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**Workshop of experts to develop specific areas
and a conceptual framework of cooperation to address
illegal trade in ozone-depleting substances**
Montreal, 3 April 2005

**Report of workshop of experts from Parties to the Montreal
Protocol to develop specific areas and a conceptual framework of
cooperation to address illegal trade in ozone-depleting substances**

I. Opening of the Workshop

1. The workshop of experts from Parties to the Montreal Protocol to develop specific areas and a conceptual framework of cooperation to address illegal trade in ozone-depleting substances (ODS) was convened on 3 April 2005 at the headquarters of the International Civil Aviation Organization in Montreal, Canada.

2. The workshop was opened by Mr. Paul Horwitz, Deputy Executive Secretary of the Ozone Secretariat. Speaking on behalf of Mr. Marco Gonzalez, Executive Secretary of the Ozone Secretariat, he noted that the workshop was being convened in accordance with decision XVI/33 (annex I to the present report) which called for the Ozone Secretariat to convene:

“a workshop of experts from Parties to the Montreal Protocol to develop specific areas and a conceptual framework of cooperation [to address illegal trade in ozone-depleting substances] in light of both the information already available, and of the reports to be produced by the Secretariat pursuant to paragraphs 4 and 5 [of the present decision].”

3. Decision XVI/33 went on to identify a number of components that the experts from Parties should consider in their efforts to develop further ideas and a framework for cooperation to address illegal trade. Those included ideas submitted by Parties, a note by the Secretariat presented to the Sixteenth Meeting of the Parties on the streamlining and exchange of information on reducing illegal trade, draft terms of reference prepared by the Secretariat on a feasibility study on developing a system of tracking trade in ODS, and a report by the United Nations Environment Programme’s Division of Technology, Industry and Economics (DTIE) presented to the Sixteenth Meeting of the Parties on activities of the regional networks in combating illegal trade.

4. He noted that on the basis of decision XVI/33, it was clear that the goal of the workshop was to develop specific ideas and a conceptual framework for cooperation between Parties and others in combating illegal trade, and to present the findings of the workshop at the Seventeenth Meeting of the Parties.

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5. In closing, he noted that the Parties were specific in calling for the present workshop to be one of experts from the Parties. In order to support the Parties in this endeavour, however, the Secretariat had asked a number of expert observers to be present. He encouraged the Parties present to request further information from any of those outside experts if and when they considered that their contributions could further their work.

II. Organizational Matters

A. Attendance

6. The workshop was attended by experts from the following Parties: Argentina, Austria, Belgium, Czech Republic, France, India, Japan, Jordan, Namibia, Poland, Sudan, Sweden, the Former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and United States of America.

7. The workshop was also attended by experts from the Environmental Investigation Agency (EIA), the secretariat of the Convention on Biological Diversity (CBD), the secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol, the Technology and Economic Assessment Panel (TEAP) of the Montreal Protocol, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the World Bank.

8. A full list of the meeting participants is included as annex IV to the present report.

B. Officers

9. The workshop participants agreed by acclamation that Mr. Paul Krajnik (Austria) would serve as Chair of the workshop.

C. Adoption of the Agenda

10. At the request of the Chair, Mr. Horwitz explained the agenda. Item 2 of the provisional agenda had been designed to enable the experts from Parties to consider the documents that the Sixteenth Meeting of the Parties had requested them to take into account in their deliberations. Regarding agenda item 3, the Secretariat felt that the experts from Parties present at the workshop might be able to gain useful insights from presentations explaining the frameworks that were being used or considered in the context of other multilateral environmental agreements. Accordingly, the Secretariat had taken the liberty of asking other organizations to present information.

11. Following debate, the Parties agreed to adopt the following agenda:

1. Introduction – Purpose of workshop – to develop specific areas and a conceptual framework of cooperation in addressing illegal trade in ozone-depleting substances pursuant to paragraph 6 of decision XVI/33.
2. Presentation of materials identified by the Parties in decision XVI/33 as being relevant to the mandate of the workshop:
 - (a) Presentation on further ideas submitted by Parties pursuant to paragraph 4 of decision XVI/33 or contributed by Parties during the workshop;
 - (b) Presentation on the information included in the note of the Secretariat to the Sixteenth Meeting of the Parties on streamlining the exchange of information on reducing illegal trade;
 - (c) Presentation on the Secretariat's proposed terms of reference for a feasibility study on developing a system of tracking trade in ODS pursuant to paragraph 5 of decision XVI/33;
 - (d) Presentation on the report of the United Nations Environment Programme Division of Technology, Industry and Economics on activities of the regional networks in combating illegal trade.

3. Presentation of submissions from other multilateral environmental agreement secretariats or other relevant bodies that have been invited to share their frameworks for dealing with illegal trade (The secretariat has invited contributions from the secretariats of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Convention on Biological Diversity (CBD), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the International Criminal Police Organization (Interpol), the Environmental Investigations Agency (EIA) and the World Customs Organization (WCO).)
4. Discussion of components of a conceptual framework of cooperation between Parties and other bodies in combating illegal trade in ozone-depleting substances in the light of the presentations above.
5. Closure of the workshop.

D. Organization of work

12. The workshop participants agreed to meet from 10.00 a.m. to 1.00 p.m. and from 2.00 p.m. to 5.00 p.m., and to work in an informal manner, taking breaks when appropriate. They also agreed to begin with agenda item 2(a).

III. Presentation of materials identified by the Parties in decision XVI/33 as being relevant to the mandate of the workshop (agenda item 2)

A. Presentation on further ideas submitted by Parties pursuant to paragraph 4 of decision XVI/33 or contributed by Parties during the workshop (agenda item 2 (a))

13. The Chairman asked the Ozone Secretariat to introduce the item and review those ideas that had been submitted by Parties pursuant to decision XVI/33. The representative of the Secretariat noted that in response to the Secretariat's letter of February 2005 and postings on the UNEP web site, the Secretariat had received 7 submissions, which contained 8 specific ideas as follows:

- (a) There is a need to develop a tracking system of ODS to monitor goods in transit;
- (b) Customs training and provision of tools for analysis of ozone-depleting substances should be intensified, and cooperation between importing and exporting Parties increased to address the problem of mislabelling of ODS;
- (c) Parties should consider the creation of a strategic approach to international chemicals management by forging cooperation among environmental agreements and provision of assistance to developing countries and countries with economies in transition;
- (d) Serious consideration should be given to the availability, affordability and efficiency of ODS substitutes to prevent short supply and price increases that might indirectly cause illegal trade;
- (e) Parties should consider the need for and practical implementation of a prior informed consent procedure for ODS imports similar to the one used in the Basel Convention;
- (f) All cases of illegal imports and smuggling of ozone-depleting substances should be reported to the Ozone Secretariat and dealt with by the Implementation Committee and the Meeting of the Parties;
- (g) There should be a requirement for cross-checking licenses for ODS between exporting and importing authorities through the exchange of copies of actual amounts of ODS exported and imported, a procedure which might reduce illegal trade;
- (h) Tracking illegal trade in ODS might be done through the inspection of producing plants and distributors by collecting data on purchased ODS and addresses of traders. Inspection authorities of exporting and importing states should track actual producers or importers and monitor the sale of ODS through data collection.

14. Following the Secretariat's explanation of the submissions of Parties, it was agreed that the participants would first proceed to list all of the ideas of the Parties, categorize those ideas, and then discuss them one by one in the context of their categories to determine if they should be retained in a list of specific areas that could form the basis of a conceptual framework of cooperation to address illegal trade in ODS.

B. Presentation on the information included in the note of the Secretariat to the Sixteenth Meeting of the Parties on streamlining the exchange of information on reducing illegal trade

15. The Chairman asked the Secretariat to introduce the item and review the contents of the note that the Secretariat had submitted to the Sixteenth Meeting of the Parties on streamlining the exchange of information on reducing illegal trade in ozone-depleting substances.

16. The representative of the Secretariat explained that the document presented to the Sixteenth Meeting was the result of decision XIV/7, which had requested the Secretariat to initiate exchanges with countries to explore options for reducing illegal trade. In response to a May 2004 note from the Secretariat to the Parties on this subject, the Secretariat had received responses from 9 Parties. A summary of those responses, which were included in document UNEP/OzL.Pro.16/8, is as follows:

(a) Coordination by Parties at the national and international levels to prevent illegal trade is very important. Comprehensive measures should therefore be established in this regard, including:

- (i) Implementing efficient legal systems to control and monitor imports and exports of ozone-depleting substances;
- (ii) Bringing enforcement actions in specific cases of illegal import of ODS;
- (iii) Specifying harmonized system codes for all ODS;
- (iv) Enhancing participation of customs authorities by:
 - a. Training all customs officers and evaluating their training. Training should focus on measures to identify and prevent illegal trade in ODS ;
 - b. Enhancing import/export monitoring of ODS;
 - c. Providing monitoring tools;
 - d. Developing information systems to link data between permission authorities and customs departments;

(b) Coordinating within regional networks to exchange information on licit and illicit trade. Consideration may be given to setting up databases on illegal trade in the regional networks. The databases could store information on importing, exporting and transit countries and the conditions for issuing licenses, which contribute to the enforcement of preventive measures and countermeasures against illegal trade;

(c) Collaboration among national ozone units (NOU) of Parties all over the world should be enhanced to enable importing countries to obtain information from exporting countries. This would help to prevent illegal trade in ozone-depleting substances and equipment containing them;

(d) Dissemination by Parties of new methods regarding illegal trade should be promoted. New methods of illegal trade detected by one country should be disseminated among the Parties so that they can take precautionary actions. Dissemination of information should aim at intensifying joint efforts to improve means of identification of ODS and prevention of their illegal trade;

(e) Education is key to curbing illegal trade. Emphasis should be on training and capacity-building for the officials responsible for phasing out ozone-depleting substances;

(f) The Parties may consider carrying out a study of cases of illegal trade and efforts made in connection with other international regimes dealing with the management of controlled chemicals and consider the lessons learned under those regimes;

(g) Networks should be created among customs officers of neighbouring countries to achieve the easy exchange of information on illegal trade.

17. The workshop participants agreed to consider whether any of the above noted items should serve as components for a framework of cooperation on addressing illegal trade.

C. Presentation on the Secretariat's proposed terms of reference for a feasibility study on developing a system of tracking trade in ODS pursuant to paragraph 5 of decision XVI/33 (agenda item 2(c))

Introducing the item, the representative of the Secretariat recalled that decision XVI/33 called on the Secretariat to develop draft terms of reference for a feasibility study on the development of a system for tracking trade in ODS, and for the current workshop participants to take those terms of reference into account in their deliberations. He then proceeded to describe the provisions of the terms of reference and their underlying purpose, which was to describe clearly the routes of ODS movement, investigate the feasibility of obtaining information that would be essential to the tracking of the movement of ODS, review the efforts of other multilateral environmental agreement to develop tracking systems and consider whether they could serve as a model for the Montreal Protocol, and assess the possible cost of implementing an ODS tracking system in an effort to suppress illegal trade in ODS. Mr. Horwitz noted that the Secretariat had posted the draft terms of reference (annex II to the present report) on its web site for consideration by the Parties at the twenty-fifth meeting of the Open-ended Working Group and the Seventeenth Meeting of the Parties. He also noted that the comments of the workshop participants would in no way preempt further comments by those bodies, and that the workshop participants were welcome to present any comments that they might have on the draft terms of reference. Several participants thanked the Secretariat for the work done on the draft terms of reference, and made suggestions for their improvement. It was agreed that those suggestions, which are set out in annex III to the present report, should be passed on to the Open-ended Working Group.

D. Presentation on the report of the United Nations Environment Programme Division of Technology, Industry and Economics on activities of the regional networks in combating illegal trade (agenda item 2(d))

The representative of UNEP DTIE provided a brief overview of the document on activities of the regional networks in combating illegal trade that had been submitted through the Executive Committee of the Multilateral Fund to the Sixteenth Meeting of the Parties pursuant to decision XIV/7. He noted that the nine regional networks, funded through the Multilateral Fund, provided a platform for ozone officers from Parties operating under Article 5 to exchange experiences, develop their skills for implementing and managing ODS phase out, and tap the expertise of their peers in both developed and developing countries. The activities of the regional networks that assisted in combating illegal trade in ODS could be divided into 3 interrelated categories.

20. First, facilitating implementation of national and regional customs training should be considered a most important way to prevent illegal trade, as customs officers and other enforcement bodies played an essential role in the effective monitoring and control of import/export licensing mechanisms, the collection of data and the enforcement of regulations which helped prevent illegal trade. UNEP training for customs officers followed the train-the-trainer approach, which aimed at ensuring the sustainability of the training through the development of national trainers who would in turn train other customs officers and stakeholders in national training workshops. Initial customs training of trainers had taken place in over 50 Parties, and in 31 Parties, both trainers and downstream users had been trained. The UNEP training programme was constantly improving as a consequence of discussions in network meetings and the related exchange of information and experience that took place during those meetings. Further, customs training had spurred more routine communication between national stakeholders, thereby creating a platform for networking, twinning and awareness raising. More recently, integrated customs training with other related multilateral environmental agreement had been proposed by UNEP, and a green customs web site had been launched.

21. Second, networking and twinning created formal and informal links that improved collection and exchange of information between relevant countries and created the possibility of joint action against illegal traders. While networking involved a large number of countries, twinning initiated closer relationships between a more limited number of countries that had common problems to solve. One unique project which demonstrated that effort involved the ongoing bilateral work of Sweden in both South Asia and South-east Asia and the Pacific region. The project used the framework of the regional networks to develop practical cooperation between customs and ODS officers in the region, thereby developing the necessary framework for continuous regional and national cooperation on monitoring and control of ODS trade. The work enabled the gathering and dissemination of information for the development of risk profiles and development of targeted enforcement tools.

22. Such networking and twinning activities such as joint workshops for customs and ozone officers, collection and analysis of quantitative data on trade in ODS in countries within a region, and initiating and facilitating small group country consultations, had had the effect of enabling more routine contact and greater exchange of information between countries, initiating formal agreements between customs and national ozone units, raising awareness, enabling implementation of new enforcement tools, creating issue-specific task forces, confirming routes of illegal ODS traffic and increasing seizures of illegally traded ODS.

23. The final pillar of the process was raising the awareness of the general public and targeted groups (customs, industry, trade, NGOs) on the problem of illegal trade in ODS. Such awareness was very important for achieving success. While the preceding activities had awareness raising components, UNEP participated in many more targeted awareness-raising activities such as: helping countries where customs training was taking place to publicize the events in the media so the general public would learn of the problems and the efforts to solve them; actively disseminating information on proven cases of illegal trade; producing information sheets facilitating recognition of illegal shipments, collecting and disseminating to countries in the region information sheets on legal exporters and importers and legislation that existed in different countries, drafting concise leaflets containing useful information facilitating identification of ODS shipments by customs and other relevant stakeholders; developing an on-line image bank of photos related to illegal trade as a handy reference for customs officers to help them recognize illegal shipments, and explaining the issue of illegal trade in ODS to regional trade and political organizations so that they could then include them in their work programmes.

24. The group thanked UNEP DTIE for its presentation and its contributions to efforts to suppress illegal trade in ODS.

IV. Presentation of submissions from other multilateral environmental agreement secretariats or other relevant bodies that have been invited to share their frameworks for dealing with illegal trade

Presentations under the item were made by the representatives of EIA and CBD.

26. The representative of EIA explained that his organization was an NGO that was committed to exposing environmental crime and that it had been working in the ozone area since the mid-1990s. Many multilateral environmental agreement dealing with chemicals, including the Basel, Stockholm and Rotterdam conventions, were facing similar problems, and that by dealing with them independently, the Parties to those Conventions were placing increased demands on global customs agencies and missing opportunities for synergy and coordination that could benefit all. He noted that most customs agencies faced similar problems when it came to illegal trade in chemicals, which included the lack of specialized knowledge, the difficult task of dealing with chemicals in transit, and the need to deal with financial issues surrounding confiscation of illegally transported chemicals.

27. He noted that in the mid-1990s, as much as 20 per cent of all trade in ODS was illegal, and that while the Parties to the Montreal Protocol had acted to address the problem by putting in place a requirement that Parties establishing licensing systems with the features set out in decision IX/8, such systems were not being implemented to the extent envisioned in that decision. Specifically, he noted that most, if not all, countries did not require checks prior to export to see if a given export was licensed for import by the importing country. Instead, exporters generally only checked to see if the country they were exporting to was a Party. The result was manifest when one looked at the data that was publicly available on exports and imports, as it showed significant discrepancies that could have been addressed had there been pre-notification of exports. While some exporting firms were reluctant to agree to pre-disclosure, due to concerns with commercial confidentiality, the problem created by the non-disclosure of the information was significant.

28. He also noted that the work of UNEP DTIE, with the support of the Multilateral Fund, was helping to address the problems of illegal trade. For example, some of the networks provided related national ozone units with lists of licensed importers and exporters in their region. This was helpful, but there was a clear need to keep all lists up to date. In that regard, he pointed to the fact that the list of national focal points on the Ozone Secretariat web site was not up to date, which could cause both confusion and the lack of needed coordination. He also suggested there was a need to keep up to date a list of legal CFC production plants, as at least 7 cases of illegal and unregistered plants had been reported to date. Another key issue was the role of transit countries that, through lack of due diligence, facilitated ODS smuggling.

29. While there were many problems, the scale of the problem was nevertheless manageable. The Asia and Pacific region accounted for 80 per cent of illegal trade, and there were only 150 or so legal importers and 19 legal CFC production plants. Given that, the problem could be addressed through the implementation of an integrated tracking system. Such a system did not have to be difficult to implement. Many useful systems, like those under the Convention on Temporary Admission (Istanbul Convention) or the International Coffee Agreement were simple paper-based systems that did not require computer technology. The Kimberly Process for conflict diamonds and the European Union Action Plan for Forest Law Enforcement, Governance and Trade were also useful models to consider.

30. In terms of needed actions, he stressed the importance of customs training, noting that following training, seizures had been made. Enhanced information sharing was also urgent – particularly an increased need for enhanced communications between national customs agencies and national ozone units. He also noted that the inclusion of an enforcement function in multilateral environmental agreement secretariats, an idea the Montreal Protocol Parties had rejected, had been of assistance to other multilateral environmental agreements, such as CITES. Finally, he noted that linkages with international bodies could be made and simple measures taken to increase cooperation with WCO regional intelligence liaison officers. In the end, however, there was a need to ensure that penalties for smuggling were adequate to ensure deterrence.

31. The representative from the CBD secretariat noted that the CBD did not specifically address the issue of illegal trade in biological resources. The question of unauthorized access and misappropriation of genetic resources, however, had led to the current discussions under the Convention process regarding the tracking of compliance with the prior informed consent requirement established under Article 15. That article, in addition to recognizing the sovereignty of States over their natural resources and the authority of national Governments to determine access to genetic resources, provided that access to such resources would be subject to the prior informed consent of the country providing such resources. The CBD Parties were only then considering how to track compliance with the terms upon which access was granted by Parties providing access to genetic resources. Among the mechanisms being considered was the adoption of an international certificate of origin or source, which would act as a passport or permit that would accompany genetic material throughout its life cycle, from the point of collection to the marketing of a product, including during applications for intellectual property rights. The Cartagena Protocol on Biosafety to the Convention explicitly addresses the issue of illegal transboundary movement of living modified organisms (LMOs), and certain tools had been established within the framework of the Protocol to deal with the issue. For example, Parties were required to adopt domestic measures to prevent and penalize illegal transboundary movement of LMOs. Secondly, where there was an incident of illegal transboundary movement, the affected Party could request the exporting country to dispose of the illegal shipment.

32. Finally, a key component of the Parties' efforts at effective implementation of the Protocol is the establishment of a clearinghouse mechanism for cooperation and the exchange of information, including cooperation and information exchange with respect to cases of illegal transboundary movements. Parties are under an obligation to report cases of illegal transboundary movements to the Biosafety Clearing House, which was accessible to all Parties to the Protocol. A further mechanism for information exchange and cooperation regarding illegal transboundary movements was the national reporting system. For example, the interim national reports to be submitted by Parties two years after the entry into force of the Protocol were to contain information on illegal transboundary movements of LMOs.

33. At the request of the Chair, the Ozone Secretariat explained two additional ideas that were contained in its note to the meeting. The first idea related to historic efforts on the part of some Parties to sponsor side events on illegal trade at past meetings of the Open-ended Working Group or Meetings of the Parties. Those events, which had been widely attended, had served as very useful springboards for increased bilateral and regional collaboration among Parties on the issue of illegal trade. The second idea related to a decision that had already been taken by the Parties – decision VII/9, which called on Parties to report the destination and quantities of exports of specific substances and the nature of those substances (newly produced, used or recycled.) While the Secretariat had been able to obtain some valuable information from the more than 20 submissions it normally received each year, the current data format only related to Annex A and B controlled substances. If the information on exports to a given Party could be shared with the importing Party, it might allow the two countries concerned to consider bilateral measures to increase collaboration on notification, and thereby help prevent illegal trade. Those concepts were extensions of past actions that had been taken by the Parties, but they would not be included in the report unless they were endorsed by a Party at the meeting for inclusion among the list of items that the meeting thought worthy of inclusion in the list of ideas that could form the basis for a collaborative framework on illegal trade. The meeting thanked the Secretariat for its presentation, and

agreed that the ideas it had presented would be useful, and should be included on the list of ideas that could form the basis of that collaborative framework.

V. Discussion of components of a conceptual framework of cooperation between Parties and other bodies in combating illegal trade in ozone-depleting substances in the light of the presentations above

34. The Chair suggested that it would be useful to put each of the ideas for components for a conceptual framework into one of three categories that had been usefully suggested by Poland, and then discuss each one individually in the context of its relevant category. The participants agreed with the Chair's proposal and each of the ideas was accordingly listed in one of the following three categories:

- (a) Ideas that involved the strengthening or enhanced execution of already existing provisions;
- (b) Ideas that would involve the introduction of new national or regional measures;
- (c) Ideas that would involve the introduction of new measures under the Protocol.

35. Following the placement of each of the ideas into one of the categories above, the participants agreed to forward to the Open-ended Working Group the following list of ideas and activities that could form the basis of a conceptual framework of cooperation to address illegal trade in ozone-depleting substances. In so doing, some delegates noted that many of the same ideas could be used to address illegal trade in products or equipment containing ozone-depleting substances:

- (a) Ideas that involved the strengthening or enhanced execution of already existing provisions:
 - (i) Efforts should be made to intensify integrated training for relevant authorities, including customs and enforcement officers, members of the judiciary and prosecutors;
 - (ii) Provision of equipment needed to detect the ODS content of containers was important;
 - (iii) The Parties should reinforce the importance of decision XIV/7, which called on Parties to report all cases of illegal trade to the Secretariat for dissemination to the Parties, with an understanding that identifying illegal trade and disseminating such information could help other Parties to better understand the methods used by smugglers, and thereby suppress such illegal trade;
 - (iv) Efforts should be made to intensify regional information sharing on issues relating to illegal trade. This should include greater collaboration among national ozone units in the sharing of information on illegal trade;
 - (v) Parties should share in a more robust manner any information they have on the methods being used by smugglers to undertake illegal trade. One possible avenue for such information sharing is the UNEP green customs web site;
 - (vi) Expansion of customs officer networks within regions is desirable;
 - (vii) Parties should be more robust in their implementation of decision VII/9. To facilitate this, the Parties should request the Secretariat to expand the reporting format established pursuant to the decision to include all ODS, and authorize the Secretariat to share the data received on exports with related countries of import in an effort to enable bilateral discussions on methods to enhance the flow of information on related trade;
 - (viii) The Secretariat should sponsor periodic side events on illegal trade during the sessions of the Open-ended Working Group and Meetings of the Parties to facilitate enhanced cooperation between Parties in this area;
 - (ix) Parties should recall the importance of decision IX/8 on licensing and the usefulness of its full implementation, including the provisions relating, as appropriate, to notification and regular reporting by exporting countries to importing Parties and cross checking of information between exporting and importing Parties;
 - (x) Export licensing of all ODS should be introduced in all producing Parties and all exporting Parties, including non-producing Parties that re-export ODS. Such licensing should go beyond mere export authorization. Some interpret the Montreal Amendment

as making export licensing non-mandatory for all Parties, while others believe it is in fact mandatory for all Parties;

- (xi) Some Parties may wish to help to suppress illegal trade by banning re-export;
- (xii) Licensing system should cover all ODS in all Parties. Such systems should include HCFC, even for Parties that do not currently have HCFC controls, because it can help ensure that CFCs are not illegally imported or exported under the label of HCFCs;
- (xiii) Customs regulations and related legal systems should be reviewed periodically to make them stronger over time as the Protocol moves forward;
- (xiv) It is essential to keep up to date information related to national contacts to enable effective coordination between Parties;
- (b) Ideas that would involve the introduction of new national or regional measures:
 - (i) Parties should consider tracking illegal trade through national inspections of production plants, ODS dealers, ODS distributors and ODS users;
 - (ii) Efforts should be intensified efforts at the national level to develop and implement more efficient national legal systems for controlling and monitoring imports and exports;
 - (iii) Parties should ensure prosecution of persons that have allegedly been involved in illegal traffic in ODS and ODS-containing equipment, and it is important that appropriate penalties are levied on offenders to dissuade recidivism;
 - (iv) The harmonized system of customs codes should be expanded in each country to cover all ODS adopted, including mixtures of ODS. In that regard, the latest WCO recommendations should be implemented by all Parties;
 - (v) Efforts should be made at the national level to enhance cooperation between customs authorities, national ozone units and other enforcement authorities;
 - (vi) National authorities should provide customs and enforcement personnel with more tools, monitoring devices and/or mechanisms for monitoring ODS movement;
 - (vii) Introduction of use controls (limiting the use of a particular ODS in a particular type of equipment) should be considered by relevant authorities on a national level;
 - (viii) Parties with regulations banning the export of CFC-using equipment should enforce those bans more rigorously;
 - (ix) On a voluntary basis, Parties should consider compiling national inventories of ODS stockpiles which companies may have an incentive to dispose of illegally. Such a measure could help prevent illegal trade;
 - (x) Police and other enforcement agencies should be activated on a national level to track ODS;
 - (c) Ideas that would involve introducing new measures into the Protocol:
 - (i) A new system for tracking ODS could be instituted such as that in used in the Basel Convention, which covers the entire chain in the movement of the chemical, including transit control. That system also includes the requirement for a “movement document” to go with each shipment. This standardized document, which is known to all customs inspectors, records all activities related to the shipment;
 - (ii) A prior informed consent (PIC) process could be implemented under the Protocol through the appropriate legal mechanism. In this regard, the participants were informed that in the European Union, the PIC provision of the Rotterdam Convention has been implemented through EU regulation 304/2003, and that this regulation includes two ODS – carbon tetrachloride and methyl chloroform. Other ODS are also being considered for inclusion. Under this system, when an exporter intends to export for the first time in each year, PIC must be issued through the central EU bureau to the importing countries’ designated authority;
 - (iii) Cross-checking of import and exporting licenses could be required.

36. After consideration of the above list, one Party expert noted that the present level of funding provided to Parties operating under Article 5 through refrigerant management plans (RMPs) and other

Multilateral Fund activities might not be sufficient to enable them to address fully the illegal trade issue. Another delegate noted that linkages and cooperation on chemicals-related conventions dictated that it was critical to the goal of combating illegal trade to ensure that proper implementation of goals took place first on a national level, and that after that, regional work, and then harmonization of all mechanisms with other multilateral environmental agreements, would be desirable.

VI. Closure of the workshop

37. The Secretariat thanked the participants for their hard work, noting that the outcome of the meeting would be discussed at the Open-ended Working Group meeting and any decisions would be taken finally at the Meeting of the Parties in December 2005 in Dakar, Senegal. It was agreed that the Secretariat, in cooperation with the Chair, would finalize the report of the workshop, and the meeting was adjourned.

Annexes to the present report

Annex I – decision XVI/33

Annex II – Draft terms of reference by the Secretariat for a feasibility study on developing a system for tracking ODS

Annex III – Comments from workshop participants on the draft terms of reference for a feasibility study on developing a system for tracking ODS

Annex IV – List of participants

Annex I

Decision XVI/33. Illegal trade in ozone-depleting substances

1. To note with appreciation the notes by the Secretariat on information reported by the Parties on illegal trade in ozone-depleting substances¹ and on streamlining the exchange of information on reducing illegal trade in ozone-depleting substances;²
2. Further to note with appreciation the report by the Division of Technology, Industry and Economics of the United Nations Environment Programme on activities of the regional networks with regard to means of combating illegal trade;³
3. To note the need for coordination of efforts by Parties at national and international level to suppress illegal trade in ozone-depleting substances;
4. To request the Ozone Secretariat to gather further ideas from the Parties on further areas of cooperation between Parties and other bodies in combating illegal trade such as development of a system of tracking trade in ozone-depleting substances and improvement of communications between exporting and importing countries in the light of the information provided in the note by the Secretariat on streamlining the exchange of information on reducing illegal trade in ozone-depleting substances and the report by the Division of Technology, Industry and Economics of the United Nations Environment Programme on activities of the regional networks with regard to means of combating illegal trade;
5. Further to request the Ozone Secretariat to produce draft terms of reference for a study on the feasibility of developing a system of tracking trade in ozone-depleting substances and the cost implications of carrying out such a study, taking into account the proposal presented by Sri Lanka;
6. To request in addition the Executive Secretary of the Ozone Secretariat to convene in the first half of 2005, and provided that funds are available, a workshop of experts from Parties to the Montreal Protocol to develop specific areas and a conceptual framework of cooperation in the light both of information already available and of the reports to be produced by the Secretariat pursuant to paragraphs 4 and 5 above and make appropriate proposals to the Meeting of the Parties;
7. To consider the information on the outcome of the workshop to be convened by the Ozone Secretariat at the Seventeenth Meeting of the Parties.

¹ UNEP/OzL.Pro.16/7.
² UNEP/OzL.Pro.16/8.
³ UNEP/OzL.Pro.16/13.

Annex II

Draft terms of reference for a feasibility study on developing a system for tracking the movement of ozone-depleting substances

Background

On many occasions, the Parties to the Montreal Protocol have expressed concern regarding the illegal trade in ozone-depleting substances (ODS) and ODS-containing products. The Parties have discussed various ways that they might address the issue. Some Parties believe that illegal trade could be diminished through a system for tracking the movement of ODS and related products from the point of production and export to the final point of import. Other Parties, however, have expressed doubt regarding the feasibility of developing such a system, as well as the cost of implementing it. As a consequence, the Parties to the Protocol took decision XVI/33, which, among other things, directed the Secretariat “to produce draft terms of reference for a study on the feasibility of developing a system of tracking trade in ODS and the cost implications of carrying out such a study, taking into account the proposal presented by Sri Lanka.”

What follows are draft terms of reference for the study referred to above. In the time between their dispatch to the Parties and the Open-ended Working Group, an effort will be made to obtain an estimate of the cost of such a study. That information will be passed on to the Parties and may be used to enable the Seventeenth Meeting of the Parties to come to some conclusion on next steps.

Draft terms of reference

1. Describe the logistical and regulatory steps necessitated by the movement of bulk quantities of ODS in its journey from the point of production, to export, to final import for use.
2. Describe potential actions that could be used to assist in the tracking of such bulk quantities of ODS as they move through the various steps from production to final import.
3. Examine how tracking mechanisms operate in other international agreements (such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on the International Trade in Endangered Species of Wild Flora and Fauna, the Kimberley Process on Conflict Diamonds, the Convention on the Conservation of Antarctic Marine Living Resources, the European Union Action Plan for Forest Law Enforcement, Governance and Trade (under development)) and how they may or may not be useful models for the development of a system for tracking the movement of ODS in a manner that would assist in the efforts to reduce illegal trade.
4. Describe important components that could usefully be included in an effective tracking system for the monitoring and control of trade in ODS between the country of export and the country of import. For example, these could include information on:
 - (a) Country of export;
 - (i) Carrier;
 - (ii) Port of export;
 - (iii) Customs information on exported ODS;
 - (b) Country of transit or transshipment;
 - (i) Port of transit/transhipment and import/export;
 - (ii) Customs information on ODS in transit or transshipment;
 - (c) Country of final import;
 - (i) Carrier;
 - (ii) Port of import;
 - (iii) Customs information on imported ODS.

5. Describe sources of information and types of information flows that would be needed to enable an ODS tracking system to be successful in reducing illegal trade, and describe the functional governmental or nongovernmental units that would need to be involved in providing and monitoring such information, considering both centralized and decentralized systems. Investigate if there are any legal impediments, through, for example, confidentiality law or international trade law, that would inhibit the assembly of needed information.
6. Communicate with five to seven producing country Governments and producers and international distributors in those countries (representing Parties operating under Article 5 and Parties not operating under Article 5) to get their views on the feasibility and cost of obtaining needed information for implementing a tracking system. Also communicate with the Governments and primary distributors in the two or three countries (representing Parties operating under Article 5 and Parties not operating under Article 5) responsible for the majority of the transit and transshipment of ODS to discuss these same matters.
7. Taking into account the above, describe, in an overview fashion, two or three potentially workable options for tracking systems that would be useful in reducing illegal trade in ODS. Those options should describe the steps and actions that would have to be taken at the producer, distributor, governmental and Secretariat level to facilitate their effective implementation. Finally, estimates of the annual user (Government, exporter/importer, Secretariat) costs and system-wide costs for implementation should be provided for each option.

Annex III

Comments of experts from parties on the draft terms of reference for a feasibility study on developing a system for tracking the movement of ozone-depleting substances

1. One delegate suggested that the terms of reference should provide for investigation of the time required to establish and implement a system for tracking the movement of ODS, as, given the number of years left until the phaseout of Annex A and B substances, it might not make sense to establish such a system at present.
2. One delegate suggested that under item 3 of the terms of reference, an effort should be made to analyze the participation of Montreal Protocol Parties in those multilateral environmental agreements that already had tracking systems, to provide an indication of how hard it would be to implement such a system. In that regard, another delegate suggested that it would be useful to update related tables that had been included in the 2002 study on illegal trade. It was also suggested that the Cartagena Protocol should be added to the list of multilateral environmental agreements in item 3. Finally, one delegate suggested that item 3 include consideration of how national tracking systems operated in the context of the regional networks sponsored by the Multilateral Fund.
3. Several suggestions were made on item 4 of the draft terms of reference. First, it was suggested that item 4a. refer not only to the country of export, but also to the country of origin. Second, it was suggested that item 4c. cover, in addition to the final destination, the receiver and purchaser, and also that re-exporting Party Governments should be included. Finally, it was suggested that under items 4b. and 7, actions that would have to be taken also at the exporter and importer level should be considered.
4. One delegate suggested adding a new sentence in item 5 calling for the review also to consider the implications of the World Trade Organization and Trade Related Aspects of Intellectual Property Rights agreements.
5. One Party noted that the licensing system and reporting requirements currently constituted in effect a rough kind of tracking system, and that a consultant might want to investigate whether, instead of a new tracking system, those existing mechanisms could be adjusted to make them more helpful in addressing illegal trade.
6. Finally, one delegate suggested that any study prepared should take into account the licensing systems that had been prepared in Parties operating under Article 5 with the assistance of the Multilateral Fund, as that could help in the assessment of the feasibility of implementation of a new system in those countries.

Annex IV

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