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**United Nations  
Environment  
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**Implementation Committee under the  
Non-Compliance Procedure for the  
Montreal Protocol  
Forty-sixth meeting**  
Montreal, 7 and 8 August 2011

**Report of the Implementation Committee under the  
Non-Compliance Procedure for the Montreal Protocol on the work  
of its forty-sixth meeting**

**I. Opening of the meeting**

1. The forty-sixth meeting of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol was held at the headquarters of the International Civil Aviation Organization in Montreal, Canada, on 7 and 8 August 2011.

2. Ms. Elisabeth Munzert (Germany), President of the Implementation Committee, opened the meeting at 10.10 a.m. on 7 August, welcoming the Committee members and representatives of the secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol, the Executive Committee of the Fund and the Fund's implementing agencies.

3. Mr. Marco González, Executive Secretary of the Ozone Secretariat, welcomed the Committee members and the other participants. He reviewed the items on the Committee's agenda, beginning with data reporting. He said that, although the 2010 data were not due until September 2011, 121 parties, including 84 operating under paragraph 1 of Article 5, had already reported their data, and all those operating under paragraph 1 of Article 5 were in compliance with the 2010 ozone-depleting-substance consumption and production phase-out targets. He commended all those parties operating under paragraph 1 of Article 5 of the Protocol who had met their obligations in relation to the complete phase-out of all chlorofluorocarbons (CFCs), halons and carbon tetrachloride, expressing the hope that the experience acquired would stand them in good stead when it came to meeting the control measures entering into force in 2013 and 2015. In that regard, a number of parties operating under paragraph 1 of Article 5 had submitted requests to amend their baseline data for hydrochlorofluorocarbons (HCFCs); the Committee was expected to provide guidance on whether those changes should be accepted if they were consistent with the methodology set forth in decision XV/19.

4. He briefly drew attention to matters on the agenda, such as trade in ozone-depleting substances, non-ratification of the amendments to the Protocol, the status of establishment of licensing systems and the difficulties faced by Iraq as a new party to the Protocol. He noted that the issue of the number of decimal places that should be used in respect of quantities of ozone-depleting substances in assessing parties' compliance with their HCFC obligations would be an area requiring the Committee's guidance, given its

implications for compliance and funding under the Multilateral Fund. In conclusion, he called upon the representatives to promote universal ratification of all the amendments to the Protocol, noting that since the Secretariat began a focused campaign on the issue at the beginning of 2011 the number of parties not having ratified one or more of the amendments had fallen from 30 to 27, with four more parties discussing the ratification of the remaining amendments at the parliamentary level. He warned that non-ratification could have a negative impact, as was seen in the case of Nepal. He wished the representatives successful deliberations.

## **Attendance**

5. Representatives of the following Committee members attended the meeting: Armenia, Egypt, Germany, Jordan, Nicaragua, Sri Lanka, Saint Lucia, Russian Federation, United States of America. The representative of Algeria was unable to attend.

6. Representatives of the European Union and Tajikistan attended the meeting at the Committee's invitation.

7. The meeting was also attended by representatives of the secretariat of the Multilateral Fund, by the Chair of the Executive Committee of the Multilateral Fund and by representatives of the implementing agencies of the Multilateral Fund: the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the World Bank. A representative of the Global Environment Facility also attended.

8. The list of participants is set out in annex II to the present report.

## **II. Adoption of the agenda and organization of work**

9. The Committee adopted the following agenda on the basis of the provisional agenda contained in document UNEP/OzL.Pro/ImpCom/46/1/Rev.1:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Presentation by the Secretariat on data and information under Articles 7 and 9 of the Montreal Protocol and on related issues.
4. Presentation by the secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol on relevant decisions of the Executive Committee of the Fund and on activities carried out by implementing agencies (the United Nations Development Programme, the United Nations Environment Programme, the United Nations Industrial Development Organization and the World Bank) to facilitate compliance by parties.
5. Follow-up on previous decisions of the parties and recommendations of the Implementation Committee on non-compliance-related issues:
  - (a) Existing plans of action to return to compliance:
    - (i) Bangladesh (decisions XVII/27 and XXI/17);
    - (ii) Bolivia (Plurinational State of) (decision XV/29);
    - (iii) Bosnia and Herzegovina (decision XXI/18);
    - (iv) Chile (decision XVII/29);
    - (v) Ecuador (decision XX/16);
    - (vi) Ethiopia (decision XIV/34);
    - (vii) Guatemala (decision XV/34);
    - (viii) Guinea-Bissau (decision XVI/24);
    - (ix) Libyan Arab Jamahiriya (decisions XV/36 and XVII/37);

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- (x) Maldives (decision XV/37);
  - (xi) Namibia (decision XV/38);
  - (xii) Nepal (decision XVI/27);
  - (xiii) Nigeria (decision XIV/30);
  - (xiv) Pakistan (decision XVI/29);
  - (xv) Papua New Guinea (decision XV/40);
  - (xvi) Paraguay (decision XIX/22);
  - (xvii) Saint Vincent and the Grenadines (decision XVI/30);
  - (xviii) Saudi Arabia (decision XXII/15);
  - (xix) Somalia (decisions XX/19 and XXI/23);
  - (xx) Uruguay (decision XVII/39);
  - (xxi) Vanuatu (decision XXII/18).
- (b) Review of information on requests for change of baseline data (decisions XIII/15 and XV/19):
- (i) Cape Verde;
  - (ii) Congo;
  - (iii) Democratic Republic of the Congo;
  - (iv) Guyana;
  - (v) Lao People's Democratic Republic;
  - (vi) Lesotho;
  - (vii) Palau;
  - (viii) Sao Tome and Principe;
  - (ix) Solomon Islands;
  - (x) Tajikistan;
  - (xi) Togo;
  - (xii) Tonga;
  - (xiii) Vanuatu;
  - (xiv) Zimbabwe.
6. Possible non-compliance with the provisions on trade with non-parties (Article 4 of the Montreal Protocol): European Union.
  7. Application to Nepal of Article 4, paragraph 8, of the Protocol with regard to the Copenhagen Amendment to the Montreal Protocol.
  8. Consideration of other non-compliance issues arising out of the data report.
  9. Consideration of the report of the Secretariat on the establishment of licensing systems:
    - (a) Compliance by parties (Article 4B, paragraph 4, of the Montreal Protocol);
    - (b) Compliance with decision XXII/19: Brunei Darussalam, Ethiopia, Lesotho, San Marino and Timor-Leste.
  10. Information on compliance by parties present at the invitation of the Implementation Committee.
  11. Other matters.

12. Adoption of the recommendations and report of the meeting.
  13. Closure of the meeting.
10. The Committee agreed that the situation of Iraq and the use of decimal places in reporting data under Article 7 of the Protocol would be discussed under item 11, "Other matters".

### **III. Presentation by the Secretariat on data and information under Articles 7 and 9 of the Montreal Protocol and on related issues**

11. Introducing the item, the representative of the Secretariat summarized the information set out in the report on information provided by parties in accordance with Article 7 of the Protocol (UNEP/OzL.Pro/ImpCom/46/2).
12. Beginning with parties that were seeking to change their baseline data, he recalled that decision XIII/15 advised such parties to present their requests to the Implementation Committee, and that decision XV/19 gave guidance on the submission and review of such requests. He outlined the requests before the Committee from 15 parties operating under paragraph 1 of Article 5 and 1 party not so operating. With regard to the status of compliance with annual data reporting requirements, he said that for the years 1986–2009 all parties except Yemen had provided all information required. In the case of Yemen, the report was complete except for HCFC data that would result from survey results related to the country's HCFC phase-out management plan. For the year 2010, to date 121 parties had reported, although any cases of non-compliance with annual data-reporting obligations would not be due for consideration until after the reporting deadline of 30 September 2010.
13. Turning to the issue of reporting on exemptions for essential uses of CFCs granted for 2010, those reports being required by January 2011, he said that of the 11 parties concerned only the Syrian Arab Republic had not yet submitted its report. In the case of reporting on exemptions for critical uses of methyl bromide granted for 2010, of the five parties concerned only Israel had not submitted a report, but then neither had it submitted any critical-use nominations in the current year.
14. With regard to the status of compliance with the control measures for 2010, he explained that, at the time that the data report had been prepared, no cases of non-compliance had been identified for 2010. Since then, however, many more parties had reported and a few cases of unexplained deviations had been identified. The Secretariat was following up with the parties involved and would inform the Committee if the issues were not resolved.
15. With regard to the consolidated stockpiling record, he said that, at the time the data report had been prepared, no new cases had been reported. The Secretariat would present an updated report at the Committee's forty-seventh meeting. In the area of process-agent reporting, the Secretariat had been contacting parties that had not yet submitted information pursuant to decisions X/14 or XXI/3. It had received many reports, and would provide information to the Committee at its forty-seventh meeting.
16. Concluding with the issue of production in 2010 of CFCs in parties not operating under paragraph 1 of Article 5 for meeting basic domestic needs of parties so operating (decision XVII/2), he said that little information had been received by the time of the preparation of the data report. An update would be prepared for the Committee at its forty-seventh meeting.
17. The Committee took note of the information provided.

#### **IV. Presentation by the secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol on relevant decisions of the Executive Committee of the Fund and on activities carried out by implementing agencies (the United Nations Development Programme, the United Nations Environment Programme, the United Nations Industrial Development Organization and the World Bank) to facilitate compliance by parties**

18. The representative of the secretariat of the Multilateral Fund presented a report under the item. He began with a review of the decisions taken by the Executive Committee of the Multilateral Fund since its sixty-first meeting, presenting both policy decisions and decisions related to compliance. Policy decisions included decision 63/4, requesting Angola to notify the Executive Committee regarding outstanding amendments to the Montreal Protocol as soon as possible, and Guinea to continue its efforts to ratify the Copenhagen Amendment so as to enable it to gain access to funding for HCFC phase-out; in addition to decision 63/15, according to which parties operating under paragraph 1 of Article 5 with HCFC consumption reported under Article 7 solely in the refrigeration servicing sector and with foam enterprises relying exclusively on imported HCFC-141b pre-blended polyol systems not reported as consumption could, on an exceptional and case-by-case basis, and consistent with decision 61/47, submit a funding request for the conversion of those enterprises during implementation of stage I of the HCFC phase-out management plan.

19. Other decisions related to compliance included decision 63/17, which provided that all submissions from the sixty-eighth meeting of the Executive Committee onwards required confirmation from the Government that an enforceable national system of licensing and quotas for HCFC imports and, where applicable, production and exports was in place and that the system was capable of ensuring the country's compliance with the Montreal Protocol HCFC phase-out schedule for the duration of the agreement; decision 62/11, which provided that non-low-volume-consuming countries with HCFC consumption in the refrigeration servicing sector only could submit stage I HCFC phase-out management plans to meet control measures up to 2020; and decision 64/14, which provided for consideration, on a case-by-case basis, of project proposals from countries with total HCFC consumption that was above 360 metric tonnes and which included funding requests for servicing sector activities instead of the manufacturing sector.

20. He then presented findings from country programme data, explaining that the 1 May deadline for submission of programme data, and the fact that such data were more detailed than reporting under Article 7 of the Montreal Protocol, gave the Executive Committee an advance view of compliance-related developments. Country programme data indicated that most of the 1,057.9 ODP-tonnes of consumption (excluding HCFCs) was for methyl bromide (1,057.7 ODP-tonnes), followed by carbon tetrachloride (0.2 ODP-tonnes). A total of 469,494 metric tonnes (31,419 ODP-tonnes) of HCFC consumption had been reported in country programme data. For the 60 parties reporting 2009 and 2010 data, HCFC consumption had fallen by 1 per cent, and only three parties had reported that their licensing systems were operating less than satisfactorily.

21. He went on to discuss issues related to the number of decimal places used to report consumption in ODP-tonnes. Twenty parties operating under paragraph 1 of Article 5 had an estimated baseline for compliance below 1.0 ODP-tonnes. If only one decimal place were used, the amount of HCFC to be phased out to meet compliance targets, particularly the 2015 target, would be lower for some parties and higher for others. He presented a table showing the estimated baselines and allowable consumption for 2015 and 2020 using one, two and four digits after the decimal place.

22. With regard to requests for revision of baseline data, he reported that the HCFC baselines indicated on the Ozone Secretariat website were provisional until the respective countries confirmed the accuracy of those data within a three-month period after they had been calculated by the Ozone Secretariat. He pointed out that, as the deadline for submission of data under Article 7 was 30 September, the final baselines for all countries might not be available before 1 December. The revision of estimated baselines could have a

significant impact on planned activities and funding levels, and lead to a revision of HCFC phase-out management plans.

23. In closing, he gave an overview of the status of preparation of HCFC phase-out management plans, noting that such preparation had taken longer than expected. Eighty-one plans had been approved to address compliance targets, for a total of approximately \$403.1 million, representing over 80 per cent of the estimated baseline consumption, including \$177.7 million approved for first tranches; 41 countries planned to submit their plans to the Executive Committee for consideration at its sixty-fifth meeting; and 22 countries would be submitting their plans after that meeting. Six of those 22 plans were considered to be at an initial stage of development and an additional five countries had not yet completed the survey of HCFC consumption. Reasons for the delays in the preparation of the plans included: difficulties identifying local institutions and/or recruiting experts; a focus on completing CFC activities; changes of Government or within Governments; difficulties in gathering data; uncertain roles and responsibilities of the implementing agencies in the countries; and difficulties linked to guidelines.

24. In the ensuing discussion, one Committee member requested clarification regarding the different deadlines for Article 7 data and country programme data, the fact that country programme data were more detailed and the consequences for countries if they submitted their country programme data late. The representative of the Multilateral Fund secretariat explained that country programme data were important when reviewing requests for funding, and that the secretariat wished to obtain up-to-date data as early as possible in the year, thence the 1 May deadline, as opposed to the 30 September deadline for Article 7 data. With regard to the consequences for late submission, if the data had not been submitted by the third Executive Committee meeting of the year, no funding could be released until the country provided them.

25. Another Committee member asked about the number of HCFC phase-out management plans being approved in the last two years before the 2013 freeze, saying that it would take time to implement those plans. HCFC consumption would increase in 2011 and 2012, making it difficult for countries to be in compliance by 2013. Another Committee member pointed out that one of the obligations of parties operating under paragraph 1 of Article 5 was to institute licensing systems, for which the Executive Committee had moved quickly to provide funding in 2008, at its fifty-eighth meeting. It was expected that parties operating under paragraph 1 of Article 5 would therefore be able to control HCFC production, exports and imports through their licensing systems to ensure compliance with 2013 freeze and other targets. The representative of the Multilateral Fund secretariat added that the issue of growth in HCFC consumption in 2011 and 2012 was a policy issue on which no decision had yet been taken.

26. The Chair of the Executive Committee said that, at the close of the Committee's sixty-fourth meeting, only one HCFC phase-out management plan had not been approved, and one had been withdrawn. That was testament to the Executive Committee's good track record of considering and deciding on HCFC phase-out management plans swiftly. Furthermore, whenever outstanding policy issues affected the consideration of an HCFC phase-out management plan, that plan was examined on a case-by-case basis to allow for its consideration and approval.

27. One Committee member reiterated his concerns that licensing would not resolve the issue of ensuring compliance with the 2013 freeze in the face of growing HCFC consumption in 2011 and 2012. Countries with serious economic difficulties would have to cease or reduce consumption of those substances in industrial sectors and return to previous years' consumption levels. In his view, it was important for the Implementation Committee to be forward-looking and have an overarching strategy to avoid being overwhelmed with non-compliance issues in 2013 and 2014.

28. The Committee took note of the report.

## **V. Follow-up on previous decisions of the parties and recommendations of the Implementation Committee on non-compliance-related issues**

### **A. Existing plans of action to return to compliance**

#### **1. Status of compliance issues**

29. The representative of the Secretariat introduced the item, giving an overview of the reporting status of the parties listed under agenda item 5 (a). Thirteen parties – Bosnia and Herzegovina, Guatemala,

Guinea-Bissau, Maldives, Namibia, Nepal, Pakistan, Papua New Guinea, Paraguay, Saint Vincent and the Grenadines, Somalia, Uruguay and Vanuatu – had reported data for 2010, allowing assessment of their compliance relevant to past decisions. They had all been found to be in compliance, as shown in table 1.

Table 1

**Parties that had reported data for 2010**

<i>Party</i>	<i>Decision on compliance</i>	<i>Substance</i>	<i>Action plan target for 2010 (ODP-tonnes)</i>	<i>Submitted Article 7 data for 2010</i>
Bosnia and Herzegovina	XXI/18	CFCs	0	0
Guatemala	XV/34	CFCs	0	0
Guinea-Bissau	XVI/24	CFCs	0	0
Maldives	XV/37	CFCs	0	0
Namibia	XV/38	CFCs	0	0
Nepal	XVI/27	CFCs	0*	0
Pakistan	XVI/29	Halons	0	0
Papua New Guinea	XV/40	CFCs	0	0
Paraguay	XIX/22	CFCs	0	0
	XIX/22	Carbon tetrachloride	0	0
Saint Vincent and the Grenadines	XVI/30	CFCs	0	0
Somalia	XX/19	Halons	0	0
	XXI/23	CFCs	0	0
Uruguay	XVII/39	Methyl bromide	6.0	5.9
Vanuatu	XXII/18	CFCs	0	0

\* Nepal also committed itself to releasing no more than zero ODP-tonnes of seized Annex A, group I, controlled substances (CFCs) on to its domestic market in 2010.

30. The representative of the Secretariat said that, as shown in table 2, the remaining eight parties – Bangladesh, Bolivia (Plurinational State of), Chile, Ecuador, Ethiopia, Libyan Arab Jamahiriya, Nigeria and Saudi Arabia – had not yet reported data for 2010, meaning that their compliance status could not yet be assessed.

Table 2

**Parties that had not reported data for 2010**

<i>Party</i>	<i>Decision on compliance</i>	<i>Substance</i>	<i>Action plan target for 2010 (ODP-tonnes)</i>
Bangladesh	XXI/17	CFCs	0
	XVII/27	Methyl chloroform	0.2600
Bolivia (Plurinational State of)	XV/29	CFCs	0
Chile	XVII/29	Methyl chloroform	1.934
Ecuador	XX/16	Methyl bromide	52.8
Ethiopia	XIV/34	CFCs	0
Libyan Arab Jamahiriya	XV/36	CFCs	0
	XVII/37	Methyl bromide	0
Nigeria	XIV/30	CFCs	0
Saudi Arabia	XXII/15	CFCs	0

## 2. Discussion

31. In the ensuing discussion, the representative of the Secretariat clarified that, once the Committee had adopted the recommendations in question, the Secretariat would write to the parties concerned, conveying that recommendation. He also clarified that the date for the submission of data had been selected to give the parties time to provide the information and to permit the Secretariat to collate those data and ensure that its report would be ready for the Committee's forty-seventh meeting.

## 3. Recommendation: parties that had reported data for 2010

The Committee therefore agreed to congratulate the following parties on their reported consumption of ozone-depleting substances for 2010, which showed that they were in compliance with their commitments contained in the decisions applicable to them:

<i>Party</i>	<i>Decision on compliance</i>	<i>Substance</i>	<i>Action plan target for 2010 (ODP-tonnes)</i>	<i>Submitted Article 7 data for 2010</i>
Bosnia and Herzegovina	XXI/18	CFCs	0	0
Guatemala	XV/34	CFCs	0	0
Guinea-Bissau	XVI/24	CFCs	0	0
Maldives	XV/37	CFCs	0	0
Namibia	XV/38	CFCs	0	0
Nepal	XVI/27	CFCs	0*	0
Pakistan	XVI/29	Halons	0	0
Papua New Guinea	XV/40	CFCs	0	0
Paraguay	XIX/22	CFCs	0	0
Saint Vincent and the Grenadines	XVI/30	CFCs	0	0
Somalia	XXI/23	CFCs	0	0
	XX/19	Halons	0	0
Uruguay	XVII/39	Methyl bromide	6.0	5.9
Vanuatu	XXII/18	CFCs	0	0

\* Nepal also committed itself to releasing no more than zero ODP-tonnes of seized Annex A, group I, controlled substances (CFCs) on to its domestic market in 2010.

### Recommendation 46/1

## 4. Recommendation: parties that had not reported data for 2010

The Committee therefore agreed to urge the following parties to submit to the Secretariat their data for 2010 in accordance with paragraph 3 of Article 7 of the Protocol, preferably no later than 15 September 2011, in order that the Committee might assess at its forty-seventh meeting the status of compliance of those parties with their commitments contained in the decisions applicable to them:

<i>Party</i>	<i>Decision on compliance</i>	<i>Substance</i>	<i>Action plan target for 2010 (ODP-tonnes)</i>
Bangladesh	XXI/17	CFCs	0
	XVII/27	Methyl chloroform	0.2600
Bolivia (Plurinational State of)	XV/29	CFCs	0
Chile	XVII/29	Methyl chloroform	1.934
Ecuador	XX/16	Methyl bromide	52.8
Ethiopia	XIV/34	CFCs	0
Libyan Arab Jamahiriya	XV/36	CFCs	0
	XVII/37	Methyl bromide	0
Nigeria	XIV/30	CFCs	0
Saudi Arabia	XXII/15	CFCs	0

### Recommendation 46/2

## B. Review of information on requests for change of baseline data (decisions XIII/15 and XV/19)

### 1. Parties operating under paragraph 1 of Article 5

32. Introducing the item, the representative of the Secretariat said that the Secretariat had received 14 requests from parties operating under paragraph 1 of Article 5 to revise the data that they had reported for HCFCs for 2009, following the completion of surveys conducted in the preparation of their HCFC phase-out management plans. Decision XIX/6 on adjustments to the Montreal Protocol provided that, for parties operating under paragraph 1 of Article 5, the consumption baseline for the accelerated phase-out of HCFCs would be the average of 2009 and 2010 consumption. The HCFC data for 2009 were therefore a part of the baseline data for parties operating under paragraph 1 of Article 5, and subject to decisions XIII/15 and XV/19. In the latter decision, the parties had set out the methodology for the submission and review of the information that should be submitted to the Committee in support of such requests.

33. The Secretariat had grouped the countries operating under paragraph 1 of Article 5 requesting a revision of their baseline data into two groups: parties for which revision resulted in lower HCFC consumption levels than previously, as shown in table 3; and parties for which revision resulted in higher HCFC consumption levels than previously, as shown in table 4.

Table 3

#### Parties for which revision resulted in lower HCFC consumption levels than previously

<i>Party</i>	<i>Substance</i>	<i>Old data</i>		<i>New data</i>	
		<i>MT</i>	<i>ODP-tonnes</i>	<i>MT</i>	<i>ODP-tonnes</i>
Cape Verde	HCFC-22	32.3	1.8	4.5	0.2
Democratic Republic of the Congo	HCFC-22	890.0		1014.984	
	HCFC-141b	245.0	85.7	0	55.8
	HCFC-142b	150.0		0	
Lesotho	HCFC-22	187.0	10.3	68.271	3.8
Sao Tome and Principe	HCFC-22	75.0	4.1	2.52	0.1
Togo	HCFC-22	372.89	20.5	350.0	19.3

34. She said that all the parties that had requested a revision of their baseline to a lower consumption level had provided very brief information: only Lesotho had later provided further information as requested in decision XV/19.

Table 4

**Parties for which revision resulted in higher HCFC consumption levels than previously**

Party	Substance	Old data		New data	
		MT	ODP-tonnes	MT	ODP-tonnes
Congo	HCFC-22	128.5	7.1	176.0	9.7
Guyana	HCFC-22	16.822	0.9	19.271	1.1
Lao People's Democratic Republic	HCFC-22	22.03	1.2	39.09	2.1
Palau	HCFC-22	2.04	0.1	2.56	0.1
Solomon Islands	HCFC-22	28.28	1.6	29.09	1.6
Swaziland	HCFC-22	33.3	9.2	34.1	9.5
	HCFC-141b	66.6		69.62	
Tonga	HCFC-22	0.01	0.0	2.43	0.1
Vanuatu	HCFC-22	1.46	0.1	1.8	0.1
Zimbabwe	HCFC-22	225.0	12.4	316.4	26.7
	HCFC-141b	0		84.97	

35. Although all the requests for baseline revision by countries who were reporting an increase in HCFC consumption stated that the revised figures were based on detailed surveys, the information provided varied by country: Congo, Lao People's Democratic Republic, Solomon Islands, Swaziland and Tonga had not provided additional information in line with the requirements of decision XV/19, while Guyana, Palau, Vanuatu and Zimbabwe had done so.

36. In the ensuing discussion, the Committee first considered the policy issue of grouping countries into two categories depending on whether the requested change in baseline would result in a lower or higher figure. Second, the Committee discussed whether it wished to require the same information from both groups of parties or whether the proposed HCFC baseline revision could be accepted without requesting further information if the revision would result in lower 2009 HCFC consumption levels, or levels that it considered to be insignificant.

37. One member pointed out that decision XV/19 made no distinction between parties in terms of the information requirements for baseline revisions. He and several other members were loath to set a precedent that might create a more complicated and less equitable approach in the future. Many members stressed that it was important to have an objective picture of consumption, and that it was just as useful to know why a baseline might be reduced as why it might be increased. It was also important to document any change in baseline, to keep a historical, verifiable record of such changes. Many members voiced a preference for a harmonized, unified approach.

38. The Committee decided that it would request the same information from all parties requesting a revision of their baseline, regardless of whether the change resulted in lower or higher HCFC consumption for their baseline year. It then went on to examine the submissions themselves with regard to their compliance with the requirements of decision XV/19.

39. The representative of the Multilateral Fund secretariat explained that, while the Multilateral Fund received surveys of HCFC use when considering HCFC phase-out management plans, it could be difficult to know whether the figures related solely to HCFC imports from Customs information, or to actual HCFC use in the country. To be able to deal with any subsequent baseline changes that had funding implications, the Executive Committee used standard wording for its decisions when accepting estimated baseline data.

That decision provided for the Multilateral Fund secretariat to adjust the starting point for funding once the actual data were known, and to apply the adjustment to the second tranche of funding when submitted.

40. In response to a request for clarification about the impact of baseline revisions on amounts stockpiled, imports and the regulation of activities, the representative of the Secretariat gave a hypothetical example. The question was how excess quantities of ozone-depleting substances would be treated for parties whose consumption had increased, but whose baseline revision had not been approved according to decision XV/19. Those parties would apply to the Committee and outline a plan for phased reduction of excess amounts, in addition to a schedule to implement that plan, which was usually accompanied by a ban on future imports of the ozone-depleting substance in question.

**(a) Recommendation for those parties that had not yet submitted information according to the methodology set out in decision XV/19**

41. The Committee therefore agreed:

*Taking note* of the requests of Cape Verde, Congo, Democratic Republic of the Congo, Lao People's Democratic Republic, Sao Tome and Principe, Solomon Islands, Swaziland, Togo, Tonga and Zimbabwe for the revision of their existing consumption data for the baseline year 2009 for the Annex C, group I, controlled substances (hydrochlorofluorocarbons),

*Recalling* decision XV/19, which sets out the methodology to be used to review requests for the revision of baseline data,

(a) To request the above-mentioned parties to submit to the Secretariat information in accordance with decision XV/19 to support their requests as soon as possible, and preferably no later than 15 September 2011, for consideration by the Committee at its forty-seventh meeting;

(b) To request the above-mentioned parties, in submitting information in accordance with decision XV/19, to include information on the methodology used in collecting and verifying the existing baseline data and a copy of any survey report underlying the requests, which the Committee understands will contain the full survey findings supporting the proposed new baseline data;

(c) To invite each of the above-mentioned parties, if necessary, to send a representative to the Committee's forty-seventh meeting to discuss the above matters.

**Recommendation 46/3**

**(b) Recommendation for those parties that had submitted information according to the methodology set out in decision XV/19**

42. The Committee therefore agreed:

*Noting with appreciation* the information submitted by Guyana, Lesotho, Palau and Vanuatu in support of their requests for the revision of their baseline consumption data for the year 2009 for the Annex C, group I, controlled substances (hydrochlorofluorocarbons),

*Noting* that decision XV/19 sets out the methodology to be used to review requests for the revision of baseline data,

*Noting with appreciation* the efforts made by the above-mentioned parties to fulfil the information requirements of decision XV/19, in particular their efforts to verify the accuracy of their proposed new baseline data through national surveys of hydrochlorofluorocarbon use carried out with the assistance of the implementing agencies and funding from the Multilateral Fund for the Implementation of the Montreal Protocol,

To forward for consideration by the Twenty-Third Meeting of the Parties the draft decision contained in section A of annex I to the present report, which would approve the requests of Guyana, Lesotho, Palau and Vanuatu for the revision of their baseline consumption data for the year 2009 for the Annex C, group I, controlled substances (hydrochlorofluorocarbons).

**Recommendation 46/4**

## 2. Parties not operating under paragraph 1 of Article 5: Tajikistan

43. The representative of the Secretariat explained that, in correspondence to the Secretariat dated 29 December 2010 Tajikistan had requested the revision of its baseline data for HCFC consumption for 1989 by increasing its consumption figure for CFCs by 455 metric tonnes, from 189.36 to 644.36 metric tonnes. Through application of the formula for determining the baseline consumption data for parties not operating under paragraph 1 of Article 5 (1989 HCFC consumption + 2.8 per cent of 1989 CFC consumption), that change would increase Tajikistan's baseline consumption of HCFCs from 6.0 ODP-tonnes to 18.7 ODP-tonnes. The party had indicated that its request was based on the outcome of a national survey and the development of a national strategy outline for HCFC phase-out for consumption sectors in the country, prepared with the assistance of UNDP and funding under the Global Environment Facility. A copy of that survey, along with associated documentation, had been submitted to the Secretariat in the same communication.

44. The party had explained that, when the original baseline of the Soviet Union had been allocated to newly independent States under the Copenhagen Amendment in 1992, the 1989 baseline assigned to Tajikistan by the central Soviet authorities had not included a significant amount of CFC consumption that had taken place in Tajikistan's territory. Investigation into historical records, triggered by the preparation of the country's HCFC phase-out management plan, had shown that the original HCFC baseline of 6.0 ODP-tonnes assigned to the country had been based only on 189.36 metric tonnes of CFCs for the manufacturing of domestic refrigerators at one plant and for refrigeration servicing (primarily for the maintenance of process equipment in a number of large non-ferrous metallurgical and chemical enterprises) and 12 metric tonnes of HCFC-22 for equipment servicing.

45. The above notwithstanding, Tajikistan had advised that there had been additional CFC consumption, given that prior to 1991 the country had been a significant producer of CFC-11 and CFC-12 at a chemical plant within its territory. That plant had been reported to have been one of the largest facilities in the Soviet Union, with an annual production capacity of 30,000 metric tonnes of CFC-11 and CFC-12. Most of that production had been exported to other parts of the Soviet Union as what the party had termed a "strategic chemical". In addition, a quantity had been used as feedstock in the production of liquid chlorine, which would not qualify as consumption under the Protocol.

46. The plant, however, had also included a consumer aerosol product facility producing hair spray and deodorant based on CFC-11 and CFC-12 propellant. The facility had ceased production in 1991, a time of political instability following the collapse of the Soviet Union, and had been largely dismantled, with key equipment being shipped to the Russian Federation. Tajikistan had noted that the CFC-11 and CFC-12 production did not appear ever to have been allocated to Tajikistan for purposes of calculating baselines under the Protocol. Similarly, the consumption of CFCs used in the manufacture of consumer aerosols had never been reported and consequently had not been taken into account in the calculation of the party's 1989 baseline. Inclusion of that consumption would raise the party's 1989 HCFC consumption baseline from 6.0 to 18.7 ODP-tonnes.

47. In support of its request Tajikistan had submitted CFC production and consumption figures for aerosol manufacturing for the period 1984–1991, along with relevant documentation provided by the current management of the facility in question.

48. Upon reviewing Tajikistan's request, the Secretariat had requested the party in correspondence dated 31 January 2011 to provide further information in accordance with the provisions of decision XV/19, including in particular information on the methodology used to collect and verify the existing and revised data, along with supporting historical documentation, as required in paragraphs 2(a) (ii) (iv) of the decision.

49. Given the Government's report that the 1989 CFC consumption allocated to Tajikistan by the central authorities in the former Soviet Union in 1992 had been incorrect, the Secretariat had advised the party that the Committee might wish to consider the fact that the Government had submitted its CFC baseline data to the Secretariat in 2001, at a time when it had presumably been in a position to determine its baseline itself. The Secretariat had noted further that Tajikistan's country programme reports, prepared with the assistance of the Global Environment Facility, and related information that had been submitted to the Secretariat since 2001, had included no reference to possible data deficiencies affecting the country's CFC baseline.

50. The Government of Tajikistan had communicated its response to the Secretariat on 7 March 2011, reiterating the reasons for its request to revise its HCFC baseline data and resubmitting some documentation. The Government had clarified that its inability to provide the additional historical CFC consumption data earlier stemmed from the fact that the facility in question had been considered to be a strategic asset under the centralized control of organizations based in what was currently the Russian Federation and that the information on its operation was not generally available because of residual security restrictions. Following the collapse of the Soviet Union and during the period of national political instability, the facility had been shut down and productive portions of it removed for return to the Russian Federation, in the process of which many detailed records had been lost. The country's committee on environmental protection had been able to gain access to such information only recently, motivated by the party's efforts to tackle the accelerated phase-out of HCFCs.

51. In commenting on the methodology used to collect and verify existing and proposed data, the party had explained that it had interviewed national experts involved in the plant's original operation and the current management of the State enterprise that currently controlled the entire facility, and had provided data based on such records as had been retained from the period in question.

52. The available documentation submitted by Tajikistan concerned CFC activity data at the facility for the years 1985–1991 and had been provided in a letter from the facility's management dated 19 March 2010. The party had noted that copies of actual production records and past sales invoices or other transaction documents had not been located and had most probably been removed or destroyed when the facility was dismantled. With regard to information on the country's gross domestic product, Tajikistan had referred to section 3.6 of a national survey that it had submitted, indicating that it provided a comparative analysis of various countries in the region in terms of their 2008 HCFC total and per capita consumption, 1989 baseline, population and gross domestic product. On the basis of that analysis the party had concluded that:

(a) Tajikistan remained the country with the lowest gross domestic product of all countries in the Commonwealth of Independent States;

(b) The country's HCFC consumption per capita was lower than that of parties operating under paragraph 1 of Article 5 that were members of the Commonwealth of Independent States but had shown a similar significant increase following the phase-out of CFCs, reflecting significant economic growth and the use of transitional substances to achieve CFC phase-out through an affordable strategy;

(c) Tajikistan had a disproportionately low 1989 HCFC baseline relative to other parties operating under paragraph 1 of Article 5, its low gross domestic product notwithstanding. For example, its baseline per capita was over three times smaller than that of Uzbekistan, even though the two countries had similar gross domestic products and Tajikistan had been a significant producer and manufacturing sector consumer of CFCs in 1989.

53. Following the presentation, two Committee members confirmed that political instability in the early 1990s following the collapse of the Soviet Union made it entirely plausible that the baseline data collected at the time were not entirely accurate. Furthermore, as the baselines for former Soviet republics had been calculated by the central Soviet authority, using its own figures for production and consumption at the time, it had been very difficult for the former republics to arrive at different figures for the period preceding the collapse of the Soviet Union.

54. The representative of UNDP provided additional information on the process for seeking Global Environment Facility funding for Tajikistan, explaining that the baseline revision being requested from the Committee would not affect such funding. Tajikistan was more concerned about the compliance implications, as its HCFC phase-out management plan would begin only in 2012 and it needed the revision to remain in compliance for the next year or two.

55. One member pointed out that Tajikistan had done its level best to remain in compliance since it had discovered the excess unreported CFCs. According to the information submitted, the requirements had been satisfied and the request for revision of the baseline was justified.

56. The representative of Tajikistan, present at the Committee's invitation, stressed the economic crisis and civil disorder following the collapse of the Soviet Union, and explained that the consumption from the defence facility controlled by the Soviet Union in 1989 had not been taken into account for that reason.

Granting the request for baseline revision would make it possible to avoid serious problems with the timeline established by Tajikistan to fulfil its obligations under decision XIX/6.

57. One member highlighted the specific reference to the facility in question being a defence facility, asking whether there was a single regulatory agency controlling imports under the licensing system in Tajikistan, so as to have an accurate vision of imports regardless of the sector to which they were destined. In response, the representative of Tajikistan reiterated that, at the time of the miscount, the facility had been under the jurisdiction of the Soviet Union, not Tajikistan.

58. The Committee therefore agreed:

*Noting with appreciation* the information submitted by Tajikistan in support of its request for the revision of its baseline consumption data for the year 1989 for the Annex C, group I, controlled substances (hydrochlorofluorocarbons),

*Noting* that decision XV/19 sets out the methodology to be used to review requests for the revision of baseline data,

*Noting with appreciation* the efforts made by Tajikistan to fulfil the information requirements of decision XV/19, in particular its efforts to verify the accuracy of its proposed new baseline data through the national survey of hydrochlorofluorocarbon use in Tajikistan carried out with the assistance of the United Nations Development Programme and funding from the Global Environment Facility,

To forward for consideration by the Twenty-Third Meeting of the Parties the draft decision contained in section B of annex I to the present report, which would approve the request of Tajikistan for the revision of its baseline consumption data for the year 1989 for the Annex C, group I, controlled substances (hydrochlorofluorocarbons) from 6.0 ODP-tonnes to 18.7 ODP-tonnes.

**Recommendation 46/5**

## **VI. Possible non-compliance with the provisions on trade with non-parties (Article 4 of the Montreal Protocol): European Union**

59. Introducing the item, the representative of the Secretariat said that, in its submission of ozone-depleting-substance data for 2009, the European Union had reported the export of 16.616 metric tonnes of HCFC-22 to Kazakhstan, a State that had not yet ratified either the Copenhagen or the Beijing amendment to the Protocol, which imposed control measures for HCFCs. According to paragraph 9 of Article 4 of the Protocol, Kazakhstan was treated as a “State not Party to the Protocol” in that context. In addition, according to paragraph 2 quin of Article 4 of the Protocol, the European Union, a party to the Beijing Amendment since 25 March 2002, was not permitted to export HCFCs to non-parties. The export of HCFCs to Kazakhstan therefore represented a situation of possible non-compliance with the provisions of Article 4 of the Protocol.

60. In correspondence dated 22 November 2010, the Secretariat had requested the party to provide clarification on its 2009 export to Kazakhstan and any associated information that it deemed appropriate to facilitate the Committee’s consideration of the issue.

61. The European Commission, on behalf of the European Union, had responded to the Secretariat in correspondence dated 14 April 2011, noting that the issue of HCFC export to Kazakhstan had turned out to be more complex than initially believed, since it had involved investigations in more than one member State and had been possibly connected to other potential violations of European Union law.

62. The party had explained that the goods in question had been exported in 2009 by a Netherlands company, possibly through a harbour in Belgium. The illegal export had been detected because the company had included it in its regular annual report, which had been cross-checked against issued licences. The exporter had not requested an export authorization for that export. Upon detection of that irregularity by the European Commission, the Netherlands and Belgian authorities had conducted investigations. In addition, the company had carried out internal investigations, cooperated with the investigating authorities and put additional measures in place to prevent such cases in future.

63. The party had advised that it considered the company to be reliable as it had in the past executed numerous trades in compliance with the existing legal framework; it had advised further that it considered the company's explanation to be satisfactory and the case to be one of simple human error. That conclusion was supported by the fact that the export had been included in the data reported by the company itself. The European Union had therefore concluded that the export had not involved criminal intent.

64. In the same communication, the Commission had underscored the existence of sufficient regulatory and administrative measures in the European Union to ensure its compliance with the Protocol's trade provisions, including explicit prohibition of trade with non-parties by European Union law and relevant laws in all member States; comprehensive manuals on the European Union's licensing system highlighting the applicability of trade restrictions to certain countries and territories that had not ratified all amendments to the Protocol; verification of the eligibility of a proposed export in a two-stage (declaration and licensing) process; and flagging in the electronic Customs systems of the member States the relevant Customs codes concerning ozone-depleting substances to enable Customs officers to be informed automatically about the licensing requirement upon declaration of a relevant trade.

65. The European Union had also noted that the exporter had initially included Azerbaijan and Kazakhstan in its export declaration. As that had then been noticed in the verification process, the exporter had been reminded that exports of HCFC to those countries were prohibited, and had removed the two countries from the declaration.

66. The representative of the European Union, present at the Committee's invitation, provided additional information. He explained that the European Union, which was a party to the Protocol in its own right, was responsible, through the European Commission, for licensing and reporting on trade in ozone-depleting substances. At the same time, responsibility for enforcement, in particular of Customs legislation, fell to the individual member States of the European Union. Consequently, a representative of the member State concerned, the Netherlands, was also present.

67. He reiterated that, after being informed that the export to Kazakhstan was not permissible, the company had subsequently gone ahead and made the export anyway, but without seeking an export licence. That that unlicensed export had not been detected was a case of human error by the Netherlands Customs authorities, although, as the shipment had actually taken place through a Belgian port, there was a degree of involvement of the Belgian Customs service also.

68. The representative of the Netherlands explained that, having been alerted to the situation by the European Commission, the Netherlands Customs inspectorate had visited the company in July 2010 and January 2011. In information provided in March 2011, the company had confirmed that it had indeed made an unlicensed shipment, describing it as a genuine human error. The company had also said that it had changed its internal procedures to prevent such errors in the future. She added that such an infringement was very rare in the case of that company, which had legitimately carried out many such exports over a considerable period of time. The Customs inspectorate had passed the matter on 11 April 2011 to the prosecutor's office, informing the company accordingly on 29 April, and the prosecutor's office was reviewing the dossier.

69. In response to a question regarding what sanctions would be imposed against the company, the representative of the Netherlands explained that the fine to be imposed was up to the courts, but that in similar cases fines of between 50,000 and 250,000 euros had been applied to offenders.

70. Responding to a question as to whether the European Union's licensing system was electronic and thus able to detect automatically whether all requisite licenses had been obtained, the representative of the European Union confirmed that its licensing system was indeed electronic, giving the various member States' Customs services access to all the licences that the European Commission issued. It did not, however, automatically block a shipment for which a licence had not been obtained; instead, it alerted Customs officers to check for presence of a licence. It was a weak point of the system that, with a significant number of declarations being processed constantly, not all Customs declarations might be screened as thoroughly as was desirable.

71. In response to a question as to whether it was the European Union or the member State that would be regarded as not being in compliance with the Protocol, the representative of the Secretariat explained that responsibilities of regional economic integration organizations and member States were divided: in the area of production of ozone-depleting substances, including reporting of production data, it was the individual member States that bore responsibility. In the area of consumption, including reporting of consumption data and the issuing of import or export licences, responsibility lay with the European Union. In the present case, it was therefore the European Union, not the member State, that was in a position of potential non-compliance.

72. Responding to a question as to what lessons had been learned from the situation, and what practical measures had been taken in consequence, the representative of the Netherlands explained that the risk profiles used by the Customs service to determine which shipments should be checked closely had been updated and enhanced. As the case had involved a company in one member State making a shipment through a port in another member State, sharing of information between national Customs services had also been improved.

73. The Committee therefore agreed:

*Noting* that the European Union was a party to the Copenhagen and Beijing amendments to the Montreal Protocol and was classified as a party not operating under paragraph 1 of Article 5 of the Protocol,

*Noting also* that the European Union had exported to Kazakhstan, a State not party to the Copenhagen Amendment to the Protocol, 16.6 metric tonnes of hydrochlorofluorocarbons in 2009 and that the export of those substances was in non-compliance with the Protocol,

*Noting further* that Kazakhstan was classified as a party not operating under paragraph 1 of Article 5 of the Protocol and had not been determined by the Meeting of the Parties to be in full compliance with the requirements of paragraph 8 of Article 4 of the Protocol,

*Noting with appreciation* the explanation provided by the European Union for its export of hydrochlorofluorocarbons to Kazakhstan in 2009,

*Noting also with appreciation* the party's implementation of regulatory and administrative measures to ensure its compliance with the trade provisions of the Protocol,

(a) To monitor closely the party's progress with regard to the implementation of its obligations under the Protocol;

(b) To forward for consideration by the Twenty-Third Meeting of the Parties the draft decision contained in section C of annex I to the present report.

**Recommendation 46/6**

## **VII. Application to Nepal of Article 4, paragraph 8, of the Protocol with regard to the Copenhagen Amendment to the Montreal Protocol**

74. The representative of the Secretariat introduced the item, noting that it had been considered by the Open-ended Working Group at its thirty-first meeting, but the Working Group had taken no decision pending the Committee's consideration. He said that the Government of Nepal had requested the Secretariat in correspondence dated 4 January 2011 to include its situation on the agendas of the thirty-first meeting of the Open-ended Working Group and the Twenty-Third Meeting of the Parties for consideration in the light of paragraphs 8 and 9 of Article 4 of the Protocol (provisions permitting a State to avoid the application of trade sanctions under the Protocol and its amendments if it could demonstrate that it was in full compliance with the relevant Protocol provisions).

75. In support of its request, the Government of Nepal had noted that the party was in full compliance with Article 2, Articles 2A–2I and Article 4 and had been submitting data to that effect as specified in Article 7 of the Protocol. It had also advised that country programme reports had been submitted as required. It had further highlighted a number of undertakings that it considered to be successful, including:

(a) Completion of various management plans under the Multilateral Fund;

- (b) Compliance with its obligation to phase out CFCs, halons and carbon tetrachloride by 1 January 2010;
- (c) Seizure of illegal imports of CFCs and HCFCs in 2004 as a result of its strong enforcement capacity and subsequent compliance with decision XVI/27;
- (d) Initiation of cross-border dialogues on trade with neighbouring countries and South-South cooperation;
- (e) Development and implementation of the very first ozone-depleting-substance destruction project for a low-volume-consuming country, approved by the Executive Committee at its fifty-ninth meeting.

76. The Government of Nepal had informed the Secretariat that it had initiated the process to ratify the Copenhagen, Montreal and Beijing amendments to the Protocol in 2001. In the light of frequent changes in the Government, the situation in the country and more pressing and urgent issues, however, the ratification process had not yet been completed. The Government had said that, those issues notwithstanding, it intended to ratify all the amendments at the earliest point possible and that it had taken many steps to control HCFCs in the meantime. The Government had gone on to outline how those steps conformed to or exceeded the requirements of the Copenhagen Amendment, including through the enforcement of three regulations since 2001 and the capping of its HCFC consumption at 23.04 metric tonnes since 2000.

77. He noted that, by decision XX/9, the application of trade sanctions to parties operating under paragraph 1 of Article 5 that were not yet parties to the Copenhagen Amendment had been deferred until 1 January 2013. In the light of that decision, the Secretariat had advised Nepal that it would have been advisable for it to have applied for treatment as a party under paragraph 8 of Article 4 of the Protocol in 2012, for 2013, when the HCFC phase-out measures applicable to parties operating under paragraph 1 of Article 5 would enter into force. A State must apply to be treated as a party under paragraph 8 of Article 4 on an annual basis, meaning that even if such treatment were granted Nepal for 2012, when the HCFC control measures were not applicable to it, it would nevertheless have to submit a similar application in 2012 to be treated as a party in 2013, when the HCFC control measures applicable to it would enter into force.

78. He pointed out that Nepal's HCFC consumption situation was the subject of a decision taken by the Executive Committee of the Multilateral Fund at its sixty-second meeting regarding an HCFC phase-out management plan proposal from Nepal. During discussion of the issue, some members had noted that under the HCFC guidelines the ratification of the Copenhagen Amendment was a prerequisite to funding from the Multilateral Fund for HCFC activities. In decision 62/53, the Executive Committee had approved in principle stage I of Nepal's proposed HCFC phase-out management plan for the period 2010–2020, on the understanding that by the time of the Twenty-Third Meeting of the Parties in November 2011 Nepal would have deposited its instrument of ratification of the Copenhagen Amendment or submitted an official request to the Twenty-Third Meeting of the Parties that it be considered to be in full compliance with the HCFC control provisions pursuant to paragraphs 8 and 9 of Article 4 of the Montreal Protocol.

79. During the Open-ended Working Group's discussion, the representative of Nepal had urged the parties to consider Nepal to be in compliance with the Protocol and to be a de facto party, lest it have difficulties in achieving its compliance targets for 2013 and 2015. One representative had said that there could be little expectation of early implementation of the country's HCFC phase-out management plan or the country meeting the 2013 or 2015 control targets unless the parties found Nepal to be in full compliance under paragraphs 8 and 9 of Article 4. Another representative, however, had said that there was no provision for declaring a State to be a de facto party and that Article 10 of the Protocol, which governed financial and technical assistance to parties, did not contemplate the provision of such assistance to non-parties.

80. Nepal had submitted its ozone-depleting substance data for the years 1986, 1989 and 1991–2010. Those data had placed the party in compliance with its commitments under the Protocol.

81. The representative of UNDP clarified that an HCFC phase-out management plan had been submitted to the Executive Committee of the Multilateral Fund and was ready for implementation, but it had not yet cleared the hurdle of ratification of the Copenhagen Amendment. He urged the Committee to

act expeditiously on the matter and not delay taking any decision, as time was short and any delay could harm Nepal's ability to remain in compliance with the phase-out targets. The representative of the Multilateral Fund said that any determination by the Implementation Committee that Nepal was to be treated as a party would enable the Executive Committee to move forward with the funding, but that it was not crucial to take a decision at that juncture.

82. In the ensuing discussion, one Committee member said that Nepal appeared to have met one of the requirements stipulated by the Executive Committee, as it had submitted an official request to the Twenty-Third Meeting of the Parties that it be considered to be in full compliance with the HCFC control provisions pursuant to paragraphs 8 and 9 of Article 4 of the Montreal Protocol. He was therefore of the opinion that the Committee should accede to the party's request to be considered as a party to the Copenhagen Amendment.

83. Another Committee member said that, as Nepal had not ratified the Copenhagen Amendment, it was taking action on a voluntary basis. The documentation that the party had supplied appeared to indicate that it had set itself a compliance target, but it had made no specific commitment to using that target as a baseline and to meeting that target in the future.

84. The representative of the Secretariat, together with the Executive Secretary, reiterated that, by decision XX/9, the application of trade sanctions to parties operating under paragraph 1 of Article 5 that were not yet parties to the Copenhagen Amendment had been deferred until 1 January 2013 and that a State must apply to be treated as a party under paragraph 8 of Article 4 on an annual basis. Accordingly, even if such treatment were granted to Nepal for 2012, when the HCFC control measures were not applicable to it, it would nevertheless have to submit a similar application in 2012 to be treated as a party in 2013, when the HCFC control measures applicable to it would enter into force. The ratification of the Copenhagen Amendment was before a parliamentary committee and it was hoped that there might be movement on the matter before the end of 2011. If the ratification could be completed by that time, the matter would be resolved. It was therefore not strictly necessary for the Committee to take a decision on the matter at the current meeting.

85. The Committee therefore agreed:

*Taking note* of Nepal's request for consideration of its situation in the light of paragraphs 8 and 9 of Article 4 of the Protocol,

*Noting* that decision XX/9 deferred the application of trade sanctions against parties operating under Article 5 of the Protocol that were not yet parties to the Copenhagen Amendment until 1 January 2013,

- (a) To request Nepal to provide more information on its commitment to comply with the obligations contained in the Copenhagen Amendment to the Montreal Protocol;
- (b) To request the Secretariat to provide information on hydrochlorofluorocarbon consumption trends since 2001 as described in Nepal's letter to the Secretariat of 4 January 2011;
- (c) To place the issue of Nepal on the agenda of the Implementation Committee's forty-seventh meeting.

**Recommendation 46/7**

## **VIII. Consideration of other non-compliance issues arising out of the data report**

### **A. Libyan Arab Jamahiriya (deviation from commitment in decision XVII/37)**

86. The representative of the Secretariat said that the Libyan Arab Jamahiriya had reported consumption of the Annex A, group II, controlled substances (halons) of 1.8 ODP-tonnes in 2009. The party had specified that that amount, which corresponded to 0.6 metric tonnes, was virgin halon 1211 for use in the aviation industry, an application defined as critical in its submission. That consumption was inconsistent with the party's commitment contained in decision XVII/37 to phase out consumption of halons by 1 January 2008.

87. In correspondence dated 13 January 2011, the Secretariat had requested the Libyan Arab Jamahiriya to submit an explanation for that deviation. The Secretariat had also noted in that communication that pursuant to paragraph 7 of decision IV/25 on essential uses, essential-use and critical-use exemptions would be applicable to parties operating under paragraph 1 of Article 5 of the Protocol after the phase-out dates applicable to those parties. Given that the Protocol's phase-out date for halons was 1 January 2010, the Libyan Arab Jamahiriya had therefore not been in a position to apply for a critical-use exemption for the years prior to 2010. The party had not yet submitted its response to the Secretariat.

88. The representative of UNIDO said that during the Executive Committee's sixty-sixth meeting a request had been made for advice on how to deal with countries experiencing political turmoil. In the case of the Libyan Arab Jamahiriya, for example, it was proving challenging to communicate with the relevant authorities and the organization's movements within the country were also restricted. UNIDO was hoping that its activities would continue, and it had received unofficial information that the Libyan Arab Jamahiriya was endeavouring to meet its obligations, but the situation remained somewhat vague.

89. The Committee therefore agreed:

*Noting* that the Libyan Arab Jamahiriya had reported consumption of 1.8 ODP-tonnes of the Annex A, group II, controlled substances (halons) in 2009, an amount that was inconsistent with its commitment contained in decision XVII/37 to limit halon consumption to no greater than zero ODP-tonnes in that year,

*Recognizing*, however, the security situation and the political and social difficulties faced by the Libyan Arab Jamahiriya in recent months,

(a) To request the Libyan Arab Jamahiriya to submit to the Secretariat as a matter of urgency, and no later than 15 September 2011, an explanation for its deviation and, if relevant, a plan of action with time-specific benchmarks for ensuring the party's prompt return to compliance with its commitment contained in decision XVII/37;

(b) To encourage the Libyan Arab Jamahiriya to submit to the Secretariat its data for 2010 in accordance with paragraph 3 of Article 7 of the Protocol, preferably no later than 15 September 2011, in order that the Committee might assess at its forty-seventh meeting, the status of compliance of the party with its commitment for that year;

(c) To invite the Libyan Arab Jamahiriya, if necessary, to send a representative to the Committee's forty-seventh meeting to discuss the matter.

#### **Recommendation 46/8**

### **B. Yemen (Non-compliance with reporting requirements under paragraph 3 of Article 7)**

90. The representative of the Secretariat said that Yemen had not submitted its HCFC data for the year 2009. As paragraph 3 of Article 7 of the Protocol required parties to submit complete annual data within nine months after the year in question, Yemen should have submitted the data for 2009 by 30 September 2010. The party had specified, in its submission of 2009 data in October 2010, that it had excluded HCFC data from its report because survey activities for its HCFC phase-out management plan preparation were continuing and that it would submit the missing data as soon as the survey was complete. Although the Secretariat had sent reminders in June and July 2011, the party had not yet responded.

91. The representative of UNEP said that the political situation in Yemen over the past six months had been highly unstable. The country's environmental protection agency, which included the national ozone unit, had been unable to ensure a constant presence in its offices and to communicate effectively with local stakeholders. The national ozone unit was not in a position to verify CFC consumption figures. The UNEP Compliance Assistance Programme team in West Asia was in contact with the unit and it was hoped that the situation would have improved by the time of the Committee's forty-seventh meeting.

92. The Committee therefore agreed:

*Noting with appreciation* that Yemen had reported all its data for 2009 except for hydrochlorofluorocarbon data,

*Noting* that the non-reporting of hydrochlorofluorocarbon data placed Yemen in non-compliance with its reporting obligations under paragraph 3 of Article 7 of the Montreal Protocol,

*Noting also* the explanation provided at the time of reporting in October 2010 by Yemen that it had excluded hydrochlorofluorocarbon data from its report because survey activities for the preparation of its hydrochlorofluorocarbon phase-out management plan were continuing,

*Noting with concern* the lack of response from Yemen to subsequent communications from the Secretariat,

*Recognizing* the security situation and the political and social difficulties faced by Yemen in recent months,

To request Yemen to submit the missing data as soon as possible, and no later than 15 September 2011, for consideration by the Committee at its forty-seventh meeting or, if it was unable to do so, to submit an explanation in that regard by that time.

**Recommendation 46/9**

**C. Syrian Arab Republic (non-submission of accounting framework)**

93. The representative of the Secretariat said that the Syrian Arab Republic had not submitted its accounting reports for exemptions granted for CFCs for the year 2010. Decision VIII/9 requested parties that had been granted essential-use exemptions for previous years to submit such reports by 31 January each year. The Secretariat had contacted the Syrian Arab Republic, but the party had not responded.

94. One Committee member stressed that it was crucial for the implementing agencies to follow up with the parties concerned to ascertain and help to resolve their problems, lest they recurred. Attention should be drawn to the risks that those parties ran if they failed to comply with the reporting requirements. Another Committee member noted that the Syrian Arab Republic had in fact submitted its data; it was only the accounting framework that was lacking and that should be relatively easy for the party to supply.

95. The Committee therefore agreed:

*Noting with appreciation* that the Syrian Arab Republic had reported its data for 2010,

*Noting with concern*, however, that the Syrian Arab Republic had not submitted its report to account for exemptions granted for essential uses of chlorofluorocarbons for 2010,

*Noting* that the non-submission of its accounting report placed the Syrian Arab Republic in non-compliance with its reporting obligations under paragraph 9 of decision VIII/9,

*Noting with concern* the lack of response from the Syrian Arab Republic to communications from the Secretariat reminding the party to submit its accounting report,

*Recognizing*, however, the security situation and the political and social difficulties faced by the Syrian Arab Republic in recent months,

To request the Syrian Arab Republic to submit its report to account for exemptions granted for essential uses in 2010 of chlorofluorocarbons as soon as possible, and no later than 15 September 2011, for consideration by the Committee at its forty-seventh meeting or, if it was unable to do so, to submit an explanation in that regard by that time.

**Recommendation 46/10**

**D. Israel (non-submission of accounting framework)**

96. The representative of the Secretariat said that Israel had not submitted its accounting report for exemptions granted for critical uses of methyl bromide for the year 2010. The Secretariat had contacted Israel to seek submission of the accounting framework, but the communications appeared not to be received by the new focal point appointed to replace the previous focal point, who had died.

97. The Committee therefore agreed:

*Noting with concern* that Israel had not submitted its report to account for exemptions granted for critical uses of methyl bromide for 2010,

To request Israel to submit its report to account for exemptions granted for critical uses in 2010 of methyl bromide as soon as possible, and no later than 15 September 2011, for consideration by the Committee at its forty-seventh meeting, or, if it was unable to do so, to submit an explanation in that regard by that time.

**Recommendation 46/11**

## **IX. Consideration of the report of the Secretariat on the establishment of licensing systems**

### **A. Compliance by parties (Article 4B, paragraph 4, of the Montreal Protocol)**

### **B. Compliance with decision XXII/19: Brunei Darussalam, Ethiopia, Lesotho, San Marino and Timor-Leste**

98. The representative of the Secretariat introduced the report on the item (UNEP/OzL.Pro.WG.1/31/INF/2-UNEP/OzL.Pro/ImpCom/46/4 and Corr.1). Article 4B of the Protocol, which had been introduced by the Montreal Amendment in 1997, required each party to establish a system for licensing the import and export of new, used, recycled and reclaimed controlled substances by 1 January 2000 or within three months of the date of entry into force of Article 4B for the party. Of the 185 parties to the Montreal Amendment, 182 had established a licensing system and notified the Secretariat accordingly. Three parties to the amendment had not yet established such systems. Another 10 parties to the Protocol had not yet ratified the Montreal Amendment but had nevertheless established licensing systems. The three parties that had ratified the Montreal Amendment and were without licensing systems (Ethiopia, San Marino and Timor-Leste) were in non-compliance with their obligation under Article 4B of the Protocol. By decision XXII/19, those three parties, among others, had been urged to establish licensing systems.

99. He went on to explain that, with regard to Timor-Leste, the party had initially reported that it had implemented a licensing system, but the Secretariat's inquiries had found that it had instead issued a decree controlling imports of ozone-depleting substances. The party had since reported that it had adopted a licensing system, which was being translated into Portuguese, but it had yet to be operationalized.

100. In the ensuing discussion, one Committee member suggested that the Implementation Committee might wish to begin a process to give a further definition of what constituted a licensing system. The Secretariat could begin by preparing a version of the report on the establishment of licensing systems that contained information disaggregated by annex and by country, to facilitate consideration of whether licensing systems were in fact in place for all substances. The current version of the report contained a table that indicated for each party whether it had reported having a licensing system in place, but did not show which substances were within the purview of the system. Furthermore, it fell to the Secretariat to decide whether what was described as a licensing system actually met the relevant requirements of Article 4B of the Protocol; in the case of Timor-Leste, the Secretariat had decided that it had not, but in the case of Lesotho that it had. Given that in the latter case the system appeared to rely on Customs tax controls, whether it was a licensing system in the true sense was debatable. He also wondered whether licensing systems and quota systems were comparable, and whether it was possible to know if the licensing systems were enforced in practice. Another Committee member said that the licensing system encompassed both substances subject and not subject to quotas.

101. Another Committee member remarked that information on licensing systems was being regularly updated and it might not therefore be correct to give the dates on which licensing systems came into force. A third requested the Secretariat to prepare a document on various modalities of licensing systems so as to ensure that any minimum requirements prepared by the Secretariat and subsequently adopted by the parties did not conflict with national law.

102. The representative of the Secretariat clarified that Article 4B of the Protocol required each party to establish a system for licensing the import and export of new, used, recycled and reclaimed controlled substances by 1 January 2000 or within three months of the date of entry into force of Article 4B for the party: it did not, however, distinguish between substances. A party that had not ratified the Montreal Amendment could voluntarily establish a licensing system. Some parties' licensing systems had been in force for some time and were being updated regularly to take account of new controlled substances, often with the assistance of the Multilateral Fund and the implementing agencies in the case of parties operating under paragraph 1 of Article 5 of the Protocol. It was very difficult to know, however, whether the licensing systems in place were being enforced. On the subject of quotas, he said that many parties had adopted a quota system as a way of controlling or managing the reduction of ozone-depleting substances, but the manner of its implementation varied by party. There was no obligation under Article 4B for a party to establish a quota system.

103. The Executive Secretary noted that licensing systems had played, and would continue to play, a key role in assisting parties to comply with their obligations under the Montreal Protocol. Accordingly, the Secretariat undertook to prepare a more detailed document on the establishment of licensing systems by parties for the Committee's consideration.

104. The Committee therefore agreed:

*Noting with appreciation* the efforts that the parties to the Montreal Protocol had made in the establishment and operation of systems for licensing the import and export of controlled ozone-depleting substances under Article 4B of the Protocol,

*Noting also with appreciation* that several parties to the Protocol had established such licensing systems even though they were not parties to the Montreal Amendment to the Protocol at the time that they had established the systems and had therefore not been obliged to do so,

*Noting further with appreciation* the information submitted by Brunei Darussalam and Lesotho on the establishment of their licensing systems in accordance with Article 4B of the Montreal Protocol, as requested in decision XXII/19, and the information submitted by Timor-Leste indicating that it had in place a system for licensing the import of ozone-depleting substances,

*Noting* that Ethiopia, San Marino and Timor-Leste were the only parties to the Montreal Amendment that had not yet reported that they had established licensing systems meeting the requirements of the Montreal Amendment,

(a) To congratulate Brunei Darussalam and Lesotho on the establishment and operation of systems for licensing the import and export of controlled ozone-depleting substances in accordance with their obligations under Article 4B of the Protocol;

(b) To urge Ethiopia, San Marino and Timor-Leste expeditiously to establish licensing systems in accordance with Article 4B of the Protocol and to report thereon to the Secretariat by 15 September 2011;

(c) To encourage all remaining parties to the Protocol that had not yet ratified the Montreal Amendment and established systems for licensing the import and export of ozone-depleting substances to ratify the amendment and to establish such systems;

(d) To request the Secretariat to prepare for the Committee's consideration at its forty-seventh meeting information on the extent to which each party's licensing system covered the substances in the annexes and groups of the Protocol and to provide further ideas on how such disaggregation of information might be achieved in the future;

(e) To review the status of licensing systems at its forty-seventh meeting.

**Recommendation 46/12**

## **X. Information on compliance by parties present at the invitation of the Implementation Committee**

105. The Committee considered information provided by the representatives of the European Union and Tajikistan, who were present at the Committee's invitation. The Committee's consideration of the information is described in chapters V and VI of the present report, respectively.

## **XI. Other matters**

### **A. Situation of Iraq**

106. The representative of the Secretariat drew attention to decision XX/15, noting that it urged all parties to assist Iraq, as a new party, in controlling the export of ozone-depleting substances and ozone-depleting-substance-based technologies into Iraq by controlling trade; requested the Executive Committee when considering project proposals for Iraq to take into account its special situation as a new party, which might face difficulties in the phase-out of ozone-depleting substances listed in Annexes A and B; and requested the Implementation Committee to report on the compliance situation of Iraq to the Open-ended Working Group at its meeting preceding the Twenty-Third Meeting of the Parties, during which the decision would be reconsidered. He noted that as the current meeting was taking place after the thirty-first meeting of the Open-ended Working Group, strict compliance with the latter request would not be possible, but the Committee could still consider the situation of Iraq and make recommendations for consideration during the preparatory segment of the Twenty-Third Meeting of the Parties.

107. He said that in June 2010 Secretariat had received a report from the Government of Iraq that highlighted the activities that it had been implementing in order to achieve compliance with the Protocol and to meet some of the expectations outlined in decision XX/15. That report had concluded with three requests: that neighbouring countries should assist in curbing illegal trade by controlling exports of ozone-depleting substances into Iraq; that additional technical and financial assistance should be provided to meet the need for extra security and to counter logistical difficulties in the implementation of phase-out projects in Iraq; and that the implementing agencies operating in Iraq should continue to pay special attention to the country's special situation.

108. In response to a question from a Committee member about plans and programmes being implemented in Iraq, the representative of UNEP said that Iraq had been facing a very difficult situation, both as a new party to the Protocol and in the light of the security situation. The main implementing agencies were UNEP and UNIDO, which attached the highest priority to helping Iraq achieve compliance with its obligations under the Protocol even though for security reasons most of the agencies' work had to be performed from outside the country's borders. Iraq was pursuing implementation of projects and developing comprehensive ozone-depleting-substance legislation, it had a temporary licensing system in place for CFCs, which might also be used for HCFCs, with a permanent system for HCFCs to be in place by the end of 2011. The country's HCFC phase-out management plan was ready for submission to the Executive Committee of the Multilateral Fund at its sixty-fifth meeting.

109. One Committee member suggested that, before reaching a conclusion on how to respond to the requests from Iraq, it would be preferable for the Committee to receive information, directly from a representative of the country present at a Committee meeting, on such questions as whether there was proof of illicit trade into the country and whether there were factories in Iraq using CFCs.

110. The Committee took note of the information received to date and decided to monitor the situation, possibly with a view to inviting Iraq to send a representative to a future Committee meeting to give greater detail of its situation.

### **B. Decimal places**

111. Introducing the issue, the representative of the Secretariat recalled that Article 7 of the Protocol required parties to report data on production, imports and exports of ozone-depleting substances, which they did with varying degrees of precision. In accordance with Article 3, the Secretariat then multiplied the metric tonnage by the ozone-depleting potential of each substance, to give the figures in ODP-tonnes. The

degree of precision of that calculation had varied over the years, but current practice was to round to one decimal place.

112. As HCFCs currently the focus of control measures had very low ozone-depleting potentials, the impact of using one decimal place had become more significant, meaning that the Secretariat could benefit from more formal guidance from the parties. To demonstrate the significance of using one decimal place, he cited the example of HCFC-22, noting that it had an ozone-depletion potential of 0.055. If a non-producing party were to report, for example, imports of 0.8 metric tonnes of that substance, and no exports, its calculated level of consumption would be 0.044 ODP-tonnes. Although the amount might appear small, it represented some 30 containers of HCFC 22, each of 30 kg. That said, rounding to one decimal place would mean that those 30 containers would be recorded by the Ozone Secretariat as zero and would not appear in its statistics. In addition, the use of one decimal place raised additional issues, such as whether a party reporting consumption of 0.044 ODP-tonnes (which the Secretariat would round to zero) would be eligible for assistance from the Multilateral Fund.

113. In the ensuing discussion, several Committee members endorsed the idea of calculating to a greater number of decimal places, preferably two or three, with some of them pointing out that the greater accuracy was important in particular to countries reporting very low levels of production or consumption. One member observed that if the choice was for three decimal places, for example, it would be necessary initially to calculate to four places in order to be able to round the third one correctly. Another stressed that any change in the number of decimal places to be used should apply only to future reporting, not retroactively, and should not cause any adjustment to baselines.

114. The Committee agreed that it would not specify the number of decimal places to be used by the Secretariat at the current meeting. Rather, it would make two recommendations: the first to the Twenty-Third Meeting of the Parties directing the Secretariat to use a number to be determined of decimal places; and the second requesting the Secretariat to prepare documentation for its consideration to give it a more informed view of the implications of rounding to two or three decimal places. The first recommendation would include square brackets around the number of decimal places to be used, pending further elucidation of the issue by the Secretariat.

115. The Committee therefore agreed:

*Recognizing* that for the preceding several years the Secretariat had been following the informal guidance set out in the report of the Eighteenth Meeting of the Parties<sup>1</sup> to round its data reported to the parties to one decimal place,

*Acknowledging* the low ozone-depletion potential of many hydrochlorofluorocarbons,

*Taking into consideration* the small quantities of hydrochlorofluorocarbons used by a significant number of parties operating under paragraph 1 of Article 5,

*Understanding* that, as a result of the low ozone-depletion potential of hydrochlorofluorocarbons, rounding to one decimal place could result in the continued use of a substantial amount of those substances or restrict the import of a substantial amount of them that a party would otherwise be eligible to import,

*Wishing* to ensure that any change in the number of decimal places used to calculate the establishment of baselines, consumption or production was forward looking and did not cause changes in previously submitted data,

To request the Twenty-Third Meeting of the Parties to direct the Secretariat to use [two][three] decimal places in reporting data.

**Recommendation 46/13**

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1 UNEP/OzL.Pro.18/10.

116. The Committee therefore also agreed:

(a) To request the Secretariat, so as to help the Committee to decide on the most appropriate number of decimal places, to provide the Committee at its forty-seventh meeting with an analysis of the implications of the use of two or three decimal places;

(b) Also to request the Secretariat to include in the documentation for the Twenty-Third Meeting of the Parties a summary of the presentation and discussion that took place at the current meeting on this issue, so that the Twenty-Third Meeting of the Parties was more prepared to discuss the matter.

**Recommendation 46/14**

## **XII. Adoption of the recommendations and report of the meeting**

117. The Committee considered and approved the text of the draft recommendations and agreed to entrust the preparation of the report of the meeting to the President and to the Vice-President, who also served as Rapporteur for the meeting, working in consultation with the Secretariat.

## **XIII. Closure of the meeting**

118. Following the customary exchange of courtesies, the President declared the meeting closed at 11.20 a.m. on Monday, 8 August 2011.

## Annex I

### Draft decisions

#### A. Draft decision XXIII/-: Request for revision of baseline data by Guyana, Lesotho, Palau and Vanuatu

*Noting* that, in accordance with decision XIII/15, by which the parties decided that parties requesting the revision of reported baseline data should present such requests to the Implementation Committee, which would in turn work with the Secretariat and the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol to confirm the justification for the changes and present them to the Meeting of the Parties for approval,

*Noting also* that decision XV/19 sets out the methodology for the submission of such requests,

1. That Guyana, Lesotho, Palau and Vanuatu have presented sufficient information, in accordance with decision XV/19, to justify their requests for the revision of their consumption data for the year 2009 for hydrochlorofluorocarbons, which is part of the baseline for parties operating under paragraph 1 of Article 5;

2. To approve the requests of:

(a) Guyana, for the revision of its consumption data for the year 2009 for the controlled substance in Annex C, group I (hydrochlorofluorocarbons), from 16.822 metric tonnes (0.9 ODP-tonnes) to 19.271 metric tonnes (1.1 ODP-tonnes);

(b) Lesotho, for the revision of its consumption data for the year 2009 for the controlled substance in Annex C, group I (hydrochlorofluorocarbons), from 187.0 metric tonnes (10.3 ODP-tonnes) to 68.271 metric tonnes (3.1 ODP-tonnes);

(c) Palau, for the revision of its consumption data for the year 2009 for the controlled substance in Annex C, group I (hydrochlorofluorocarbons), from 2.04 metric tonnes (0.1 ODP-tonnes) to 2.56 metric tonnes (0.1 ODP-tonnes);

(d) Vanuatu, for the revision of its consumption data for the year 2009 for the controlled substance in Annex C, group I (hydrochlorofluorocarbons), from 1.46 metric tonnes (0.1 ODP-tonnes) to 1.8 metric tonnes (0.1 ODP-tonnes);

#### B. Draft decision XXIII/-: Request by Tajikistan for the revision of its baseline data

*Noting* that Tajikistan has submitted a request for the revision of its consumption data for the Annex C, group I, controlled substances (hydrochlorofluorocarbons) for the baseline year 1989 from 6.0 ODP-tonnes to 18.7 ODP-tonnes,

*Noting also* that decision XV/19 sets out the methodology for the submission and review requests for the revision of baseline data,

*Noting with appreciation* the efforts by Tajikistan to fulfil the information requirements of decision XV/19, in particular its efforts to verify the accuracy of its proposed new baseline data through a national survey of hydrochlorofluorocarbons use carried out with the assistance of the United Nations Development Programme and funding from the Global Environment Facility,

1. To determine that Tajikistan has presented sufficient information, in accordance with decision XV/19, to justify its request for the revision of its baseline consumption data for hydrochlorofluorocarbons;

2. To change the baseline consumption data of Tajikistan for hydrochlorofluorocarbons for the year 1989 from 6.0 ODP-tonnes to 18.7 ODP-tonnes.

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**C. Draft decision XXIII/-: Non-compliance with the Montreal Protocol by the European Union**

*Noting* that the European Union reported the export of 16.616 metric tonnes of hydrochlorofluorocarbons in 2009 to a State classified as not operating under paragraph 1 of Article 5 of the Montreal Protocol that is also a State not party to the Copenhagen Amendment to the Protocol, which places the party in non-compliance with the provisions of Article 4 of the Protocol prohibiting trade with any State not party to the Protocol,

1. That no further action is necessary in view of the party's implementation of regulatory and administrative measures to ensure its compliance with the provisions of the Protocol governing trade with non-parties;

2. To monitor closely the party's progress with regard to the implementation of its obligations under the Montreal Protocol.

## Annex II

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