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

1. At the 25th Meeting of the Open Ended Working Group, the Parties considered a proposal by the European Community on preventing illegal trade in ozone depleting substances. The Parties agreed that the proposal should be forwarded for consideration by the Meeting of the Parties, and it could be found in chapter I of document UNEP/OzL.Conv.7/3-UNEP/OzL.Pro.17/3. At the same time, the Parties requested the European Community to provide an explanation of their proposal, and to invite the Parties to submit comments. Two parties, Japan and New Zealand, submitted comments.
2. The document that follows contains the explanation provided by the European Community on their proposal on preventing illegal trade of ozone depleting substances. Also attached are the comments submitted by Japan and New Zealand, as annexes I and II respectively.

Explanatory Note to the Appendix of Decision I in UNEP/OzL.Pro.WG.1/25/9 on “Preventing Illegal Trade in Ozone Depleting Substances” submitted by the European Community at the 25th OEWG in Montreal 27-30 June 2005

The Appendix to Decision I in UNEP/OzL.Pro.WG.1/25/9 contains a “Draft Terms of Reference for a Feasibility Study on Developing a System for Tracking the Movement of Ozone-Depleting Substances Between the Parties” which was proposed by the European Community based on the draft Terms of Reference for such a study prepared by the Ozone Secretariat (included in the Report from the Workshop of Experts – document UNEP/OzL.Pro.WG1/25/3).

The European Community made some amendments at the 25th OEWG to the Terms of Reference proposed by the Ozone Secretariat. These amendments were mostly based on the comments made by participants at the Workshop of Experts held in Montreal on 3 April 2005. The comments were included in the Report from the Workshop. Consideration of these comments has resulted in the following text changes to the Draft Terms of Reference prepared by the Ozone Secretariat, as described in the Appendix to Decision I in UNEP/OzL.Pro.WG.1/25/9:

Paragraph 1 = paragraph 1 of the Draft Terms of Reference prepared by the Ozone Secretariat except for the following: “necessitated” was replaced with “necessary” and the words: “...and suggest an appropriate threshold for bulk quantities” were added at the end of paragraph 1.

Paragraph 2 = first sentence of paragraph 4 of the Draft Terms of Reference prepared by the Ozone Secretariat except for the following: the words “...or re-export” were added after the word “..export”. The rest of paragraph 4 was compressed and included in paragraph 6 of the Draft Terms of Reference proposed by the European Community (see explanatory text to paragraph 6 below).

Paragraph 3 = paragraph 2 of the Draft Terms of Reference prepared by the Ozone Secretariat except for the following: the words “such quantities” were replaced with “bulk quantities” and the words “by Parties” were inserted.

Paragraph 4 is new.

Paragraph 5 = paragraph 3 of the Draft Terms of Reference prepared by the Ozone Secretariat except for the following:

- the Kimberley Process on Conflict Diamonds was removed from the list of international agreements to be looked at because the European Community proposal considered only environmental agreements;
- the European Union Action Plan for Forest Law Enforcement, Governance and Trade (under development) was removed from the list of international agreements to be looked at since the European Community considered it was not an international agreement;
- Cartagena Protocol was added as suggested at the Workshop of Experts; and
- The new text: “Examine costs and practical difficulties associated with tracking systems under the above mentioned international agreements in order to provide an estimate of the practical difficulties and costs with regard to implementation of a tracking system for ozone depleting substances” was added at the end of paragraph 3.

Paragraph 6 = combined:

- The second part of paragraph 4 of the Draft Terms of Reference prepared by the Ozone Secretariat is presented in a compressed form and with the addition of further details to be included in the customs information (among other possible elements of that information);
- Paragraph 5 of the Draft Terms of Reference prepared by the Ozone Secretariat with addition of the following sentence (suggested by the participants of the Workshop of Experts): “Investigate implications of the WTO and Trade Related Aspects of Intellectual Property Rights agreements”.

Paragraph 7 = paragraph 6 of the Draft Terms of Reference prepared by the Ozone Secretariat with the following additions to the first sentence:

- “...as well as with five to seven re-exporting country Governments and international distributors in those countries” (suggested by the participants of the Workshop of Experts);
- “...and their views on whether such a system would impact on legitimate trade”.

Paragraph 8 = paragraph 7 of the Draft Terms of Reference prepared by the Ozone Secretariat except for replacing in the second sentence the words: “...to facilitate their effective implementation “ with “...to facilitate effective implementation of the system”.

ANNEX I

Japan

Japan's comments on monitoring and preventing illegal trade in ozone-depleting substances (decision XVI/33)

The twenty-fifth meeting of the Open-ended Working Group of the Parties to the Montreal Protocol invites all Parties to submit comments on para.169 in its Report (UNEP/OzL.Pro.WG.1/25/9).

The Government of Japan herewith submits its Comments on monitoring and preventing illegal trade in ozone-depleting substances.

- The Government of Japan recognizes the importance and the need to prevent illegal trade to ensure the effective phase-out of ozone-depleting substances.
- We believe that this issue has to be resolved primarily by the efforts of importing countries, including communication between custom officials and trade or environment officials and stringent enforcement of domestic law. Therefore, we are concerned about imposing possible additional burden on exporting countries.
- According to the MOP/16/INF/1, about 60 countries have not yet established an import and export licensing system. Such a situation, the lack of an import and export licensing system, could negatively affect the strict control of ozone-depleting substances and the implementation of legal trade.
- In this situation, the Government of Japan proposes the change of paragraph 4 of the draft decision proposed by EC; (1) to replace 'urge' with 'encourage' , (2) to replace 'to seek' with 'to consider seeking', and (3) to add the phrases "only when both Parties establish an import and export licensing system" at the end of the paragraph. The reasons of our proposal are following;
 1. Exchanging detailed information between importing and exporting countries as urged in paragraph 4 could operate effectively only when both Parties have established an import and export licensing system. Therefore, it is premature to include paragraph 4 to all Parties in this

decision.

2. Montreal Protocol primarily establishes the phase-out schedule of production and consumption of ozone-depleting substances, fundamentally different from such as the Basel Convention or CITES which stipulate export and import procedures in their texts. The Parties should take into account this aspect,, in order to avoid confusion on the implementation of the Montreal Protocol by the introduction of immature and complicated system.
 3. In addition, it would necessitate an amendment to the Montreal Protocol if all the Parties had imposed trade restrictions when exporting countries can not confirm the import licenses of importing countries. This is because the Montreal Protocol does not have such a regulation and only regulates trading with non-Parties. This amendment would lead to a lengthy process of ratification by each Party, which would delay the commencement of the implementation of this system.
- The Government of Japan proposes that this decision include promoting capacity-building for custom officials that were effective in the reduction of illegal trade as reported at the 25th OEWG. In addition, Japan also proposes that it includes promoting strict control of production and export of ozone-depleting substances in the illegally exporting countries, which could be identified and limited by the MOP/15/INF/6 and MOP/16/7, and the earliest possible establishment of import and export licensing system for all Parties.

ANNEX II

Montreal Protocol on Substances that Deplete the Ozone Layer

draft Decision XVII/_ :

Preventing illegal trade in ozone depleting substances

Submission from: NEW ZEALAND

Introduction

New Zealand supports a feasibility study on developing a system for tracking the movement of ozone depleting substances (ODS) between the Parties and supports the current draft terms of reference (subject to the comment below).

Combating illegal trade in ODS has many linkages with other issues of effective implementation of the Protocol such as licensing systems, domestic legal and customs capability, education, monitoring and enforcement, and communication and cooperation. The drivers for illegal trade should also be considered. These issues could be addressed by enhanced domestic implementation of the current Protocol requirements, including reporting and monitoring.

General Comments on the draft Decision

New Zealand thanks the European Community for its efforts in formulating this draft Decision for the attention of the Parties.

New Zealand is supportive of the overall concept of mandating the Secretariat to proceed with the proposed study, however, we are concerned that the draft decision goes further than is required at this stage and appears to pre-empt the study and urges Parties to implement some form of tracking system for ODS before the proposed study has confirmed feasibility, effectiveness, cost, and the most appropriate methods and actions. We submit that the Decision be limited to the role of mandating the feasibility study.

Specific Comments on the draft Decision

PREAMBLE

No comment.

PARAGRAPH 1

No comment.

PARAGRAPHS 2-6

We consider these paragraphs are unnecessary at this initial stage of the proposed study process.

If these paragraphs are to be retained by agreement of the Parties, then New Zealand would suggest amendments as follows:

Paragraph 2

This paragraph appears to pre-empt a system for tracking as the meaning of “comprehensive controls” is uncertain. It suggests that something more is required than current licensing

systems for imports and exports of ODS, but exactly what these measures might be is not clarified. We suggest the paragraph could be removed. A sound rationale for further controls needs to be established by the study first. We submit that greater benefit in eliminating illegal trade in ODS will ensue from a co-ordinated approach in response to the findings of the study. However, as a separate matter outside the scope of this draft Decision, agreement between countries on specific measures in the meantime should not be precluded.

Suggested wording

Replace “call on” with “encourage” or similar.

Replace “implement comprehensive controls” with “consider implementing further controls”.

It would also be helpful to give examples of the type of controls envisaged and agreed to by the Parties.

New Zealand submits that there are inherent and unresolved difficulties with the application of ad hoc controls on “transit” shipments that need to be worked through in more detail before implementation is carried out as part of the response to the findings of the study.

Paragraph 3

We suggest that the last sentence will create more work for the Secretariat. We request the Secretariat to confirm that this information exchange is feasible and to provide details of the process it may use to achieve this objective, taking into account the privacy or confidentiality of the information regarding legal imports and exports.

Paragraph 4

This paragraph appears to pre-empt the study by anticipating some form of prior informed consent system and should be removed until the feasibility or otherwise of any formal tracking system is established by the proposed study. . However, as a separate matter outside the scope of this draft Decision, agreement between countries on specific measures in the meantime should not be precluded.

Suggested wording

Replace “urge” with “encourage” or similar.

Replace “seek” with “consider seeking”.

Paragraph 5

Replace “introduce” with “consider introducing”.

Paragraph 6

No comment

TERMS OF REFERENCE

Suggest that the phrase in Paragraph 1 that reads “...and suggest an appropriate threshold for bulk quantities” is clarified.