



**United Nations
Environment
Programme**

Distr.: General
1 November 2004

English only



**Sixteenth Meeting of the Parties
to the Montreal Protocol on
Substances that Deplete the
Ozone Layer**
Prague, 22–26 November 2004
Item 6 (f) of the provisional agenda¹

**Consideration of issues related
to ratification, data reporting, compliance
and international and illegal trade: Feasibility
study on the development of a system for
tracking international trade in ozone-depleting substances**

**Executive summary of the report on the study of international
trade and prevention of illegal trade in ozone-depleting
substances, mixtures and products containing ozone-depleting
substances**

1. During the discussion on a proposal regarding the international transit trade in ozone-depleting substances at the twenty-fourth meeting of the Open-ended Working Group of the Parties to the Montreal Protocol in July 2004, the Secretariat was requested to include in the note accompanying the draft decision a summary of discussions on the issue of illegal trade that had taken place within the expert group that had discussed the draft report in 2002 (see paragraph 166 of the report of the Open-ended Working Group meeting, document UNEP/OzL.Pro.WG.1/24/9).
2. The present information note has been prepared by the Secretariat in response to that request. It contains in the annex the Executive Summary of document UNEP/OzL/Pro/WG.1/22/4 on the study on monitoring of international trade and prevention of illegal trade in ozone-depleting substances, mixtures and products containing ozone-depleting substances that was considered by the Open-ended Working Group at its twenty-second meeting in 2002. The note should be read together with the draft decision on a feasibility study for the development of a system for tracking international trade in ozone-depleting substances submitted by a number of Parties and contained in document UNEP/OzL.Pro.16/3, which contains draft decisions forwarded by the Open-ended Working Group for consideration by the Sixteenth Meeting of the Parties.

¹ UNEP/OzL.Pro.16/1.

Annex

Executive summary of the report on the study of international trade and prevention of illegal trade in ozone-depleting substances, mixtures and products containing ozone-depleting substances

1. Concern over the illegal trade in ozone-depleting substances (ODS), mainly in chlorofluorocarbons (CFCs) and in mixtures and products containing ODS, has been growing since it was first detected in the mid 1990s. The Parties to the Montreal Protocol have discussed the issue and proposed various means of studying and dealing with the problem in a series of decisions of the Parties between 1995 and the most recent Meeting, in 2001.
2. This report was prepared pursuant to decisions XII/10 and XIII/12, entitled "Monitoring of international trade and prevention of illegal trade in ozone-depleting substances, mixtures and products containing ozone-depleting substances", and presents a series of options for discussion.

Illegal trade in ozone-depleting substances

3. Illegal trade in all categories of ODS will clearly remain a concern over the next ten years at least, in particular for CFCs in developing countries and possibly for hydrochlorofluorocarbons (HCFCs) and halons in developed nations. Means of controlling the illegal trade are available but difficult, requiring investment in customs resources, including training and equipment. The availability of intelligence, including monitoring of price movements and trade patterns, is crucial to developing the targeted risk analysis on which to base physical inspection of consignments. Cooperation between enforcement authorities in exporting, trans-shipment and import countries is of great value in combating the illegal trade.

Identification and tracking

4. Various options are available for improving identification and tracking systems for ODS and for mixtures and products containing ODS. In the area of labelling, the following conclusions are reached:
 - (a) For virgin substances, given the wide range of labelling systems already in place and the relative ease with which they can be falsified, together with the existence of other ways of tracking movements of ODS such as customs codes and export and import licences, there is no value in trying to introduce a new, universal labelling system;
 - (b) This conclusion does not apply, however, to used substances, where the volume in trade is much lower and the problem of illegal trade is particularly strong. A consultation exercise involving the industry and Governments could therefore usefully be undertaken to identify more clearly the feasibility, costs and benefits of labelling used ODS;
 - (c) Given the large number of products containing ODS in trade, a universal labelling system would be exceptionally difficult to introduce, although it might be possible to develop such a system for key products such as refrigeration and air-conditioning equipment. A consultation exercise should be undertaken with the industry over the feasibility, costs and benefits of introducing a voluntary common system for identifying the ODS contained in their products.
5. Customs codes provide an alternative and in many ways superior method of identifying substances, mixtures and products in trade. The following measures would assist in combating illegal trade:
 - (a) Listing the most commonly traded hydrochlorofluorocarbons (HCFCs) – and also the most common hydrofluorocarbons (HFCs) – under separate Harmonized System (HS) codes. UNEP should pursue this matter with the World Customs Organization (WCO), but pending the outcome of those discussions, all Parties to the Protocol should be encouraged to develop their own national codes for these ODS;
 - (b) The development of specific customs code sub-headings for ODS mixtures, initially as recommendations for national codes and, potentially, for eventual incorporation into the HS proper. Discussions are already under way on this matter within the Montreal Protocol ad hoc Customs Codes Discussion Group;

(c) A review and possible revision of decision I/12A to specify clearly that no matter which customs code is allotted to an ODS-containing mixture, such a mixture must be considered to be a “substance” subject to the phase-out schedules;

(d) Further consideration of the feasibility of developing customs codes to identify key products containing ODS.

6. The most productive way to control international trade, and reduce illegal trade, lies in the more rigorous application of the existing means of controlling trade: export and import licences. Efforts to ensure that every Party ratifies the Montreal Amendment and introduces licensing systems, together with the provision of appropriate training, should remain a high priority. In addition, the following measures would improve the value of export and import licences in controlling illegal trade:

(a) Most Article 5 countries which do possess licensing systems have not had them in place for very long, and there is relatively little experience with their operation and effectiveness. It would be useful to collect and distribute information on their operation and effectiveness in order to draw lessons for the future;

(b) The more visible the system is to the users – for example, by requiring applications for licenses to be accompanied by declarations certifying the accuracy of the information, signed by the importer or exporter – the more effective it is likely to be. Individual shipment licences; extending licence requirements to products containing ODS; checking whether licences are actually used when issued and, if so, how; the wider use of export licences; a requirement for clearance in advance from the importing country; and cross-checking import and export licences against each other would all enhance the value of licence systems in monitoring the market and detecting possible illegal activity;

(c) The development of a system of transit licences for ODS would be of particular value in bringing a common means of illegal trade under control;

(d) The introduction of a requirement for proof that substances labelled as used have indeed been used and are not virgin could be introduced into import licensing schemes and would assist in controlling a common route for “laundering” virgin ODS into legitimate trade.

Enforcement

7. Effective enforcement is crucial to the prevention of illegal trade. There is growing experience in many countries with good practice in enforcement, and lessons should be learned and best practices disseminated. In particular, at the national level measures should be taken to encourage:

(a) Close collaboration between enforcement agencies – customs services, environment ministries, environment and trade inspectorates, police and judiciary – all supported by appropriate training and awareness raising;

(b) The appointment of special investigative agents, and/or the stationing of environment officials at a country’s main entry points, working together with customs officials;

(c) The provision of real-time data on imports, combined with automatic alerts from customs agents when specified goods cross the border;

(d) The collection and analysis of appropriate intelligence, including close monitoring of trade patterns, such as imports and trans-shipments and requests for import and export licences;

(e) Collaboration with industry in projecting future patterns of demand and supply and customer use profiles, and liaison with and support for non-governmental organizations carrying out investigations into illegal trade;

(f) High-profile publicity for seizures and arrests, helping to raise public awareness and deter smugglers, together with convergence in the penalties for illegal trading so long as these are not reduced to the lowest common denominator.

8. At the international level, existing networks can be developed and built upon through:

(a) Collaboration between national enforcement agencies. In particular, timely exchange of information between customs agencies, for example, pre-arrival notification of shipments of ODS based on export licences and cross-checking export and import licence data, could help to reveal instances of illegal trade;

(b) The conclusion of memorandums of understanding between WCO, Interpol, the Ozone Secretariat and the UNEP Division of Technology, Industry and Economics UNEP/DTIE);

(c) A proposal to the International Network for Environmental Compliance and Enforcement (INECE) to establish a special working group or task force on illegal trade in ODS;

(d) The development of regional collaboration and regional networks and training.

9. The institutions of the Montreal Protocol itself could usefully be restructured to add value to existing efforts to control illegal trade and in particular to provide enforcement assistance to developing countries, which will bear the brunt of illegal activities in the near future. The following functions are required:

(a) The collection of data on illegal trade. Parties should be encouraged, and where necessary assisted, to report all cases of illegal trade detected, including the volumes and types of ODS involved, the means of smuggling, the means of detection where appropriate and the penalties imposed; how the seized materials were disposed of; best estimates of the volume of illegal trade that may be proceeding unchecked; summaries of threat analysis studies showing the likelihood of illegal trade in that country; and the systems in place for detecting and preventing illegal trade. It should be made clear that reported illegal trade should not count towards the reporting Party's consumption;

(b) Analysis of information on illegal trade to enable a database of common origins, routes, destinations and methods of illegal trade to be compiled and analysis of the data on production and consumption of ODS already collected, including following up any discrepancies;

(c) Analysis of projected future demands for and likely trade flows in ODS and, possibly, central coordination of the issuance, use and cross-checking of export and import licences;

(d) Communication of data and examples of best practices through reports to the Meetings of the Parties and through the Secretariat public web site or a restricted "intelligence" part of it, and possible extension of the mandate of the Implementation Committee;

(e) Establishment of regional and international networks of environment and enforcement officials, building on the crucial efforts of UNEP/DTIE;

(f) The provision of enforcement assistance, including expert assistance to UNEP/DTIE in designing and implementing training materials and activities specifically targeted on the control of illegal trade, working with countries experiencing particular problems with illegal trade to help them improve their enforcement activities, helping coordinate those countries' efforts with those of neighbouring countries and encouraging regional networks of enforcement officials, liaising with and drawing on the resources of WCO, Interpol, INECE and other international networks.

10. Although some of these functions can be carried out to a greater or less extent using the existing capacity of the Protocol's institutions, there is a strong argument for introducing an enforcement assistance officer or unit within the Ozone Secretariat to support, coordinate and enhance them. This would replicate the successful experience of the Enforcement Assistance Unit of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The recommendation of the 1999 UNEP workshop on appointing an individual from within the enforcement community should also be borne in mind. The possible use of non-governmental organizations or research institutes to collect data on illegal trade, and of the UNEP World Conservation Monitoring Centre to provide a central collection and analysis point for import and export licences should also be considered.

Dealing with illegal material

11. The disposal of illegal ODS seized by customs or other enforcement bodies poses real problems for the authorities in many countries as all the options available to them have significant drawbacks. There is no easy solution, and indeed no single solution; the optimum course of action will vary depending on the circumstances of the country in question. For many countries, particularly developing countries, the costs of the various options suggest sale at auction as the least worst outcome. In all cases, however, national regulations should clearly state which agency has the responsibility for taking the disposal decision and bearing the cost. The costs involved in storage and destruction should not fall on the enforcement agency which seizes the goods, to avoid creating negative incentives.

Consumption and production controls

12. Discussions concerning the control of illegal trade tend to focus on means of enhancing enforcement, tracking and detecting movements of the illegal products, and taking more effective action against smugglers. All these measures will be necessary so long as ODS are produced and consumed, but it should be remembered that there are additional measures available that could prove as or more cost-effective in reducing illegal activities. These include:

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- (a) Use controls in particular sectors and ODS sales and stockpiling bans, with or without import bans on virgin or both virgin and recycled ODS;
- (b) Economic incentives and disincentives such as sales taxes and import duties to raise the relative price of ODS relative to non-ODS alternatives, but bearing in mind the danger of increasing the incentives for illegal trade by increasing prices;
- (c) Re-adoption of decision I/12H, which included imports and exports of used ODS in the calculation of consumption, in order to reduce the incentives to import used ODS and help shut off a common route for illegal trade;
- (d) A ban on the export of used, recycled and reclaimed substances except for purposes of destruction, which would require an amendment to the Protocol, or encouraging Parties to ban the use and import of used ODS and equipment containing it;
- (e) Encouraging Parties to adopt restrictions on trade in used ODS, including by implementing decision VIII/20, which urged non-Article 5 Parties to establish systems requiring validation and approval of imports of used, recycled or reclaimed ODS, requiring importers to provide proof that the ODS had actually been used, and extending the terms of the decision to cover Article 5 Parties;
- (f) Encouraging Parties to institute a presumption against importing used ODS from countries which produce virgin ODS of the same types, and to introduce restrictions on the types of containers allowed, such as by permitting the entry of ODS in large containers only;
- (g) An accelerated phase-out in the production sector in Article 5 Parties if more resources can be made available through the Multilateral Fund. It would be important, however, to bear in mind the need for the production and consumption phase-outs to proceed in balance and it would be counterproductive for developing country production simply to be replaced by developed country exports or for unscheduled CFC shortages to develop and cause significant hardship.
13. Reductions in production allowances for basic domestic needs in non-Article 5 Parties through an adjustment to the Protocol rather than an amendment or through voluntary commitments on the part of the countries and industries concerned.
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