

Introduction

Under the Montreal Protocol on Substances that Deplete the Ozone Layer countries are committed to phase out controlled ozone depleting substances (ODS), and those countries that have already ratified the Kigali Amendment are committed to phase down controlled hydrofluorocarbons (HFCs), according to specific schedules. One of the primary ways that countries implement these commitments is through the monitoring and control of import and export of these controlled substances. In cases of illegal trade where the chemicals have entered the country or there are attempts to import contrary to the national controls (such as legislation on quotas and licensing systems, packaging, labelling and counterfeits), the country can be faced with a seizure of ODS or HFCs which they must deal with. National laws and the provisions of the import/export licensing system may prescribe what happens to seized ODS or HFCs. **This factsheet focuses on controlled ODS, but the options could equally apply to HFCs.**

Customs and enforcement agencies should coordinate with the National Ozone Unit (NOU) to inform them of any seizure and to provide guidance in making decisions on what happens to the seized chemicals. The most appropriate option will naturally depend on the country-specific situation, where the ODS is seized/confiscated and costs involved.

The table below summarises the five main options. More detail on these is provided in the following pages.



Overview of Main Options

Options	Applicability*	
	Seized During Customs Processes (i.e. not imported)	Seized in Domestic Market (i.e. already imported)
1) Reject/send back to the country of origin/exporting country	Yes	No
2) Auction – sell to eligible enterprise/release to market [†]	Yes	Yes
3) Destroy at approved facility in the country	Yes	Yes
4) Export for destruction	Yes	Yes
5) Store in a customs warehouse	Yes	Yes

* Depending on national situation † If the relevant quantity will still be within country quota

1) Reject/send back to the country of origin/exporting country



This option involves sending the consignment back to the country of origin or country of export. The cost of the shipping should be borne by the importer (if possible). This option avoids the burden to the country (NOU and customs) in having to deal with the seized/confiscated ODS. Depending on the national regulations and customs rules this may be a feasible option. A number of issues need to be considered:

- Who is paying for cost of rejecting/returning?
- Can customs prosecute the importer?
- Whether the exporting country will accept the returned shipment?
- Is the original exporting country or country of origin known?
- Can the returned shipment be tracked?
- Is there a risk that the goods will be at risk of being smuggled again?

Issue

Burden/work required:		Low to medium
Environmental consequences:		Medium
Cost:		Low (if cost of return shipping is covered)
Complexity:		Low
Consequence on national consumption:		Does not affect national consumption
Risks:		<ul style="list-style-type: none"> • Original exporting country may not be known • May need to cover shipping costs • Shipment is diverted/illegally imported elsewhere

2) Auction – sell to eligible enterprise/release to market



Auctioning or selling off the seizure (if conditions for import have been met and the relevant quantity will still be within the country quota) is likely to be the most environmentally sound option if its use can prevent additional production of ODS. The additional benefit is that the government will raise revenue from the auction. Auctioning will only be feasible for correctly-labelled and tested substances in appropriate cylinders for the market. If the substance is in non-compliant cylinders, they could be transferred into acceptable (normally re-fillable) cylinders. Mislabelled or contaminated

refrigerants are recommended to be sent for destruction or stored by Customs. Only eligible buyers can participate in such an auction and it is imperative that there is sufficient remaining quota in the country in accordance with the Montreal Protocol commitments. Depending on local regulations, it is possible for external/foreign countries to participate in the auction.

It is important to note that once completed, the quantity auctioned will be counted as part of the country's reported imports, or if sold to a foreign buyer, it should be reported as export.

Issue

Burden/work required:		Medium to High
Environmental consequences:		Low
Cost:		Low (revenue should be generated)
Complexity:		Medium (complexity increases significantly if auction includes international buyers)
Consequence on national consumption:		Quantity must be added to national consumption, if sold to a foreign buyer, it should be reported as an export.
Risks:		Preparations and logistics can require significant work

3) Destroy at approved facility in the country



If auctioning or rejecting the seizure is not possible, destruction is a potential option. The cost of the destruction process can be high (\$10 US to \$50, per kg¹) in addition to the cost of logistics such as recovery, collection and transportation. If possible, the cost should be borne by the illegal importer/owner and such a requirement should be included in national legislation. An additional major challenge is that the majority of developing countries do not have local destruction facilities (see next

section). It is important that the destruction technology is approved by the Montreal Protocol (for details of approved technologies see: *2018 TEAP Report, Supplement to the April 2018 Decision XXIX/4 TEAP Task Force Report on Destruction Technologies for Controlled Substances*²).

If the ODS is destroyed it can be deducted from national imports. However it is important to note that the original import will still need to be reported as an 'import'.

Issue		
Burden/work required:		High
Environmental consequences:		Low to medium (if approved destruction facility is used)
Cost:		High
Complexity:		Medium-high
Consequence on national consumption:		Quantity can be subtracted from national consumption*
Risks:		Complications with logistics

* N.B. original import will still need to be reported as an 'import'

4) Export for Destruction



If there is no destruction facility in the country an option is to export the seizure to a neighboring country or a country further afield where the appropriate approved destruction technologies are available. The costs are likely to be significantly higher than the above option due to the shipping costs, etc. Again, the cost should be borne by the importer/owner of the shipment. This is a more involved process as it will involve coordination with the

other country to enable the shipment to be allowed to be imported for destruction.

There may be some restrictions and requirements due to regulations in some countries (e.g. Basel Convention³ requirements, bans on disposable cylinders, etc.). If the shipment transits through other countries on its route to the destruction facility, the proper coordination with this country/countries will also be required.

Issue		
Burden/work required:		High
Environmental consequences:		Low to medium (if approved destruction facility is used)
Cost:		High/very high
Complexity:		High (as complexity increases significantly when exported for destruction)
Consequence on national consumption:		Quantity can be reported as 'export' *
Risks:		Additional burden/complications with logistics when exported for destruction.

* N.B. ...if it entered the country and was then exported. The original import will still need to be reported as an 'import'

5) Store in a customs warehouse - temporary option



The final option considered here of storage of the seizure is perhaps the least preferable, but the most often implemented. Storage in the short term is naturally required while logistics are made for other options. However, this is often seen as the default option when neither sending back to the country of origin or exporting country or auctioning is a feasible option. This usually requires the least effort in terms of logistics and is less complicated as a short-term solution.

However, it can become a significant challenge in the longer-term due to:

- Deterioration of cylinders / leakage of refrigerant
- Takes up valuable space in storage area in the customs warehouse
- Cost of storage

If the storage facility is under customs jurisdiction (i.e. it has not officially entered the country) it is not counted against a country's imports.

Issue		
Burden/work required		Low
Environmental consequences		Low in short term Higher in long term
Cost		Low to medium (storage costs)
Complexity		Low
Consequence on national consumption		Does not affect national consumption
Risks		<ul style="list-style-type: none"> • A temporary solution • Long-term storage can be costly • Deterioration of cylinders • Leakage of refrigerant

Conclusions

In deciding how to deal with seized ODS (or HFCs) there are many factors that need to be taken into consideration, as briefly described in this factsheet. It is recommended that the NOU coordinate with the Customs and enforcement agencies so that a joint approach can be adopted in making decisions on what happens with the seized chemicals. The most appropriate option will naturally depend on the country-specific situation, the type and condition of the substances, where the ODS is seized/confiscated, the availability of a suitable destruction facility and the costs involved. If the shipment is to be returned or exported for destruction good coordination with the recipient country is required. It is of course preferable to avoid the situation of having to deal with seized ODS by preventing illegal and 'unwanted' trade. Vigilance and

cooperation at the national and regional/global level is required to prevent illegal trade in ODS. One effective and practical tool to assist countries in monitoring and preventing illegal and unwanted ODS imports is the *Informal Prior Informed Consent mechanism* (iPIC)⁴ hosted by UNEP OzonAction.

OzonAction can provide additional information and assistance to developing countries as required to support them in considering the best option and approach to dealing with seized ODS. Regional Network meetings are also a good platform for countries to share experiences on this topic.

Please feel free to contact your OzonAction Compliance Assistance Programme Regional Coordinator for further assistance.

References

1. Preliminary Report for the Second Phase of the Evaluation of the Refrigeration Servicing Sector, Executive Committee of The Multilateral Fund for the Implementation of the Montreal Protocol, UNEP/OzL.Pro/ExCom/81/7 <http://www.multilateralfund.org/81/English/1/8106c1.pdf>
2. 2018 TEAP Report, Supplement to the April 2018 Decision XXIX/4 TEAP Task Force Report on Destruction Technologies for Controlled Substances https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKewi9t-iiOXIAhVR8uAKHb95D_QQFjACegQIBRAC&url=http%3A%2F%2Fconf.montreal-protocol.org%2Fmeeting%2Foewg%2Foewg-40%2Fpresession%2Fbackground-documents%2FTEAP-DecXXIX4-TF-Supplemental-Report-May2018.pdf&usq=AOvVaw2kNZe-oqA0Wtw8CqP9tJPF
3. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
4. Prior Informed Consent mechanism (iPIC) <https://www.unenvironment.org/ozonaction/resources/ipic/ipic-informal-prior-informed-consent>