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**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**

Twenty-seventh meeting

Nairobi, 4–7 June 2007

Item 10 of the provisional agenda*

**Compilation of Parties' comments on systems for monitoring
transboundary movements of ozone-depleting substances (decision XVIII/18)**

**Written comments submitted by Parties on priorities with
respect to the medium- and longer- term options listed in the
study on developing a system for monitoring the transboundary
movement of controlled ozone-depleting substances between the
Parties**

Note by the Secretariat

1. At the Eighteenth Meeting of the Parties, in 2006, the Parties considered a report prepared by the Secretariat¹ in accordance with decision XVII/16 on a feasibility study on developing a system for monitoring the transboundary movement of controlled ozone-depleting substances between Parties. The Parties noted in decision XVIII/18 that the study contained recommendations on better implementation and enforcement of existing mechanisms. They also acknowledged the need for the Parties to make a detailed assessment of all the options put forward in the study and, in particular, the medium-term and longer-term options.
2. In paragraph 5 of decision XVIII/18 all Parties were invited to submit written comments by 31 March 2007 to the Ozone Secretariat on the report, focusing in particular on their priorities with respect to the medium- and longer-term options listed in the study and/or all other possible options with a view to identifying those cost-effective actions which would be given priority by the Parties both collectively through further action to be considered under the Protocol and at the regional and national levels.
3. The annex to the present note contains a compilation of comments submitted by Parties in response to the invitation contained in paragraph 5 of decision XVIII/18. The comments are presented as submitted and have not been formally edited by the Secretariat.

* UNEP/OzL.Pro.WG.1/27/1.
1 UNEP/OzL.Pro.WG.1/27/INF/2.

Annex

I. Comments by Australia

1. Australia supports and encourages the establishment of effective licensing and import/export systems by all Parties given their importance as a foundation for successful control of ozone-depleting substances (ODS) trade and identification of illegal trade.
2. In particular, Australia supports the outcomes of the report which support immediate actions focusing on the establishment of effective licensing systems by all Parties; better use of customs codes; and harnessing the regional networks for exchange of information and exchange of experience in best practice.

Prior Informed Consent (PIC) systems

3. In the medium term, the report gives support for an 'informal' PIC system in high-risk regions such as South and South-East Asia, and/or focused on the largest producers and consuming countries.
 - A number of informal PIC process exist already. In January 2006 the South Asia and South-East Asia-Pacific UNEP regional networks began implementation of an agreed voluntary system of Prior Informed Consent on Import and Export of chlorofluorocarbons (CFCs). Network countries have provided lists of registered importers and exporters. Participating countries agree to consult this list when trading with other countries in the network in order to make unregistered traders easier to identify.
4. At this stage, Australia does not see value in a global Prior Informed Consent procedure which is identified as a long term option in the report. The value of imposing a global PIC system when only a handful of countries are involved with transit trade is questionable.
 - An amendment to the Protocol to implement a formal PIC system would take several years to be agreed, enter into force and be implemented, and is obviously not a practical solution for the ODS soon to be phased out, including CFCs and carbon tetrachloride. It could, however, be relevant for ODS with longer phase-out schedules, such as HCFCs and methyl bromide, should an illegal trade be identified in these substances.

Intelligence sharing

5. Australia agrees that a system of tracking ODS transshipment or transit, in addition to the existing ODS import/export licensing systems, should be expected to reduce the incidence of illegal trade through misuse of transshipment and transit arrangements.
 - Australia agrees that transshipment and transit arrangements have been used in some parts of the world to conduct considerable illegal trade in ODS. On this basis, Australia would encourage Parties to continue to explore and implement other measures for addressing illegal trade, particularly as they relate to the exchange of intelligence which is integral to the detection and successful prosecution of illegal trade.
6. In this regard, Australia notes with appreciation the support provided by the UNEP CAP and Environmental Investigations Agency to the South Asia and Southeast Asia and Pacific region and would encourage the Parties to review some of the other recommendations made by the 2003 SA-SEAP workshop on measures to address illegal trade.
 - In particular, Australia would draw attention to the Workshop's recommendations: to take advantage of Regional Network meetings to also hold bilateral discussions on illegal trade concerns; and, leverage intelligence gathering resources by promoting cooperation between government and industry and accessing intelligence reports on ODS available from the WCO's Global Network of Regional Liaison Offices (RILO) and Customs Enforcement Network (CEN).

Project Sky-Hole Patching

7. Australia welcomes this initiative as a means to reduce illegal trade in ODS and to improve the capacity of customs officers to track and apprehend illegal ODS shipments. We consider that such

initiatives, which allow the free exchange of information between participating Customs administrations, are important tools that allow countries to better implement both the word and the spirit of the Montreal Protocol.

II. Comments by the European Community

General Comments

8. The European Community is a strong supporter of actions that can minimise illegal trade in ozone depleting substances and therefore welcomes this comprehensive Report that could provide a springboard for possible cost-effective actions by the Parties on countering illegal trade.

9. The report provides a good factual analysis of transboundary movements of ozone-depleting substances (ODS), existing means for identifying and monitoring such movement and which data on these movements are reported. On the basis of this analysis the report identifies a number of weaknesses in the design or implementation of existing monitoring, reporting and data collection system such as

- Lack of independent verification of data submitted to the Ozone Secretariat
- Weak controls of ODS shipped through duty free zones
- No controls at all of ODS transited through a third country
- Lack of controls of ODS re-exports by many countries, not including all ODS or not including ODS-containing mixtures in licensing systems)
- Naming and labeling systems and customs codes

10. The report's analysis of the monitoring systems of goods covered by other Conventions is also very instructive and a number of practices for monitoring goods could usefully be used in the Montreal Protocol.

11. It should be noted that some issues have been presented not quite correctly in the report — for example the text in section 6.4.1 where the term “transit” is mixed up with the term “re-export”. As it concerns the consultant's suggestion presented in Section 7.1. (paragraph 274) that there is a need of defining terms “trans-shipment” and “re-export” by the Parties, it is worth underlining that those terms have been precisely defined in Decision IV/14, so it seems that the only recommendation that the Parties can make in that regard is acknowledging that particular decision and asking for its implementation.

Short-term Actions

12. Many of the short-term actions listed in the Report are already contained in many existing decisions. The European Community is of the opinion that the full implementation of these decisions *inter alia* Decisions IX/8, XIV/7, XVII/12 or XVII/16 as well as Article 4B of the Protocol would make a significant contribution to reducing illegal trade. These items were also referred to in Decision XVIII/18 taken at the last meeting of the Parties in New Delhi. Implementation of these decisions could be enhanced by effective communication, sharing of data and strengthening co-operation to combat illegal trade at both national and regional level (for instance through the regional networks).

13. It should also be noted that Parties could also utilise existing systems in other Conventions where they could be useful for tracking ODS, for example the PIC System includes in its annexes both carbon tetrachloride and methyl bromide. It agrees with the Consultant that most of these activities can be carried out within existing structures, without any significant increase in resources, apart perhaps from strengthening the licensing systems, and without changes to legal texts.

Medium-term Actions

14. In regard to the proposed medium-term solutions, the European Community believes that the following actions should be prioritized as soon as possible. This will mean them being discussed at the next meeting of the Parties and presented for the endorsement by the Parties. The European Community is of the opinion that the following actions could bring considerable cost-effective results in combating illegal trade for some modest costs:

- Cross checking of data by for example the Ozone Secretariat (electronic system)
- Encourage the extension of the informal PIC system used in South and South East Asia to other regions
- Establishing the minimum requirements for an ODS import/export licensing system,
- Introduction of uniform system for labeling the ODS containers by the producers and improved consistency of ODS shipment documentation
- Establishing the minimum requirements for labeling the ODS containers, so the containers improperly labeled would be considered illegal
- Banning non-refillable containers at national level
- Promote customs investigations of illegal trade and supply chains using “Operation Sky-Hole Patching”

Long-term Actions

15. The European Community is of the opinion that many of the long-term options have merit and would be particularly useful when building on existing mechanisms, notably effective licensing systems. We would be ready to consider measures that could be implemented speedily and without disproportionate cost. In this framework

- The inclusion of transit movements (trans-shipments) of ODS and ODS shipped through duty free zones in ODS licensing systems or through some monitoring mechanism for instance using a unique consignment reference number
- Improved data collection and reporting independent verification of data for the most severe cases of discrepancies

16. On the PIC system we would not prioritise the introduction of a formal system which would take a long time to introduce and implement but rather build up the informal regional systems which could be operational much more quickly.

III. Comments by India

17. This report presents a feasibility study for developing systems for monitoring transboundary movements of controlled ozone-depleting substances (ODS) between the Parties to the Montreal Protocol. It has been produced according to the terms of reference agreed by the Parties in Decision XVII/16. The bulk of the work of the study has been a series of in-depth interviews with government officials and industry personnel, designed to analyze the systems they currently use and to understand their views on potential workable options. The report has also indicated the immediate, medium and long term options to be followed by each Party for tracking the illegal trade of ODS.

18. In response to the paragraph 5 of decision XVIII/18, comments on priority with respect to medium-and longer-term-options listed in the study and/or all other possible options with a view to identifying those cost-effective actions which could be given priority by the Parties both collectively through further action to be considered under the Protocol and at the regional and national levels.

19. All options given in the report are quite useful for tracking, monitoring and combating illegal trade. In addition to this, following options/suggestions are given for consideration:

Medium term options:

- Export should be made by a Party against the import license submitted by the importer to the exporter. In the absence of the import license, exporter may seek clarification from the National Ozone Unit (NOU). If a Party exported without license to a country where license is existing, it is treated as illegal trade. These cases are very crucial to determine the calculated consumption level of the either Party. As suggested in paragraph 3 of decision XVIII/18, the data published under “UNComtrade” will be taken for monitoring the trade of ODS. However, in the event of any discrepancy, Ozone Secretariat or CAP head office should interact with both the Parties to resolve the issue. A list of such cases may also be submitted to the Meeting of the Parties (MOP) for information.

- As per the Protocol schedule and with the efforts made by the Multilateral Fund (MLF), the total phase-out management plan and national ODS phase-out plans have been approved, and most of the countries are probably under compliance with the agreement. Accordingly, there has been a substantial reduction of ODS demand. In order to facilitate the importer and exporter, a list of countries and their annual demand of ODS may be published by UNEP CAP head office. This will be helpful to monitor the trade between Parties.
- UNEP Paris office under CAP program should establish a mechanism to monitor the trade of ODS. If any unusual trade happen between Parties, that may be brought to the notice of the Governments for immediate action.
- The regional ozone officers and customs network may raise awareness at regional level but it fails to address the issues at inter-regional level. To create awareness at inter-zonal level, CAP head office should prepare a definite plan.

Long-term options:

- The MOP through a decision should request all Parties to establish a regulatory system to enforce the licensing system.
- Through the institutional strengthening mechanism, each Party may be requested to establish capacity to review import and export data from various sources available at national and international level and to interact with appropriate authority to validate the same.
- The availability of institutional framework for implementation of the future Amendments of the Protocol and adoption of formal prior-information consent (PIC) may be ensured.
- A study may be undertaken by TEAP to estimate the impact of illegal trade on the recovery of the ozone layer.

IV. Comments by Japan

20. With respect to measures against illegal trade of controlled ozone-depleting substances, it is prerequisite that all Parties without licensing system should immediately introduce the system concerning the import and export of controlled substances in accordance with Article 4B of the Montreal Protocol. Also, it is essential that Parties with the licensing system implement their system effectively and steadily. To this end, it is important to continue the training of concerned officers, such as strengthening coordination between ozone officers and customs officers.

21. As pointed out in the report, export of chlorofluorocarbons (CFCs) among all ozone-depleting substances (ODSs) is limited to some specific countries, and amount of import per country is fairly limited. Moreover, in the light of the fact that the Montreal Protocol aims at total phase-out of ODSs in the end, the nature of the Protocol is quite different from those of other conventions like the Basel Convention and the CITES. Parties to the Protocol therefore should not introduce such new regulatory measures that require amendment of the Protocol and/or additional domestic legislation only for monitoring the transboundary movement of ODSs.

22. From the above-mentioned point of view, Japan believes that implementing “immediate actions” listed in the report will be fully effective to monitor the transboundary movements of ODSs.

23. Based on the fact that the majority of Article 5 Parties are importing CFCs, Japan believes it is also effective for reducing illegal export that CFC producing countries such as China (18,700 ODPT), India (11,260 ODPT), Mexico (5,201 ODPT), Venezuela (3,568 ODPT), Republic of Korea (3,518 ODPT) and Argentina (1,646 ODPT) strengthen the manufacturing management and strictly regulate illegal production.

V. Comments by New Zealand

24. The report on ozone-depleting substances (ODS) tracking is a comprehensive investigation of the issues surrounding the trade in ozone depleting substances and the mechanisms of the Protocol to capture and act upon this information. New Zealand congratulates the writers and contributors and supports the use of this report as a constructive way forward in addressing illegal trade.

25. We strongly agree with the report's observation that many options are activities and actions that Parties should already be implementing, or having assistance to implement, in accordance with existing obligations under Article 4B of the Protocol and subsequent decisions of the Parties. We would emphasise that the best method to tackle illegal trade is enforcement by Parties of their fully functioning licensing systems.

26. We acknowledge the point that there has been very little assessment of the effectiveness or potential effectiveness of the processes set up by the Parties. However, we believe that the basic principles are sound and maintain that establishing, strengthening and enhancing of these processes in all Parties is the most logical and practical way to address illegal trade.

27. We consider that additional measures could be considered for the known high risk areas, and that there is potential for more use to be made of existing trade databases to identify major discrepancies and verify high risk trade routes. If Parties wish to deal with the issue of illegal trade, then provision of the appropriate resources at all levels needs to be prioritised.

28. To this end we support prompt engagement by Parties to consider and put into universal practice the 'Immediate Actions' outlined in the report. We do agree that in the context of regulating exports, it makes sense that the primary onus should be on the importer to ensure that the trade is legal and does not place them into non-compliance with the control provisions of the Protocol.

In the medium term we would prioritise:

- Encouragement for customs investigations of illegal trade hotspots and supply changes, based on the 'Operation Sky-Hole Patching' model. New Zealand is involved in the project and our Customs Service is of the view that it is working well internationally.
- Further development of post-shipment systems in line with Decision IX/8 for cross-checking all export and import data per country and per shipment, possibly using a central clearing house mechanism. The report acknowledges that this is probably the single most important action that could be taken to ensure that licensing systems operate effectively. We note, however, that not all Parties use a 'per shipment' approach and that this may involve changes to domestic legislation and/or administration processes that would need to be clarified before any concrete action was decided upon.
- Clarification of the essential minimum elements of licensing systems as required by the Protocol, with additional enhancements encouraged. These should be endorsed by Parties through a decision with greater promotion of best practice in comprehensive licensing systems and training. It is considered the implementing agencies will be of invaluable assistance to the Parties in this matter.
- Analysis of the extent of transit trade in high-risk regions.

In the long term we would prioritise:

- Inclusion of transit movements in licensing systems but targeting in the first instance high-risk areas only.

29. In relation to the option of a feasibility study and/or implementation of a new centralised trade data collection and analysis system, we believe it is entirely possible that existing trade databases, such as Comtrade and/or eGrid could be modified to capture the already generated trade data on ODS. This could then be used by Parties or the Secretariat to analyse trade flows.

30. We note that there has been a disappointing assessment of Comtrade with respect to the trade in small arms and light weapons with limitations identified that may make transparency requirements difficult to meet. However, it would be useful for the Ozone Secretariat to at least contact Comtrade in the first instance to determine exactly what can be offered.

31. We believe it would be easier to investigate this avenue first than to proceed to create a similar database with different statistical services providers.

32. As to a formal prior informed consent (PIC) system, we are unconvinced of the need and efficacy of a PIC system for trade in ODS. This should only be attempted when other prioritised measures have been fully implemented and found to be ineffective. The formality of such a system will not guarantee a cessation of illegal trade, as Parties also experienced in other PIC systems such as under the Rotterdam and Basel Conventions will testify to. The report notes that the more visible a system is

to the users, the more effective the system is likely to be. It is considered most other measures will be more efficient in achieving this aim and should be fully utilised before a formal PIC system.

VI. Comments by Thailand

33. Under medium-term options, we consider the 'informal' Prior Informed Consent (PIC) system and encouragement for customs investigations based on the 'Operation Sky-Hole Patching' as the most practical activities at regional level and do not need much additional resources. And cooperation among the parties in South and South-East Asia regions must be strengthened if the successes of these two options are needed.

34. We agree with the review of data collection and data reporting systems which is important for identifying and eliminating data discrepancies. The quality of reported data can be affected by the way data was recorded, especially for the ODS in mixture. So, the consultancy services on how to record data of imported or exported mixtures correctly is required.

35. With regard to the encouragement for standardization of industry naming and labelling conventions on cylinders, we are of the view that the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) provides effective tools for hazards communication which can be useful for preventing an illegal trade in ODS. Since GHS will be fully operational by 2008, it is advisable that labelling of ODS cylinders should be in compliance with GHS by that target time frame.

VII. Comments by the Former Yugoslav Republic of Macedonia

36. The cross-checking of import and export data for ozone-depleting substances could be facilitated by informing importing countries of export licenses issued and by sharing the names of certified companies through the informal prior informed consent (PIC) initiative or bilateral agreements between exporting and importing countries.

VIII. Comments by the United States of America

37. The United States would like to thank the Secretariat for collecting comments on behalf of the Parties to the Montreal Protocol and to thank the report authors for their efforts in preparing the document on ODS Tracking. The report contains many ozone-depleting substance (ODS) tracking policy options in the near, medium, and long-term and has helped raise the profile of this important issue.

38. Based on our extensive experience in the United States monitoring trade of ODS, the most important actions to address the problem of illegal trade are implementing a licensing system and sustaining the political will to meaningfully enforce ODS regulations. Our domestic regulations carry strict penalties for violations- up to US\$ 37500 per kilogram of ODS illegally produced or imported. To date, the United States has levied more than US\$ 40 million in fines from over 100 enforcement actions and severe offenders have even been incarcerated for up to 7 years in prison. These aggressive actions have significantly deterred the illicit flow of ODS despite the fact that there is still domestic demand for ODS to service legacy equipment and despite the fact that legal supplies of ODS are subject to significant taxes.

39. Based on our domestic experience in combating illegal trade, it appears that most of the recommendations present practical difficulties or cost hurdles that are larger than the problem that is trying to be solved. Further, the complexity of many of the recommendations seems unwarranted at this late stage in the evolution of the Protocol (near the phase out date for most of the ODSs). This is especially true since there is little recent evidence of significant, current illegal trade problems.

40. The United States is keenly aware of problems with illegal trade in ODS arising from poorly regulated trans-shipments in the Asia region. Recent efforts to collaborate regionally so that importing and exporting countries are fully aware of such traffic have substantially addressed the issue. We applaud the efforts of those involved to make progress on the issue of trans-shipments. We note that often the collaboration is bilateral between two countries regarding specific instances of illegal trade. The results in this regional and bilateral collaborative effort serve to underscore the U.S. view that significant new global initiatives are unnecessary.

41. Proposals in the study such as creation of a real-time tracking system or notification procedures for individual shipments of ODS (e.g. a system similar to prior informed consent) are highly resource intensive activities that would be difficult even for a country such as the United States to employ. Furthermore, the cost associated with new database systems seems prohibitive to make such a proposal practical whether this activity is carried out by National Ozone Units (NOUs) or the Secretariat.

42. Other proposals such as calling for standardization of sub-headings for Customs Codes are difficult to implement globally and will therefore provide minimal effect. Each country/company has their own internal approach and an attempt to standardize such activities across 191 Parties will be very complex and is highly unrealistic. Furthermore, smugglers understand they can easily falsify customs codes and would therefore not be deterred by efforts to standardize them. Smugglers will only be deterred if the risk of getting caught exceeds the benefits of their illegal activity underscoring our previous statement regarding political will to enforce meaningful regulations.
