Workshop Report

Regional Workshop on Implementation and Enforcement of ODS Licensing Systems for the Central and Eastern European and Baltic States

Organized by

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EXECUTIVE SUMMARY

The Regional Workshop on Implementation and Enforcement of ODS Import/Export Licensing Systems in Central and Eastern European and Baltic States (CEEBs) held in Budapest (Hungary) from 15 to 17 May 2000 is an important element of the UNEP Project Promoting Compliance with the Trade and Licensing Provisions of the Montreal Protocol in Countries with Economies in Transition (CEITs) financed by GEF. A similar workshop was organized in Baku (Azerbaijan) for Newly Independent States (NIS). These two workshops can be considered as follow-up from two Regional Workshops on Monitoring and Consumption of Ozone Depleting Substances (ODS) that were held in 1998 for the CEEBS and NIS in Bratislava (Slovakia) and Kiev (Ukraine), respectively.

Complying with the provisions of the Montreal Protocol (MP) is a difficult task for many CEITs as their economies are still in transition, and the resources needed for introducing new non-ODS technologies and for effective monitoring and control of ODS traffic are insufficient. This creates a driving force for illegal activities in trade with ODS which can be eliminated only when the existing institutional and legal framework are well established and the regulations can be successfully implemented and fully enforced. Cooperation amongst ozone officers and customs officers, customs inspectors and environmental inspectors both inside the country and at the regional level is of vital importance to achieve this objective.

The workshop organized in Budapest for the CEEBS was designed to assist the participating countries further improve and enforce the regulatory measures introduced earlier and was devoted mostly to strengthening the regional customs control of trade in ODS. A detailed survey carried out before the workshop showed that, although all CEEBS had established systems for licensing import and export of ODS, the systems in some countries needed improvement to allow them to assure reliable control of ODS traffic. The survey showed that most of the countries were facing difficulties in enforcing the existing regulations.

The objective of this workshop was to enhance the capabilities of the participating countries to enforce the established policies and regulations designed to monitor and control ODS traffic effectively. It was expected that the discussions and practical training sessions held during the workshop would result in conclusions and recommendations on more effective enforcement of the control of ODS traffic on national and regional levels. It was also expected that each country's team would propose additional measures to prevent illegal trade and secure reliable reporting of data on ODS consumption.
Thirty-five participants from 10 countries of the Region participated in the Workshop. The participants' profiles were as follows:

- Officers from Ozone Units and Senior Ministerial Officers responsible for ozone issues: 43%
- Customs Officers and Customs Inspectors: 50%
- Environmental Inspectors: 7%

The design of the Workshop enabled the participants to receive and discuss the information presented to them and share their own experiences step by step through:

a) plenary presentations on relations between the Montreal Protocol requirements and control of ODS traffic; the present situation in the Region with regard to implementation of regulations on ODS traffic; measures for enforcement of trade control in the EU and the USA; and illegal trade in ODS and ways to prevent it; and

b) working sessions in which participants could express and exchange opinions on the issues covered by the plenary presentations as well as work out the suggestions for action plans for their countries. The participants were given a Participants Information Package containing all workshop documents.

The Workshop Agenda included, *inter alia*, the Welcome Address by the host country (Hungary), the Opening Address by UNEP DTIE, brief review of workshop objectives and status of ODS phase-out efforts in the CEEBS by UNEP DTIE, and six presentations by experts from the European Union, UK, USA, Poland and Ukraine. The representative of the Ozone Secretariat was unable to attend, so his presentation was given on his behalf by the leading workshops consultant, Mr Janusz Kozakiewicz. The Workshop Agenda also included the following working sessions:

1. Legal and Institutional Aspects of the Enforcement of Control of ODS Traffic in Countries throughout the Region

2. Practical Aspects of Enforcement of Control on ODS Traffic in the Countries and throughout the Region

The detailed Agenda is shown in Annex I.
At the workshop the participants learned about the most important issues related to the monitoring and control of trade in ODS, and had the opportunity to discuss them and present their views on ways to improve the enforcement of regulations in their countries and throughout the region. The participants regarded as crucial that real examples, and sometimes controversial problems, were emphasized in the presentations and then discussed in the plenary and in the working sessions, so that they could take an active problem solving role. This approach made the workshop more interesting to the participants and enabled them to understand better the issue of prevention of illegal ODS traffic.

The participants drafted conclusions and recommendations where they noted the good progress made by the participating countries in the implementation of their National Action Plans developed at the UNEP Regional Workshop on Monitoring and Control of ODS for CEEBS held in Bratislava in 1998.

In view of the threat that illegal trade in ODS and ODS-containing products poses to the global process of protecting the ozone layer, they proposed several actions to be undertaken at national, regional and international levels that would help to improve control in ODS traffic. Finally, they requested that the whole text of these conclusions and recommendations be communicated to the Parties to the MP. This was done by the Ozone Secretariat in June 2000, and the recommendations on actions to be undertaken at an international level were presented by Poland on behalf of the countries participating in the workshop at the Open Ended Working Group (OEWG) meeting in Geneva in the form of a draft decision.

This draft decision was forwarded to the XII MOP held in Burkina Faso in December 2000. Success in convincing the Parties to the MP to consider the problem of preventing the illegal ODS traffic should be regarded as an extremely valuable output of the workshop.

In their evaluation of the workshop, the participants generally gave very high marks to all questions in the questionnaire. The highest ratings were given to the overall evaluation of the workshop and to the working sessions.

1. BACKGROUND

The Regional Workshop on Implementation and Enforcement of ODS Import/Export Licensing Systems in Central and Eastern European and Baltic States (CEEBS) held in Budapest (Hungary) on 15-17 May 2000 is an important element of the UNEP project "Promoting Compliance with the Trade and Licensing Provisions of the Montreal Protocol in Countries with Economies in Transition (CEITs)" financed by GEF.
A Similar workshop was organized in Baku (Azerbaijan) for the Newly Independent States (NIS). These two workshops can be considered as a follow-up from the two Regional Workshops on Monitoring and Consumption of Ozone Depleting Substances (ODS) that were held in 1998 for the CEEBS and the NIS in Bratislava (Slovakia) and Kiev (Ukraine), respectively.

The experience that the participating CEITs gained in the Bratislava and Kiev workshops assisted them in improving the operation of their existing ODS import/export licensing systems or in establishing such systems, and these Workshops also encouraged closer links between the Ozone Officers in the countries of the Region.

The conclusions and recommendations from Bratislava and Kiev made a considerable contribution to the phase out of ODS in CEITs. However, it has become evident that only the comprehensive training of ozone officers and customs officers in the enforcement of measures to monitor and control ODS traffic can lead to a successful implementation of the Montreal Protocol phase-out schedules and reporting requirements, and help to prevent illegal trade activities.

Complying with the provisions of the MP is a difficult task for many CEITs because their economies are still in transition, and the resources needed for introducing new non-ODS technologies and for effective monitoring and control of ODS traffic are insufficient. This creates a driving force for illegal trade in ODS which can be eliminated only when the existing institutional and legal framework is well established and the regulations can be successfully implemented and fully enforced. Co-operation amongst ozone officers and customs officers, customs inspectors and environmental inspectors both inside the country and at the regional level is of vital importance to achieve this goal.

As has been expressed through several Decisions taken at different Meetings of the Parties, The Parties to the MP attach great attention to the problem of illegal ODS traffic as this may undermine global efforts to phase out ODS. Having an ODS import/export licensing system has become mandatory under the Amendment to the Protocol approved in Montreal in September 1997, and several important decisions designed to assist the countries to introduce and implement the relevant regulatory measures have been undertaken by the Parties. The global problem of illegal trade in ODS has already been acknowledged by the World Customs Organization (WCO) and Interpol and is closely monitored by international institutions and NGOs such as Friends of the Earth and the Environmental Investigation Agency (EIA). This has been extensively discussed at international meetings and workshops, e.g. the International Conference on Ozone Layer Protection (Taipei, 1997), the Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements (Geneva, 1999) and The Earth Technologies Forum held each year in Washington DC.
2 OBJECTIVES

The objective of the workshop was to assist participating Countries with Economies in Transition (CEITs) from the CEEBS Region to successfully implement and enforce policies and regulations to monitor and control ODS trade.

3. EXPECTED RESULTS

The expected results of the workshop were:

- Conclusions and recommendations on enforcement of controls in ODS traffic in specific countries, and possibly also in the Region.

- That each country team would develop suggestions for additional measures (such as new regulations, agreements on co-operation between customs and environmental authorities both at national and regional levels, national training workshops, etc.) that could be implemented to improve the control of the ODS traffic in their own country in order to prevent and fight illegal activities and secure reliable reporting of data on ODS consumption.

- Proposals for discussions and possible decisions by appropriate bodies.

4. PARTICIPANTS

Thirty-five participants from ten countries participated in the Workshop. These 10 countries included seven Central European States (Bulgaria, Croatia, Hungary, Poland, Romania, Slovakia and Slovenia) and three Baltic States (Estonia, Latvia and Lithuania). The Czech Republic was also invited, but did not attend. The complete list of participants is presented in Annex 2.

All countries except Croatia, Romania and Slovenia are classified as non-Article 5 Parties under the MP. Nine countries represented at the workshop (Croatia, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia) are parties to the MP and its London and Copenhagen Amendments, one (Romania) is party to the MP and its London Amendment only. It should be noted that as many as five countries (Bulgaria, Hungary, Poland, Slovakia and Slovenia) had also ratified the Montreal Amendment. This is especially important from the point of view of control and monitoring of ODS.
The participants to the Workshop were senior officers from Customs Authorities in their countries, including those responsible for implementing and enforcing the control of traffic in goods at the border, (specifically ODS and ODS-containing products) and for formulating relevant national customs codes and tariffs. They also included, senior representatives of the Customs Inspectorates and Environmental Inspectorates or equivalent authorized institutions. Finally, officers in charge of ODS problems (National Ozone Officers) and key officers regarded as National Focal Point for ODS Import Licensing System, also participated. This ensured a better understanding amongst governmental bodies involved in the enforcement of regulations related to ODS traffic.

The participants profile was as follows:

- Officers from Ozone Units and Senior Ministerial Officers responsible for ozone issues: 43%
- Customs Officers and Customs Inspectors: 50%
- Environmental Inspectors: 7%

5. METHODOLOGY

The design of the Workshop enabled the participants to receive and discuss the information presented to them and share their own experiences through the following:

(a) Plenary presentations through which participants were informed about:

- the relationship between the Montreal Protocol requirements and the control of ODS traffic;
- the situation in the Region with regard to implementation of regulations on ODS traffic;
- enforcement of trade controls in ODS in the European Union (EU) and in the USA;
- illegal trade in ODS and possible means to prevent illegal ODS traffic on international, regional and national levels.

(b) Working sessions through which the participants expressed and exchange their own opinions on the issues covered by the plenary presentations and work out draft action plans to be implemented in their countries. There was a brief introduction given to each of the working sessions by the discussion facilitator.
During the working sessions the participants were divided into working groups, consisting of country teams. Working groups were structured differently for each working session. Countries with some experience were grouped with those without experience. Each working group selected its own moderator and rapporteur who represented this group at the following plenary discussion.

Resource persons (details in Annex 3) visited each of the working groups during the working sessions.

Presentations of ODS containers and ODS identifiers took place during the working sessions. The participants also learned how to check the contents of ODS cylinder, using an ODS identifier.

At the end of the workshop each country team presented the actions already taken in their countries, and their plans to prevent illegal trade in ODS.

The participants were given a Participants Information Package containing all workshop documents, including the agenda, concept note, presentations and guidelines for the working sessions, the workshop evaluation form, and supporting workshop documents (background information on the issues related to the workshop and UNEP's general information brochures and leaflets). Reference manuals were also available (one copy for each country team). The list of presentations and working sessions and the list of other training and background materials are attached to this report as Annexes 4 and 5, respectively.

A chairman was elected for each day of the workshop while a representative of the host country took on the role of Rapporteur throughout the whole workshop.

6. CONTENTS

The Workshop Agenda included, inter alia, the Welcome Address by the host country (Hungary), the Opening Address by UNEP DTIE, brief reviews of workshop objectives and status of ODS phase-out efforts in the CEEBS by UNEP DTIE, and six presentations by experts from the European Union, the UK, the USA, Poland and Ukraine. The representative of the Ozone Secretariat was unable to attend, so the Workshop leading consultant gave his presentation on his behalf.

The presentations and statements given at the Workshop are briefly summarized below:

In his address to the participants Mr. Rajendra Shende, Chief of the Energy and OzonAction Unit, UNEP DTIE (Paris), congratulated the countries of the Region for the great improvement made in the last couple of years in the implementation of legislation on
ODS and stressed the importance of the Workshop for the effective enforcement of existing regulations. Referring to the achievements of the OzonAction Programme in establishing the regional networks of Ozone Officers, he encouraged the participants to exchange information and share the experience between Ozone Units in neighbouring countries.

The presentation by Mr. Heikki. Willstedt of UNEP DTIE (Paris) was devoted to the objectives of the Workshop in view of ODS phase-out activities in the Region and the role of UNEP in this process. He pointed out the importance of customs training in ensuring the effective monitoring and control of the flow of ODS and ODS-containing products. He also described possible follow-up actions that were expected from the participating countries after the workshop.

Dr. Janusz Kozakiewicz (ICRI, Poland), speaking on behalf of Mr. Gilbert Bankobeza from the Ozone Secretariat (UNEP, Nairobi) who was not able to attend the Workshop, presented the structure of the MP, emphasizing the provisions related to trade in ODS and ODS-containing products (Articles 4, 4A and 4B). He highlighted the differences between trade with Parties and non-Parties under the MP and discussed the MP requirements with regard to particular substances. He pointed out the benefits from ratification of the London Amendment (with regard to trade in Annex B substances) and the Montreal Amendment (with regard to trade in methyl bromide) and the problems that might be faced in practice by the countries that do not ratify these treaties. He also presented the decisions of the Parties (IX/9 and X/9) which concern the control of trade in products and equipment whose continuing functioning relies on Annex A and B substances.

Mr. Duncan Brack (Royal Institute of International Affairs, UK), speaking on the growth of international environmental crime, presented examples of this type of criminal activity that may be biodiversity-related, natural resource-related, waste-related and banned substance-related. He further underlined the common features that could be identified behind most instances of international environmental crime and common solutions that might be suggested to avoid this kind of crime. He also presented a general overview of illegal trade in ODS from a global perspective and presented some examples of such illegal activity on a large scale. He concluded by suggesting that though the problem should solve itself in the long term, as ODS-using machinery is gradually replaced, there are several reasons why it is worth investing time and resources in tackling the problem now.

Dr. Janusz Kozakiewicz (ICRI, Poland) presented the background paper dealing with problems in monitoring and control of trade in ODS and ODS-containing products. Some of these problems are complexity and lack of clear definition of customs codes for most ODS, difficulties of practical identification of ODS by customs, number of exemptions under the MP that have to be treated in a special way, the lack of an internationally accepted system of labelling of ODS and ODS-containing products and equipment, and difficulties in differentiation between ODS-containing mixtures and ODS-containing products.
He further discussed the various methods used to trade illegally in ODS and presented several practical examples (importing/exporting without licence/permit but using correct customs code, using wrong or misleading customs code, mislabelling - including also shipping of virgin ODS as used, and ordinary smuggling). Finally, he proposed measures which may be used to prevent/curb illegal trade in ODS at a global, regional and national level.

Mr. Peter Horrocks (European Union Office in Brussels) described the stages involved in establishing a control and monitoring regime for ODS, including the steps needed for implementing the necessary regulations. He described the principles of the ODS licensing system currently used in the EU, which covers controls on production, imports, placing on the market and use of ODS as well as on ODS-containing products. However, the EU Regulations do not include export controls and several other measures resulting from recent decisions of the Parties to the MP.

He presented how this regulation worked in practice in the EU member countries and stressed that understanding this mechanism would be quite important for those CEEBS who might join the EU in the future.

He also briefly explained the main objectives of the new ODS Regulations that have already been approved by the EU Parliament and are expected to be published soon in the Official Journal of the EC. It includes, *inter alia*, controls on export of ODS and special requirements concerning use of halons and HCFCs.

Mr. Lary Larson (DOJ, USA) concentrated on the methods for fighting illegal trade in ODS in the USA. He pointed out that close co-operation between the interested state institutions must exist in order to ensure joint action against smugglers. He informed the participants that a special group was established in the US Department of Justice (DOJ) to investigate cases of illegal ODS traffic and described a few successes of that group.

Dr. Vladimir Demkin (Ukraine) presented the results of the Survey on the status of implementation of legislative systems dealing with ODS and ODS-containing products in the CEEBS, (part of the UNEP Project Promoting Compliance with the Trade and Licensing Provisions of the MP in CEITs). He pointed out that the situation in the Region looks favourable and has improved since 1998, (i.e. the year when the previous regional workshop was held in Bratislava), although some imperfections in the existing regulations needed to be corrected.

He applauded the efforts of the NOUs and other authorities dealing with ozone issues in the countries in the Region to implement their national action plans proposed in the Workshop in Bratislava. He also stressed that more attention should be paid to strengthening co-operation between the NOUs at the regional level, and between environmental and custom
authorities at the national level. He added that securing reliable controls at the borders must be fulfilled as promptly as possible.

The Workshop Agenda included the following working sessions:

1. Legal and Institutional Aspects of the Enforcement of Control of ODS Traffic in Countries and throughout the Region.

2. Practical Aspects of the Enforcement of Control of ODS Traffic in Countries and throughout the Region

During the working sessions the participants were asked to discuss the issues presented in the Guidelines. Background information was also included in the guidelines to facilitate the discussions. The following issues were discussed:

Working Session 1: The definition of illegal ODS traffic, the status of non-compliance with MP ODS phase-out schedules vs. data reporting, the importance of customs codes, legal and institutional means to prevent/curb illegal ODS traffic and penalties for illegal trade in ODS.

Working Session 2: A practical approach to the customs control of goods, proceedings with captured shipments of illegal ODS and transit shipments of ODS or ODS-containing products. Apart from discussion, this session also included presentation of colour pictures of standard containers/cylinders used to ship ODS legally and illegally and demonstration of the use of an ODS refrigerant identifier.

The Workshop booklet containing, *inter alia*, the texts of presentations as well as introductions and training materials to working sessions, is available from:

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7. RESULTS, CONCLUSIONS, RECOMMENDATIONS AND LESSONS LEARNED

The workshop described in this Report was the first regional UNEP workshop designed specifically for training of customs officers and environmental officers dealing with customs issues, so the lessons learnt from it will have a substantial influence in the preparation of such events in the future.

One conclusion of the workshop was that the idea of bringing together ozone officers already acquainted with the MP and directly responsible for its implementation and customs officers who should enforce its provisions in practice, enhanced the co-ordination of their efforts and the understanding or their respective problems. The workshop provided an unique opportunity for the exchange of information, not only between representatives of customs authorities from different countries of the Region (which seems obvious), but also between representatives of environmental authorities and customs authorities from the same country. Indeed, it was noticed that in some of the participating countries the contacts between environmental bodies and customs were initiated only at the workshop. This shows clearly that there is a need for organizing similar workshops for other regions, and that the programs of national customs training should also include joint discussions between customs officers and environmental officers.

During the workshop the participants learnt about the main issues related to the monitoring and control of trade in ODS, and had the opportunity to discuss them and present their own views on how to improve the enforcement of relevant regulations in their countries and in the Region. It was of great importance that real examples and sometimes controversial problems were emphasized in the presentations and then discussed in the plenary and in the working sessions, so that the participants could take an active role in finding solutions. This approach made the workshop more interactive for the participants and enabled them to better understand the difficult area of preventing illegal ODS traffic.

The use of practical examples, the showing of colour pictures of real cylinders and containers in which ODS may be shipped, and the performing of an identification of ODS before the audience, undoubtedly resulted in a better understanding of the information and encouraged active participation during the workshop.

Unfortunately, it was not possible to organize a visit to the customs check-point where the practical approach of customs officer to ODS-suspicious shipments could be shown. It is recommended that such demonstrations and visits be arranged during other regional, and specifically national, workshops devoted to customs training.

The results of the discussions carried out at the Working Sessions 1 and 2 are presented below. The detailed results of a the survey on implementation and enforcement of
ODS import/export licensing systems in the participating countries will be published by UNEP as separate report. A brief summary is given in Chapter 6.

Results of Working Session 1: Legal and institutional aspects

The purpose of this session was to discuss the enforcement of the control of trade in ODS from a legal and institutional point of view.

When discussing the definition of illegal ODS traffic from different perspectives, most of the participants came to the conclusion that “illegal” would generally mean breaking the national legislation. In practice, if there's no national permit system dealing with ODS, then imports of particular ODS undertaken by the individual or company should be considered legal even if the country is obliged to ban imports of that ODS by the MP.

Answering the question on whether the country should be considered formally as “being in a state of non-compliance with the MP provisions if it does not report data to the Ozone Secretariat”, the participants took the position that since reporting of higher consumption or production than resulting from the phase-out schedules is considered as non-compliance by the Implementation Committee, also non-reporting should be regarded as such.

There was very interesting discussions held with regard to the question of what should be reported to the Ozone Secretariat: only quantities of ODS traded legally, or also the captured illegal shipments. The participants view was that information on illegal shipments should be reported along with the quantities traded on a legal basis (i.e. covered by permits). They pointed out, however, that at present reporting on such cases to the Ozone Secretariat would result in adding legally and illegally imported ODS quantities which may lead to a situation of non-compliance for the country, so the best solution would be that the quantities reported as illegally shipped are not counted as imports by the Ozone Secretariat. This approach would facilitate monitoring and fighting the illegal ODS traffic on a global scale. Probably the lack of such approach at present was the reason why in the plenary discussion on cases of illegal trade activity in the Region, only one country reported a case.

The participants agreed that special sanctions should be introduced for the illegal activities related to trade in ODS and that they should be categorised as a crime.

As the most effective means to prevent illegal ODS traffic the participants underlined the following: strengthening control on ODS trade inside the country, introducing special regulations dealing with used ODS, improving the customs codes for ODS, training of customs officers. In this respect, the participants praised UNEP for implementing successfully the activities related to these issues entrusted to it, and for actively assisting the countries.
Results of Working Session 2: Practical aspects of enforcement of the control of ODS traffic in the country and in the Region.

The purpose of this session was to get participants views on possible practical approaches that may be undertaken in their countries to improve the enforcement of ODS import/export-licensing systems.

The participants agreed that the customs officers who deal with shipments of ODS and ODS-containing products in practice have to be well equipped not only with ODS identifiers (that seem to be the one of the few effective tools to investigate suspicious shipments), but also with all the necessary information (e.g. Risk Profiles containing the commercial names vs. chemical names of ODS, commercial names of products containing ODS, characteristic features of the containers that may be used to transport ODS, lists of suspicious producers/importers and the companies that were given licenses for ODS trading, etc.). This context, some participants informed about a growing flow of obsolete equipment containing ODS entering the countries in the Region originating from the EU.

When discussing the problem of the establishment of procedures related to captured shipments of illegal ODS, the participants pointed out that the regulation in some countries requiring the return of the captured goods to the exporting country may not be a good practice in case of ODS since the environmental goal is to diminish ODS use. They suggested that the captured ODS should be destroyed either in the importing country or re-exported for that purpose to another country if the importing country did not have the destruction facilities, and that the cost should be covered by the importer who made the illegal shipment.

Regarding the issue of transit of ODS and ODS-containing products, the participants declared that in most of the countries in the Region there is a computerised system for monitoring transit shipments in place, so there is no need for introducing special transit permits. However, they agreed that it would be useful if the country of origin informed the transit countries on such transports.

The recommendations and conclusions agreed upon at the Workshop are presented below.

**RECOMMENDATIONS AND CONCLUSIONS FROM THE WORKSHOP**

1. The participants appreciate the good progress made in the implementation of National Action Plans developed at the UNEP Regional Workshop on Monitoring and Control of ODS for CEEBS held in Bratislava in 1998, aimed at improving the ODS licensing systems in the countries of the Region. The countries that have not completed the process of improving their institutional and legal systems are accordingly asked to do so as soon as possible. In this
context, the participants suggest that the recommendations of the present Workshop be reflected in further actions undertaken by the governments in the countries in the Region.

2. The participants recognize the threat of illegal trade in ODS and ODS-containing products to the global process of ozone layer protection.

3. Understanding the importance of the enforcement of control of trade in ODS and ODS-containing products in the Region, in view of the need for global implementation of the Montreal Protocol requirements, the participants strongly feel that appropriate measures should be established in their countries. At the same time the participants call upon the other countries in neighbouring regions to follow similar approaches.

4. The participants wish to point out that presently the proper control of ODS at the border that would allow the elimination of illegal trade is very difficult, due to problems in ODS identification, the complexity of customs codes related to ODS and ODS-containing products, the lack of an internationally accepted common labelling system, and the lack of specially trained customs officers.

5. In this regard the participants recommend that the following actions, at international, regional and national levels, are undertaken in order to curb the illegal trade in ODS:

5.1. Actions at international level (undertaken under the guidance of Parties to the Montreal Protocol):

(1) introduction of an universal labelling system, drawn up in co-operation with industry and applied by all those who produce or offer for sale any ODS or ODS-containing products.

(2) introduction of an universal system of additional classification of ODS (alongside the CN system). A good example is the CAS identification numbers used for chemicals.

(3) establishment of guidelines for the format of a national database for customs officers that would include risk profiles for ODS and ODS-containing products.

(4) introduction of separate customs codes for those mixtures containing ODS for which there are no specific customs codes in the HS System.

(5) further clarifications on the difference between ODS-containing products and ODS-containing mixtures. It is suggested that TEAP produce an amended list of categories of ODS-containing products with the corresponding HS customs classification printed alongside.
5.2. Actions at regional level

(1) establishment of routine contacts between NOUs, customs, customs inspection and environmental inspection authorities in the region. It is suggested that a Regional Board of Experts is created that would monitor illegal activities in trade in ODS in the region;

(2) acceleration of the establishment of common transit requirements in the region and in the rest of Europe;

(3) organization of meetings and workshops for customs officers and customs inspectors from neighbouring countries to exchange information and strengthen co-operation (including, but not limited to, the neighbouring countries from the EU and NIS).

5.3. Actions at national level.

(1) setting up action plans on how to monitor and control the illegal traffic in ODS and ODS-containing products;

(2) modification, where appropriate, of the existing ODS licensing systems in line with the new EC Regulation concerning ODS management, and specifically including in those systems the control of ODS trade inside the country;

(3) periodic reviews, at least on a yearly basis, of customs statistics in comparison with other data on ODS trade;

(4) organization of national workshops for customs officers and customs inspectors;

(5) organization of meetings of environmental and customs authorities to monitor the current situation with regard to illegal trade in ODS in the country;

(6) establishment of routine methods of communication between customs and the NOU;

(7) equipping the relevant authorities in the country (such as customs or environmental authorities) with ODS identifiers;

(8) carrying out adequate environmental inspections;

(9) carrying out Public Awareness Raising Campaigns (PARCs) on ozone layer protection and ODS aimed at ODS end-users in order to diminish demand for ODS and ODS-containing products;
(10) specification of a limited number of entry points and exit points for imports and exports of ODS and ODS-containing products; and

(11) encouragement of co-operation with relevant businesses and business associations in carrying out all the above activities.

[External financial support and technical expertise will be necessary to implement actions (4), (7) and (9)]

6. The participants also felt that reporting the quantities of illegally shipped ODS to the Ozone Secretariat by the Parties is needed to facilitate tracking the sources of illegal activity. However, the participants were of the opinion that these quantities should not be included in the reporting Party consumption of ODS provided that such Party has an ODS licensing system in place and undertakes the necessary actions to prevent illegal trade.

7. The participants strongly encouraged all Parties to the Montreal Protocol to introduce ODS export permits along with ODS import permits in order to facilitate communication between exporting and importing countries on suspected illegal trade activities.

8. These conclusions and recommendations would be forwarded to the Parties to the Montreal Protocol at the next OEWG by Poland on behalf of the countries participating at this Workshop.

8. FOLLOW-UP ACTIONS

At the end of the workshop each country’s team presented to the plenary a brief update on the status of implementation of the national action plans developed at the previous workshop, and suggestions for actions aimed at introducing additional measures that could help to improve the control of ODS traffic in their own country.

Most of the countries suggested that though their existing legislation dealing with ODS enabled an effective monitoring and control of ODS traffic, they learnt from the workshop that certain improvements were still possible. Most of the countries declared that some changes might be necessary, especially in the routine practice of customs in dealing with ODS and also in co-operation between customs and environmental authorities. The officers participating in the workshop are expected to further develop their suggestions for discussions and possible decisions by appropriate bodies. UNEP will monitor the implementation of the suggested actions, specifically the training of customs officers at a national level which is scheduled to be carried out in some of the participating countries.
The conclusions and recommendations were one of the most important outputs from the workshop, specifically those related to the actions to be undertaken on an international level under the guidance of the Parties to the MP. Following the request of Poland on behalf of the countries participating in the workshop, the Ozone Secretariat distributed the full text of the conclusions and recommendations from the Budapest Workshop to all Parties of the MP.

Furthermore, the recommendations of the workshop concerning the actions to be undertaken at international level were presented in the form of a draft decision to the Parties at XX OEWG Meeting in Geneva in July 2000.

After an interesting plenary discussion, the draft decision was amended to incorporate the comments of the Parties and were forwarded to the XII MOP to be held in Burkina Faso in December 2000, which should be regarded as a success of the workshop.

9. EVALUATION BY PARTICIPANTS

A graphical representation of the workshop evaluation by the participants (31 participants out of 35 answered the questionnaire) is presented in Annex 6.

- The overall evaluation of the workshop (Q1) was very good - only highest marks were given with A5" prevailing.
- Only very good marks (A4" and A5") were given also to working sessions (Q2) what proves that the concept of structuring the working sessions was correct and that they were very useful for participants.
- Plenary presentations (Q4) received slightly lower marks, though only very few participants rated them as A3".
- Assistance of the workshop in improving the co-operation with customs (Q6) was also highly rated what is very important from the point of view of effective enforcement of measures dealing with ODS by the customs what is needed to prevent illegal trade in ODS.
- The composition of the audience at the workshop (Q3) was considered by the participants as quite appropriate since only one gave A3" mark to it while all others rated it as A4" or A5".
• Assistance of the workshop in improving the existing ODS licensing system (Q5) or monitoring ODS consumption (Q7), and also the usefulness of UNEP’s Resource Module for that purpose received lower marks (though still A4” rating was clearly prevailing) probably because most of the countries in the Region already have well established systems dealing with ODS.

10. LIST OF ANNEXES

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ANNEX 1 AGENDA

Preliminary Agenda
Budapest, Hungary 15-17 May 2000

Workshop objectives

To assist participating Countries with Economies in Transition (CEITs) from the CEEBS Region to successfully implement and enforce policies and regulations to monitor and control ODS trade.

Target audience

Senior officers from National Customs Authorities, including those responsible for enforcing the control of traffic of goods at the border (specifically including ODS and ODS-containing products), and for formulating relevant national customs codes and tariffs.
Senior representatives of the Customs Police (Customs State Inspectorate) and Environmental Police (Environmental State Inspectorate) if such institutions exist in the country.
The officer in charge of the National Ozone Unit (Ozone Officer) or a key officer from the Ministry responsible for co-ordinating MP policy.

Three to four representatives from each country will participate in the workshop

Duration: 3 days.

The presentations include a time allowance for questions,

MONDAY, MAY 15

1. Opening Session

08.00-08.45 Registration
09.00-09.10 Welcome address, by the host country representative
09.10-09.25 Opening Address by GEF
09.25-09.35 UNEP Address: Workshop objectives. Mr Heikki Willstedt, Training Expert, UNEP TIE, Paris
2. Control of ODS Trade in view of International Environmental Agreements

Election of Chairperson and Rapporteur of the day

9.35-10.05 Montreal Protocol requirements with regard to control of ODS trade, by, Dr Janusz Kozakiewicz, on behalf of Mr. Gilbert Bankobeza, Legal Officer, Ozone Secretariat

10.05-10.35 Illegal trade in ODS as international environmental crime, Mr Duncan Brack, Royal Institute of International Affairs, London, UK

10.35-10.50 Coffee Break

3. Ways to Control Trade in ODS

10.50-11.15 Developments in classification of ODS under HS System, WCO

11.15-12.00 The problem of illegal trade in ODS and possible means to solve it, Dr Janusz Kozakiewicz, Ozone Layer Protection Unit, ICRI, Poland

12.00-12.15 The role of Interpol in responding to global illegal trade

12.15-13.30 Lunch Break

4. Experience in Existing Systems of Customs Control of ODS Traffic

13.30-14.50 Enforcement of customs control of ODS traffic in the EU and in the USA: - selected EU member country - country and speaker to be announced - USA (speaker to be announced)

14.50-15.05 Coffee break

15.05-15.40 Presentation of results of questionnaire on implementation and enforcement of ODS import/export-licensing systems in participating countries: Dr Vladimir Demkin, Consultant to UNEP TIE

15.40-17.00 Exchange of information on suspected or identified local illegal activities in trade in ODS in the region
TUESDAY, MAY 16

Election of Chairperson and Rapporteur of the day

5. Legal, Institutional and Practical Aspects of the Enforcement of Control of ODS Traffic

09.00-09.15 Introduction to the First Working Session, Dr. Janusz Kozakiewicz

09.15-11.30 First Working Session: Legal and institutional aspects of the enforcement of control of ODS traffic in the country and in the Region

The participants will be divided into working groups of three to four countries and discuss the issues listed in the hand-outs prepared for this session.

Issues include: Definition of illegal ODS traffic, non-compliance with the MP phase-out schedules vs data reporting, importance of customs codes, legal and institutional means to prevent/curb illegal ODS traffic, penalties for illegal ODS trade

10.00-10.15 Coffee Break (during the working session)

11.30-12.30 Each working group reports to the plenary on the results of discussion of the First Working Session

12.30-14.00 Lunch Break

14.00-14.15 Introduction to the Second Working Session, Dr. Janusz Kozakiewicz

14.15-17.30 Second Working Session: Practical aspects of the enforcement of control of ODS traffic in the country and in the Region

Part I: Demonstration of ODS containers and ODS identifiers. The participants will be acquainted with typical containers which can be used to transport various ODS through the border legally or to smuggle them. Presentation of typical ODS (refrigerant) identifiers will be also made.
Part II: Discussion

The participants will be divided into working groups composed of three to four countries and asked to discuss the issues in the hand-outs. The discussion will focus on the following subjects: practical approach to customs control of ODS and ODS-containing products, proceeding with captured shipments and illegal ODS, transit shipments of ODS and ODS containing products

15.30-15.45 Coffee Break (during the Working Session - after Part I)

WEDNESDAY, MAY 17

Election of Chairperson and Rapporteur of the day

09.00-10.00 Each working group reports to the plenary on the results of discussion of the Second Working Session

10.00-10.15 Coffee Break

6. Actions already taken and actions planned to prevent illegal trade in ODS as a result of the workshop

10.15-12.00 Short presentation by the representatives of each participating country (10 minutes per country)

12.00-13.30 Lunch break

13.30-14.40 Presentations by the countries (continued) and general discussion focusing on the regional aspects of preventing illegal ODS trade

14.40-14.55 Coffee break

14.55-15.55 Presentation and discussion of conclusions and recommendations of the workshop

15.55-16.30 Closure of the workshop
- Concluding remarks by the representative of UNEP: (speaker to be announced)
- Concluding remarks by the representative of the host country: (speaker to be announced)
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ANNEX 4 LIST OF PRESENTATIONS AND WORKING SESSIONS

WORKING SESSION I

Legal and Institutional Aspects of Enforcement of the Control of ODS Traffic in the Country and in the Region

ISSUES FOR DISCUSSION

1. Definition of illegal ODS traffic.

Hint:
It is not easy to define what should be considered as illegal ODS traffic. Several different approaches to this problem may be taken:

- from the global or regional perspective
- from the country (party to the MP) perspective
- from the company or individual perspective

Try to discuss the above approaches and present your views. The Report from the Ozone Working Group of the AUNEP Workshop on Enforcement of and Compliance with Multilateral environmental Agreements (provided in your Workshop documents) may be helpful.

2. Situation of non-compliance with the Montreal Protocol ODS phase-out schedules vs. data reporting.

Hint:
If the country produces or consumes (consumption = production + imports - exports) more ODS than specified in the phase-out schedules of the MP it is in the state of non-compliance with the MP provisions. However, remember that this would depend on what data on production and the country had provided consumption to the Ozone Secretariat. Then, try to discuss the possible answers to the following questions:
should the country be considered as being in the state of non-compliance if it did not report any data to Ozone Secretariat? what data should be reported to the Ozone Secretariat?

(i) only ODS quantities produced or imported Alegally, i.e. based on a valid permit or licence?
(ii) the above and also ODS quantities produced or imported/exported without permit or licence, but properly registered by the manufacturer or by the customs at the border and (thus appearing in customs statistics)?
(iii) the above two and also ODS quantities produced, but not registered by the manufacturer, or transported through the border illegally, but spotted by the customs at the border or by the customs police/environmental police inside the country?

Remember, that if the answer to A(ii)\(\cong\) and A(iii)\(\cong\) is A\(\text{YES}\), the country may be considered as being in state of non-compliance even if the ODS licensing system was operated properly, i.e. the allowed ODS quotas have not been overcome.

However, some of you may be at the position that the fault of customs officer at the border to let illegal transports of ODS pass through means the fault of the country to comply with the MP provisions, as the customs officer actually represents the country.

3. Importance of customs codes.

**Hint:**

Customs officers rely on customs codes when checking the goods that pass through the border. Also customs statistics are based on customs codes. However, with ODS it is sometimes difficult to identify the particular substance as the chemical names of ODS are quite complex and for certain ODS, especially mixtures containing ODS, there are presently no specific customs codes. The Parties to the MP took notice of this situation and asked WCO to improve the HS System with regard to ODS.

Can you confirm (based on your experience) that improving the classification of ODS customs codes would help to prevent illegal ODS traffic?

Don’t you think that some other kind of ODS classification should be introduced along with customs codes, e.g. a system of classification similar to the one used for dangerous chemicals?

Or, perhaps, there should be an obligation that both the trade name and chemical name should be provided by the importer/exporter together with customs code? Some importers/exporters refuse to give this information saying this is confidential.

Do you agree that preparation by the NOU of a list of the most popular ODS trade names (provided in your Workshop documents) supplemented with corresponding chemical names and customs codes used in the country would help?

4. Legal and institutional means to prevent/curb the illegal ODS traffic.

**Hint:**

There are many legal and institutional means that can be introduced to prevent or/and curb the illegal ODS traffic (see the presentation given at this Workshop by J. Kozakiewicz).
Some of them have already been introduced both on a global scale (e.g. the Montreal Amendment to the MP, increased activity of WCO and Interpol in this regard) and on a local scale (certain improvements of national legislations dealing with ODS, organisation of national workshops for customs officers in some countries, etc.).

Do you see any legal and institutional activities still to be undertaken to prevent or/and curb the illegal ODS traffic on:

(a) global scale?
(b) regional scale?
(c) national scale?

Please, try to identify also possible input of UNEP to this process.

How do you foresee the role of Customs in this process? Is there any specific legislation that, if introduced, would help Customs to control ODS traffic? (see also issues No. 3 and 5). Do you agree that one of the possible measures is to control not only production/imports/exports of ODS, but also trade in ODS inside the country?

5. Penalties for illegal trade in ODS.

**Hint:**

Several countries in the world introduced specific, sometimes quite severe, penalties for illegal trade in ODS. Do you think this would help to stop illegal ODS traffic, and if so, what kind of penalties you would suggest

(a) the special fine only?
(b) the jail sentence?
(a) or (b) depending on the quantity smuggled?
WORKING SESSION II

Practical Aspects of Enforcement of the Control of ODS Traffic in the Country and in the Region

DEMONSTRATION OF ODS CONTAINERS AND ODS IDENTIFIERS

The participants of the Workshop were informed about the containers that can be used to carry ODS through the border legally and illegally. The possibility of direct identification of certain ODS at the border using portable ODS identifiers will be also explained. The operation of such identifier will be demonstrated and, if possible, the participants will have the opportunity to practice the use of such identifier.

ISSUES FOR DISCUSSION

1. Practical approach to the customs control of goods
   
   (a) declared as ODS at the border
   (b) declared as other chemicals (e.g. HFCs, trichloroethylene, propane-butane, mixture not containing ODS), but are ODS-suspicious to the customs officer

   Hint:

   Based on the background given in the paper presented at this Workshop by J. Kozakiewicz discuss what should be the best routine practice of customs officer in:

   (a) and in
   (b) and what improvements can be made from technical point of view to make the work of customs easier and more effective in that respect.

2. Practical approach to the customs control of goods

   (a) declared as ODS-containing products at the border (e.g. pesticides, solvents, cleaners, pre-polymers, refrigerators, foams)
   (b) declared as products that do not contain ODS, but are ODS-suspicious to the customs officer
Hint:

Imports of ODS-containing products from non-Parties to the MP are banned by the MP provisions. Some countries introduced additional measures to stop imports of products that contain particular ODS (especially CFCs), may be used with these ODS or even were produced with ODS.

Discuss what should be the best routine practice of customs officer in (a) and in (b) and what improvements can be made from technical point of view to make the work of customs easier and more effective in that respect and how can he/she differentiate in practice between ODS and ODS-containing products.

3. Proceeding with captured shipments of illegal ODS

Hint:

Supposing that the shipment of illegal ODS or ODS-containing product was captured at the border, what should customs officer do with it?

Some countries prefer to store the captured illegal ODS or ODS-containing products and then re-export them to the countries where they are allowed for consumption.

Some other countries prefer to use them locally, e.g. for the military purposes. Here, take notice of the problem of compliance with the MP presented in the issue No. 2 discussed at Working Session I).

Finally, there are many countries that would rather destroy the illegally shipped ODS in a similar way as other smuggled goods (e.g. drugs, ivory).

Obviously, the easiest proceeding of choice for the customs officer would be to order the importer to take such illegal shipment back to the country it was brought from, but do you think it is a good practice?

4. Transit shipments of ODS or ODS-containing products.

Hint:

It may be supposed that large quantities of ODS pass through the border as transit shipments and therefore are not controlled, while in fact they never reach the country of destination and either stay in the transit country or are re-exported to a country different from a declared destination.
From the other hand, some shipments of ODS and ODS-containing products that should stay in the country according to customs documents, in fact may never stay, but rather are immediately transported through, so the country becomes a transit country without being aware of it.

Try to discuss what routine practice of Customs can be recommended to prevent such situations to happen. Would relevant agreements between Customs Authorities in the Region or in the neighbouring countries be enough, or a specific legislation would have to be introduced in each country?

ANNEX 5  LIST OF TRAINING AND BACKGROUND MATERIAL

- UNEP IE list of Publications
- Then UNEP Web Site Flyer
- Stratospheric Ozone Protection Flyer: Questions and Answers. Query response service available from
- The OzonAction Programme Flyer
- The OzonAction Newsletter
- Halons Special Supplement no. 1
- Refrigeration Special Supplement no. 2
- Vienna plus ten Special Supplement no. 3
- The Impact of the Ozone Layer
- List of ODS Focal Points in Article-5 Countries
- Contact List of Training Institutes
- Contact List of Industry Associations
- Submission Form for the OzonAction Information Clearinghouse Contacts Database
- List of Ozone Layer Protection Videos
- OzonAction Posters, 1994
- OzonAction Strategic Information Systems (OASIS)
- Stratospheric Ozone Protection Flyer: Questions and Answers. Query response service available from
- Five Steps for Raising Awareness on Ozone Depletion: A Handbook for National Ozone Units,
- Saving the Ozone Layer: Every Action Counts: Video Booklet,
- Making good Decisions: How to effective use of UNEP IE's OzonAction Clearinghouse,
- Mainstreaming Development Countries: Innovative assistance to Protect the Ozone Layer, The Finnish Trust Fund under the Montreal Protocol,
- 1997 Update of the Handbook of the International Treaties for the Protection of the Ozone Layer
• Saving the Ozone Layer: Every Action Counts: Video, UNEP IE 1995
• 1997 Information Exchange Roundtable: Problems and prospects of Article 5 countries related to the 1999 Freeze
• Regulations to Control Ozone Depleting Substances,
• Monitoring Imports of Ozone Depleting Substances, 1996, UNEP IE,
• Guidelines for Development of Refrigerant Management Plan,
• ODS Import/Export Licensing Systems, Resource Module, CEITS
• Handbook on Data Reporting Under the Montreal Protocol
• Inventory of Trade Names of Chemical Products Containing Ozone Depleting Substances and Their Alternatives
• Study on the Potential for Hydrocarbon Replacements in Existing Domestic and Small Commercial Refrigeration Appliances, June 1999
• Avoiding a double Phase out: Alternative Technologies to HCFCs in Refrigeration and Air Conditioning, June 1999
• Government Strategies to Phase Out Ozone-depleting Refrigerants: Four Case Studies from the Nordic Countries
• Inventory of Technical and Institutional Resources for Promoting Methyl Bromide Alternatives
• Towards Methyl Bromide Phase Out: A Handbook for National Ozone Units
• Methyl Bromide Phase-Out Strategies : A Global Compilation of Laws and Regulations
• UNEP DTIE Activity Report 1999.
ANNEX 6. GRAPHICAL REPRESENTATION OF WORKSHOP EVALUATION RESULTS

1. OVERALL EVALUATION

2. WORKING SESSIONS

3. AUDIENCE

4. PRESENTATIONS

5. LICENSING SYSTEM

6. COOPERATION WITH CUSTOMS

7. MONITOR ODS CONSUMPTION

8. RESOURCE MODULE

Overall Evaluation by Marks

- 0% Poor
- 1% Adequate
- 9% Good
- 36% Very Good
- 54% Excellent

* 1) Poor; 2) Adequate; 3) Good; 4) Very Good; 5) Excellent