ANNEX VII

WHETHER THE FUND SHOULD FINANCE ACTIVITIES RELATED TO ENTERPRISES THAT ARE WHOLLY OR PARTLY OWNED BY COUNTRIES THAT ARE NOT PARTIES TO THE MONTREAL PROTOCOL

1. This discussion paper addresses the probable situation of a project being submitted to the Executive Committee for funding that involves an enterprise, operating in an Article 5 country, that is wholly or partly owned by a country that is not a Party to the Montreal Protocol.

2. Most countries that are not currently Parties to the Montreal Protocol are expected to ratify it in the future. Some of the countries that have yet to sign the Protocol have already declared that they will ratify it, in the near term. Others have signed the Protocol but have not yet ratified it while several countries have only recently been recognized as sovereign nations by the United Nations.

3. Almost all of the countries that have not signed the Protocol are classified by the Parties as developing countries. That classification would qualify them for consideration as Article 5 countries. With the notable exception of one country, all of the industrialized countries have signed the Protocol. However, some States, for political reasons, are not now signatories to the Protocol and probably cannot become so in the future.

4. As mentioned above, most, if not all, of those countries that have not signed the Protocol will become Parties eventually since financial assistance through the Fund is available to Parties only. Developing countries which are potential Article 5 countries also have the added incentive to sign because by so doing they become eligible for a grace period which enables them to delay their compliance with the control measures set out in Articles 2A to 2E of the Protocol[12]. That grace period will become effective from 1999 onward. However, if for no other reason, countries will sign The Protocol because of the mandatory trade ban, on controlled substances, between Parties and non-Parties.

5. The Interim Multilateral Fund provides financial assistance for the benefit of those Parties the qualify under paragraph 1 of Article 5[13] not to individuals, interests, nor enterprises from any given country. It may be difficult or impossible to obtain information about the details associated with enterprise ownership in an Article 5 country since such ownership may come under different companies and/or citizens from several different countries, both industrialized and developing. Therefore, an analysis of the precise ownership structure of an enterprise, by nationals and non-nationals, may not be possibe.

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[12] Montreal Protocol on Substances that Deplete the Ozone Layer as adjusted and amended by the Second Meeting of the Parties, London, 27-29 June 1990, Article 5, paragraph 1.

[13] Ibid.

6. If it were to be recommended that there should be no funding for projects on the basis of enterprise participation that had (a) transnational ownership or (b) ownership by non-Parties, then there might not be any projects left in some of the Article 5 countries for the Fund to support, irrespective of the fact that these countries will remain classified as Article 5 countries.

7. The Multilateral Fund should not finance phase-out activities relating to enterprises that are wholly owned by non-Parties.

8. Partial funding can be considered on a case-by-case basis to finance the local share ownership of any given enterprise owned by a non-Party. In such a case, funding can be provided as a percentage of project incremental costs, proportionate to the local share ownership of the enterprise with the non-Party responsible for the rest. Subject to the approval of the Executive Committee, the same criteria should apply to bilateral assistance for activities involving non-Parties.