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**Implementation Committee under the  
Non-compliance procedure for the  
Montreal Protocol  
Thirty-fifth meeting**  
Dakar, 7–9 December 2005

**Report of the Implementation Committee under the  
Non-Compliance Procedure for the Montreal Protocol on the  
work of its thirty-fifth meeting**

**I. Opening of the meeting**

1. The thirty-fifth meeting of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol was held at the Hotel Méridien, Dakar, Senegal, from 7 to 9 December 2005.

**A. Opening statements**

2. The President of the Committee, Mr. Maas Goote (Netherlands), opened the meeting at 10.25 a.m. on 7 December 2005, welcoming the members of the Committee and representatives of the Multilateral Fund for the Implementation of the Montreal Protocol, the implementing agencies and Parties present at the invitation of the Committee.

3. Mr. Marco González, Executive Secretary of the Ozone Secretariat, added his welcome to that of the President and thanked the Government of Senegal for hosting the meeting. Noting that both the Vienna Convention and the Montreal Protocol were preventive rather than remedial, he recalled that both were informed by the precautionary principle and the principle of common but differentiated responsibilities. In addition, both instruments were intended to be flexible and adaptable to changing conditions. The responsibility of the Implementation Committee was both delicate and complex, due to the potential impacts of the Committee's recommendations. Those recommendations needed to be based on a complete understanding of each Party's ozone-depleting substance (ODS) regulatory and policy measures and phase-out activities and, above all, on the information reported under Articles 4 and 7 of the Protocol. In the highest level of data reporting ever recorded, 182 Parties had submitted their ODS data for 2004. That would enable the Implementation Committee to provide the Seventeenth

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\* Re-issued for technical reasons.

Meeting of the Parties with the most comprehensive picture of the Parties' compliance with the Protocol's phase-out measures so far and contribute to the forthcoming discussions on the replenishment of the Multilateral Fund. Observing that the Implementation Committee planned at the current meeting to consider initiatives for improving its own operation, he assured the Committee of the Secretariat's support in the implementation of any such initiatives it considered appropriate.

## **B. Attendance**

4. Representatives of the following members of the Committee attended the meeting: Australia, Belize, Cameroon, Ethiopia, Georgia, Guatemala, Jordan (Vice-President and Rapporteur), Nepal, Netherlands (President) and Russian Federation.

5. The representatives of Azerbaijan, Bosnia and Herzegovina, Ecuador, Kyrgyzstan and Uruguay also attended at the invitation of the Committee.

6. The meeting was also attended by representatives of the Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol, the Vice-Chair of the Executive Committee of the Multilateral Fund and representatives of the implementing agencies of the Multilateral Fund: the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the World Bank. The full list of participants is contained in annex III to the present report.

## **II. Adoption of the agenda and organization of work**

7. The Committee adopted the following agenda, based on the provisional agenda circulated as document UNEP/OzL.Pro/ImpCom/35/1:

1. Opening of the meeting.
2. Adoption of the agenda and organization of work.
3. Report of the Secretariat on data under Article 7 of the Montreal Protocol.
4. Information provided by the Fund Secretariat on relevant decisions of the Executive Committee and on activities carried out by implementing agencies (United Nations Development Programme, United Nations Environment Programme, United Nations Industrial Development Organization and the World Bank) to facilitate compliance by Parties.
5. Follow-up on previous decisions of the Parties and recommendations of the Implementation Committee on non-compliance-related issues:
  - (a) Data-reporting obligations:
    - (i) Afghanistan (decision XVI/18 and recommendation 34/1);
    - (ii) Cook Islands (decision XVI/18 and recommendation 34/12);
    - (iii) Nauru (decision XVI/17 and recommendation 34/29);
    - (iv) Tuvalu (decision XVI/17 and recommendation 34/44);
  - (b) Existing plans of action to return to compliance:
    - (i) Albania (decision XV/26 and recommendations 33/1 and 34/2);
    - (ii) Azerbaijan (decision XVI/21 and recommendation 34/4);
    - (iii) Bolivia (decision XV/29 and recommendations 33/3 and 34/7);
    - (iv) Bosnia and Herzegovina (decision XV/30 and recommendation 34/8);
    - (v) Botswana (decision XV/31 and recommendation 34/9);
    - (vi) Guatemala (decision XV/34 and recommendation 34/16);
    - (vii) Guinea-Bissau (decision XVI/24 and recommendation 34/17);
    - (viii) Honduras (decision XV/35 and recommendation 34/19);

- (ix) Kazakhstan (decision XIII/19 and recommendations 33/6 and 34/21);
  - (x) Lesotho (decision XVI/25 and recommendation 34/23);
  - (xi) Libyan Arab Jamahiriya (decisions XV/36 and XVI/26 and recommendations 33/4 (b) and 34/25);
  - (xii) Nigeria (decision XIV/30 and recommendation 34/31);
  - (xiii) Pakistan (decision XVI/29 and recommendation 34/32);
  - (xiv) Saint Vincent and the Grenadines (decision XVI/30 and recommendation 34/36);
  - (xv) Tajikistan (decision XIII/20 and recommendation 34/41);
  - (xvi) Turkmenistan (decisions XI/25 and XVI/39 and recommendation 34/43);
  - (xvii) Uruguay (decision XV/44 and recommendation 34/46);
- (c) Draft plans of action to return to compliance:
- (i) Bangladesh (decision XVI/20 and recommendation 34/5);
  - (ii) Chile (decision XVI/22 and recommendation 34/11);
  - (iii) Ecuador (decision XVI/20 and recommendation 34/13);
  - (iv) Fiji (decision XVI/23 and recommendation 34/15);
- (d) Other decisions on compliance:
- (i) Iran (Islamic Republic of) (decision XVI/20 and recommendation 34/20);
  - (ii) Somalia (decision XVI/19 and recommendation 34/39);
- (e) Other recommendations on compliance:
- (i) Armenia (recommendation 34/3);
  - (ii) Federated States of Micronesia (recommendation 34/14);
  - (iii) Kyrgyzstan (recommendation 34/22);
  - (iv) Mozambique (recommendations 33/20 and 34/27);
  - (v) Russian Federation (recommendation 34/35);
  - (vi) Sierra Leone (recommendation 34/37);
  - (vii) Switzerland (recommendation 34/40);
  - (viii) Turkey (recommendation 34/42).
6. Consideration of other non-compliance issues arising out of the data report.
  7. Review of information on requests for changes in baseline data.
  8. ODS stockpiling relative to non-compliance with the Montreal Protocol.
  9. Information on compliance by Parties present at the invitation of the Implementation Committee.
  10. Updated information pursuant to decision XV/3 (Obligations of Parties to the Beijing Amendment under Article 4 of the Montreal Protocol with respect to hydrochlorofluorocarbons).
  11. Consideration of the report of the Secretariat on Parties which have established licensing systems (Article 4B, paragraph 4, of the Montreal Protocol).
  12. Other matters.
  13. Adoption of the report of the meeting.
  14. Closure of the meeting.

8. The President noted that item 12, "Other matters," would include, among other things, a proposal from Australia on standardization of Implementation Committee recommendations; a draft outline of a primer for the Implementation Committee; and consideration of issues raised under Article 9 of the Montreal Protocol on research, development, public awareness and exchange of information.
9. At the suggestion of the President, the Committee agreed that, in order to make the best use of its time when working on draft decisions on individual countries' situations, it would not, in contrast with past practice, request the representatives of the implementing agencies and the Multilateral Fund Secretariat to leave the room, but that it would be understood by all participants that the deliberations leading to the draft decisions was a preserve of the Committee members alone and would be confidential.

### **III. Report by the Secretariat on data under Article 7 of the Montreal Protocol**

10. The representative of the Ozone Secretariat drew attention to the report of the Secretariat on information provided by Parties in accordance with Article 7 of the Protocol, contained in documents UNEP/OzL.Pro.17/6 and UNEP/OzL.Pro.17/6/Add.1.
11. As the report also covered the situation with regard to ratifications, he noted that 189 Parties had so far ratified the Montreal Protocol. Assuming the same rate, 100 per cent ratification could be anticipated within the next three to four years. A total of 101 Parties had ratified all the Amendments to the Protocol.
12. With regard to the requirement to report base-year data under Article 7, paragraphs 1 and 2 (relating to 1986 for Annex A substances, 1989 for Annexes B and C substances, and 1991 for the annex E substance), 188 Parties were fully in compliance. Only one Party (Eritrea, which had ratified the Protocol only in March 2005) had not yet reported its base-year data.
13. In the case of baseline data (defined as the average of years 1995–1997 for Annex A substances, of 1998–2000 for Annex B substances and of 1995–1998 for the Annex E substance), 143 Parties operating under Article 5 had fully reported all their baseline data, as shown in annexes VIII and IX to document UNEP/OzL.Pro.17/6. The United Arab Emirates had reported its baseline data after the finalization of document UNEP/OzL.Pro.17/6, and Eritrea and Serbia and Montenegro had yet to report.
14. The Islamic Republic of Iran had requested a revision of its baseline data for carbon tetrachloride and methyl chloroform, and Mexico had requested a revision of its baseline data for carbon tetrachloride. The quantities concerned were shown in documents UNEP/OzL.Pro/ImpCom/35/3/Rev.1 and UNEP/OzL.Pro/ImpCom/35/3/Rev.1/Add.1.
15. With regard to annual data reporting for 2004, a total of 183 out of 188 (97 per cent) Parties required to report had done so. That represented an improvement on the preceding year's figure of 93 per cent, and was indeed the highest level of reporting ever achieved. The data reported by the Parties for 2004 were given in section E and annexes Ia, Ib and Ic of document UNEP/OzL.Pro.17/6, as updated by section E and annex I of document UNEP/OzL.Pro.17/6/Add.1. Six Parties (Central African Republic, Cook Islands, Gambia, Jamaica, Mozambique and Nauru) had not so far reported data for 2004 as required by Article 7 paragraphs 3 and 4 of the Protocol.
16. The Secretariat report also covered compliance with the control measures for 2004. The cases of possible non-compliance by Parties not operating under Article 5 were listed in table 5 of document UNEP/OzL.Pro.17/6. For consumption, following clarifications given by the European Community and Japan, only Azerbaijan, Kazakhstan and Turkmenistan remained in non-compliance. For production, following clarifications given by France, Greece, Japan and the United States of America, only the Netherlands remained in non-compliance, although further information on some of the clarifications given by Greece and the United States of America would be necessary.
17. The cases of potential non-compliance with the control measures by Parties operating under Article 5 for 2004 were listed in table 7 of document UNEP/OzL.Pro.17/6. Thirteen Article 5 Parties remained in non-compliance (Armenia, Bosnia and Herzegovina, Chile, Ecuador, Fiji, Kyrgyzstan, Libyan Arab Jamahiriya, Federated States of Micronesia, Sierra Leone, Singapore, Somalia and Uruguay). Further clarification was required from Singapore and Uruguay. In addition, clarifications on consumption were still pending from China, Honduras and Libya, but the three-month period for

responding had not elapsed since the request for such clarification. With regard to late submission of data for 2002 and 2003, Federated States of Micronesia, the Russian Federation and Turkmenistan were in situations of possible non-compliance.

#### **IV. Information provided by the Fund Secretariat on relevant decisions of the Executive Committee and on activities carried out by the implementing agencies (United Nations Development Programme, United Nations Environment Programme, United Nations Industrial Development Organization and the World Bank) to facilitate compliance by Parties**

18. The representative of the Multilateral Fund secretariat gave a report on the agenda item, explaining that it would cover, on the one hand, the decisions taken by the Executive Committee at its forty-fourth to forty-seventh meetings relating to compliance matters, and on the other hand, the status of Article 5 Parties in achieving compliance with the control measures of the Montreal Protocol or their prospects for so doing.

19. The Executive Committee constantly monitored the status of Article 5 Parties and their prospects for achieving compliance with the control measures. At each of its meetings from the forty-fourth to the forty-seventh, the implementing agencies had been requested to incorporate all countries requiring assistance in its 2005–2007 business plan, and any countries subsequently identified as requiring assistance had been allowed to submit additional projects. Alternatively, countries for which there was an identified compliance need could also be assisted through special initiatives under the UNEP Compliance Assistance Programme.

20. At its forty-fifth meeting, the Executive Committee had decided to maintain in its business plan metered-dose inhaler (MDI) transition strategies in countries with no remaining funding eligibility, as well as any carbon tetrachloride, methyl chloroform or methyl bromide projects for countries with very low levels of consumption.

21. All countries that had requested funding for refrigerant management plans, terminal phase-out management plans or agreements for the phase-out of CFCs had received funding, with projects for Somalia to be submitted when conditions would permit. With the approval of production sector agreements for controlled substances with Romania, and for methyl bromide and carbon tetrachloride production with China, the Multilateral Fund had concluded agreements for the production sector in all countries.

22. Seventeen countries had received one-year renewals for institutional strengthening projects rather than two-year renewals, in order to allow compliance to be closely monitored, because the countries concerned were in non-compliance either with control measures or with data reporting obligations.

23. At its forty-fourth meeting, the Committee had authorized the submission of halon banking update projects for countries that had received less than US \$50,000 for halon banking. The Committee at its forty-seventh meeting had authorized countries with zero baselines but low levels of documented installed halon inventories to submit projects at a level between US \$25,000 and US \$50,000.

24. At the same meeting, the Committee had decided to provide technical assistance to methyl bromide users in Central America, including Honduras and Guatemala; to defer to a future meeting requests for a revision of phase-out schedules based on decisions by the Parties on revised time-specific benchmarks for Honduras and Uruguay; and to approve a phase-out project for the Libyan Arab Jamahiriya for the complete phase-out of methyl bromide and halons that would address non-compliance.

25. It had been decided that countries with baselines for carbon tetrachloride or methyl chloroform whose most recent reported consumption was less than 2 ODP-tonnes could request technical assistance or assistance with preparation of legislative measures to complete phase-out or to ensure sustainability, the funding for which would range between \$20,000 and 40,000, depending on consumption. Such countries had to have reported consumption of carbon tetrachloride or methyl chloroform at least once over the three-year period preceding funding.

26. Countries with zero methyl bromide, carbon tetrachloride or methyl chloroform baselines that were experiencing compliance difficulties could be provided with assistance under the UNEP Compliance Assistance Programme, and UNEP was to submit a strategic plan for these countries for consideration by the Executive Committee at its next meeting. Implementing agencies providing assistance for terminal phase-out management plans had been requested to provide support for developing and implementing licensing systems for methyl bromide, carbon tetrachloride and methyl chloroform for such countries.

27. Turning to the second aspect of his presentation, which covered the status of Article 5 Parties in achieving compliance with the control measures of the Montreal Protocol or their prospects for so doing, he explained that a new format had been adopted to facilitate understanding and decision-making by the Executive Committee. In tabular form, each country with compliance issues was shown, together with its baseline, its latest consumption, the relevant compliance decision taken in 2004, and the 2004 action plan target.

28. Another table showed the percentages by which countries currently exceeded the freeze and the various reduction steps, respectively. A further set of tables showed the situation for each category of ozone-depleting substances, with the number of countries meeting the freeze and the various reduction steps, together with the number of countries that were exceeding them by given percentage bands.

29. Those tables indicated clearly that for the present control measures, most or all countries were in compliance, or very close to being in compliance, whereas for the steps yet to be achieved, certain countries faced a large amount of hard work.

30. Also new was a set of tables arranged by country and showing, for each controlled substance, the number of import or export licenses issued, together with the average estimated retail price. It was to be anticipated that as the retail price rose, so too would the likelihood of a country's coming into or remaining in compliance. Other tables showed numbers of customs officers or technicians trained, quantities of ODS recovered and reused and similar matters.

## **V. Follow-up on previous decisions of the Parties and recommendations of the Implementation Committee on non-compliance-related issues**

## **VI. Consideration of other non-compliance issues arising out of the data report**

## **VII. Review of information on requests for changes in baseline data**

## **VIII. Information on compliance by Parties present at the invitation of the Implementation Committee**

31. The Committee decided to consider agenda items 5, 6, 7 and 9 together and agreed to adopt the associated recommendations by Party, in alphabetical order.

### **A. Afghanistan**

32. Afghanistan had been listed for consideration because of decision XVI/18 and recommendation 34/1. Decision XVI/18 had noted that Afghanistan was temporarily classified as operating under paragraph 1 of Article 5, as it had not reported any consumption or production data to the Secretariat, thereby placing it in non-compliance with the data-reporting obligations of the Protocol. The decision further noted that it had only recently ratified the Protocol, and urged it to report data as quickly as possible to the Secretariat for review by the Implementation Committee at its next meeting. Recommendation 34/1 noted with appreciation Afghanistan's efforts to collect and submit data in accordance with decision XVI/18, and urged the Party to continue those efforts and submit the data to the Secretariat.

33. The Party had subsequently reported data confirming its status as a Party operating under Article 5 of the Protocol, in accordance with decision XVI/18, as well as all other outstanding data. The data indicated that Afghanistan was in compliance with the Protocol's control measures for all ODS. Afghanistan's data submission also reiterated its commitment to the protection of the ozone layer, reporting that the Government would make additional efforts to comply with all its obligations under the Protocol.

34. The Committee therefore agreed to note with appreciation Afghanistan's submission of all outstanding data, in accordance with decision XVI/18 of the Sixteenth Meeting of the Parties, which confirms its status as a Party operating under Article 5 of the Protocol.

**Recommendation 35/1**

**B. Albania**

35. Albania was listed for consideration because of decision XV/26 and recommendation 34/2, which had noted its progress in implementing its CFC phase-out plan of action and its continued efforts to comply with the Protocol's CFC control measures and recorded the Committee's agreement to consider, at its thirty-fifth meeting, the Party's response to its commitment contained in decision XV/26 to establish by 2004 an ODS import and export licensing and quota system and a ban on the import of equipment using ODS.

36. Albania had subsequently informed the Secretariat that, with the publication of a decision of its Council of Ministers on ozone layer protection on 7 July 2005, both its ODS licensing and quota system and ban on the import of equipment using ODS had been implemented.

37. The Committee therefore agreed to note with appreciation Albania's establishment of an ozone-depleting substance licensing and quota system and its implementation of a ban on the import of equipment using ozone-depleting substances, in accordance with its CFC plan of action contained in decision XV/26.

**Recommendation 35/2**

**C. Armenia**

38. Armenia had been listed for consideration because of recommendation 34/3, which had noted with appreciation its explanation for its methyl bromide consumption deviation in 2004, and had requested the Party to submit a plan of action with time-specific benchmarks for returning it to compliance. The recommendation had also invited Armenia, if necessary, to send a representative to the thirty-fifth meeting of the Committee to discuss the matter. In the absence of the submission of a plan of action, the recommendation had recorded the Committee's agreement to forward the draft decision in section A of annex I to the present report to the Seventeenth Meeting of the Parties.

39. Armenia had reported consumption of 1.020 ODP-tonnes of methyl bromide in 2004, representing a deviation from the Party's obligation under the Protocol to continue to freeze its consumption at its baseline level of zero. At its thirty-fourth meeting, the Committee had been informed that the deviation had arisen from the fact that Armenia did not at that time have the regulatory authority to control ODS imports. The Party had not expected any methyl bromide consumption in 2004, and it had been detected by a national consultant engaged to undertake data collection in Armenia's flour and wheat production sector. A member of the Committee had informed the meeting that Armenia had reported zero methyl bromide consumption in 2003 because demand in that year had been met from stockpiles within the country, which had now been exhausted.

40. Armenia had not submitted a plan of action in response to recommendation 34/3, but it had reported that UNIDO had agreed to help it prepare the plan as soon as possible. The Party also anticipated that the legislation required to establish an import licensing system would enter into force by the end of 2006. As the assistance Armenia was receiving from the Global Environment Facility (GEF) did not include any funding for methyl bromide phase-out, UNIDO had submitted a request to the Executive Committee for funding to implement training and awareness workshops in Armenia to avoid the use of methyl bromide. The Executive Committee at its forty-seventh meeting had agreed that UNEP should assist Armenia to meet its methyl bromide phase-out obligations through its Compliance Assistance Programme.

41. The Committee therefore *agreed*:
- (a) To note with regret that Armenia had not submitted a plan of action to return to compliance with the Protocol's methyl bromide control measures, in accordance with recommendation 34/3, but also to note that Armenia had nevertheless taken steps to move towards compliance and has submitted information on its efforts to prepare the requested plan of action;
  - (b) To forward the draft decision contained in section A of annex I to the present document to the Seventeenth Meeting of the Parties for consideration.

**Recommendation 35/3**

## **D. Azerbaijan**

42. Azerbaijan had been included for consideration because of recommendation 34/4, which had noted with concern that the Party had reported an increase in CFC consumption in 2004 and failed to introduce a promised CFC import ban, thereby possibly compromising its ability to fulfil its commitment, contained in decision XVI/21, to complete CFC phase-out by 1 January 2005. The recommendation also noted Azerbaijan's explanation that the reported increase might be attributed to users stockpiling CFCs and perhaps a confusion between CFC use and consumption data. The recommendation further noted the Party's report that it was making progress with introduction of the CFC import ban and urged the Party to continue those efforts and also provide in writing further information on the reported increase in CFC consumption in 2004 for consideration by the Committee at its thirty-fifth meeting. The recommendation reminded Azerbaijan that it had previously been cautioned by the Meeting of the Parties that the Parties might consider ensuring that the supply of CFCs to Azerbaijan was ceased so that exporting Parties were not contributing to Azerbaijan's continued non-compliance. Finally, the recommendation encouraged Azerbaijan to work with implementing agencies to develop a request for additional assistance from GEF for capacity-building, to support its efforts to return to compliance in a timely manner.

43. The representative of the Secretariat explained that Azerbaijan had subsequently submitted official data-reporting forms that revised its ODS data for 2004, indicating that the Party had consumed 15.1 ODP-tonnes of CFCs in 2004, rather than the previously reported 69.9 ODP-tonnes, due to the mistaken reporting of hydrochlorofluorocarbons (HCFCs) under the customs code for CFCs. The data also indicated CFC imports for 2002 and 2003 of 82.64 and 76.47 ODP-tonnes respectively, which differed from the 10.2 ODP-tonnes and 12 ODP-tonnes officially reported for those years. Azerbaijan's revised official data-reporting forms did not, however, include revised data for the years 2002 and 2003.

44. With regard to Azerbaijan's progress in introducing a CFC import ban, the submission stated that, while the Government had not yet taken a final decision, a presidential decree had been issued that ordered the Ministry of Ecology and Natural Resources to regulate the import and export of ODS and products containing such substances and allowed the ministry to ban the import and export of CFC-11 and CFC-12. The ban was in place until the end of 2005, and an absolute ban was being negotiated with CFC importers. Azerbaijan had further confirmed that it had consumed CFCs in 2005, reporting consumption prior to the import ban of 21.3 ODP-tonnes of Annex A, group I, CFCs. The Secretariat had requested the Party to submit as soon as possible the date from which the absolute ban on the import of CFCs would commence in Azerbaijan. In its submission, the Party had sought financial assistance for training customs officers and importers of ODS and to engage an interpreter, a request that the Secretariat considered to be consistent with the recommendation of UNEP to the thirty-fourth meeting of the Committee that the country required financial support to supply custom offices with special equipment for the detecting of ODS and to continue training and awareness-raising activities.

45. The representative of the Secretariat reminded the Committee that Azerbaijan had first been found to be in non-compliance with the Protocol's CFC consumption control measures in 1996. It had committed, in decision X/20, to achieving total phase-out of CFCs by 1 January 2001, and GEF had approved assistance aimed at returning Azerbaijan to compliance in 1998, including national and regional programmes, implemented by UNDP and UNEP, for institutional strengthening, regional workshops on implementation and enforcement of ODS licensing systems, technology conversions of refrigeration sector enterprises, refrigerant recovery and recycling projects, technical assistance and refrigerant technician training, all of which were subsequently completed. Notwithstanding some success under the programmes, the Fifteenth Meeting of the Parties adopted decision XV/28, noting that Azerbaijan had not fulfilled its commitment to achieve CFC phase-out by 1 January 2001, while the

Sixteenth Meeting of the Parties adopted decision XVI/21, noting that Azerbaijan had not fulfilled its commitment recorded in decision XV/28 to achieve CFC phase-out by 1 January 2003, and recorded the Party's subsequent commitment to achieve phase-out by 1 January 2005 and introduce a ban on CFC imports.

46. In explaining the situation, the Party had informed the Committee at its thirty-fourth meeting that, once the institutional strengthening assistance from GEF had ended in July 2002, the country's national ozone unit had effectively ceased to function, and that while the functions of the unit had recently been incorporated into the Ministry of Ecology and Natural Resources, the relevant section was understaffed, underfunded and effectively starting from scratch with nearly all new staff. In response to an offer of assistance from UNEP in June 2005, including further project assistance from GEF, the Party had formally requested UNEP assistance with reinvigorating its national ozone unit, examining the success of the recovery and recycling project implemented under GEF, improving data reporting and considering the role that an institutional strengthening project could play in assisting the national institutional structure under the Party's national climate centre further to implement and coordinate ODS phase-out activities. UNEP advised Azerbaijan that it could include Azerbaijan in a project proposal to GEF to renew institutional strengthening assistance for some of the countries in the region.

47. At the time of the current meeting, the Ozone Secretariat was awaiting advice from the World Bank on the nature of a study that it was preparing for GEF to inform the further development of the GEF Council's major capacity-building initiative, the Strategic Approach to Enhancing Capacity-Building. The Secretariat was also awaiting information from UNEP on whether, as suggested to the Ozone Secretariat by the GEF secretariat, UNEP was preparing a project to implement the Strategy, the nature of any such project and its expected submission date.

48. During consideration of the possible steps the Committee might take to promote the Party's compliance with its obligations, one member of the Committee urged the Committee not to rush into imposing such measures as a ban on exports of CFCs by other Parties, and suggested that Azerbaijan, with the assistance it had requested from UNEP and GEF, could comply with its obligations. Another suggested that he would be reluctant to see such measures imposed unless there was no other option.

49. In response to a request for input by the implementing agencies, the representative of UNEP reported that UNEP was developing a regional medium-sized project for institutional strengthening in which Azerbaijan was expected to participate, which he expected would be favourably received by GEF.

50. At the invitation of the Committee, a representative of Azerbaijan attended and responded to questions. He informed the Committee that on 12 September 2005, the President of Azerbaijan had signed an executive order which, among other things, had effected a ban on the import of ODS, and that the national customs authorities had been instructed to forbid the import of ODS into the country. He explained further that importers could apply for exemptions to the ban, in which case Azerbaijan would consult with the Secretariat. To date, no exemption applications had been received. He stressed that the success of the ban would depend on the training of customs and other officials with respect to customs codes and other matters pertinent to identification of ODS, and said that his country required assistance with such training as well as funding assistance in connection with the recycling and reprocessing of ODS and compliance with the Convention in general. He advised that, currently, Azerbaijan could not be certain as to the type and quantity of ODS entering the country, or the customs codes that were being used to record such trade.

51. The Committee therefore *agreed*:

- (a) To note with appreciation the additional information submitted by Azerbaijan, in particular that the Party had introduced in November 2005 a ban on the import of Annex A, group I, controlled substances (CFCs);
- (b) To recall that, in response to Azerbaijan's inability to fulfil its commitments contained in decision X/20 and decision XV/28 to achieve total phase-out of Annex A, group I, controlled substances (CFCs) by 1 January 2001 and 1 January 2003 respectively, the Fifteenth Meeting of the Parties had adopted decision XVI/21, which noted Azerbaijan's undertaking that it would complete phase-out of these controlled substances by 1 January 2005;

- (c) To therefore note with concern that Azerbaijan had imported Annex A, group I, controlled substances (CFCs) in 2005 prior to the introduction of its import ban, and had expressed reservations as to its ability to enforce its import ban given its existing lack of expertise in the tracking of ODS trade;
- (d) To note with appreciation, however, the Party's action in cooperation with UNEP to seek further assistance from the Global Environment Facility to address the current situation and to request Azerbaijan to report to the Secretariat on the status of its request for further assistance from the Global Environment Facility, in time for the Committee's consideration at its next meeting;
- (e) To forward the draft decision contained in section B of annex I to the present document to the Seventeenth Meeting of the Parties for consideration.

**Recommendation 35/4****E. Bangladesh**

52. Bangladesh had been listed for consideration because of recommendation 34/5, which had noted with appreciation that Bangladesh had reported methyl chloroform consumption for 2004 which indicated that it had returned to compliance with the Protocol's control measures and had congratulated the Party on that achievement. The recommendation had also noted with appreciation the Party's submission of a plan of action for phasing out methyl chloroform consumption, in accordance with decision XVI/20, and had agreed to forward to the Seventeenth Meeting of the Parties for its consideration the draft decision set forth in section C of annex I to the present report, which incorporated Bangladesh's plan of action. It had since reconfirmed its support for the draft decision.

**F. Bolivia**

53. Bolivia had been listed for consideration because of recommendation 34/7, which had urged it to submit its 2004 data, and its commitment in decision XV/29 to reduce CFC consumption to 47.6 ODP-tonnes in 2004. The representative of the Secretariat reported that the Party's consumption data for 2004 of 42.366 ODP-tonnes showed it to be in advance of both the consumption reduction commitment contained in its plan of action for that year and its obligations under the Protocol. She also noted that the Executive Committee had at its forty-seventh meeting approved funds to enable Canada to assist Bolivia to prepare a CFC terminal phase-out management plan, as well as an extension to the Party's institutional strengthening project implemented by UNEP.

54. Asked to comment on the Party's prospects for complying with its obligations and in particular an increase in CFC consumption of 10 tonnes from 2003 to 2004, the representative of UNEP noted that the Party had adopted legislation in 2004 resulting in the training of customs officers and improved enforcement. The representative of the Multilateral Fund secretariat noted that funding had been approved for the preparation of its terminal phase-out plan. 21 ODP-tonnes had already been phased out, leaving another 20 ODP-tonnes to be phased out from approved projects currently under implementation.

55. The Committee therefore agreed to note with appreciation that Bolivia continues to be in advance of its commitments to phase out CFC contained in decision XV/29 and prescribed under the Protocol.

**Recommendation 35/5****G. Bosnia and Herzegovina**

56. Bosnia and Herzegovina had been listed for consideration because of recommendation 34/8, which had noted with appreciation that the Party had submitted an explanation for its excess consumption of methyl chloroform in 2003 and a plan of action with time-specific benchmarks to ensure its prompt return to compliance, which the Committee had directed the Secretariat to incorporate into a draft decision for the Committee's consideration at the present meeting. The recommendation also noted that the Party had reported CFC consumption for 2004 of 187.9 ODP-tonnes, which was inconsistent with its commitment contained in decision XV/30 to reduce its CFC consumption to 167 ODP-tonnes in 2004, and that the Party had asked to revise the CFC phase-out schedule contained in decision XV/30.

57. The recommendation recorded the Committee's agreement to continue to review the Party's CFC phase-out progress with reference to decision XV/30 for the time being and to reconsider it at the current meeting, taking into account any additional relevant information. The recommendation also noted the Party's expectation that it would meet its commitment, contained in decision XV/30, to establish an ODS licensing and quota system, and requested Bosnia and Herzegovina to submit an update to the next meeting of the Committee.

58. The Party had subsequently provided an update on the status of its commitment to establish a system for licensing ODS imports and exports, including quotas, in accordance with recommendation 34/8, reporting that implementation of the system might be delayed such that the Party's Council of Ministers would consider the relevant regulations for adoption in January 2006 rather than December 2005.

59. The Party had also informed the Secretariat that its proposed licensing system would set annual CFC imports at levels consistent with the time-specific benchmarks contained in decision XV/30, and that it expected that enforcement of the system together with support received through the training of customs officers would bring the Party closer to compliance with its commitments. It also noted that further significant CFC phase-out would depend upon the combined effect of the various measures contained in the Party's national phase-out plan, which UNIDO was implementing under the Multilateral Fund and which included licensing and certification schemes for refrigeration technicians, education and training of new and existing service technicians, targeted public awareness-raising activities, establishment of a code of practice for refrigeration technicians and a system for the re-use of ODS.

60. At the invitation of the Committee, a representative of Bosnia and Herzegovina attended and responded to questions. She informed the Committee that the delay in implementation of the licensing and quota system had been necessary to give the various ministries that had to consider the system sufficient time to review and comment on it, and because it had been necessary to harmonize national customs tariffs with European Union tariffs. The comments of the ministries had been incorporated into the legislation, and the Party was confident that it would be in place by January 2006.

61. The Committee therefore *agreed*:

- (a) To recall the report of the representative of Bosnia and Herzegovina to the Implementation Committee at its thirty-fourth meeting that it had not met its commitment contained in decision XV/30 to reduce its consumption of Annex A, group I, controlled substances (CFCs) to 167 ODP-tonnes in 2004, for reasons peculiar to transition economies, but also to recall the representative's notification that, as of 2006, CFCs would only be used in the country's servicing sector, and the report of the implementing agencies to the Executive Committee at its forty-sixth meeting that the Party's CFC phase-out projects were well advanced;
- (b) Further to recall that, although the Party did not meet its CFC reduction commitment in 2004, Bosnia and Herzegovina did continue towards compliance with the Protocol's CFC control measures, by reducing its consumption from 230 ODP-tonnes in 2003 to 187.9 ODP-tonnes in 2004;
- (c) To continue to review progress by the Party in phasing out CFCs with reference to the existing benchmarks contained in decision XV/30;
- (d) To note with appreciation that Bosnia and Herzegovina submitted an update on the status of its commitment contained in decision XV/30 to establish an ozone-depleting substance licensing and quota system, in accordance with recommendation 34/8, and confirmed that the draft decision in section D of annex I to the present document accurately incorporates the Party's plan of action for returning to compliance with the Protocol's methyl chloroform control measures;
- (e) To forward the draft decision in section D of annex I to the present document to the Seventeenth Meeting of the Parties for its consideration.

**Recommendation 35/6**

## H. Botswana

62. Botswana was listed for consideration because of recommendation 34/9, which noted that Botswana's 2003 and 2004 data placed it in compliance with its methyl bromide consumption reduction commitments in decision XV/31 and returned it to compliance with the Protocol's methyl bromide control measures in 2004. The recommendation also urged Botswana to submit updated information on its progress in establishing an ODS licensing and quota system in accordance with decision XV/31.

63. The Committee had previously been informed that UNIDO had agreed to provide assistance aimed at completion of the necessary legislation, and that it was already assisting Botswana with a methyl bromide phase-out project, which it expected to be completed in December 2005. It had also learned that UNEP had helped Botswana to identify legislation that would accommodate ODS regulations and that a chemicals management act was being developed, and that UNEP expected the ODS regulations, which would include an ODS licensing and quota system, to be in place by December 2005. UNEP was also providing institutional strengthening to Botswana.

64. Botswana, however, had reported to the Ozone Secretariat that it was still awaiting assistance from UNIDO and had been informed by its legal experts that it could not effect ODS regulations through its chemicals management act.

65. It had subsequently been determined that UNIDO could not provide the requested assistance to Botswana under the Multilateral Fund, as such assistance had previously been approved for the Party through its refrigerant management plan update. GTZ, the bilateral agency implementing Botswana's refrigerant management plan update, had previously informed the Party that the funds approved for the update could be used to finalize its ODS regulations. UNEP had also informed Botswana that its institutional strengthening budget could be drawn upon for that purpose. Botswana had since confirmed in writing to the Secretariat that it intended to draw upon its approved institutional strengthening budget to develop and finalize the outstanding legislation. The Party also submitted a draft of the proposed components of the legislation to the Secretariat for comment.

66. The Committee therefore *agreed*:

- (a) To note the report by Botswana that it had not yet established a system for licensing imports and exports of methyl bromide, including quotas, in accordance with decision XV/31, as it was awaiting assistance from an implementing agency;
- (b) To note, however, that Botswana had taken steps to expedite the implementation of its licensing and quota system with the assistance of UNEP;
- (c) To urge Botswana to work with relevant implementing agencies to establish its licensing and quota system, as a matter of priority, and to submit to the Secretariat a report on the status of this commitment in time for consideration by the Committee at its thirty-sixth meeting, so that the Committee could assess the Party's implementation of its commitments contained in decision XV/31.

**Recommendation 35/7**

## I. Chile

67. Chile had been listed for consideration because of recommendation 34/11, which had noted with appreciation its submission of revised data for the consumption of Annex B, group I, controlled substances (other fully halogenated CFCs) for 2003, which showed that the Party had been in compliance with the Montreal Protocol's control measures for those substances in that year, its explanation for its deviations from the Protocol's methyl chloroform and methyl bromide control measures in 2003, and its submission of a plan of action for ensuring a prompt return to compliance with those control measures, in accordance with decision XVI/22, including a ban on the import of methyl bromide until December 2005. The recommendation had further noted with appreciation Chile's submission of 2004 data, which showed that it had returned to compliance with the Protocol's control measures for methyl chloroform in that year. The recommendation had also recorded the agreement of the Committee to forward the draft decision contained in section E of annex I to the present report, incorporating Chile's plan of action, to the Seventeenth Meeting of the Parties for its consideration.

68. Chile had reconfirmed its agreement to implement the commitments contained in the draft decision, and had subsequently informed the Secretariat that the bill, which set maximum allowable levels of annual imports of ODS in accordance with the phase-out schedules prescribed by the Montreal Protocol, was in the last stages of approval. Chile had also reported that a ban on the import of methyl bromide imposed by the Party in April 2005 and intended to remain in force until 31 December 2005, had so far limited Chile's methyl bromide consumption to 168.2 ODP-tonnes, which was lower than its maximum allowable consumption level for 2005 of 170.008 ODP-tonnes.

69. The Secretariat had observed that the current wording of the draft decision might result in its misinterpretation and suggested that it could be amended to reflect more clearly the fact that in 2004 Chile had returned to compliance with the Protocol's requirement to freeze methyl chloroform consumption at its baseline level, and would return to compliance in 2005 with the Protocol's methyl bromide control measures by reducing its consumption to no greater than 20 per cent of its methyl bromide baseline level in that year.

70. The Committee therefore agreed to reaffirm recommendation 34/11 to the effect that the draft decision contained in section E of annex I to the present document be forwarded to the Seventeenth Meeting of the Parties for consideration.

**Recommendation 35/8**

## **J. China**

71. China had been listed for consideration because of its apparent excess consumption of Annex B, group I, controlled substances (other CFCs), which for 2004 had amounted to 20.539 ODP-tonnes, above the Protocol's requirement that consumption be reduced to no greater than 80 per cent of the Party's baseline. The Secretariat had requested China to submit an explanation for the apparent deviation from its Protocol obligations, but no response had yet been received.

72. The Committee therefore agreed to forward the draft decision contained in section F of annex I to the present document to the Seventeenth Meeting of the Parties for consideration.

**Recommendation 35/9**

## **K. Cook Islands**

73. Cook Islands had been listed for consideration because it had been listed in recommendation 34/12, which had noted with appreciation the Party's submission of data which confirmed its status as a Party operating under Article 5 of the Protocol, and urged the Party to submit its baseline data for the ODS in Annexes A, B and E of the Protocol, as well as its Annex A 1986 base-year data, in order that the Committee might assess the Party's compliance with the Protocol. The Party had subsequently reported all data requested by recommendation 34/12, but had not reported its data for the year 2004.

74. The Committee therefore *agreed*:

- (a) To note with appreciation the Cook Islands' submission of baseline data for the ozone-depleting substances in Annexes A, B and E of the Protocol, as well as its Annex A base-year (1986) data, in accordance with recommendation 34/12;
- (b) To include the Cook Islands in the draft decision contained in section G of annex I to the present document, as a Party that had not yet submitted its ozone-depleting substances data for 2004 in accordance with Article 7 of the Montreal Protocol, in the event that the Party did not report the outstanding data prior to the adoption of the draft decision by the Seventeenth Meeting of the Parties.

**Recommendation 35/10**

## **L. Ecuador**

75. Ecuador had been listed for consideration because of recommendation 34/13, which had noted that, during its thirty-fourth meeting, the Committee had received Ecuador's response to the request contained in decision XVI/20 that the Party should submit an explanation for its excess consumption of methyl chloroform in 2003 or a plan of action containing time-specific benchmarks for ensuring its

prompt return to compliance. The recommendation had also noted that, as there had not been sufficient time to translate the Party's response from Spanish into other languages, the Committee would consider the Party's submission at its thirty-fifth meeting, and had invited Ecuador to send a representative to that meeting to discuss the matter.

76. The English translation of the Party's submission had subsequently been made available, and had explained that the methyl chloroform deviation occurred because, in 2003, the Government had not had the legal authority to limit the import of that substance. The situation had since been redressed through the implementation of a licensing system, including quotas, on 27 May 2004, and the quota for 2005 had been set at 1.4 ODP-tonnes of methyl chloroform, in compliance with the provisions of the Protocol. The plan of action included workshops to identify the country's current uses and to raise awareness of alternatives. Based on the workshops' results, the need to prepare an investment project for the sector would be assessed. Ecuador expected that the plan would return it to compliance with the Protocol's methyl chloroform control measures in 2005.

77. The Secretariat had incorporated Ecuador's plan of action into a draft decision. Ecuador had also submitted 2004 data, which indicated methyl chloroform consumption of 2.559 ODP-tonnes, representing a reduction from 2003 consumption, but in excess of the Party's obligation under the Protocol to freeze its consumption at its baseline level of 1.997 ODP-tonnes. The Secretariat had also included the figure of 1.3979 ODP-tonnes for 2005 consumption in the draft decision, rather than the 1.4 ODP-tonnes mentioned in Ecuador's submission, because that represented Ecuador's maximum allowable consumption level in accordance with the Protocol's control measures. It had requested confirmation of this change from Ecuador, but had not yet received a response.

78. At the invitation of the Committee, a representative of Ecuador attended and responded to questions. He explained that the political turmoil in his country over the previous ten years had delayed implementation of the licensing system, but that Ecuador was now well on track towards meeting its obligations. Indeed, only 0.817 ODP-tonnes of methyl chloroform had been imported in the first ten months of 2005, so he expected the final consumption figure to be well below the allowed level. He confirmed that the figure of 1.3979 ODP-tonnes for 2005 consumption was acceptable in the plan of action.

79. The Committee therefore *agreed*:

- (a) To note with appreciation Ecuador's submission, in accordance with decision XVI/20, of an explanation for its deviation in 2003 from its obligation under the Protocol to freeze consumption of methyl chloroform at its baseline level;
- (b) Also to note with appreciation the Party's submission of a plan of action for returning to compliance with the Protocol's methyl chloroform control measures and the subsequent clarifications provided by Ecuador with respect to that plan;
- (c) To forward to the Seventeenth Meeting of the Parties for its consideration a draft decision incorporating the plan of action, as contained in section H of annex I to the present report.

#### **Recommendation 35/11**

### **M. Eritrea**

80. Eritrea had been listed for consideration because of possible non-compliance with its data-reporting obligations. Recommendation 34/47 had requested the Secretariat to remind Parties in non-compliance with their data-reporting obligations to submit their outstanding data for consideration by the Committee at its thirty-fifth meeting.

81. Eritrea had become a Party to the Montreal Protocol on 10 March 2005 and a Party to all the amendments to the Protocol on 5 July 2005. Prior to the Committee's last meeting, Eritrea had not reported any ODS data, thereby placing it in non-compliance with its data-reporting obligations. The Party had subsequently made efforts to report its outstanding data but had concluded that it required assistance to ensure that the data collected were accurate and reliable. It had informed the Secretariat that it would submit the outstanding data no later than the first quarter of 2006. In order to obtain the data collection assistance, Eritrea had submitted a request to the Executive Committee for funds to prepare a country programme and refrigerant management plan, which the Committee had approved at its forty-seventh meeting.

82. In the case of Parties such as Eritrea that had not reported any ODS data, thereby preventing confirmation of their status as a Party operating under Article 5 of the Protocol, it was customary for the Committee to recommend that the Meeting of the Parties adopt a decision noting that the Party was temporarily classified as operating under paragraph 1 of Article 5 and requesting the Party to submit its outstanding data to the Secretariat, as a matter of urgency, for review at the next meeting of the Committee.

83. The Committee therefore *agreed*:

- (a) To note Eritrea's commitment to submit its outstanding data in accordance with its data-reporting obligations under the Protocol and with recommendation 34/47, by the first quarter of 2006;
- (b) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision contained in section I of annex I to the present document.

#### **Recommendation 35/12**

### **N. European Community**

84. The European Community had been listed for consideration because of possible excessive consumption of methyl chloroform in 2004, which it had reported as 0.200 ODP-tonnes. The Party had reported that the methyl chloroform had been produced and imported for essential uses, but had not specified the nature of the uses.

85. In response to a further query from the Secretariat, the European Community had explained that the essential uses represented laboratory and analytical uses covered by the global exemption for laboratory and analytical essential uses. That clarification had been recorded in the addendum to the report of the Secretariat on information provided by the Parties in accordance with Article 7 of the Montreal Protocol (UNEP/OzL.Pro.17/3) and would also be recorded in the report of the current meeting.

### **O. Federated States of Micronesia**

86. Federated States of Micronesia had been listed for consideration because of recommendation 34/14, which had noted with appreciation that the Party had reported its outstanding data for the years 2001, 2002 and 2003 in accordance with decision XVI/17 and had also reported data for 2004. The recommendation had also recorded the Committee's agreement to defer consideration of the Party's compliance in those years with the Protocol's control measures until the current meeting, in the light of the limited time which Federated States of Micronesia had had to review the data reports generated by the Secretariat from its 2001–2004 data submission and to respond to a request for clarifications on the apparent deviations from its requirement to freeze CFC consumption at its baseline level in those years.

87. The Party had subsequently submitted revised data for the years 2001–2004 showing CFC consumption data of 1.106, 1.876, 1.691 and 1.451 ODP-tonnes respectively. This represented deviations in 2002, 2003 and 2004 from the Party's obligation under the Protocol to freeze its consumption at its baseline level of 1.219 ODP-tonnes. In response to a subsequent request by the Secretariat, the Party had explained that these deviations were attributed to the absence of any law to regulate the import of CFCs and the low level of awareness in the country. The plan of action submitted by the Party included commitments to adopt regulations to control CFC imports, introduce customs training, use the media to educate the public and consult with CFC importers and primary consumers in the country. The Party's continuing participation in the Regional Strategy to Comply with the Montreal Protocol in Pacific Island Countries, supported by the Multilateral Fund and implemented by UNEP and the Government of Australia, was also cited as contributing to its efforts to return to compliance. The time-specific benchmarks contained in the plan of action, if achieved, would return Federated States of Micronesia to compliance with the Protocol's CFC control measures in 2006.

88. The Committee therefore *agreed*:

- (a) To note with appreciation the submission by the Federated States of Micronesia of an explanation for its deviations in 2002, 2003 and 2004 from its obligation under the Protocol to freeze consumption of Annex A, group I, controlled substances (CFCs) at its baseline level;

- (b) Also to note with appreciation the Party's submission of a plan of action for returning to compliance with the Protocol's control measures for those substances;
- (c) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision contained in section J of annex I to the present document.

**Recommendation 35/13****P. Fiji**

89. Fiji had been listed for consideration because of recommendation 34/15, which had noted that Fiji's revised methyl bromide consumption data for 2004 showed a deviation from the obligation to freeze its consumption at its baseline level of 0.671 ODP-tonnes. The recommendation had noted with appreciation, however, that Fiji had submitted a plan of action with time-specific benchmarks to return it to compliance. The recommendation had also recorded the Committee's agreement to forward the draft decision, contained in section K of annex I to the present report, which incorporates Fiji's plan of action, to the Seventeenth Meeting of the Parties for approval, provided that the Party did not notify the Committee prior to the conclusion of its thirty-fifth meeting that it wished to revisit the time-specific benchmarks contained in the draft decision.

90. In correspondence with the Fund Secretariat, UNEP had confirmed that Fiji did not wish to change the time-specific benchmarks in the light of its total methyl bromide phase-out project proposal.

91. The Committee therefore agreed to reaffirm recommendation 34/15 to the effect that the draft decision contained section K of annex I to the present document be forwarded to the Seventeenth Meeting of the Parties for consideration.

**Recommendation 35/14****Q. France**

92. France had been listed for consideration because of its possible excess production of halons, methyl chloroform and methyl bromide in 2004. It had reported data showing production of 4,000 ODP-tonnes of halons, 0.1 ODP-tonnes of methyl chloroform, and 1,113.90 ODP-tonnes of methyl bromide. As a Party not operating under Article 5 of the Protocol, France was required to maintain total phase-out of the production of halons and methyl chloroform in 2004, except for essential uses approved by the Parties or allowed in accordance with the basic domestic needs provisions of the Protocol. In addition, France was required to reduce its methyl bromide production to no greater than 30 per cent of its baseline, namely, 755.10 ODP-tonnes.

93. France had reported that the methyl chloroform had been produced for essential uses, but had not specified their nature. In a response to a request from the Secretariat, France had explained that this production represented laboratory and analytical uses covered by the global exemption for laboratory and analytical essential uses.

94. France had also clarified that the halon production had been misreported, and should have been reported as production for exempted feedstock use.

95. Finally, France had clarified that the methyl bromide had been produced to meet the basic domestic needs of Parties operating under Article 5 of the Protocol and production pursuant to a transfer of an annual production allowance from the United States of America to France, in accordance with Article 2 of the Protocol.

96. The Committee therefore noted that that clarification had been recorded in the addendum to the report of the Secretariat on information provided by the Parties in accordance with Article 7 of the Montreal Protocol (UNEP/OzL.Pro.17/3) and would also be recorded in the report of the current meeting.

**R. Greece**

97. Greece had been listed for consideration because of possible excess production of CFCs in 2004. Greece had reported production in 2004 of 2,793 ODP-tonnes of CFCs, above its requirement for total phase-out. Greece had reported, however, that its entire CFC production in 2004 was to meet the basic domestic needs of Parties operating under Article 5 of the Protocol. The Party had also noted that

1,503 ODP-tonnes of its total reported CFC production could be accounted for by industrial rationalization between a CFC production plant in Greece and a production plant in the United Kingdom.

98. The Secretariat had noted that the reported transfer of 1,503 ODP-tonnes from the United Kingdom to Greece was within the maximum allowable amount that the United Kingdom could have transferred to Greece in 2004, in accordance with Article 2 of the Protocol. The letter from Greece communicating the transfer, however, was dated 29 March 2005, after the transfer had taken place, and the Secretariat's records did not contain correspondence from the Government of the United Kingdom notifying the Secretariat of the transfer. Nor did they contain correspondence from the Government of Greece, prior to the transfer, notifying the Secretariat of the imminent event. The Secretariat had sought Greece's advice on the status of those notifications, observing that paragraph 7 of Article 2 of the Protocol provided that the Parties involved in a transfer of ODS production allowances were required to notify the Secretariat by the time of the transfer.

99. The Secretariat had also observed that Article 2A, paragraph 5 of the Protocol provided that, in 2004, Greece could produce up to 1,168 ODP-tonnes of CFCs to meet the basic domestic needs of Parties operating under Article 5. The amount remaining from Greece's total reported production after the deduction of the amount produced on behalf of the United Kingdom was 1,290 ODP-tonnes. That amount appeared to be in excess of Greece's basic domestic needs production allowance for 2004.

100. Greece's response, received by the Secretariat on 6 December 2005, had not addressed the Secretariat's query on the absence of notifications from Greece and the United Kingdom regarding the transfer of CFC production allowance, prior to the date of the transfer. It had, however, made reference to a transfer of 1,641 ODP-tonnes of CFCs, raising the question of whether this figure was intended to replace the figure of 1,503 ODP-tonnes contained in its earlier letter to the Secretariat. The Party's response had also sought to correct the figure of 1,290 ODP-tonnes that the Secretariat had suggested might have been produced under the Party's own production allowance for basic domestic needs, noting that only 1152 ODP-tonnes of its 1,168 ODP-tonnes allowance had been used, the remainder of its production coming from the production allowance transfer from the United Kingdom. The Secretariat had not had the opportunity to seek further clarification from the Party.

101. The Committee therefore *agreed*:

- (a) To note with appreciation the explanation submitted by Greece for the apparent deviation from its obligation in 2004 to maintain total phase-out of production of the controlled substances in Annex A, group I, except for approved essential uses and in accordance with the basic domestic needs provisions of the Protocol;
- (b) To note that further clarification was required from the Party with regard to its implementation of paragraph 7 of Article 2 of the Protocol, prescribing the conditions for transfer between Parties of allowances to produce controlled substances, including the requirement that the Parties concerned must notify the Secretariat of the transfer no later than the time of the transfer;
- (c) To request the Secretariat to seek the further clarification from Greece in time for the Committee's consideration at its next meeting.

#### **Recommendation 35/15**

### **S. Guatemala**

102. Guatemala had been listed for consideration because of recommendation 34/16, which had noted with appreciation its progress towards complying with the commitments set forth in its plan of action set out in decision XV/34, reminded it of its commitment to ban the import of equipment using ODS by 2005 and requested it to report on the status of that commitment to the Committee at its thirty-fifth meeting.

103. Guatemala had not responded to recommendation 34/16, but UNEP had reported to the Committee at its thirty-fourth meeting that Guatemala had been implementing a ban on the import of used refrigeration and air-conditioning equipment that used ODS. It had also reported that officers of the Ministry of Environment were conducting inspections of importers and users of ODS and that during the second half of 2003 the Public Ministry had initiated measures to enforce the ODS legislation. The report of the Multilateral Fund secretariat to the forty-seventh meeting of the Executive Committee had noted that Guatemala had approved a law to ban the import of CFC-based technology,

but also that the law could not enter into force until customs identification codes and other administrative arrangements had been established, and UNEP had recently informed the Secretariat that it had received an official communication from the Party to that effect.

104. At the request of a member of the Committee, the representative of Guatemala informed the Committee that his Government had compiled a list of articles using ODS, which was being used by the ministries of environment and trade to enforce a ban on equipment using ODS. He also reported that the legislation implementing the ban was expected to be in place within four to six months.

105. The Committee therefore *agreed*:

- (a) To note with appreciation that Guatemala had reported, in accordance with recommendation 34/16, on the status of its commitment contained in decision XV/34 to ban the import of equipment using ozone-depleting substances by 2005, including the Party's advice that it expected the ban to commence operation within the next four to six months;
- (b) To urge Guatemala to submit to the Secretariat, as a matter of priority, a further update on the status of its import ban, in time for consideration at the Committee's thirty-sixth meeting.

**Recommendation 35/16**

## **T. Guinea-Bissau**

106. Guinea-Bissau had been listed for consideration because of recommendation 34/17, which had noted with appreciation that the Party had reported data for the consumption of CFCs in 2004 which showed that it was in advance of its commitment, contained in decision XVI/24, and had returned it to compliance with the Protocol's CFC control measures, noted with appreciation that the Party had reported the establishment of a system for licensing the import and export of ODS, in accordance with decision XVI/24, and urged it to submit a report on the status of its commitment also contained in decision XVI/24 to introduce an ODS quota system by the end of 2004.

107. The Executive Committee at its forty-seventh meeting had approved a policy assistance project for Portuguese-speaking countries in Africa that would include Guinea-Bissau. The Party had also advised that it had agreed sub-regional harmonized ODS regulations for French-speaking Africa, which had been adopted on 4 July 2005 and required each member State to establish annual quotas for the import of ODS. While Guinea-Bissau had not yet established its national arrangements to introduce those annual quotas, it expected to do so when the sub-regional regulations entered into force on 1 January 2006.

108. The Committee therefore *agreed*:

- (a) To note with appreciation that Guinea-Bissau had reported, in accordance with recommendation 34/17, on the status of its commitment contained in decision XVI/24 to introduce an ozone-depleting substance quota system by the end of 2004, including the Party's advice that it expected to have introduced the quota system by 1 January 2006;
- (b) To urge Guinea-Bissau to submit to the Secretariat, as a matter of priority, a further update on the status of its ODS import quota system, in time for its consideration at the Committee's thirty-sixth meeting.

**Recommendation 35/17**

## **U. Honduras**

109. Honduras had been listed for consideration because of recommendation 34/19, which had urged it to submit its data for 2004 so that the Committee might assess the Party's implementation of its commitments contained in decision XV/35. That decision had noted with appreciation the plan of action submitted by Honduras to ensure its prompt return to compliance with the Protocol's methyl bromide control measures, which had included a reduction in consumption of methyl bromide from 412.52 ODP-tonnes in 2002 to 306.1 ODP-tonnes in 2004.

110. The representative of the Secretariat explained that Honduras had reported methyl bromide consumption data for 2004 of 340.8 ODP-tonnes, an amount in excess of its commitment. Honduras had

submitted an explanation for this deviation together with a request that the Meeting of the Parties approve the postponement of its return to compliance from 2005, as required by decision XV/35, to 2008, together with a strategy for ensuring its return to compliance in 2008. The documentation submitted by Honduras had highlighted the fact that methyl bromide consumption in the melon sector accounted for more than 99 per cent of 2004 consumption, following successful reduction in other sectors.

111. Under the auspices of a methyl bromide phase-out investment project supported by the Multilateral Fund and implemented by UNIDO, a wide range of alternatives had been tested in the melon sector. However, technical problems had been encountered, including the absence of extension services and reliable laboratories and the lack of experienced plant pathologists for the identification of soil-borne pathogens and specialized contractors for the application of alternative chemicals. The two biggest melon production companies had many farms located throughout the region, with a wide variety of soil and environmental conditions and, consequently, differing levels of soil-borne pest pressures. Another problem was posed by the insufficient time available to train managers and workers for grafted seedling production and grafted melon crop management.

112. The melon producers had entirely financed the field trials of methyl bromide alternatives themselves, and had made good progress in reducing consumption in 2001 and 2002, but underestimation of the time required to install large greenhouses and complex nursery equipment in three different locations in the country, together with a lack of material in the quantities required for the implementation of some of the alternative technologies, had slowed down phase-out in 2003 and 2004. In the light of this, Honduras considered that the commitments contained in decision XV/35 of the Fifteenth Meeting of the Parties and decision 42/14 of the Executive Committee may have been too ambitious.

113. Some of the technical problems had been solved, while others might be solved shortly, and Honduras noted that the methyl bromide phase-out investment project had the full cooperation of Government bodies, the ministries of environment, agriculture and customs, and melon, banana and tobacco producers. Nevertheless, it estimated that an additional two years would be required to secure a return to compliance with the methyl bromide control measures. Honduras was therefore requesting the postponement of its original date, and had presented revised time-specific benchmarks, agreed by all relevant stakeholders, which would achieve a return to compliance in 2008. A strategy for this return to compliance had been submitted, and UNIDO had confirmed that the Party was not seeking further financial assistance from the Multilateral Fund to meet the revised benchmarks.

114. The report of UNIDO and Honduras had also been submitted to the Executive Committee at its forty-seventh meeting, as decision 42/14 of that committee had adopted methyl bromide phase-out commitments that mirrored those contained in decision XV/35. Consequently, on behalf of Honduras, UNIDO had asked the Executive Committee to revise the phase-out commitments contained in decision 42/14. The Executive Committee had decided to ask UNIDO to resubmit the request after the Meeting of the Parties' consideration of the request to revise the time-specific benchmarks contained in decision XV/35.

115. Honduras had been invited to send a representative to the meeting of the Committee to respond to questions, but no representative had been able to attend.

116. The Committee therefore *agreed*:

- (a) To note with appreciation that Honduras had submitted its ozone-depleting substance data for 2004, in accordance with recommendation 34/19;
- (b) To note with concern, however, that while Honduras had reported consumption of methyl bromide for 2004 that was less than its reported consumption for 2003, it was still inconsistent with the Party's commitment contained in decision XV/35 to reduce its methyl bromide consumption to 306.1 ODP-tonnes in 2004;
- (c) Further to note the explanation submitted by Honduras that, despite the ongoing commitment of all Government and industry stakeholders to the phase-out of methyl bromide, technical difficulties prevented the Party's reduction of methyl bromide consumption in accordance with its commitment contained in decision XV/35 for 2004;
- (d) To note with appreciation the advice of Honduras that its stakeholders remained committed to methyl bromide phase-out, but also to note the advice of Honduras that an additional two years would be required to overcome the technical difficulties and its

submission of revised time-specific benchmarks to return the Party to compliance with the Protocol's methyl bromide control measures in 2008;

- (e) To forward the draft decision set forth in section L of annex I to the present document, including the revised time-specific benchmarks, to the Seventeenth Meeting of the Parties for its consideration.

#### Recommendation 35/18

### V. Islamic Republic of Iran

117. The Islamic Republic of Iran had been listed for consideration because of recommendation 34/20, which had noted its submission pursuant to decision XVI/20, and recommendation 33/28(b), which had requested the Party to submit an explanation for its excess consumption of methyl chloroform in 2003 and a plan of action to return it to compliance. The recommendation had also noted with appreciation that in December 2004 the Islamic Republic of Iran had established a system for licensing the import and export of ODS, and planned to establish an import quota in October 2005 to freeze methyl chloroform imports at 2003 consumption levels. The recommendation had urged the Party to submit a revised methyl chloroform plan of action, on the basis that the time-specific benchmarks contained in its existing plan of action would not return it to compliance.

118. The recommendation had also noted, however, that the Party had submitted a request to revise its methyl chloroform and carbon tetrachloride baseline data and, on that point, had requested the Party to submit a more comprehensive package of information. The recommendation had recorded the Committee's agreement to reconsider the Party's request to revise its baseline data at the thirty-fifth meeting of the Committee, in the light of the Party's submission pursuant to recommendation 33/28(b), the Committee's dialogue with the Party at its thirty-fourth meeting and the results of the exercise being undertaken by the Party and UNIDO to verify its proposed baseline data.

119. The Islamic Republic of Iran had not yet submitted either a revised plan of action or the findings of its data-verification exercise. It had, however, submitted written responses to the questions put to the Party's representative at the Committee's last meeting, which had been intended to ensure that the Party's request for the revision of its methyl chloroform and carbon tetrachloride baseline data met the requirements contained in the methodology adopted by the Parties for requesting baseline data revisions, set out in decision XV/19.

120. Pursuant to paragraph 2 (a) (i) of decision XV/19, the Committee had asked the Islamic Republic of Iran to identify which of the baseline years' data were considered incorrect and to provide the proposed new figures for each relevant year. The Party's submission, however, had only provided a figure representing an average of the Party's estimated carbon tetrachloride and methyl chloroform consumption over the baseline period, derived from the extrapolation of data for 2002, adjusted to account for the growth rate of relevant industrial subsectors. The Islamic Republic of Iran had therefore not fulfilled the requirements of decision XV/19 in this regard.

121. Pursuant to the requirement in paragraph 2 (a) (ii) of decision XV/19, the Committee had asked the Party to explain why the existing data for the baseline years 1998, 1999 and 2000 were incorrect, including information on the methodology used to collect and verify those data, along with supporting documentation. The Party's submission confirmed the statement made by its representative at the Committee's last meeting that, owing to the absence of alternative data sources, the existing data for the baseline years merely repeated the data collected in a survey conducted from March to December 1998.

122. Pursuant to the requirement in paragraph 2 (a) (iii) of decision XV/19, the Committee had asked the Islamic Republic of Iran to explain why the requested changes should be considered correct, including information on the methodology used to collect and verify those data. The Secretariat had sought a number of clarifications to confirm the rigour of the methodology used to collect the data for 2002, upon which the proposed baseline data were based, and had received a comprehensive set of responses.

123. In the light of the correspondence from the Islamic Republic of Iran, the Secretariat had requested the Party to submit its proposed new data for each of the baseline years that it considered incorrect, in accordance with paragraph 2 (a) (i) of decision XV/19. The Secretariat had also suggested that the Islamic Republic of Iran might wish to submit a written response to a further question raised at the thirty-fourth meeting of the Committee. The meeting had noted the statement in the report of the 2002 data survey that carbon tetrachloride, methyl chloroform and CFCs for the solvent sector had been

imported under different names and brands and that it was therefore very difficult to trace them with their known chemical abbreviations. In the light of that statement, the meeting had requested information on how the Party had ensured that solvent-using enterprises that participated in the survey had identified and reported carbon tetrachloride and methyl chloroform solvent consumption separately from CFC and non-ODS solvent consumption.

124. The Islamic Republic of Iran had not yet responded to the Secretariat's correspondence. In its letter to the Secretariat dated 29 May 2005, the Party had stated that, in cooperation with UNIDO, the verification exercises would be conducted in July 2005 and a revised methyl chloroform plan of action would be finalized in October 2005. The Islamic Republic of Iran had, however, submitted its data for 2004, reporting carbon tetrachloride and methyl chloroform consumption equal to the levels reported for 2003, that is, 2,169.2 ODP-tonnes and 386.8 ODP-tonnes, respectively.

125. In response to questions at the current meeting, the representative of UNIDO confirmed that the finalization of the verification exercise had been delayed slightly, but she expected it to be available in January 2006, in good time for consideration at the thirty-sixth meeting of the Committee.

126. The Committee therefore *agreed*:

- (a) To note with appreciation the additional information submitted by the Islamic Republic of Iran in support of its request to revise its baseline data for methyl chloroform and carbon tetrachloride;
- (b) To recall that the Party had informed the Committee at its thirty-fourth meeting that its baseline data verification exercise would be concluded in July 2005 and that a revised plan of action to return the Party to compliance with the Protocol's control measures for methyl chloroform would be finalized in October 2005;
- (c) To note with concern, however, that the Party had not submitted the findings of the baseline data verification exercise or a revised methyl chloroform plan of action, in accordance with recommendation 34/20, thereby further delaying the Party's return to compliance with the Protocol's methyl chloroform control measures and potentially compromising the Committee's ability to assess the Party's compliance with its obligation to reduce in 2005 its carbon tetrachloride consumption to 15 per cent of its baseline level and its methyl chloroform consumption to 70 per cent of its baseline level;
- (d) Pursuant to the provisions of subparagraph (c) above, to request the Islamic Republic of Iran to submit to the Secretariat, as a matter of urgency and no later than six weeks prior to the thirty-sixth meeting of the Committee, the findings of its verification exercise and a revised plan of action with time-specific benchmarks to ensure the Party's prompt return to compliance with the Protocol's methyl chloroform control measures, as well as the data for the year or years of the baseline period that the Islamic Republic of Iran believes to be incorrect, and a written response to the question as to how it was ensured that solvent-using enterprises that participated in the survey identified and reported carbon tetrachloride and methyl chloroform consumption separately from CFC and non-ozone-depleting substance consumption;
- (e) In the interests of avoiding further postponement of action to return the Party to compliance with its methyl chloroform phase-out obligations, to conclude its consideration of the request from the Islamic Republic of Iran for the revision of its carbon tetrachloride and methyl chloroform baseline data at its next meeting, based on all information available at that time.

#### **Recommendation 35/19**

### **W. Japan**

127. Japan had been listed for consideration because of its apparent excess consumption and production of carbon tetrachloride in 2004. Japan had reported consumption of 19.800 ODP-tonnes and production of 20.790 ODP-tonnes of carbon tetrachloride in that year, above its allowed limit of zero. Japan had reported that the carbon tetrachloride had been produced for essential uses, but had not specified the nature of the uses.

128. In response to a query from the Secretariat, Japan had explained that the essential uses represented laboratory and analytical uses covered by the global exemption for laboratory and analytical

essential uses. That clarification had been recorded in the addendum to the report of the Secretariat on information provided by the Parties in accordance with Article 7 of the Montreal Protocol (UNEP/OzL.Pro.17/3) and would also be recorded in the report of the current meeting.

## X. Kazakhstan

129. Kazakhstan had been listed for consideration because of recommendation 34/21, which had urged it to submit its data for 2004 and a report on the status of its import ban on equipment using ODS, so that the Committee might assess the Party's implementation of its commitments contained in decision XIII/19. That decision had noted that Kazakhstan had reported data that placed it in non-compliance for the years 1998–2000, and its commitment to return to compliance by, among other things, reducing its CFC and methyl bromide consumption to zero by 1 January 2004 and establishing a ban on the import of equipment using ODS by 1 January 2003.

130. Kazakhstan had submitted its 2004 data, which were consistent with the commitment to phase out methyl bromide consumption but not with its obligation to reduce CFC consumption to zero in 2004. Kazakhstan had not responded to the Secretariat's request for an explanation of this apparent deviation or a report on the status of its import ban.

131. The Committee therefore *agreed*:

- (a) To note with appreciation that Kazakhstan had submitted its ozone-depleting substance data for 2004 in accordance with recommendation 34/21;
- (b) To note with concern, however, that, while Kazakhstan had reported consumption of the controlled substances in Annex A, group I (CFCs), for 2004 that was less than its reported consumption in 2003, it was still inconsistent with the Party's commitment contained in decision XIII/19 to achieve total phase-out of those substances in 2004;
- (c) Also to note with concern that the Party had not submitted the requested explanation for the deviation, nor a report on the status of its commitment contained in decision XIII/19 to implement a ban on the import of equipment using ozone-depleting substances;
- (d) To forward the draft decision set forth in section M of annex I to the present document to the Seventeenth Meeting of the Parties for its consideration;
- (e) To invite Kazakhstan, if necessary, to send a representative to the thirty-sixth meeting of the Committee to discuss the matter.

### Recommendation 35/20

## Y. Kiribati

132. Kiribati had been listed for consideration because of possible non-compliance with its data-reporting obligations. Recommendation 34/47 from the thirty-fourth meeting of the Implementation Committee had requested the Secretariat to remind Parties in non-compliance with their data-reporting obligations under the Protocol to submit their outstanding data for consideration by the Committee at its thirty-fifth meeting.

133. Kiribati had become a Party to the London and Copenhagen amendments to the Montreal Protocol on 9 August 2004. Prior to the previous meeting of the Committee, Kiribati had not reported its base year data for Annex B, C and E controlled substances and was therefore in non-compliance with its data-reporting obligations. In accordance with recommendation 34/47, the Secretariat had reminded Kiribati of its data-reporting obligation, and the Party had since reported all outstanding data.

134. The Committee therefore agreed to note with appreciation Kiribati's submission of all outstanding data in accordance with its data-reporting obligations under the Protocol and recommendation 34/47.

### Recommendation 35/21

## Z. Kyrgyzstan

135. Kyrgyzstan had been listed for consideration because of recommendation 34/22, which had noted with appreciation its explanation for the deviation in its consumption of halons reported for 2004,

and had congratulated the Party on its improved data-collection process. The recommendation had also requested Kyrgyzstan to submit a plan of action with time-specific benchmarks for ensuring the Party's prompt return to compliance, and had invited Kyrgyzstan, if necessary, to send a representative to the thirty-fifth meeting of the Committee to discuss the matter.

136. Kyrgyzstan had subsequently submitted a plan of action to return it to compliance in 2008 through the introduction of a ban on halon imports. The plan also included the training for customs officers and the introduction in 2006 of a ban on the import of halon-containing equipment. The Party had previously reported the establishment of a system for licensing the import and export of ODS. In response to a request from the Secretariat, Kyrgyzstan had also provided annual halon consumption limits for 2005, 2006 and 2007, and had confirmed that these time-specific benchmarks would be supported by the introduction of a halon import quota system by the beginning of 2006, the implementation of halon alternatives in relevant sectors, the establishment of halon banking and public-awareness campaigns on halon alternatives and the negative impact of halons on the ozone layer.

137. At its last meeting, the Committee had been informed that Kyrgyzstan had reported halon consumption for 2004 in excess of its obligation to freeze its consumption at its baseline level of zero. The Party had explained that halons were imported in 2004 by the Ministry of Defence for use in air force and tank units, and had also been used in civil aviation. As military supplies were not subject to customs procedures or reported to the Ministry of Foreign Trade and Industry, they had not been captured by the Party's original data collection process. Kyrgyzstan had also clarified that all its military equipment was imported from the Russian Federation, while all fire-fighting equipment for aviation was overhauled outside the country, in Kazakhstan and the Russian Federation. In its submission to the Committee at its last meeting, the Party had further clarified that the servicing and replacement of halon in fire-fighting systems would take eight years.

138. The Executive Committee at its forty-seventh meeting had decided that Parties such as Kyrgyzstan that had a halon baseline of zero and a low level of documented installed halon could submit proposals for projects to manage their halon stocks in accordance with the Executive Committee's interim halon banking guidelines. In the light of that decision the Committee had requested UNEP to revise and resubmit the halon phase-out project proposal it had submitted to the meeting on behalf of Kyrgyzstan. Responding to a question from a member of the Committee, the representative of the Multilateral Fund Secretariat confirmed that a number of issues in the project proposal needed to be clarified, including how the implementation of the plan of action would be monitored and whether it was a multi-year proposal, and the sum requested, which fell above the limits agreed by the Executive Committee for this type of project.

139. The representative of the World Bank raised the question of what halon Kyrgyzstan was importing. If it was halon-2402, which was used in military equipment in the region, then it might be recycled, since the Russian Federation no longer manufactured the substance. Under the provisions of decision IV/24, the import and export of recycled and used controlled substances was not to be counted against consumption.

140. At the invitation of the Committee, a representative of Kyrgyzstan attended and responded to questions. He confirmed that about 2 tonnes of halon-2402 had been imported in 2004 for use by the military, which needed the substance to refill fire-fighting appliances in equipment inherited from the Soviet Union. It had proved difficult to monitor and control halon consumption in the armed forces, or even to acquire information about it, and it had taken eight months to obtain the import data. It was still not clear where the substance had been imported from or how much old halon-2402 remained in use or in storage by the armed forces. Nevertheless, the Ministry of Environment was working with the Ministry of Defence at under-ministerial level, and a plan for the gradual reduction of halon use was under way. A ban on further imports of halon had been introduced, and if the Executive Committee of the Multilateral Fund approved the halon project proposal from UNEP, further actions, such as training of personnel and the introduction of alternatives, could be implemented. He confirmed that the draft decision under consideration by the Committee was acceptable to Kyrgyzstan.

141. The Committee therefore *agreed*:

- (a) To note with appreciation Kyrgyzstan's submission, in accordance with recommendation 34/22, of a plan of action for returning to compliance with the Protocol's halon control measures;
- (b) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision set out in section N of annex I to the present document, which contains Kyrgyzstan's plan of action.

**AA. Lesotho**

142. Lesotho had been listed for consideration because of recommendation 34/23, which had noted with appreciation its submission of outstanding data for 2003 and its data for 2004, which showed that it was in advance of its halon phase-out commitments contained in decision XVI/25. The recommendation had also noted that Lesotho had established an import permit system for halons and CFCs, and had urged Lesotho to report to the Secretariat on the status of its commitment in decision XVI/25 to ban the import of halon-based equipment and systems and to indicate whether its halon permit arrangements incorporated a quota system.

143. Although Lesotho had not responded to recommendation 34/23, GTZ had informed the Secretariat that the halon import permit and quota systems were likely to be officially approved in the near future. In the interim, the national ozone unit of Lesotho had reached an agreement with Lesotho's sole halon user to cease the import of halons.

144. The Committee therefore *agreed*:

- (a) To note with concern that Lesotho had not reported, in accordance with recommendation 34/23, on the status of its commitment contained in decision XVI/25 to ban the import of halon-based equipment and systems and whether its halon permit arrangements incorporated a quota system in accordance with its commitment contained in that decision;
- (b) To note, however, the information provided by GTZ that official approval of the quota system was expected in the near future and that, as an interim measure, Lesotho's sole halon user had agreed to cease the import of halons;
- (c) To urge Lesotho to submit to the Secretariat, as a matter of priority, the information referred to in subparagraph (a) above, in time for consideration by the Committee at its thirty-sixth meeting.

**BB. Libyan Arab Jamahiriya**

145. The Libyan Arab Jamahiriya had been listed for consideration because of recommendation 34/25, which had noted with appreciation its report on the status of its commitment to establish an ODS import and export licensing and quota system, and also its information regarding the implementation of decision XVI/26, which had requested the Libyan Arab Jamahiriya to prepare a plan of action with time-specific benchmarks for ensuring its prompt return to compliance with the Protocol's control measures for halons. The recommendation had also urged the Libyan Arab Jamahiriya to prepare the requested plan of action and to submit an update on the status of its commitment, contained in its CFC plan of action, to establish an ODS import and export licensing and quota system.

146. The Libyan Arab Jamahiriya had reported CFC consumption in advance of its commitment contained in decision XV/36. It had also reported halon consumption in 2004 maintaining its status of non-compliance and methyl bromide consumption in 2004 which represented a deviation from its obligation to freeze consumption.

147. The Libyan Arab Jamahiriya had also reported that the legislation required to introduce the import and export licensing and quota system was expected to be enacted, at the latest, by the end of January 2006, and in the meantime the Party was implementing an interim import permit arrangement. The Libyan Arab Jamahiriya had also explained that its excess methyl bromide consumption in 2004 was due to the fact that it had not ratified the Copenhagen Amendment until September 2004, and so technically it had not been obliged to impose any controls on methyl bromide consumption. The Party had submitted plans of action with time-specific benchmarks to return it to compliance with the Protocol's methyl bromide and halon control measures in 2007, and to achieve total phase-out of methyl bromide consumption by 2010 and halon consumption by 2008, in advance of the Protocol's requirement.

148. The Committee therefore *agreed*:
- (a) To note with appreciation that the Libyan Arab Jamahiriya continued to be in advance of its commitments to phase out CFCs contained in decision XV/36 and prescribed under the Protocol.
  - (b) To note also the Party's update on the status of its commitment, contained in decision XV/36, to establish an ozone-depleting substance import quota system, including its expectation that the system would be enacted no later than 31 January 2006;
  - (c) To note further, with appreciation, the Party's submission of an explanation for its methyl bromide consumption deviation in 2004 and plans of action for returning to compliance with the Protocol's halon and methyl bromide control measures;
  - (d) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision in section O of annex I to the present document, which incorporates the Party's plans of action.

#### Recommendation 35/24

### CC. Mexico

149. The representative of the Secretariat drew attention to Mexico's request to revise its baseline data for carbon tetrachloride. She noted that the methodology contained in the submission was in conformity with paragraph 2 (a) (i) of decision XV/19, which requested Parties to identify which of the baseline year data were incorrect and to provide replacement figures. Following consultation with Mexico, the Secretariat had confirmed that the Party sought to replace its existing carbon tetrachloride consumption data of zero ODP-tonnes for the year 1998 with 202.752 ODP-tonnes. Mexico did not wish to change the data for the other baseline years of 1999 and 2000, for which it had reported zero consumption of carbon tetrachloride.

150. Paragraph 2 (a) (ii) of decision XV/19 requested Parties to explain why existing baseline data were incorrect, including information on the methodology used to collect and verify those data, along with supporting documentation. As could be seen in its submission, Mexico had explained that the existing baseline data for 1998 were incorrect because an importer, Cloro de Tehuantepec, had mistakenly reported its carbon tetrachloride imports in that year as exempted feedstock uses, when in fact the imports were for the process-agent application of recovering chloride in tail gas from chlorine production. The error had been detected by the Government in the course of its review of the company's application to import carbon tetrachloride in 2005.

151. Mexico had also noted that the Technology and Economic Assessment Panel would need to be consulted to confirm the Government's conclusion that the carbon tetrachloride use was a process agent application. TEAP had subsequently confirmed that that was the case. The Party had undertaken to provide a written description of the methodology used to collect and verify the existing 1998 baseline data, as required by paragraph 2 (a) (ii) of decision XV/19, as well as supporting documentation.

152. In paragraph 2 (a) (iii) of decision XV/19, Parties were requested to explain why any requested changes should be considered correct, including information on the methodology used to collect and verify the accuracy of the proposed changes. Paragraph 2 (a) (iv) of decision XV/19 required the submission of documentation substantiating the collection and verification procedures and their findings.

153. Mexico had suggested that the proposed new 1998 carbon tetrachloride figure of 184.32 metric tonnes should be considered to be correct because, based on the Government's review of the annual reports of enterprises in its chemical industry, Cloro de Tehuantepec was the only company in Mexico that was using carbon tetrachloride for uses other than feedstock in 1998. In that year, the company had been issued a licence to import up to 300 metric tonnes of carbon tetrachloride. However, as stated in the letter from the company to the Government only 184.32 metric tonnes of that allowance had been used in 1998. Mexico had also pointed out that imports represented the Party's sole source of carbon tetrachloride, as it did not produce the chemical.

154. Mexico had undertaken to provide in writing the explanation required under paragraph 2 (a) (iii) of decision XV/19, as well as the necessary documentation, although it noted that it might be difficult to locate the documentation owing to the passage of time. The Secretariat was awaiting the advice of

TEAP as to whether the quantities of carbon tetrachloride cited in the technical report as being used for process agent applications were consistent with the quantities customarily required by a company of that size.

155. Mexico had last reported controlled carbon tetrachloride consumption in 2002 and, prior to that year, had not reported controlled carbon tetrachloride consumption since 1993. Approval of Mexico's requested revision would change the Party's carbon tetrachloride consumption baseline from zero ODP-tonnes to 67.4667 ODP-tonnes.

156. The Committee therefore *agreed*:

- (a) To note Mexico's request to revise its carbon tetrachloride baseline data;
- (b) To note with appreciation the information Mexico had provided to date in support of that request in accordance with decision XV/19, which set out the requirements for the assessment of such requests, but to note as well that the Party had not provided certain information required by decision XV/19 and to request it to provide such information in time for the Committee's consideration at its next meeting;
- (c) To further request Mexico to include in its submission to the next meeting of the Committee the reason for the absence of carbon tetrachloride imports in the years 1999 and 2000 for the process agent application of the recovery of chloride from tail gas in chlorine production.

**Recommendation 35/25**

## **DD. Mozambique**

157. Mozambique had been listed for consideration because of recommendation 34/27, which had urged it to provide to the Secretariat the information requested in recommendation 33/20, noting that the information was sought in order to improve the Committee's understanding of action taken by parties to return to compliance with the Protocol's methyl bromide control measures in a timely manner. Recommendation 33/20 had reiterated an earlier request of the Committee that Mozambique provide the information needed to clarify its 2002 excess consumption of methyl bromide and had also requested that the Party explain the measures that it had taken in order to limit that consumption.

158. Mozambique had responded to recommendation 34/27, reporting that its excess consumption of methyl bromide in 2002 had resulted from a lack of well-organized Government infrastructure to prevent the illegal trade in methyl bromide and other commodities, encouraged by Mozambique's position as a transit point for neighbouring land-locked countries. Mozambique had tackled its non-compliance, however, by introducing a new, effectively enforced, pesticides regulation, which had entered into force in March 2003. Mozambique's latest reported data, for the year 2003, indicated that it was well in advance of the Protocol's methyl bromide control measures in that year, but it had not yet reported data for 2004.

159. The Committee therefore *agreed*:

- (a) To note with appreciation Mozambique's explanation of the action taken to return it rapidly to compliance with the Protocol's methyl bromide control measures, and its 2003 data, indicating that it was well in advance of the Protocol's methyl bromide control measures in that year;
- (b) To include Mozambique in the draft decision contained in section G of annex I to the present document, as a Party that had not yet submitted its ozone-depleting substance data for 2004 in accordance with Article 7 of the Montreal Protocol, in the event that the Party did not report the outstanding data prior to the adoption of the draft decision by the Seventeenth Meeting of the Parties.

**Recommendation 35/26**

**EE. Nauru**

160. Nauru had been listed for consideration because of recommendation 34/29, which had noted with appreciation Nauru's submission of its outstanding data in accordance with decision XVI/17 and had reminded it to submit its outstanding base-year data. Nauru had subsequently reported its outstanding base year data, but had not yet reported data for 2004.

161. The Committee therefore *agreed*:

- (a) To note with appreciation Nauru's submission of its outstanding base year data in accordance with recommendation 34/29;
- (b) To include Nauru in the draft decision contained in section G of annex I to the present document, as a Party that had not yet submitted its ozone-depleting substance data for 2004 in accordance with Article 7 of the Montreal Protocol, in the event that the Party did not report the outstanding data prior to the adoption of the draft decision by the Seventeenth Meeting of the Parties.

**Recommendation 35/27**

**FF. Netherlands**

162. The Netherlands had been listed for consideration because of its reported deviation from the Protocol's control measures for the production of Annex B, group I, controlled substances (other CFCs) in 2004. The Netherlands had reported production of 2 ODP-tonnes of Annex B, group I, controlled substances in 2004, representing a deviation from the Party's obligation to maintain total phase-out of the substances. In response to the Secretariat's request for an explanation of the deviation, the Party had reported that the CFCs in question had been produced as a byproduct of CFC-11 and CFC-12 manufacture.

163. In accordance with national regulations, the CFC-11 and CFC-12 producer had captured the emissions of the Annex B, group I, controlled substances and had exported them to Germany for destruction. Owing to the small amount captured in 2004, however, it had been stockpiled in 2004 for export for destruction in 2005, to minimize transport and destruction costs. In previous years, stockpiling of the byproduct had also been necessary because of the limited capacity of the destruction facility.

164. The Netherlands had reminded the Secretariat that, in correspondence dated 15 October 2001 it had committed itself to close its CFC-11 and CFC-12 production facility before 31 December 2005. Consequently, production of Annex B, group I, controlled substances would cease in 2005, with all byproduct exported for destruction in that year.

165. The Committee considered that the Party's situation involved an instance of stockpiling of ODS relative to non-compliance with the Protocol, which the Committee took up under agenda item 8. The Committee's general discussion of that subject is set out in the section of the present report pertaining to that item.

166. The Committee therefore *agreed*:

- (a) To note with appreciation the explanation submitted by the Netherlands for its deviation in 2004 from the Protocol's requirement that it maintain zero production of the controlled substances in Annex B, group I (other CFCs), which stated that the excess ODS production was a by-product of CFC-11 and CFC-12 manufacture, captured in accordance with national regulations, and that the excess production had been stockpiled in 2004 for export for destruction in 2005, rather than 2004, in order to minimize transport and destruction costs;
- (b) To recall that the Netherlands had committed to cease, before 31 December 2005, the production process responsible for the production of the controlled substances in Annex B, group I (other CFCs);

- (c) In the light of recommendation 35/46, to defer assessment of the Netherlands' compliance in 2004 with the Protocol's consumption control measures for the controlled substances in Annex B, group I (other CFCs), until it could consider the Party's situation in the light of any decision the Seventeenth Meeting of the Parties might adopt with regard to recommendation 35/46.

**Recommendation 35/28****GG. Nigeria**

167. Nigeria had been listed for consideration because of recommendation 34/31, which had urged it to submit its data for 2004 so that the Committee could assess the Party's implementation of its commitments contained in decision XIV/30. That decision had noted with appreciation the plan of action submitted by Nigeria, in which it committed itself to reducing its CFC consumption from 3,666 ODP-tonnes in 2001 to 3,200 ODP-tonnes in 2004. Nigeria had subsequently submitted its 2004 data, reporting CFC consumption of 2,116.09 ODP-tonnes.

168. The Committee therefore agreed to note with appreciation that Nigeria continues to be in advance of its commitments to phase out CFCs, as contained in decision XIV/30 and prescribed under the Protocol.

**Recommendation 35/29****HH. Pakistan**

169. Pakistan had been listed for consideration because of recommendation 34/32, which has urged it to submit its data for 2004 so that the Committee could assess the Party's implementation of its commitments contained in decision XVI/29. That decision had noted with appreciation the plan of action submitted by Pakistan to ensure its prompt return to compliance with the Protocol's halon control measures. The plan included Pakistan's commitment to reduce halon consumption from 15.0 ODP-tonnes in 2003 to 14.2 ODP-tonnes in 2004. Pakistan had subsequently submitted its 2004 data, reporting halon consumption of 7.2 ODP-tonnes.

170. The Committee therefore agreed to note with appreciation that Pakistan was in advance of its commitments to phase out halon, as contained in decision XVI/29, and had returned to compliance with the Protocol's halon control measures.

**Recommendation 35/30****II. Russian Federation**

171. The Russian Federation had been listed for consideration because of recommendation 34/35, which recalled decision XIV/35, which had noted with appreciation that the Russian Federation had reported data for 2001 which confirmed its complete phase-out of production and consumption of Annex A and Annex B ODS. The recommendation had also noted the Russian Federation's submission of its 2003 data, in accordance with decision XVI/17, and had noted with concern that the Party had reported consumption and production of carbon tetrachloride for 2003 which indicated deviations from its obligations under the Protocol to maintain complete phase-out. The recommendation had therefore requested the Russian Federation to submit an explanation for those deviations, its 2004 data and, if relevant, a plan of action with time-specific benchmarks for ensuring its prompt return to compliance. The recommendation had agreed, in the absence of an official explanation of the Party's excess consumption, to request the Seventeenth Meeting of the Parties to approve the draft decision contained in the report of the thirty-fourth meeting of the Committee.

172. The representative of the Russian Federation had explained to the Committee at its thirty-fourth meeting that the excess consumption and production in 2003 of 40.37 ODP-tonnes of carbon tetrachloride represented its production as a byproduct in 2003 and its stockpiling in that year for use in the following year, 2004, as feedstock. As this was a continuous process, the Russian Federation expected that it would always have a quantity of carbon tetrachloride remaining at the end of each year which could not be put to its intended feedstock use until the following year. That explanation had been officially endorsed by the Minister for Natural Resources of the Russian Federation in a meeting with the Secretariat on 18 October 2005.

173. The Russian Federation had also submitted its 2004 data report, which recorded carbon tetrachloride production wholly for feedstock purposes, and showed no exports or imports of the substance. It appeared, therefore, that the process which produced carbon tetrachloride had not followed its typical cycle in 2004. Nevertheless, as the Russian Federation's calculated controlled carbon tetrachloride consumption and production levels in 2004 were zero, the Party was in compliance with the Protocol's control measures for that year.

174. This information was confirmed by the member of the Committee from the Russian Federation, who had also submitted the information in writing, and stated that he would be happy to provide any further information that was required.

175. The Committee considered that the Party's situation involved an instance of stockpiling of ODS relative to non-compliance with the Protocol, which the Committee took up under agenda item 8. The Committee's general discussion of that subject is set out in the section of the present report pertaining to that item.

176. The Committee therefore *agreed*:

- (a) To note with appreciation that the Russian Federation had provided an official explanation, in accordance with recommendation 34/35, for its deviation from the Protocol's requirement that it maintain zero production and consumption of the controlled substance in Annex B group II (carbon tetrachloride) in 2003, which stated that the excess ODS consumption and production constituted by-production from a continuous manufacturing process that could not be put to its customary feedstock purpose before the end of 2003 and had therefore been stockpiled for feedstock use in 2004;
- (b) To further note with appreciation that the Russian Federation's 2004 data report indicated that the Party was in compliance with the Protocol's consumption and production control measures for carbon tetrachloride and other controlled ozone-depleting substances in that year;
- (c) In the light of recommendation 35/46, to defer assessment of the Russian Federation's compliance in 2003 with the Protocol's consumption control measures for the controlled substance in Annex B group II (carbon tetrachloride), until it can consider the Party's situation in the light of any decision the Seventeenth Meeting of the Parties might adopt with regard to recommendation 35/46.

#### **Recommendation 35/31**

### **JJ. Saint Vincent and the Grenadines**

177. Saint Vincent and the Grenadines had been listed for consideration because of recommendation 34/36, which had recorded the agreement of the Committee, among other things, to encourage Saint Vincent and the Grenadines to continue its efforts to implement its commitment in its CFC phase-out plan of action, contained in decision XVI/30, to introduce a quota system for ODS by the last quarter of 2004 and to report on its status for consideration by the Committee at its thirty-fifth meeting.

178. Saint Vincent and the Grenadines had responded to the Committee's recommendation, confirming that it had introduced and commenced implementation of the quota system.

179. The Committee therefore agreed to note with appreciation that Saint Vincent and the Grenadines had confirmed the introduction and implementation of a quota system in accordance with recommendation 34/36 and decision XVI/30.

#### **Recommendation 35/32**

### **KK. Serbia and Montenegro**

180. Serbia and Montenegro had been listed for consideration because of its possible non-compliance with its data-reporting obligations. Recommendation 34/47 had requested the Secretariat to remind Parties in non-compliance with their data-reporting obligations under the Protocol to submit their outstanding data for consideration by the Committee at its thirty-fifth meeting.

181. Serbia and Montenegro had become a Party to all the amendments of the Montreal Protocol on 22 March 2005. Prior to the thirty-fourth meeting of the Committee, Serbia and Montenegro had not reported baseline data for Annex B, groups I, II and III, or Annex E controlled substances, thereby placing the Party in non-compliance with its data-reporting obligations. In accordance with recommendation 34/47, the Secretariat had reminded Serbia and Montenegro of its data-reporting obligations.

182. The Party had not yet responded to the recommendation. With regard to Parties such as Serbia and Montenegro that had not reported baseline data, thereby preventing assessment of their compliance status, it was customary for the Committee to recommend that the Meeting of the Parties adopt a decision noting that the Party had not reported the data, stressing that those data were necessary for determining the Party's compliance status, acknowledging that the Party had only recently ratified the amendments for which the data were required and urging the Party to submit its outstanding data as a matter of urgency to the Secretariat, for review by the Committee at its following meeting.

183. The Committee therefore *agreed*:

- (a) To note that Serbia and Montenegro had not reported its outstanding baseline data for the controlled substances in Annex B and Annex E in accordance with recommendation 34/47;
- (b) To include the Party in the draft decision contained in section P of annex I to the present document, and forward the draft decision to the Seventeenth Meeting of the Parties for its consideration.

#### **Recommendation 35/33**

### **LL. Sierra Leone**

184. Sierra Leone had been listed for consideration because of recommendation 34/37, which had requested it to submit an explanation for the deviation in its consumption of halons reported for 2004 and, if relevant, a plan of action with time-specific benchmarks to ensure the Party's prompt return to compliance. The recommendation had also agreed, in the absence of an official explanation of the Party's excess consumption, to request the Seventeenth Meeting of the Parties to approve the draft decision contained in section Q of annex I to the present report.

185. Sierra Leone had responded to the recommendation, explaining that the increase in the consumption of halons was caused by a shortage of electricity in Freetown, the capital city, which had led to the installation of electricity generators in most residences and institutions. The accompanying storage of fuel to power the generators had in turn resulted in an increase in accidental fires within the city, and a greater demand for halons for fire-fighting. The Party reported that it had requested UNDP to work with the Government to develop a plan of action to reverse the increase in halon consumption and eventually return it to compliance, and had outlined a series of activities it was undertaking to reduce halon consumption.

186. The Committee therefore *agreed*:

- (a) To note with appreciation Sierra Leone's submission of an explanation for excess consumption of halons in 2004, and the efforts made to develop regulations including a licensing and quota system that would ensure progress in halon phase-out;
- (b) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision contained in section Q of annex I to the present document.

#### **Recommendation 35/34**

### **MM. Singapore**

187. Singapore had been listed for discussion because of its apparent deviation from the Protocol's control measures for the consumption of methyl bromide. Singapore had reported methyl bromide consumption in 2004 of 42.620 metric tonnes (25.572 ODP-tonnes), representing an apparent deviation from the Protocol's requirement to freeze consumption of methyl bromide at its baseline level of 4.965 ODP-tonnes. In response to the Secretariat's request for an explanation, Singapore had conveyed its view that there was in fact no deviation. It explained that it had recorded the use of only 1.388 metric tonnes of the methyl bromide for non-quarantine and pre-shipment applications in 2004, and so only

that amount should be counted as consumption in that year. It pointed out that the remaining quantity of methyl bromide imported in 2004 had been stored pending a decision in 2005 on whether it would be used for quarantine and pre-shipment, or non-quarantine and pre-shipment applications.

188. The Secretariat had explained in subsequent correspondence to Singapore that it had calculated a consumption level for 2004 of 42.620 metric tonnes (25.572 ODP-tonnes) on the basis of the Party's reported imports of 109.5850 metric tonnes minus reported exports of 21.250 metric tonnes and minus reported quarantine and pre-shipment use of 45.7150 metric tonnes, basing this formula on Article 1 and Article 2H of the Montreal Protocol.

189. Article 2H of the Protocol sets out the calculated levels of methyl bromide consumption which a Party must not exceed in a prescribed period. Article 2H states that the prescribed periods are 12 months in duration, commencing on 1 January. Paragraph 6 of Article 2H further states that the calculated levels of methyl bromide consumption should not include amounts used by the Party for quarantine and pre-shipment applications. Article 1, paragraph 6, of the Protocol, defines consumption as "production plus imports minus exports of controlled substances".

190. The Secretariat had informed the Party that it understood those provisions to mean that methyl bromide imported in a given year should be included in the calculation of a Party's controlled consumption level for that year, while the amount used for quarantine and pre-shipment applications in that year should not. In addition, the Party's calculated level of methyl bromide consumption for that year should not exceed the level prescribed in Article 2H, which in 2004 was equal to the Party's baseline.

191. The Secretariat had also informed Singapore that the current meeting of the Committee would consider a paper prepared by the Secretariat at the request of the Committee at its last meeting on the issue of whether deviations from the Protocol's prescribed levels of calculated consumption and production were cases of possible non-compliance when the Party concerned explained that the excess consumption or production had been stockpiled for a specific use in a future year. In response, Singapore had submitted further information to assist the Committee's consideration of its situation, noting that "it is normal business practice in Singapore to have a balance of stock available at any one time to cater for urgent requests by the industry and ensure business continuity". In addition, Singapore had revised its previously reported exports of methyl bromide, reducing the Party's consumption of methyl bromide in 2004 from 25.572 ODP-tonnes to 16.902 ODP-tonnes, though this was still in excess of its obligation under the Protocol to freeze consumption in 2004 at 4.965 ODP-tonnes.

192. The Committee considered that the Party's situation involved an instance of stockpiling of ODS relative to non-compliance with the Protocol, which the Committee took up under agenda item 8. The Committee's general discussion of that subject is set out in the section of the present report pertaining to that item.

193. The Committee therefore *agreed*:

- (a) To note with appreciation that Singapore submitted an explanation for its consumption of methyl bromide in 2004 in excess of the Protocol's requirement that it freeze its consumption of the controlled substance in Annex E (methyl bromide) at its baseline level of 4.965 ODP-tonnes;
- (b) To recall that the Party explained that the excess consumption represented methyl bromide imported in 2004 which had been stockpiled, possibly for quarantine and pre-shipment uses, in a future year;
- (c) To recall, however, recommendation 35/46 and therefore to defer assessment of Singapore's compliance in 2004 with the Protocol's consumption control measures for the controlled substance in Annex E (methyl bromide) until it could consider the Party's situation in the light of any decision the Seventeenth Meeting of the Parties might adopt with regard to recommendation 35/46.

#### **Recommendation 35/35**

## **NN. Somalia**

194. Somalia had been listed for consideration because of recommendation 34/39, which had noted with appreciation its explanation for its halon consumption deviations in 2002 and 2003, in accordance with decision XVI/19, including its advice that it expected to introduce a ban on the import of halon-

dependent equipment and an interim import quota system by December 2005. The recommendation had requested Somalia, following the introduction of its interim import quota system, to provide the Secretariat with details of the time-specific benchmarks contained in the system, noting that that information was required in order to identify the time-specific benchmarks for inclusion in the plan of action, in accordance with decision XVI/19. The recommendation had also noted the constraints under which Somalia was operating but urged that Party to make its best efforts to submit 2004 data to assist the Committee's consideration of Somalia's situation at the current meeting.

195. Somalia had since submitted its 2004 data, reporting halon consumption of 23.370 ODP-tonnes, a reduction in consumption compared to 2003. Somalia had also reported that a proposal to obtain the necessary Parliamentary motion to introduce a ban on the import of halon-dependent equipment and an interim quota system, and a system for licensing the import and export of ODS, had been submitted. The proposal had not yet been considered, however, due to internal political problems. Somalia had informed the Secretariat that its Parliament had not been able to meet since April 2005 and was not expected to do in the near future. On that basis, Somalia had requested postponement of any action by the Committee on the issue of the Party's establishment of regulatory measures and submission of a plan of action.

196. Nevertheless, Somalia had submitted a plan of action with time-specific benchmarks for reductions in halon consumption, calculated as a percentage of 2003 reported halon consumption, and had indicated that implementation of the plan was highly dependent on Multilateral Fund assistance. The Secretariat had sought clarification on a number of issues, including the measures Somalia would introduce to ensure it met its proposed benchmarks. The Secretariat had also observed that the Executive Committee had not yet considered a request for halon phase-out assistance from Somalia, but had adopted a decision at its most recent meeting that requested bilateral and implementing agencies to include halon phase-out activities for Somalia in their 2006–2008 business plans when conditions for sustainable activities existed in the country. To date, no response had been received.

197. The Committee therefore *agreed*:

- (a) To note with appreciation that, in accordance with paragraph 4 of decision XVI/19, Somalia had reported halon consumption for 2004 that was less than its reported consumption level of 2003, indicating that the Party was moving toward compliance with the Protocol's halon consumption control measures;
- (b) Further to note with appreciation that, despite the constraints under which the Party was operating, it had also submitted a plan of action with time-specific benchmarks for returning it to compliance, also in accordance with that decision;
- (c) To note with regret, however, that Somalia had not responded to the request for clarification on the plan of action, including the regulatory and other measures that the Party would undertake to support its proposed halon consumption reduction benchmarks;
- (d) Strongly to encourage Somalia to submit to the Secretariat, as a matter of priority, the information referred to in subparagraph (c) above, in time for consideration at the thirty-sixth meeting of the Committee.

#### **Recommendation 35/36**

## **OO. Switzerland**

198. Switzerland had been listed for consideration because of recommendation 34/40, which had recorded the agreement of the Committee to defer, until its thirty-fifth meeting, consideration of Switzerland's compliance with the Protocol's control measures for carbon tetrachloride and methyl chloroform in 2004, in the light of the limited time that Switzerland had had to review the data reports generated by the Secretariat from its 2004 data submission.

199. Switzerland had responded to the recommendation, reporting that consumption of carbon tetrachloride and methyl chloroform in 2004 fell under the global exemption for laboratory and analytical uses.

200. The Committee therefore agreed to note with appreciation Switzerland's clarification of its consumption of carbon tetrachloride and methyl chloroform in 2004, which confirmed that the Party was in compliance with the Protocol's control measures for that year.

**Recommendation 35/37**

**PP. Tajikistan**

201. Tajikistan had been listed for consideration because of recommendation 34/41, which had urged it to submit its 2004 data so that the Committee could assess the Party's implementation of its commitments contained in decision XIII/20. That decision had noted that Tajikistan had reported data for 1999 that placed it in non-compliance with the Protocol's control measures and its commitment to return to compliance by, among other things, totally phasing out its CFC consumption by 1 January 2004, save for essential uses authorized by the Parties.

202. Tajikistan had subsequently submitted its 2004 data, reporting zero CFC consumption, which is consistent with its commitment contained in decision XIII/20.

203. The Committee therefore agreed to note with appreciation Tajikistan's data report for 2004, which indicated its compliance with its commitment contained in decision XIII/20 to phase out the consumption of CFCs by 1 January 2004, and also its return to compliance with the CFC control measures of the Montreal Protocol.

**Recommendation 35/38**

**QQ. Turkey**

204. Turkey had been listed for consideration because of recommendation 34/42, which had noted with appreciation its submission regarding its consumption of 16.44 ODP-tonnes of bromochloromethane in 2004, but had also noted that the information did not reconcile the deviation with the Party's obligations for total phase-out of the substance. The recommendation had invited Turkey to submit further information to explain the deviation, noting TEAP's review of the use of bromochloromethane in the production of sultamicilin, which had concluded that the application was a feedstock use rather than a process-agent use. The recommendations had also invited Turkey, if necessary, to send a representative to the thirty-fifth meeting of the Committee to discuss the matter.

205. Prior to the last meeting of the Committee, Turkey had informed the Secretariat that 14.04 ODP-tonnes of bromochloromethane had been used in 2004 as a process agent in the production of sultamicilin, with the remaining amount to be used for the same purpose in 2005. At its twenty-fifth meeting, the Open-ended Working Group to the Montreal Protocol had agreed with the Panel's proposal that Turkey's use of bromochloromethane for sultamicilin should be considered a feedstock use.

206. Turkey had responded to recommendation 34/42, reporting that it disagreed with TEAP's assessment. The Party reiterated its view that bromochloromethane was used in the production of sultamicilin almost entirely as a process agent, and was emitted directly to the environment. In its opinion, only 9.2 per cent of the substance that was used in the production process was used as a feedstock. The Party's response was accompanied by additional supporting technical information, which had been forwarded to TEAP for further consideration.

207. The Committee therefore *agreed*:

- (a) To note with appreciation the additional information submitted by Turkey with regard to its consumption of bromochloromethane in 2004 and to note that that information had been forwarded to the Technology and Economic Assessment Panel for its consideration;
- (b) To defer assessment of Turkey's compliance with the Protocol's consumption control measures for bromochloromethane until the Committee could consider the Party's situation in the light of the conclusions by the Seventeenth Meeting of the Parties on the assessment by the Technology and Economic Assessment Panel of the additional information submitted by Turkey.

**Recommendation 35/39**

## RR. Turkmenistan

208. Turkmenistan had been listed for consideration because of recommendation 34/43, which had noted with appreciation its submission of its outstanding data for 2003, in accordance with decision XVI/17. The recommendation had also recorded the agreement of the Committee to defer its consideration of the Party's compliance in 2003 with its commitment contained in decision XI/25 to achieve total phase-out of Annex A and Annex B substances by 2003, in the light of the limited time which Turkmenistan had had to respond to the Secretariat's request for information on the Party's apparent deviation in 2003 from that commitment. The recommendation had also urged Turkmenistan to submit an explanation for the apparent deviation, and its 2004 data, in order that the Committee could assess the Party's compliance status, and had reminded the Party that its classification as a Party not operating under Article 5 for 2003 and 2004 required the Committee to review the Party's compliance status in those years by reference to its commitments contained in decision XI/25. The recommendation had also recalled, however, in accordance with decision XVI/39, that the Committee would review Turkmenistan's compliance status in 2005 by reference to the Protocol's control measures applicable to Parties operating under Article 5, which required Turkmenistan to reduce its CFC consumption in 2005 to 18.666 ODP-tonnes in order to achieve compliance in that year.

209. Turkmenistan had subsequently submitted data for 2004, reporting CFC consumption of 58.412 ODP-tonnes, an increase on its reported CFC consumption for 2003 of 43.390 ODP-tonnes. Turkmenistan had explained that its excess consumption of CFCs in 2003 and 2004 was due to the fact that it did not have regulatory authority to limit the import of ODS in those years. This issue had, however, been addressed in April 2005, with the introduction of an import quota system. On the basis of CFC consumption data currently available for 2005, the Party did not expect to exceed the level fixed for 2005 for Article 5 Parties.

210. In the light of previous correspondence with Turkmenistan suggesting that the Party required further assistance in understanding the CFC phase-out schedule prescribed by the Protocol for Parties operating under Article 5, the Secretariat had sought Turkmenistan's confirmation that it had set its CFC import quotas for 2005 at 18.666 ODP-tonnes, consistent with the requirement that its CFC consumption in 2005 not exceed 50 per cent of its baseline level. No response to those queries had been received to date.

211. The Committee therefore *agreed*:

- (a) To note with appreciation Turkmenistan's submission of data for 2004, its explanation for the Party's deviation in that year and 2003 from its commitment contained in decision XI/25 to achieve total phase-out of the controlled substances in Annex A, group I (CFCs), by 2003;
- (b) To note with appreciation also that Turkmenistan had introduced an import quota system and set the CFC import quota for 2005 at a level intended to return the Party to compliance in that year, recalling that that would require the quota to be set at a level not greater than 18.666 ODP-tonnes;
- (c) To note that, in accordance with decision XVI/39, which reclassified Turkmenistan as a Party operating under Article 5 of the Protocol, the Committee would review Turkmenistan's compliance status for 2005 by reference to the Protocol's control measures applicable to Parties operating under Article 5, rather than by reference to the commitments contained in decision XI/25, which were intended to return Turkmenistan to compliance with the control measures applicable to Parties not operating under Article 5;
- (d) To take no further action with regard to monitoring Turkmenistan's compliance with decision XI/25.

**Recommendation 35/40**

## SS. Tuvalu

212. Tuvalu had been listed for consideration because of recommendation 34/44, which had noted with regret that it had not reported its 2003 data as requested by the Sixteenth Meeting of the Parties and had urged it to submit that information and its 2004 data to the Secretariat. Tuvalu had subsequently

reported the outstanding data, which indicated that it was in compliance with the Protocol's control measures in 2003 and 2004.

213. The Committee therefore agreed to note with appreciation that Tuvalu had reported its ozone-depleting substance data for 2003 and 2004, in accordance with recommendation 34/44, and that the Party was in compliance with the Protocol's control measures in those years.

**Recommendation 35/41**

**TT. United Arab Emirates**

214. The United Arab Emirates had been listed for consideration because of its possible non-compliance with its data-reporting obligations. Recommendation 34/47 had requested the Secretariat to remind Parties in non-compliance with their data-reporting obligations under the Protocol to submit their outstanding data for consideration by the Committee at its thirty-fifth meeting.

215. The United Arab Emirates had become a Party to the Copenhagen Amendment to the Montreal Protocol on 16 February 2005. Prior to the last meeting of the Committee, the Party had not reported baseline data for methyl bromide, thereby placing it in non-compliance with its data-reporting obligations. In accordance with recommendation 34/47, the Secretariat had reminded the United Arab Emirates of its data-reporting obligations. Since the previous meeting of the Committee, the Party had also assumed the obligation of reporting 1991 base year data for methyl bromide.

216. The United Arab Emirates had subsequently reported all outstanding data, placing it in compliance with its data reporting obligations and the control measures of the Protocol

217. The Committee therefore agreed to note with appreciation the United Arab Emirates' submission of all outstanding data in accordance with its data reporting obligations under the Protocol and under recommendation 34/47.

**Recommendation 35/42**

**UU. United States of America**

218. The United States of America had been listed for consideration owing to a need to clarify some of the data it had provided to the Secretariat. For the year 2004, the United States had reported consumption of 1,340.366 ODP-tonnes of CFCs and production of 699.281 ODP-tonnes of CFCs, and production of 10.8284 ODP-tonnes of carbon tetrachloride and 10.6451 ODP-tonnes of methyl chloroform for approved essential uses. It had reported total consumption of 9.356 ODP-tonnes and production of 12.035 ODP-tonnes of carbon tetrachloride, total consumption and production of methyl chloroform of 11.080 ODP-tonnes and 124.798 ODP-tonnes respectively, and total consumption and production of methyl bromide of 6353.309 ODP-tonnes and 7718.182 ODP-tonnes, respectively.

219. As a Party not operating under Article 5, the United States was required, in 2004, to maintain total phase-out of the production and consumption of CFCs, carbon tetrachloride, and methyl chloroform, except for essential uses approved by the Parties or allowed in accordance with the basic domestic needs provisions of the Protocol, and to reduce its consumption and production of methyl bromide to no greater than 30 per cent of its methyl bromide baselines.

220. The United States had reported that, in 2004, it had produced and imported the following amounts of the controlled substances for essential uses: produced 584.233 ODP-tonnes and imported 926.67 ODP-tonnes of CFCs, produced 10.8284 ODP-tonnes of carbon tetrachloride and 10.6451 ODP-tonnes of methyl chloroform. It had not, however, specified the nature of all the uses.

221. The United States' Article 7 data report had indicated that it had produced 0.5331 ODP-tonnes of methyl chloroform and 1,986.2 ODP-tonnes of methyl bromide in 2004 for export in a future year to Parties operating under Article 5 of the Protocol, to meet their basic domestic needs.

222. With regard to the CFC data, the Secretariat had noted that the 2004 accounting framework for essential uses submitted by the Party had reported that 927 ODP-tonnes of CFCs had been imported and 187 ODP-tonnes produced in 2004 for essential uses exempted under decision XIV/4. It had also noted that the United States' data report indicated that a further 126.2 ODP-tonnes had been produced in 2004 to meet the basic domestic needs of Parties operating under Article 5.

223. With regard to the reported carbon tetrachloride and methyl chloroform imports and production, the Secretariat had noted that the Party had not been granted an essential use exemption for the consumption and production of those controlled substances in 2004, in accordance with the provisions of the Protocol, but that some or all of the consumption and production might constitute a use covered by the global essential use exemption for laboratory and analytical uses.

224. With regard to the apparent production of 0.5331 ODP-tonnes of methyl chloroform and 1,986.2 ODP-tonnes of methyl bromide in 2004 for export in a future year to Parties operating under Article 5 of the Protocol to meet their basic domestic needs, the Secretariat had noted that, at its current meeting, the Committee would consider a paper on the issue of ODS stockpiling relative to non-compliance with the Montreal Protocol.

225. In consequence, the Secretariat had invited the United States to submit any further comments that it might wish to provide with regard to its production and stockpiling of methyl chloroform and methyl bromide in 2004 for export in future years to meet the basic domestic needs of Article 5 Parties. In addition, the Secretariat had sought the United States' explanation for its production in 2004 of 5,226.9048 ODP-tonnes of methyl bromide for purposes other than meeting the basic domestic needs of Article 5 Parties, recalling that the Party's maximum allowable level of production in 2004 for purposes other than the basic domestic needs of Article 5 Parties was 5,072.400 ODP-tonnes.

226. Further consultation between the Party and the Secretariat had identified an error in the Secretariat's calculation of the Party's maximum allowable level of methyl bromide production for purposes other than meeting the basic domestic needs of Parties operating under Article 5. When transfers to the United States of annual calculated methyl bromide production were taken into account, the Party's maximum allowable level of production in 2004 for purposes other than meeting the basic domestic needs was 5,502.8958 ODP-tonnes. The United States had advised that it would provide a response to the other cases of apparent consumption and production deviations as soon as possible.

227. The Committee considered that the Party's situation involved an instance of stockpiling of ODS relative to non-compliance with the Protocol, which the Committee took up under agenda item 8. The Committee's general discussion of that subject is set out in the section of the present report pertaining to that item.

228. The Committee therefore *agreed*:

- (a) To note with appreciation the explanations submitted by the United States of America for the Party's apparent deviations from its obligation in 2004 to maintain total phase out of consumption and production of the controlled substances contained in Annex A, group I (CFCs), Annex B, group II (carbon tetrachloride) and Annex B, group III (methyl chloroform), except for essential uses agreed by the Parties and in accordance with the basic domestic needs provisions of the Protocol, and the Party's apparent deviation from its obligation in 2004 to reduce its consumption and production of the controlled substance in Annex E (methyl bromide) to no greater than a level equal to 30 per cent of its baseline for that substance, except in accordance with the basic domestic needs provisions of the Protocol;
- (b) To further note with appreciation that those explanations indicated that, with the exception of the production in 2004 of the controlled substances in Annex E (methyl bromide) and Annex B, group III (methyl chloroform) for basic domestic needs that were not exported within that year, the other components of the Party's 2004 production and consumption of the controlled substances in Annex E (methyl bromide), Annex B, group III (methyl chloroform) and Annex B group II (carbon tetrachloride) were allowed or otherwise exempted under the Protocol;
- (c) To note, however, that further clarification was required from the Party with regard to consumption and production of the controlled substances in Annex A group I (CFCs), and to request the Secretariat to seek the required information from the United States of America in time for the Committee's consideration at its next meeting;
- (d) To also note, with regard to the Party's consumption deviations in 2004 arising from its production of controlled substances in Annex E (methyl bromide) and Annex B, group III (methyl chloroform) in 2004 to meet the basic domestic needs of Parties operating under Article 5 of the Protocol, which was not exported in that year, that the stockpiling of those controlled substances was a consequence of the timing of commercial export arrangements and that the United States of America required the companies that

produced those controlled substances to maintain strict record keeping to demonstrate that the quantities of controlled substances produced for basic domestic needs were ultimately exported for that purpose, and that significant penalties were attached to the contravention of that requirement;

- (e) In the light of recommendation 35/46, to defer assessment of the United States of America's compliance in 2004 with the Protocol's consumption control measures for the controlled substances in Annex B group III (methyl chloroform) and Annex E (methyl bromide), until it could consider the Party's situation in the light of any decision the Seventeenth Meeting of the Parties might adopt with regard to recommendation 35/46.

**Recommendation 35/43**

## VV. Uruguay

229. Uruguay had been listed for consideration because of recommendation 34/46 which, among other things, had noted with concern that, while its reported methyl bromide consumption for 2004 was consistent with the Protocol's requirement to freeze consumption at the baseline level, it was inconsistent with its consumption reduction commitment, contained in decision XV/44 and represented an increase in consumption relative to 2003. The recommendation had noted with appreciation, however, Uruguay's prompt submission of an explanation for the deviation in its methyl bromide consumption and a description of the measures it was taking to redress the situation. The recommendation had requested Uruguay to submit its proposed revised plan of action to replace the plan contained in decision XV/44, for consideration by the Committee.

230. At its forty-sixth meeting, the Executive Committee of the Multilateral Fund had approved a revised implementation schedule for the methyl bromide phase-out agreement between the Government of Uruguay and the Executive Committee, on the understanding that it was subject to a possible decision by the Seventeenth Meeting of the Parties. Uruguay had then responded to recommendation 34/46, and submitted a revised plan of action to replace the plan contained in decision XV/44 that was consistent with the revised schedule conditionally approved by the Executive Committee.

231. At the invitation of the Committee, a representative of Uruguay attended and responded to questions. She confirmed that activities were already under way to reduce methyl bromide consumption, in line with the Party's obligations, and also that the draft decision under consideration by the Committee was acceptable to Uruguay.

232. The Committee therefore *agreed*:

- (a) To note with appreciation Uruguay's submission of a revised plan of action to phase out methyl bromide, in accordance with recommendation 34/46;
- (b) To forward to the Seventeenth Meeting of the Parties for its consideration the draft decision containing the revised plan of action set out in section R of annex I to the present document.

**Recommendation 35/44**

## WW. Data reporting

233. Recalling the data report contained in documents UNEP/OzL.Pro/ImpCom/35/2 and Add.1, the Committee agreed to include in the draft decision contained in section G of annex I to the present report those Parties that had not yet submitted their ODS data for 2004 in accordance with Article 7 of the Montreal Protocol prior to the adoption of the draft decision by the Seventeenth Meeting of the Parties.

**Recommendation 35/45**

## IX. ODS stockpiling relative to non-compliance with the Montreal Protocol

234. The representative of the Secretariat introduced the item, outlining the note it had prepared and explaining that over the years, there had been instances where Parties had reported consumption or

production in a given year that exceeded the levels prescribed by the Protocol for that year because of one of the following four situations: first, when ODS produced in a given year had been stockpiled for domestic destruction or export for destruction in a later year; second, when ODS produced in a given year had been stockpiled for domestic feedstock use or export for that use in a later year; third, when ODS produced in a given year had been stockpiled for export to meet the basic domestic needs of developing countries in a later year; and fourth, when ODS imported in a given year had been stockpiled for domestic feedstock use in a later year.

235. Based on an analysis of the provisions of the Protocol and the decisions of the Parties, the Secretariat had concluded that only the last situation, in which imported ODS was stockpiled in a given year for domestic feedstock use in a future year, was consistent with the requirements of the Protocol. In the light of that conclusion, the Secretariat sought guidance from the Committee on whether it should in future highlight in the data reports it prepared pursuant to Article 7 of the Protocol instances of stockpiling in the other three situations as cases of possible non-compliance with the Protocol to the extent they resulted in deviations from the Protocol's control measures.

236. In the ensuing debate, the Committee agreed that the question of stockpiling was a complex one requiring careful analysis. The Committee praised the note by the Secretariat, and agreed that it appeared to represent a sound analysis of the issue. One member cautioned, however, that given the difficulty of the question, it would be necessary to consider it thoroughly. Another member indicated that he had not had time to test the conclusions contained in the note. He felt that the legal analysis contained in the note might be correct, but that it raised logical and analytical inconsistencies, especially with regard to the treatment of the second and fourth situations of stockpiling described in paragraph 234 above.

237. One member pointed out that similar situations had been dealt with by the Committee in the past, for example in the case of the Maldives, which had imported ODS in an amount greater than it needed for a single year with the intent of using it over a longer period. Another such example was Nepal, which had seized a quantity of illegal ODS in excess of what it could consume in a single year. Both cases had been dealt with by the Committee as cases of potential non-compliance.

238. A number of members suggested that if stockpiling for future feedstock use or destruction were allowed, it might be necessary to establish an accounting framework to ensure that the stockpiled substances were put to their intended use. In that context, it was pointed out the Multilateral Fund Secretariat had guidelines for production agreements with Parties that included provisions for the verification of production and stockpiles, which the Committee might want to examine in its consideration of the issue. It was also suggested that TEAP could be asked to analyse the issue, provide further guidance and, if it considered that an accounting framework was called for, to prepare a draft.

239. The representative of the World Bank suggested that further consideration of the issue should take into account the fact that many countries found themselves with stocks of ODS on hand at the end of a given year as a result of co-production of substances that due to practical limitations could not be destroyed by the end of the year. A member of the Committee pointed out that there were other practical incentives for stockpiling, for example the need to take advantage of economies of scale, which might require production of ODS in amounts in excess of what was required for a single year.

240. The representative of the Multilateral Fund Secretariat suggested that it was important to assess the magnitude of the problem, including whether it was a problem that was getting better or worse on its own. A member of the Committee noted that while it was indeed important to understand the scale of the issue, the Committee was mandated by the Meeting of the Parties and the terms of the Protocol to deal with cases of non-compliance whether they were big or small. Accordingly, if it was determined that stockpiling represented non-compliance with the Protocol, it would be necessary for the Committee to address all such cases and, as in other cases of non-compliance, Parties in non-compliance due to stockpiling would need to present plans of action for returning to compliance. The Committee agreed that the Secretariat should undertake further analysis of the issue, including historical instances of small deviations from the Protocol's control measures, in particular in developing countries.

241. One member suggested that, pending further resolution of the issue, the approach suggested by the Secretariat should be followed, that is, to treat deviations from the Protocol's control measures arising from the first, second and third situations listed in paragraph 234 above as cases of potential non-compliance with the Protocol.

242. The Committee therefore *agreed*:
- (a) To recall that the Committee at its thirty-fourth meeting had requested the Secretariat to prepare a paper for its consideration on those instances in previous years where Parties which exceeded the prescribed level of consumption or production of a particular controlled substance in a given year had explained that their excess production or consumption represented:
    - (i) ODS production in that year which had been stockpiled<sup>1</sup> for domestic destruction or export for destruction in a future year;
    - (ii) ODS production in that year which had been stockpiled for domestic feedstock use or export for that use in a future year;
    - (iii) ODS production in that year which had been stockpiled for export to meet basic domestic needs of developing countries in a future year;
    - (iv) ODS imported in that year which had been stockpiled for domestic feedstock use in a future year.
  - (b) To note with appreciation the paper prepared by the Secretariat in accordance with that request, reproduced as annex II to the present report, containing a technical analysis of the provisions of the Protocol and decisions of the Parties relevant to determining whether the above four instances of stockpiling were consistent with the Protocol;
  - (c) To conclude at this stage, on the basis of that technical analysis, that the Secretariat should highlight to the Committee as cases of possible non-compliance those deviations from the Protocol's control measures in a particular year resulting from the situations detailed in paragraphs (a) (i) to (iii) above, with a view to enabling the Committee and the Parties to consider them on a case-by-case basis;
  - (d) To also conclude at this stage, on the basis of the technical analysis, that deviations from the Protocol's control measures in a particular year resulting from the situation detailed in paragraph (a) (iv) are consistent with the provisions of the Protocol;
  - (e) To fully recognize that the operation of the conclusions in subparagraphs (c) and (d) above, based on the technical analysis, might present practical difficulties for Parties in their efforts to ensure compliance with the Protocol, and that, therefore, the Meeting of the Parties might wish to give further consideration to the issue;
  - (f) To keep the issue under review, to the extent that it falls within the mandate of the Committee, in the light of any further relevant information that might be made available to the Committee, and to request a further analysis by the Secretariat of similar situations of consumption in developing countries, which would include a record of historical instances of small volume deviations from the Protocol's control measures and suggested options for streamlining the Parties' consideration of these matters.

**Recommendation 35/46**

## **X. Updated information pursuant to decision XV/3 (Obligations of the Parties to the Beijing Amendment under Article 4 of the Montreal Protocol with respect to hydrochlorofluorocarbons)**

243. The representative of the Secretariat drew attention to the information contained in document UNEP/OzL.Pro/ImpCom/35/6, covering the treatment of Parties not operating under Article 5 of the Protocol that had not ratified the Copenhagen and the Beijing amendments for the purpose of trade in HCFCs as "States not party to the protocol," as that term was used in decision XV/3 and in paragraph 9 of Article 4 of the Protocol. That document updated the information on the status of certain Parties with

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<sup>1</sup> The terms "stockpiled" and "stockpiling" are used in this recommendation to refer to ODS which is not put to its intended use in the year in which it is produced or imported. The explanations submitted by the Parties for their consumption or production deviations did not always specifically use those terms. However, the nature of their explanation indicates that stockpiling had occurred.

regard to ratification of amendments or submission of data. The Secretariat also presented further information which had been submitted by the Parties following the finalization of the document.

244. The representative of the Russian Federation announced that its Government was in the process of ratifying the Copenhagen, Beijing and Montreal amendments, and that it was expected that the instruments of ratification would be deposited with the Secretary-General of the United Nations before the end of the Meeting of the Parties the following week. The Committee welcomed the announcement from the Russian Federation.

245. The Committee therefore agreed to forward the following comments to the Seventeenth Meeting of the Parties:

1. Paragraph 1 (c) of decision XV/3 allowed that the term “State not party to the Protocol” would not apply to a Party not operating under Article 5 of the Protocol which had not ratified the Copenhagen and Beijing amendments to the Protocol for the purpose of trade in hydrochlorofluorocarbon (HCFCs) until the seventeenth Meeting of the Parties if a Party had submitted the information set forth in paragraph 1 (c) (i)–(iii) of that decision by 31 March 2004 in the first instance, and had then updated that information by 31 March 2005. Subparagraphs 1(c) (i)–(iii) provided, as follows, for each Party to have:

- “(i) Notified the Secretariat that it intends to ratify, accede or accept the Beijing Amendment as soon as possible;
- (ii) Certified that it is in full compliance with Articles 2, 2A to 2G and Article 4 of the Protocol, as amended by the Copenhagen Amendment;
- (iii) Submitted data on (i) and (ii) above to the Secretariat, to be updated on 31 March 2005.”

2. Pursuant to paragraph 3 of decision XV/3 at its thirty-second meeting held in July 2004, the Committee had forwarded its comments on those Parties which had submitted information in 2004 pursuant to paragraph 1(c) of decision XV/3, which were presented to the Sixteenth Meeting of the Parties in document UNEP/OzL.Pro.16/9.

3. Since the Sixteenth Meeting of the Parties, and at the time of the thirty-fifth meeting of the Implementation Committee, the situation related to decision XV/3 is as follows:

(a) The following two Parties have become Parties to, or have recently ratified, the relevant Amendments to the Montreal Protocol: Australia and Ireland;

(b) The following 11 Parties have not yet ratified the relevant amendments to the Montreal Protocol: Azerbaijan, Belarus, Belgium, Greece, Kazakhstan, Poland, Portugal, Russian Federation, Tajikistan, Ukraine and Uzbekistan;

(c) The following three Parties appear to fall outside the definition of “State not party to this Protocol” for the purposes of decision XV/3: Belgium, Greece (assuming that the clarification sought by the Implementation Committee in recommendation 35/15, resolves the Party’s apparent deviation from the Protocol’s production control measure), and Portugal. They have updated their submissions prior to 31 March 2005 in fulfillment of the requirements of paragraph 1(c)(i)–(iii) of decision XV/3;

(d) The following four Parties appear to fall within the definition of “State not Party to this Protocol” for the purposes of decision XV/3 for the reasons stated: Azerbaijan (non-compliance with the Montreal Protocol with respect to CFC phase-out, as contained in decision XVI/21), Belarus and Uzbekistan (did not submit any of the information required under subparagraphs 1(c)(i)-(iii) of decision XV/3), and Kazakhstan (non-compliance with CFC phase-out, as contained in decision XIII/19);

(e) The following four Parties appear to fall outside the definition of “State not party to this Protocol” for the purposes of decision XV/3 because they had submitted updated information in fulfillment of the requirements of paragraph 1(c) (i)–(ii) by 31 March 2005, although they did not submit updated data pursuant to paragraph 1 (c) (iii) until after 31 March 2005: Poland, Tajikistan, the Russian Federation and Ukraine.

4. The operation of decision XV/3 expires at the time of the Seventeenth Meeting of the Parties to the Montreal Protocol, and in that light, to recall Article 4, paragraph 8, of the Montreal Protocol, which provides that:

“Notwithstanding the provisions of the Article, imports and exports referred to in paragraphs 1 to 4 *ter* of this Article may be permitted from, or to, any State not party to this Protocol, if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2, Article 2A to 2I and this Article, and have submitted data to that effect as specified in Article 7.”

**Recommendation 35/47**

## **XI. Consideration of the report of the Secretariat on Parties which have established licensing systems (Article 4B, paragraph 4, of the Montreal Protocol)**

246. The representative of the Secretariat introduced the item, reviewing document UNEP/OzL.Pro/35/5 and noting that the item was discussed at each Meeting of the Parties in accordance with paragraph 4 of Article 4B of the Protocol, which required the Secretariat to provide Parties and the Committee with a list of the Parties that had reported to it on the status of their licensing systems for the import and export of ODS. Annex I of the document contained a list of the Parties to the Montreal Amendment to the Protocol that had established and were operating licensing systems, annex II contained a list of non-parties to the amendment that had established and were operating such systems, and annex III listed focal points for Parties' licensing systems, as called for in paragraph 2 of decision IX/8.

247. Subsequent to the preparation and distribution of the document, Bhutan had reported that it had established a licensing system; Cuba and Ireland, which had already established licensing systems, had become Parties to the Montreal Amendment; and Uzbekistan, which was not a Party to the amendment, had established a licensing system. In addition, a number of Parties had provided updated information on licensing system focal points, which had been posted on the Secretariat website. With the updated information, the representative of the Secretariat reported that 107 Parties to the Montreal Amendment had established licensing systems and 37 non-parties to the Amendment had established such systems. Following the Secretariat's introduction, the President reviewed in some detail the provisions of the draft decision on the item.

248. The Committee therefore agreed to forward to the Seventeenth Meeting of the Parties for its consideration the draft decision contained in section S of annex I to the present document.

**Recommendation 35/48**

## **XII. Other Matters**

### **A. Standardizing recommendations addressing compliance matters considered by the Implementation Committee**

249. The representative of Australia drew attention to the proposal contained in document UNEP/OzL.Pro/ImpCom/35/7, explaining that it was based on the experience of Australia as a member of the Implementation Committee over the preceding four years. During that time, the Party had observed that apparently identical issues had given rise to recommendations of slightly differing wording, which could lead to confusion or differing interpretations by persons not privy to the discussions. In consequence, it proposed that the Secretariat produce a list of standard recommendations that could be applied in a consistent and transparent manner.

250. The Committee therefore *agreed*:

- (a) To consider the development of standardized recommendations for addressing routine procedural matters of non-compliance;

- (b) To invite the members of the Committee to submit comments on the issue to the Secretariat by 15 February 2006;
- (c) To request the Secretariat to prepare a report on the issue, taking into account any comments submitted by members, including proposals for standardized recommendations, for the consideration of the Committee at its next meeting.

**Recommendation 35/49**

## **B. Implementation Committee primer**

251. The representative of the Secretariat recalled that at its thirty-fourth meeting the Committee had expressed support for a proposal from Australia that a document be prepared to explain and clarify the role and operational procedures of the Committee. Its purpose would be to help ensure consistent and transparent treatment of the issues before the Committee and also to provide information to assist new members, as the composition of the Committee changed every year. The President noted that any comments or suggestions on the draft outline could be incorporated into a first draft which would be reviewed at the Committee's thirty-sixth meeting.

252. The Committee welcomed the draft outline. It was suggested that it would benefit from a broad description of all the obligations falling within the mandate of the Committee; a more detailed description of the obligations relating to each technical issue (data reporting, licensing systems, and so on) and their relationship to the various articles of the Montreal Protocol; and an ongoing compilation of all of the Committee's recommendations to date. The representative of the Secretariat clarified that such a compilation covering the years up to 2000 was already in existence, and could be brought up to date.

253. The Committee also suggested that some of the content of the primer would remain constant while other parts would need to be updated every year. The President suggested that the Secretariat might address that particular issue when it presented a first draft of the primer to the thirty-sixth meeting of the Committee.

254. The Committee therefore agreed to request the Secretariat to finalize a draft of the primer, taking into account the comments of the members of the Committee, for the consideration of the Committee at its next meeting.

**Recommendation 35/50**

## **C. Observations and related proposals of the Secretariat relating to the reports of the Parties submitted under Article 9 of the Montreal Protocol on research, development, public awareness and exchange of information**

255. The representative of the Secretariat drew attention to document UNEP/OzL.Pro/ImpCom/35/9. He recalled that Article 9 of the Montreal Protocol called on the Parties to cooperate in various research, development, public awareness and information exchange activities, and to submit a summary report on such activities to the Secretariat every two years. The number of Parties that were submitting such reports was steadily dropping, although it did appear that cooperation and information-sharing was in fact proceeding and that the intent of Article 9 was being fulfilled.

256. In view of the already heavy workload of the Committee, it might be timely to consider ceasing the submission of such reports. Committee members observed, however, that Article 9 contained a legal obligation, and also that the reports had value and should continue to be submitted.

257. The Committee therefore *agreed* to forward to the Seventeenth Meeting of the Parties for its consideration the draft decision contained in section T of annex I to the present document.

**Recommendation 35/51**

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### **XIII. Adoption of the report of the meeting**

258. The Committee considered and approved the text of the draft recommendations. It agreed to entrust finalization of the report of the meeting to the Secretariat, working in consultation with the Vice-President, serving also as Rapporteur, and with the President.

### **XIV. Closure of the meeting**

259. Following the customary exchange of courtesies, the President declared the meeting closed at 12.05pm on Friday, 9 December 2005.

## Annex I

### **Draft decisions for the consideration of the Seventeenth Meeting of the Parties**

#### **A. Decision XVII/–: Non-compliance with the Montreal Protocol by Armenia, and request for a plan of action**

1. To note that Armenia ratified the Montreal Protocol on 1 October 1999 and is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and that the Council of the Global Environment Facility has approved \$2,090,000 to enable Armenia's compliance;

2. To note further that Armenia has reported annual consumption for the controlled substance in Annex E (methyl bromide) for 2004 of 1.020 ODP-tonnes, which exceeds the Party's maximum allowable consumption level of zero ODP-tonnes for that controlled substance for that year, and that Armenia is therefore in non-compliance with the control measures for methyl bromide under the Protocol;

3. To request Armenia, as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting a plan of action with time-specific benchmarks to ensure a prompt return to compliance. Armenia may wish to consider including in its plan of action the establishment of import quotas to support the phase-out schedule, and policy and regulatory instruments that will ensure progress in achieving the phase-out;

4. To monitor closely the progress of Armenia with regard to the phase-out of the controlled substance in Annex E (methyl bromide). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Armenia should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions Armenia, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substance in Annex E (methyl bromide) that is the substance that is the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

#### **B. Decision XVII/–: Non-compliance with the Montreal Protocol by Azerbaijan**

1. To note that Azerbaijan ratified the Montreal Protocol, London and Copenhagen Amendments on 21 June 1996, and the Montreal Amendment on 28 September 2000, and is classified as a Party not operating under Article 5 of the Protocol. The Council of the Global Environment Facility has approved \$6.867 million to enable Azerbaijan's compliance;

2. To note with appreciation that Azerbaijan has confirmed the introduction of a ban on the import of controlled substances in Annex A group I (CFCs), in accordance with decision XVI/21, but also note with concern that the Party did not achieve total phase out of these controlled substances by 1 January 2005 in accordance with that decision;

3. To further note that Azerbaijan had expressed reservations as to its ability to enforce its import ban given its lack of expertise in the tracking of ozone-depleting substances, and recall that Azerbaijan was not able to fulfil its commitments contained in decision X/20 and decision XV/28 to achieve total phase-out of Annex A, group I, controlled substances (CFCs) by 1 January 2001 and 1 January 2003 respectively;

4. To note with appreciation, however, the Party's action in cooperation with UNEP to seek further assistance from the Global Environment Facility to address this situation and to request Azerbaijan to report to the Secretariat on the status of this initiative, in time for the Committee's consideration at its next meeting;

5. To agree, in the light of Azerbaijan's recurrent inability to return to compliance with the Protocol in accordance with the decisions of the Meetings of the Parties and the Party's reservations as to its capacity to enforce its newly introduced ban on the import of controlled substances in Annex A group I (CFCs), to request exporting Parties to assist Azerbaijan implement its commitment by ceasing export of these controlled substances to that Party, and to further caution Azerbaijan in accordance with item B of the indicative list of measures that, in the event that the Party does not achieve total phase out of Annex A group I controlled substances (CFC) by 1 January 2006, the Eighteenth Meeting of the Parties shall consider implementation of item C of the indicative measures, which could include action available under Article 4 to cease supply of Annex A group I controlled substances (CFC) to Azerbaijan.

### **C. Decision XVII/-: Non-compliance with the Montreal Protocol by Bangladesh**

1. To note that Bangladesh ratified the Montreal Protocol on 2 August 1990, the London Amendment on 18 March 1994, the Copenhagen Amendment on 27 November 2000 and the Montreal Amendment on 27 July 2001 and is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in September 1994. The Executive Committee has approved \$1,852,164 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note also that Bangladesh's baseline for the controlled substance in Annex B, group III (methyl chloroform) is 0.8667 ODP-tonnes. As the Party reported consumption of 0.892 ODP-tonnes of methyl chloroform in 2003, it was in non-compliance with its obligations under Article 2E of the Montreal Protocol;

3. To note with appreciation Bangladesh's submission of a plan of action to ensure a prompt return to compliance with the Protocol's methyl chloroform control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Bangladesh specifically commits itself:

(a) To maintain methyl chloroform consumption at no more than the 2004 level of 0.550 ODP-tonnes from 2005 until 2009, and then to reduce methyl chloroform consumption as follows:

- (i) To 0.2600 ODP-tonnes in 2010;
- (ii) To zero ODP-tonnes in 2015, as required under the Montreal Protocol, save for essential uses that may be authorized by the Parties after that date;

(b) To monitor its existing system for licensing imports and exports of ozone-depleting substances, which includes import quotas;

4. To note that the measures listed in paragraph 3 above have already enabled Bangladesh to return to compliance in 2004, to congratulate the country on that progress and to urge it to work with the relevant implementing agencies to implement the remainder of the plan of action and to phase out consumption of the controlled substance in Annex B, group III;

5. To monitor closely the progress of Bangladesh with regard to the implementation of its plan of action and the phase-out of methyl chloroform. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Bangladesh should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Bangladesh, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl chloroform

that is the substance that is the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

#### **D. Decision XVII/–: Non-compliance with the Montreal Protocol by Bosnia and Herzegovina**

1. To note that Bosnia and Herzegovina ratified the Montreal Protocol on 1 September 1993, the London, Copenhagen and Montreal amendments on 11 August 2003, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in March 1999. The Executive Committee has approved \$2,900,771 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note also that Bosnia and Herzegovina's baseline for the controlled substance in Annex B, group III (methyl chloroform), is 1.548 ODP-tonnes. As the Party reported consumption of 3.600 ODP-tonnes of methyl chloroform in 2003 and consumption of 2.44 ODP-tonnes of methyl chloroform in 2004, it was in non-compliance with its obligations under Article 2E of the Montreal Protocol;

3. To note with appreciation Bosnia and Herzegovina's submission of a plan of action to ensure a prompt return to compliance with the Protocol's methyl chloroform control measures, and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Bosnia and Herzegovina specifically commits itself:

(a) To reduce methyl chloroform consumption from 2.44 ODP-tonnes in 2004 as follows:

(i) To 1.3 ODP-tonnes in 2005;

(ii) To zero ODP-tonnes in 2006, save for essential uses that may be authorized by the Parties after 1 January 2015;

(b) To establish a system for licensing imports and exports of ozone-depleting substances, which includes import quotas, by the end of January 2006;

4. To note that the measures listed in paragraph 3 above should enable Bosnia and Herzegovina to return to compliance in 2006 and to urge Bosnia and Herzegovina to work with the relevant implementing agencies to implement the plan of action and phase out consumption of the controlled substance in Annex B, group III;

5. To monitor closely the progress of Bosnia and Herzegovina with regard to the implementation of its plan of action and the phase-out of methyl chloroform. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Bosnia and Herzegovina should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Bosnia and Herzegovina, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl chloroform that is the substance that is the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

#### **E. Decision XVII/–: Non-compliance with the Montreal Protocol by Chile**

1. To note that Chile ratified the Montreal Protocol on 26 March 1990, the London Amendment on 9 April 1992, the Copenhagen Amendment on 14 January 1994, the Montreal Amendment on 17 June 1998 and the Beijing Amendment on 3 May 2000, and is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in June 1992. The Executive Committee has approved \$10,388,451 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note also that Chile's baseline for the controlled substance in Annex B, group III (methyl chloroform), is 6.445 ODP-tonnes and its baseline for the controlled substance in Annex E (methyl bromide) is 212.510 ODP-tonnes. As the Party reported consumption of 6.967 ODP-tonnes of methyl chloroform and 274.302 ODP-tonnes of methyl bromide in 2003, and consumption of 3.605 ODP-tonnes of methyl chloroform and consumption of 262.776 ODP-tonnes of methyl bromide in 2004, it was in non-compliance with its obligations under Article 2E of the Montreal Protocol in 2003 and under Article 2H of the Montreal Protocol in 2003 and 2004;

3. To note with appreciation Chile's submission of a plan of action to ensure a prompt return to compliance with the Protocol's methyl chloroform and methyl bromide control measures, and to note that under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Chile specifically commits itself:

(a) To maintain methyl chloroform consumption at no more than 4.512 ODP-tonnes from 2005 until 2009, and then to reduce methyl chloroform consumption as follows:

(i) To 1.934 ODP-tonnes in 2010;

(ii) To zero ODP-tonnes by 1 January 2015, save for essential uses that may be authorized by the Parties after that date;

(b) To reduce methyl bromide consumption from 262.776 ODP-tonnes in 2004 as follows:

(i) To 170 ODP-tonnes in 2005;

(ii) To zero ODP-tonnes by 1 January 2015, save for critical uses that may be authorized by the Parties after that date;

(c) To introduce an enhanced ozone-depleting substances licensing and import quota system from the moment the bill is approved in Parliament and to ensure compliance in the interim period by adopting regulatory measures that the Government is entitled to apply;

4. To note that Chile has reported data for 2004 that indicate that it has already returned to compliance with the Protocol's methyl chloroform control measures, to congratulate Chile on that progress, and to urge the Party to work with the relevant implementing agencies to implement the remainder of the plan of action to achieve total phase-out of methyl chloroform;

5. To note also that the measures listed in paragraph 3 above should enable Chile to return to compliance with the Protocol's methyl bromide control measures by 2005, and to urge Chile to work with the relevant implementing agencies to implement the plan of action to achieve total phase-out of methyl bromide;

6. To monitor closely the progress of Chile with regard to the implementation of its plan of action and the phase-out of methyl chloroform and methyl bromide. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Chile should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non compliance. Through the present decision, however, the Meeting of the Parties cautions Chile, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl chloroform and methyl bromide that is the substances that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance.

**F. Decision XVII/–: Potential non-compliance in 2004 with consumption of the controlled substances in Annex B group I (other fully halogenated chlorofluorocarbons) by China, and request for a plan of action**

1. To note that China ratified the Montreal Protocol and the London Amendment on 14 June 1991, and the Copenhagen Amendment on 22 April 2003, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in March 1993. The Executive Committee has approved \$623,438,283 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note further that China has reported annual consumption for the controlled substances in Annex B, group I (other CFCs) for 2004 of 20,539 ODP-tonnes, which exceeds the Party's maximum allowable consumption level of 20,536 ODP-tonnes for those controlled substances for that year, and that, in the absence of further clarification, China is presumed to be in non-compliance with the control measures of the Protocol;

3. To request China, as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting an explanation for its excess consumption, together with a plan of action with time-specific benchmarks to ensure a prompt return to compliance. China may wish to consider including in its plan of action the establishment of import quotas to support the phase-out schedule;

4. To monitor closely the progress of China with regard to the phase-out of the controlled substances in Annex B, group I (other CFCs). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, China should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions China, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substances in Annex B, group I (other CFCs) that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

**G. Decision XVII/–: Data and information provided by the Parties in accordance with Article 7 of the Montreal Protocol**

1. To note with appreciation that [*to be provided*] Parties out of the [*to be provided*] that should have reported data for 2004 have now done so, and that [*to be provided*] of those Parties reported their data by 30 June 2005 in conformance with decision XV/15;

2. To note, however, that the following Parties have still not reported 2004 data: [*Cook Islands, Mozambique, Nauru*];

3. To note that this places those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

4. To urge them, where appropriate, to work closely with the implementing agencies to report the required data to the Secretariat as a matter of urgency, and to request the Implementation Committee to review the situation of those Parties at its next meeting;

5. To note also that lack of timely data reporting by Parties impedes effective monitoring and assessment of Parties' compliance with their obligations under the Montreal Protocol;

6. To note further that reporting by 30 June each year greatly facilitates the work of the Executive Committee of the Multilateral Fund in assisting Parties operating under paragraph 1 of Article 5 to comply with the control measures of the Montreal Protocol;

7. To encourage Parties to continue to report consumption and production data as soon as the figures are available, and preferably by 30 June each year, as agreed in decision XV/15;

## **H. Decision XVII/–: Non-compliance with the Montreal Protocol by Ecuador**

1. To note that Ecuador ratified the Montreal Protocol on 10 April 1990 and the London Amendment on 30 April 1990, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in February 1992. The Executive Committee has approved \$5,493,045 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note also that Ecuador's baseline for the controlled substance in Annex B, group III (methyl chloroform) is 1.997 ODP-tonnes. As the Party reported consumption of 3.484 ODP-tonnes of methyl chloroform in 2003, it was in non-compliance with its obligations under Article 2E of the Montreal Protocol;

3. To note with appreciation Ecuador's submission of a plan of action to ensure a prompt return to compliance with the Protocol's methyl chloroform control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Ecuador specifically commits itself:

(a) To reduce methyl chloroform consumption from 2.50 ODP-tonnes in 2004 to 1.3979 ODP-tonnes in 2005;

(b) To monitor its existing system for licensing imports and exports of ozone-depleting substances, which includes import quotas;

4. To note that the measures listed in paragraph 3 above should enable Ecuador to return to compliance in 2005 and to urge Ecuador to work with the relevant implementing agencies to implement the plan of action to phase out consumption of the controlled substance in Annex B, group III (methyl chloroform);

5. To monitor closely the progress of Ecuador with regard to the implementation of its plan of action and the phase-out of methyl chloroform. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Ecuador should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Ecuador, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl chloroform that is, the substance that is the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

## **I. Decision XVII/–: Non-compliance with data-reporting requirements under Articles 5 and 7 of the Montreal Protocol by Parties recently ratifying the Montreal Protocol**

1. To note that Eritrea, temporarily classified as operating under paragraph 1 of Article 5 of the Protocol, has not reported any consumption or production data to the Secretariat;

2. To note that that situation places that Party in non-compliance with its data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

3. To acknowledge that Eritrea has only recently ratified the Montreal Protocol and received approval for data collection assistance from the Multilateral Fund through the implementing agencies;

4. To note with appreciation Eritrea's commitment to submit its outstanding data no later than the first quarter of 2006;

5. To urge Eritrea to work together with the United Nations Environment Programme under the compliance assistance programme and other implementing agencies of the Multilateral Fund to report data as quickly as possible to the Secretariat and to request the Implementation Committee to review the situation of those Parties with respect to data-reporting at its next meeting;

## **J. Decision XVII/–: Non-compliance with the Montreal Protocol by Federated States of Micronesia**

1. To note that Federated States of Micronesia ratified the Montreal Protocol on 6 September 1995 and the London, Copenhagen, Montreal and Beijing amendments on 27 November 2001, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in March 2002. The Executive Committee has approved \$74,680 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note further that the Federated States of Micronesia has reported annual consumption of the controlled substances in Annex A, group I (CFCs) for 2002, 2003 and 2004 of 1.876, 1.691, 1.451 ODP-tonnes respectively, which exceed the Party's maximum allowable consumption level of 1.219 ODP-tonnes for those controlled substances in each of those years, and that Federated States of Micronesia is therefore in non-compliance with the control measures under the Protocol;

3. To note with appreciation Federated States of Micronesia's submission of a plan of action to ensure a prompt return to compliance with the Protocol's CFC control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Federated States of Micronesia specifically commits itself:

(a) To reduce consumption of the controlled substances in Annex A, group I (CFCs) from 1.451 ODP-tonnes in 2004 as follows:

- (i) To 1.351 ODP-tonnes in 2005;
- (ii) To phase out consumption of the controlled substances in Annex A, group I (CFCs) by 1 January 2006, save for essential uses that may be authorized by the Parties;

(b) To introduce a system for licensing imports and exports of ozone-depleting substances, including a quota system, by 1 January 2006;

4. To note that the measures listed in paragraph 3 above should enable Federated States of Micronesia to return to compliance in 2006, and to urge Federated States of Micronesia to work with the relevant implementing agencies to implement the plan of action and phase out consumption of the controlled substances in Annex A, group I (CFCs);

5. To monitor closely the progress of Federated States of Micronesia with regard to the implementation of its plan of action and the phase-out of the controlled substances in Annex A, group I (CFCs). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Federated States of Micronesia should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Federated States of Micronesia, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substances in Annex A, group I (CFCs) that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance.

## **K. Decision XVII/–: Non-compliance with the Montreal Protocol by Fiji**

1. To note that Fiji ratified the Montreal Protocol on 23 October 1989, the London Amendment on 9 December 1994 and the Copenhagen Amendment on 17 May 2000, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in June 1993. The Executive Committee has approved \$542,908 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note also that Fiji's baseline for the controlled substance in Annex E (methyl bromide) is 0.6710 ODP-tonnes. As the Party reported consumption of methyl bromide of 1.506 ODP-tonnes in 2003 and 1.609 ODP-tonnes in 2004, it was in non-compliance with its obligations under Article 2H of the Montreal Protocol in those years;

3. To note with appreciation Fiji's submission of a plan of action to ensure a prompt return to compliance with the Protocol's methyl bromide control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Fiji specifically commits itself:

(a) To reduce methyl bromide consumption from 1.609 ODP-tonnes in 2004 as follows:

(i) To 1.5 ODP-tonnes in 2005;

(ii) To 1.3 ODP-tonnes in 2006;

(iii) To 1.0 ODP-tonnes in 2007;

(iii) To 0.5 ODP-tonnes in 2008;

(b) To monitor its existing system for licensing imports and exports of ozone-depleting substances;

(c) To commence implementation of a methyl bromide import quota system in 2006;

4. To note that the measures listed in paragraph 3 above should enable Fiji to return to compliance in 2008, and to urge Fiji to work with the relevant implementing agencies to implement the plan of action and phase out consumption of methyl bromide;

5. To monitor closely the progress of Fiji with regard to the implementation of its plan of action and the phase-out of methyl bromide. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Fiji should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Fiji, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl bromide that is the substance that is the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

## **L. Decision XVII/–: Revised plan of action to return Honduras to compliance with the control measures in Article 2H of the Montreal Protocol**

1. To note that Honduras ratified the Montreal Protocol on 14 October 1993 and the London and Copenhagen Amendments on 24 January 2002. Honduras is classified as a Party operating under Article 5, paragraph 1, of the Protocol and had its country programme approved by the Executive Committee in 1996. Since approval of the country programme, the Executive Committee has approved \$3,342,025 from the Multilateral Fund to enable compliance in accordance with Article 10 of the Protocol;

2. To recall decision XV/35, which noted that Honduras was in non-compliance in 2002 with its obligations under Article 2H of the Montreal Protocol to freeze its consumption of the controlled substance in Annex E (methyl bromide) at its baseline level of 259.43 ODP-tonnes, but also noted with appreciation the plan of action submitted by Honduras to ensure its prompt return to compliance in 2005;

3. To note with concern, however, that while Honduras has reported consumption of methyl bromide for 2004 of 340.80 ODP-tonnes that is less than its reported consumption for 2003, it is still inconsistent with the Party's commitment contained in decision XV/35 to reduce its methyl bromide consumption to 306.1 ODP-tonnes in 2004;

4. Further to note the advice of Honduras that its stakeholders remain committed to methyl bromide phase out and that an additional two years would be required to overcome the technical difficulties that were the cause of the Party's deviation from its commitments contained in decision XV/35;

5. To note with appreciation that Honduras has submitted a revised plan of action for methyl bromide phase-out in controlled uses, and to note, without prejudice to the operation of the financial mechanism of the Protocol, that under the revised plan Honduras specifically commits itself:

- (a) To reduce methyl bromide consumption from 340.80 ODP-tonnes in 2004 as follows:
  - (i) To 327.6000 ODP-tonnes in 2005;
  - (ii) To 295.8000 ODP-tonnes in 2006;
  - (iii) To 255.0000 ODP-tonnes in 2007;
  - (iv) To 207.5424 ODP-tonnes in 2008;
- (b) To monitor its system for licensing imports and exports of ODS, including quotas, in force since May 2003;
- (c) To monitor its ban on imports of equipment using ozone-depleting substances, in force since May 2003;

6. To note that the measures listed in paragraph 5 above should enable Honduras to return to compliance with the Protocol methyl bromide control measures in 2008 and to urge Honduras to work with the relevant implementing agencies to implement the plan of action and phase out consumption of the controlled substance in Annex E (methyl bromide);

7. To monitor closely the progress of Honduras with regard to the implementation of its plan of action and the phase-out of the controlled substance in Annex E (methyl bromide). To the degree that Honduras is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Honduras should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Honduras, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl bromide that is the subject of non-compliance is ceased and that exporting Parties are not contributing to a continuing situation of non-compliance;

#### **M. Decision XVII/-: Potential non-compliance in 2004 with the controlled substances in Annex A, group I (CFCs) by Kazakhstan, and request for a plan of action**

1. To recall decision XIII/19, which noted that Kazakhstan was in non-compliance from 1998 to 2000 with its obligations under Article 2A of the Montreal Protocol to maintain total phase-out of its consumption of the controlled substances in Annex A, group I (CFCs), but also noted with appreciation the plan of action submitted by Kazakhstan to ensure its prompt return to compliance;

2. To note with concern, however, that Kazakhstan reported annual consumption for the controlled substances in Annex A, group I (CFCs) in 2004 of 11.2 ODP-tonnes, which is inconsistent with the Party's commitment contained in decision XIII/19 to reduce its consumption of the controlled substances in Annex A, group I (CFCs) to zero in 2004;

3. To note further with concern that Kazakhstan has not submitted to the Implementation Committee the requested explanation for this deviation and strongly to urge the Party to submit this information, along with its ozone-depleting substance data report for 2005, and to report on its commitment also contained in decision XIII/19 to implement a ban on the import of equipment using ozone-depleting-substances, as a matter of urgency, in time for consideration by the Committee at its next meeting;

4. To remind the Party of paragraph 4 of decision XIII/19, which records the agreement of the thirteenth Meeting of the Parties to monitor the progress of Kazakhstan with regard to the phase-out of ozone-depleting substances, particularly towards meeting the specific commitments contained in decision XIII/19. In this regard, the Parties requested that Kazakhstan should submit a complete copy of its country programme and subsequent updates, if any, to the Ozone Secretariat. To the degree that Kazakhstan is working towards and meeting the specific time-based commitments contained in decision XIII/19 and continuing to report data annually demonstrating a decrease in imports and consumption, it should continue to be treated in the same manner as a Party in good standing. In this regard, Kazakhstan should continue to receive international assistance to enable it to meet these commitments in accordance with item A of the indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance. Through decision XIII/19, however, the Parties cautioned Kazakhstan, in accordance with item B of the indicative list of measures, that, in the event that the country fails to meet the commitments noted above in the times specified, the Parties shall consider measures, consistent with item C of the indicative list of measures. These measures could include the possibility of actions that may be available under Article 4, designed to ensure that the supply of controlled substances in Annex A and Annex B that are the subject of non-compliance is ceased, and that exporting Parties are not contributing to a continuing situation of non-compliance;

## **N. Decision XVII/-: Non-compliance with the Montreal Protocol by Kyrgyzstan**

1. To note that Kyrgyzstan ratified the Montreal Protocol on 31 May 2000, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in July 2002. The Executive Committee has approved \$1,206,732 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note further that Kyrgyzstan has reported annual consumption for the controlled substances in Annex A, group II (halons) for 2004 of 2.40 ODP-tonnes, which exceeds the Party's maximum allowable consumption level of zero ODP-tonnes for those controlled substances for that year, and that Kyrgyzstan is therefore in non-compliance with the control measures under the Protocol;

3. To note with appreciation Kyrgyzstan's submission of a plan of action to ensure a prompt return to compliance with the Protocol's halon control measures, and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, Kyrgyzstan specifically commits itself:

(a) To maintain consumption of the controlled substances in Annex A, group II (halons) at no more than the 2004 level of 2.40 ODP-tonnes in 2005, and then to reduce halon consumption as follows:

(i) To 1.20 ODP-tonnes in 2006;

(ii) To 0.60 ODP-tonnes in 2007;

(iv) To phase out consumption of these controlled substances by 1 January 2008, save for essential uses that may be authorized by the Parties;

(b) To monitor its existing system for licensing imports and exports of ozone-depleting substances;

(c) To introduce a ban on the import of equipment containing halons and equipment that uses halons by 1 January 2006;

(d) To introduce an import quota system to limit annual consumption of the controlled substances in Annex A, group II (halons), by the beginning of 2006;

4. To note that the measures listed in paragraph 3 above should enable Kyrgyzstan to return to compliance in 2008 and to urge Kyrgyzstan to work with the relevant implementing agencies to implement the plan of action and phase out consumption of the controlled substances in Annex A, group II (halons);

5. To monitor closely the progress of Kyrgyzstan with regard to the implementation of its plan of action and the phase-out of Annex A, group II, controlled substances (halons). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Kyrgyzstan should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Kyrgyzstan, in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of Annex A, group II, controlled substances (halons) that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

## **O. Decision XVII/- Non-compliance with the Montreal Protocol by the Libyan Arab Jamahiriya**

1. To note that the Libyan Arab Jamahiriya ratified the Montreal Protocol on 11 July 1990, its London Amendment on 12 July 2001 and its Copenhagen Amendment on 24 September 2004, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in December 2000. The Executive Committee has approved \$5,198,886 from the Multilateral Fund to enable the Party's compliance in accordance with Article 10 of the Protocol;

2. To note further that the Libyan Arab Jamahiriya's baseline for Annex A, group II, controlled substances (halons) is 633.067 ODP-tonnes. It reported consumption in 2003 and 2004 of 714.500 ODP-tonnes of those substances. The Libyan Arab Jamahiriya's baseline for the controlled substance in Annex E (methyl bromide) is 94.050 ODP-tonnes. It reported consumption in 2004 of 96.000 ODP-tonnes of that substance. As a consequence, in 2003 the Libyan Arab Jamahiriya was in non-compliance with its obligations under Article 2A of the Montreal Protocol, while in 2004 it was in non-compliance with its obligations under Articles 2A and 2H of the Protocol;

3. To note with appreciation the Libyan Arab Jamahiriya's submission of a plan of action to ensure a prompt return to compliance with the Protocol's halon and methyl bromide control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, the Libyan Arab Jamahiriya specifically commits itself:

(a) To maintain consumption of the controlled substances in Annex A, group II (halons) at no more than the 2004 level of 714.500 ODP-tonnes in 2005, and then to reduce halon consumption as follows:

(i) To 653.910 ODP-tonnes in 2006;

(ii) To 316.533 ODP-tonnes in 2007;

(iii) To phase out halon consumption by 1 January 2008, save for essential uses that may be authorized by the Parties;

(b) To maintain consumption of the controlled substance in Annex E (methyl bromide) at no more than the 2004 level of 96.000 ODP-tonnes in 2005 and 2006, and then to reduce methyl bromide consumption as follows:

- (i) To 75.000 ODP-tonnes in 2007;
- (ii) To phase out methyl bromide consumption by 1 January 2010, save for critical uses that may be authorized by the Parties;

4. To recall the commitment of the Libyan Arab Jamahiriya, contained in decision XV/36, to establish a system for licensing imports and exports of ODS, including quotas, and to monitor its ban on imports of equipment using ozone-depleting substances, introduced in 2003;

5. To note that the measures listed in paragraph 3 above should enable the Libyan Arab Jamahiriya to return to compliance with the Protocol's halon and methyl bromide control measures in 2007, and to urge the Libyan Arab Jamahiriya to work with the relevant implementing agencies to implement the plan of action and phase out consumption of halon and methyl bromide;

6. To monitor closely the progress of the Libyan Arab Jamahiriya with regard to the implementation of its plan of action and the phase-out of Annex A, group II, controlled substances (halons) and the controlled substance in Annex E (methyl bromide). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, the Libyan Arab Jamahiriya should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution the Libyan Arab Jamahiriya, in accordance with item B of the indicative list of measures, that in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of Annex A, group II, controlled substances (halons) and the controlled substance in Annex E (methyl bromide) that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance.

**P. Decision XVII/–: Non-compliance with data-reporting requirements for the purpose of establishing baselines under Article 5, paragraphs 3 and 8 ter (d)**

1. To note that Serbia and Montenegro has not reported data for one or more of the years which are required for the establishment of baselines for Annexes B and E to the Protocol, as provided for by Article 5, paragraphs 3 and 8 ter (d);

2. To note that that places Serbia and Montenegro in non-compliance with its data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

3. To stress that compliance by Serbia and Montenegro with the Montreal Protocol cannot be determined without knowledge of those data;

4. To acknowledge that Serbia and Montenegro has only recently ratified the amendments to the Protocol to which the data-reporting obligation relates, but also to note that its has received assistance with data collection from the Multilateral Fund through the implementing agencies;

5. To urge Serbia and Montenegro to work together with the United Nations Environment Programme under the compliance assistance programme and with other implementing agencies of the Multilateral Fund to report data as a matter of urgency to the Secretariat and to request the Implementation Committee to review the situation of Serbia and Montenegro with respect to data reporting at its next meeting;

## **Q. Decision XVII/–: Non-compliance with the Montreal Protocol by Sierra Leone, and request for a plan of action**

1. To note that Sierra Leone ratified the Montreal Protocol and all its amendments on 29 August 2001, is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in December 2003. The Executive Committee has approved \$660,021 from the Multilateral Fund to enable compliance in accordance with Article 10 of the Protocol;

2. To note further that Sierra Leone has reported annual consumption of the controlled substances in Annex A, group II (halons) for 2004 of 18.45 ODP-tonnes, which exceeds the Party's maximum allowable consumption level of 16.00 ODP-tonnes for those controlled substances for that year, and that Sierra Leone is therefore in non-compliance with the control measures under the Protocol;

3. To request Sierra Leone, as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting a plan of action with time-specific benchmarks to ensure a prompt return to compliance. Sierra Leone may wish to consider including in its plan of action the establishment of import quotas to support the phase-out schedule, a ban on imports of equipment using ozone-depleting substances, and policy and regulatory instruments that will ensure progress in achieving the phase-out;

4. To monitor closely the progress of Sierra Leone with regard to the phase-out of the controlled substances in Annex A, group II (halons). To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Sierra Leone should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions Sierra Leone, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substances in Annex A, group II (halons) that are the subject of non-compliance is ceased so that exporting Parties are not contributing to a continuing situation of non-compliance;

## **R. Decision XVII/–: Revised plan of action for the early phase-out of methyl bromide in Uruguay**

1. To note that Uruguay ratified the Montreal Protocol on 8 January 1991, the London Amendment on 16 November 1993, the Copenhagen Amendment on 3 July 1997, the Montreal Amendment on 16 February 2000 and the Beijing Amendment on 9 September 2003. The country is classified as a Party operating under paragraph 1 of Article 5 of the Protocol and had its country programme approved by the Executive Committee in 1993. Since approval of the country programme, the Executive Committee has approved \$5,457,124 from the Multilateral Fund to enable compliance in accordance with Article 10 of the Protocol;

2. To recall that Uruguay's baseline for the controlled substance in Annex E (methyl bromide) is 11.2 ODP-tonnes. It reported consumption of 17.7 ODP-tonnes of methyl bromide in 2002. As a consequence, for 2002 Uruguay was in non-compliance with its obligations under Article 2H of the Montreal Protocol;

3. To recall further that Uruguay had submitted a plan of action to ensure a prompt return to compliance with the Protocol's methyl bromide control measures, which was contained in decision XV/44 of the Fifteenth Meeting of the Parties;

4. To note that Uruguay reported consumption of 11.1 ODP-tonnes of methyl bromide in 2004. This level of consumption, while consistent with the requirement that Parties operating under Article 5 of the Protocol freeze their methyl bromide consumption in 2004 at their baseline level, was inconsistent with the Party's commitment contained in decision XV/44 to reduce its methyl bromide consumption to a level no greater than 4 ODP-tonnes in 2004;

5. To note with appreciation, however, that Uruguay submitted a revised plan of action for methyl bromide early phase-out in controlled uses, and to note, without prejudice to the operation of the financial mechanism of the Protocol, that under the revised plan Uruguay specifically commits itself:

- (a) To reduce methyl bromide consumption from 11.1 ODP-tonnes in 2004 as follows:
  - (i) To 8.9 ODP-tonnes in 2005;
  - (ii) To 8.9 ODP-tonnes in 2006;
  - (iii) To 8.9 ODP-tonnes in 2009;
  - (iv) To 6.0 ODP-tonnes in 2010;
  - (v) To 6.0 ODP-tonnes in 2011;
  - (vi) To 6.0 ODP-tonnes in 2012;
  - (vii) To phase out methyl bromide consumption by 1 January 2013, save for critical uses that may be authorized by the Parties;
- (b) To monitor its system for licensing imports and exports of ozone-depleting substances, including quotas;

6. To note that the measures listed in paragraph 5 above should enable Uruguay to maintain compliance and to urge Uruguay to work with the relevant implementing agencies to implement the plan of action and phase out consumption of the controlled substance in Annex E (methyl bromide);

7. To monitor closely the progress of Uruguay with regard to the implementation of its plan of action and the phase-out of methyl bromide. To the degree that Uruguay is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, Uruguay should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution Uruguay, in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of methyl bromide that is the substance that is the subject of non-compliance is ceased and that exporting Parties are not contributing to a continuing situation of non-compliance;

## **S. Draft decision XVII/–: Report on the establishment of licensing systems under Article 4B of the Montreal Protocol**

1. To note with appreciation that [107] Parties to the Montreal Amendment to the Montreal Protocol have established import and export licensing systems, as required under the terms of the Amendment;

2. To note also with appreciation that [37] Parties to the Montreal Protocol that have not yet ratified the Montreal Amendment have also established import and export licensing systems;

3. To recognize that licensing systems bring the following benefits: monitoring of imports and exports of ozone-depleting substances; prevention of illegal trade; and enabling data collection;

4. To urge all the remaining [29] Parties to the Montreal Amendment to provide information to the Secretariat on the establishment of import and export licensing systems, and for those that have not yet established such systems to do so as a matter of urgency;

5. To encourage all the remaining Parties to the Montreal Protocol that have not yet ratified the Montreal Amendment to ratify it and to establish import and export licensing systems if they have not yet done so;

6. To urge all Parties that already operate licensing systems to ensure that they are implemented and enforced effectively;

7. To review periodically the status of the establishment of licensing systems by all Parties to the Montreal Protocol, as called for in Article 4B of the Protocol;

**T. Draft decision XVII/–: Reports of the Parties submitted under Article 9 of the Montreal Protocol on research, development, public awareness and exchange of information**

1. To note with appreciation the reports submitted by 24 Parties, in accordance with Article 9 of the Protocol: Argentina, Belarus, Brazil, Brunei Darussalam, Bulgaria, Czech Republic, Dominican Republic, Guyana, Hungary, Jordan, Latvia, Mauritius, Malaysia, Monaco, Oman, Pakistan, Romania, Somalia, Spain, Sri Lanka, Thailand, Togo, Trinidad and Tobago, Turkmenistan;

2. To recall that paragraph 3 of Article 9 states that, every two years, each Party shall submit to the Secretariat a summary of activities it has conducted pursuant to that Article, and that relevant activities include promotion of research and development, information exchange on technologies for reducing emissions of ozone-depleting substances, alternatives to the use of controlled substances and the costs and benefits of relevant control strategies, awareness-raising on the environmental effects of controlled substances emissions and other substances that deplete the ozone layer;

3. To recognise that information relevant to the reporting obligation contained in paragraph 3 of Article 9 may be generated through cooperative efforts undertaken in the context of regional ozone networks, ozone research managers activities under Article 3 of the Vienna Convention, participation by Parties in the assessment work of both the Technology and Economic Assessment Panel and the Scientific Assessment Panel under Article 6 of the Montreal Protocol, and national public awareness raising initiatives;

4. To note that the reporting under Article 9, paragraph 3, could be undertaken through electronic means, and to note also that the information contained in these reports could be shared through the Ozone Secretariat's website;

5. To note that such activities continue to play an important role in global efforts to protect the ozone layer and that dissemination of information on such activities, through Article 9, also contributes to these efforts;

6. To therefore urge all Parties to submit information in accordance with paragraph 3 of Article 9.

## Annex II

### The issue of ODS stockpiling\* relative to non-compliance with the Montreal Protocol

#### Note by the Secretariat

##### *Executive summary*

The Montreal Protocol includes very specific time-bound control measures which must be met to achieve and maintain compliance. Those control measures are most often framed in language similar to that which follows:

“Each Party shall ensure that for the 12-month period commencing on 1 January [year], and in the 12-month period thereafter, the calculated level of [consumption or production] of the controlled substances in [Group x of Annex x] does not exceed, annually, [prescribed level]”.

Nevertheless, in previous years a number of Parties which exceeded the prescribed level of production or consumption of a particular controlled substance for a given year explained that their excess production or consumption represented:

- (a) ODS production in that year which had been stockpiled for domestic destruction or export for destruction in a future year;
- (b) ODS production in that year which had been stockpiled for domestic feedstock use or export for that use in a future year;
- (c) ODS production in that year which had been stockpiled for export to meet basic domestic needs of developing countries in a future year;
- (d) ODS imported in that year which had been stockpiled for domestic feedstock use in a future year.

When the Secretariat received those explanations from the Parties in past years, it included them in its data report to the Implementation Committee but did not highlight the issue for the Committee under the non-compliance procedure of the Montreal Protocol, or ask the Committee if the explanations were sufficient to justify the apparent deviation from the related Protocol control measure. In order to ensure that the Secretariat was correctly discharging its obligations under the Protocol’s non-compliance procedure to identify and report to the Parties possible cases of non-compliance, it invited the Committee at its thirty-fourth meeting to consider whether the Secretariat should be reporting the type of deviations mentioned above as cases of possible non-compliance. In response, the Committee requested the Secretariat to place the issue on the agenda of the thirty-fifth meeting and to prepare an information document on the subject.

In the course of preparing the present information document, the Secretariat requested Parties which had previously submitted the explanations listed in the second paragraph above to provide further details of the circumstance which had resulted in their production or consumption deviations. The Secretariat also identified those Articles of the Protocol and the decisions of the Parties which appeared to provide guidance on whether those deviations were consistent with the Protocol’s control measures. The Secretariat sought in particular to identify any Article or decision which might support the explanations submitted by the Parties by allowing production or import for destruction, feedstock use or basic domestic needs for developing countries to exceed the annual levels of production or consumption prescribed by the Protocol for the corresponding 12-month period. The primary sources of guidance identified by the Secretariat were Article 1, paragraphs 5 and 6, Articles 2A to 2H, Article 5 and Article 7, paragraph 3, of the Protocol, and decisions VII/30 and IX/28 of the Meeting of the Parties.

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\* The terms “stockpiled” and “stockpiling” are used throughout the present document to refer to ODS which is not put to its intended use in the year in which it is produced or imported. The explanations submitted by some Parties for their consumption or production deviations do not specifically use those terms. However, the nature of their explanation indicates that stockpiling has occurred.

From its review, the Secretariat observed that, of the four types of deviation from the Protocol's production and consumption control measures listed in paragraph 2 of the present note, only the type described in subparagraph (d) appeared to be consistent with the Protocol. That type of deviation concerned the situation where imports in excess of the level prescribed for consumption in a given 12-month period were stockpiled in that period for domestic feedstock use in future years. It appeared to be consistent with the Protocol on the basis of decision VII/30, which addresses the export and import of controlled substances for feedstock use.

With regard to the other three types of consumption and production deviations listed in subparagraphs (a) to (c), the Secretariat was not able to identify any Protocol provisions or decisions of the Parties which would support the conclusion that those types of deviation were consistent with the Protocol. Those deviations concerned situations where production in excess of the level prescribed by the Protocol for production or consumption in a given 12-month period were stockpiled in that period for domestic destruction, domestic feedstock use or export for destruction, export for feedstock use or export to meet the basic domestic needs of developing countries in future years.

On that basis, unless the Implementation Committee recommends otherwise, future deviations consistent with the types of deviations listed in subparagraphs (a) to (c) above will be highlighted to the Committee and the Parties in the data report of the Secretariat as cases of possible non-compliance, to enable the Committee and the Parties to consider each instance on a case-by-case basis, in accordance with the usual practice.

## **A. Background**

1. The present note has been prepared in response to a request by the Implementation Committee at its thirty-fourth meeting. At that meeting, the Ozone Secretariat reported that, in previous years, a number of Parties had explained that deviations from their ODS consumption and production phase-out obligations in a particular year fell into one of the following categories:

- (a) ODS production in that year which had been stockpiled for domestic destruction or export for destruction in a future year;
- (b) ODS production in that year which had been stockpiled for domestic feedstock use or export for that use in a future year;
- (c) ODS production in that year which had been stockpiled for export to meet basic domestic needs of developing countries in a future year;
- (d) ODS imported in that year which had been stockpiled for domestic feedstock use in a future year.

2. The Secretariat advised that, in previous years, when those explanations were included in the Secretariat's data reports to the Committee and the Meeting of the Parties, they had not been highlighted by the Secretariat as possible cases of non-compliance and were not discussed by those bodies.

3. In order to ensure that the Secretariat was correctly discharging its obligation under the Protocol's non-compliance procedure to identify and report to the Parties possible cases of non-compliance, it invited the Committee at its thirty-fourth meeting to consider whether the Secretariat should be reporting the type of deviations mentioned in paragraph 1 above as cases of possible non-compliance.

4. In response, the Committee requested the Ozone Secretariat to place the issue on the agenda of its thirty-fifth meeting and prepare an information document on the subject.

5. The present note summarizes information which Parties have submitted to the Secretariat on the circumstances leading to those Parties' stockpiling ODS for future years for the aforementioned purposes, the approach to date on the issue, and the Articles of the Montreal Protocol on Substances that Deplete the Ozone Layer and decisions of the Parties to the Protocol which appear relevant to the issue.

## **B. Information submitted by Parties with regard to stockpiling for future purposes**

6. The Secretariat contacted Parties which had submitted explanations consistent with those listed in paragraph 1 of the present note with regard to ODS consumption or production deviations in previous years. Those Parties were requested to provide additional information on the reasons why the ODS

which caused the deviation was stockpiled rather than put to its intended purpose in the year in which it was imported or produced.

7. To date, Parties have reported to the Secretariat the following information:

(a) The ODS was produced throughout the year as by-product and used as feedstock by domestic enterprises or by the Parties to which the producing Party exports. The process by which the ODS by-product is created is continuous. Consequently, the producing Party would always have a quantity of the ODS remaining at the end of each year, which would be stockpiled until it could be used as feedstock the following year;

(b) The ODS was produced as by-product, captured through mandatory emission minimization measures, and exported for destruction. The ODS was sometimes stockpiled for export for destruction in a future year in order to minimize transport and destruction costs. At other times, the ODS was stockpiled for export for destruction in a future year to accommodate the limited capacity of the destruction facility;

(c) The ODS was produced as by-product and destroyed as soon as a sufficient quantity of waste liquid from the production of epichlorhydrine became available to make an appropriately proportioned mixture. Destruction of the ODS in a mixture, rather than pure form, was considered necessary because of the chemical properties of the ODS by-product, carbon tetrachloride. The production of the waste liquid does not always synchronize with the production of the ODS by-product. Consequently, ODS production must sometimes be stockpiled for destruction in a future year;

(d) The ODS was produced for feedstock, upon demand. The customer subsequently requested postponement of the export until the following year, requiring the producing Party to stockpile the feedstock until that time;

(f) The ODS was produced each year to meet the basic domestic needs of developing countries, in quantities no greater than the annual allowance prescribed by the Protocol. The national authority assumed that a portion of that production was stockpiled for export to the developing countries in a future year because the associated commercial arrangements could not be completed before the end of the year of production. The stockpiling was not prohibited on the basis that prohibition would be overly restrictive of commercial trade.

### **C. The current approach**

8. Whenever a Party's data report showed that it had imported or produced ODS in a certain year, the Secretariat would add the quantity imported into the calculation of the Party's consumption level for that year and add the quantity produced into the calculation of the Party's production and consumption levels for that year. That approach would be taken regardless of whether the Party's data report showed that the imported or produced ODS was intended for domestic destruction or feedstock use in a future year, or for export for destruction, feedstock use or basic domestic needs in a future year.

9. Parties whose calculated production or consumption exceeds their annual consumption or production limit as prescribed by the Protocol's control measures are shown in the data report of the Secretariat as deviating from the control measures of the Protocol. Also, the Secretariat includes in its data report to the Committee and the Parties the explanations or clarification associated with the excess production or consumption. Should the Party's data report not provide an explanation for the deviation, the Secretariat would request an explanation from the reporting Party.

10. Consequently, the data report of the Secretariat has to date included the explanations listed in paragraph 8 of the present note in the "clarification" column of the tables which specify apparent deviations from the consumption and production control measures of the Protocol. The Secretariat has not previously asked the Parties or the Committee if these explanations were sufficient to justify the apparent deviations from the relevant Protocol control measure.

11. Recent requests for advice on the matter, however, led the Secretariat to review the guidance provided by the Articles of the Protocol and decisions of the Parties. The Secretariat's review raised questions regarding the consistency of those deviations with the terms of the Protocol and led the Secretariat to conclude that it should ask the Committee and the Parties to determine if those types of deviations from the Protocol's consumption and production control measures were consistent with the Protocol, and the manner in which the deviations should be treated in future with respect to the Protocol's non-compliance procedure.

## D. Relevant Articles of the Montreal Protocol and decisions of the Parties

12. Articles 2A to 2I and 5 set out the levels of consumption and production which a Party must not exceed in a prescribed period. The prescribed periods are 12 months in duration, commencing on 1 January.

13. Article 1, paragraph 5, of the Montreal Protocol defines production as the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. Paragraph 6 of that Article defines consumption as production plus imports minus exports of controlled substances. Therefore, unless otherwise prescribed by the Protocol, the Secretariat's understanding of those provisions is that ODS imported or produced in a given year should be included in the calculation of a Party's controlled consumption and production levels for that year, and the Party's calculated level of consumption and production for that year should not exceed the level prescribed in Articles 2A to 2I and 5.

14. Whether ODS imported and produced by a Party in a given year for domestic destruction or feedstock use, or export for destruction, feedstock use, or basic domestic needs in a future year should be presented as instances of possible non-compliance therefore appears to depend upon whether the production or import is allowed by the Protocol or can be legally excluded from the calculation of the Party's controlled consumption and production levels for the year in which it was imported or produced. As noted in the definition of consumption in the preceding paragraph, the Protocol makes provision for the deduction of exports. Other Articles of the Protocol and decisions of the Parties make provision for the deduction of feedstock use and destruction, and also allow additional production to meet the basic domestic needs of developing countries.

15. Consequently, whether those Articles and decisions can be applied to the consumption and production deviations under consideration appears to depend upon the year in which the calculation of a Party's annual consumption and production levels should take into account the act of domestic destruction or feedstock use, or export for destruction, feedstock use, or basic domestic needs of developing countries. That is, should it be accounted for in the year in which the destruction, feedstock use or export occurs, or in the year in which the ODS is imported or produced for that purpose?

16. The section of the present note below presents the Articles of the Protocol and decisions of the Parties relevant to the issue, addressing in turn each of the explanations for consumption and production deviations listed in paragraph 1 above.

### 1. ODS production in a given year which has been stockpiled for domestic destruction or export for destruction in a future year

17. Article 1, paragraph 5, of the Protocol makes provision for the deduction of ODS destruction from a Party's controlled production, as it defines production as the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. ODS destruction is therefore also deducted from a Party's controlled consumption, given that paragraph 6 of the Article defines consumption as production plus imports minus exports of controlled substances. Paragraph 6 also makes provision for the deduction of exports, regardless of their intended purpose.

18. With the exception of the initial years of the phase-out schedule applicable to Annex A, group I CFC, Articles 2A to 2I and 5 prescribe the Protocol's controls on consumption and production on a 12-monthly basis, commencing 1 January. That is, each Article contains the equivalent of the following part of the passage from Article 2B, paragraph 1, that:

“Each Party shall ensure that for the twelve-month period commencing on 1 January 1992, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in group II of Annex A does not exceed, annually, its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, its calculated level of production in 1986.”

19. Article 7, paragraph 3, prescribes the data which must be submitted to the Secretariat each year to calculate a Party's level of controlled consumption and production. In doing so, it appears to provide guidance on the year in which a Party should report data on destruction and export for destruction, and

thereby, the year in which destruction or export for destruction should be deducted from a Party's controlled production or consumption levels. Paragraph 3 of the Article states that:

“Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each controlled substance listed in Annexes A, B, C and E and, separately, for each substance...

- Amounts destroyed by technologies approved by the Parties, and
- Imports from and export to Parties and non-Parties respectively,

for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter...”

20. Decision IX/28 adopted the existing official data reporting forms and instructions. The guidance provided in the forms and instructions on the year in which a Party should report destruction and export of ODS for destruction, and thereby the year in which the destruction or export for destruction should be deducted from a Party's controlled production or consumption levels, appear consistent with the guidance of Article 7, paragraph 3, of the Protocol. Question 1.2 of the questionnaire, contained in the instructions, reads:

“Did your country export CFCs, halons, carbon tetrachloride, methyl chloroform, HCFCs, HBFCs, bromochloromethane, or methyl bromide in the reporting year?”

Question 1.4 reads:

“Did your country destroy any ODSs in the reporting year?”

The instructions for data reporting form 4 are:

“If your country has destroyed any of the substances listed in Annex A (CFCs and Halons), Annex B (other fully halogenated CFCs, methyl chloroform and carbon tetrachloride), Annex C (HCFCs, HBFCs or BCM), or Annex E (methyl bromide) in the reporting period, please use data form 4”.

21. From the above discussion, and unless the Parties decide otherwise, it would appear that Article 7, paragraph 3, of the Protocol and the data reporting instructions given under decision IX/28 support the conclusion that a consumption or production deviation which represented ODS produced in the year of the apparent deviation and stockpiled for domestic destruction in a future year, or export for destruction in a future year, is not consistent with the Protocol. That would mean that the amount stockpiled for domestic destruction in a future year should be legally excluded from the calculation of a Party's controlled consumption and production levels only in the year in which it is destroyed, rather than the year in which it was produced and stockpiled. Similarly, the amount intended for export for destruction should be legally excluded from a Party's controlled consumption level only in the year in which it was exported.

## **2. ODS production in that year which had been stockpiled for domestic feedstock use or export for that use in a future year**

22. Article 1, paragraph 5, of the Protocol makes provision for the deduction of ODS used as feedstock from a Party's annual controlled production, as it defines production as the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. ODS used as feedstock is therefore also deducted from a Party's annual controlled consumption, given that paragraph 6 of the Article defines consumption as production plus imports minus exports of controlled substances. Paragraph 6 also makes provision for the deduction of exports, regardless of their intended purpose, as the paragraph defines consumption as production plus imports minus exports of controlled substances.

23. As stated in paragraph 25 above, Articles 2A to 2I and 5 prescribe the Protocol's controls on consumption and production on a 12-monthly basis, commencing 1 January.

24. Article 7, paragraph 3, also appears to provide guidance on the year in which a Party should report the use of domestically produced ODS for feedstock and export for feedstock, and thereby, the year in which the feedstock use or export for feedstock use should be deducted from a Party's controlled production or consumption levels. Paragraph 3 of the Article states that:

“Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each controlled substance listed in Annexes A, B, C and E and, separately, for each substance,

- Amounts used for feedstocks, ...
- Imports from and export to Parties and non-Parties respectively,

for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter...”

25. With regard to Parties which stockpile domestically produced ODS in a given year for export for feedstock uses in a future year, decision VII/30 is intended to provide guidance on how the export should be treated. Entitled “Export and import of controlled substances to be used as feedstock”, paragraphs 1 and 2 of the decision provides as follows:

“1. That the amount of controlled substances produced and exported for the purpose of being entirely used as feedstock in the manufacture of other chemicals in importing countries should not be the subject of the calculation of ‘production’ or ‘consumption’ in exporting countries. Importers shall, prior to export, provide exporters with a commitment that the controlled substances imported shall be used for this purpose. In addition, importing countries shall report to the Secretariat on the volumes of controlled substances imported for these purposes; and

“2. That the amount of controlled substances entirely used as feedstock in the manufacture of other chemicals should not be the subject of calculation of ‘consumption’ in importing countries.”

26. The information presented in paragraph 20 above on the guidance provided by the data reporting forms and instructions with respect to reporting the export of domestically produced ODS for destruction also appears to apply to the export of domestically produced ODS for feedstock use. With respect to the domestic feedstock use of domestically produced ODS, the forms and instructions adopted by decision IX/28 appear to provide further guidance on the year in which a Party should report that use, and thereby the year in which the use should be deducted from a Party’s controlled production and consumption levels. The instructions state:

“If your country produced ODS for feedstock use within the reporting period, please provide data on the quantity of each ODS produced for feedstock purposes in column 4”.

Column 4 is entitled “Production for feedstocks within your country”.

27. From the above discussion, and unless the Parties decide otherwise, it would appear that decision VII/30 supports the conclusion that a consumption or production deviation which represents ODS produced in the year of the deviation and stockpiled for export for feedstock use in a future year is not consistent with the Protocol. That would mean that the amount produced for export for feedstock in a future year should be legally excluded from the calculation of a Party’s controlled consumption and production levels only in the year in which it was exported, rather than the year in which it was produced and stockpiled.

28. Also, from the above discussion and unless the Parties decide otherwise, it would appear that Article 7, paragraph 3, of the Protocol and the instructions adopted under decision IX/28 support the conclusion that a consumption or production deviation which represents ODS produced in the year of the deviation and stockpiled for domestic feedstock use in a future year is not consistent with the Protocol. That would mean that the amount stockpiled for domestic feedstock use in a future year should be legally excluded from the calculation of a Party’s controlled consumption and production levels only in the year in which it was used as feedstock, rather than the year in which it was produced and stockpiled.

### 3. ODS production in that year which had been stockpiled for export to meet basic domestic needs in a future year

29. The definition of production contained in Article 1, paragraph 5, of the Protocol does not make provision for the deduction of ODS produced to meet basic domestic needs from a Party’s annual controlled production. As stated previously, paragraph 6 of that Article makes provision for the deduction of exports, regardless of their intended purpose, as the paragraph defines consumption as production plus imports minus exports of controlled substances.

30. As stated in paragraph 18 above, Articles 2A to 2I and 5 prescribe the Protocol's controls on consumption and production on a 12-monthly basis, commencing on 1 January. Also, Articles 2A to 2F, 2H and 5 allow a Party to exceed its annual production limit by a prescribed amount in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5. That is, each of those Articles contains the equivalent of the following passage from Article 2B, paragraph 1:

“Each Party producing one or more of those substances shall ensure that its calculated level of production of the substances does not exceed, annually, its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to 10 per cent of its calculated level of production in 1986.”

Those Articles do not, however, make provision for Parties to exceed their annual consumption limit by the above amount.

31. Article 7, paragraph 3, appears to provide guidance on the year in which a Party should report the production of ODS for basic domestic needs and the export of ODS to meet those needs. The Article also appears to provide guidance on the year in which the production of ODS for basic domestic needs and the export of ODS to meet those needs should be added to the Party's controlled production levels and deducted from its controlled consumption level. Paragraph 3 of the Article states that:

“Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each controlled substance listed in Annexes A, B, C and E and, separately, for each substance...

- Imports from and export to Parties and non-Parties respectively,

for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter...”

32. The information presented in paragraph 20 above on the guidance provided by the data reporting forms and instructions with respect to reporting the export of domestically produced ODS for destruction also appears to apply to the export of domestically produced ODS for basic domestic needs. With regard to guidance on reporting ODS production for basic domestic needs, the instructions state that:

“Producers of Annex A and Annex B substances are allowed to produce additionally, 10 per cent (prior to phase-out) or 15 per cent (after phase-out), of their base-year production to meet the basic domestic needs of Parties operating under Article 5, paragraph 1. If your country produced ODS for this purpose, please enter the amount so produced in column 6 on Data Form 3.”

Column 6 is entitled “Production for supply to Article 5 countries in accordance with Articles 2A–2H and 5”.

33. From the above discussion, and unless the Parties decide otherwise, it would appear that Article 7, paragraph 3, of the Protocol and the data-reporting instructions adopted under decision IX/28 support the conclusion that a consumption deviation which represents ODS produced in the year of the deviation and stockpiled for export to meet basic domestic needs in a future year is not consistent with the Protocol. That would mean that the amount stockpiled for export to meet basic domestic needs should be legally excluded from the calculation of a Party's controlled consumption levels only in the year in which it was exported rather than the year in which it was produced and stockpiled.

#### **4. ODS imported in that year which had been stockpiled for domestic feedstock use in a future year**

34. As noted with regard to case (b) above, Article 1, paragraphs 5, of the Protocol makes provision for the deduction of ODS used as feedstock from a Party's annual controlled production, as it defines production as the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. ODS used as feedstock is therefore also deducted from a Party's annual controlled consumption, given that paragraph 6 of the Article defines consumption as production plus imports minus exports of controlled substances. Paragraph 6 also requires the addition of imports in the calculation of a Party's consumption.

35. As stated in paragraph 18 above, Articles 2A to 2I and 5 prescribe the Protocol's controls on consumption and production on a 12-monthly basis, commencing 1 January.

36. Article 7, paragraph 3, appears to provide guidance on the year in which a Party should report the use of imported ODS for feedstock, and thereby the year in which the feedstock use should be deducted from a Party's controlled production levels. Paragraph 3 of the Article states that:

"Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each controlled substance listed in Annexes A, B, C and E and, separately, for each substance,

- Amounts used for feedstocks,
- Imports from and export to Parties and non-Parties respectively,

for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter..."

37. Decision VII/30 provides guidance on the treatment of ODS imported for feedstock use with regard to a Party's annual calculated consumption. The paragraphs 1 and 2 of the decision provide as follows:

"1. That the amount of controlled substances produced and exported for the purpose of being entirely used as feedstock in the manufacture of other chemicals in importing countries should not be the subject of the calculation of 'production' or 'consumption' in exporting countries. Importers shall, prior to export, provide exporters with a commitment that the controlled substances imported shall be used for this purpose. In addition, importing countries shall report to the Secretariat on the volumes of controlled substances imported for these purposes; and

"2. That the amount of controlled substances entirely used as feedstock in the manufacture of other chemicals should not be the subject of calculation of 'consumption' in importing countries."

38. The forms and instructions adopted under decision IX/28 appear to provide further guidance on how ODS imported for feedstock use in a future year should be treated. The instructions state that:

"In reporting total quantities of new substances imported in column 3, the quantities imported for feedstocks, reported in column 5, should not be deducted. The Secretariat will make the necessary deductions."

Column 5 is entitled "Quantity of new substances imported as feedstock".

39. From the above discussion, and unless the Parties decide otherwise, it would appear that decision VII/30 and the data-reporting instructions adopted under decision IX/28 support the conclusion that a consumption deviation which represents ODS imported in the year of the deviation and stockpiled for domestic feedstock use in a future year is consistent with the Protocol. That would mean that the amount imported for feedstock in a future year would be legally excluded from a Party's controlled consumption level in the year it was imported and stockpiled, rather than the year in which it was used as feedstock.

## **E. Conclusion**

40. In the light of the guidance provided by the Articles of the Protocol and decisions of the Parties, only one of the four types of consumption and production deviation listed in paragraph 1 above appears to be consistent with the Protocol. That type of deviation, listed in subparagraph 1 (d), concerns the situation where imports in excess of the level prescribed by the Protocol for consumption in a given 12-month period were stockpiled in that period for domestic feedstock use in future years. It appears to be consistent with the Protocol on the basis of decision VII/30, which addresses the export and import of controlled substances for feedstock use.

41. With regard to the other three types of consumption and production deviations listed in subparagraphs 1 (a) to 1 (c), the Secretariat was not able to identify any Protocol provisions or decisions of the Parties which would support the conclusion that those types of deviation were consistent with the Protocol. Those deviations concerned situations where production in excess of the level prescribed by the Protocol for production or consumption in a given 12-month period were stockpiled in that period for domestic destruction, domestic feedstock use or export for destruction, export for feedstock use or

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export to meet the basic domestic needs of Parties operating under Article 5 of the Protocol in future years.

42. On that basis, unless the Implementation Committee recommends otherwise, future deviations consistent with the types of deviations listed in subparagraphs 1 (a) to 1 (c) above will be highlighted to the Committee and the Parties in the data report of the Secretariat as cases of possible non-compliance to enable the Committee and the Parties to consider each instance on a case-by-case basis, in accordance with the usual practice.

## Annex III

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