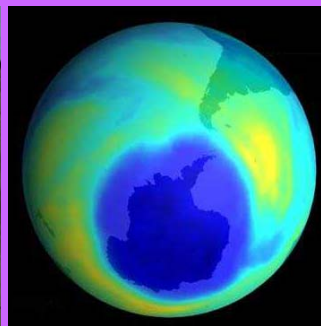




Preventing illegal trade in ODS: Strengthening the Montreal Protocol licensing system



Introduction

At the 27th OEWS, Parties have the opportunity to discuss the feasibility study presented at the last MOP on *developing a system for monitoring the transboundary movement of controlled ozone-depleting substances*, along with the written comments submitted to the Ozone Secretariat on this study by Parties. It was requested that Parties focus on their priorities with respect to the medium- and longer-term options listed in the study with a view to identifying those cost-effective actions which could be given priority.

The Environmental Investigation Agency (EIA) believes the licensing regime could be significantly improved by incorporating elements of prior notification of ODS shipments, enhanced tracking of consignments, and more effective information sharing as recommended in the study.

Illegal Trade and the Failure of the Licensing System

By the mid-1990s around 20000 tonnes of ODS were being traded illegally each year, equivalent to 20% of legitimate trade, and sophisticated smuggling networks had appeared. In response to this threat the Parties agreed to establish licensing systems to monitor the flow of ODS and to prevent ODS from ending up on the black market.

The creation of licensing systems has been the main accomplishment of the Montreal Protocol in the fight against illegal trade, with the Parties declining further actions such as the establishment of a unit to assist with enforcement. Current estimates indicate that the illegal trade in ODS is likely to represent around 10–20 per cent of legitimate trade. Based on 2005 figures, smuggling of this magnitude (10–20 per cent of legitimate trade) would represent an illegal trade in CFCs of approximately 7,000–14,000 tonnes a year, with an approximate value of between US\$25 million – 60 million a year.

It is clear that the licensing system as presently implemented is manifestly failing to tackle illegal trade. There is little coherent sharing of license information between Parties and exporting countries generally fail to check whether the importing company has a license or if intended imports are

within quota. Due to these deficiencies licensing systems have failed to shut the ‘front door’ to ODS smugglers. EIA’s analysis of customs data has shown alarming discrepancies between exporters and importers reported quantities, which should not exist if the system was functioning properly.

Effective and transparent licensing systems could play a key role in helping Article 5 Parties achieve phase-out targets but scant attention has been paid to the actual effectiveness of these systems, which need to be overhauled and improved urgently. Decision IX/8 of the Parties which created the current licensing system states that: *“the licensing system to be established by each Party should... assist Parties 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”*. This key provision of the decision is simply not happening, and an opportunity to curb illegal trade in ODS is being missed.

“Licensing systems have failed to shut the ‘front door’ to ODS smugglers”

Licensing systems have a key role to play in curbing ‘front door’ smuggling of ODS, but have to be revamped to achieve the desired impacts intended by Decision IX/8. While sophisticated smuggling methods involving tactics like false labelling and clever concealment will always pose a challenge to enforcement agents, EIA’s research shows that significant quantities of CFCs are being sent directly to unlicensed importers due to the failure of Parties to use licensing systems effectively.

ODS Tracking System: Background

The issue of illegal trade in ODS has been raised by the Parties to the Montreal Protocol on many occasions and for example in April 2002 a study on ‘Monitoring of International Trade and Prevention of Illegal Trade in ODS, Mixtures and Products Containing ODS’ was published.

Flaws in the Current Licensing System

- **Lack of Prior Checks** - A fundamental shortcoming of the licensing system is that there is no requirement to check the licensing system and quota of the recipient country or if the importers are licensed, prior to export of ODS.
- **Discrepancies Between Imports and Exports** - Detailed analysis of official customs import and export data for CFCs highlights huge discrepancies in declared trade between countries. EIA has identified many cases where CFC export data to a particular country do not match the import data of the recipient country, with discrepancies of more than several thousand tonnes of CFCs a year.
- **Lack of Information Exchange** - It is clear that the provision in Decision IX/8 for cross-checking of information between exporting and importing countries is not being utilized. There is a strong reluctance amongst many Parties to exchange detailed and timely information on the shipment of CFCs. Despite such obstacles some progress has been made, principally through the efforts of UNEP DTIE's Compliance Assistance Programme in the Asia-Pacific region. Here steps have been taken to encourage network members to provide lists of licensed importers and exporters, and to adopt an informal prior informed consent procedure. These represent the first moves towards creating genuine information sharing mechanisms.
- **Country Quotas Exceeded** - Lack of controls of exports and for goods passing through transit zones can allow countries with weak or non-existent licensing systems to import CFCs vastly in excess of their domestic consumption, providing a surplus of CFCs which can be sold on the black market.
- **Illicit CFC production** - There are growing concerns that as legal production of CFCs is scaled down illegitimate production could increase to supply residual demand. There have been reports of at least seven cases of illicit production plants producing CFCs in China.² There is also market intelligence indicating a rise in the availability of counterfeit R-134a in branded cylinders, which in fact contain R-12, or a mixture of ODS and non-ODS gases.
- **Weak Transit Controls** - The role of transit countries in the global illegal trade in ODS is of particular concern as these facilitate ODS smuggling by confusing the trail of the material and providing a jump-off point into illegal markets.

Since the early 2000s, evidence has been mounting which indicated that ODS smuggling was a serious problem in Article 5 countries. An initiative to attempt to combat this emerged from the south-east Asia-Pacific and south Asia (SEAP/SA) regional networks, a region which suffers particularly from the illegal trade in these chemicals. Based on the recommendations of the 2003 workshop of the SEAP/SA customs-ODS officers cooperation meeting, which identified the obstacle posed by transit trade to the efforts of customs authorities in the region to stop illegal trade, a draft decision was introduced at the 15th MOP in 2003 requesting the Secretariat to carry out a study into the feasibility of the development of a system of tracking and securing trans-shipment, re-export and transit trade in ODS.

Discussion on the issue was deferred until the following year, when the suggestion was taken up again against the background of a longer debate on the implementation of Decision XIV/7 on illegal trade. The outcome was Decision XVI/33 which called for a further study of the feasibility of a system for tracking trade in ODS and for improving communications between exporting and importing countries. Following further discussions the following year, the 17th Meeting of the Parties

adopted Decision XVII/16. This encouraged Parties to adopt a series of activities designed to more closely monitor international trade in ODS, exchange information between themselves about exports and imports, and in general take actions designed to combat illegal trade; it also agreed the terms of reference for the study envisaged in the previous year's decision. The Secretariat commissioned consultants from Chatham House (Royal Institute of International Affairs) and the Environmental Investigation Agency to prepare the study and this was presented at the 18th MOP in 2006 in Delhi.

Acknowledging also the need for Parties to make a detailed assessment of all the options put forward in the study Decision XVIII/18 was introduced which: *"...invited all Parties to submit written comments by 31 March 2007 to the Ozone Secretariat on the report, focusing in particular on their priorities with respect to the medium- and longer-term options listed in the study and/or all other possible options with a view to identifying those cost-effective actions which could be given priority by the Parties both collectively through further action to be considered under the Protocol and at the regional and national levels..."*.

These comments have been collated by the ozone Secretariat and the issue will be discussed at the 27th OEWG under Agenda Item 10.

The Way Forward: Highlights of the Feasibility Study

This study has brought together a wealth of information on illegal trade, options for tracking the trade in ODS, and analysis of other conventions. Much groundwork has been done to collect this information and recommendations from different sources, including industry, customs officials, and ozone officers from around the world, particularly in countries that suffer from illegal trade in ODS.

The study recognises that there are many different steps that can be taken to address this problem by industry, governments, and international institutions. Options are presented individually in Chapter 6 of the study with notes on costs for each, and then collated into measures which can be achieved as short, mid and long term steps in Chapter 7. It is up to the Parties to decide which recommendations are most appropriate and effective.

There are practical immediate steps that can be taken which will help the problem without significant additional costs. A particularly encouraging aspect is that the report has revealed a high potential within industry to utilise their own capacity for tracking ODS trade to contribute to solutions in this matter.

The study states that: “cross-checking of import and export data is probably the single most important action that could be taken to ensure that licensing systems operate effectively.” It gives specific recommendations for achieving this task, including efficient options for developing this capacity within the Secretariat. One suggestion for the Secretariat could be that a contact group could be convened to develop a proposal to be presented at the OEWG in Nairobi in June 2007.

Development of a draft decision on the basis of the recommendations of the feasibility study would be the best way to ensure that the useful recommendations contained in this report are acted upon to assist in combating illegal trade in ODS.

Parties should learn from the painful lesson of CFC and halon smuggling and act now, to curb the illegal trade in all ODS, to ensure that globally applicable measures are introduced to combat the current smuggling and to prevent the proliferation of illegal trade in other chemicals controlled by the Montreal Protocol .

HCFCs – the Future of Smuggling?

As successive phase-outs of other chemicals controlled by the Montreal Protocol are implemented, illegal trade in ODS other than CFCs and halons are expected to become an increasing problem in the future. Indeed there is already much evidence that HCFCs are starting to be illegally traded in many parts of the world and some indications of smuggling of methyl bromide.

Restrictions for consumption and trade of HCFCs in some countries are already in force. In many regions of the world, market demand for HCFCs remains high and in some countries consumption is dramatically increasing. There are very close parallels to the situation in the late 1990s where China's production of CFCs was dramatically increasing and Europe had restricted imports of these chemicals. It would appear that the scene is set for a global illegal trade in HCFCs very much in the manner that CFC smuggling took hold.

It is feared that without proactive measures taken by the Parties this smuggling will only get worse in the future and illegal trade is likely to emerge in other chemicals as their phase-out schedules progress and shortages begin to be felt on the market.



India is currently experiencing a considerable black market in CFC and HCFCs imports. The above seizure made in July 2006 by India's Department of Revenue Intelligence consisted of 160 cylinders, most of which were HCFC-22

Recommendations

EIA urges parties to:

- Fully implement the Montreal Amendment requirement for licensing systems to cover all categories of ODS including mixtures and used ODS, and include export licenses
- Fully implement the new reporting requirement under Decision XVII/16 for destinations for all exports of all ODS
- To request the Executive Committee to ensure continued support of UNEP's CAP initiatives to train regional ozone officer and customs networks to raise awareness and spread examples of best practice in national licensing systems and regional cooperation to combat illegal trade in ODS
- To support regional intelligence sharing initiatives such as the WCO's RILO 'Sky-Hole Patching' project, which can offer real-time assistance to customs agencies in implementing national trade control measures
- Encourage wider implementation of the 'informal' prior informed consent system of sharing per-shipment trade information between importer and exporter countries that is currently being developed in South-East Asia and Pacific and South Asia regions by the UNEP CAP
- Encourage governments to facilitate industry initiatives to track and monitor the trade in ODS
- To ensure that prior to shipment of Annex A and B substances, the exporting Party notifies the importing country with details of the shipment, including the name of the importing entity and volume of ODS. The importing Party can then respond as to whether the importer has a valid licence and the quantity is within the country's quota.
- Request the Ozone Secretariat to report on the feasibility of developing its function of centralising the collection and analysis of trade data from a variety of sources to inform decisions and activities of the Parties on trade in ODS, including cross-checking of import and export data. This should include:
 - a request for a quote on the one-time development of software for data collection and analysis of ODS trade,
 - assessment of cost of increasing the capacity of the secretariat or use of a consultant for fulfilling this function
- Request the TEAP or the Ozone Secretariat to carry out a review of data collection and data reporting systems, aiming to identify and eliminate discrepancies and to provide better reporting in particular of ODS in mixtures
- Request the Executive Committee to carry out an evaluation of how licensing systems are actually working and suggest the essential minimum elements of licensing systems
- Ensure national focal point information is kept up to date to enable efficient communication between Parties

This briefing was written by Ezra Clark, June 2007

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Further Information

An executive summary of the feasibility study on tracking system for ODS (document number UNEP/OzL.Pro.18/6) is attached as Appendix III and can also be downloaded from:
http://ozone.unep.org/Meeting_Documents/mop18mop/MOP-18-6E.pdf

Other languages are available here:

http://ozone.unep.org/Meeting_Documents/mop18mop/index.asp

A full version of the feasibility study on tracking system for ODS is available from the Ozone Secretariat website (123 pages):
http://ozone.unep.org/Meeting_Documents/mop18mop/ODS-Tracking-September-2006-1.pdf

The report of the 18th Meeting of the Parties (English) can be downloaded from:
http://ozone.unep.org/Meeting_Documents/mop18mop/MOP-18-10E.pdf



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