Act is to help 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—

(a) By providing for the phasing out by the year 2000 of all 35 but essential uses of substances that deplete the ozone layer; and

(b) By giving further effect to New Zealand’s obligations under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on 40 Substances that Deplete the Ozone Layer (copies of the English texts of which are set out in the **Fourth** and **Fifth** Schedules to this Act).

(2) Every person exercising any power or discretion conferred by this Act shall have regard to that purpose.

PART I

RESTRICTIONS ON IMPORTATION OF BULK CONTROLLED SUBSTANCES

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5. Certain imports of bulk controlled substances prohibited after 30 June 1990—(1) No person shall, after the 30th day of June 1990, import—

(a) Any bulk controlled substance from a country that is neither—

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(i) A party to the Montreal Protocol; nor

(ii) A country that has been determined, in accordance with the Montreal Protocol, to be a country that is in full compliance with Articles 2 and 4 of that Protocol; or

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(b) Any bulk controlled substance specified or described in Part II of the First Schedule to this Act; or

(c) Any bulk controlled substance that is to be used in the manufacture or servicing of aerosols or fire extinguishers or Group A plastics (other than aerosols and fire extinguishers that are necessary for human health or safety).

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(2) Any certificate given by the Minister of Foreign Affairs to the effect that any country is not one to which subsection (1) (a) of this section applies shall be conclusive evidence of that fact.

25 6. Other imports of bulk controlled substances prohibited after 30 June 1990 without import permit—

(1) No person shall, after the 30th day of June 1990, import any bulk controlled substance unless the importation is in accordance with an import permit issued under this Part of this

30 Act.

(2) Nothing in this section shall permit the importation of any substance which is prohibited by section 5 of this Act.

Procedure in Respect of Import Permits

35 7. Application for import permit—(1) Any person who in any year wishes to import any bulk controlled substance shall apply for an import permit in respect of that year.

(2) Every such application shall be made in writing to the Minister, and shall—

(a) Specify the bulk controlled substance in respect of which a permit is sought; and

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- (b) Specify the industry group to which the applicant belongs;
and
- (c) State or be accompanied by such other information as the Minister may from time to time require for the purpose of establishing the applicant's 1986 consumption level, and the industry group to which the applicant belongs. 5
- (3) The Minister may, by notice in writing given to the applicant within 60 days after any such application is made, require the applicant— 10
- (a) To verify any statement by statutory declaration:
- (b) To supply such further information relating to the application as is specified in the notice.

8. Minister to determine applicant's 1986 consumption level —(1) On receipt of any application for an import permit, the Minister shall determine the amount of bulk controlled substance consumed by the applicant during 1986. 15

(2) Where the applicant commenced a business involving any controlled substance between the 1st day of January 1986 and the 1st day of May 1989, the Minister shall determine an amount of bulk controlled substance which shall, for the purposes of this Act, be deemed to be the applicant's 1986 consumption level. 20

(3) Where the applicant is a person to whom any quota has been transferred pursuant to **section 12** or **section 13** of this Act, the Minister shall determine an amount of bulk controlled substance by reference to— 25

- (a) The amount of quota allocated to the transferor in respect of the industry group or groups concerned; and
- (b) The amount of quota transferred,— 30
- and that amount shall, for the purposes of this Act, be deemed to be the applicant's 1986 consumption level.

(4) In determining any applicant's 1986 consumption level, the Minister shall disregard any bulk controlled substance that was used in the manufacture or servicing of aerosols or fire extinguishers or Group A plastics (other than aerosols and fire extinguishers that are necessary for human health or safety). 35

9. Grant of import permit—(1) Subject to **subsection (4)** of this section, the Minister shall, if satisfied that the applicant has the benefit of a 1986 consumption level, grant a permit to the applicant in accordance with this Part of this Act. 40

- (2) Every such permit shall specify—

- (a) The bulk controlled substance in respect of which it is issued; and
- (b) The permit holder's 1986 consumption level; and
- 5 (c) The industry group to which the permit holder belongs; and
- (d) The dates of issue and expiry of the permit; and
- (e) The amount of the bulk controlled substance that the permit holder is permitted to import under the permit, calculated in accordance with section 10 of this Act; and
- 10 (f) Any other terms and conditions on the importation of any bulk controlled substance as the Minister thinks fit.
- (3) Notwithstanding subsection (2) (c) of this section, where a permit holder has 2 or more uses of any bulk controlled substance, the permit may specify 2 or more industry groups to which the permit holder belongs.
- 15 (4) The Minister may decline to grant a permit if satisfied that the applicant is not a fit and proper person to hold a permit by reason of any conviction for any offence against section 28 of this Act.
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10. Calculation of import quota—The amount of bulk controlled substance that a permit holder is permitted to import under any import permit shall be calculated by applying to the permit holder's 1986 consumption level the appropriate percentage specified in the relevant reduction timetable prescribed in the **Second Schedule** to this Act.

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11. Revocation and modification of import permit—

(1) The Minister may revoke any import permit if satisfied that the permit holder has been convicted of any offence against section 28 of this Act.

30 (2) The Minister may modify any import permit for the purpose of correcting any clerical error.

12. Transfer of quota—(1) Any permit holder may transfer to any other person—

35 (a) The benefit of the 1986 consumption level; or

(b) The import permit; or

(c) Any part of the entitlement under the import permit.

(2) The transferor shall, within 20 working days of making any such transfer, notify the Minister in writing of the transfer, and the amount of quota transferred.

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13. Reallocation of quota after 1992—(1) If the Minister is satisfied, on any application for a permit in respect of 1992 or any subsequent year, that the applicant—

- (a) Has not, within the last 2 years, applied for an import permit in respect of the bulk controlled substance concerned; or 5
- (b) Has not, during the last 2 years, imported any of the bulk controlled substance that the applicant was entitled to import and has not transferred or attempted to transfer any of the entitlement to any other person,— 10

the Minister may, in his or her discretion, cancel that person's entitlement to an import permit.

(2) If the Minister is satisfied, on any application for a permit in respect of 1992 or any subsequent year, that the applicant has not, during the last 2 years, imported all of the bulk controlled substance that the applicant was entitled to import and has not transferred or attempted to transfer the balance of the entitlement to any other person, the Minister may, in his or her discretion, reduce the applicant's 1986 consumption level. 20

(3) Where any entitlement to an import permit is cancelled pursuant to **subsection (1)** of this section, or any person's 1986 consumption level is reduced pursuant to **subsection (2)** of this section, the Minister may, in his or her discretion, reallocate the quota to any other person. 25

(4) Any person who is interested in the reallocation of quota may notify the Minister accordingly.

PART II

PROHIBITION OF IMPORTATION OF CERTAIN GOODS

14. Prohibition of importation of certain goods containing ozone depleting substances—(1) No person shall, after the 31st day of March 1990, import— 30

- (a) Any aerosol spray that contains any ozone depleting substance;
- (b) Any goods which are specified or described in **Part II** of the **Third Schedule** to this Act and which contain any **Group B** plastic foam: 35
- (c) Any dry cleaning machine that contains or is designed to use any controlled substance.

(2) No person shall, after the 30th day of June 1990, import any fire extinguisher that contains any controlled substance. 40

(3) No person shall, after such date as may be appointed by the Governor-General by Order in Council in any particular case, import—

5 (a) Any goods which are specified or described in **Part I** of the **Third Schedule** to this Act and which contain any Group A plastic foam:

(b) Any goods containing controlled substances for use as a solvent:

10 (c) Any goods containing, or designed to use, any controlled substance for use as a refrigerant or a coolant.

(4) For the purposes of **subsection (1) (a)** of this section, a fire extinguisher is not an aerosol spray.

15 (5) Every Order in Council made under **subsection (3)** of this section shall be deemed to be a regulation for the purpose of the Regulations Act 1936.

15. Prohibition of other imports by Order in Council—The Governor-General may from time to time, by Order in Council, make regulations prohibiting the importation of any other goods containing or manufactured using ozone depleting substances.

20 **16. Goods containing 2 or more ozone depleting substances**—Where any goods contain 2 or more ozone depleting substances the importation of which is prohibited from different dates, the goods may be imported until such
25 time as all ozone depleting substances contained in the goods are prohibited.

30 **17. This Part of Act not to apply to packaging**—Nothing in this Part of this Act shall make it unlawful for any person to import any ozone depleting substance, or any goods containing any ozone depleting substance, that is or are used only as packaging of any other imported goods or as part of the packaging of any other imported goods.

35 **18. This Part of Act not to apply to certain personal effects**—Nothing in this Part of this Act shall make it unlawful for any person to import any goods that qualify for importation under the concession relating to passengers' baggage and effects set out in reference numbers 80 and 81 of Part II of the Tariff, as contained in the Tariff Act 1988.

PART III

PROHIBITION OF MANUFACTURE OF CONTROLLED SUBSTANCES
AND CERTAIN GOODS

19. Prohibition of manufacture of controlled substances and certain goods—(1) No person shall, after the 31st day of March 1990, manufacture in New Zealand— 5

(a) Any controlled substance:

(b) Any aerosol spray that contains any ozone depleting substance:

(c) Any Group B plastic foam or any goods that contain any Group B plastic foam: 10

(d) Any dry cleaning machine that contains or is designed to use any controlled substance.

(2) No person shall, after the 30th day of June 1990, manufacture in New Zealand any fire extinguisher that contains any controlled substance. 15

(3) For the purposes of subsection (1) (b) of this section, a fire extinguisher is not an aerosol spray.

20. Prohibition of manufacture of other goods by Order in Council—The Governor-General may from time to time, by Order in Council, make regulations prohibiting the manufacture in New Zealand of any other goods containing ozone depleting substances. 20

PART IV

PROHIBITION OF SALE OF CERTAIN GOODS 25

21. Prohibition of sale of certain goods—(1) No person shall, after the 31st day of March 1990, sell in New Zealand any dry cleaning machine that contains or is designed to use any controlled substance.

(2) No person shall, after the 31st day of December 1991, sell in New Zealand— 30

(a) Any aerosol spray that contains any ozone depleting substance:

(b) Any goods that contain any Group B plastic foam.

(3) No person shall, after the 30th day of June 1992, sell in New Zealand any fire extinguisher that contains any controlled substance. 35

(4) For the purposes of subsection (2) (a) of this section, a fire extinguisher is not an aerosol spray.

22. Prohibition of other sales by Order in Council— The Governor-General may from time to time, by Order in 40

Council, make regulations prohibiting the sale in New Zealand of any other goods containing ozone depleting substances.

5 **23. This Part of Act not to apply to certain personal effects**—Nothing in this Part of this Act shall make it unlawful for any person to sell any household effects belonging to that person where those goods are sold otherwise than in the course of business.

PART V
EXEMPTIONS

10 **24. Matters in respect of which exemptions may not be granted**—No exemption shall be granted under this Part of this Act in respect of—

- 15 (a) The importation of any bulk controlled substances other than those that are to be used only in the manufacture or servicing of aerosols and fire extinguishers that are necessary for human health or safety;
- (b) The importation or manufacture of any aerosols or fire extinguishers other than those that are necessary for human health or safety;
- 20 (c) The importation or manufacture of any dry cleaning machine;
- (d) The manufacture of any bulk controlled substance.

25 **25. Application for exemption**—(1) Any person may apply for an exemption from any obligation imposed by this Act or by any regulations made under this Act.

(2) Every application shall be made in writing to the Minister and shall—

- 30 (a) Specify the substance or goods in respect of which an exemption is sought; and
 - (b) Specify the amount of the substance or goods proposed to be imported, manufactured or sold in accordance with the exemption; and
 - 35 (c) Specify the reasons why the exemption is necessary; and
 - (d) State or be accompanied by such other information as the Minister may from time to time require for the purpose of determining whether or not to grant the exemption.
- (3) The Minister may, by notice in writing given to the applicant within 60 days after any such application is made, require the applicant—
- (a) To verify any statement by statutory declaration:

- (b) To supply such further information relating to the application as is specified in the notice.

26. Consideration of application for exemption—The Minister shall, in considering any application for an exemption under this Part of this Act, have regard to— 5

- (a) The need to phase out in New Zealand by the year 2000 all but essential uses of ozone depleting substances; and
 (b) The technology available and whether any alternative products have been developed that may be used instead of the ozone depleting substance concerned. 10

27. Publication of exemptions—The Minister shall publish, in the annual report required under section 44 of this Act, a list specifying—

- (a) The number of exemptions granted during the year under this Part of this Act; and 15
 (b) In respect of each exemption granted—
 (i) The person to whom it was granted; and
 (ii) The substance or goods in respect of which it was granted; and 20
 (iii) The amount of that substance or goods that may be imported, manufactured, or sold in accordance with the exemption; and
 (iv) The reason or reasons for granting the exemption. 25

PART VI

MISCELLANEOUS PROVISIONS

Offences and Penalties

28. Offences—Every person commits an offence against this Act who— 30

- (a) Without reasonable excuse imports, manufactures, or sells any ozone depleting substance or any goods in contravention of this Act or any regulations made under this Act; or
 (b) Fails without reasonable excuse to comply with any term or condition of any import permit; or 35
 (c) Makes a statement or produces a document knowing that it is false or misleading in a material particular for the purpose of—
 (i) Obtaining a permit or an exemption; or 40
 (ii) Importing any goods in contravention of this Act.

29. Penalties—(1) Every person who commits an offence against **paragraph (a)** of **section 28** of this Act is liable on summary conviction,—

5 (a) In the case of a person other than a body corporate, to a fine not exceeding \$50,000:

(b) In the case of a body corporate, to a fine not exceeding \$150,000.

10 (2) Every person who commits an offence against **paragraph (b)** or **paragraph (c)** of **section 28** of this Act is liable on summary conviction,—

(a) In the case of a person other than a body corporate, to a fine not exceeding \$25,000:

(b) In the case of a body corporate, to a fine not exceeding \$75,000.

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Powers Relating to Enforcement

30. Purpose for which powers may be exercised—The powers conferred by **sections 31 to 36** of this Act may be exercised to the extent reasonably necessary for the purpose of ensuring compliance with this Act.

20 **31. Power of inspection**—(1) If, in the opinion of any officer, there are reasonable grounds for believing that any person has imported or manufactured, or is manufacturing or selling, any substances or goods in contravention of this Act, that officer may require that person to produce for
25 inspection—

(a) Any such substances or goods:

(b) Any books, documents or other records relating to the importation, manufacture or sale of such substances or goods.

30 (2) Any officer may inspect, and may make or cause to be made copies of, or extracts from, any books, documents or other records produced in accordance with **subsection (1)** of this section.

35 (3) Any officer may inspect any substances or goods produced in accordance with **subsection (1)** of this section and, where the officer has reasonable grounds to believe that the substances or goods have been imported or manufactured or are being sold in contravention of this Act, may take or obtain samples of any such substances or goods.

40 (4) Every officer exercising any of the powers conferred under this section shall, at the time of exercising that power, and thereafter on request, produce—

(a) Evidence of that person's appointment as an officer; and

(b) Evidence of that person's identity.

(5) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who refuses or fails to comply with any requirement of an officer under this section.

(6) Nothing in this section shall limit or affect the privilege against self-incrimination.

32. Search warrants—(1) Any District Court Judge or Justice or any Registrar (not being a constable) who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that there is in or on any premises—

(a) Any substances or goods that have been imported or manufactured or are being sold in contravention of this Act; or

(b) Any books, documents, or other records which there are reasonable grounds to believe may be evidence of the commission of any such offence,—

may issue a search warrant in the prescribed form.

(2) Every search warrant shall be directed either to a member of the Police by name or to every member of the Police or to any officer, but in any of those cases, the warrant may be executed by any member of the Police.

(3) On issuing a warrant, the Judge, Justice, or Registrar may impose such reasonable conditions on its execution as he or she thinks fit.

(4) Any member of the Police or any officer may call any person to assist him or her in the execution of a search warrant.

(5) Every warrant shall, subject to any conditions imposed under subsection (3) of this section, authorise the member of the Police or the officer who is executing it, and any person called by that member or officer to assist,—

(a) To enter the premises on one occasion within 14 days of the date of the issue of the warrant at any time that is reasonable in the circumstances; and

(b) To use such force, both for making entry (either by breaking open doors or otherwise) and for breaking open anything on the premises, as is reasonable in the circumstances; and

(c) To search for and seize—

(i) Any substances or goods found on the premises and believed on reasonable grounds to have been imported or manufactured or to be available for sale in contravention of this Act; or

(ii) Any books, documents, or other records which there are reasonable grounds to believe may be evidence of the commission of any such offence.

5 (6) Any member of the Police or officer who executes a search warrant shall carry the warrant with him or her, and shall produce it for inspection—

(a) On first entering the premises, to the person appearing to be in charge of the premises; and

10 (b) Whenever subsequently required to do so on the premises, by any other person appearing to be in charge of the premises or any part of the premises.

(7) Where the occupier of the premises is not present at the time the search warrant is executed, the member of the Police or officer shall leave in a prominent place on the premises a written statement of the time and date of the search, and of that member's name and the address of the Police station or other office to which enquiries should be made.

15 (8) Where any substances or goods or books, documents, or other records are seized in execution of a search warrant, the member of the Police or officer executing the warrant shall leave in a prominent place on the premises or send to the occupier within 10 working days of the search a written inventory of all things so seized.

20 (9) For the purposes of this section, "premises" means any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place.

33. Analysis of samples—Any sample obtained pursuant to this Part of this Act shall be dealt with as if it were a sample obtained pursuant to the Toxic Substances Act 1979, and the provisions of sections 54 to 56 and section 65 of that Act shall, with necessary modifications, apply in all respects as if references in those sections to an officer were references to a member of the Police or an officer within the meaning of this Act.

35 **34. Seizure by Customs Officers**—Any Customs officer who, in the course of exercising a power conferred on that officer under the Customs Act 1966, finds any substance or goods that he or she believes on reasonable grounds have been imported in contravention of this Act, may seize that substance or goods.

40 **35. Retention of property seized**—(1) Where any member of the Police seizes any substance or goods under this Act, it

shall be retained by the Commissioner of Police pending the trial of the person in respect of the offence for which the substance or goods were seized.

(2) Where any officer seizes any substance or goods under this Act, it shall be retained by the Comptroller of Customs or the Chief Executive of the Ministry of Commerce, as the case may be, pending the trial of the person in respect of the offence for which the substance or goods were seized. 5

36. Forfeiture of property seized—(1) If no proceedings are taken in respect of an offence within 12 months after the seizure of the substance or goods under this Act or, where proceedings are taken, no order of forfeiture is made under subsection (2) of this section, the substance or goods shall be returned to the person from whom they were seized. 10

(2) Where any person has been convicted of an offence against paragraph (a) or paragraph (b) of section 28 of this Act, the Court may, if it thinks fit, order that any substance or goods in relation to which the offence was committed shall be forfeited to the Crown and disposed of as the Minister for the Environment directs. 15 20

Procedure in Respect of Decision-Making and Appeals

37. Rights of persons affected by proposed adverse decisions—(1) In this section, unless the context otherwise requires, “adverse decision” means any decision under this Act in respect of which there is a right of appeal pursuant to section 38 of this Act. 25

(2) Where the Minister proposes to make an adverse decision in respect of any person, that Minister shall, by notice in writing,—

- (a) Notify the person directly affected of the proposed decision; and 30
- (b) Subject to subsection (4) of this section, inform that person of the grounds for the proposed decision; and
- (c) Specify a date by which submissions may be made to the Minister in respect of the proposed decision (which date shall not be less than 15 working days after the date on which the notice is given); and 35
- (d) Where appropriate, specify the date on which the proposed decision will, unless that Minister otherwise determines, take effect, being a date not earlier than 20 working days after the date the notice is given; and 40

(e) Notify the person of the person's right of appeal under **section 38** of this Act, in the event of the proposed decision being proceeded with.

5 (3) Where any notice is given to any person under this section,—

(a) It shall be the responsibility of that person to ensure that all information that the person wishes to have considered in relation to the proposed adverse decision is received by the Minister within the period specified in the notice pursuant to **subsection (2) (c)** of this section, or within such further period as that Minister may allow in any case:

(b) That Minister shall consider any submissions made in accordance with **paragraph (a)** of this subsection:

15 (c) That Minister may, but shall not be obliged to, consider any other information supplied by the person:

(d) That Minister shall not be obliged to hear any person on the matter.

(4) After considering the matter in accordance with this section, the Minister shall—

(a) Finally determine whether or not to make the proposed adverse decision; and

(b) As soon as practicable thereafter, notify in writing the person directly affected of—

25 (i) The Minister's decision; and

(ii) Where appropriate, the date on which the decision will take effect; and

(iii) Where appropriate, the right of appeal under **section 38** of this Act.

30 Cf. 1989, No. 74, s. 25

38. Appeals—(1) In any case where the Minister—

(a) Specifies in any import permit a 1986 consumption level or an industry group different to that specified in the application for the permit; or

35 (b) Declines any application for an import permit; or

(c) Revokes any import permit; or

(d) Cancels any person's entitlement to an import permit; or

(e) Reduces any person's 1986 consumption level; or

40 (f) Refuses to allow the importation of any goods pursuant to **Part II** of this Act; or

(g) Refuses to grant an exemption pursuant to **Part V** of this Act,—

the person directly affected may appeal against that decision to the Administrative Division of the High Court.

(2) In any case where any substance or goods are seized pursuant to this Part of this Act, the person directly affected may appeal against that decision to the Administrative Division of the High Court.

(3) The Minister shall be taken, for the purposes of this section, to have declined any application if that Minister fails, within 60 days after the making of the application, or within 60 days after any requirement under **section 7 (3)** or **section 25 (3)** of this Act being satisfied, as the case may be, to agree to the application.

39. Procedure in respect of appeals—(1) Every appeal under **section 38** of this Act shall be brought, by way of originating application, not later than 20 working days after the date on which the appellant was notified of the decision appealed against, or within such further period as the Court may allow.

(2) In dealing with an appeal under this Act, the Court may—

(a) Confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Minister or officer concerned as may be necessary to give effect to the Court's decision; or

(b) Refer the matter back to the Minister or officer concerned with directions to reconsider the whole or any specified part of the matter.

(3) Subject to **section 41** of this Act, the decision of the Court on any appeal under this Act shall be final.

40. Decision of Minister to continue in force pending appeal, etc.—(1) Every decision of the Minister appealed against under **section 38** of this Act shall continue in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of **Parts I to IV** of this Act on the ground that any appeal is pending.

(2) The Court may, in its discretion, suspend the effect of the revocation of any permit pending the outcome of the appeal.

41. Appeal to Court of Appeal on question of law—Any party to an appeal under **section 38** of this Act may appeal to the Court of Appeal on a question of law.

Miscellaneous Provisions

42. Review of reduction timetables—The Minister and the Minister for the Environment shall undertake a review at

least every 2 years to consider whether the reduction timetables are appropriate given the technology available.

5 **43. Other Acts not affected**—The provisions of this Act are in addition to, and not in substitution for, the provisions of any other enactment relating to the importation, manufacture, or sale of any goods, and nothing in this Act shall limit or otherwise affect any such provisions.

Cf. 1974, No. 14, s. 69

10 **44. Annual report**—(1) The Minister and the Minister for the Environment shall, as soon as practicable after the end of each year, prepare a report on the operation of this Act during that year.

(2) The Minister shall lay a copy of the report before the House of Representatives as soon as practicable thereafter.

15 (3) Every such report shall, among other things, specify the matters referred to in **section 27** of this Act.

45. Amendment of First, Second, and Third Schedules—(1) The Governor-General may from time to time, by Order in Council,—

20 (a) Add to or omit from any Part of the **First** Schedule or **Third** Schedule to this Act the name or description of any substance or goods; or

(b) Add to or omit any Part of the **Second** Schedule to this Act; or

25 (c) Otherwise amend any such Schedule; or

(d) Otherwise revoke any such Schedule or any such Part and substitute a new Schedule or a new Part as the case may be.

30 (2) No order that amends the **Second** Schedule to this Act shall be made otherwise than on the advice of the Minister for the Environment given—

35 (a) After consultation by that Minister with such representatives of the users of bulk controlled substances and other persons as that Minister considers appropriate; and

(b) After satisfying himself or herself that, after making the proposed amendment, New Zealand will be able to give effect to its commitments under the Vienna Convention and the Montreal Protocol.

40 **46. Regulations**—The Governor-General may, from time to time, by Order in Council, make regulations—

- (a) Prescribing such forms as are necessary for the purposes of this Act:
- (b) Providing for such other matters as are contemplated by or are necessary for giving full effect to this Act and its due administration.

5

47. Revocation of Customs Order—(1) The Customs Import Prohibition (Chlorofluorocarbons) Order 1988 is hereby revoked.

(2) This section shall come into force on the 1st day of July 1990.

10

SCHEDULES

FIRST SCHEDULE
CONTROLLED SUBSTANCES

Section 2

PART I

GROUP I CONTROLLED SUBSTANCES (CFC's)

Chemical Formula	Substance
CFCl_3	Trichlorofluoromethane (CFC-11)
CF_2Cl_2	Dichlorodifluoromethane (CFC-12)
$\text{C}_2\text{F}_3\text{Cl}_3$	1,1,2-Trichloro-1,2,2-trifluoroethane (CFC-113)
$\text{C}_2\text{F}_4\text{Cl}_2$	1,2-Dichlorotetrafluoroethane (CFC-114)
$\text{C}_2\text{F}_5\text{Cl}$	Chloropentafluoroethane (CFC-115)

PART II

GROUP II CONTROLLED SUBSTANCES (HALONS)

Chemical Formula	Substance
CF_2BrCl	Bromochlorodifluoromethane (halon-1211)
CF_3Br	Bromotrifluoromethane (halon-1301)
$\text{C}_2\text{F}_4\text{Br}_2$	Dibromotetrafluoroethane (halon-2402)

SECOND SCHEDULE
REDUCTION TIMETABLES BY INDUSTRY GROUP

Sections 2, 10

PART I
REFRIGERATION/AIR CONDITIONING

Timetable for reduction of consumption of controlled substances in the refrigeration/air conditioning industry.

Year	Reduction (%)
1990-91	0
1991-92	0
1992-93	20
1993-94	20
1994-95	20
1995-96	90
1996-97	90
1997-98	90
1998-99	100

PART II
PLASTIC FOAMS

Timetable for reduction of consumption of controlled substances in the manufacture of Group A plastic foams.

Year	Reduction (%)
1990-91	10
1991-92	10
1992-93	55
1993-94	55
1994-95	55
1995-96	100

PART III
SOLVENTS

1. Timetable for reduction of consumption of controlled substances in the dry cleaning industry.

Year	Reduction (%)
1990-91	20
1991-92	20
1992-93	20
1993-94	20
1994-95	20
1995-96	20
1996-97	20
1997-98	20
1998-99	100

SECOND SCHEDULE—*continued*REDUCTION TIMETABLES BY INDUSTRY GROUP—*continued*

2. Timetable for reduction of consumption of controlled substances as solvents in industries other than dry cleaning.

Year	Reduction (%)
1990-91	20
1991-92	20
1992-93	20
1993-94	20
1994-95	20
1995-96	100

THIRD SCHEDULE

Section 14

PLASTIC GOODS THAT CAN BE MANUFACTURED USING
CHLOROFLUOROCARBONS

PART I

Products that can be manufactured using plastic foam for which there is no alternative blowing agent (which is not a controlled substance) available at 1 January 1990.

1. Rigid Polyurethane Foam (including, without limiting the generality of that term, slabstock insulation).
2. Moulded Flexible Polyurethane Foam (including, without limiting the generality of that term:
 - carpet underlays
 - mattresses
 - foam upholstered furniture
 - automotive seat cushions and seat backs).

PART II

Products that can be manufactured using plastic foam for which there is an alternative blowing agent (which is not a controlled substance) available at 1 January 1990.

1. Extruded Polystyrene Foam
2. Thermoformed Plastic Packaging (including, without limiting the generality of that term:
 - supermarket meat/produce trays
 - egg cartons
 - fast-food containers
 - disposable plates
 - disposable cups
 - horticultural packaging trays
 - packaging netting).
3. Polystyrene Boardstock.

Section 4

FOURTH SCHEDULE

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER

Preamble

The Parties to this Convention,

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21, which provides that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”,

Taking into account the circumstances and particular requirements of developing countries,

Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of the United Nations Environment Programme,

Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels,

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations,

Aware also of the need for further research and systematic observations to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modifications,

Determined to protect human health and the environment against adverse effects resulting from modifications of the ozone layer,

HAVE AGREED AS FOLLOWS:

Article 1

DEFINITIONS

For the purposes of this Convention:

1. “The ozone layer” means the layer of atmospheric ozone above the planetary boundary layer.

2. “Adverse effects” means changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind.

3. “Alternative technologies or equipment” means technologies or equipment the use of which makes it possible to reduce or effectively eliminate emissions of substances which have or are likely to have adverse effects on the ozone layer.

4. “Alternative substances” means substances which reduce, eliminate or avoid adverse effects on the ozone layer.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

5. “Parties” means, unless the text otherwise indicates, Parties to this Convention.

6. “Regional economic integration organization” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

7. “Protocols” means protocols to this Convention.

Article 2

GENERAL OBLIGATIONS

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party 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.

2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:

(a) Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;

(b) Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;

(c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes;

(d) Co-operate with competent international bodies to implement effectively this Convention and protocols to which they are party.

3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention.

4. The application of this article shall be based on relevant scientific and technical considerations.

Article 3

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research and scientific assessments on:

(a) The physical and chemical processes that may affect the ozone layer;

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

(b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B);

(c) Climatic effects deriving from any modifications of the ozone layer;

(d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind;

(e) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;

(f) Alternative substances and technologies;

(g) Related socio-economic matters;

and as further elaborated in annexes I and II.

2. The Parties undertake to promote or establish, as appropriate, directly or through competent international bodies and taking fully into account national legislation and relevant ongoing activities at both the national and international levels, joint or complementary programmes for systematic observation of the state of the ozone layer and other relevant parameters, as elaborated in annex I.

3. The Parties undertake to co-operate, directly or through competent international bodies, in ensuring the collection, validation and transmission of research and observational data through appropriate world data centres in a regular and timely fashion.

Article 4

CO-OPERATION IN THE LEGAL, SCIENTIFIC AND TECHNICAL FIELDS

1. The Parties shall facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information relevant to this Convention as further elaborated in annex II. Such information shall be supplied to bodies agreed upon by the Parties. Any such body receiving information regarded as confidential by the supplying Party shall ensure that such information is not disclosed and shall aggregate it to protect its confidentiality before it is made available to all Parties.

2. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge. Such co-operation shall be carried out particularly through:

(a) Facilitation of the acquisition of alternative technologies by other Parties;

(b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;

(c) The supply of necessary equipment and facilities for research and systematic observations;

(d) Appropriate training of scientific and technical personnel.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

Article 5

TRANSMISSION OF INFORMATION

The Parties shall transmit, through the secretariat, to the Conference of the Parties established under article 6 information on the measures adopted by them in implementation of this Convention and of protocols to which they are party in such form and at such intervals as the meetings of the parties to the relevant instruments may determine.

Article 6

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the secretariat designated on an interim basis under article 7 not later than one year after entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish, as well as financial provisions governing the functioning of the secretariat.

4. The Conference of the Parties shall keep under continuous review the implementation of this Convention, and, in addition, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with article 5 and consider such information as well as reports submitted by any subsidiary body;

(b) Review the scientific information on the ozone layer, on its possible modification and on possible effects of any such modification;

(c) Promote, in accordance with article 2, the harmonization of appropriate policies, strategies and measures for minimizing the release of substances causing or likely to cause modification of the ozone layer, and make recommendations on any other measures relating to this Convention;

(d) Adopt, in accordance with articles 3 and 4, programmes for research, systematic observations, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge;

(e) Consider and adopt, as required, in accordance with articles 9 and 10, amendments to this Convention and its annexes;

(f) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;

(g) Consider and adopt, as required, in accordance with article 10, additional annexes to this Convention;

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

- (h) Consider and adopt, as required, protocols in accordance with article 8;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;
- (j) Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Meteorological Organization and the World Health Organization, as well as the Co-ordinating Committee on the Ozone Layer, in scientific research, systematic observations and other activities pertinent to the objectives of this Convention, and make use as appropriate of information from these bodies and committees;
- (k) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by 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 Conference 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 Conference of the Parties.

Article 7

SECRETARIAT

1. The functions of the secretariat shall be:
- (a) To arrange for and service meetings provided for in articles 6, 8, 9 and 10;
- (b) To prepare and transmit reports based upon information received in accordance with articles 4 and 5, as well as upon information derived from meetings of subsidiary bodies established under article 6;
- (c) To perform the functions assigned to it by any protocol;
- (d) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
- (e) To ensure the necessary co-ordination with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
- (f) To perform such other functions as may be determined by the Conference of the Parties.
2. The secretariat functions will be carried out on an interim basis by the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to article 6. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

Article 8

ADOPTION OF PROTOCOLS

1. The Conference of the Parties may at a meeting adopt protocols pursuant to article 2.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a meeting.

Article 9

AMENDMENT OF THE CONVENTION OR PROTOCOLS

1. Any Party may propose amendments to this Convention or to any protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.
4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the parties to that protocol present and voting at the meeting shall suffice for their adoption.
5. Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the Parties to this Convention or by at least two-thirds of the parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
*continued*Article 10

ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedures shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) Annexes to this Convention shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 3, while annexes to any protocol shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 4;

(b) Any party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, *inter alia*, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 11

SETTLEMENT OF DISPUTES

1. In the event of a dispute between Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with procedures to be adopted by the Conference of the Parties at its first ordinary meeting;

(b) Submission of the dispute to the International Court of Justice.

4. If the parties have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.

5. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.

6. The provisions of this article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 12

SIGNATURE

This Convention shall be open for signature by States and by regional economic integration organizations at the Federal Ministry for Foreign Affairs of the Republic of Austria in Vienna from 22 March 1985 to 21 September 1985, and at United Nations Headquarters in New York from 22 September 1985 to 21 March 1986.

Article 13

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention or any protocol without any of its member States being a Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Article 14

ACCESSION

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent to their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of article 13, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 15

RIGHT TO VOTE

1. Each Party to this Convention or to any protocol shall have one vote.

2. Except as provided for in paragraph 1 above, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 16

RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

1. A State or a regional economic integration organization may not become party to a protocol unless it is, or becomes at the same time, a Party to the Convention.

2. Decisions concerning any protocol shall be taken only by the parties to the protocol concerned.

Article 17

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. Any protocol, except as otherwise provided in such protocol, shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance or approval of such protocol or accession thereto.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

3. For each Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 18

RESERVATIONS

No reservations may be made to this Convention.

Article 19

WITHDRAWAL

1. At any time after four years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.

3. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

4. Any Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 20

DEPOSITARY

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any protocols.

2. The Depositary shall inform the Parties, in particular, of:

(a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 13 and 14;

(b) The date on which the Convention and any protocol will come into force in accordance with article 17;

(c) Notifications of withdrawal made in accordance with article 19;

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

(d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with article 9;

(e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with article 10;

(f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof;

(g) Declarations made in accordance with article 11, paragraph 3.

Article 21

AUTHENTIC TEXTS

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

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Vienna

on the 22nd day of March 1985.

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
*continued*Annex I

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties to the Convention recognize that the major scientific issues are:

(a) Modification of the ozone layer which would result in a change in the amount of solar ultra-violet radiation having biological effects (UV-B) that reaches the Earth's surface and the potential consequences for human health, for organisms, ecosystems and materials useful to mankind;

(b) Modification of the vertical distribution of ozone, which could change the temperature structure of the atmosphere and the potential consequences for weather and climate.

2. The Parties to the Convention, in accordance with article 3, shall cooperate in conducting research and systematic observations and in formulating recommendations for future research and observation in such areas as:

(a) *Research into the physics and chemistry of the atmosphere*

(i) Comprehensive theoretical models: further development of models which consider the interaction between radiative, dynamic and chemical processes; studies of the simultaneous effects of various man-made and naturally occurring species upon atmospheric ozone; interpretation of satellite and non-satellite measurement data sets; evaluation of trends in atmospheric and geophysical parameters, and the development of methods for attributing changes in these parameters to specific causes;

(ii) Laboratory studies of: rate coefficients, absorption cross-sections and mechanisms of tropospheric and stratospheric chemical and photochemical processes; spectroscopic data to support field measurements in all relevant spectral regions;

(iii) Field measurements: the concentration and fluxes of key source gases of both natural and anthropogenic origin; atmospheric dynamics studies; simultaneous measurements of photochemically-related species down to the planetary boundary layer, using *in situ* and remote sensing instruments; intercomparison of different sensors, including co-ordinated correlative measurements for satellite instrumentation; three-dimensional fields of key atmospheric trace constituents, solar spectral flux and meteorological parameters;

(iv) Instrument development, including satellite and non-satellite sensors for atmospheric trace constituents, solar flux and meteorological parameters;

(b) *Research into health, biological and photodegradation effects*

(i) The relationship between human exposure to visible and ultra-violet solar radiation and (a) the development of both non-melanoma and melanoma skin cancer and (b) the effects on the immunological system;

(ii) Effects of UV-B radiation, including the wavelength dependence, upon (a) agricultural crops, forests and other terrestrial ecosystems and (b) the aquatic food web and fisheries, as well as

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

- possible inhibition of oxygen production by marine phytoplankton;
- (iii) The mechanisms by which UV-B radiation acts on biological materials, species and ecosystems, including: the relationship between dose, dose rate, and response; photorepair, adaptation, and protection;
 - (iv) Studies of biological action spectra and the spectral response using polychromatic radiation in order to include possible interactions of the various wavelength regions;
 - (v) The influence of UV-B radiation on: the sensitivities and activities of biological species important to the biospheric balance; primary processes such as photosynthesis and biosynthesis;
 - (vi) The influence of UV-B radiation on the photodegradation of pollutants, agricultural chemicals and other materials;
- (c) *Research on effects on climate*
- (i) Theoretical and observational studies of the radiative effects of ozone and other trace species and the impact on climate parameters, such as land and ocean surface temperatures, precipitation patterns, the exchange between the troposphere and stratosphere;
 - (ii) The investigation of the effects of such climate impacts on various aspects of human activity;
- (d) *Systematic observations on*
- (i) The status of the ozone layer (i.e. the spatial and temporal variability of the total column content and vertical distribution) by making the Global Ozone Observing System, based on the integration of satellite and ground-based systems, fully operational;
 - (ii) The tropospheric and stratospheric concentrations of source gases for the HO_x, NO_x, ClO_x and carbon families;
 - (iii) The temperature from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (iv) Wavelength-resolved solar flux reaching, and thermal radiation leaving, the Earth's atmosphere, utilizing satellite measurements;
 - (v) Wavelength-resolved solar flux reaching the Earth's surface in the ultra-violet range having biological effects (UV-B);
 - (vi) Aerosol properties and distribution from the ground to the mesosphere, utilizing ground-based, airborne and satellite systems;
 - (vii) Climatically important variables by the maintenance of programmes of high-quality meteorological surface measurements;
 - (viii) Trace species, temperatures, solar flux and aerosols utilizing improved methods for analyzing global data.

3. The Parties to the Convention shall co-operate, taking into account the particular needs of the developing countries, in promoting the appropriate scientific and technical training required to participate in the research and systematic observations outlined in this annex. Particular emphasis should be given to the intercalibration of observational

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

instrumentation and methods with a view to generating comparable or standardized scientific data sets.

4. The following chemical substances of natural and anthropogenic origin, not listed in order of priority, are thought to have the potential to modify the chemical and physical properties of the ozone layer.

(a) Carbon substances

(i) *Carbon monoxide (CO)*

Carbon monoxide has significant natural and anthropogenic sources, and is thought to play a major direct role in tropospheric photochemistry, and an indirect role in stratospheric photochemistry.

(ii) *Carbon dioxide (CO₂)*

Carbon dioxide has significant natural and anthropogenic sources, and affects stratospheric ozone by influencing the thermal structure of the atmosphere.

(iii) *Methane (CH₄)*

Methane has both natural and anthropogenic sources, and affects both tropospheric and stratospheric ozone.

(iv) *Non-methane hydrocarbon species*

Non-methane hydrocarbon species, which consist of a large number of chemical substances, have both natural and anthropogenic sources, and play a direct role in tropospheric photochemistry and an indirect role in stratospheric photochemistry.

(b) Nitrogen substances

(i) *Nitrous oxide (N₂O)*

The dominant sources of N₂O are natural, but anthropogenic contributions are becoming increasingly important. Nitrous oxide is the primary source of stratospheric NO_x, which play a vital role in controlling the abundance of stratospheric ozone.

(ii) *Nitrogen oxides (NO_x)*

Ground-level sources of NO_x play a major direct role only in tropospheric photochemical processes and an indirect role in stratosphere photochemistry, whereas injection of NO_x close to the tropopause may lead directly to a change in upper tropospheric and stratospheric ozone.

(c) Chlorine substances

(i) *Fully halogenated alkanes, e.g. CCl₄, CFC1₃, (CFC-11), CF₂Cl₂ (CFC-12), C₂F₃Cl₃ (CFC-113), C₂F₄Cl₂ (CFC-114)*

Fully halogenated alkanes are anthropogenic and act as a source of C10_x, which plays a vital role in ozone photochemistry, especially in the 30–50 km altitude region.

(ii) *Partially halogenated alkanes, e.g. CH₃Cl, CHF₂Cl (CFC-22), CH₂Cl₂, CHFCl₂ (CFC-21)*

The sources of CH₃Cl are natural, whereas the other partially halogenated alkanes mentioned above are anthropogenic in origin. These gases also act as a source of stratospheric C10_x.

(d) Bromine substances

FOURTH SCHEDULE—*continued*VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
*continued**Fully halogenated alkanes, e.g. CF₂Br*

These gases are anthropogenic and act as a source of BrO_x, which behaves in a manner similar to ClO_x.

(e) Hydrogen substances

(i) *Hydrogen (H₂)*

Hydrogen, the source of which is natural and anthropogenic, plays a minor role in stratospheric photochemistry.

(ii) *Water (H₂O)*

Water, the source of which is natural, plays a vital role in both tropospheric and stratospheric photochemistry. Local sources of water vapour in the stratosphere include the oxidation of methane and, to a lesser extent, of hydrogen.

Annex II

INFORMATION EXCHANGE

1. The Parties to the Convention recognize that the collection and sharing of information is an important means of implementing the objectives of this Convention and of assuring that any actions that may be taken are appropriate and equitable. Therefore, Parties shall exchange scientific, technical, socio-economic, business, commercial and legal information.

2. The Parties to the Convention, in deciding what information is to be collected and exchanged, should take into account the usefulness of the information and the costs of obtaining it. The Parties further recognize that co-operation under this annex has to be consistent with national laws, regulations and practices regarding patents, trade secrets, and protection of confidential and proprietary information.

3. *Scientific information*

This includes information on:

(a) Planned and ongoing research, both governmental and private, to facilitate the co-ordination of research programmes so as to make the most effective use of available national and international resources;

(b) The emission data needed for research;

(c) Scientific results published in peer-reviewed literature on the understanding of the physics and chemistry of the Earth's atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and effects on human health, environment and climate which would result from changes on all time-scales in either the total column content or the vertical distribution of ozone;

(d) The assessment of research results and the recommendations for future research.

4. *Technical information*

This includes information on:

(a) The availability and cost of chemical substitutes and of alternative technologies to reduce the emissions of ozone-modifying substances and related planned and ongoing research;

(b) The limitations and any risks involved in using chemical or other substitutes and alternative technologies.

FOURTH SCHEDULE—*continued*

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER—
continued

5. *Socio-economic and commercial information on the substances referred to in annex I*

This includes information on:

- (a) Production and production capacity;
- (b) Use and use patterns;
- (c) Imports/exports;
- (d) The costs, risks and benefits of human activities which may indirectly modify the ozone layer and of the impacts of regulatory actions taken or being considered to control these activities.

6. *Legal information*

This includes information on:

- (a) National laws, administrative measures and legal research relevant to the protection of the ozone layer;
 - (b) International agreements, including bilateral agreements, relevant to the protection of the ozone layer;
 - (c) Methods and terms of licensing and availability of patents relevant to the protection of the ozone layer.
-

Section 4**FIFTH SCHEDULE****MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER**

The Parties to this Protocol,

Being Parties to the Vienna Convention for the Protection of the Ozone Layer,

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 that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment,

Conscious of the potential climatic effects of emissions of these substances,

Aware that measures taken to protect the ozone layer from depletion should be based on relevant scientific knowledge, taking into account technical and economic considerations,

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations,

Acknowledging that special provision is required to meet the needs of developing countries for these substances,

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

Considering the importance of promoting international co-operation in the research and development of science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted on 22 March 1985.
2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol.
3. "Secretariat" means the secretariat of the Convention.
4. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or in a mixture. It excludes, however, any such substance or mixture which is in a manufactured product other than a container used for the transportation or storage of the substance listed.
5. "Production" means the amount of controlled substances produced minus the amount destroyed by technologies to be approved by the Parties.

FIFTH SCHEDULE—*continued*

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

6. “Consumption” means production plus imports minus exports of controlled substances.

7. “Calculated levels” of production, imports, exports and consumption means levels determined in accordance with Article 3.

8. “Industrial rationalization” means the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

ARTICLE 2: CONTROL MEASURES

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.

2. Each Party shall ensure that for the twelve-month period commencing on the first day of the thirty-seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances listed in Group II of Annex A does not exceed its calculated level of consumption in 1986. Each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review.

3. Each Party shall ensure that for the period 1 July 1993 to 30 June 1994 and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, eighty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, eighty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

4. Each Party shall ensure that for the period 1 July 1998 to 30 June 1999, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply unless the Parties decide otherwise at a meeting by a two-thirds majority of Parties present and voting, representing at least two-thirds of the total calculated level of consumption of these substances of the Parties. This decision shall be considered and made in the light of the assessments referred to in Article 6.

5. Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, for the purposes of industrial rationalization, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer.

6. Any Party not operating under Article 5, that has facilities for the production of controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.

7. Any transfer of production pursuant to paragraph 5 or any addition of production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition.

8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1 (6) of the Convention may agree that they shall jointly fulfil their obligations respecting consumption under this Article provided that their total combined calculated level of consumption does not exceed the levels required by this Article.

(b) The Parties to any such agreement shall inform the secretariat of the terms of the agreement before the date of the reduction in consumption with which the agreement is concerned.

(c) Such agreement will become operative only if all Member States of the regional economic integration organization and the organization concerned are Parties to the Protocol and have notified the secretariat of their manner of implementation.

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—*continued*

9. (a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:

- (i) adjustments to the ozone depleting potentials specified in Annex A should be made and, if so, what the adjustments should be; and
- (ii) further adjustments and reductions of production or consumption of the controlled substances from 1986 levels should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be;

(b) Proposals for such adjustments shall be communicated to the Parties by the secretariat at least six months before the meeting of the Parties at which they are proposed for adoption;

(c) In taking such decisions, the Parties shall make every effort to reach agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, such decisions shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting representing at least fifty per cent of the total consumption of the controlled substances of the Parties;

(d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.

10. (a) Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide:

- (i) whether any substances, and if so which, should be added to or removed from any annex to this Protocol; and
- (ii) the mechanism, scope and timing of the control measures that should apply to those substances;

(b) Any such decision shall become effective, provided that it has been accepted by a two-thirds majority vote of the Parties present and voting.

11. Notwithstanding the provisions contained in this Article, Parties may take more stringent measures than those required by this Article.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles 2 and 5, each Party shall, for each Group of substances in Annex A, determine its calculated levels of:

(a) Production by:

- (i) Multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A; and

- (ii) Adding together, for each such Group, the resulting figures;

(b) Imports and exports, respectively, by following, *mutatis mutandis*, the procedure set out in subparagraph (a); and

(c) Consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES

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

2. Beginning on 1 January 1993, no Party operating under paragraph 1 of Article 5 may export any controlled substance to any State not party to this Protocol.

3. Within three years of the date of the entry into force of this Protocol, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

4. Within five years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to it in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

5. Each Party shall discourage the export, to any State not party to this Protocol, of technology for producing and for utilizing controlled substances.

6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.

7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances.

8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 3 and 4 may be permitted from any State not party to this Protocol if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2 and this Article, and has submitted data to that effect as specified in Article 7.

ARTICLE 5: SPECIAL SITUATION OF DEVELOPING COUNTRIES

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet its basic domestic needs, be entitled to

FIFTH SCHEDULE—*continued*

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

delay its compliance with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures.

2. The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives.

3. The Parties undertake to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to Parties that are developing countries for the use of alternative technology and for substitute products.

ARTICLE 6: ASSESSMENT AND REVIEW OF CONTROL MEASURES

Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the secretariat, to the Parties.

ARTICLE 7: REPORTING OF DATA

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

2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate.

ARTICLE 8: NON-COMPLIANCE

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

ARTICLE 9: RESEARCH, DEVELOPMENT, PUBLIC AWARENESS AND EXCHANGE OF INFORMATION

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

international bodies, research, development and exchange of information on:

(a) Best technologies for improving the containment, recovery, recycling or destruction of controlled substances or otherwise reducing their emissions;

(b) Possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and

(c) Costs and benefits of relevant control strategies.

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.

3. Within two years of the entry into force of this Protocol and every two years thereafter each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article.

ARTICLE 10: TECHNICAL ASSISTANCE

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

2. Any Party or Signatory to this Protocol may submit a request to the secretariat for technical assistance for the purposes of implementing or participating in the Protocol.

3. The Parties, at their first meeting, shall begin deliberations on the means of fulfilling the obligations set out in Article 9, and paragraphs 1 and 2 of this Article, including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. States and regional economic integration organizations not party to the Protocol should be encouraged to participate in activities specified in such workplans.

ARTICLE 11: 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 the date of the 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 decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one-third of the Parties.

3. The Parties, at their first meeting, shall:

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

FIFTH SCHEDULE—*continued*

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

(b) Adopt by consensus the financial rules referred to in paragraph 2 of Article 13;

(c) Establish the panels and determine the terms of reference referred to in Article 6;

(d) Consider and approve the procedures and institutional mechanisms specified in Article 8; and

(e) Begin preparation of workplans pursuant to paragraph 3 of Article 10.

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

(a) Review the implementation of this Protocol;

(b) Decide on any adjustments or reductions referred to in paragraph 9 of Article 2;

(c) Decide on any addition to, insertion in or removal from any annex of substances and on related control measures in accordance with paragraph 10 of Article 2;

(d) Establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 9;

(e) Review requests for technical assistance submitted pursuant to paragraph 2 of Article 12;

(f) Review reports prepared by the secretariat pursuant to sub-paragraph (c) of Article 12;

(g) Assess, in accordance with Article 6, the control measures provided for in Article 2;

(h) Consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex;

(i) Consider and adopt the budget for implementing this Protocol; and

(j) 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 12: SECRETARIAT

For the purposes of this Protocol, the secretariat shall:

(a) Arrange for and service meetings of the Parties as provided for in Article 11;

(b) Receive and make available, upon request by a Party, data provided pursuant to Article 7;

(c) Prepare and distribute regularly to the Parties reports based on information received pursuant to Articles 7 and 9;

(d) Notify the Parties of any request for technical assistance received pursuant to Article 10 so as to facilitate the provision of such assistance;

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

- (e) Encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;
- (f) Provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-party observers; and
- (g) Perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.

ARTICLE 13: 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.

ARTICLE 14: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

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

ARTICLE 15: SIGNATURE

This Protocol shall be open for signature by States and by regional economic integration organizations in Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at United Nations Headquarters in New York from 17 January 1988 to 15 September 1988.

ARTICLE 16: ENTRY INTO FORCE

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by that date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

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

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

ARTICLE 17: PARTIES JOINING AFTER ENTRY INTO FORCE

Subject to Article 5, any State or regional economic integration organization which becomes a Party to this Protocol after the date of its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, as well as under Article 4, that apply at that date to the States

FIFTH SCHEDULE—*continued*

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—
continued

and regional economic integration organizations that became Parties on the date the Protocol entered into force.

ARTICLE 18: RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 19: WITHDRAWAL

For the purposes of this Protocol, the provisions of Article 19 of the Convention relating to withdrawal shall apply, except with respect to Parties referred to in paragraph 1 of Article 5. Any such Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in paragraphs 1 to 4 of Article 2. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

ARTICLE 20: AUTHENTIC TEXTS

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

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

DONE AT MONTREAL THIS SIXTEENTH DAY OF SEPTEMBER, ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

FIFTH SCHEDULE—*continued*MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER—*continued**Annex A*

CONTROLLED SUBSTANCES

<i>Group</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
Group I	CFC1 ₃ (CFC-11)	1.0
	CF ₂ C1 ₂ (CFC-12)	1.0
	C ₂ F ₃ C1 ₃ (CFC-113)	0.8
	C ₂ F ₄ C1 ₂ (CFC-114)	1.0
	C ₂ F ₅ C1 (CFC-115)	0.6
Group II	CF ₂ BrC1 (halon-1211)	3.0
	CF ₃ Br (halon-1301)	10.0
	C ₂ F ₄ Br ₂ (halon-2402)	(to be determined)

*These ozone depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.