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Item 5 of the provisional agenda*

Montreal Protocol treatment of ozone-depleting substances used to service ships (decision XXIII/11)

Submissions on ozone-depleting substances used to service ships

Note by the Secretariat

1. In accordance with decision XXIII/11, adopted by the Twenty-Third Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, the Secretariat has prepared a note on issues relating to the treatment of ozone-depleting substances used to service ships (UNEP/OzL/Pro.WG.32/3).

2. Consistent with decision XXIII/11, and in keeping with the approach agreed upon at the thirty-first meeting of the Open-ended Working Group, the Secretariat sought information from Parties regarding their treatment of ozone-depleting substances used to service ships. In decision XXIII/11, the Meeting of the Parties requested the Secretariat to consult with the International Maritime Organization (IMO) and the World Customs Organization (WCO) on the matter. The annexes to the present note, which are intended to complement the information provided in the note by the Secretariat (UNEP/OzL/Pro.WG.1/32/3), contain the submissions by IMO and WCO and many of the submissions received from Parties. The annexes have been reproduced without formal editing.

3. Annex I sets out submissions by 18 parties (including the European Union on behalf of its 27 member States) received by the Secretariat before the holding of the Twenty-Third Meeting of the Parties, from 21 to 25 November 2011. Annex II contains the communication submitted by the Secretariat of IMO in response to paragraph 3 of decision XXIII/11 and annex III contains the corresponding communication by the Secretariat of WCO.

* UNEP/OzL.Pro.WG.1/32/1.

Annex I

Comments received from parties on the treatment of ozone-depleting substances used to service ships

A. Comments submitted by Argentina

We have to differentiate exports of refrigerants to be used for equipment upkeep, from those operations where a local refrigeration service makes repairs on board in port. In this way, changes of ownership of the gases in containers, receptacles for transportation or storage are included in the concept of "sale" or "transfer", equivalent to the concept of placing on the market of EU legislation.

Therefore, according to the Argentine law, the supplies to foreign flag vessels are considered as exports for consumption. Therefore, for such operations, stakeholders must apply for an export license. Customs authorities will enable the delivery of ODS without the presentation of the corresponding license.

The sale or transfer of fluorinated gas is defined as the change of ownership of a fluid with or without financial implications, respectively. When the refrigerant is used for loading (charging) or maintenance of equipment by enabled companies or refrigeration professionals at the local ports, no sale or cession is considered. These operations have been traditionally considered as "*use"* according to the European legislation (Regulation No 1005/2009, item 21, article 3) and not as sale or transfer.

In the annual report to the Secretariat, the Republic of Argentina includes all the exports indicating the country of destination. These are specifically indicated in the report´s comments.

As no license is required for the ODS used by technicians to service ships in ports, there is no statistical on the subject. The following is the corresponding data of ODS exported (Normally in 57 kg cylinders) to foreign flag vessels for the indicated years:

- 2008: CFC-12 93.2 kg and HCFC-22 14,353.60 kg
- 2009: HCFC-22 7,823.00 kg
- 2010: HCFC-22 7,661.02 kg

B. Comments submitted by Australia

Australia does not require individuals or businesses to obtain a license to import or export HCFCs if:

- The HCFCs are on board a ship or aircraft; and
- The ship or aircraft has air conditioning or refrigeration equipment; and
- The HCFC is used exclusively for meeting the reasonable servicing requirements for the ship or aircraft when it is engaged in a journey between:
  - A place in Australia and a place outside Australia, or
  - Two places outside of Australia

HCFCs supplied to meet the service requirements of ships or aircraft comes from Australia's domestic HCFC allocation – the HCFCs supplied to ships or aircraft are not treated as an export. The supply of HCFC must be provided by a business licensed to supply HCFCs.

Australia would have concerns if HCFC supplied to Australian or Canadian ships at foreign ports was deemed to be an export to Australia. This would impact on our quota systems and may lead to non-compliance as our existing domestic controls do not extend to licensing and quota for the normal servicing requirements of ships or aircraft plying their trade internationally.

There are a number of factors that would indicate that supply for export is highly unlikely in Australia.

Firstly the price of HCFCs in Australia, compared with other countries in the region, means it is less likely that Australian HCFCs would be used to meet export demands.

The second key factor is the existing supply controls, where only authorised businesses are able to acquire, store and dispose of fluorocarbon refrigerants in Australia. The authorisation provides greater capacity to apply compliance checks on the range of requirements that authorised businesses must meet. One such requirement is that businesses must keep records of the refrigerants bought, sold and returned. The records must be made available to the regulator on request. We run a regular audit program, where around 6,000 authorisation holders, of the 18,000 in total, are audited each year. 'Over supply' to ships is likely to become apparent through this process.

C. Comments submitted by Canada

In Canada, there is an exemption in our domestic regulations for foreign ships that wish to refill or service their refrigeration, air-conditioning or fire extinguishing equipment in a quantity that does not exceed the total capacity of the equipment. Therefore, a permit would not be required should a foreign ship at a Canadian Port be required to refill or service their existing equipment with an ozone-depleting substance.

This is treated as a domestic sale, not as an export activity. As such, in the case of HCFCs, the company importing or manufacturing the virgin ozone-depleting substance as per its Canadian allowance would have already counted the substance towards its consumption. In the case of other substances, only non-virgin substances could be used.

Like Australia, Canada would have concerns if HCFCs supplied to a Canadian ship would be considered an export as it would impact our allowance/quotas/permit framework. Virgin HCFC allowances and import permits are limited to specific companies and not extended to any companies that were not already granted such allowances. Importing HCFCs without a proper allowance and permit would be in violation of our domestic regulations.

D. Comments submitted by Barbados

As I understand it, this issue only emerged as a consequence of the decisions of the EU to account for the sale of ODS to ships as exports to the flagged country, and therefore is expected to be counted as part of the country's domestic consumption.

Barbados' historical monitoring and reporting of ODS consumption has never accounted for substances sold to ships flagged in Barbados. Accordingly to treat such under a quota system that was determined solely by domestic (on island) consumption would have a significant impact on the capacity to extend the useful life of available HCFC using infrastructure and, in our opinion, is contrary to the consideration accorded to developing countries under the Montreal Protocol. We would support a rational multilateral approach to the resolution to this matter that does not compromise the ability and capacity of our businesses and industries to derive the fullest possible utility from the use of HCFCs even as we are addressing the obligatory phase-out and transition processes.

E. Comments submitted by Cook Islands

Consumption, when reported to the NOU is not differentiated between ships or land-based refrigerators.

Gas used to service ships is included in that reported from servicing companies as local consumption. But apart from this there is no official recording or reporting of ODS sold to ships.

In general, gas is supplied to local ships, so it is consumed in-country. The grey area is yachts. Some have their own gas, some buy while on Rarotonga but these quantities are very small, only a few kg's per year.

F. Comments submitted by the European Union

1) Overall legal situation:

In the EU all imports and exports of ODS (substances, as well as products and equipment containing or relying on ODS) are prohibited. This applies to all types of customs procedures (e.g. including transit or trans-shipments). Where exemptions to this prohibition apply, the shipment is subject to licensing. There is a minor exemption related to the licensing of certain transit trades but this is not relevant for our discussion.

2) Movements of means of transport without transfer of ODS:

Movements of foreign means of transport are not considered as import or export and thus not subject to licensing or to import/export restriction if:

- They carry ODS for use onboard the means of transport, and
- The ODS or the means of transport is not imported into the European Union, and
- The means of transport benefits from the exemptions applicable for temporary admission under the relevant international conventions

(in short: a foreign ship/aircraft calling an EU port/airport is not affected provided that it leaves again unchanged)

3) Movements of ODS from EU to non-EU means of transport:

For the practical implementation we currently distinguish between servicing and supply. This differentiation is made to accommodate the recommendation of the ad-hoc expert group on reporting of 1990.

(a) Servicing is considered as domestic consumption and not subject to licensing or reporting. In these cases an EU based company is executing the maintenance work onboard the means of transport bringing its own ODS. In these cases the conditions for use of ODS under EU law apply (e.g. only non-virgin HCFC is permitted).

(b) Supply is the delivery of ODS to the ship for use onboard the ship currently in the EU harbour but without servicing executed by the delivering company. In these cases the actual maintenance work is executed by the crew usually while the ship is on the high seas. De facto such situations do not occur for means of transport other than ships. However, in case of ships in almost all cases we deal with "supply" and not with "servicing".

We do not have limit for supply but we would be very interested to understand how Australia and the USA (and possibly other parties) determine the "reasonable servicing requirements" given the multitude of means of transports and refrigeration systems they use. That might help our enforcement as well.

There is another interesting scenario and this is the delivery of ODS to ships where the ODS is eventually not used onboard of the ship that is currently in the port. We observe this quite often, in particular for fishery fleets that a staying on long haul mission on the high seas and where only one supply ship is calling the port. We currently classify this as regular export for refrigeration uses (not even as "ship supply") as this is not for use onboard the ship currently in the EU harbour and thus even farther away from EU consumption.

Do we understand correctly that those parties that limit deliveries to "reasonable servicing requirement" do not permit such movements because it would go beyond the "reasonable servicing requirement" of the ship currently in the port? Or would those actually be considered as export?

4) Movements from third countries to EU means of transport:

On the import side, we would consider it as an import if ODS are delivered to means of transport flagged to an EU Member State or a territory of an EU Member State that is part of the EU (for simplicity we will call those "EU ships/aircraft"). Given that import of HCFC (virgin or not) for refrigeration uses into the EU is prohibited, this means that such supply to EU ships in non-EU harbours would be prohibited as well. If servicing was taking place in a non-EU harbour by a company of the port state, this could only be done with non-virgin HCFC. Of course enforcement of this import restriction entails challenges. Note that such strict restrictions do not exist for products and equipment containing non-virgin halon (to service/supply EU aircraft). The use of halon on non-military ships is generally prohibited aboard EU ships.

G. Comments submitted by Fiji

At the moment Fiji is including all bulk purchases and service maintenance by our contractors as part of Fiji's consumption as they are within our EEZ and this was also discussed during the SEAP Meeting in Vietnam.

During our HPMP survey it was found that HCFC's used in the shipping sector takes up a large percentage of HCFC consumption approx. 55% and is quite a political matter in our country as well as other Pacific Island countries. The fishing industry is rated as one of the top 4 contributors towards the economic growth for Fiji as well as the Pacific.

Data is also collected via a Declaration Forms which we supply to Customs Officers at the border. So for every vessels that embarks at our ports, they are obliged to declare the quantity of ODS they have on board, if they falsely declare (eg, declare 5 cylinders instead of 10), the cylinders are confiscated upon inspection by the border control officers. They also pay a huge fine to Customs and they can also appeal if they would like to claim their cylinders. For vessels in particular, we have a separate wholesaler altogether that caters to the needs of both foreign and local vessels that are within Fiji's EEZ. If a vessel is outside Fiji's EEZ asking for ODS, these companies contact us for advice before any transactions is made.

We do not have any records of ODS transactions for Fiji flagged ships in other ports as we were aware that ODS transactions within a country's EEZ is liable for the consumption of that particular country.

So far, as for the imports, it is ok, but we only face issues that as companies that do not apply for import permits and realize that their goods are detained by Customs until they obtain but we are still trying to find out if there can be a way to track down on illegal high seas trading.

H. Comments submitted by Japan

Japan has been implementing trade regulation under the Foreign Exchange and Foreign Trade Act from the 1990s, in accordance with the Montreal Protocol.

Export is considered to be the time when goods are loaded into vessels or aircraft for transport from Japan to overseas. In case that a person or a firm intends to export supplies for its own use in vessels or aircraft coming and going between Japan and overseas, export approval is not required. Therefore, ODS sales to ships for onboard uses are treated as domestic sales in Japan.

Imports are considered to be the situation where goods arrive from overseas and across the coastline of Japan. Even if supplies are loaded to be used for vessels or aircraft coming and going between Japan and overseas, they are not considered as an import as long as the supplies are not landed in Japan. Even if the supplies are landed in Japan, when it is not intended to be consumed inside Japan for the purpose of transshipment, import approval as specific provision is not required. Accordingly, we do not consider ODS sales to Japanese flagged vessels for onboard uses in the ports of foreign countries as imports and they are not categorized as domestic consumption.

I. Comments submitted by Liberia

In Liberia, there is no mechanism to differentiate between consumption by ships or land based equipment. Consumption of ODS is largely done in the servicing sector. When reporting, sale to and use by ships of ODS is considered as consumption. Also sale to flagships is not considered export and does not require a permit for servicing on board equipment. Flagships within the Ports of other countries can be considered to be under the control and authority of host Country while there.

We think handling this issue this way is uncomplicated. However we are open to suggestions to improving reporting

J. Comments submitted by Malaysia

At the moment Malaysia has no restriction on the amount of HCFC import into the country. However there are activities of rebottling of the refrigerants and re export to the neighboring countries. The re exported amount will be declared to the Customs and recorded by the Statistic Department.

As for the onboard servicing of ships regardless of the flags at our ports, the refrigerants used are considered as our consumption because it is done by the local service contractors. We will set a quota system as of 1 January 2013 to meet the freeze target. Therefore if HCFC sold to Malaysian ships was considered as consumption, this would upset the system and will jeopardize our compliance status. Furthermore only licensed importers registered to Ministry of Trade are allowed to import HCFC. In this case ship owners are not considered as importers.

K. Comments submitted by Marshall Islands

4. The Marshall Islands has similar concerns as those expressed by Australia, Canada, Barbados and the United States in regards to the European Union's proposal on treatment of ODS used to service ships. The Marshall Islands, in the effort to further improve the draft decision, supports the proposed text provided by the IMO Secretariat as stated out in annex 2 of that submission. (The annex 2 text improves the proposed decision as it provides better language).

L. Comments submitted by the Republic of Korea

In the Republic of Korea, ODS used to all service ship is considered as national consumption not account as export.

M. Comments submitted by Singapore

In Singapore, the sale of HCFCs to ships flying foreign flag for servicing is considered as local consumption, and not as an export to the country to which the ship is flagged.

Similarly, HCFCs supplied to Singapore ships berthed at foreign ports should not constitute as an import into Singapore due to the following considerations:

- Firstly, Singapore is obliged to implement the phase-out of HCFCs according to the time-line stipulated by the Montreal Protocol. The implementation of the licensing and quota system to meet our obligations will be affected if the HCFCs sold to Singapore ships at foreign ports is attributed to Singapore's import. This will also lead to potential non-compliance issues as Singapore's baseline for HCFC phase-out did not take into account the HCFCs used on our flag ships.
- Secondly, Singapore ships that purchase HCFCs at foreign ports might not be sailing to Singapore. In this case, no import license will be issued since the HCFCs are not entering into Singapore territory. This is in line with our existing HCFC Licensing Control.

N. Comments submitted by Sri Lanka

In Sri Lanka there are few Suppliers who supply refrigerants only to ships and large vessels for the purpose of servicing and maintenance of refrigeration systems. They follow the same regulation that is adopted by the NOU for recommending import of ODSs to the country. Sri Lanka is recording the quantity import by them as a domestic consumption. There is no information about purchases by ships since that information are not requested by the NOU to date. However in future this will be implemented if Montreal Protocol give us a guideline

O. Comments submitted by Trinidad and Tobago

Trinidad and Tobago has a semi-open ship registry in that the ship register is only open to citizens of Trinidad and Tobago, residents or joint venture partnerships (with a citizen or resident). Currently there are approximately 150 vessels registered to the country. The Maritime Services Division is the agency responsible for the monitoring of these flagships, but they do not have any reporting mechanism in place and do not receive or mandate the reporting of ODS consumption to these ships.

The National Ozone Unit, which is the implementing body of the Montreal Protocol, in its annual data reporting to the Ozone and Fund Secretariats accounts for only legal imports as defined by the Montreal Protocol from data acquired through the Customs and Excise Division and the Ministry of Trade and Industry. In addition, the licensing and quota system which monitors ODS imports of refrigerants does not take into consideration sale or use to 'flagships".

P. Comments submitted by Tuvalu

The Maritime and transportation has two passenger ships for domestic and international routes. Tuvalu also has one patrol boat and also fishing boats. These ships and boats contain ODSs systems or equipment. Most of them use R-22 to service the air conditions and freezers. However, one of the passenger ships, MV Nivaga II, uses R-406 which is a component of blend refrigerant and that is why R-142b appears in our reporting data. In previous years, MV Nivaga II, used R-22, then they switched to R-404 and is currently using R-406.

The ODSs used to service ships are normally recorded in an ODS Record Book in which the engineers record any related supply of ODS during the recharging, repair, discharging or the disposal operations. However, both of the ships are on tour to outer islands at the time this summary report is being prepared, and as such access to the record book was not possible. However, additional information would be collected from the engineers on their return. Additionally, the ODSs used to service ships are mainly reported in the Country Programme (CP) Data reports to the Multilateral Fund Secretariat (MFS) and Article 7 data to Ozone Secretariat (OS).

At this time, Tuvalu's ships use mostly R-22 and in minimal amount and also a few amounts of blends

Q. Comments submitted by the United States of America

Under U.S. domestic regulations implementing the Montreal Protocol and our Clean Air Act provisions (40 C.F.R. 82.3), we use the following regulatory definition:

Export means the transport of virgin or used ODS from inside the United States or its territories to persons outside the United States or its territories, excluding the United States military bases and ships for on-board use.

We do not consider ODS sales to ships for onboard service to constitute an export to the country to which the ship is flagged. Further, our domestic regulations for servicing apply to any servicing that occurs while foreign flagged ships are in a U.S. port or in the U.S. territorial waters.

Our annual reporting of production and consumption is consistent with our domestic practice – a practice that has been in place since we first established our regulatory licensing system in the 1990s.

To us, this practice is consistent with the language of the Montreal Protocol as well as with maritime law. When a ship is in port, it is on the sovereign territory of the port state. The port state can assert extensive authority and control over a foreign flagged vessel in its port, and it would be extremely odd to describe a sale to a ship in our port, that is, in our territory, for onboard use as an "export."

We do not believe the Law of the Sea Convention provisions are determinative of this issue. While the "high seas" articles of the Law of the Sea Convention have some general applicability (e.g., ships may sail under one flag), the cited rule of the flag state having "exclusive jurisdiction" over its vessels does not apply in territorial waters or in ports. The Montreal Protocol parties have the authority to interpret the Montreal Protocol provisions on exports/imports of ODS in the manner most appropriate to the text and practice of the Protocol.

R. Comments submitted by Viet Nam

Viet Nam does not have regulations to control the HCFC use in servicing sector and all HCFC usage for servicing any ships, foreign or national flagged, boarded in Viet Nam ports is considers as domestic consumption.

In fact we are not able to control the HCFC used for servicing the Viet Nam flagged ships in other countries and this HCFC consumption (if any) should not be counted as Viet Nam HCFC consumption.

Annex II

Submission by the International Maritime Organization on the treatment of ozone-depleting substances used to service ships

ORGANISATION MARITIME INTERNATIONALE
INTERNATIONAL MARITIME ORGANIZATION
ORGANIZACIÓN MARÍTIMA INTERNACIONAL
МЕЖДУНАРОДНАЯ МОРСКАЯ ОРГАНИЗАЦИЯ
المنظمة البحرية الدولية
国际海事组织

Submission by the International Maritime Organization to the Ozone Secretariat of the Montreal Protocol

Information on treatment of ozone depleting substances used to service ships including ships from other flag states

29 March 2012

SUMMARY

In November 2011 the Twenty-Third Meeting of the Parties to the Montreal Protocol adopted Decision XXIII/11: Montreal Protocol treatment of ozone depleting substances used to service ships, including ships from other flag states. The Decision requests the Ozone Secretariat to prepare an information document and to consult, as deemed necessary, with relevant international bodies, including the International Maritime Organization (IMO). This document is submitted by IMO in response to a request from the Ozone Secretariat for information on the "Treatment of ozone-depleting substances used to service ships, including ships from other flag States". Specifically it provides information on the use of ozone-depleting substances onboard ships.

Background

1 The Twenty-Third Meeting of the Parties to the Montreal Protocol (MOP 23) adopted in November 2011 Decision XXIII/11: Montreal Protocol treatment of ozone depleting substances used to service ships, including ships from other flag states.

2 In response to publication of a draft decision, the International Maritime Organization (IMO) submitted general information to MOP 23 on the regulatory regime for ozone depleting substances for international shipping, specifically their control under regulation 12 of MARPOL Annex VI (The 1997 Protocol of the International Convention for the Prevention of Pollution from Ships) - Regulations for the prevention of air pollution from ships.

3 Paragraph 3 of Decision XXIII/11 states as follows:

"To request the Ozone Secretariat in preparing the document referred to in

paragraph 1 to consult as deemed necessary with relevant international bodies, in particular the International Maritime Organization and the World Customs Organization, to include in the document information on whether and how those bodies address:

(a) Trade in ozone-depleting substances for use onboard ships;

(b) Use of ozone-depleting substances onboard ships;

and to provide a general overview on the framework applied by those bodies to manage relevant activities;".

4 Accordingly the Ozone Secretariat of the Montreal Protocol wrote to IMO requesting contact details for correspondence and to request the aforementioned information. In response to this request for information the IMO's Marine Environment Protection Committee at its 63rd session held from 27 February to 2 March 2012 considered Decision XXIII/11 and agreed that the IMO Secretariat should provide to the Ozone Secretariat only the information requested in the decision adopted by the Twenty-Third Meeting of the Parties to the Montreal Protocol, namely information on whether and how IMO address (a) trade in ozone-depleting substances for use on board ships, and (b) use of ozone depleting substances on board ships.

(a) Trade in ozone-depleting substances for use on board ships

5 IMO does not collate or hold information on the trade in ozone-depleting substances for use on board ships.

(b) Use of ozone-depleting substances onboard ships

Onboard use of ODS

6 ODS are used onboard ships during their construction, inter alia, as blowing agents in insulation material, however the main use and consumption onboard ships is in rechargeable fire fighting and refrigerant systems. Further information on the use of ODS onboard ships is set out in annex 1.

Regulation of ODS in international shipping

7 Requirements for treatment of ODS onboard ships are covered in regulation 12 of MARPOL ANNEX VI which regulates such substances in line with the Montreal Protocol and prohibits all deliberate release. All ships of 400 GT and above must keep a record book of all equipment containing ODS which is not permanently sealed, and maintain a record of all supply, discharges to atmosphere and land based reception facilities, repair or maintenance and recharging of such equipment. The purpose of this record keeping is to enable monitoring of the condition and quantity of ODS onboard ships and may be used by the flag State as basis for data collection. Comprehensive information on the regulatory requirements for ODS onboard ships under IMO is set out in annex 2.

Action requested of the Parties to the Montreal Protocol

8 The Parties to the Montreal Protocol are invited to note the information provided and to take action as appropriate when deliberating the treatment of the use of ozone depleting substances used onboard ships.

ANNEX 1

INFORMATION ON THE USE OF OZONE DEPELETING SUBSTANCES ON BOARD SHIPS

1 Ozone depleting substances (ODS) are used onboard ships during their construction, inter alia, as blowing agents in insulation material, however the main use and consumption onboard ships is in rechargeable fire fighting and refrigerant systems. Further information on the types of ODS and also other substances used as substitutes is provided below.

Ozone depleting substances used on board ship

2 On new ships it is a requirement of most refrigeration and air conditioning design codes that the refrigeration plant is clearly labelled with the refrigerant used. The quantity of refrigerant in a system can be difficult to determine, especially if long pipe runs are used.

3 Refrigerants and refrigerant blends have been formulated to operate at their most efficient under certain evaporating and condensing temperatures. Thus it is normal to have one refrigerant in an air-conditioning system which has a high evaporating temperature and another in a provision room system which has a lower evaporating temperature. Thus it is common to have two different refrigerants on the same ship and in use next to each other.

4 Once the type (R number) and quantity of refrigerant charge (kg) for each refrigeration system is known, this information and the locations of the main items of equipment should be recorded under paragraph 2.1.2 of the Supplement to the International Air Pollution Prevention Certificate issued under the survey and certification requirements of MARPOL Annex VI. The same information should be recorded in the refrigerant log book, retained on board. If replacement refrigerant is stored onboard, then the number, size and the content of each cylinder and its location should be recorded.

5 CFC (chlorofluorocarbon) refrigerants, such as R-11, R-12 and R-502 are ozone depleting substances and as such have been banned under the Montreal Protocol. A major landmark was passed on 01 January 2010, when the production and consumption of CFCs, even in the developing (Article 5) countries, was banned. Thus, the use of these refrigerants to maintain existing installations, which is construed as being consumption, is also prohibited.

6 There may be possible essential-use exemptions for CFCs; however, these are likely to be only for medical inhalers. In conclusion, CFC refrigerants are now prohibited from use in any refrigeration systems on all ships, independent of the Flag Administration, as from 01 January 2010.

7 HCFC (hydrochlorofluorocarbon) refrigerants, such as R-22, R-123 and various blends are currently going through a transitional period of legislation. Regulation 12 of MARPOL Annex VI makes an exception for HCFCs and only requires them to be prohibited by 01 January 2020. However, other legislation, such as Regulation (EC) 2037/2000 (now recast as Regulation (EC) 1005/2009) of the European Parliament, banned the use of HCFCs from use in new refrigeration and air-conditioning installations effective from 01 January 2001. In accordance with the European Commission, if the ship's Flag Administration is a member of the European Community, this legislation applies. America, Australia and Japan also have HCFC specific legislation, however, the applicability of this legislation to shipping has not been confirmed.

8 Halons, such as 1211 or 1301, have been used as fire fighting media and as they are ozone depleting substances they are affected by regulation 12 of MARPOL Annex VI. The

International Convention on the Safety of Life at Sea (SOLAS) Chapter II-2 Construction - fire protection, detection and extinction, regulation 10, paragraph 4.1.3 has prohibited the installation of new systems using halon since October 1994. On existing ships, systems containing halon can remain in service until replaced or required to be removed by international, national or other legislation or requirements. The release of halon can still be undertaken in accordance with the requirements of regulation 3.1 of MARPOL Annex VI, for example, where emissions are necessary for the purpose of securing the safety of a ship or saving life at sea.

9 HFC (hydrofluorocarbon) refrigerants and fire fighting media, such as HFC R-134a and HFC R-227ea (FM-200) were originally developed as alternatives to CFC refrigerants and halons. Subsequently, there has been a plethora of binary and ternary HFC mixtures being promoted as HFC refrigerants, such as R-410A and R-404A.

10 Natural substances, such as ammonia (R-717), carbon dioxide (R-744) and propane (R-290), are also all used as refrigerants.

11 The various HFC gases and fluorinated ketone which are being marketed as direct or near direct drop in replacements for halon 1301. Other alternatives to halon 1301 include nitrogen, argon and carbon dioxide.

Blowing agents use in insulation

12 The most popular insulation materials used on existing ships are; polyurethane foam, expanded polystyrene and extruded polystyrene. Polyurethane foam, either in the standard 50/50 mix or 80/20 polyisocyanurate mix, is the most widely used insulation especially for pre-fabricated domestic provision rooms and cold chambers constructed from panels.

13 To make the rigid polyurethane foam, two components - MDI (diphenyl methane diisocyanate) and polyol (polyether or polyether resin), are mixed together. During the initial mixing stage other components are added. The main one, termed the ‘blowing agent’, is a chemical with a suitably low boiling point which is added in smaller quantities. As the heat of reaction volatilises the blowing agent, numerous small bubbles of blowing agent vapour, known as cells, are formed in the mixture.

14 When rigid foams were first developed the blowing agent selected was chlorofluorocarbon (CFC) R-11. When CFC R-11 started to be phased out under the Montreal Protocol in the early 1990’s, HCFC R-141b, with a boiling point of 32°C, was near universally introduced for blowing polyurethane foam. As both of these gases are ozone depleting, thus affected by regulation 12 of MARPOL Annex VI, there is a requirement for them to be delivered to a suitable reception facility. Thus if foam is being replaced, or the ship scrapped, the removed insulation must be sent to a suitable reception facility.

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ANNEX 2

Regulation of ODS under international shipping legislation - MARPOL Annex VI

MARPOL Annex VI

1 MARPOL Annex VI applies to all ships, while ships of 400 gross tonnage and above have to demonstrate compliance by an International Air Pollution Prevention Certificate issued by the flag Administration. Regulation 12 of MARPOL Annex VI contains the requirement for ozone-depleting substances which are regulated in line with the Montreal Protocol.

2 Applicability is defined in paragraph 1 of regulation 12 of MARPOL Annex VI. The regulation does not apply to permanently sealed equipment where there are no refrigerant charging connections or potentially removable components containing ozone depleting substances. Domestic refrigerators, domestic freezers, ice makers, water coolers and self contained air-conditioners are usually sealed systems and thus outside the scope of complying with regulation 12 of MARPOL Annex VI.

3 The quantity of refrigerant charge (kg) for each refrigeration system and the locations of the main items of equipment should be recorded under paragraph 2.1.2 of the Supplement to the International Air Pollution Prevention Certificate issued under the survey and certification requirements of MARPOL Annex VI. The same information should be recorded in the refrigerant log book, retained on board. If replacement refrigerant is stored onboard, then the number, size and the content of each cylinder and its location should be recorded. Other applications of ozone depleting substances onboard ships include fire fighting systems and foam insulation.

Definition of ODS

4 Regulation 2.16 of MARPOL Annex VI defines an ozone-depleting substance as follows:

> *"Ozone depleting substances* means controlled substances defined in paragraph (4) of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A, B, C or E to the said Protocol in force at the time of application or interpretation of this Annex.
>
> Ozone depleting substances that may be found on board ship include, but are not limited to:
>
> Halon 1211 Bromochlorodifluoromethane
>
> Halon 1301 Bromotrifluoromethane
>
> Halon 2402 1, 2-Dibromo -1, 1, 2, 2-tetraflouroethane (also known as Halon 114B2)
>
> CFC-11 Trichlorofluoromethane
>
> CFC-12 Dichlorodifluoromethane
>
> CFC-113 1, 1, 2 - Trichloro - 1, 2, 2 - trifluoroethane

CFC-114 1, 2 - Dichloro -1, 1, 2, 2 - tetrafluoroethane

CFC-115 Chloropentafluoroethane"

5 Regulation 12 of MARPOL Annex VI contains provisions for the mandatory control and management of ozone depleting substances on ships, where installations, maintenance and record keeping of ODS using equipment on board ships are specified. Any deliberate emissions of ODS is prohibited including emissions occurring in the course of maintaining, servicing, repairing or disposing of ODS equipment.

6 Each ship shall maintain a list of equipment containing ODS in paragraph 2.1 of the supplement to its International Air Pollution Prevention Certificate, which certifies the compliance of a ship with the requirements of MARPOL Annex VI. The form of paragraph 2.1 of the supplement is as follows:

2.1 *Ozone-depleting substances (regulation 12)*

2.1.1 The following fire-extinguishing systems, other systems and equipment containing ozone-depleting substances, other than hydrochlorofluorocarbons (HCFCs), installed before 19 May 2005 may continue in service:

System or equipment	Location on board	Substance

2.1.2 The following systems containing HCFCs installed before 1 January 2020 may continue in service:

System or equipment	Location on board	Substance

7 Each ship that has rechargeable systems that contain ODS shall maintain an ozone-depleting substances record book. Entries in the record book shall be recorded in terms of mass (kg) of substances on each occasion, such as recharge, repair, discharge and supply of ODS.

Purpose of ODS data recording

8 Purpose of ODS data recording in the supplement to International Air Pollution Prevention Certificate and in the ozone-depleting substances record book is to keep the condition and quantities of ODS on board ships and may be used by the flag States as basis for data collection.

Verification of ODS data

9 ODS data recorded in the supplement to International Air Pollution Prevention Certificate and in the ozone-depleting substances record book are verified by a surveyor at each periodical survey of ships and/or by port State control officer when ships call a port of Parties to MARPOL Annex VI. Such verification includes whether the condition of the ODS equipment on

board correspond with the particulars of the supplement and the record book, and that records are maintained. In other words, by verifying the ODS data and the condition of the ODS equipment on board, it is confirmed that appropriate maintenance of the ODS equipment has been carried out and deliberate emission of ODS has not taken place.

10 Regulation 12 which regulates ODS is reproduced below.

"Regulation 12
Ozone Depleting Substances

1 This regulation does not apply to permanently sealed equipment where there are no refrigerant charging connections or potentially removable components containing ozone depleting substances.

2 Subject to the provisions of regulation 3.1, any deliberate emissions of ozone depleting substances shall be prohibited. Deliberate emissions include emissions occurring in the course of maintaining, servicing, repairing or disposing of systems or equipment, except that deliberate emissions do not include minimal releases associated with the recapture or recycling of an ozone depleting substance. Emissions arising from leaks of an ozone depleting substance, whether or not the leaks are deliberate, may be regulated by Parties.

3.1 Installations which contain ozone depleting substances, other than hydro-chlorofluorocarbons, shall be prohibited:

.1 on ships constructed on or after 19 May 2005; or

.2 in the case of ships constructed before 19 May 2005, which have a contractual delivery date of the equipment to the ship on or after 19 May 2005 or, in the absence of a contractual delivery date, the actual delivery of the equipment to the ship on or after 19 May 2005. [1]

3.2 Installations which contain hydro-chlorofluorocarbons shall be prohibited:

.1 on ships constructed on or after 1 January 2020; or

.2 in the case of ships constructed before 1 January 2020, which have a contractual delivery date of the equipment to the ship on or after 1 January 2020 or, in the absence of a contractual delivery date, the actual delivery of the equipment to the ship on or after 1 January 2020.

4 The substances referred to in this regulation, and equipment containing such substances, shall be delivered to appropriate reception facilities when removed from ships.

5 Each ship subject to regulation 6.1 shall maintain a list of equipment containing ozone depleting substances.[1]

6 Each ship subject to regulation 6.1 which has rechargeable systems that contain ozone depleting substances shall maintain an Ozone Depleting Substances Record Book. This Record Book may form part of an existing log-book or electronic recording system as approved by the Administration.

7 Entries in the Ozone Depleting Substances Record Book shall be recorded in

[1] Supplement to International Air Pollution Prevention Certificate (AIPP Certificate), section 2.1.

terms of mass (kg) of substance and shall be completed without delay on each occasion, in respect of the following:

.1 recharge, full or partial, of equipment containing ozone depleting substances;

.2 repair or maintenance of equipment containing ozone depleting substances;

.3 discharge of ozone depleting substances to the atmosphere:

.3.1 deliberate; and
.3.2 non-deliberate;

.4 discharge of ozone depleting substances to land-based reception facilities; and

.5 supply of ozone depleting substances to the ship."

11 Regulation 3 identifies the exceptions and exemptions from the regulations in MARPOL Annex VI as follows:

"Regulation 3
Exceptions and exemptions

General

1 Regulations of this Annex shall not apply to:

.1 any emission necessary for the purpose of securing the safety of a ship or saving life at sea; or

.2 any emission resulting from damage to a ship or its equipment:

.2.1 provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the emission for the purpose of preventing or minimizing the emission; and

.2.2 except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result."

12 Regulation 17 which covers port reception facilities is reproduced below.

"Regulation 17
Reception facilities

1 Each Party undertakes to ensure the provision of facilities adequate to meet the:

.1 needs of ships using its repair ports for the reception of ozone-depleting substances and equipment containing such substances when removed from ships;

.2 needs of ships using its ports, terminals or repair ports for the reception of exhaust gas cleaning residues from an exhaust gas cleaning system;

without causing undue delay to ships, and

.3 needs in ship-breaking facilities for the reception of ozone-depleting substances and equipment containing such substances when removed from ships.

2 If a particular port or terminal of a Party is - taking into account the guidelines to be developed by the Organization - remotely located from, or lacking in, the industrial infrastructure necessary to manage and process those substances referred to in paragraph 1 of this regulation and therefore cannot accept such substances, then the Party shall inform the Organization of any such port or terminal so that this information may be circulated to all Parties and Member States of the Organization for their information and any appropriate action. Each Party that has provided the Organization with such information shall also notify the Organization of its ports and terminals where reception facilities are available to manage and process such substances.

3 Each Party shall notify the Organization for transmission to the Members of the Organization of all cases where the facilities provided under this regulation are unavailable or alleged to be inadequate."

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Annex III

Submission by the World Customs Organization on the treatment of ozone-depleting substances used to service ships

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

12.FL-0081E/D.M.

Brussels, 10 February 2012.

Dear Mr. González,

Thank you for your letter dated 26 January 2012 consulting the World Customs Organization regarding decision XXIII/11: Montreal Protocol treatment of ozone-depleting substances used to service ships, including ships from other flag states.

The World Customs Organization (WCO) does not specifically address the trade in ozone-depleting substances for use onboard ships nor the use of ozone-depleting substances onboard ships. However, the WCO's revised Kyoto Convention (International Convention on the Simplification and Harmonization of Customs procedures) may provide some guidance regarding the aforementioned matters. Specific Annex J, Chapter 4 on Stores states the following:

- E5/F3. *"stores for consumption" means :*
  - goods intended for consumption by the passengers and the crew on board vessels, aircraft or trains, whether or not sold; and
  *- **goods necessary for the operation and maintenance of vessels**, aircraft or trains including fuel and lubricants but excluding spare parts and equipment; which are either on board upon arrival or **are taken on board during the stay in the Customs territory of vessels**, aircraft or trains used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration;*

- *15. Standard: "Vessels and aircraft which depart for an ultimate foreign destination shall be entitled to **take on board, exempted from duties and taxes**:*

  a. stores in such quantities as the Customs deem reasonable having regard to the number of the passengers and the crew, to the length of the voyage or flight and to any quantities of such stores already on board; and

  *b stores for consumption **necessary for their operation and maintenance,** in such quantities as are deemed reasonable for operation and maintenance during the voyage or flight having regard also to any quantities of such stores already on board."*

../..

Mr. Marco Gonzáles,
Executive Secretary
Ozone Secretariat,
UNEP
P.O. Box 30552-00100,
Nairobi, Kenya.

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Account-compte Fortis banque : 210-0475126-72 •

../..

The legal text of the revised Kyoto Convention can be found on the WCO website. In addition, the revised Kyoto Convention – Specific Annex – Chapter 4 Guidelines on Stores are attached to this letter.

Should you have any further enquiries, please have your staff to contact Mr. Daniel Moell (e-mail: daniel.moell@wcoomd.org, Tel: +32 2 209 93 61) at the WCO Secretariat.

Yours sincerely,

Gaozhang Zhu,
Director;
Compliance and Facilitation.

KYOTO CONVENTION

GUIDELINES TO SPECIFIC ANNEX J

Chapter 4

STORES

WORLD CUSTOMS ORGANIZATION

Kyoto Convention - Specific Annex J - Chapter 4
Guidelines on Stores

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Kyoto Convention - Specific Annex - Chapter 4
Guidelines on Stores

1. Introduction

Most Customs territories provide an exemption from import duties and taxes for stores which are carried on board vessels, aircraft and trains arriving in the Customs territory and which are intended to meet the needs of passengers and crew, as well as the needs of the means of transport themselves. Exemption is granted because, as a rule, such stores remain on board and may be regarded as being temporarily imported with a minimum of Customs formalities. For obvious reasons, however, some of the stores may be used or consumed while the means of transport stay in the Customs territory.

Similarly, stores for vessels and aircraft departing for an ultimate foreign destination are usually supplied free of any applicable duties and taxes. This is granted since these stores are regarded as exported and thus receive the same benefits as goods exported directly.

The level of Customs control for stores is usually adapted according to the requirements of each means of transport and, in some cases, according to the revenue status of the stores themselves. The measures normally taken include general supervision, documentary control and placing certain stores under Customs seal.

Chapter 4 of Specific Annex J covers stores for vessels, aircraft and trains which are used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration. It does not cover stores for means of transport for private use or for military or government means of transport not engaged in commercial activities. It also does not cover means of transport for commercial use engaged in the carriage of goods coastwise.

2. Definitions

E1/F6 ***"carrier"*** *means the person actually transporting goods or in charge of or responsible for the operation of the means of transport;*

E2/F1 ***"Customs formalities applicable to stores"*** *means all the operations to be carried out by the person concerned and by the Customs in respect of stores;*

E3/F5 ***"Customs treatment of stores"*** *means all the facilities to be accorded and all the Customs formalities applicable to stores;*

E4/F2 ***"stores"*** *means :*
- stores for consumption; and
- stores to be taken away;

E5/F3 ***"stores for consumption"*** *means:*

- goods intended for consumption by the passengers and the crew on board vessels, aircraft or trains, whether or not sold; and

- goods necessary for the operation and maintenance of vessels, aircraft or trains including fuel and lubricants but excluding spare parts and equipment;

which are either on board upon arrival or are taken on board during the stay in the Customs territory of vessels, aircraft or trains used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration;

E6/F4 ***"stores to be taken away"*** *means goods for sale to the passengers and the crew of vessels and aircraft with a view to being landed, which are either on board upon arrival or are taken on board during the stay in the Customs territory of vessels and aircraft used, or intended to be used, in international traffic for the transport of persons for remuneration or for the industrial or commercial transport of goods, whether or not for remuneration.*

All the definitions of terms necessary for the interpretation of more than one Annex to the Convention are placed in the General Annex. The definitions of terms applicable to only a particular procedure or practice are contained in that Specific Annex or Chapter.

3. Principles

Standard 1

Customs treatment of stores shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

The revised Kyoto Convention has a set of obligatory core provisions that are contained in the General Annex. The General Annex reflects the main principles considered necessary to harmonize and simplify all the relevant Customs procedures and practices which Customs apply in their daily activities.

As the core provisions of the General Annex are applicable to all Specific Annexes and Chapters, they should be applied in full for Stores. Where a specific applicability is not relevant, the general facilitation principles of the General Annex should always be borne in mind when implementing the provisions of this Chapter. In particular, Chapter 1 of the General Annex on General principles, Chapter 3 on Clearance and other Customs formalities, Chapter 8 on Relationship between the Customs and third parties and Chapter 9 on Information, decisions and rulings supplied by the Customs should be read in conjunction with this Chapter on Stores.

Contracting Parties should particularly note Standard 1.2 of the General Annex and ensure that their national legislation specifies the conditions to be fulfilled and the formalities to be accomplished for Stores.

In line with Article 2 of the Convention, Contracting Parties are encouraged to grant greater facilities than those provided for in this Chapter.

Recommended Practice 2

Customs treatment of stores should apply equally, regardless of the country of registration or ownership of vessels, aircraft or trains.

The objective of Recommended Practice 2 is to exclude any discrimination in the Customs treatment of stores based on the Customs territory of registration or ownership of the conveyances. Nevertheless Customs might vary the degree of Customs control due to particular circumstances, such as more strict control measures on routes where smuggling is more likely to occur. In exercising their control functions, Customs should apply the risk management techniques that are detailed in Chapter 6 of the General Annex and its Guidelines.

4. Stores on board arriving vessels, aircraft or trains

4.1. Exemption from import duties and taxes

Standard 3

Stores which are carried in a vessel or aircraft arriving in the Customs territory shall be exempted from import duties and taxes provided that they remain on board.

Standard 3 covers stores that are intended for consumption by the passengers and crew on board vessels or aircraft or that are for sale to the passengers and crew, as well as goods necessary for the operation and maintenance of the vessel or aircraft. This Standard relates only to stores on two of the types of conveyances covered by the definition and excludes those on trains. This is because vessels and aircraft generally remain in the Customs territory for as short a time as possible and are in the controlled environment of a port or airport. Stores on trains are covered under Recommended Practice 4.

Stores that are sold or given free of charge to passengers or members of the crew may be liable to duties and taxes when taken out of the vessels or aircraft.

Recommended Practice 4

Stores for consumption by the passengers and the crew imported as provisions on international express trains should be exempted from import duties and taxes provided that :

(a) such goods are purchased only in the countries crossed by the international train in question; and

(b) any duties and taxes chargeable on such goods in the country where they were purchased are paid.

Most international express trains normally provide foodstuffs, non-alcoholic beverages, beer and wine as an added service to their passengers and crew. Recommended Practice 4 provides for these types of provisions to enter free of any duties and taxes on two conditions. They must have been purchased in the Customs territories crossed by the international train and, if any duties and taxes are due in the Customs territory of purchase, they have been paid.

These stores on international trains are exempted from duties and taxes by virtue of their having been duty and tax paid in the Customs territory in which they were purchased.

Thus they may not be totally duty and tax-free for the owner of the train, but they will receive a facilitation treatment in subsequent Customs territories.

Customs generally do not apply Customs controls to these stores for consumption. However some administrations do subject spirits and tobacco on board the trains to the usual Customs control.

Standard 5

Stores for consumption necessary for the operation and maintenance of vessels, aircraft and trains which are on board these means of transport arriving in the Customs territory shall be exempted from import duties and taxes provided that they remain on board while these means of transport are in the Customs territory.

Standard 5 provides for exemption of duties and taxes on goods such as fuel and lubricants meant for the operation and maintenance of vessels, aircraft and trains. Other items normally considered as stores for consumption necessary for the operation and maintenance of vessels are:

- boiler compounds, fuel oil treatment preparations and filter sponges;
- cleaning compounds and materials;
- paints, varnishes and solvents, and corrosion and rust inhibitors;
- gas for welding purposes; and
- products for the preservation, treatment or preparation on board of the goods carried.

Customs treatment of the normal spare parts and equipment upon arrival in the Customs territory, as well as parts and equipment imported separately, are dealt with in this Specific Annex in Chapter 3 on Means of transport for commercial use.

4.2. Documentation

4.2.1. Stores on board vessels

Standard 6

When a declaration concerning stores on board vessels arriving in the Customs territory is required by the Customs, the information required shall be kept to the minimum necessary for the purposes of Customs control.

Standard 6 relates only to stores on board vessels. This is because vessels stay in ports for a longer period than other means of transport, and are used as passenger lines and cruise vessels. Therefore Customs may, for the purposes of control, require a declaration of stores. However Standard 6 limits the information to be submitted to the minimum.

Generally only goods that are subject to high import duties, such as tobacco products, beer, spirits and wine, and goods subject to import restrictions or prohibitions, such as narcotics for medical use or firearms, must be listed in detail in such a declaration. Therefore this Standard should not be interpreted as justification to require a declaration listing in detail everything on board the vessel. The overriding consideration should be facilitation and appropriate proportions of control.

If a declaration is required, many administrations use that set out in the International Maritime Organization (IMO) FAL Convention.

It should be noted, however, that many administrations dispense with the requirement of a written declaration concerning any kind of stores.

Recommended Practice 7

The quantities of stores which are allowed by the Customs to be issued from the stores held on board should be recorded on the declaration concerning stores produced to the Customs upon arrival of the vessel in the Customs territory and no separate form should be required to be lodged with the Customs in respect thereof.

Recommended Practice 7 is intended to minimize document requirements and facilitate the issue of stores by using only the declaration produced upon arrival of the vessel for recording the quantities issued.

As a measure of facilitation in accounting for stores, some Customs administrations have agreed to use a separate document on which all changes in the quantities of stores that have been placed under Customs seal are recorded by Customs. This document is drawn up by Customs at the first port of call, on the basis of the ship's stores declaration. The master of the vessel will then produce this document to Customs at the subsequent ports of call in any of those Customs territories.

Recommended Practice 8

The quantities of stores which are supplied to vessels during their stay in the Customs territory should be recorded on any declaration concerning stores which has been required by the Customs.

If and when stores are supplied to the vessels during their stay in the Customs territory, the supply should be recorded in the declaration originally submitted upon arrival. No separate document should be required, thus minimizing the number of forms provided by the vessel operator.

As in Standard 6, many administrations have dispensed with the requirement of this written declaration. Likewise if a declaration is deemed necessary, only stores which are subject to high import duties and taxes and/or restrictions and prohibitions (narcotics for medical use, tobacco products, beers, spirits and wine) should need to be recorded in detail.

4.2.2. Stores on board aircraft

Standard 9

The Customs shall not require the presentation of a separate declaration of stores remaining on board aircraft.

Since aircraft generally remain in an airport as short a time as possible, the level of facilitation should be increased and the level of controls on stores less stringent. Customs should accept an oral declaration of the quantities of stores on board an arriving aircraft or make use of the airline company's internal documents.

Standard 9 thus provides for Customs not to require a separate declaration. It should also be noted that Annex 9 to the Convention on International Civil Aviation (Chicago, 1944) contains a corresponding provision in Chapter 2 under the heading "Description, Purpose and Use of Aircraft Documents".

4.3. Issue of stores for consumption

4.3.1. Issue of stores on vessels

Standard 10

The Customs shall allow the issue of stores for consumption on board during the stay of a vessel in the Customs territory in such quantities as the Customs deem reasonable having regard to the number of the passengers and the crew and to the length of the stay of the vessel in the Customs territory.

It is usual that vessels tend to stay longer in a Customs territory than aircraft due to the time needed for berthing, loading and unloading of cargo, and refueling. Therefore it is important that the passengers and crew be issued with sufficient quantities of stores during their stay. Standard 10 requires Customs to allow the issue of these stores in reasonable quantities and based on appropriate considerations.

In most administrations this facility for passengers is subject to the condition that no passengers or cargo are embarked at one port of call in the Customs territory for disembarkation at another port in that territory. This would make any Customs controls difficult to maintain.

In some administrations, standard quantities of alcoholic beverages and tobacco products can be issued for consumption by the passengers and crew on board during the stay of a vessel in the Customs territory. The daily amounts per person, for example, may be:

- 1/4 liter of spirits, æ liter of wine and 1 liter of beer; and

- 40g. of tobacco or an equivalent amount in cigars and cigarettes.

In order to simplify the arrangements, overall quantities of such products may be issued at one time. As a matter of control, certain limits may be set for these overall quantities.

Customs should also allow an additional issue of stores if the vessel's departure is delayed for one reason or another.

Customs also normally allow an additional issue of stores for consumption to be served at functions organized on board, whether or not against the payment of any duties and taxes, when persons other than passengers and the crew also attend.

Recommended Practice 11

The Customs should allow the issue of stores for consumption on board by the crew while the vessel is undergoing repairs in a dock or shipyard, provided that the stay in a dock or shipyard is considered to be of reasonable duration.

When a vessel has to undergo repairs in a dock or a shipyard, the crew is not expected to stay on the vessel unless the duration of the repair is a short one. Since it is reasonable that the crew be allowed the quantities of stores for consumption that would be issued if they remained on board, Recommended Practice 11 provides for Customs to allow the issue of these stores in this situation.

4.3.2. Issue of stores on aircraft

Recommended Practice 12

When an aircraft is to land at one or more airports in the Customs territory, the Customs should allow the issue of stores for consumption on board both during the stay of the aircraft at such intermediate airports and during its flight between such airports.

With the increase in the volume of air passengers, an aircraft from a foreign place of departure may frequently land at one or more airports in a Customs territory. In such circumstances, Recommended Practice 12 encourages Customs to allow the consumption of stores on board during the stay and during their flights between domestic airports.

In this regard Annex 9 to the Convention on International Civil Aviation (Chicago, 1944) contains a corresponding provision in Chapter 4 under the heading "Sale and Use of Commissary Supplies on Board Aircraft".

4.4. Customs control

Standard 13

The Customs shall require the carrier to take appropriate measures to prevent any unauthorized use of the stores including sealing of the stores, when necessary.

Standard 13 is intended to place responsibility for compliance on the carrier to prevent any abuse of the stores. Appropriate measures could include requesting Customs to seal the stores if necessary.

Although the responsibility is with the carrier, this Standard does not prevent Customs from taking appropriate control measures to safeguard the interest of the Revenue when deemed necessary. These could include taking stock of the stores on board from time to time, or placing the stores under Customs seal after permitting the issue of a required quantity. It must be pointed out, however, that generally only goods subject to high import duties and taxes and susceptible to smuggling, mainly alcoholic beverages and tobacco products are placed under Customs seal. Chapter 6 on Customs control in the General Annex and its Guidelines should be consulted for further details.

In many Customs administrations sealing is carried out only if so requested by the carrier. Customs also may waive the sealing of stores on vessels that stay in the Customs territory only for a short time and on cruise vessels.

Standard 14

The Customs shall require the removal of stores from the vessel, aircraft or train for storage elsewhere during their stay in the Customs territory only when they consider it necessary.

It is possible that aircraft, vessels or trains may have to remain in the Customs territory for a longer period of time than anticipated, for example, when there is a breakdown or unusual weather conditions. Standard 14 limits Customs requiring the removal of the stores for storage elsewhere. This should be rare and used only when there is a high probability of abuse. For aircraft, Customs would normally keep them under general supervision or, in the case of a long stay at the airport, place the stores on board under Customs seal.

5. Supplies of stores exempted from duties and taxes

Standard 15

Kyoto Convention - Specific Annex J - Chapter 4
Guidelines on Stores

Vessels and aircraft which depart for an ultimate foreign destination shall be entitled to take on board, exempted from duties and taxes:

(a) stores in such quantities as the Customs deem reasonable having regard to the number of the passengers and the crew, to the length of the voyage or flight and to any quantities of such stores already on board; and

(b) stores for consumption necessary for their operation and maintenance, in such quantities as are deemed reasonable for operation and maintenance during the voyage or flight having regard also to any quantities of such stores already on board.

Standard 15 requires Customs to allow vessels and aircraft bound for a foreign destination to take on board the supply of all reasonable stores necessary for their journey, having regard to the stores already on board. In some Customs territories this facility is also granted to vessels and aircraft which leave the Customs territory although their ultimate destination is not foreign.

The supply of such stores for the voyage and the flight should generally include both the outward and return journeys and, for frequent and regular traffic on short routes, Customs should consider supplying, at any one time, quantities that would meet the requirements of several journeys. This is a facilitative measure that would avoid the need for additional paperwork, formalities and supervision by Customs.

As a further facility, Customs may also accept requests for the supply of stores for quick turn-around vessels and aircraft in advance of their arrival in the port or airport.

In determining the quantities of alcoholic beverages and tobacco products to be supplied, the number of passengers need not necessarily be the exact number of passengers on a voyage or flight. The quantity may be fixed having regard to the passenger capacity of the conveyance or, in the case of vessels, to an average number of passengers carried at a given time of the year.

The exemption from duties and taxes referred to in this Standard may be granted as a remission, a refund or a repayment, as the case may be.

Stores exempted from duties and taxes are a risk to the Revenue and, as such, Customs could institute appropriate control measures as elaborated in the Guidelines to Standard 13 above.

Standard 16

Replenishment of stores exempted from duties and taxes shall be allowed for vessels and aircraft which have arrived in the Customs territory and which need to replenish their stores for the journey to their final destination in the Customs territory.

Standard 16 requires Customs to allow replenishment of stores for vessels or aircraft enroute along their journey. Such replenishment may cover not only replenishments for the journey to the final destination, but also quantities that will make it unnecessary for a further supply at a subsequent destination before the return journey abroad.

This replenishment also should take into account the number of passengers and crew and the length of the journey involved.

Standard 17

The Customs shall allow stores for consumption supplied to vessels and aircraft during their stay in the Customs territory to be issued under the same conditions as are applicable in this Chapter to stores for consumption held on board arriving vessels and aircraft.

Standard 17 requires that if any conditions are laid down by Customs for the supply of stores for consumption to vessels or aircraft, they should be the same as those for stores held on board. No additional conditions or differing conditions should be imposed. The conditions would generally relate to the security of the stores (sealing or other controls) and the amounts allowed for issue or sale to passengers or crew.

6. Departure

Recommended Practice 18

No separate declaration concerning stores should be required upon departure of vessels from the Customs territory.

When a vessel departs from the Customs territory, any necessary information about the stores is usually available from a declaration produced upon arrival, supplemented with any notations referred to in Recommended Practices 7 and 8, and from any documents covering stores loaded on board during the stay in the Customs territory. Thus Recommended Practice 18 states that a separate declaration should not be made necessary.

Some Customs territories have mutually established a system to prevent smuggling of alcoholic beverages and tobacco products carried on board as stores in maritime traffic between their territories. The quantities on board upon departure from one Customs territory are recorded on a document which the person responsible for the vessel is required to produce to Customs upon arrival in another Customs territory. This system does not apply to passenger vessels in scheduled service.

Standard 19

When a declaration is required concerning stores taken on board vessels or aircraft upon departure from the Customs territory, the information required shall be kept to the minimum necessary for the purpose of Customs control.

As with other similar provisions regarding declarations at departure, Standard 19 limits the information Customs can require and the reasons for it. The need for control may arise when, for example, a vessel or aircraft initially departs from the Customs territory with the intention of returning before the stores on board have been consumed, or in the absence of any preceding declaration. If a declaration is required, the information should be limited to only goods subject to high duties and taxes and restricted or prohibited goods.

7. Other disposal of stores

Standard 20

Stores on board vessels, aircraft and trains having arrived in the Customs territory shall be allowed:

(a) to be cleared for home use or to be placed under another Customs procedure, subject to compliance with the conditions and formalities applicable in each case; or

(b) subject to prior authorization by the Customs, to be transferred respectively to other vessels, aircraft or trains in international traffic.

Standard 20 provides for additional facilitation measures that allow various means of disposal of stores arriving in the Customs territory, subject to compliance with the relevant Customs formalities applicable to the chosen procedure.

The facility provided for under (b) above may be granted, for example, between conveyances belonging to the same company. In some administrations, such transfers are dealt with under the transhipment procedure as covered in Specific Annex E, Chapter 2.
