



United Nations
Environment
Programme



Distr.
LIMITED

UNEP/OzL.Pro/ExCom/29/56
16 October 1999

ORIGINAL: ENGLISH

EXECUTIVE COMMITTEE OF
THE MULTILATERAL FUND FOR THE
IMPLEMENTATION OF THE MONTREAL PROTOCOL
Twenty-ninth Meeting
Beijing, 24-26 November 1999

**EXPORT TO NON-ARTICLE 5 COUNTRIES:
REPORT ON PROJECT ELIGIBILITY**

Introduction

After considering the Secretariat's paper on Export to Non-Article 5 Countries: Report on Project Eligibility (UNEP/OzL.Pro/ExCom/28/55), at the Twenty-eighth Meeting, the Executive Committee decided to request "the Secretariat to invite the members of the Executive Committee and the implementing agencies to submit comments on document UNEP/OzL.Pro/ExCom/28/55 to the Secretariat, to collate and analyse them and to present them to the Twenty-ninth Meeting of the Executive Committee".

(Decision 28/50)

Accordingly the Secretariat sent an invitation for comments to the members of the Executive Committee and the implementing agencies on 30 July 1999 and received responses from Canada, USA, UNIDO and UNEP. These comments are reproduced below:

Comments Received

Canada

We are in agreement with the interpretation provided by the Multilateral Fund Secretariat in the aforementioned report and as a result would not support the expansion of the scope of the exemption provision proposed by the Government of India in regard to the decision on exports to non-Article 5 countries arrived at during the Fifteenth Meeting of the Executive Committee. This position has been arrived at given the fact that the issue raised in the Indian draft decision pertains not to the actual export to non-Article 5 countries but rather, to the nature of the product being exported.

In regard to the decision taken during the Fifteenth Meeting of the Executive Committee regarding projects wherein exports to non-Article 5 countries in the form of agricultural or fisheries products are exempt from the application of the discounting factor, it is our understanding that the intent of the exemption is that no discount factor will be applied to projects for conversion of cold storage wherein the cold storage equipment is not exported to non-Article 5 countries, but wherein the agricultural and fisheries products stores in them might be exported to non-Article Parties. Thus, according to the intent of the exemption, the conversion of a CFC-refrigerated container on a ship that transports exports of fish or grains to non-Article 5 countries should be eligible for funding because the container is not the product being exported.

As is pointed out in document UNEP/OzL.Pro/ExCom/28/55, paragraph 12, the issue addressed by the exemption decision in the export to non-Article 5 countries and not the origin of the products or the origin of the raw materials from which the products are made. We would therefore, not support an expansion of the scope of the exemption provision as proposed in the Indian draft decision to include "products locally grown or products manufactured with natural raw material of local origin". This said, it might be worth considering an amendment to the existing decision so as to clarify the fact that the exemption applies only to the conversion of storage equipment which is not exported to non-Article 5 countries but which is used to preserve

agricultural or fisheries products for export, thereby clarifying more precisely the scope of the exemption while nevertheless maintaining its original objective.

As for the Sri Lankan project, based on the aforementioned, and in accordance with the decision from the Fifteenth Executive Committee Meeting, we do not feel that assistance provided by the Multilateral Fund for the Sri Lankan project should cover the proportion of the activated carbon produced that is being exported to non-Article 5 countries (72 per cent). Should however, the government of Sri Lanka like to make the case for funding on another basis, we could give the project individual consideration.

USA

The Executive Committee agreed to the decision on export (UNEP/OzL.Pro/ExCom/15/45) as a set of “guidelines to apply to projects that would benefit enterprises that export part of their production to non-Article 5 countries.”

The objective of decision on export (UNEP/OzL.Pro/ExCom/15/45) is to limit the Multilateral Fund subsidy of exports to consumers in non-Article 5 Parties.

The United States strongly supports the objective of decision on export (UNEP/OzL.Pro/ExCom/15/45) as it was originally agreed in 1995. The U.S. feels that consumers in non-Article 5 countries should not be benefiting from subsidized imports as the result of Multilateral Fund conversion projects.

In reply to the Executive Committee request that we provide comments on UNEP/OzL.Pro/ExCom/28/55, the United States completely agrees with two clear points made in that document. First, the Secretariat argues that the activated carbon in the Sri Lankan project proposal that initiated the recent discussion of decision on export (UNEP/OzL.Pro/ExCom/15/45) is definitively classified as an industrial product. Thus, under decision on export (UNEP/OzL.Pro/ExCom/15/45), because more than 70 per cent of the activated carbon is exported to non-Article 5 countries the project is ineligible for Multilateral Fund funding. And consistent with the rationale behind decision on export (UNEP/OzL.Pro/ExCom/15/45), it is our firm belief that the cost of the conversion should be repaid to the firm through increased prices paid by the non-Article 5 country purchasers of the products. Second, the Secretariat’s paper points out that the language under debate for possible change (paragraph 5) in decision on export (UNEP/OzL.Pro/ExCom/15/45) refers to the export of products to non-Article 5 countries, not the origin of those products or the origin of the raw materials from which those products were made.

Changing the focus of decision on export (UNEP/OzL.Pro/ExCom/15/45) from something other than products and the destination of exports of those final products would be inconsistent with the existing Executive Committee agreement. The U.S. believes that the prospect of implementing a guideline that might focus on the origin of component parts of a manufacturing process would be so burdensome for the enterprise and Implementing Agencies to collect the necessary information and for the Secretariat and Executive Committee in reviewing project proposals that it would be completely unworkable. However, the U.S. believes that, in

accordance with decision on export (UNEP/OzL.Pro/ExCom/15/45), it is incumbent on the enterprise requesting Multilateral Fund resources, and on the Implementing Agency and on the country government to identify the portion of an enterprise's final products that are exported to non-Article 5 Parties when preparing a project proposal. This provision has been faithfully carried out for over four years.

Given the original misunderstanding surrounding the inclusion of paragraph 5 in decision on export (UNEP/OzL.Pro/ExCom/15/45) and the fact that paragraph 5 has never been applied in reviewing projects, the U.S. believes that the most effective action the Executive Committee can take is removing paragraph 5. The historical reason for including paragraph 5 in decision on export (UNEP/OzL.Pro/ExCom/15/45) was a misunderstanding regarding exports of fishery products from Burkina Faso. The misunderstanding arose because of concerns about refrigerated shipping containers that carry fishery products. It should be stressed that refrigerated shipping containers that are converted to non-ODS technology are not the product actually exported, so would not be the subject of focus in applying decision on export (UNEP/OzL.Pro/ExCom/15/45). It is the contents of the containers that are exported/imported, not the refrigerated shipping containers. And the fishery products are not converted to non-ODS so would not be the focus of the Decision. To eliminate this misunderstanding and clarify the existing Decision, the U.S. believes paragraph 5 should be removed.

The Executive Committee has met 13 times since agreeing to decision on export (UNEP/OzL.Pro/ExCom/15/45). Hundreds of project proposals have been prepared, reviewed and approved using the existing guidelines in decision on export (UNEP/OzL.Pro/ExCom/15/45). The decision seems to be fairly easily implemented and seems to have been effective in limiting subsidies by the Multilateral Fund of non-ODS technologies being exported to non-Article 5 Parties. Therefore, we continue to support consistent application of this Decision. However, if there is a strong belief that the Decision should be re-opened, we [believe] that the provisions for determining eligibility could be changed. Because the goal of decision on export (UNEP/OzL.Pro/ExCom/15/45) is to have the Fund not subsidize exports to non-Article 5 countries, the eligibility ranges might be changed so that any enterprise exporting a majority of its production to non-Article 5 countries (more than 50 per cent) would not be eligible for Multilateral Fund funding. In addition, the eligibility criteria might be changed so that enterprises exporting between zero per cent and 50 per cent of their production to non-Article 5 countries would have the project eligibility reduced in proportion to the percentage between zero and 50 per cent. These adjustments to the guidelines for eligibility criteria would more accurately reflect the overall intent of not having the Multilateral Fund subsidize exports to non-Article [5] countries. The U.S. feels strongly that people in non-Article 5 countries should not be able to buy cheaper non-ODS products because the Multilateral Fund paid for a conversion to non-ODS technology.

UNEP

Our only comment is that the last section "Analysis of the Indian draft decision" should include an explicit recommendation as to how to proceed with both the Indian proposal and the Sri Lankan case.

UNIDO

We have reviewed the document UNEP/OzL.Pro/ExCom/28/55 and have no comments or elements to bring more light for further analysis of the issue. The information put forward in paragraph 10 of the document has, however, strong merits so that the proposed conclusion in paragraph 11 has a point of validity.

Analysis

The Secretariat is providing the analysis on the basis of only three responses received from two members of the Executive Committee (out of 14) and one from UNIDO. UNEP's response has focused on the process and not on the substance and was excluded from the analysis. The comments received contained the following recommendations.

1. The main objective of the decision taken at the 15th meeting which is not to use the Multilateral Fund resources to subsidize exports to developed countries remains valid. However in order to remove any misunderstanding while preparing future projects, clarification of the decision may be warranted and this can be done through either of the following two ways:
 - (a) Amending the decision on export (included for ease of reference as Annex I to the paper) by adding to the end of paragraph 5 the text, "This exemption applies only to the conversion of storage equipment which is not exported to non-Article 5 countries but which is used to preserve agricultural or fishery products for export",
 - or
 - (b) Removing paragraph 5 from the current decision on export of the Fifteenth Meeting, and thus eliminating any likelihood of misunderstanding.
2. The 15th meeting's decision on export should apply to the Sri Lanka project and therefore the project is not eligible for funding.

Impact of the proposed amendments on the decision on export

3. Since the recommendations in paragraph 1 above intend to amend the decision of the 15th meeting, it is relevant to assess their impact against the status quo which is provided under the current decision. The status quo is that since the adoption of the decision on export at the Fifteenth Meeting in 1993, the decision has been applied to only 12 projects of a total of 2,000 projects approved. The exemption included in the decision has never been requested or applied.
 - (a) Proposal (a) above maintains the status quo but clarifies further the intent of the exemption and thus removes the likelihood of misunderstanding and avoids the

recurrence of cases like the Sri Lanka project. This is an improvement on the status quo.

- (b) Proposal (b) above achieves the same result as proposal (a) of removing the likelihood of misunderstanding by removing paragraph 5 from the current decision on export.

By doing so, the proposal has not changed the status quo since the status quo is that the exemption has never been applied since its adoption. However, the issue is whether by removing it one has taken away an exemption which could be applied in the future.

This does not seem to be the case because the exemption intends to cover those CFC consuming refrigerated shipping containers which provide cold storage to fishery and agricultural exports and not the fishery and agricultural exports per se. Therefore removing paragraph 5 from the current decision will not impact adversely on future projects for which the exemption is intended for.

Annex I

Decision on export from the Fifteenth Meeting

“In projects which benefit enterprises that export part of their production to non-Article 5 countries, the following rules shall apply:

1. Where exports to non-Article 5 countries correspond to or are less than 10 per cent of total production, the total incremental costs shall be covered.
2. Where exports to non-Article 5 countries exceed 10 per cent of production but do not exceed 70 per cent, there shall be a reduction equivalent to the percentage of total production represented by such exports less 10 per cent.
3. Where exports to non-Article 5 countries exceed 70 per cent of production, the project shall not be eligible.
4. The average over the three years prior to submission of the project shall be used to determine production and exports to non-Article 5 countries.
5. Projects where the exports to non-Article 5 countries are in the form of agricultural or fisheries products shall be eligible for total incremental costs.”

(UNEP/OzL.Pro/ExCom/15/45 Para. 146)