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EXECUTIVE COMMITTEE OF  
THE MULTILATERAL FUND FOR THE  
IMPLEMENTATION OF THE MONTREAL PROTOCOL  
Sixty-first Meeting  
Montreal, 5-9 July 2010

**NEPAL: CONSIDERATION OF HCFC PHASE-OUT MANAGEMENT PLAN (HPMP)**

1. The Secretariat has received on 29 June 2010 a communication from the Government of Nepal requesting that it wishes to transmit to the members of the Committee an official note providing an explanation on the current situation in Nepal with regards to its non-ratification of the Copenhagen Amendment, which is a basic requirement for the consideration and approval of an HPMP in line with decision 53/37.
2. The note, as submitted by the Government of Nepal, is attached to this document.



## Note by the Government of Nepal on special consideration for approval of the HPMP

### Background

Nepal, with assistance of UNEP and UNDP has submitted their HPMP to the forthcoming 61st Excom meeting for consideration. One of the unique features of the HPMP is an accelerated phase out of HCFCs by 2025, 15 years earlier than the targets set out in MOP Decision XIX/6. This will become possible because of the strong institutional and regulatory structure Nepal has put in place since 2000 to control imports of HCFCs and HCFC based equipments.

However, in view of the Excom Decision 53/37, paragraph (c), Nepal's HPMP request may not be considered because the country has not ratified the Copenhagen amendment. We are also informed by UNEP that the position of the Secretariat stands that as per decision 53/37, Nepal cannot be considered for this meeting as it has not fulfilled the basic requirement for funding.<sup>1</sup> Further, the Secretariat in this email has noted that there is no policy issue involved in this submission as Nepal clearly is a non-signatory country to the Copenhagen Amendment and further funding cannot be provided unless this requirement is met.

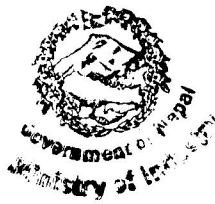
### Nepal and Montreal Protocol:

In this regard, Nepal would like to draw the attention of the Montreal Protocol to its longstanding commitment to the phaseout of ODS since the ratification of the Protocol and London Amendment in 1994<sup>2</sup>. The highest political commitment to the Protocol was showcased when our Prime Minister, (now late) Mr. Girija Prasad Koirala attended the MOP in 1994.

*Since the Copenhagen Amendment came into force almost at the same time as Nepal ratified the Protocol and the London Amendment, it was not included in the first round of ratification that Nepal committed to. Soon after ratification, it took a few years to set up the national institutional framework for implementing the Protocol. This has been common in almost all new Parties that needed a few years to kick start the implementation from the funding received from the MLF. Since there was no*

<sup>1</sup> Email from the MLFS to UNEP dated 15 May 2010

<sup>2</sup> Nepal ratified the **Montreal Protocol** and the London Amendment on 6 July 1994. The London, Copenhagen, Montreal and Beijing Amendments entered into force, *only for those Parties which ratified the particular amendments*, on 10 August 1992, 14 June 1994, 10 November 1999 and 25 February 2002, respectively.



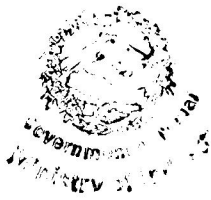
*Environment Ministry in our country at that time, the focal point for Montreal Protocol was designated in the ~~National~~<sup>Nepal</sup> Bureau of Standards and Metrology in 1996 and the process of developing the Country Programme and Institutional Strengthening was initiated and approved in 1998. Around 2001, Nepal initiated the process to ratify the remaining amendments but because of frequent changes in the government, the situation in the country and more pressing and urgent issues, the ratification could not be accomplished. At present the Cabinet document is being reviewed by the Ministry of Environment. In consultation with the Law Department it will be put up to the cabinet for consideration. After due consideration by the Cabinet, the recommendations of the Cabinet will be agreed in the Parliament. This process will take some more time before the government can make a commitment on exact timing of ratification.*

Meanwhile, Nepal has fulfilled all its obligations under the Protocol and has been submitting their Article 7 and Country Programme report since then till date. The IS projects are also being renewed regularly indicating the strong institutional structure that has been set up by our Government. We have also successfully completed our RMP, RMP Update and TPMP and have been able to comply with the control measures for 1.1.2010 of complete phase out of CFCs, CTC and halons. Nepal successfully seized illegal imports of CFCs and HCFCs in 2004 highlighting the capacity built of its enforcement agencies. Subsequently Nepal conformed with MOP decision XVI/27 setting out annual consumption limits for the country from the seized stocks. Nepal has shown innovativeness in starting the cross border dialogues on trade with neighbouring countries and developing the very first destruction project for a LVC country. This project was approved in the 59<sup>th</sup> Excom in Port Ghalib, Egypt in November 2009.

### **Nepal and HCFC control measures**

While Nepal has not been able to ratify the Copenhagen amendment though there is still intent to ratify it as soon as politically feasible. But non ratification of this amendment has not, in any way, stopped our country from taking pro active steps to control HCFCs in the country much ahead of either MOP decision XIX/6 and before any other developing country globally. We would like to outline how each requirement of Copenhagen amendment in regard to HCFCs has been already addressed by the following national regulations since 2001 that control ODS supply and use as well as import controls. These regulations have been framed under the sub section (3) of Section 7 of the Environment Protection Act, 1996:

- Notice on Annual Consumption, Import Quantity and Phase-out Rates of Ozone Depleting Substances, 2001.
- Ozone Depleting Substance Consumption (Control) Rules, 2001.
- Procedures, Conditions and Specifications, Quantitative Standard and Annual Phase-out Rates for Import of the Ozone Depleting Substances, 2001.



Key requirements of the Copenhagen Amendment	Compliance by National Regulations
Targets for phase out of HCFCs with total phase out by 2040	<p>Section 2 (B) of the above mentioned rules states: <i>“The import and consumption quantity of HCFC 22 has been determined as 23.04 metric tones per annum to the year 2015 AD. Thenceforth, this shall be phased out annually and brought down to zero by the year 2040 AD.”</i></p> <p>Section 2 (C) states: <i>“The phase out rate of the substance as mentioned in Clause (B) above from the year 2015 AD onwards shall be pursuant to the amendments by the meetings under the Montreal Protocol.”</i></p> <p>As per our regulation, the consumption of HCFC would be reduced from 2016 with annual reduction of 1 MT, thereafter, it would be reduced to zero by 2040 as per the Copenhagen Amendment, under which the HCFC was first introduced to be controlled under the Montreal Protocol</p>
Introduce licensing system to control imports of HCFCs (in conjunction with the Montreal Amendment)	Section 1 (B) states:” The annual import quantity of HCFC 22 mentioned in this table has been determined in such a way that it shall not exceed 23.04 tonnes for the year 2000, since the current annual consumption quantity of this substance is 23.04 metric tones.

The unique feature of this 2001 regulation of our country is that despite no control measure mandated by the Protocol or Copenhagen Amendment, the country capped its consumption of HCFCs at 23.04 tonnes since 2000. It is indeed a unique step the Government had taken considering the transitional nature of the chemical and the leapfrogging of technology that Nepal wanted to do. So while the white good industry globally was increasing at 20-25 percent, Nepal continued to cap its consumption of HCFCs at 23.04 tonnes annually and has continued to do so till 2010. We have also continued to provide data on HCFC consumption since 1991.

We would like to point out that Article 4 para 8 of the Protocol provides an opportunity for countries to be considered on the same footing as a “Party” if the country is functionally meeting the compliance requirements of the underlying amendment. MOP decisions IV/17B, VI/4, XVII/3 and XVII/4 are precedents where such an approach has been taken in the past.



### **Funding for countries that have not ratified the London Amendment**

We would also like to draw the attention of the Executive Committee and the MLFS to the positive approach the Parties took in regard to providing funding Parties that had not ratified the London Amendment. We would like to particularly draw attention to the following two decisions of the Excom:

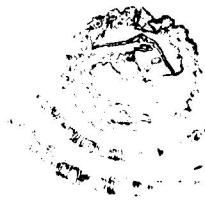
1. The Twenty-ninth Meeting of the Executive Committee decided to approve funding for the projects and activities submitted by countries which had not ratified the London Amendment, on the understanding that a letter would be sent to those countries urging them to take the necessary action to ratify the London Amendment as rapidly as possible. (*Decision 29/21*).
2. The Fortieth Meeting of the Executive Committee decided to require from Parties an official commitment in writing to ratify the London Amendment to the Montreal Protocol before funding could be approved for their projects. (*Decision 40/35*)

It is within this spirit that Nepal's HPMP request should be viewed. The Government of Nepal hereby commits to ratify all of the remaining Amendments to the Montreal Protocol as early as possible. However, due to the political difference among parties, the Parliament could not operate normally. Once the Parliament would have its regular session, the draft proposal would be then submitted for consideration. We, of course, would need to also highlight the importance of such ratification to the political hierarchy.

### **Spirit of the Montreal Protocol**

We would like to draw the attention of the Executive Committee to the spirit of the Montreal Protocol and its institutions. The approach has always been to support the Parties to phase out and in this regard we would point out to the spirit behind Article 4 paragraph 8 concerning the trade with non-Party, which reads "Notwithstanding the provisions of this Article, imports and exports referred to in paragraphs 1 to 4 ter of this Article may be permitted from, or to, 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, Articles 2A to 2I and this Article, and have submitted data to that effect as specified in Article 7". Even though this clause relates to trade issues, the spirit behind this approach of considering a non Party as a Party provided the Party has complied with the key components of an Article, should be the basis of considering Nepal's HPMP request. While we have complied with the spirit and letter of the Copenhagen Amendment, Nepal should not be deprived of funding for HPMP because of non ratification of Copenhagen Amendment.

A handwritten signature in black ink, consisting of a stylized 'P' and 'M' followed by a long horizontal line extending to the right.



### Nepal's request

Nepal has submitted an innovative approach for its HPMP where we commit to not only an accelerated phase out by 2025 but also commit to bring co-financing for the climate co benefits. We fear if the momentum is lost now because of non funding of the HPMP, the infrastructure built under the RMP and TPMP will be lost and Nepal may face serious challenges in fulfilling the new phase out schedule committed under the HPMP. Delay in approval would also mean redrafting the HPMP and hence more delays and possibly more funding to capture the contemporary HCFC scenarios. Without HPMP, the established ozone institutions in Nepal will suffer and this will impact adversely the implementation of the Protocol not only in Nepal but in the entire region, in view of our geographic position at the junction of important countries including the major producers of HCFCs in China and India. If we are not able to implement the developed HPMP soon, there are grave chances of our country becoming a centre for illegal trade of ODS, a bitter lesson the whole Montreal Protocol community has learnt from the CFC phase out. With the impending non compliance situation that our country may face, we may need to take recourse to Section 4 of the non compliance procedure in this scenario. In view of the above, we request our case be presented to the 61<sup>st</sup> Excom on 5-9 July 2010 in Montreal and seek guidance from the Excom. in this regard.

( Mr. Aratap Kumar Pathak )

**SECRETARY**