

**Montreal Protocol
on Substances that
Deplete the Ozone Layer**

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**Workshop on strengthening the effective
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Montreal Protocol**
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to the Montreal Protocol on Substances
that Deplete the Ozone Layer**
Forty-fifth meeting

Bangkok, 3–7 July 2023

Item 5 (b) of the provisional agenda*

**Strengthening Montreal Protocol institutions, including
for combating illegal trade (decision XXXIV/8):
background documents prepared by the Secretariat in
accordance with decision XXXIV/8****Summary of illegal trade practices and the approaches taken by
national authorities to identify and address such cases****Note by the Secretariat****I. Introduction**

1. The present note has been prepared in accordance with subparagraph 4 (a) of decision XXXIV/8 on strengthening Montreal Protocol institutions, including for combating illegal trade.
2. In decision XXXIV/8, the Thirty-Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer recalled decisions XIV/7 and XXXI/3 and, in paragraph 3, encouraged all parties to facilitate the exchange of information to prevent illegal trade of controlled substances by reporting to the Secretariat fully proved cases of illegal trade and, to the extent that parties were able to do so, to provide information about illegal trade situations. In subparagraph 4 (a), the Secretariat was requested to compile and regularly summarize the practices of illegal trade reported under paragraph 3 of the decision as well as the approaches taken by national authorities to identify and address such cases.
3. In preparing the present note, the Secretariat has taken into account cases of illegal trade reported by parties on a voluntary basis in response to the following decisions:
 - (a) Decision XIV/7, in which the Fourteenth Meeting of the Parties highlighted the importance of actions aimed at improving the monitoring of trade in ozone-depleting substances (controlled substances) and preventing illegal trade in those substances for their timely and smooth phase-out according to the agreed schedules. In the decision, the Secretariat was requested to collect any information on illegal trade received from the parties and disseminate it to all parties.
 - (b) Decision XXXI/3, in which the Thirty-First Meeting of the Parties, in paragraph 5, encouraged all parties to take action to discover and prevent the illegal production, import, export and consumption of controlled substances by, among other things, reporting fully proved cases of illegal trade in controlled substances to the Secretariat in order to facilitate an exchange of information.

* UNEP/OzL.Pro.WG.1/45/1/Rev.2.

4. All the reports of illegal trade received by the Secretariat as at the date of the present note have been made available in the online database of illegal trade cases.¹ Ahead of each Meeting of the Parties, that information is also compiled into an information note for the attention of the parties.
5. Section II.A of the present note provides background information on the current understanding of illegal trade, its drivers and measures for tackling it effectively in relation to substances controlled under the Montreal Protocol. Section II.B provides an overview of key past discussions and decisions related to illegal trade. Section III summarizes the reported cases of illegal trade, with the aim of identifying patterns of illegal trade and common practices and approaches taken by national authorities to detect and address such cases, and Section IV sets out the relevant conclusions that can be drawn from the summary.
6. The annex to the present note outlines the history of the parties' discussions and decisions on illegal trade in controlled substances.

II. Background

A. Understanding illegal trade and its drivers

7. There is no agreed definition of illegal trade in the Montreal Protocol.² This lack of a definition was identified as a challenge during the discussions on the related agenda items at the forty-fourth meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol and the Thirty-Fourth Meeting of the Parties. The only clear references to illegal activity falling under the non-compliance procedure of the Protocol is the ban on trade with non-parties under Article 4 of the Protocol and on trade under Article 4A. However, on the basis of a review of the reported illegal trade cases, it is understood that illegal trade involves the unauthorized import or export of controlled substances as defined under domestic law, which often recognizes that such activities undermine the Protocol's objectives and can result in continued use of those substances.

8. Understanding the underlying causes of the recurrence of illegal trade is essential for developing effective interventions to combat illegal trade, targeting enforcement efforts, reducing demand for illegal substances and reducing the negative impacts of illegal trade. There are several key drivers that fuel illegal trade in the context of the Montreal Protocol:³

(a) Profitability: Illegal trade in environmentally sensitive goods, including substances controlled by the Montreal Protocol, is often highly profitable due to high demand and limited supply of those goods and/or the absence of affordable alternatives. The different phase-out schedules for ozone-depleting substances between developed and developing countries triggered the original smuggling of those substances in the early and mid-1990s. The same pattern is now emerging in Europe with the earlier phase-down of hydrofluorocarbons (HFCs) there than in other parts of the world.⁴

(b) Regulation and enforcement gaps: Inadequate regulation and enforcement of laws and related regulations can create opportunities for illegal trade. The gaps relate to limited national capabilities for effective law enforcement, inadequate penalties for non-compliance and failures of coordination between enforcement agencies and between countries. Monitoring and surveillance of land and sea borders for illegal activities can be highly labour-intensive, often requiring costly technological solutions that are difficult to justify in view of their applicability to a very narrow set of activities.

(c) Global trade and its liberalization: Trade flows across the world can create opportunities for illegal trade in environmentally sensitive goods, including controlled substances, as well as making it more difficult to detect illegal trade and enforce relevant laws and regulations. Maritime transportation of freight in large containers has increased the complexity of inspecting

¹ <https://ozone.unep.org/countries/additional-reported-information/illegal-trade>.

² UNEP, "Illegal Trade in Ozone-Depleting Substances: Is There a Hole in the Montreal Protocol?", OzonAction Newsletter Special Supplement No. 6 (2001).

³ References to these drivers can be found in the following documents: Organization for Economic Co-operation and Development (OECD), *Illegal Trade in Environmentally Sensitive Goods*, OECD Trade Policy Studies (OECD Publishing, 2012) (which also discusses the Montreal Protocol and ozone-depleting substances); UNEP/OzL.Pro/WG.1/22/4; UNEP/OzL.Pro.18/6; UNEP and GRID-Arendal, *The Illegal Trade in Chemicals* (UNEP, 2020).

⁴ Environmental Investigation Agency, "Doors Wide Open: Europe's Flourishing Illegal Trade in Hydrofluorocarbons (HFCs)" (2019).

goods, with random cargo inspections alone unlikely to be effective in identifying illicit trade. In addition, trade through duty-free zones and trans-shipments is not fully tracked by key control measures such as licensing systems and is left to be governed by domestic measures.⁵

(d) Consumer demand: By 2050, the worldwide number of air conditioning units is expected to triple.⁶ The demand is driven by rising GDP levels and population growth as well as changing consumer behaviour in response to the effects of global warming. Meanwhile, the supply of controlled substances is tightening under the Montreal Protocol processes, and transitioning to HFC alternatives is hindered by multiple challenges.⁷

9. Overall, the drivers listed above interact with each other in complex ways, making it challenging to address illegal trade in controlled substances effectively.

10. The documents⁸ consulted for the preparation of this summary, including the reports and decisions of the Meetings of the Parties, identify the following measures as effective in combating illegal trade:

(a) Mandatory export and import licensing and permit systems can be strengthened through a number of measures to ensure that controlled substances are being used and traded legally.⁹

(b) Customs controls for monitoring and inspecting controlled substances entering or leaving the country can be improved by employing various available techniques and tools, such as risk profiling and refrigerant identifiers. Leveraging new technology such as blockchain,¹⁰ artificial intelligence and data analytics opens new capabilities for tracking and tracing the movement of goods and identifying illegal activities.

(c) Law enforcement and judicial systems can be strengthened by providing adequate resources and capacity-building so that law enforcement agencies and judicial bodies can investigate and prosecute illegal trade effectively.

(d) Inter-agency cooperation and coordination among law enforcement agencies and other stakeholders can facilitate information-sharing, identification and tracking of illegal activities and more precise targeting of enforcement efforts.

(e) Public awareness and education campaigns can inform individuals and companies about the importance of complying with laws and regulations governing the use and trade of controlled substances. Rewarding companies that comply with regulations and environmental standards while penalizing those that engage in illegal activities can help engage businesses in ethical behaviour and contribute to a culture of compliance.

(f) International cooperation can help countries share information and coordinate efforts to detect and prevent illegal trade of controlled substances. This can include sharing intelligence, coordinating investigations and exchanging best practices.

11. Overall, a multifaceted approach with a combination of the above measures is seen as more effective in combating illegal trade. In decisions of the Meetings of the Parties, many of those measures are recommended for domestic implementation by parties on a voluntary basis, as is described below and in the annex to the present note. In addition, implementing agencies involved with institutional strengthening projects provide capacity-building activities targeting the implementation of these measures.¹¹

⁵ UNEP/OzL.Pro/Workshop.11/2–UNEP/OzL.Pro.WG1/45/5, paras. 9–15.

⁶ According to the International Energy Agency, the number of air conditioning units in the world, particularly in developing countries, is expected to grow from 1.6 billion today to 5.6 billion by 2050. See International Energy Agency, “The Future of Cooling: Opportunities for energy-efficient air conditioning” (IEA Publications, 2018).

⁷ UNEP, *2022 Assessment Report of the Technology and Economic Assessment Panel* (Nairobi, 2022), sect. 1.1.2.

⁸ OECD, *Illegal Trade in Environmentally Sensitive Goods*, OECD Trade Policy Studies (OECD Publishing, 2012); UNEP/OzL.Pro.WG.1/22/4; UNEP/OzL.Pro.18/6; UNEP/OzL.Pro/Workshop.11/2–UNEP/OzL.Pro.WG1/45/5.

⁹ UNEP/OzL.Pro/Workshop.11/2/Add.2–UNEP/OzL.Pro.WG.1/45/5/Add.2.

¹⁰ Blockchain technology has been used by customs authorities in some countries to enhance the tracking and monitoring of transboundary movement of goods. The use of blockchain offers the benefits of transparency, decentralization and security of customs processes while helping reduce the risk of illegal trade. See Clara Frezal and Grégoire Garsous, “New Digital Technologies to Tackle Trade in Illegal Pesticides”, OECD Blockchain Policy Series, OECD Trade and Environment Working Papers 2020/02 (Paris, OECD Publishing, 2020).

¹¹ See for instance, *Training Manual for Customs and Enforcement Officers*, 3rd ed., *Saving the Ozone Layer: Phasing Out Ozone Depleting Substances in Developing Countries* (United Nations publication, 2013).

B. Key decisions of the parties to the Montreal Protocol concerning illegal trade

12. From the early years of the Montreal Protocol, parties acknowledged evidence of illegal trade in controlled substances that posed a serious threat to the achievements already gained under the Montreal Protocol.¹² Illegal trade in ozone-depleting substances arose in the early 1990s as an unintended consequence of the phase-out of chlorofluorocarbons (CFCs), and increased in the mid-1990s.¹³

13. Parties' discussions and ensuing decisions on the topic of the prevention and detection of illegal trade have generally focused on the following main measures: licensing, reporting and information-sharing; international tracking systems of trade in controlled substances, including informal prior informed consent; exchange of information; customs codes; national support for implementation; and capacity-building, including technical assistance through the Multilateral Fund for the Implementation of the Montreal Protocol. Following is a summary of key decisions in those respects; a more detailed account of the discussions and resulting decisions by the parties is presented in the annex to the present note.

1. Licensing

14. Decisions VII/9 and IX/4 introduced the requirement to have in place an operational export and import licensing system for controlled substances, the latter through the adoption of the Montreal Amendment in 1997. The Montreal Amendment added Article 4B to the text of the Protocol, requiring each party to establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C, E and F (introduced through the recent Kigali Amendment).

15. In addition, in decision IX/8, the Ninth Meeting of the Parties specified the objectives of licensing system, namely to assist in the collection of information for compliance with reporting requirements under the Protocol and in the prevention of illegal traffic of controlled substances, including through notification and/or regular reporting by exporting countries to importing countries and/or by allowing cross-checking of information between exporting and importing countries. It also specified that the Secretariat and implementing agencies should assist parties in designing and implementing their national licensing systems and that the Multilateral Fund should provide appropriate funding for that purpose.¹⁴

2. Customs codes

16. Meetings of the Parties have also sought collaboration with the World Customs Organization to have in place relevant customs codes for ozone-depleting substances and most recently for hydrofluorocarbons (HFCs) and products containing them. In decisions IX/22, X/18 and XI/26, the United Nations Environment Programme (UNEP) was requested to work with the World Customs Organization to revise the Harmonized Commodity Description and Coding System to allow the inclusion of appropriate codes for mixtures containing hydrochlorofluorocarbons (HCFCs), to enable parties to easily monitor the import and export of substances and their mixtures, and cross-check and monitor their consumption of ozone-depleting substances, to ensure compliance with their obligations under the Montreal Protocol. In decision XXVI/8, similar cooperation was requested with respect to HFCs and their blends, while in decision XXXIV/8, parties were urged to introduce into their national customs classification systems the separate sub-headings of HFCs and blends contained in the amendments to the 2022 edition of the Harmonized Commodity Description and Coding System,¹⁵ and to use more specific classifications for controlled substances and blends where possible to better identify and track imports and exports of controlled substances.

3. International tracking of controlled substances

17. In decision VIII/20, parties not operating under paragraph 1 of Article 5 (non-Article 5 parties) were urged to establish a system requiring validation and approval of imports of any used, recycled or

¹² UNEP/OzL.Pro.7/12, para. 69.

¹³ UNEP, "Illegal Trade in Ozone-Depleting Substances: Is There a Hole in the Montreal Protocol?", OzonAction Newsletter Special Supplement No. 6 (2001).

¹⁴ See also UNEP/OzL.Pro/Workshop.11/2/Add.2.

¹⁵ In the 2022 edition of the Harmonized System, new subheadings for HFCs have been created under heading 29.03. The new subheadings are structured according to the importance in international trade and environmental impacts of HFCs. A new heading 38.27 for mixtures of HFCs has been created.

reclaimed controlled substances before they were imported, and the Ninth Meeting of the Parties was requested to consider instituting a system to require validation and approval of exports of used and recycled ozone-depleting substances from all parties.

18. Pursuant to decision XVII/16, a study on the feasibility of developing an international system of monitoring the transboundary movement of controlled ozone-depleting substances between parties was conducted and presented to the Eighteenth Meeting of the Parties in 2006.¹⁶ The study examined the various systems for monitoring and tracking the transboundary movement of controlled substances and presented three options for immediate, medium-term and long-term actions and measures to improve the monitoring and tracking of controlled substances, for the consideration of the parties.

19. In decision XIX/12, the Nineteenth Meeting of the Parties acknowledged the initiative of countries of the South Asia and South-East Asia and Pacific region to combat illegal trade through informal prior informed consent and encouraged all parties to participate in such a system. The invitation was reiterated in decision XXIV/12.

4. Reporting and information-sharing

20. Measures were also taken to improve data reporting under Article 7 to help detect illegal trade. In decisions XVII/16 and XXIV/12, on a voluntary basis, parties exporting controlled substances were requested to submit information on countries of destination, while importing parties were encouraged to report import sources. In decision XXX/12, it was recognized that such information facilitated the exchange of information and the identification of data discrepancies to detect possible cases of illegal trade.

21. As was mentioned in paragraph 2 of the present note, in decisions XIV/7, XXXI/3 and XXXIV/8, parties were invited to report to the Secretariat, on a voluntary basis, fully proved cases of illegal trade in controlled substances for the purpose of information exchange facilitated by the Secretariat, who would collect and disseminate such information to all parties.

22. Importantly, paragraph 7 of decision XIV/7 stipulated that illegally traded quantities should not be counted against a party's consumption provided the said quantities were not placed on the domestic market. Subsequently, in paragraphs 6 and 7 of decision XVI/27, parties clarified, through the specific case of Nepal, that the amount of illegally traded ozone-depleting substances seized by a party and subsequently released to the domestic market should not exceed the party's allowed consumption level of the controlled substances during that year.

III. Summary of the reported cases of illegal trade

A. Number of reported cases

23. In 2002, the Fourteenth Meeting of the Parties adopted decision XIV/7, inviting the submission of fully proved cases of illegal trade to the Secretariat. Since then, the Secretariat has sent regular reminders to parties to submit such cases, with the aim of compiling them in an information note for the Meeting of the Parties and in a database on the Secretariat website.¹⁷

24. Pursuant to paragraph 4 of decision XXXIV/8, the reported cases are summarized in this section, based on a preliminary analysis aimed at:

- (a) Identifying the countries most commonly involved in the illegal trade of controlled substances and the most common trade routes;
- (b) Identifying the types of controlled substances most commonly involved in illegal trade;
- (c) Identifying common means by which illegal trade is conducted;
- (d) Identifying common means of detection of instances of illegal trade;
- (e) Identifying common enforcement actions taken in cases of illegal trade;
- (f) Examining trends over time in terms of the frequency, severity and scale of illegal trade.

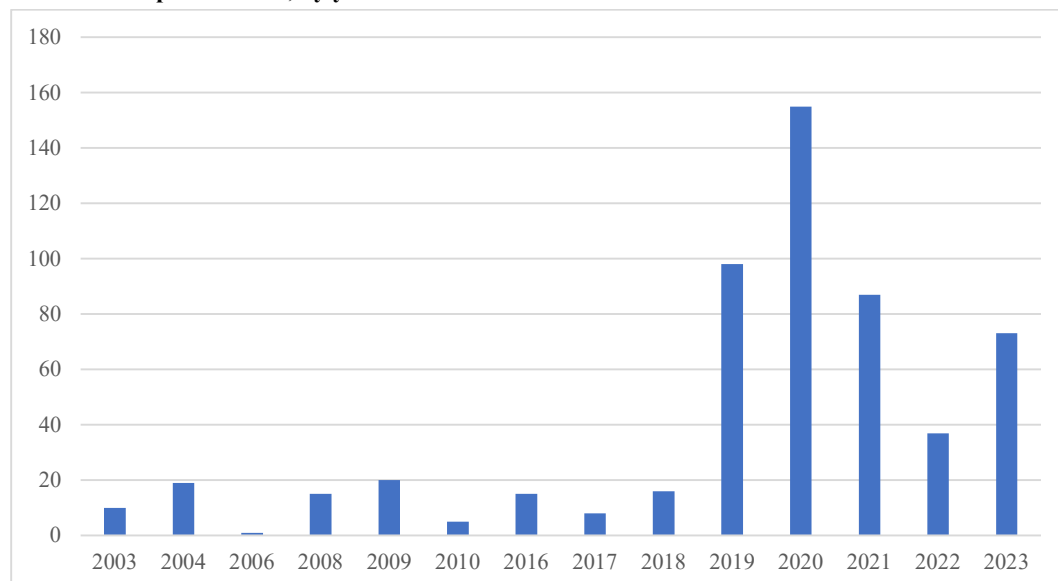
¹⁶ UNEP/OzL.Pro.18/6.

¹⁷ <https://ozone.unep.org/countries/additional-reported-information/illegal-trade>.

25. As at 20 April 2023, the database consisted of 559 cases reported by parties to the Montreal Protocol over the period 2002–2023. The information is submitted and recorded in the database under the following parameters, in line with the reporting template provided by the Secretariat to facilitate the process: party, date of seizure, substance traded, volumes, importing and exporting countries, illegal trade details, actions taken and remarks. The template was adapted to an online form in 2023.¹⁸

26. The number of submissions per year fluctuates, with an overall increase in the number of submissions in the last five years (figure 1).

Figure 1
Number of reported cases, by year



B. Parties that report cases of illegal trade and scale of illegal trade

27. Forty-six of the 198 parties to the Montreal Protocol (23 per cent) have reported cases of illegal trade since 2002: Angola, Argentina, Armenia, Australia, Belgium, Bulgaria, Burkina Faso, China, Colombia, Congo (Democratic Republic of), Croatia, Cyprus, Czechia, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Kenya, Kyrgyzstan, Lithuania, Mexico, Micronesia (Federated States of), Namibia, Netherlands (Kingdom of the), Nigeria, North Macedonia, Paraguay, Philippines, Poland, Romania, Seychelles, Singapore, Spain, Sri Lanka, Thailand, Türkiye, Turkmenistan, United Kingdom of Great Britain and Northern Ireland, United States of America and Uzbekistan. Twenty-three are parties operating under paragraph 1 of Article 5 of the Protocol (Article 5 parties), while the remaining 23 are non-Article 5 parties. The geographical distribution of reported cases is shown in figure 2 (on p. 7).

28. Thirteen of the 46 parties reported 85 per cent of all cases (473 out of 559). Bulgaria reported 199 cases, Lithuania 114 cases and Poland 32 cases. The number of reported cases does not imply the highest volume of imported substances in kg: the cases reported by Bulgaria amount to 83,835 kg of controlled substances, Lithuania to 40,191 kg and Poland to 230,663 kg. Table 1 (on p. 7) shows the number of cases reported by each of the 13 parties that account for most of the cases.

¹⁸ <https://ozone.unep.org/illegal-trade-online-form>.

Figure 2
Geographical distribution of reported cases

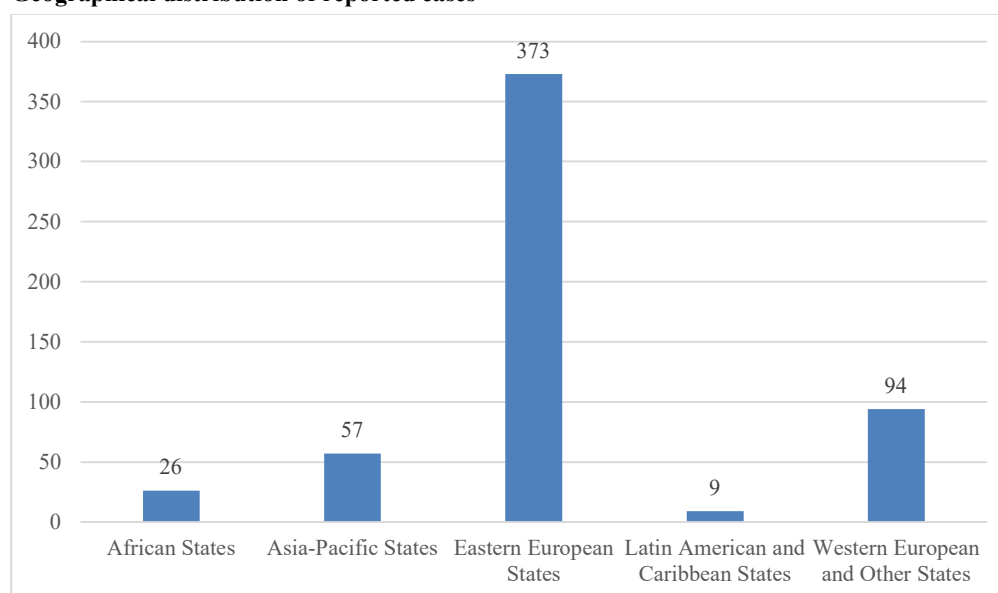


Table 1
Number of reported cases, by party, for the 13 parties that account for most of the cases

<i>Party</i>	<i>Number of reported cases</i>
Bulgaria	199
Lithuania	114
Poland	32
Italy	29
Spain	19
Uzbekistan	12
Netherlands	11
Australia	10
Namibia	10
Japan	10
China	9
Georgia	9
France	9
Total	473

29. It is worth noting that occasionally, after the Secretariat sends the reminder pursuant to decision XIV/7, a few parties respond that they did not record any cases of illegal trade during the period in question.

30. Nevertheless, information from other sources gathered by partners and organizations involved in this area indicates that the number of instances of illegal trade reported to the Ozone Secretariat appears to be quite low compared to the potential scale of such trade.¹⁹ For example, within the context of the Global Montreal Protocol Award for Customs and Enforcement Officers, 587 seizures of HCFCs and HFCs, corresponding to 255,904 kg of substances, 19,992 cylinders and 27,944 items of equipment and covering the period 2009–2018, were nominated by a total of 24 countries. Ninety-one per cent of those cases involved HFCs but 53 per cent of the quantities seized were ozone-depleting substances. The cases showed that illegal trade in controlled substances continues and that the different phase-out and phase-down schedules encouraged illegal trade. In addition, between the period of 2016–2018 as the result of informal prior informed procedure consultations between

¹⁹ Environmental Investigation Agency, “Tip of the Iceberg: Implications of Illegal CFC Production and Use”, briefing to the Thirtieth Meeting of the Parties, Nov. 2018, p. 4.

11 countries and the European Commission, 47 cases of illegal trade had been prevented, corresponding to more than 2,000 metric tons of controlled substances.²⁰

31. Under the more recent fifth edition of the European and Central Asia Montreal Protocol Award for Customs and Enforcement Officers, parties of that region reported 64 seizures during the period 2019–2020, corresponding to 80 metric tons of HFCs, HCFCs and CFCs and involving 215 pieces of equipment.²¹ UNEP has been implementing this award for the Regional Network of Ozone Officers from Europe and Central Asia countries since 2009.

32. Considering the advantages of reporting on fully proved cases of illegal trade, as expressed in the various decisions on the matter, parties may wish to explore the reasons for limited voluntary reporting, as well as ways to improve the reporting rate and the quality of the information reported.²²

33. The summary of illegal cases and preliminary findings from the analysis contained in the present note are limited to the 559 cases of illegal trade reported by 46 parties since 2002. The summary may not present a comprehensive picture of the extent and nature of illegal trade in controlled substances during that time, but it nonetheless offers insights into the patterns of reported illegal trade, for the parties' consideration and discussion on the way forward.

C. Routes of illegal trade

34. Table 2 lists the countries most often mentioned in the reported cases of illegal trade, either as the origin or the destination of the illegal trade. Türkiye and Bulgaria are the most frequently identified, with 204 and 200 cases each. Lithuania, Belarus and China also feature in the list, with 115, 103 and 76 mentions, respectively. The table shows that in 63 cases, the party did not identify the importing and exporting countries in its submissions.

Table 2

Countries most often mentioned in the reported cases of illegal trade

<i>Country</i>	<i>Number of reported cases</i>
Türkiye	204
Bulgaria	200
Lithuania	115
Belarus	103
China	76
Unknown	63
Poland	32
Spain	31
Russian Federation	30
Italy	29

35. The numbers in the tables can be linked to the greater number of cases report by the countries shown. It is also possible that their geographic locations and general transportation routes make those parties more prone to illegal traffic. Based on the data submitted by the top three reporting parties, the illegal trade routes often involve multiple countries, with substances being shipped through several countries before reaching their final destination. For example, controlled substances seized in Bulgaria had originated in China or Türkiye and were intended for countries in Europe, such as Germany or Italy, so the final destination was not Bulgaria. In any case, as is indicated in paragraph 33 of the present note, the data presented in the above tables are limited to the reported cases and possibly does not represent the actual extent of illegal trade.

²⁰ UNEP, *Watch Out for Illegal Trade of HCFCs and HFCs: Lessons Learnt from the Global Montreal Protocol Award for Customs and Enforcement Officers* (2023) and UNEP, *Global Montreal Protocol Award for Customs and Enforcement Officers: Compilation of iPIC Consultations and Seizures* (2019).

²¹ Whether some of these cases of illegal trade are the same as those reported to the Ozone Secretariat by parties has not been ascertained.

²² UNEP/OzL.Pro/Workshop.11/2–UNEP/OzL.Pro.WG.1/45/5, para. 8.

D. Substances traded and volumes

36. It must be noted that, because of the non-uniform way in which cases were reported, especially in earlier years, it is not possible to extract the exact total volume of substances traded from the database. Volume is indicated in kg, cylinders or volume of emissions, or is not indicated at all. Sometimes the weight of substances and equipment is not broken down. Moreover, the numbering convention used in earlier reports is not uniform, with both a comma and a period used as a thousands or decimal separator. For the purpose of future similar analyses, it would be important to standardize the reporting and record-keeping of such cases. The Secretariat could refine the current reporting format to accommodate this need and follow up as necessary to clarify information reported.

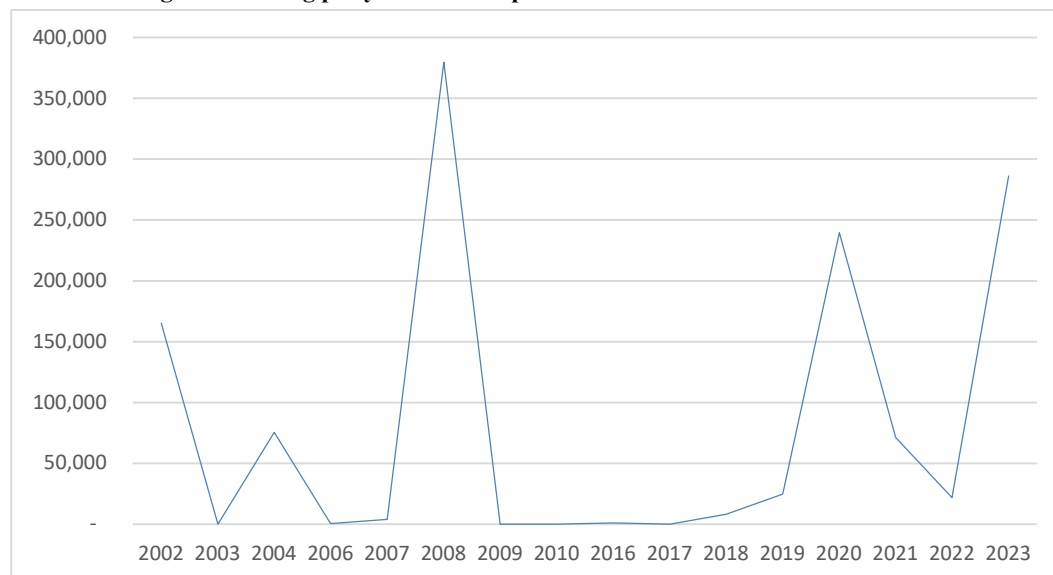
37. Table 5 shows the most common substances and blends²³ traded illegally, by number of reported cases and weight, based on the available data.

Table 5
Most common substances and blends traded illegally, by number of reported cases and weight

<i>Substance</i>	<i>Number of reported cases</i>	<i>Weight (kg)</i>
HFC-134a	225	286,601
R-404A	134	124,198
HCFC-22	82	373,242
R-410A	57	62,961
CFC-12	43	345,135
R-407C	21	54,264
HFCs (not specified)	19	190,333
HFC-32	16	32,323
R-507A	10	29,997
CFC-11	9	63,078

38. Most reported cases relate to 10–100 kg of traded substances in cylinders. The largest-volume single illegal trade cases reported were the illegal export of 168,000 kg of halon-1011 in 2008; the illegal export of 153,000 kg of HCFC-22 in 2007; and the illegal import of 123,300 kg of CFC-12 in 2001. Figure 3 shows the volume of illegal trade reported over the reporting years.

Figure 3
Volume of illegal trade in kg per year over the period 2001–2022



²³ All pure substances are indicated by their chemical type, such as HCFC or HFC, and blends/mixtures are identified by their designation using the “R” prefix.

39. Based on the data available from the reported cases, the total substance weight involved in the illegal trade of controlled substances is approximately 1,780,986 kg (or 1,780.99 metric tons).

E. Methods of illegal trade

40. The most common methods of illegal trade, as identified in various sources of information on illegal trade in ozone-depleting substances and HFCs, include importing and exporting without a licence or without a declaration or with a false declaration; mislabelling and misidentification of substances, including mislabelling of virgin substances as recycled; and concealment.²⁴ These methods, which are not mutually exclusive and often overlap, are frequently mentioned in the reported cases, as follows:

(a) Misdeclaration, when false, incomplete or no information about the actual content of the shipment was provided (whether intentionally or unintentionally) by importers/exporters to the competent customs authorities, was mentioned in 97 reported cases (17 per cent).

(b) Mislabelling commonly refers to cases where false customs codes, chemical names and other markings, including colour coding, were used on cylinders containing controlled substances in an attempt to avoid or mislead the inspection process. This approach was counted in 29 instances of reported illegal trade (5 per cent).

(c) Lack of a licence, quota or registration is mentioned in 73 reported cases (13 per cent) where an importer or exporter failed to show or comply with the compulsory paperwork authorizing trade in the substances in question.

(d) The term “smuggling” is used to identify cases where illegally transported controlled substances were intercepted but the means of illegal trade was not clearly mentioned. This accounts for 394 cases (70 per cent).

(e) The above category also includes trading and smuggling of non-refillable/disposable cylinders found in 207 cases (37 per cent of total cases). These cases have been counted separately due to the specific reference in reported cases and given that the use of such cylinders is prohibited in some countries.²⁵

(f) Concealment is mentioned in 11 cases (2 per cent), referring to situations where cylinders containing controlled substances are hidden inside legitimate shipments, personal luggage or vehicles to avoid detection.

(g) In addition, 11 cases were detected through market surveillance and field inspections under special law enforcement operations, which can fall more under illegal consumption, as the information does not specify that the importation was illegal.²⁶

(h) There are 39 records that do not provide information on the details of the illegal trade.

41. The vast majority of the reported cases (533 out of 559, more than 95 per cent) involved illegal imports, and only 26 (less than 5 per cent) referred to illegal exports. This may suggest that illegal imports are a more significant problem and more effort is required to prevent them, or it may indicate inadequate enforcement at the origin,²⁷ allowing exporters to evade regulation and detection of illegal activity, or alternatively that enforcement measures for illegal exports are more effective than those for illegal imports.²⁸

²⁴ UNEP/OzL.Pro.18/6; Environmental Investigation Agency, *Risk Assessment of Illegal Trade in HCFCs* (UNEP, 2011); UNEP, *Watch Out for Illegal Trade of HCFCs and HFCs: Lessons Learnt from the Global Montreal Protocol Award for Customs and Enforcement Officers* (2023).

²⁵ See also Environmental Investigation Agency, *Risk Assessment of Illegal Trade in HCFCs* (UNEP, 2011), p. 17: “The vast majority of known ODS smuggling cases are facilitated by the use of disposable cylinders (sometimes referred to as ‘non-refillable containers’), as their disposable nature means they can be freely traded.”

²⁶ Reported cases of illegal production are available at <https://ozone.unep.org/countries/additional-reported-information/illegal-trade> and are not included in this summary.

²⁷ As is noted in document UNEP/OzL.Pro/Workshop.11/2/Add.2, on the common features of licensing systems, exports of controlled substances appear not to be covered or controlled under the licensing systems of some parties.

²⁸ As is shown in UNEP, *Watch Out for Illegal Trade of HCFCs and HFCs: Lessons Learnt from the Global Montreal Protocol Award for Customs and Enforcement Officers* (2023), iPIC consultations have been regularly undertaken by exporting countries such as China and European Union countries.

42. To implement more targeted solutions, it is helpful to understand the methods of illegal trade. The fact that there are relatively fewer cases involving trading without licences, quotas or registration may indicate that the related systems have been relatively effective in coordinating and monitoring trade in controlled substances.

43. The higher frequency of cases involving the smuggling of disposable cylinders, often through incorrect declaration or concealment, indicates that a significant portion of reported trade is facilitated by their use and increased availability beyond the borders of countries that imposed the bans. The introduction of refillable cylinders has many benefits, including the fact that they are more difficult to smuggle owing to their more significant weight and size. There is a need for better awareness among stakeholders across the supply chain about the rules and consequences of infringing the bans on disposable cylinders. Investing more resources in both internal and international tracking and management of refillable cylinders through electronic systems and labelling requirements and their enforcement at border and customs controls can be considered.

F. Common means of detection

44. The most common means of detecting illegal trade can be approximately grouped as follows (with some overlap between cases owing to the use of multiple detection methods):

(a) Customs inspections, including document inspection, risk-profiling, physical inspection of shipments and random checks, detected 329 cases (59 per cent of the total). In this category, random checks, particularly at land borders, are mentioned in 208 cases (37 per cent of all reported cases).

(b) Investigation and special law enforcement operations were the detection method in 26 cases of illegal trade (and consumption (see para. 40 (g) above) (5 per cent).

(c) Tips-off from informants and intelligence from other agencies were mentioned in 20 cases (4 per cent).

(d) Detection of possible illegal trade through data monitoring and analysis for discrepancies was indicated in 5 reported cases.

(e) Detection using identifiers and laboratory analysis was mentioned in 6 cases.

(f) Post-clearance audit as the process in which illegal trade was identified was mentioned in 4 cases.

(g) Details of how the trade was detected could not be discerned in 151 cases (27 per cent).

45. There are a significant number of cases for which the details of illegal trade are not clearly specified, especially for the period 2019–2023. This may indicate limited information-sharing, transparency and cooperation between the authorities that prevented the Montreal Protocol focal points from providing the relevant information when reporting the fully proved cases to the Secretariat. Without more comprehensive information, it is difficult to draw meaningful conclusions about the effectiveness of different methods for detecting illegal trade and to support the exchange of useful practices that parties sought in adopting the decisions. Parties may wish to consider providing further specific information on cases of illegal trade that they report to the Secretariat (see para. 36 above).

46. In spite of the limitations described in the preceding paragraph, based on available data, the fact that most of the identified illegal trade is detected and intercepted at the border and customs level, as well as through special enforcement operations, indicates the value of building stronger relationships with customs and enforcement agencies. It also shows the importance of promoting cross-border cooperation and allocating more resources to environmental law enforcement frameworks, including sharing information among the agencies for risk profiling, providing refrigerant identifiers and other technological solutions, and enhancing capacity for detection and investigations.

47. Random checks, the detection method most frequently identified in the cases reported over the years, especially from 2003 to 2020, can be an effective mechanism for combating illegal trade, because it creates a sense of uncertainty for potential offenders and generates useful information for future risk profiling of illegal trade. It can be reinforced by publicizing high-profile seizures to help raise awareness and deter potential smugglers.²⁹ The random detection of many instances of illegal

²⁹ UNEP/OzL.Pro/WG.1/22/4, para. 93.

activity may also indicate that such trade is more widespread than reported and that parties need to stay vigilant and ensure the effectiveness of monitoring and enforcement frameworks.

48. A few cases of non-compliant trade activities were identified by reconciling data from various sources. As this has also been discussed by the parties to the Protocol (see the annex to the present note), using data from various sources can help to provide a more comprehensive and accurate picture of trade in controlled substances and assist in identifying and addressing illegal trade.

49. Several cases reported by parties in various regions were identified through tip-offs from informants and internal intelligence gathering. Such cases highlight the importance of collaboration among stakeholders and building a trustful relationship with legitimate market players who have an interest in keeping illegal activities at bay.

G. Enforcement actions and penalties imposed in reported cases of illegal trade

50. Enforcement actions and penalties are aimed at deterring and punishing those involved in illegal trade. The consequences depend on the impact and severity of the violation and are determined by the domestic legal system. The penalties for illegal trade can follow administrative, civil or criminal proceedings.³⁰

51. Based on the reported cases, the most important measures, in terms of frequency and possible implications (bearing in mind that measures are not applied exclusively, and their use can overlap in the handling of one instance of violation) can be grouped under seizures; administrative proceedings,³¹ including confiscation; monetary fines; suspension of licences; and criminal court proceedings, potentially entailing confiscation, arrest and imprisonment.

52. Seizures – or temporary deprivation of goods³² – of controlled substances that have been imported or exported illegally were reported in 321 cases, while confiscation – permanent removal from possession³³ – resulted from legal proceedings in 145 cases. Both measures are often applied under most Montreal Protocol legislation when there is reasonable belief or suspicion of a violation, such as illegal import or export of controlled substance.³⁴ In most cases, seizure was characterized as an initial temporary measure to prevent controlled substances and goods from entering the market while an investigation was underway. The number of cases of confiscation, used as a more permanent measure, may indicate the successful resolution of legal proceedings resulting in relevant punishment of offenders and removal of goods from circulation.

53. A monetary fine was imposed as a financial penalty in 146 cases, with the value ranging from \$25 (for the illegal import of 36 kg of HFC-134a and CFC-12 through concealment) to \$40,000 (for the illegal import of 22,900 kg of HCFC-22 through mislabelling). As is reported in the submitted cases, this type of penalty also includes other measures to be paid for by the violator, such as re-export or destruction of the unauthorized shipment of controlled substances. The main purpose of imposing fines is to eliminate the financial gain that can be obtained from violating the law.³⁵ The range of the fines reported in the cases of illegal trade under the Montreal Protocol demonstrates quite a nuanced approach to determining the value of such environmental crimes.³⁶ It is also interesting to see the use of measures based on the “polluter pays” principle, such as destruction or re-export at the offender’s expense, which can reduce the financial burden of detecting and addressing environmental crimes and increase the environmental authorities’ motivation to do so.

54. Actions taken pursuant to administrative proceedings are mentioned in 403 cases (72 per cent). In addition to fines and confiscation, the reported penalties include suspension and revocation of licences and registration as an authorized importer (5 cases); re-exportation (26 cases) or

³⁰ UNEP and GRID-Arendal, *The Illegal Trade in Chemicals* (UNEP, 2020).

³¹ Owing to limited data and unclear specifications, administrative and civil penalties have been grouped together.

³² UNEP, *Promoting a Culture of Compliance: Available Enforcement Measures for Domestic Legislation Related to the Montreal Protocol* (forthcoming). The publication will be introduced during the workshop.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ In the Federal State of Micronesia, in determining the amount of monetary penalties, the authorities also considered calculating it on the basis of the amount of smuggled substances and its environmental impact, as measured by its global warming potential, as well as the number of offenses. *Source*: case study presented at a side event at the forty-first meeting of the Open-ended Working Group and entitled “Enforcement of HCFC licensing systems”. Slide presentation available at https://www.ozonactionmeetings.org/system/files/fsm_case_study_v3_.pdf.

storage/destruction at the offender's cost (4 cases); warning and notification; education (11 cases); and compliance with the labelling requirement before goods are released for free circulation (4 cases). The range of measures imposed in these cases exemplifies the comprehensive approach needed in combating illegal trade. Warnings, notifications and education across the supply chain³⁷ are particularly important for the prevention of future violations.³⁸

55. Criminal charges were filed against individuals and companies involved in illegal trade in 23 cases mainly reported by two parties, members of the European Union, with legal consequences ranging from confiscation, fines, suspension and revocation of a business licence to arrests in 14 instances and imprisonment in 4 instances, in some cases for up to 12 months.³⁹ This indicates that in those countries, illegal trade in controlled substances is treated as a serious offence for which authorities are willing to pursue legal action.

56. “Ongoing” investigation, prosecution and legal proceedings were mentioned in 8 of the cases reported, and in 35 cases, it was not possible to discern the details of any actions taken and enforcement measures applied. It could be useful to follow up with the reporting parties on the status of those cases, especially those where “ongoing” investigation was indicated, in order to understand what action was taken and measures applied, so that the analysis of those cases can be completed and further insights can be gained for the benefit of the parties.

57. The above only describes the most common enforcement actions taken and penalties imposed in reported cases of illegal trade of controlled substances and HFCs; other actions and penalties are likely also used by parties. Regardless, this summary indicates the importance of employing a range of measures, including legal action, to combat illegal trade, and the potential severity of penalties for violations. Sharing such information indicates a degree of transparency and accountability in the enforcement regimes of the reporting parties, and can be helpful in raising public awareness and promoting a culture of compliance.⁴⁰

H. Disposal and handling of confiscated substances

58. Proper treatment and disposal of these substances are critical to preventing leakage and emissions and avoiding environmental harm. In terms of what happens to seized and confiscated substances, the cases reported to the Secretariat revealed the following:

- (a) In 260 reported cases, such information was not provided.
- (b) Destruction was indicated in 221 cases, which in many was specified to have been conducted in accordance with the legislation.
- (c) Re-export to the country of origin is mentioned in 26 cases.
- (d) In 17 cases, the appropriated substances were auctioned off to importers and counted against their quotas.
- (e) Storage on the customs premises is mentioned in 8 cases.
- (f) Release into free circulation once the importing requirements were complied with is mentioned in 7 cases.

³⁷ In the Kingdom of the Netherlands, in a case of the smuggling of two mislabelled containers containing ozone-depleting substances, the carrier was found to be as guilty as the sending and receiving companies. The Human Environment and Transport Inspectorate blocked the shipment from entry and further transportation and imposed a heavy financial penalty on all offenders. The carrier company appealed the decision, arguing that it had not and could not have known that it was transporting controlled substances. The company also argued that blocking the shipment would cause significant financial losses and damage to its reputation. After reviewing the case, the Council of State upheld the decision, finding that the shipping company was also an offender because it had not taken sufficient measures to ensure compliance with the relevant laws and regulations, thus violating article 15, para. 1 of the Ozone Regulation. More information is available at <https://www.raadvanstate.nl/@113575/201706000-1-a1/>.

³⁸ UNEP, *Promoting a Culture of Compliance*, sect. 3, pp. 16–18.

³⁹ The European Anti-Fraud Office undertook a joint enforcement operation with Europol and Spain's Guardia Civil and Agencia Tributaria to dismantle a criminal network involved in the illicit trade of controlled substances imported without quotas and with false documents, leading to the seizure of 110 tonnes of gases valued at €11 million and the arrest of 27 individuals. See European Anti-Fraud Office, “OLAF Helps Dismantle Criminal Network Involved in the Illicit Trade of Refrigerant Gases”, 30 June 2022.

⁴⁰ UNEP, *Promoting a Culture of Compliance*.

(g) In other cases, handling included sending the substance to recycling, donating it to naval services and releasing it back to the importer once the conditions for legal import were met.

59. The reporting format currently used by the Secretariat does not specifically request parties to provide details on disposal and handling of confiscated substances, which may be why almost in 46 per cent of cases there is no mention of the means of disposal when substances are confiscated by authorities (see subpara. 58 (a) above). The lack of such information makes it difficult to assess the overall effectiveness of measures taken to prevent not only illegal trade but, ultimately, emissions of controlled substances. More transparency in this area would be helpful, and parties may wish to encourage the reporting of information on this aspect of management of illegally traded substances.

III. Conclusions

60. The picture presented in this note of the extent and nature of illegal trade in controlled substances covering the period from 2002 to early 2023 is limited to the 559 cases reported by 46 parties to the Montreal Protocol. Despite this limitation, the hope is that the available information provided offers some insight and prompts discussion among the parties on how to continue address more effectively the issue of illegal trade in controlled substances.

61. There are indications of a possible increase in the frequency of illegal trade in recent years, but the data available from the reported cases may not be representative of the true scale and severity of the problem due to the limited number and geographical coverage of the reported cases. Data from other sources seem to support this observation.

62. To implement more targeted solutions, it is helpful to understand the methods of illegal trade. Responses in that regard have remained relatively consistent over the period covered by the data file, with customs inspection being the most common means of detection. This suggests that law enforcement agencies continue to rely heavily on customs controls to detect and intercept illegal shipments of controlled substances. Random checks have been cited most frequently as the main means of detection, which could imply that illegal trade is more widespread than perceived.

63. Overall, the data highlight the importance of continued vigilance and effective monitoring frameworks to deter and tackle illegal trade in controlled substances. It also underscores the need for improved transparency and information-sharing so that parties can develop a better understanding of the problem's scale, scope and drivers, which could lead to the identification of opportunities for more effective regulation and enforcement. While the Secretariat managed to identify a number of approaches from reported cases of illegal trade in the areas of detection, enforcement and disposal actions, it is likely that more could have been found in a larger pool of cases and data.

64. It may be worthwhile to explore the reasons behind the low rate of voluntary reporting and consider providing additional incentives for the submission of proved cases of illegal trade, given the benefits that parties have sought to obtain through such information-sharing. The conditions under which illegally traded quantities are not to be counted against a party's consumption, in line with decisions XIV/7 and XVI/27, could also be reiterated or further clarified. In addition, implementing positive reinforcement and visibility schemes such as the Customs and Enforcement Award initiated since 2009 among parties of the Eastern Europe and Central Asia Network under the UNEP OzonAction Compliance Programme can be an effective strategy to incentivize actions in detecting illegal trade and enforcing measures against such instances and fostering a culture of transparency and accountability as well as reporting of such cases.

65. For the purpose of future similar work at the request of the parties, it will be helpful to work towards comparability of reporting by standardizing information on volume, details of illegal trade, and enforcement actions, including the fate of any controlled substances seized. The Secretariat can refine the current reporting format to address those concerns and can also take a more proactive approach in seeking clarification, if there are no objections from the parties.

Annex

Overview of decision-making under the Montreal Protocol related to illegal trade in controlled substances

1. At the Seventh Meeting of the Parties, in 1995, a number of parties acknowledged regrettable evidence of illegal trade in controlled substances, which posed a serious threat to the achievements already gained under the Montreal Protocol and required a concerted, coordinated response, through a continuous exchange of information and a tightening of control systems.¹ Accordingly, in decision VII/9, the Seventh Meeting of the Parties decided that the Ninth Meeting of the Parties should incorporate an import and export licensing system into the Montreal Protocol.
2. In decision VIII/20, the Eighth Meeting of the Parties urged each non-Article 5 party that had not already done so to establish a system requiring validation and approval of imports of any used, recycled or reclaimed controlled substances prior to their import, and requested the Ninth Meeting of the Parties to consider instituting a system to require validation and approval of exports of used and recycled ozone-depleting substances from all parties.²
3. In 1997, in decision IX/4, the Ninth Meeting of the Parties adopted the Montreal Amendment, which introduced Article 4B into the text of the Protocol, requiring each party to establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances. In decision IX/8, the Ninth Meeting of the Parties specified that such licensing systems should assist parties with a collection of sufficient information to comply with relevant reporting requirements under Article 7 of the Protocol and decisions of the Parties, and in the prevention of illegal traffic of controlled substances, including, as appropriate, through notification and/or regular reporting by exporting countries to importing countries and/or by allowing cross-checking of information between exporting and importing countries.
4. In decisions IX/22 (and later, in decisions X/18, XI/26 and XXVI/8), UNEP and the Secretariat were requested to work with the World Customs Organization to revise the Harmonized Commodity Description and Coding System (customs codes) to allow the inclusion of appropriate codes for CFCs and HCFCs and mixtures and products containing them.³ In decisions IV/9, XIV/7, XXVI/8 and XXXIV/8, parties were also encouraged to adopt the codes as necessary, including further inserting national subheading for more accurate monitoring of the imports and exports of each substance listed in the annexes to the Protocol.
5. Pursuant to decisions XII/10 and XIII/12, at the twenty-second meeting of the Open-ended Working Group, in 2002, the Secretariat presented a study on monitoring of international trade and prevention of illegal trade in controlled substances.⁴ The study examined the origins, scale and trends of illegal trade in controlled substances, as well as identification, tracking and enforcement methods, and discussed the gaps in monitoring and enforcement of control measures, including inadequate data-sharing, lack of resources and weak legal frameworks in some countries. It also contained a wide range of proposals, covering labelling of cylinders, separate customs codes, enhancing of licensing systems, national enforcement through cooperation between agencies, international networks of coordination and channelling of expertise from the enforcement community and provision of direct assistance to developing countries. The findings of the study also highlighted the importance of public awareness and engagement to ensure the success of those efforts.
6. In the ensuing discussions at that meeting, parties highlighted the need for coordinated international action to combat illegal trade. Suggestions included greater information exchange and the possibility of creating a database or information centre maintained by the Secretariat, the introduction

¹ UNEP/OzL.Pro.7/12, para. 69.

² The regulation of used and recycled substances is important because the amount of recycled and reused substances is not to be considered as “production” and consequently not to be taken into account in the calculated consumption of controlled substances. Therefore, the representation of substances that would otherwise be considered as part of “production” as used, recycled or reclaimed substances could be a form of illegal trade. In paragraph 5 of decision VI/19, on trade of previously used substances, the Sixth Meeting of the Parties requested all parties that exported previously used substances to take, where appropriate, steps to ensure that such substances were labelled correctly and were of the nature claimed, and to report any related activities through the Secretariat to the Seventh Meeting of the Parties.

³ The customs codes are seen to be of great importance for the prevention of the illegal traffic of ozone-depleting substances and for the purpose of reporting data in accordance with Article 7 of the Montreal Protocol.

⁴ UNEP/OzL.Pro.WG.1/22/4.

of transit licences, and closer monitoring and control of trade in used substances. Some representatives noted the need to identify the causes of illegal trade and for capacity-building in Article 5 parties.

7. As a result of that discussion, the Fourteenth Meeting of the Parties adopted three decisions. In decision XIV/7, paragraph 7, parties were invited to report to the Secretariat, on a voluntary basis, fully proved cases of illegal trade in controlled substances, for the purpose of information exchange facilitated by the Secretariat, which would collect and disseminate such information to all parties. The same call for voluntary reporting of proved cases of illegal trade in all controlled substances (including HFCs), as well as illegal production and consumption, was made in decision XXXI/3, subparagraphs 5 (c) and (d), within the context of the discovery of unexpected emissions of CFC-11 and, most recently, in decision XXXIV/8, paragraph 3. Those decisions are discussed in paragraphs 2 and 3 of the present note (on pp. 1 and 2).

8. In addition, paragraph 7 of decision XIV/7 clarified that illegally traded quantities should not be counted against a party's consumption provided that the party did not place the said quantities on its own market. Further discussions among the parties, particularly concerning the case of illegal CFC imports impacting Nepal's compliance, resulted in decision XVI/27, on compliance with the Montreal Protocol by Nepal, which, in paragraph 4, clarified that Nepal would only be considered to be in non-compliance if the amount of illegally traded ozone-depleting substances seized and released on to the domestic market in any one year exceeded its permitted consumption level for that substance in that year.

9. In paragraph 8 of decision XIV/7, the Executive Committee of the Multilateral Fund was requested to continue providing financial and technical assistance to Article 5 parties to introduce, develop and apply inspection technologies and equipment in customs to combat and monitor illegal traffic in controlled substances.

10. Pursuant to paragraph 7 of decision XIV/7, in which the Secretariat was requested to initiate exchanges with countries to explore options for reducing illegal trade, a communication was sent to all parties in May 2004 to solicit their views on how the exchange of information could be streamlined and made more effective in reducing illegal trade in controlled substances. The views received on the issue expressed the need for, among other things, coordination at the national and international levels; comprehensive measures such as efficient legal systems and their enforcement; specific harmonized system codes; customs officer training and participation in implementation; collaboration among national ozone units at the global level; dissemination of new information on illegal trade and its methods to allow precautionary action to be taken; education; and customs officer networks.

11. In 2004, a summary of the above-mentioned responses was presented to the Sixteenth Meeting of the Parties, which, in decision XVI/33, requested the Secretariat to develop draft terms of reference for a study on the feasibility of developing a system of tracking trade in ozone-depleting substances and to convene a workshop of experts from parties to develop specific areas and a conceptual framework of cooperation on tackling illegal trade.⁵

12. The results of the implementation of decision XVI/33 were considered by the Seventeenth Meeting of the Parties.⁶ In the discussion on the matter, many delegates recognized that the current licensing system was insufficient to stop illegal trade in ozone-depleting substances, and observed that it should be complemented by additional measures such as a prior exchange of information between exporting and importing countries. In decision XVII/16, on preventing illegal trade in controlled ozone-depleting substances, the Seventeenth Meeting of the Parties approved the proposed terms of reference for the study on the feasibility of developing an international system of monitoring the transboundary movement of controlled ozone-depleting substances between parties.

13. In paragraph 4 of the same decision, the Secretariat was requested to revise the Article 7 data reporting format to cover exports (including re-exports) of all controlled ozone-depleting substances, including mixtures containing them, and parties were urged to implement the revised reporting format expeditiously. The Secretariat was also requested to report back aggregated information received from the exporting/re-exporting party to the importing party concerned (see para. 16 below).

14. The feasibility study on an international system of monitoring the transboundary movement of controlled ozone-depleting substances between parties was prepared for the consideration of the Eighteenth Meeting of the Parties, in 2006. The study discussed various systems for monitoring and

⁵ Workshop of experts to develop specific areas and a conceptual framework of cooperation to address illegal trade in ozone-depleting substances, held on 3 April 2005 in Montreal, Canada. The report of the workshop is available as document UNEP/OzL.Pro/Workshop/3.

⁶ UNEP/OzL.Conv.7/7–UNEP/OzL.Pro.17/11, paras. 127–140.

tracking the transboundary movement of controlled substances, included data reporting, import and export licensing schemes, information exchange, labelling and marking regulations and national tracking, and highlighted their potential weaknesses and failures. The report also identified lessons to be learned from other international agreements and systems for monitoring and controlling transboundary movements and presented three options for immediate, medium-term and long-term actions and measures, for the consideration of the parties. The recommendations contained in the study especially focused on better implementation and enforcement of existing mechanisms, including licensing systems for the control of imports, exports and re-exports, as called for in Article 4B of the Protocol, noting that they had a key role to play in monitoring transboundary movements in ozone-depleting substances.⁷

15. The study and the issue of the monitoring of transboundary movement of controlled substances and prevention of illegal trade were discussed by the Eighteenth Meeting of the Parties in 2006 and the Nineteenth Meeting of the Parties in 2007, resulting in decision XVIII/18, on preventing illegal trade in ozone-depleting substances through systems for monitoring their transboundary movement between parties, and decision XIX/12, on preventing illegal trade in ozone-depleting substances. In both decisions, parties were urged to make use of existing tracking systems under other multilateral environmental agreements, fully implement their licensing systems and consider implementing other domestic measures on a voluntary basis, such as sharing information with other parties (acknowledging particularly the initiative on informal prior informed consent to combat illegal trade in the South Asia and South-East Asia and Pacific regions), establishing permits for each shipment, monitoring transit movements, banning or controlling the use of non-refillable containers and cross-checking trade information.

16. In terms of improving Article 7 data reporting to enhance the detection of illegal trade, in decision XXIV/12, adopted in 2012, the Twenty-Fourth Meeting of the Parties, recognizing that the differences in Article 7 data on imports and exports of controlled substances might result from illegal trade activities, requested the Secretariat to add an annex to the data reporting form where parties would indicate the exporting party for the quantities reported as imports. The Secretariat was also requested to compile aggregated information received from the importing/re-importing party on controlled substances by annex and group and provide it uniquely and solely to the exporting party concerned when requested.

17. In the same decision, parties were invited to enhance cooperation to clarify any differences in import and export data. They were also invited to consider participating in the informal prior informed consent scheme to improve information about their potential imports of controlled substances.

18. In addition, in decision XXX/12, the Thirtieth Meeting of the Parties urged exporting parties to report the destination of their exports, as called for in decision XVII/16, and encouraged importing parties to report the sources of their imports, as set out in decision XXIV/12, recognizing that such information facilitated the exchange of information and the identification of data discrepancies, which could in turn facilitate the identification of possible cases of illegal trade.

19. In response to the request of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol and the discussions that followed the discovery of unexpected emissions of CFC-11, the Secretariat prepared an extensive report on possible ways of dealing with illegal trade and production of controlled substances under the Montreal Protocol, which was presented to the Implementation Committee at its sixty-third meeting, in 2019.⁸

20. Building on that document, the Thirty-First Meeting of the Parties, in subparagraphs 5 (c) and (d) of decision XXXI/3, encouraged parties to report to the Secretariat fully proved cases of illegal trade in controlled substances, which now included HFCs, and to also report on how significant cases of illegal production, import, export or consumption had been addressed and what, to their best knowledge, were the causes of such cases, in order to facilitate an exchange of information.

21. In July 2022, after two years of online meetings and restricted agendas owing to the coronavirus disease (COVID-19) pandemic, the matter of illegal trade was brought up again at the forty-fourth meeting of the Open-ended Working Group, in the context of institutional processes to strengthen the effective implementation and enforcement of the Montreal Protocol.⁹ The Working

⁷ UNEP/OzL.Pro.18/6.

⁸ UNEP/OzL.Pro/ImpCom/63/6, annexes II and III.

⁹ UNEP/OzL.Pro.WG.1/44/4, paras. 49–53.

Group produced a list of topical “issues of interest” for further discussion at the Thirty-Fourth Meeting of the Parties, each with specific subitems, including illegal trade.¹⁰

22. The issue was then further discussed at the Thirty-Fourth Meeting of the Parties, at which time it was proposed that the discussion continue in 2023, with the Secretariat updating the information provided in the note it had prepared for the Implementation Committee in 2019, on possible ways of dealing with illegal production of and illegal trade in controlled substances under the Montreal Protocol, and providing additional information.¹¹ That proposal was reflected in decision XXXIV/8, on strengthening Montreal Protocol institutions, including for combating illegal trade.

¹⁰ UNEP/OzL.Pro.WG.1/44/4, annex II, sect. B.

¹¹ UNEP/OzL.Pro.34/9, para. 57.