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**Open-ended Working Group of the Parties to  
the Montreal Protocol on Substances that  
Deplete the Ozone Layer  
Thirtieth meeting  
Geneva, 15–18 June 2010  
Items 4–10 of the provisional agenda\***

**Issues for discussion by and information for the attention of the  
Open-ended Working Group of the Parties to the Montreal  
Protocol at its thirtieth meeting**

**Note by the Secretariat**

**Addendum**

1. The Secretariat has in the recent past received several requests from parties, primarily parties operating under paragraph 1 of Article 5 of the Montreal Protocol, to revise reported data on hydrochlorofluorocarbons (HCFCs) to include additional consumption of the substance HCFC-141b. Some of the requests indicate that the extra consumption was in the form of imports of polyols; other requests provide no information on the source of the additional consumption. Some of the requested revisions relate to 2008 or 2009 while others relate to a larger range of years, such as from 2002 to 2008. In addition, one party recently submitted its HCFC consumption data for 2009 and indicated that it had included as consumption HCFC-141b that was contained in imports of fully formulated polyols.

2. The question of how polyols should be treated in calculating consumption has been discussed several times before. Previous decisions and discussions on the question are briefly outlined below:

(a) Subparagraph (e) (iii) of decision I/12 A states that “a polyurethane prepolymer or any foam containing, or manufactured with, a controlled substance” is to be considered a product for the purposes of paragraph 4 of Article 1 of the Montreal Protocol. Paragraph 4 of Article 1 indicates that the definition of the term “controlled substance” excludes any “controlled substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance”;

(b) Annex D of the Montreal Protocol, which was adopted by the Third Meeting of the Parties as required by paragraph 3 of Article 4 of the Protocol, also lists prepolymers as products;

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\* UNEP/OzL.Pro.WG.1/30/1/Rev.1.

(c) India's polyol use was discussed in the year 2000 at the twenty-fifth meeting of the Implementation Committee under the Non-compliance Procedure of the Montreal Protocol in relation to CFC consumption. India was seeking to revise upwards its CFC consumption since it had not included in previous data reports CFC-11 contained in pre-mixed and pre-blended polyols. The Committee denied the request. Referring to decision I/12 A and Annex D of the Protocol, it stated that "polyols were to be regarded as a product under the terms of the Montreal Protocol so that CFCs in polyols should not be counted as consumption by the importing country";

(d) When the President of the Implementation Committee reported on the Committee's work to the Twelfth Meeting of the Parties, the representative of India expressed the view that polyols mixed with CFCs used in the foam sector should be regarded as a raw material rather than a product and renewed his country's request that its CFC consumption data should be revised to reflect its polyol consumption. The parties, however, did not agree on any decision to accept India's request, and some delegates suggested that the issue would be more appropriately addressed in a different forum;

(e) At its twenty-sixth meeting, in 2001, the Implementation Committee recommended that the Meeting of the Parties should decide that the use of CFCs to blend prepolymers (pre-mixed polyols) should be counted as CFC consumption and that if such products were then exported that would count against the consumption allowance in the exporting countries. The Committee also noted a technical question on the definition of polyols and that it might be useful for the Meeting of the Parties to seek further guidance from the Technology and Economic Assessment Panel on the issue;

(f) Later in 2001, and in response to the recommendation of the Implementation Committee, the Secretariat produced a draft decision on polyols for discussion by the Thirteenth Meeting of the Parties. The Implementation Committee, however, at its twenty-seventh meeting agreed that the draft decision on polyols, referring to a technical definition of polyols to be provided by the Technology and Economic Assessment Panel, was not an accurate reflection of the Committee's discussions and should be deleted from the draft decision and a corrigendum to the document containing the draft decision (UNEP/OzL.Pro.13/9) should be issued. Despite this preparatory work, the issue of polyols was not discussed by the Thirteenth Meeting of the Parties;

(g) Following a study based on decisions XIII/12 and XII/10, the Fourteenth Meeting of the Parties adopted decision XIV/7. That decision provided further clarification on the difference between a controlled substance, or a mixture containing a controlled substance, and a product containing a controlled substance. The decision did not, however, explicitly mention prepolymers or polyols.

3. Over the last five years, 88 parties (73 parties operating under paragraph 1 of Article 5 and 15 not so operating) have reported some imports of HCFC-141b. Eight of the parties operating under paragraph 1 of Article 5 reported positive HCFC-141b consumption for the first time for the year 2008; an additional four reported positive HCFC-141b consumption for the first time for the year 2009.

4. Given the above history and recognizing that interpretation of the provisions of the Protocol is the purview of the parties, as recorded in decision XVI/34, the Secretariat is highlighting the issue of how polyols should be treated for further consideration by the parties. In the interim, the Secretariat has not taken any action on the requests from parties for revision of their HCFC-141b data to include polyol consumption.

5. The texts of decision I/12 A, Annex D to the Montreal Protocol and decision XIV/7 are set out in the annex to the present document for ease of reference.

## Annex

### Decision I/12 A: Clarification of terms and definitions: Controlled substances (in bulk)

The *First Meeting of the Parties* decided in *Dec. I/12 A* to agree to the following clarification of the definition of controlled substances (in bulk) in Article 1, paragraph 4 of the Montreal Protocol:

- (a) Article 1 of the Montreal Protocol excludes from consideration as a “controlled substance” any listed substance, whether alone or in a mixture, which is in a manufactured product other than a container used for transportation or storage;
- (b) Any amount of a controlled substance or a mixture of controlled substances which is not part of a use system containing the substance is a controlled substance for the purpose of the Protocol (i.e. a bulk chemical);
- (c) If a substance or mixture must first be transferred from a bulk container to another container, vessel or piece of equipment in order to realize its intended use, the first container is in fact utilized only for storage and/or transport, and the substance or mixture so packaged is covered by Article 1, paragraph 4 of the Protocol;
- (d) If, on the other hand, the mere dispensing of the product from a container constitutes the intended use of the substance, then that container is itself part of a use system and the substance contained in it is therefore excluded from the definition;
- (e) examples of use systems to be considered as products for the purposes of Article 1, paragraph 4 are *inter alia*:
  - (i) an aerosol can;
  - (ii) a refrigerator or refrigerating plant, air conditioner or air-conditioning plant, heat pump, etc;
  - (iii) a polyurethane prepolymer or any foam containing, or manufactured with, a controlled substance;
  - (iv) a fire extinguisher (wheel or hand-operated) or an installed container incorporating a release device (automatic or hand-operated);
- (f) bulk containers for shipment of controlled substances and mixtures containing controlled substances to users include (numbers being illustrative), *inter alia*:
  - (i) Tanks installed on board ships;
  - (ii) Rail tank cars (10–40 metric tons);
  - (iii) Road tankers (up to 20 metric tons);
  - (iv) Cylinders from 0.4 kg to one metric ton;
  - (v) Drums (5–300 kg);
- (g) Because containers of all sizes are used for either bulk or manufactured products, distinguishing on the basis of size is not consistent with the definition in the Protocol. Similarly, since containers for bulk or manufactured products can be designed to be rechargeable or not rechargeable, rechargeability is not sufficient for a consistent definition;
- (h) If the purpose of the container is used as the distinguishing characteristic as in the Protocol definition, such CFC or halon-containing products as aerosol spray cans and fire extinguishers, whether of the portable or flooding type, would therefore be excluded, because it is the mere release from such containers which constitute the intended use.

**Annex D:\* A list of products\*\* containing controlled substances specified in Annex A**

Products	Customs code number
1. Automobile and truck air conditioning units (whether incorporated in vehicles or not)	.....
2. Domestic and commercial refrigeration and air conditioning/heat pump equipment***	.....
e.g. Refrigerators	.....
Freezers	.....
Dehumidifiers	.....
Water coolers	.....
Ice machines	.....
Air conditioning and heat pump units	.....
3. Aerosol products, except medical aerosols	.....
4. Portable fire extinguisher	.....
5. Insulation boards, panels and pipe covers	.....
6. Pre-polymers	.....

\* This Annex was adopted by the Third Meeting of the Parties in Nairobi, 21 June 1991 as required by paragraph 3 of Article 4 of the Protocol.

\*\* Though not when transported in consignments of personal or household effects or in similar non-commercial situations normally exempted from customs attention.

\*\*\* When containing controlled substances in Annex A as a refrigerant and/or in insulating material of the product.

## Decision XIV/7: Monitoring of trade in ozone-depleting substances and preventing illegal trade in ozone-depleting substances

The *Fourteenth Meeting of the Parties* decides:

*Mindful* of Decision XIII/12 requesting the Ozone Secretariat to undertake a study dealing with issues related to monitoring of trade in ODS and preventing illegal trade in ODS listed in Decision XII/10 and present a report with practical suggestions to the Open-ended Working Group at its twenty-second meeting, in 2002, for consideration of the Parties in 2002,

*Acknowledging* with appreciation the work of the Ozone Secretariat and all organizations and individuals which assisted in the preparation of the report,

*Acknowledging* with appreciation the proposal from the Ozone Secretariat, based on the work done by the ODS Customs Codes Discussion Group convened under Decision X/18, on national subdivisions to customs codes for classification of mixtures containing ODS, which is presently being processed by the World Customs Organization,

*Recalling* previous decisions of the Parties dealing with monitoring of trade in ODS, customs codes, ODS import and export licensing systems and prevention of illegal trade in ODS, namely Decisions II/12, VI/19, VIII/20, IX/8, IX/22, X/18 and XI/26,

*Understanding* the importance of actions aimed at improvement of monitoring of trade in ODS and preventing illegal trade in ODS for timely and smooth phase-out of ODS according to the agreed schedules,

1. To encourage each Party to consider means and continued efforts to monitor international transit trade;
2. To encourage all Parties to introduce economic incentives that do not impair international trade but which are appropriate and consistent with international trade law, to promote the use of ODS substitutes and products (including equipment) containing them or designed for them, and technologies utilizing them; and to consider demand control measures in addressing illegal trade;
3. To urge each Party that has not already done so to introduce in its national customs classification system the separate sub-divisions for the most commonly traded HCFCs and other ODS contained in the World Customs Organization recommendation of 25 June 1999 and request that Parties provide a copy to the Secretariat; and to urge all Parties to take due account of any new recommendations by the World Customs Organization once they are agreed;
4. To provide the following further clarification of the difference between a controlled substance, or a mixture containing a controlled substance, and a product containing a controlled substance contained in Article 1 of the Montreal Protocol and further explained in Decision I/12A:
  - a. No matter which customs code is allocated to a controlled substance or mixture containing a controlled substance, such substance or mixture, when in a container used for transportation or storage as defined in Decision 1/12A, shall be considered to be a "controlled substance" and thus shall be subject to the phase-out schedules agreed upon by the Parties;
  - b. The clarification contained in subparagraph (a) above concerns, in particular, controlled substances or mixtures containing controlled substances classified under customs codes related to their function and sometimes wrongly considered to be "products", thus avoiding any controls resulting from the Montreal Protocol phase-out schedules;
5. To encourage all Parties to exchange information and intensify joint efforts to improve means of identification of ODS and prevention of illegal ODS traffic. In particular those Parties concerned should make even greater use of the UNEP regional networks and other networks in order to increase cooperation on illegal trade issues and enforcement activities;
6. To request the Division of Technology, Industry and Economics of the United Nations Environment Programme through the Executive Committee to report to the Sixteenth Meeting of the Parties on the activities of the regional networks with regard to means of combating illegal trade; to request the Executive Committee to consider making an evaluation of customs officers training and licensing systems projects a priority and, if possible, report to the Sixteenth Meeting of the Parties;

7. To invite Parties, in order to facilitate exchange of information, to report to the Ozone Secretariat fully proved cases of illegal trade in ozone-depleting substances. The illegally traded quantities should not be counted against a Party's consumption provided the Party does not place the said quantities on its own market. The Secretariat is requested to collect any information on illegal trade received from the Parties and to disseminate it to all Parties. The Secretariat is also requested to initiate exchanges with countries to explore options for reducing illegal trade;

8. To request the Executive Committee of the Multilateral Fund to continue to provide financial and technical assistance to Article 5 Parties to introduce, develop and apply inspection technologies and equipment in customs to combat illegal ODS traffic and to monitor ODS trade, and to report to the Sixteenth Meeting of the Parties to the Montreal Protocol on activities to date.

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