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**Eighteenth Meeting of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**
New Delhi, 30 October–3 November 2006
Item 9 of the provisional agenda*

**Notification of non-compliance by the Government of
Bangladesh, pursuant to paragraph 4 of the Non-compliance
Procedure of the Montreal Protocol**

Note by the Secretariat

1. The present note was prepared in accordance with recommendation 37/46 (f) of the thirty-seventh meeting of the Implementation Committee under the non-compliance procedure of the Montreal Protocol. That recommendation requested the Secretariat to, among other things, circulate the information document on the potential non-compliance of Bangladesh (UNEP/OzL.Pro/ImpCom/INF/3) and the related correspondence from that Party dated 19 October 2006, to the Eighteenth Meeting of the Parties to facilitate that meeting's consideration of Bangladesh's situation under agenda item 9 "Difficulties faced by some Article 5 Parties manufacturing metered-dose inhalers which use chlorofluorocarbons."
2. The information document UNEP/OzL.Pro/ImpCom/INF/3 was prepared by the Ozone Secretariat for the Committee at its thirty-seventh meeting. It concerns the notification of potential non-compliance submitted by the Government of Bangladesh to the Secretariat pursuant to paragraph 4 of the non-compliance procedure. The document summarised the circumstances that Bangladesh had identified as the cause of its anticipated non-compliance with the Protocol's chlorofluorocarbon (CFC) control measures in the years 2007 to 2009, information on the Party's CFC consumption sector, its CFC phase out efforts to date, and related information presented by the secretariat of the Multilateral Fund to the forty-ninth meeting of the Executive Committee in July 2006.
3. The information document UNEP/OzL.Pro/ImpCom/INF/3 is reproduced in its entirety in the annex to the present note, with the exception of its annex II. Annex II is the paper prepared by the secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol "Options for addressing the situation of countries referred to in decision XVII/14 of the Seventeenth Meeting of the Parties (Follow-up to decision 48/36)" (UNEP/OzL.Pro/ExCom/49/39). This paper has been made available on the Secretariat's website as a background document.

* UNEP/OzL.Pro.18/1.

Annex

Government of the People's Republic of Bangladesh
Department of Environment
Paribesh Bhaban, E-16 Agargaon
Sher-e-Banglanagar, Dhaka-1207

Memo No. DOE/ODS(MDI)/834/2005/411

Date : 19/10/2006

Dear Executive Secretary,

Subject : Your reference Oz.Sec/IMPCOM 37/Bangladesh2; dated : 11 October, 2006

The Government of Bangladesh acknowledges your response to our letter dated September 17, 2006 concerning “**Notification of potential non-compliance, pursuant to paragraph 4 of the non-compliance procedure of the Montreal Protocol**”. In view of your request for further information regarding the reasons why Bangladesh will be unlikely to meet its compliance targets in spite of Beximco Pharmaceutical introducing HFA MDIs, the Government of Bangladesh would like to submit the following additional information to clarify our position.

Consumption Levels by MDI Manufacturers:

With respect to consumption levels by the MDI manufacturing sector we wish to submit the following.

1. There are Three (3) Manufacturing Plants in Bangladesh that produces CFC Based MDI for Four (4) Companies.
2. Three of these companies are locally owned and the fourth is owned by an international cooperation (GSK).
3. Beximco, which is one of the locally owned companies, produces, under license, CFC MDIs for the international company, in addition to their own brands.
4. In terms of consumption of CFC by the three plants, the Beximco Plant consumes 71.5% (2005) of the total sector consumption. We wish to point out that this usage is split, 73.9% for Beximco branded products (or 52.84% of total sector consumption) and 26.1% for GSK branded products (or 18.66% of total sector consumption).
5. The other two manufacturing plants accounts for 23.2% (2005) of total sector consumption and 5.3% (2005) of total sector consumption respectively.
6. Non-availability of non-ODS based technology for expansion of the product range of MDIs coupled with higher levels of growth in this industrial sector, played a significant role in increasing consumption of CFCs in MDI sector.

Development of HFA Inhalers:

With respect to the efforts of Beximco to develop HFA Inhalers we wish to submit the following:

1. The current development of HFA based inhalers does not apply to the portion of consumption that is used to produce GSK branded products. As a result, any future move to replace the Beximco branded CFC products with Bangladesh developed HFA's will not apply to that portion of consumption attributed to the GSK brand since the HFA technology owned by GSK is proprietary and it is unlikely this technology will be transferred or made available to an Article 5 country while the patent is in effect.
2. Out of fifteen only two HFA based formulations have been developed by Beximco. The first is a Salbutamol Inhaler which is branded as Azamol HFA. The second is a Beclomethasone Inhalers which is branded as Decomit HFA. These products were launched on September 15, 2006 on the eve of International Ozone Day.
3. Beximco has indicated that it will not stop its current production of the CFC based versions of Azamol and Decomit.

Consumption of MDI's in Bangladesh

Currently there are around 7.00 million Asthma & COPD patients in the country. The entire local market demand for MDI in Bangladesh is supplied from locally manufactured drugs. The price of these locally produced drugs makes it affordable for sufferers of asthma and COPD. If these drugs have to be imported due to local manufacturers not having access to CFC's then a large portion of people will be unable to acquire these life saving drugs.

Mr. Executive Secretary, Bangladesh's primary concern is the health of our people and we are hesitant to adopt measures that would not result in the total conversion of the local manufacturing since this is the only way that we can guarantee a safe, affordable supply of MDI.

Measures Identified in Decision 49/33

The Government of Bangladesh believes that the measures identified in decision 49/33 are unlikely to provide a suitable resolution for the following reasons:

1. We are now 76 days away from the 2007 compliance target (as of October 17, 2006). Bangladesh has raised this issue since 2004 during the SA/SEAP network meeting in Cambodia and has been trying ever since to get a workable solution to this urgent problem which will affect the health of our people. With 76 days and counting to go to 2007, it is simply not possible to implement the majority of decision 49/33 in time to make an impact.
2. The multinational company in Bangladesh does not have its own manufacturing plant in Bangladesh but has licensed Beximco to

manufacture its product. GSK does not envisage providing assistance to Beximco to convert; as a result para (b) (ii) of decision 49/33 cannot be implemented.

3. The NPP needs to be revisited because the Terms of Agreement with the ExCom the Government of Bangladesh requires 100% reduction of CFC Consumption. This agreement cannot be fulfilled by the Government of Bangladesh given the currently unfunded consumption in the MDI Sector.
4. The Government of Bangladesh has submitted to the 51st ExCom a proposal to develop a transition strategy with UNEP as the lead agency and UNDP the supporting agency.

Plan to resolve the situation:

Bangladesh wishes to submit the following proposal that we believe can resolve the situation of our MDI Manufacturing Sector:

1. Preparation of an MDI transition strategy with a focus on urgent technology transfer to national manufactures.
2. Consider essential use nominations during 2007-2009 for Bangladesh
3. The Implementation Committee and the Meeting of the Parties should defer until 2010 consideration of the compliance status of Bangladesh provided that we submit evidence to the Ozone Secretariat with our data reports submitted in accordance with Article 7 showing that any deviation from our chlorofluorocarbon consumption targets is due to the use of chlorofluorocarbons in the production of metered-dose inhalers.
4. Funding should be provided by the MLF to assist Bangladesh to convert its MDI manufacturing to non-CFC dependent technology. We wish to reiterate our view and the view expressed by the MLFS and others that in 1995 the technology for production of HFA based MDIs was not available or transferable to Article 5 countries and as a result to alleviate the urgent need for affordable life saving drugs, CFC Based MDI production was started in Bangladesh.

Conclusion:

The people of Bangladesh are our greatest resource and the protection of their health is of paramount importance to the Government of Bangladesh. The manufacture of MDIs by local companies ensures that the people of Bangladesh have access to a safe and affordable supply of these life saving drugs.

We have raised the issue of our MDI consumption since 2004 at the SA/SEAP network meeting in Cambodia and have raised it at successive fora including the OEWG and the MOP where we have been seeking the guidance of the Parties and the bodies of the Montreal Protocol to help us find a solution to the looming crisis that we will be faced with if we cannot ensure that our local manufacturing industry has the support to convert to alternative products.

The reliance on imported drugs is not an economically viable option for Bangladesh since this will put these drugs out of reach of the people that need them. The only option is to continue to manufacture these drugs and seek assistance to convert the production to non-CFC products.

We are willing to work with the Ozone Secretariat and the bodies of the Montreal Protocol to agree to a workable solution and we look forward to discussions in this regard.

The Government of the People's Republic of Bangladesh avails itself of this opportunity to renew to the Ozone Secretariat the assurances of our highest consideration and to reaffirm our commitment to achieving the objectives of the Vienna Convention and its Montreal Protocol.

With best Regards,

A handwritten signature in black ink, appearing to read 'Dr. Khandaker Rashedul Haque', is written over a horizontal line. The signature is stylized and somewhat abstract.

(Dr. Khandaker Rashedul Haque)
Director General

Mr. Marco Gonzalez
Executive Secretary
Vienna Convention and Montreal Protocol
Nairobi, KENYA



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Environment
Programme**

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**Implementation Committee under the
Non-compliance procedure for the
Montreal Protocol**
Thirty-seventh meeting
New Delhi, 25–27 October 2006
Item 11 of the provisional agenda*

**Notification of non-compliance by the Government of
Bangladesh, pursuant to paragraph 4 of the Non-compliance
Procedure of the Montreal Protocol**

Note by the Secretariat

A. Executive Summary

1. Pursuant to paragraph 4 of the Non-compliance Procedure of the Montréal Protocol, the Government of Bangladesh has notified the Ozone Secretariat that, despite its bona fide efforts, it does not expect to be able to comply with the Protocol's consumption control measures for the ozone-depleting substances in Annex A, group I (CFCs) in each of the years 2007, 2008 and 2009. The Implementation Committee is required to consider such notifications as soon as practicable and the Ozone Secretariat has prepared the present note to facilitate this process.
2. The written notification submitted to the Secretariat by Bangladesh suggests that the Party considers three circumstances to be the primary causes of its future non-compliance. Firstly, that the Government of Bangladesh only became aware of CFC consumption in its pharmaceutical metered-dose inhaler manufacturing sector in 2004, restricting the time available to achieve the CFC phase out required to meet the Protocol's 2007 deadline for an 85 per cent reduction in CFC consumption. Secondly, Bangladesh has not received assistance to phase out CFC consumption in its metered-dose inhaler manufacturing sector. Thirdly, the Party expects its estimated CFC requirements for metered-dose inhaler manufacture in 2007, 2008 and 2009 to result in total annual CFC consumption that is greater than the maximum levels prescribed by the Protocol for Bangladesh.
3. Since 2002, Bangladesh has been in advance of both its CFC phase out commitments contained in its national phase out plan agreement with the Executive Committee, and the Protocol. Bangladesh estimates that its CFC metered-dose inhaler manufacturing sector currently consumes 70 metric tonnes of CFC per year, representing 80 per cent of the Party's allowable CFC consumption in 2007. The Party's largest CFC metered-dose inhaler manufacture, responsible for an estimated 75 per cent of CFC consumption in the sector has, however, commenced conversion to non-CFC technology and plans to complete conversion in the third quarter of 2006.

* UNEP/OzL.Pro/ImpCom/37/1.

4. The situation of Bangladesh is to be considered by the Eighteenth Meeting of the Parties, scheduled for 30 October to 3 November 2006, and the fifty-first meeting of the Executive Committee to the Multilateral Fund, scheduled for early 2007. In accordance with decision XVII/14, the Eighteenth Meeting of the Parties will consider a possible decision to address the difficulties that some Parties, such as Bangladesh, may face in relation to metered-dose inhalers. To this end, the draft decision contained in annex III to the present note was forwarded to that meeting by the twenty-sixth meeting of the Open-ended Working Group, held in July 2006.

5. The fifty-first meeting of the Executive Committee will consider an updated version of the paper presented to the Committee at its forty-ninth meeting in July 2006. The paper is to be updated to take into account the implications of any decision taken at the Eighteenth Meeting of the Parties as well as any other new information. The existing paper, contained in annex II to the present note examined situations such as those experienced by Bangladesh in regard to metered-dose inhaler manufacture and detailed options that might assist the situation.

6. In the light of the Implementation Committee's previous approach to the application of paragraph 4 of the non-compliance procedure, and its current approach to instances of potential non-compliance, the Committee might wish to consider identifying at the present meeting any additional information that the members might require in order to obtain a complete understanding of the reasons why Bangladesh believes it will be unable to comply with the Protocol's CFC consumption control measures over the years 2007 to 2009. Furthermore, as confirmation of Bangladesh's anticipated non-compliance would not be possible until the Party submits its ozone-depleting substances data for 2007, the Committee might wish to agree a means of monitoring the Party's CFC phase out efforts, while minimising the reporting burden on the Party. To this end, the Committee might wish to request Bangladesh to submit a copy of the documents requested by the forty-ninth meeting of the Executive Committee under decision 49/33. That is, a copy of the 2007 and 2008 annual programmes for Bangladesh's national phase out plan and, when complete, a copy of the transition strategy for the phase out of CFC metered-dose inhalers. Lastly, to facilitate the consideration of Bangladesh's situation by the Eighteenth Meeting of the Parties, the Committee might wish to request the Secretariat to circulate this note to that meeting.

B. Introduction

7. Through correspondence contained in annex I to the present note, the Government of Bangladesh notified the Secretariat that, pursuant to paragraph 4 of the Non-compliance Procedure of the Montreal Protocol on Substances that Deplete the Ozone Layer, despite having made its best, bona fide efforts, Bangladesh anticipated that it would be unable to comply fully with its obligations under the Protocol. Specifically, the Party anticipates that it would be unable to comply with the Protocol's consumption control measures for the ozone-depleting substances in Annex A, group I (CFCs), as prescribed by Articles 2A and 5 of the Protocol for the years 2007, 2008 and 2009.

8. Paragraph 4 of the non-compliance procedure requires the Secretariat to transmit such submissions to the Implementation Committee, in order that the Committee can consider the submission as soon as practicable. Should the Committee decide to consider the submission from Bangladesh at the present meeting, the Secretariat has prepared this note to facilitate its deliberations. The note presents the Secretariat's understanding of the circumstances that Bangladesh considers to be the cause of its impending non-compliance with the Protocol's CFC control measures, information on the Party's CFC consumption sector, its CFC phase out efforts to date, and related information presented by the secretariat of the Multilateral Fund to the forty-ninth meeting of the Executive Committee. The note concludes with options that the Committee might wish to consider in developing its recommendation to the Eighteenth Meeting of the Parties on Bangladesh's submission.

9. To further assist the Committee's deliberations, representatives of the Government of Bangladesh will attend the present meeting to provide any additional information the Committee might require.

C. The specific circumstances considered by the Party to be the cause of its anticipated non-compliance in the years 2007, 2008 and 2009

10. Paragraph 4 of the non-compliance procedure requires the Party concerned to submit a written explanation on the specific circumstances that it considers to be the cause of its non-compliance. Bangladesh's submission contained in annex I to the present note suggests that the circumstances are as follows.

1. Bangladesh only became aware of its CFC consumption in the pharmaceutical metered-dose inhaler (MDI) manufacturing sector in 2004, restricting the time available to achieve the CFC phase out required to meet the Protocol's 2007 deadline for an 85 per cent reduction in CFC consumption;

11. The CFC consumption in the pharmaceutical metered-dose inhaler (MDI) manufacturing sector of Bangladesh was brought to the attention of the Government through data collection exercises conducted in 2003 in cooperation with the United Nations Development Programme (UNDP) as part of the preparation of Bangladesh's country programme update under the auspices of the Multilateral Fund. CFC consumption data from the sector was obtained for the years 2002 to 2004. It is likely, however, that this sector consumed CFCs since at least 1996, given that was the year in which two of the four CFC MDI manufacturing companies commenced operation.

12. The secretariat of the Multilateral Fund, in a paper presented to the forty-ninth meeting of the Executive Committee to the Fund in July 2006, noted that the average implementation time for the conversion of MDI manufacturing plants to a non-CFC-based technology could be between two and three years. This would suggest that there would be insufficient time for such assistance to realise the CFC phase out required to enable Bangladesh's compliance with the Protocol's 2007 control measures. On this basis, the Fund Secretariat suggested that urgent action to accelerate the phase out of CFCs in other sectors needed to be considered. The paper is contained in annex II to the present note.

2. No assistance to phase out this consumption has been received to date;

13. To date, Bangladesh has not received assistance from the Multilateral Fund that is specifically targeted at the phase out of CFC consumption in the Party's CFC MDI manufacturing sector. The Party sought such assistance from the Executive Committee at its forty-eighth meeting in April 2006, in the context of the submission of its country programme update.

14. In response to Bangladesh's request to that meeting for special consideration for financial and technical support to phase out its CFC consumption in its CFC MDI manufacturing sector, the meeting noted that the national phase-out plan for Bangladesh, approved by the Committee in 2004, had clearly stated that the Party was precluded from applying for or receiving any further funding in respect of phase out of CFCs. It also noted that, as Bangladesh's CFC MDI production capacity had been installed after 1995, it was ineligible for funding under Executive Committee decision 17/7. Decision 17/7 states that the Executive Committee decided, in the light of technological advancements, not to consider any projects to convert ozone-depleting substances-capacity installed after 25 July 1995.

15. Bangladesh's submission to the Committee expressed the Party's view that the application of decision 17/7 to the MDI manufacturing sector did not appear appropriate given that, contrary to the other sectors that used ozone-depleting substances (ODS) in 1995, non-ODS technologies were not available in the MDI manufacturing sector by that year. In the aforementioned paper presented by the Fund Secretariat to the Executive Committee it is noted that the first non-CFC MDI was introduced in Europe in March 1995, with a second introduced in 1997 by another company. The Fund Secretariat makes the statement that it is unlikely that the technology to manufacture the non-CFC MDI was fully developed, commercially available and transferable to pharmaceutical companies owned by Parties operating under Article 5 of the Protocol (Article 5 Parties) until the late 1990s. It was not until 2000 that a company wholly owned by an Article 5 Party introduced a non-CFC MDI.

16. The Executive Committee further recalled that the Seventeenth Meeting of the Parties, held in December 2005, discussed concerns that some Article 5 Parties such as Bangladesh that consume CFC for the manufacture of MDIs may find it difficult to phase out these substances without incurring economic losses to their countries, and may find that the consumption levels in 2007 of CFC for this purpose may place the Parties in non-compliance. In response, the Meeting adopted decision XVII/14, contained in annex III to the present note.

17. That decision: agreed to consider at the Eighteenth Meeting of the Parties in November 2006 a possible further decision to address this situation; requested the Executive Committee of the Multilateral Fund to examine situations such as these and consider options that might assist this potential situation of non-compliance; also requested the Executive Committee to consider appropriate regional workshops to create awareness and educate stakeholders, including doctors and patients, on alternative MDIs and on the elimination of CFCs in MDI uses and technical assistance to Article 5 Parties to phase out this use; and requested the Open-ended Working Group at its twenty-sixth meeting to consider the issue.

18. In the light of this information, the Executive Committee at its forty-eighth meeting adopted decision 48/39 (c) that requested the Fund Secretariat, in consultation with relevant implementing

agencies, to prepare a paper for submission to its forty-ninth meeting that outlined options for addressing such situations as discussed at the Seventeenth Meeting of the Parties. The paper made two recommendations to the Executive Committee with respect to addressing Bangladesh's compliance concerns.

19. It recommended that the Executive Committee request Bangladesh to use the assistance already approved for the Party under its national phase out plan to include in its 2007 and 2008 annual implementation programmes activities that could be implemented in the shortest possible time to achieve the greatest reduction in CFC consumption, would assess the feasibility of importing recovered and recycled CFCs for servicing existing refrigeration equipment, and, if technically feasible and economically viable, could establish stockpiles of pharmaceutical-grade CFC for use in MDI manufacturing facilities.

20. The paper also recommended that the Executive Committee request Bangladesh to submit to the Committee at its next meeting in November 2006, a proposal for the development of a transition strategy for the phase out of CFC-based MDIs, inviting the Party to consider incorporating measures that would accelerate the replacement of CFC MDIs with non-CFC alternatives by multi-national companies that had already introduced those products in other Article 5 Parties, invite multi-national companies manufacturing CFC MDIs in Bangladesh to demonstrate prompt action to convert to non-CFC product manufacture, and facilitate the earliest possible conversion by the leading nationally-owned CFC MDI manufacturer.

21. The Executive Committee adopted decision 49/33, incorporating the above recommendations and also requesting the Fund Secretariat to update the paper contained in annex II to the present note for its fifty-first meeting in 2007, taking into account any new information that might come to light and the implications of decisions to be taken at the Eighteenth Meeting of the Parties.

22. In accordance with decision XVII/14, the Eighteenth Meeting of the Parties will revisit the issue of the potential economic and compliance difficulties facing Article 5 Parties such as Bangladesh that consume CFC for the manufacture of MDI. Its deliberations will include consideration of the draft decision contained in annex III to the present note that was developed by a contact group formed at the twenty-sixth meeting of the Open-ended Working Group, held in July 2006, immediately prior to the forty-ninth meeting of the Executive Committee.

23. Amongst other things, the draft decision requests the Executive Committee to give priority to funding projects that facilitate CFC MDI phase out and to consider reviewing decision 17/7 with regard to funding eligibility for the conversion of CFC MDI production capacity installed after 1995. It proposes either directing the Implementation Committee and the Meeting of the Parties to defer until 2010 consideration of CFC consumption deviations by Article 5 Parties that provide evidence that the deviation is due to the use of CFC in MDI manufacture, or requesting the Implementation Committee to consider the situation faced by the Article 5 Parties and propose options on how such Parties should be treated. The draft decision also requests the United Nations Environment Programme, through its compliance assistance programme, to incorporate discussion on the steps required to phase out CFC MDIs in its regional workshops held in 2007.

3. Estimated CFC requirements for MDI manufacture in 2007, 2008 and 2009 are expected to result in total annual CFC consumption in those years greater than the maximum levels prescribed by the Protocol for Bangladesh.

24. The submission by Bangladesh estimates that its CFC MDI manufacturing sector currently consumes 70 metric tonnes of CFC per year, representing 80 per cent of the Party's allowable CFC consumption in 2007 and thereby placing Bangladesh at risk of non-compliance in that year.

25. The paper presented by the Multilateral Fund Secretariat to the forty-ninth meeting of the Executive Committee in July 2006 stated that information contained in a questionnaire submitted by Bangladesh to the Secretariat estimated that CFC consumption in the CFC MDI manufacturing sector would rise to 76 metric tonnes in 2006. Annexed to the paper, however, was a statement from one of Bangladesh's four CFC MDI manufacturers, Beximco. That manufacturer stated that conversion of its plant to CFC-free MDIs had commenced and was scheduled for completion in the third quarter of 2006. That company represents approximately 75 per cent of the Party's annual CFC consumption demand in the MDI manufacturing sector.

26. Table 1 below sets out the time-specific CFC consumption reductions to which Bangladesh has committed under its national phase out agreement with the Executive Committee. The submission from the Party incorrectly stated that these figures also represented Bangladesh's annual maximum

allowable CFC consumption levels under the Protocol. The correct annual maximum levels prescribed by the Protocol for Bangladesh are contained in table 1.

Table 1

Maximum allowable consumption (Year)	2006	2007	2008	2009	2010	Baseline
Montreal Protocol (ODP-tonnes)	290.797	87.239	87.239	87.239	0	581.594
National phase out plan (ODP-tonnes)	207.2	87.1	71.0	53.0	0	-

D. Controlled consumption and sector-specific uses of CFCs in Bangladesh

27. After 1994, the year in which Bangladesh's original country programme was approved by the Executive Committee, the Party's controlled CFC consumption rose from 180.580 ODP-tonnes to 262.956 ODP-tonnes in 2005. Consumption peaked at 832.187 ODP-tonnes in 1997 and remained above 800 ODP-tonnes though on a downward trend until 2002, placing the Party in non-compliance with the Protocol's CFC control measures from 1999 until 2002.

28. From 2002, Bangladesh has been in advance of both its CFC phase out commitments contained in its national phase out plan, and the Protocol. In 2004, Bangladesh reported CFC consumption of 294.916 ODP-tonnes, an amount 33.784 ODP-tonnes less than its maximum agreed consumption under its national phase out plan and 285.484 ODP-tonnes less than its maximum allowable consumption under the Protocol. Similarly, in 2005 Bangladesh reported CFC consumption of 262.956 ODP-tonnes, an amount 26.744 ODP-tonnes less than its maximum agreed consumption under its national phase out plan and 27.841 ODP-tonnes less than its maximum allowable consumption under the Protocol.

29. CFC consumption over the 1993 to 2004 period is attributed to the Party's refrigeration and aerosol sectors. With regard to the refrigeration sector, CFC-11 and CFC-12 consumption has been recorded in both the manufacturing and servicing subsectors. CFC-11 use is considered minor, and declining since 2001, being used primarily to recharge chiller units and possibly for flushing refrigeration and air conditioning equipment. The use of CFC-12 is considered to be substantial, though also declining. In addition to CFC-12 use in domestic and commercial refrigeration applications and central air-conditioning units, growth in the mobile air-conditioning subsector has been recorded and is attributed to a significant increase since 1997 in imports of vehicles with CFC-based air conditioning systems.

30. CFC consumption in the aerosol sector at the time of the approval of the original country programme was attributed to a single manufacturer of aerosol pesticide products, which was also the country's largest overall CFC user. Since the conversion of that manufacturer's plant in 2002 to non-CFC alternatives, Bangladesh's CFC consumption in the aerosol sector is now wholly attributed to the manufacture of pharmaceutical MDIs.

31. CFC consumption in the CFC MDI manufacturing subsector has risen from 39.15 ODP-tonnes in 2003 to 61.81 ODP-tonnes in 2005, with Bangladesh estimating consumption of between 70 and 76 ODP-tonnes in 2006. Bangladesh's country programme update identified CFC MDI manufacturing by four companies, three of which are locally owned. The fourth company, GlaxoSmithKline, is 18 per cent locally owned. Two of the companies commenced CFC MDI manufacture in 1996, while a third commenced manufacture in 2003.

32. Should the locally-owned company Beximco, which currently accounts for 75 percent of CFC consumption in the MDI manufacturing subsector be completed on schedule in 2006, it would appear that Bangladesh's annual estimated CFC consumption in that subsector could decline to between 17.5 and 19.75 ODP-tonnes in 2007.

E. CFC phase out efforts

33. Under the auspices of the Multilateral Fund, Bangladesh has completed two CFC phase out projects, an aerosol plant conversion project and a refrigerant management plan.

34. The aerosol plant conversion project implemented by Bangladesh in cooperation with the UNDP targeted the Party's largest user of CFC at that time, a pesticide product manufacturer. Approved in 1995 and scheduled for completion in 1996, the project was not completed until 2002. Bangladesh's non-compliance with the Protocol's CFC control measures over the 1999 to 2002 period was attributed to the delay in the completion of this project.

35. The refrigerant management plan, implemented by Bangladesh in cooperation with UNEP and UNDP, was approved by the Executive Committee to the Multilateral Fund in 1999. The project comprised the establishment of a national recovery and recycling network, monitoring activities, training for customs officers in supporting regulatory measures, and training of refrigeration technician trainers in good refrigerant management practices. Planned for completion in 2001 and 2002, the various components of the refrigerant management plan were completed in 2004 and 2005.

36. Bangladesh's CFC phase out efforts are also supported by an institutional strengthening project implemented by UNDP, under the auspices of the Multilateral Fund. At the time of the project's approval in December 2004 it was stated that the project would focus on controlling ozone-depleting substances imports through the Party's import permit system. Other regulatory measures implemented by Bangladesh to facilitate CFC phase out include: an ozone-depleting substances quota system, an import ban on new and used ozone-depleting substances-based equipment, a ban on the production of ozone-depleting substances, controls on the sale and purchase of ozone-depleting substances and mandatory reporting of the import, export and sale of ozone-depleting substances. Bangladesh has also increased the import tariff on ozone-depleting substances and decreased the tariff on alternatives.

37. With regard to current and future CFC phase out efforts, a national ozone-depleting substances phase out plan was approved for Bangladesh by the Executive Committee in 2004. It would appear however that implementation of the plan, in cooperation with UNEP and UNDP, did not commence until this year, following the resolution of discussions within the government as to the composition of the project's coordination unit.

38. The national phase out plan's first annual programme includes: public awareness and information dissemination activities, with an intensive campaign to sensitise the public on the impact of CFC-12 phase out; technical assistance for the refrigeration servicing subsector focusing on the provision of recovery and recycling equipment, retrofitting of refrigeration systems and assistance for commercial refrigeration end-users; training of an additional 25000 refrigeration servicing technicians, development and dissemination of a code of good practice for technicians, the introduction of a technician certification programme; and, additional training for customs officers. The Executive Committee at its forty-ninth meeting in July 2006 requested UNDP to submit a status report on the plan to its next meeting in November 2006. UNDP has submitted the report, stating that the Government of Bangladesh was expected to sign the documentation for the national phase out plan by September 2006.

39. The World Bank is expected to assist Bangladesh develop a project to phase out CFC consumption in the Party's chiller subsector. CFC consumption in this sector was detected during the preparation of the Party's country programme update. A detailed survey of the subsector is planned for completion this year to inform the development of a phase out strategy and the project.

40. With the exception of the conversion of Bangladesh's largest CFC MDI manufacturer, planned for completion by the third quarter of 2006, no other efforts to phase out CFC consumption in this subsector appear to be underway. The submission by Bangladesh states that a meeting of relevant national stakeholders including manufacturers, doctors, members of the country's asthma society and related agencies including policy makers concluded that cessation of CFC supply to local CFC MDI manufacturers would result in serious health and financial hardship for millions of asthma patients. The meeting agreed that Bangladesh should be granted an exemption to allow continued use of CFCs for the manufacture of MDIs to protect human health in the country. The submission also recalls that Bangladesh has proposed, through the draft decision to be considered by the Eighteenth Meeting of the Parties, that the Executive Committee revisit decision 17/7 such that it would no longer present an obstacle to funding the conversion of CFC MDI production capacity installed after 1995.

41. With regard to the imminent conversion of its largest CFC MDI manufacturer, Bangladesh's submission expresses the view that this action would not address the technology transfer issue faced by that company and the other three CFC MDI manufacturers. It further expresses the opinion that the CFC

phase out realised through the company's conversion would not be sufficient to enable it to comply with its CFC phase out obligations.

42. The Secretariat invited Bangladesh to elaborate on its reasons for these views. It also invited the Party to provide information on any action already taken or planned with respect to the requests contained in decision 49/33. As stated above, that decision requested Bangladesh to use the assistance already approved for the Party under its national phase out plan to include in its 2007 and 2008 annual implementation programmes activities that could be implemented in the shortest possible time to achieve the greatest reduction in CFC consumption, assess the feasibility of importing recovered and recycled CFCs for servicing existing refrigeration equipment, and consider establishing stockpiles of pharmaceutical-grade CFC for use in MDI manufacture facilities. The decision also requested Bangladesh to submit to its next meeting in November 2006, a proposal for the development of a transition strategy for the phase out of CFC-based MDIs, inviting the Party to consider incorporating measures: to accelerate the replacement of CFC MDIs with non-CFC alternatives by multi-national companies that had already introduced those products in other Article 5 Parties; to invite multi-national companies manufacturing CFC MDIs in Bangladesh to demonstrate prompt action to convert to non-CFC product manufacture; and, to facilitate the earliest possible conversion by the leading nationally-owned CFC MDI manufacturer.

43. The Ozone Secretariat has since learned that, on behalf of Bangladesh and pursuant to decision 49/33, UNEP has submitted a request to the November 2006 meeting of the Executive Committee for funding to develop in cooperation with UNDP a transition strategy for Bangladesh. The Fund Secretariat has recommended approval of the request.

F. Conclusion

44. Paragraph 4 of the non-compliance procedure was last employed in the mid-1990s by a number of members of the former Soviet Union that anticipated future non-compliance with various control measures of the Protocol. At that time, the Implementation Committee used an approach consistent with the approach currently used by the Committee to address instances of potential non-compliance. The Committee first consulted the Parties concerned, in writing and through direct consultation with representatives of the Parties in meetings of the Committee, to obtain a complete understanding of the reasons why the Party anticipated non-compliance with the Protocol's control measures. Once the situation of non-compliance was confirmed through the submission of annual data in accordance with Article 7 of the Protocol, the Committee then worked with the Parties to agree a plan of action with time-specific benchmarks to promptly return the Parties to compliance, which was then incorporated into a draft decision for the consideration of the annual Meeting of the Parties.

45. The Committee might therefore wish to pursue a similar approach with regard to the situation of Bangladesh, identifying at the present meeting any additional information that the members might require in order to obtain a complete understanding of the reasons why Bangladesh believes it will be unable to comply with the Protocol's CFC consumption control measures over the years 2007 to 2009. To the extent that this information could not be provided by the Party's representative to the meeting, Bangladesh could be requested through a recommendation of the Committee to submit the information to the Secretariat no later than 31 March 2007, for consideration by the Committee at its next meeting.

46. Confirmation of Bangladesh's anticipated non-compliance would not be possible until the Party submits its ozone-depleting substances data for 2007. Requesting the Party to submit a plan of action with time-specific benchmarks for returning to compliance with the Protocol's CFC consumption control measures might therefore be premature. In the interests of enabling the Committee to monitor the Party's CFC phase out efforts, while minimising the reporting burden on the Party, the Committee might wish to request Bangladesh to submit a copy of the documents requested by the forty-ninth meeting of the Executive Committee under decision 49/33. That is, a copy of the 2007 and 2008 annual programmes for Bangladesh's national phase out plan and, when complete, a copy of the transition strategy for the phase out of CFC MDIs.

47. In the light of the fact that, in accordance with decision XVII/14, the Eighteenth Meeting of the Parties is to consider Bangladesh's situation, the Committee might also wish to recommend that the Secretariat circulate this note to that meeting to provide further context for the Parties' deliberations.

Annex I

Submission by Bangladesh



Minister
Ministry of Environment & Forest
Government of the People's Republic of Bangladesh

D. O. No. MoEF-4/10/1/2006/ 505

Dated the 17 September, 2006

Subject : Notification of Potential Non-Compliance as per Non-compliance Procedure (1998) para 4 due to difficulties faced by Bangladesh with respect to Chlorofluorocarbons used in the Manufacture of Metered Dose Inhalers.

Ref: Non-Compliance Procedure (1998), Para 4.

Dear Mr. Marco Gonzalez,

Bangladesh acceded to the Montreal Protocol on 2 August 1990 and ratified its London, Copenhagen and Montreal Amendments in 1994, 2000 and 2001 respectively. We prepared our Country Programme in 1994 and have implemented a number of projects under the financial and technical assistance of Multilateral Fund (MLF). The Ozone Secretariat will also be happy to note that we are currently in compliance with our obligations under the Montreal Protocol and have started implementing the National ODS Phase-out Plan which targets a 100% phase-out by 2010 for the Refrigeration and Air conditioning sector and the solvent sector.

While we are engaged in the implementation of our National Phase-out Plan (NPP), we face a serious problem in the MDI Sector. We have discovered, post agreement of the NPP, that there are four pharmaceutical companies engaged in the production of CFC based MDIs in Bangladesh. The production from these plants meets our country's demand for the treatment of asthma and chronic obstructive pulmonary diseases.

It may kindly be noted that the use of CFCs in MDI production in Bangladesh was identified for the first time during the Country Programme Update survey in 2004. This consumption was not known to us earlier and was not reported before 2004. It may be mentioned here that the pharmaceutical companies using CFCs for MDI started their production after 1995. This date (1995), as you are aware, was established by the ExCom as the cut off date to be eligible to receive funding and as such, according to this rule all MDI manufacturing companies in Bangladesh were not considered eligible for financial assistance from the MLF.

The MDI manufacturing sector is quite big in Bangladesh and the estimated requirement of CFCs in the MDI sector at the current level is 70 M. Tons (estimated) per year. On the contrary, our maximum allowable CFC consumption limit is 87.00 M.Ton, 71.00 M.Ton and 53.00 M.Ton in 2007, 2008 and 2009 respectively as per Protocol and the agreed conditions of the National Phase-out Plan.

In view of the above stated factors, Bangladesh is facing a potential non-compliance in 2007, 2008 and 2009. According to paragraph 7 of decision IV/25, essential-exemption will not be applicable to Parties operating under paragraph 1 of Article 5 of the Protocol until the phase-out dates applicable to those Parties. Owing to this situation Bangladesh during 17th MOP raised its concerns through submission of a CRP and sought redressal of the problem by deferring consideration of the compliance situation till 2010 with respect to the consumption of CFCs in the MDI Sector for Bangladesh. The MOP, in its Decision XVII/14, requested the Executive Committee of the Multilateral Fund to examine situation of Article 5 Parties and consider options that might assist the countries in order to overcome the situation, and its consideration during the Open Ended Working Group (OEWG) at its twenty-sixth meeting.

With respect to the decision XVII/14, the Secretariat of the MLF was requested to prepare a report on the issues for the consideration of the Ex.Com. at its 49th Meeting. The Fund Secretariat prepared a policy paper (UNEP/Oz.LPro/Ex.Com/49/39), and based on that paper 49th meeting of the Ex.Com took a decision 49/33(attached). The Government of Bangladesh, having reviewed the MOP decisions, the follow up recommendations at the OEWG and the Ex.Com decision, feels that these decisions do not fully address the special circumstances faced by Bangladesh, and it provides only an uncertain temporary solution to the problem. In this regard, we view that assumptions have been made by the Ex.Com that the technology conversion by one company should suffice in assisting Bangladesh to meet its compliance commitments. In our view, this solution is not adequate to address the technology transfer issues faced by this company and other companies which provide CFC-MDIs to the people of Bangladesh and address serious health issues in this country. In addition, supply shortages of pharmaceutical grade CFCs envisaged were also not considered and therefore, we believe that a long term solution is the need of the hour.



Minister
Ministry of Environment & Forest
Government of the People's Republic of Bangladesh

D. O. No.

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Further, it may kindly be noted that before this communication, the Department of Environment organized a meeting with the relevant national stakeholders including manufactures, doctors, members of the Asthma Society and other related agencies including policy makers. It was a unanimous decision from the meeting that an extraordinary exemption needs to be sought for Bangladesh in the use of CFCs for the manufacture of Metered Dose Inhalers for protection of human health in Bangladesh. The meeting felt that if the supplies of CFCs to the local MDI manufacturing companies were stopped, millions of asthma patients would suffer serious health and financial hardships. For Bangladesh, the health security issue is of paramount importance for its citizens.

To address the above situation, as you are aware Bangladesh submitted two CRPs to the 26th OWEG meeting. One CRP was submitted with Egypt for the extra-ordinary exemption of CFCs for the production of MDIs for the period 2007-2009 and the other, requesting Ex.Com. of MLF to review their decision, 17/7 to facilitate financial support for conversion projects for the MDI sector in developing countries. Both the CRPs went to Contact Group for discussion. After detailed discussion, the two CRPs along with another proposal of EU for the availability of CFCs during transition period were integrated. The integrated CRP was recommended for consideration of the 18th MOP and we are expecting a positive decision from the upcoming MOP in this regard.

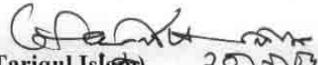
Now, as the next Implementation Committee Meeting (the 37th meeting) will be held before the 18th MOP to consider the OEWG recommendations, we would like to inform the 37th Implementation Committee meeting about the developments that have taken place as mentioned above through the Secretariat and through making a presentation to the members. We would also like to request the Secretariat to include the Bangladesh situation as an agenda item.

Under the aforesaid circumstances, we would request the Secretariat to:

- notify as per Section 4 of the non-compliance procedure that the country has made bona-fide efforts to address the potential non-compliance situation and is unable to comply with the 2007 and 2010 control measures. We are now requesting the Ozone Secretariat to place before the 37th Implementation Committee meeting our concerns for potential non-compliance during 2007-2010 due to consumption of CFCs in the MDI sector. The Implementation Committee should consider ways and means to help Bangladesh to avoid non-compliance in the light of the prevailing situation.
- consider Bangladesh's participation in the 37th Implementation Committee meeting. We shall be pleased to participate in the upcoming Implementation Committee Meeting to explain our situation and concern upon invitation from the Secretariat.

The Government of the People's Republic of Bangladesh avails itself of this opportunity to renew to the Ozone Secretariat the assurances of its highest consideration.

With best regards,


(Tariqul Islam) 20/03
Minister

Ministry of Environment and Forests

Mr. Marco Gonzalez
Executive Secretary
Vienna Convention and Montreal Protocol
United Nations Environment Programme (UNEP)
P.O. Box 30552