

RESUMED OWEG 38 HIGHLIGHTS: 8 OCTOBER 2016

The resumed session of the thirty-eighth Open-Ended Working Group (OWEG 38) of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer met in Kigali, Rwanda on Saturday, 8 October 2016.

Parties convened to continue and conclude the work that has been assigned to the Contact Group on the Feasibility and Ways of Managing Hydrofluorocarbons (HFC Management Contact Group), as agreed to under the Dubai pathway on HFCs (the Dubai pathway). Having previously concluded work on generating solutions to agreed challenges, the contact group resumed discussions on issues related to proposed amendments, including calculation of baselines, and commencement years for any freezes and reduction steps.

Plenary briefly reconvened in the evening to hear a report from the HFC Management Contact Group, noting that the Contact Group's work will continue during the twenty-eighth Meeting of the Parties (MOP 28), which commences on Monday, 10 October.

OWEG 38 closed at 8:04 pm.

OPENING SESSION

OWEG 38 Co-Chair Leslie Smith (Grenada) opened the resumed OWEG 38 session.

Tina Birmpili, Executive Secretary, Ozone Secretariat, remarked that one year after agreeing on the Dubai Pathway on HFCs, parties have gathered to honor their commitment to adopt an HFC amendment in 2016. She observed projected increases in cooling demand mean that, by mid-century, more energy will be used on cooling than on heating. She said this trend makes reaching an agreement on an HFC phase-down, combined with efforts to improve energy efficiency, crucial to mitigating climate change.

Birmpili also stressed that parties had moved from discussing the need for an HFC amendment and what form it should take, to considering how such an amendment should be constructed. She urged all to listen, be flexible and be prepared to compromise. She encouraged parties to celebrate the 30th anniversary of the Montreal Protocol in 2017 with an agreement to phase down HFCs with a high-global warming potential (GWP).

Delegates adopted the provisional agenda (UNEP/OzL.Pro. WG.1/resumed.38/1). OWEG 38 Co-Chair Paul Krajnik (Austria) explained the organization of work, emphasizing that much of the time would be spent in the HFC Management Contact Group, co-chaired by Patrick McInerney (Australia) and Xia Yingxian (China).

DUBAI PATHWAY ON HYDROFLUOROCARBONS (DECISION XXVII/1)

HFC Management Contact Group Co-Chair McInerney reported on informal discussions that had taken place in Kigali in the two days prior to the re-commencement of OWEG 38. He highlighted progress on baselines and discussion on: which HFCs a potential amendment would cover; financing; entry into force dates; and GWP values.

KUWAIT shared progress made by Article 5 parties, informing these countries have reached agreement on two sets of baselines that could apply to them, but additional time is needed to finalize a freeze date.

The EU summarized progress by non-Article 5 parties, highlighting agreement on: the amendment's entry into force "no later than 2019"; an increase in the hydrochlorofluorocarbon (HCFC) baseline component from 25% to 50%; a list of 19 HFCs; convergence on GWP values; and progress on financing and licensing. He said further discussion is needed on hydrofluoroolefins' (HFOs) inclusion in the amendment and adding additional HFCs at a later date.

SENEGAL stressed his country's flexibility and, supported by BURKINA FASO, requested time to discuss freeze dates, financing and baselines among the African Group.

SAUDI ARABIA said GWP should not be the only criterion applied, explaining that the quantity of gases used also has implications.

The EU, supported by the AUSTRALIA, BRAZIL, BURKINA FASO, CAMEROON, CANADA, EGYPT, the RUSSIAN FEDERATION, the US, RWANDA, SENEGAL, and Saudi Arabia for the GULF COOPERATION COUNCIL (GCC), and opposed by PAKISTAN, proposed establishing a legal drafting group. Many requested this group be established as early as possible to ensure amendment text is ready for review by Friday, 14 October.

AUSTRALIA noted the legal drafting group is a way to progress in negotiations, stating that the proposed group's relationship with the Contact Group would be iterative, so that legal language accurately reflects the decision of the Contact Group.

INDIA cautioned against private sector lobbying, suggesting monitoring this to avoid exerting undue pressure on parties. He urged for considering all concerns, stating that the "uniqueness" of each country must also be borne in mind.

McInerney reiterated the need to uphold the Protocol's success as a consensus-based treaty and underscored repeated calls for an agreement that is feasible and takes into account the needs of all parties.

PAKISTAN underscored that discussions should follow the order of precedence agreed to in the Dubai pathway, suggesting that solutions have not yet been generated for some issues. He proposed establishing a working group to set clear criteria for new alternatives, including funding needs.

EGYPT stressed key issues, such as linkages with agreements under the UN Framework Convention on Climate Change (UNFCCC), and the economic impact of an amendment on Article 5 parties, must be addressed prior to agreement on an amendment. The RUSSIAN FEDERATION also cautioned against rushing towards agreement, emphasizing that ensuring a good outcome document is more important.

The US, noting some core issues are yet to be resolved, called for making as much progress as possible during MOP 28 toward an amendment that is ambitious, practicable and can be universally accepted.

JORDAN proposed creating three working groups: one to draft a document on implementation of the Dubai pathway; another to discuss amendment proposals; and a legal drafting group. COLOMBIA supported a working group to capture preliminary agreements, such as on the date of entry into force.

SOUTH AFRICA said the African Group is flexible and is looking forward to agreeing an HFC amendment on African soil.

BRAZIL expressed optimism that an amendment could be agreed in Kigali. He said Brazil wishes to maintain the Montreal Protocol's modalities as much as possible, while recognizing that creative, non-standard solutions may be necessary to address some challenges.

KUWAIT stressed that cooling and addressing other high ambient temperature (HAT) concerns are not a luxury but a necessity for his region.

CAMEROON requested clarification on agreements among non-Article 5 parties.

NIGERIA stressed Article 5 parties' proposed freeze date is not yet finalized and urged delegates to consider early freeze dates and baselines to achieve more beneficial climate outcomes. CANADA requested clarity on Article 5 parties' two proposed baselines and how they are to be operationalized.

Reporting back on Article 5 and non-Article 5 party informal consultations, which took place in the early afternoon, KUWAIT, stressing the proposal was not final, outlined the Article 5 parties' proposition to have two sets of baselines: one for 2020, 2021, and 2022; and one for 2024, 2025 and 2026. The proposal, he explained, would be conditional on a 70% reduction of HFCs by 2027 for non-Article 5 parties and there being no HCFC component in their baseline. He stated the Article 5 parties' discussions on freeze dates are in their final stages and some issues with regard to the list of substances remain to be resolved.

The EU noted non-Article 5 parties are considering how to address the three HFC gases with GWPs less than 100, in particular HFC-161, as well as the possibility of voluntary reporting on HFC gases that are in the process of development. He stressed that HFCs should be licensed and reported on in the same way as ozone depleting substances (ODS); proposed a small membership for the legal drafting group; and noted ongoing informal discussions between non-Article 5 parties, Pakistan and a small number of other Article 5 parties. In response to Kuwait's report back, the EU noted that "any option is on the table,"

including the possibility of having two baselines for Article 5 parties, and said the question of how parties would fall in one group or the other would need to be considered. He indicated the proposal for non-Article 5 parties to phase down 70% of HFCs by 2027, instead of 2030, would be more challenging.

KUWAIT, echoed by Saudi Arabia for the GCC, highlighted the flexibility presented by both groups of parties and urged delegates to reach agreement in the next five days. SAUDI ARABIA expressed strong reservations about dividing countries into different baseline groups on the basis of fixed criteria.

Observing the non-Article 5 countries have proposed transparent baselines, and freeze and phase-down levels, SWITZERLAND requested similar information from the Article 5 party discussions.

Contact Group Co-Chair Xia proposed establishing the legal drafting group under the Contact Group, to which delegates agreed.

After another round of consultations in the evening, Co-Chair Xia invited Article 5 and non-Article 5 parties to report.

The EU, for non-Article 5 parties, noted the Article 5 parties' proposal still lacks key details, such as phasedown schedules, freeze dates and the HCFC component in the baselines. He said non-Article 5 parties also sought several clarifications, such as which Article 5 countries would be covered under each baseline, why a 0% HCFC level in the non-Article 5 baseline is necessary, and the rationale behind linking Article 5 action to a 70% non-Article 5 phasedown of HFC consumption by 2027. KUWAIT, for Article 5 parties, said his group needed more time to consider other issues, and they awaited a formal response from non-Article 5 parties on their proposal.

Xia thanked both for their reports and closed the contact group.

CLOSING SESSION

OEWG 38 Co-Chair Smith opened the plenary by asking the HFC Management Contact Group to report. Contact Group Co-Chair McInerney noted "significant progress, putting us on a good footing" for discussions during MOP 28. He cited the decision to create a legal drafting group as a concrete achievement.

Noting the earlier decision not to adopt a meeting report but rather to entrust it to the Secretariat, Smith closed the meeting at 8:04 pm.

IN THE CORRIDORS

The resumed OEWG 38 session followed on the heels of two days of "fruitful" informal discussions regarding a possible HFC amendment, with many lauding parties' "creativity and flexibility" in attempting to find common ground. It was evident, however, that for an amendment to be agreed on by the conclusion of MOP 28, significant clarity on a number of unresolved issues is still needed. Lamenting the shortness of time, many delegates were heard expressing concern at the lack of urgency among some and the continued "negotiating games" that others might be playing. More than one delegate predicted long nights ahead if this slow pace continued.

In contrast, another observer, quoting the Rwandan proverb "people helping one another can bring an elephant into the house," noted that there was a willingness among all parties to put in the work needed, but a quicker pace and greater focus on action would be paramount in order to reach "a good" agreement. Another optimistic insider stressed the "enormous" amount of work taking place behind the scenes that he felt would lead to an agreement by the week's end.