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**Additional information related to agenda item 4f, Preventing illegal trade in ozone
depleting substances**

**Comments of the United States on the Draft Decision on Preventing Illegal Trade in Ozone Depleting
Substances**

The United States appreciates the opportunity to submit comments on the proposal submitted by the European Community on “preventing illegal trade in ozone-depleting substances,” and its Annex entitled, “draft terms of reference for a feasibility study on developing a system for tracking the movement of ozone-depleting substances between the Parties.” We apologize for the lateness of our comments.

General Comments

The United States heard many Parties express their concerns during the Open-Ended Working Group meeting in June that some of the mechanisms being suggested for addressing illegal imports may create too great a burden for their small, over-worked national ozone offices. They expressed general concerns about any possible language that might impose additional administrative tasks just at a time when they are focusing their program oversight on their very important, existing compliance obligations.

In recognizing that each country already has its own set of laws, regulations and institutions for oversight and control of trade in ozone-depleting substances, the United States would support a MOP Decision that approves terms of reference for a feasibility study; focuses on the importance of implementing relevant provisions of the Protocol but does not go beyond current Protocol requirements; and encourages participation in UNEP’s Green Customs initiative. At this point in the history of the Protocol and each Party’s implementation of controls on trade in controlled substances under the Protocol a new Decision should outline general principals and simply encourage each Party to consider adopting further steps to address illegal trade. We believe language that is less prescriptive will be more acceptable and will have a higher likelihood of being adopted at the 17th Meeting of the Parties.

Comments on the Draft Decision

We have questions about the purpose of the European Community's draft decision and what it intends to achieve. For example, the preamble reference to the Montreal Amendment seems to need to be specific to Article 4B on licensing or it might seem that the focus of the decision is on one substance – methyl bromide – rather than on illegal traffic in all controlled substances.

Regarding operative paragraph 4 of the draft decision, we believe Parties should simply be encouraged to consider adopting the particular “prior informed consent” procedure that is currently described in the decision because of the enormous extra administrative burden this procedure would pose for every national ozone unit. We note that paragraph 4 as formulated, is similar to the Basel Convention model, but is more restrictive than the Rotterdam Convention model, which requires an exchange of information between the importing and exporting country on an annual basis rather than shipment-by-shipment (Basel also allows for annual notification of intent to export and 12-month consent).

Operative paragraph 5 of the draft decision talks about “use controls and/or use bans for selected ODS that are used in particular sectors or applications”. The unstated presumption is that such voluntary bans could diminish illegal trade. Our concern with this paragraph is that voluntary bans, that by definition go beyond the requirements of the Protocol, could conflict with a Party's national or international legal obligations, and may not produce any measurable environmental benefits. We suggest deleting this paragraph.

Comments on the European Community's re-drafted Terms of Reference

Regarding the terms of reference for the study, we have some concerns about whether a tracking system would add any significant value to the existing obligations in the Protocol regarding imports and exports of controlled substances, and whether such a tracking system for legal trade would, in fact, assist in identifying illegal trade. Presumably, full implementation of Article 4, particularly the licensing obligation, would obviate the need for an additional control system, but without full implementation it is, of course, hard to know.

After studying the European Community's reorganization of the sentences and paragraphs in the terms of reference from the expert's workshop we found it difficult to see the added benefit. To us, the workshop's terms of reference were more logically organized and clearer. It also seems that some of the intent of some paragraphs from the workshop's terms of reference changed with the European Community's edits. For example, we believe that it is crucial in the paragraph starting with the phrase, “communicate with five to seven producing countries...” that the phrase remain as originally drafted, “get their views on the feasibility and cost of *obtaining needed information* for implementing a tracking system”. Since each country will bear the burden and cost of providing information needed to implement a tracking system, it is imperative that the study seek views on the feasibility and cost of obtaining such information. We believe that unless all countries can easily and cost-efficiently provide the needed information for a tracking system, it may not be worthwhile for the Parties to consider the theoretical feasibility and cost of a global system. Ultimately, the usefulness of any tracking system depends on the quality and comprehensiveness of information going into the system and Parties will need to understand the burden of providing detailed shipment information to a global tracking system.

We would suggest including in the terms of reference an element on gathering information on the amount of time it took to develop and establish working tracking systems associated with other international agreements. We believe this can be easily incorporated into the new sentence suggested by the European Community in their paragraph 5, so that it would read, “examine the costs and practical difficulties associated with developing and operating tracking systems under the above mentioned” Based on United States' domestic experience with our large ODS database, we believe that it takes many years to design, develop and start running a database as complex as the one envisioned for tracking global ODS trade. Given this long time to design, develop and implement a complex database we doubt whether the prospective costs and efforts associated with a global ODS tracking system are warranted because all

countries will have phased out Annex A and B controlled substances by the time this theoretical tracking system might come on-line.

Finally, should the Parties decide that a tracking system is too burdensome or may not be worth the resource investment if it comes on-line too late in the phase out schedule, we suggest the Parties might want to engage more fully in the UNEP “Green Customs” Initiative. This initiative has been addressing illegal trade in controlled ODS since its inception, and the Parties to the Montreal Protocol could, at a reasonable time in the future, evaluate whether this program meets the needs of the Parties. In fact, this program has already done considerable work in areas such as training of Customs officials in monitoring and detecting illegal trafficking in ODS and other media, ODS import/export licensing systems, and other areas. If this program is successful, it could greatly reduce illegal trade in controlled substances.
