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**STRATEGIC FRAMEWORK FOR NATIONAL, SUB-REGIONAL AND
REGIONAL CUSTOMS TRAINING**

(Submitted by UNEP)



United Nations Environment Programme

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ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

STRATEGIC FRAMEWORK for the IMPLEMENTATION of NATIONAL and SUBREGIONAL/REGIONAL TRAINING

For

Customs and Regulatory Mechanisms

**Presented by UNEP in response to ExCom Decision 32/43,
for the consideration of the Executive Committee
of the Multilateral Fund for the Implementation of the Montreal Protocol
at its 33rd Meeting**

Introduction

1. The 32nd meeting of the Executive Committee of the Multilateral Fund decided to: “approve the [French-speaking Africa: Sub-regional project on harmonisation of legislative and regulatory mechanisms to improve monitoring and control of ODS consumption (UNEP/OzL.Pro/ExCom/32/25 and Corr.1)] project proposal [...], on the understanding that no further such projects would be approved until:

- a) a report had been prepared by UNEP, in consultation with the Fund Secretariat and the implementing agencies, for submission to the Executive Committee, if possible, at its 33rd Meeting. The report would examine the strategic framework for requests for funding of activities associated with national, sub-regional and regional customs training and harmonization, as well as the implication of the commitment of the regional organizations concerned in establishing regulatory mechanisms;
- b) the Executive Committee had held a discussion on the strategic vision behind the future approval of such projects” (Decision 32/43).

2. This paper has been prepared by UNEP, in consultation with various national and multilateral agencies¹ in response to this decision.

Legislation, regulations, licensing system and harmonisation

3. The issues of licensing, monitoring and control, prevention of illegal trade and collection of data and reporting regarding controlled substances under the Montreal Protocol are covered under Article 4B.

4. The introduction and enforcement of import/export licensing systems, supported by appropriate legislative and regulatory mechanisms and enforcement processes, have been identified as essential requirements by Article 5 countries to meet not only their compliance objectives under the Montreal Protocol, but also to ensure the on-going sustainability of their ODS phase-out programmes. Such mechanisms allow governments to control ODS consumption by establishing patterns of use and gradually limit and eliminate their consumption of ODS in accordance with the objectives of the Protocol. In addition, they support the adoption of economic incentives necessary to promote the competitiveness of alternatives, including recycled CFCs, and dissuade the use of virgin ODS by driving their market prices upwards.

5. Over the last few years in a large number of Article 5 countries, the availability of low-priced ODS and/or second-hand equipment operating with ODS, as well as the increased use of ODSs illegally imported, have had a negative impact on the overall ODS phase out plans adopted (one Article 5 country reported that 90 per cent of the total CFCs used in the country is imported illegally). To address these issues Article 5 countries are not only putting in place import/export

¹ The draft was circulated to the Multilateral Fund Secretariat, Implementing Agencies and a number of other international organizations. Comments were provided by the MLFS; the World Customs Organization; US EPA; US Customs Agency; Stockholm Environment Institute; the U.K.; Ozone Units from Burkina Faso, China, the Gambia, India, and Saint Lucia.

systems but are also negotiating with their neighbouring countries on modalities to implement joint actions.

6. The Parties to the Montreal Protocol and the Executive Committee have taken a number of decisions in regard to these issues, some of which are pre-requisite for implementation of a variety of ODS phase out projects and training programmes. Specifically,

- (a) The prerequisites for successful implementation of a refrigerant recovery and recycling (R&R) project (such as legislation, regulations and economic incentives) should be put in place before the project is implemented (Decision 22/23);
- (b) A customs training programme cannot proceed until relevant legislation is in place or substantial progress has been made towards promulgating such legislation (Decision 27/19 and Decisions 27/35 a);
- (c) Implementation of a refrigerant management plan (RMP) may not be able to proceed until commitment and development by the government of regulations and legislation required for the effective implementation of activities to phase out the use of CFC refrigerants are developed (Decision 31/48); and,
- (d) To encourage further work with regard to providing information on [monitoring of international trade and prevention of illegal trade in ozone-depleting substances, mixtures and products containing ODSs] to Article 5 Parties and countries with economies in transition, specifically through customs training at the regional and/or national level. (Decision XII/10).

7. Substantial work has also been done by other international organisations regarding ODS. As noted by the XI meeting of the Parties, the World Customs Organisation has undertaken a number of actions on the further extension of the Harmonised System customs nomenclature of ODSs and products containing ODSs and the draft recommendation concerning the insertion in national statistical nomenclatures of Harmonised System subheadings for ODSs (Decision XI/26).

The role of customs agencies

8. Customs agencies play an essential role in the effective monitoring and control of import/export licensing mechanisms, in the collection of import/export data, in the enforcement of ODS regulations and in the prevention of illegal trade given their role as front-line agencies. In order to effectively uphold a given regulatory regime, customs agencies must necessarily be made familiar with any legislative and regulatory mechanisms that will require their attention.

9. Complying with the provisions of the Montreal Protocol is a difficult task for many Article 5 countries. 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 ODS trade which can be eliminated only when existing institutional and legal frameworks are strong enough, and regulations can be successfully implemented and fully enforced. Co-operation between ozone officers, customs officers, customs inspectors and

environmental inspectors both inside the countries and on the regional level is therefore considered to be of vital importance.

10. Historically, the bulk of national customs training programmes have fallen under the auspices of refrigerant management plans (RMPs), which were developed for low-volume consuming countries (LVCs) where ODS are mainly used to service refrigeration equipment. As such, RMPs represent comprehensive and integrated national strategies that target the phase-out of virgin CFC refrigerants. Such phase-out strategies necessarily include the establishment of legislative and regulatory mechanisms.

11. Invariably, progress reports on RMP projects and/or refrigerant recovery and recycling (R&R) projects emphasise the importance of actions on the part of a Government, such as adoption of legislation prohibiting purposeful emissions of ODS, enforcing recovery of CFC refrigerants, and/or controlling and restricting imports of CFC refrigerant to ensure implementation of the activities as planned. For example, reports from R&R projects implemented in two Article 5 countries stated that “the supply of R&R equipment alone does not ensure the successful operation of the system. It must be supported by a regulatory framework including legal and voluntary measures as well as incentive schemes”. In another country, where no legislation was in place prohibiting the deliberate leakage of CFC refrigerants into the atmosphere at the time of the implementation of the R&R project, it was found that service technicians were not taking the recovered refrigerant for recycling.

Customs training programmes

12. Training of customs officials has been demonstrated to be required in order to ensure the effective monitoring, control and enforcement of such mechanisms, as well as the on-going sustainability of a country’s phase-out strategy. Given the integral role played by customs training within the context of a country’s phase-out strategy, such training programmes have also been approved outside the context of RMPs and are now also being considered by the ExCom for medium- and large-volume consuming countries in order to support their national phase-out strategies.

13. As of today, a total of 88 customs training programmes and monitoring and control workshops have been approved by the Executive Committee for implementation at the national, regional and global levels. Many lessons have been learnt from implementation of those programmes that have been approved. In a number of cases, these programmes have had a positive impact on drafting ODS-related legislation, establishing licensing systems and/or controlling illegal trade of ODS. Specifically:

- (a) In Senegal, it is reported that positive results achieved through the implementation of a regional project that targeted the expansion and upgrading of statistics networks for customs officers, allowed the National Ozone Unit to draft a decree to establish a system to control imports of CFC and CFC-based equipment and products.
- (b) A common result that surfaced following the implementation of two sub-regional workshops in Africa (hosted by Burkina Faso and Cameroon) that addressed

monitoring and control of ODS consumption, was the need to expand upon such training at the national level through sub-regional co-operation in order to further the enforcement of national monitoring and control systems and thereby, overall compliance with the objectives of the Montreal Protocol.

- (c) Of the national customs training programmes implemented to date, participants in the train-the-customs-trainers programme in Jamaica emphasised the need to expand education and outreach efforts on issues related to ODS in relevant educational institutions, trade associations, as well as amongst the judiciary. In addition, the organisation of a regional meeting in conjunction with the Caribbean regional trade association, CARICOM, was called for in order to exchange information and explore opportunities for enhanced regional collaboration. Participants in the train-the-customs-trainers programme in Bahrain called for enhanced co-operation with the World Customs Organisation in an effort to support identification and tracking of imports within the region.
- (d) One of the most significant outcomes of a regional workshop of customs and ozone officers of Central and Eastern European countries (including two Article 5 countries), held in Budapest in May 2000 was the establishment of an informal network among the customs authorities inside and outside the region. While all the countries in the region already have a licensing system in place, the principle challenge identified revolved around implementation and enforcement of these systems in order to effectively combat illegal activities in ODS trade. Indeed, the rationale for a draft decision on the prevention of illegal trade in ODS and products containing ODS, later adopted as Decision XII/10, originated during this meeting.
- (e) The Ministers of the Environment from the Central Asian and Caucasian region (including one Article 5 country) in a meeting held to discuss measures to enable compliance with the provisions of the Montreal Protocol, stressed the importance of close co-operation among the countries in areas such as prevention of illegal trade in ODSs and sharing experiences of project implementation activities.
- (f) Ozone officers and customs officials that participated in a Monitoring and Control Workshop held in Panama in 1998 agreed that the opportunity to meet at the regional level allowed them to develop a common understanding and sense of partnership, at the regional level, regarding the Montreal Protocol. It was also felt that such advances would contribute to efforts undertaken at the national level.

Objectives and scope of customs training programmes

14. The main objective of national customs training programmes is to provide customs officers with the skills necessary to accurately monitor and control the imports and exports of ODS and products containing them and effectively enforce licensing and control systems. The implementation of such programmes is a dynamic exercise. The methodology for implementation follows a three-phase approach wherein customs trainers are trained during phase I, they in turn train the remainder of customs officials in-country during phase II, and

on-going monitoring, follow-up, and reporting are undertaken by the Ozone Unit during phase III. The training methodology is constantly reviewed and assessed based on national circumstances and on lessons learned during implementation of such projects.

15. National customs training programmes provide: (i) basic background information on ozone depletion issues including the Montreal Protocol and its amendments as well as an overview of the national phase-out strategy; (ii) training on enforcement modalities including, overview of relevant ODS legislation and licensing systems, revised customs codes for ODS, monitoring and control systems for ODS and ODS-based products, and their implications for customs officers; and, (iii) training on the use of identification tools for ODS-based refrigerants. Local consultants assist in drafting Country Handbooks that address the country's ODS legislative/regulatory framework and import/export licensing system. Country Handbooks are used, together with the Global Customs Training Manual (prepared by UNEP), to guide the training sessions. To ensure the on-going sustainability of a training programme within the context of a country's national phase-out strategy, an ODS training module on control, monitoring and reporting is incorporated in the curriculum of the national customs agency to ensure that future customs officers, and customs officers undergoing refresher training, also receive training in ODS-related issues. Where appropriate, representatives from the World Customs Organization, and increasingly, relevant regional trade associations/organizations, are invited to participate in the training workshops.

16. The sub-regional and regional monitoring and control workshops, 13 of which have been implemented to date, have contributed significantly in allowing participating countries to initiate and implement efficient legal systems and institutional frameworks to control and monitor consumption of ODSs, in particular imports and exports, thereby supporting their ODS phase-out strategies. In effect, these regional workshops have not only laid the groundwork for partnership at the regional level regarding collection of reliable ODS import/export data and exchange of information and experiences amongst countries in a region, but have also laid the foundation for initiation of ODS legislation/regulation and licensing systems required for effective national customs training. The regional monitoring and control workshops were attended by Ozone Officers and high-level representatives from customs agencies (one per country).

Results/recommendations of national customs training programmes and regional monitoring and control workshops

17. Benefits associated with the implementation of national customs training programmes include ensuring the availability of customs trainers and agents who possess a clear understanding of the objectives of the Montreal Protocol, their country's commitments within this context, and an understanding of their country's phase-out strategy; creating a community of informed key stakeholders from related sectors such as Justice, Trade and Commerce, and Industry; incorporating a module on control, monitoring and reporting of ODS data in the on-going training curriculum of a country's Customs Agency in order to ensure that future customs officers also receive training in this regard; and, ensuring the adoption of sustainable national compliance and enforcement regimes.

18. Benefits associated with the implementation of regional monitoring and control programmes include the adoption of legislative and regulatory systems and the collection of

reliable data on ODS imports/exports. Today, more than 85 countries have initiated and implemented ODS import/export licensing systems (as reported by UNEP to the 25th Meeting of the Implementation Committee). Implementation of regional ODS compliance and enforcement initiatives can yield benefits in regard to information-sharing and outreach, more regular and timely data reporting, development of collaborative regional management tools, and enhanced country-to-country co-operation in regions with strong economic inter-linkages by leveraging existing trade cooperation within a region to support the harmonisation and enforcement of national licensing systems and regulatory mechanisms within the regional context.

Delays in implementation: obstacles and challenges

19. Of the total number of national customs training programmes and monitoring and control workshops approved by the Executive Committee to date, implementation has advanced more rapidly within the regional context. Of the sixty-two national customs training programmes approved, only four have been implemented to date; it is expected that 25 training sessions will be implemented in 2001. The principle reason for these delays stems from the fact that the implementation of national customs training programmes require that an ODS import/export licensing system and relevant legislation/regulations be either in place or that substantial progress be made in promulgating such mechanisms before training may commence. This pre-requisite for implementation has been mandated by both decisions of the Parties (Decision IX/8) and the Executive Committee (Decisions 22/23; 27/19 and 27/35(a); and, 31/48).

20. For example, in Senegal and Côte d'Ivoire, ministerial decrees that establish the legislative and regulatory frameworks necessary to control ODSs have been drafted, (since three years in the case of Senegal). However, in both cases, the commitment and approval required from other key stakeholders (e.g., Ministries of Commerce, Industry and/or Finance) to have such decrees adopted has not been received. Therefore, although substantial progress has been made by the Ozone Unit (usually under the Ministry of the Environment) in drafting relevant legislation, the lack of support from other stakeholders has caused delays in project implementation.

21. By providing additional funds to launch preparatory activity in the development of legislation and regulations, Executive Committee Decision 31/48 (section B), is expected to help alleviate such delays in future RMPs approved.

Compliance and enforcement initiatives: the strategic vision

22. As countries move from the grace period into that of compliance it is expected that there will be an on-going need for enforcement of the legislation and regulations that Article 5 countries have enacted and the initiation of additional legislation in support of the phase out programmes.

At the national level

23. As the Montreal Protocol advances towards complete phase out, all Parties will be faced with increasingly stringent phase-out schedules that will require enhanced monitoring, control and enforcement in order to allow countries to achieve, and remain in, compliance. Currently,

Article 5 countries are being challenged to control and eventually phase out ODSs used in their refrigeration servicing sectors. The price of CFCs is still lower than any other non-CFC refrigerant, retrofit of CFC-based equipment is not yet cost-effective and sustainable, and the supply of used CFC-based refrigerators is abundant.

24. The Parties and the Executive Committee have taken a number of important decisions that require the establishment of targeted legislative and regulatory mechanisms and incentives in order to address the reduction of consumption of ODS in a sustainable fashion. Decision 31/48, for example, allows for the provision of additional financial resources to Article 5 countries, as well as flexibility regarding use, to assist them in reducing their CFC consumption to 15 per cent of their baseline by 2007, with the understanding that no further funding for this purpose will be available.

25. The Executive Committee has also approved sectoral phase-out projects in the methyl bromide sector wherein countries agree that methyl bromide will no longer be used for a particular crop, or an entire sector, once the project is fully implemented; and commit to ensure that this consumption will be eliminated permanently by introducing relevant control measures.

26. Such decisions, compounded by stringent phase-out schedules, will necessitate an enhanced, co-ordinated approach to the adoption and enforcement of ODS legislative regimes. In addition to the key role played by customs agencies in their capacity to monitor, control and enforce regulatory decisions, in the prevention of illegal trade, and in ensuring the on-going sustainability of national phase-out strategies, increasingly, efforts will have to focus on building consensus amongst other key national and regional stakeholders. Representatives from ministries involved in trade, commerce, industry and justice, as well as, regional trade associations have a role to play in building additional mechanisms required to address common goals for environmental compliance and enforcement programmes.

At the regional level

27. In recent years, the trend toward increased globalisation has led to enhanced collaboration amongst countries from political, economic and trade, and environmental perspectives. In many regions, increased liberalisation of economic policies has meant that trade between countries flows more freely, leading for example, to such flexible border scenarios as can be found in South America (MERCOSUR), the English-speaking Caribbean countries (CARICOM) and in Asia (ASEAN). As a result, national trade considerations are increasingly being organised in a regional fashion.

28. For example, in west and central French-speaking African countries, strong inter-regional economic and trade ties, managed under the auspices of two sub-regional associations, the Union Économique et Monétaire de l'Ouest Africain (UÉMOA) and the Communauté Économique et Monétaire de l'Afrique Centrale (CÉMAC), have led member countries to move towards the development and adoption of harmonised processes regarding the movement of goods, collection of trade data, and monitoring, control and enforcement of regulatory mechanisms.

29. The gradual disappearance of trade barriers and the trend toward increased regional collaboration poses new challenges in regard to the implementation and monitoring, control and

enforcement of, inter alia, national ODS legislative and regulatory imperatives. Increasingly, the backing of additional stakeholders, including representatives of sub-regional and regional trade associations, is required in order to support the implementation of national phase-out initiatives and to ensure the on-going sustainability of such initiatives at the regional level.

Need for training programmes during the compliance period

30. The objective of the customs training programme is to build capacity to ensure the on-going sustainability of a country's phase out strategy and therefore, compliance with their commitments under the Montreal Protocol. The aim of the training programmes is not expected to change as Parties move from grace to compliance; however, their relevance is increasing. The content of the training programmes would be adjusted to incorporate new decisions that might be adopted by the Parties to the Montreal Protocol and the Executive Committee. Under the grace period, performance indicators were developed to ensure that approved training was being implemented in support of the overall phase out strategy adopted by a country. Within the context of the compliance period, such indicators could also be adjusted to account for considerations such as actual decreases in the levels of virgin CFCs or methyl bromide (where applicable) being imported into a country, and levels of compliance and enforcement capabilities.

31. The fact that countries within a given region implement national legislative/regulatory mechanisms at different times leads to uneven implementation of customs training and therefore, compliance readiness, especially in regions where internal borders between countries are more open. Collaboration and harmonisation amongst countries at the regional level allows for regional controls to be adopted by all countries, thereby supporting both those that have adopted legislative and regulatory regimes, as well as those in which such initiatives are still under development. From a practical perspective, this translates into mainstreaming the issue into the objectives of agencies such as customs unions and trade associations that are concerned with trade, and its control, at the regional level.

32. Therefore, the implementation of one-off regional ODS compliance and enforcement training initiatives, where appropriate, can serve to enhance compliance and enforcement of legislation through networking, capacity-building and enforcement co-operation; facilitate linkages and communication, create synergies, provide bilateral and multilateral cooperation across borders; and articulate principles for enforceable ODS regulations, at both the national and regional levels, within a trade community (targets may include, among others, MERCOSUR, the Andean Pact, ASEAN, South Africa Development Community, South African Commercial Union, East African Co-operation).

Suggested next steps: expanding cooperation to include key national and regional stakeholders/constituencies

33. Experience has shown that national and regional initiatives may be considered mutually supportive, not mutually exclusive. Given the key role played by Customs Agencies in supporting the on-going sustainability of a country's phase-out strategy, national customs training programmes for each country should continue to be funded and implemented. Given the Montreal Protocol's increasingly stringent control schedule, efforts have begun, and will

continue to expand, to create synergy amongst key national and regional stakeholders in addressing common goals in regard to national environmental compliance and enforcement programmes.

34. One time sub-regional/regional compliance and enforcement initiatives should be designed to promote enhanced cooperation and information-sharing amongst key stakeholders within the regional context. Such initiatives would be funded on a one-off basis, with the intention of creating mutually beneficial support networks at the regional level and mainstreaming the Montreal Protocol into the activities of regional trade and customs associations.

35. Building upon existing cooperative regional agreements, and in order to heighten awareness amongst key regional stakeholders, representatives from regional trade/customs associations would be invited over the course of 2001 to participate in Regional Network Meetings and national customs training sessions in order to familiarise themselves with the Montreal Protocol and issues related to its implementation. In tandem, an outreach exercise, initiated by Ozone Units and supported by UNEP, could be directed to key regional trade/customs associations (including, but not limited to, MERCOSUR, the Andean Pact, ASEAN, South Africa Development Community, South African Commercial Union, East African Cooperation) in order to ascertain their interest in participating in the development of shared data management processes and information-sharing exercises at sub-regional/regional level.

36. One working meeting would then be hosted per interested region to which ODS officers, customs officers, representatives from each country's economic/commercial agencies and representatives from trade associations would be invited. The principle objective of such one-off sub-regional/regional initiatives would be to establish co-operative associations aimed at establishing shared data management and information mechanisms in order to ensure the on-going sustainability of ODS phase out initiatives within the region. Continued commitment to such an endeavour would be confirmed through signature by participants of a declaration of co-operation incorporating ODS phase out considerations within the mandate of the relevant trade/customs association.

37. On-going reporting and follow-up on recommendations, from both national and sub-regional/regional perspectives, would be addressed on a regular basis within the context of the Regional Network Meetings.