

# ODS LEGISLATION DRAFTING PROJECT

SUPPORTED BY THE SOUTH PACIFIC REGIONAL  
ENVIRONMENT PROGRAMME (SPREP)

## FINAL REPORT

### DRAFTING OZONE LAYER PROTECTION LEGISLATION FOR VANUATU



GOVERNMENT OF VANUATU  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION



**SPREP**  
Secretariat of the  
Pacific Regional  
Environment Programme

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19<sup>th</sup> December 2009

**FINAL REPORT**

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**1. Project Background**

1.1 With the assistance of the South Pacific Regional Environment Programme (SPREP), the Government of Vanuatu has determined to address a significant gap in the laws of Vanuatu applying to the control of ozone depleting substances (ODS) and the implementation of the obligations arising under the Vienna Convention and the Montreal Protocol.

No current law makes comprehensive provision in relation to the regulation and management of ODS in Vanuatu.

1.2 The International Conventions relevant in Vanuatu to ODS are –

- The *Vienna Convention for the Protection of the Ozone Layer* (Adopted at Vienna on 22 March 1985); and
- The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Adopted at Montreal on 16 September 1987), and some amendments to the Protocol that have been ratified by Vanuatu.

There is no comprehensive law in Vanuatu to implement the important regulatory and administrative processes required under the Convention and the Protocol. This project also aims to remedy this deficiency.

**2. Project Description**

2.1 The objectives of this project have been to formulate and deliver legislative reform to provide a sound administrative and regulatory framework in Vanuatu for the control of ODS in accordance with the Convention and the Montreal Protocol.

2.2 The specific activities required under the contract for the provision of these consultancy services have been to:

- (a) Undertake a general review of existing Vanuatu laws that may have relevance and application in the context of ODS.
- (b) Facilitate and participate in consultations with government stakeholders and the general community.
- (c) Draft appropriate legislative reforms.

2.3 The following legislative outputs have formulated, modified and delivered during the course of this project –

(a) Draft ODS Order under the Customs Act

This has been drafted to impose prohibitions and restrictions in relation to ODS, and utilises the powers vested in the Minister for Customs under section 29 and section 47 of the Customs Act in this regard.

(b) A draft Ozone Layer Protection Act 2010

This has been drafted as a stand alone Act, and it makes comprehensive provision in relation to the management and control of ODS, and for the implementation of the Convention and the Montreal Protocol in Vanuatu.

### **3. Research Methodology**

3.1 The preparation of the legislative outputs has been achieved by the application of the following processes –

(a) Generally reviewing all relevant laws and proposed laws in Vanuatu.

(b) Reviewing the Convention and the Montreal Protocol, and assessing the legislative implications arising from them.

(c) Consulting with stakeholders, and reflecting the views expressed during the consultations in the drafted outputs (as facilitated by the preparation of a Workshop Handout – Appendix 1).

(d) The process of preparing drafts of the legislative reforms, and then finalising the drafts by reflecting the additional views expressed by the key stakeholders.

### **4. Key Elements of the Drafted Outputs**

#### **4.1 *Draft ODS Order under the Customs Act***

4.1.1 This draft Order has been prepared in collaboration with Nicholas Godden, Manager Customs and Audit, and Eric Csiba who is the legal adviser to the Customs Department. This Order can apply under the Customs Act and can operate to immediately impose prohibitions and restrictions on ODS as required by the Convention and the Montreal Protocol. It is necessary for the draft to be presented to the Council of Ministers for approval, and then it can be brought into effect by the Minister for Customs. The draft Order has been given to the State Law Office in Vanuatu for review, and the willing assistance provided by Angeline Saul and Jason Pakoasongi of that Office is especially noted.

4.1.2 The draft Order includes provisions as follows –

- Applicable definitions under the Convention and the Montreal Protocol

- Prohibitions on the importation of controlled substances in Parts I –VI of the Schedule
- Prohibitions on the importation of certain goods containing controlled substances
- Restrictions on the importation of HCFCs (imports are permissible if the Director certifies that they are permissible under the Montreal Protocol)
- Exemptions for methyl bromide if the Director of Quarantine provides certification.
- Exemptions for medical goods if the Director of Health provides certification
- Prohibitions and restrictions on the exportation of controlled substances
- A proviso permitting the transshipment of controlled substances under conditions imposed by the Director of Customs

4.1.3 A number of drafts of the Order were prepared to incorporate suggestions made by Nirupa and Shaofeng. The final draft also incorporates the relevant HS Codes as suggested by Nicholas Godden.

## **4.2 Draft Ozone Layer Protection Act**

4.2.1 This draft law seeks to comprehensively apply and implement the Convention and the Montreal Protocol in Vanuatu. It is necessary to give a firm base to the application of the import and export controls under the Customs ODS Order, particular in relation to the certification (permit) processes that are referred to in the Order. It also imposes controls over the manufacture and sale of controlled substances in accordance with the Convention and the Montreal Protocol.

4.2.2 The draft law is structured as follows –

### **PART 1 – PRELIMINARY**

1. Interpretation
2. Objects and application of the precautionary principle

### **PART 2 – PROHIBITIONS AND RESTRICTIONS RELATING TO CONTROLLED SUBSTANCES**

3. Prohibitions and restrictions on the importation of controlled substances
4. Prohibitions on the importation of certain goods
5. Exemptions in relation to imports
6. Regulation of exports of controlled substances
7. Prohibitions on manufacture of controlled substances
8. Prohibitions on sales of controlled substance
9. Exemptions in relation to sales

### **PART 3 – PERMITS, LICENSING AND CERTIFICATION**

10. General principles to be applied in relation to permits
11. Quarantine and pre-shipment permits
12. Medical and health related permits
13. Base year permits for HCFC's
14. General provisions in relation to permits
15. Goods for which no permit may apply
16. Registered importers and workshops
17. Provision of information relevant to controlled substances

### **PART 4 – ENFORCEMENT AND OFFENCES**

18. Powers of officers
19. Seizure of substances and goods
20. Forfeiture of seized substances and goods and duties to dispose
21. Call-up of substances and goods
22. Offences and penalties

**PART 5 – MISCELLANEOUS PROVISIONS**

23. National Ozone Advisory Committee
24. Regulations

**5. Consultation Process and the Outcomes of the Consultations**

A round of consultations was held with a range of key stakeholders. This included the holding of a well attended workshop.

The draft Ozone Layer Protection Act can be circulated in due course to all relevant stakeholders in accordance with government protocols.

The outcome of all such consultations is identified in Appendix 2.

**6. Steps Required for Implementation of the Reforms**

Two Checklists for the action required to implement these reforms appear at the end of this Report.

I wish the Department of Environment and Conservation well in achieving the final implementation of these reforms, and thank the Director and his staff for their support during the drafting of these significant initiatives. I also note the considerable inputs and willing cooperation of Eric Csiba and Nicholas Godden of the Department of Customs, and Jason Pakoasongi of the State Law Office.

Graham Bruce Powell

Appendices –

1. Overview for ODS Workshop
2. Consultation Report

Attachments:-

1. The Draft ODS Order under the Customs Act
2. The Draft Ozone Layer Protection Act

## Appendix 1

### LEGISLATION TO PROVIDE FOR OZONE LAYER PROTECTION

## AN OVERVIEW

### 1. Background

New legislation must be drafted specifically for application in Vanuatu, and to address issues that are relevant now. While it may be based on the provisions of legislation applying in New Zealand and neighbouring Pacific Island countries, the provisions of the new law must be simplified and modified for current application in Vanuatu.

The legislative reforms shall be drafted with financial and technical assistance provided by the South Pacific Environment Programme (SPREP).

### 2. Basis of the new legislation

The new law must be consistent with the powers and arrangements provided for in the *Environmental Management and Conservation Act 2002*. Section 45 of that Act provides a basis for making regulations in the following terms –

“(2) The Minister may make regulations with other Ministers, including for the purpose of any or all of the following:

(a) regulating the environmental effects of:

- (i) the importation and transportation of hazardous substances;
- (ii) the proposed introduction of foreign organisms;
- (iii) pests and weeds;
- (iv) waste management;
- (v) air and water pollution;...”

A new Act or Regulations must make comprehensive provision for the implementation of Vanuatu’s obligations under the *Vienna Convention for the Protection of the Ozone Layer* (“*the Convention*”) and the *Montreal Protocol on Substances that Deplete the Ozone Layer* (“*the Protocol*”).

### 3. Achieving the Legislative Reforms

The reforms could be progressed as a stand-alone Act under a title such as the “*Ozone Layer Protection Act 2010*”, or as Regulations made under the authority of the *Environmental Management and Conservation Act 2002*. This shall be done in accordance with the decision of the Attorney General.

In accordance with the *Environmental Management and Conservation Act 2002* the Regulations may be made by the Minister responsible for the Environment, in conjunction with “other Ministers”.

#### 4. Major Provisions

##### **The major provisions of the new law need to provide as follows –**

###### □ **“Controlled Substances”**

A Schedule to the new law must identify the ozone depleting substances controlled by the new legislation. The list must be consistent with the Convention and the Protocol.

###### □ **Prohibitions on Export, Import, Manufacture and Sale of Controlled Substances etc.**

##### ***The following prohibitions should be applied to controlled substances –***

- The importation of controlled substances must be banned, unless a permit is granted.
- The importation of certain aerosol sprays, plastic foam products, dry-cleaning machines, fire extinguishers and coolers must be banned.
- The importation of many goods from countries that are not complying with the Convention and the Protocol must be banned.
- The exportation of controlled substances to countries not complying with the Convention and Protocol must be banned.
- The manufacture of controlled substances and certain goods containing them must be banned.
- The sale of certain goods containing controlled substances must be banned.

###### □ **General Exemptions**

In relation to products containing controlled substances the following shall not be absolutely prohibited –

- The use of such products only for packaging.
- The importation of personal or household effects containing such products.
- The sale of second hand goods.
- The sale of goods to which a permit applies.

###### □ **Permits relating to controlled substances**

The following permits may be granted under the authority of the new law -

- Quarantine and pre-shipment permits.

Relating only to the use of methyl bromide for quarantine and pre-shipment applications.

➤ Medical permits

Relating only to hydrochlorofluorocarbons in medical products necessary for protection of life or human health.

➤ Base year permits

Companies and persons who have used controlled substances in the past may be permitted to use them, but must phase out the use in accordance with the provisions of the Protocol. The actual current application of these arrangements must be determined and reflected in the new legal provisions.

The general provisions applying to all permits issued are stated in regulation 14. No base year permit may apply after the appropriately designated year.

□ **Enforcement**

The new legal arrangements should be enforceable by “Environment Officers” and by Customs Officers. They should not affect the ordinary application of the *Customs Act* in any way.

Officers should be given powers to seize offending goods and controlled substances. Upon a court order any goods or substances (or equipment using them) should be forfeited to the Government and disposed of.

The Minister should also have the power to advertise that prohibited goods and substances are to be stored properly, or delivered up for destruction or other disposal.

□ **Penalties**

A range of offences will be stated in the new law.

Penalties will consist of significant fines and terms of imprisonment, or both.

5. *Additional or Alternative Action to Regulate Substances*

The objectives of these reforms may be achieved in the long and/or short terms by exercising powers under existing laws, such as the *Customs Act 1999* to restrict or prohibit the importation and/or exportation of controlled substances. This possibility shall be considered in conjunction with stakeholders.

## Appendix 2

### CONSULTATION REPORT

#### OUTCOME OF CONSULTATIONS RELATING TO A PROPOSED OZONE LAYER PROTECTION LAW FOR VANUATU

##### 1. Inputs from Shaofeng – 30/11/09

###### *General Observations*

- It might be good to ban most of the ODS without exception, and control the import and export of HCFC, methyl bromide.
- The importer should be also obligated to report its annual import/export within timeline as set by the regulation.
- A clear line should be set for the customs office to transfer the import data to the Ministry of environment.

###### *Other important provisions could also be included:*

- Setting up the National Ozone Unit under the Environment department to look after the daily implementation of the Convention and Protocol.
- Obligation of the technicians servicing refrigeration/air conditioning equipment to get training/certification before handling ODS refrigerants; Obligation of the end user of refrigeration/air conditioning equipment not to vent ODS intentionally; Regular maintenance of the end-user of big equipment with high ODS charge; Encourage servicing workshops to follow up good practices during the servicing/maintenance which include recovery/recycling, to reduce the leakage of refrigerant.
- Government encourage the ozone layer protection awareness raising activities, and encourage the technicians to follow up good practices, conducting recovery/recycling.
- Licensing system to servicing technicians.
- It would also be highly recommended to have the quota system for the import/export of HCFC and methyl bromide). The Minister should be able to set the amount of the total import annually).
- It would be better to obligate the importer to take the responsibility to return the seized substances to its original country. If the government seized and keep it within the country, the country would be in non-compliance if the total amount is more than the limit under the Protocol.

##### 2. Stakeholder Workshop – Ministry of Women’s Affairs 01/12/09

The following issues were raised and discussed as feedback during the Workshop –

- Some reference and appropriate provisions need to be made in relation to disposal, recycling and re-use of substances removed and held in storage.
- It is crucial that the permit system and any set quota does not permit a monopoly to arise if all or most of the quota is allocated to one supplier. (The input of a National Ozone Advisory Committee in setting the quota may alleviate this concern and possible outcome).

- Consideration needs to be given to permitting persons holding stocks of regulated ODS (under permits and in accordance with the quota) to trade in their stocks so that one business may dispose of ODS that is surplus to its requirements but which is needed by another.
- We need to clarify the extent of the licensing and certification requirements. i.e businesses are to be licenced (as workshops) and staff are to be certificated. But can this recognise the right of a certified supervisor to oversee the work of uncertified workers who are under his or her direct supervision.
- Thought should be given to conditions to be applied to permits. e.g. requirements for there to be reclaim units and proper processes and facilities for extraction and storage at all licensed premises.
- Training and certification for reclaiming ODS needs to be considered.
- Schemes of incentives should be devised to encourage change-over to alternative gases. e.g. duty rebates on good gases and duty premiums on more problematic gases. Perhaps there is a role in this context for a National Ozone Advisory Committee to recommend such schemes and arrangements.
- Provision should be included to automatically accommodate amendments to the Convention and the Protocol in the ODS law.
- If an Order is to be made under the Customs Act to prohibit and restrict ODS importation and exportation then training will be needed for identification and management of ODS, and arrangements will be needed for the storage and disposal (or return) of substances found to be in contravention of the Order.

### **3. Vanuatu Quarantine and Inspection Service – 02/12/09**

The Acting Director (Timothy) and Snr Quarantine Officer (Francis) noted –

- They are aware of the implications of ODS generally and methyl bromide in particular, and in fact already liaise with one importer of methyl bromide for quarantine purposes.
- They are willing to play a role in vetting applications for permits to import methyl bromide for quarantine applications. They are aware of the need to assess that the methyl bromide is necessary for the purpose and that there are not other better substances that can be used in its place.
- They are in the process of reviewing their Act and will make any necessary provisions to give effect to this arrangement, but are quite happy to play the vetting role in accordance with any ODS law and system that is put into effect under our reforms.
- We provided them with the Overview Paper, the Schedule of substances and the draft application forms.

### **4. Ministry of Health**

The following matters were noted by Len Tarivonda, Director of Public Health –

- The power to authorise medical products containing ODS should be vested with the Director General of Health.
- The Ministry of Health has a Therapeutic Drugs Committee which will be involved in decisions about which medical products are to be used in Vanuatu, and this may extend to determining which products containing ODS are to be authorised.

- Some technical advice may need to be provided to determine which products should be authorised, and which should be replaced entirely by non ODS products.
- The Ministry is willing to play its role in implementing the Convention and the Protocol under the proposed Customs Order and the new ODS legislation.

## **5. State Law Office**

Jason Pakoasongi of the SLO noted as follows –

- The ODS Order under the Customs Act would be a more expeditious way of achieving compliance with the Convention and Protocol. This should be followed by a ODS Act which needs to formalise the licensing system and regulate manufacture and sale of ODS products etc.
- He can review the Order without delay and shall contact Eric to confirm arrangements for it to be given legal effect.
- He will ascertain the possibility of getting the ODS Act ready for the Parliament sessions scheduled for early 2010.

**Attachment 1**

**ODS ORDER UNDER THE CUSTOMS ACT**

**REPUBLIC OF VANUATU**

*CUSTOMS ACT [Cap. 257]*

**OZONE DEPLETING SUBSTANCES ORDER 2010**

I, \_\_\_\_\_, Minister for Customs, acting with the approval of the Council of Ministers **PURSUANT TO** sections 29 and 47 of the Customs Act [Cap. 257] **DO HEREBY MAKE** Orders to prohibit and restrict the importation and exportation of certain ozone depleting goods and goods containing ozone depleting substances in accordance with the requirements of the *Vienna Convention for the Protection of the Ozone Layer*, and the Montreal Protocol (as amended) made under that Convention.

SIGNED at Port Vila on the \_\_\_\_\_ day of \_\_\_\_\_ 2010

.....

Minister for Customs

**ORDERS**

**1. Definitions of terms used in these Orders**

(1) In these Orders -

“aerosol spray” and “aerosol” means any substance packed under pressure in a container with a device for releasing it directly into the atmosphere as a foam or fine spray, or a liquid or solid stream;

“bulk”, in relation to any controlled substance, -

- (a) means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture; and
- (b) includes any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, that has been recovered, cleaned (by filtering or drying) or reclaimed (by filtering, drying, distillation or chemical treatment); but
- (c) excludes any controlled substance that is in a manufactured product;

“Convention” means the *Vienna Convention for the Protection of the Ozone Layer* (Adopted at Vienna on 22 March 1985);

“controlled substance” means any substance specified in the Schedule;

“export” and “exportation” means to take or cause to be taken out of Vanuatu;

“import” and “importation” means to bring or cause to be brought into Vanuatu;

“Montreal Protocol” means the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Adopted at Montreal on 16 September 1987), and includes all amendments to the Protocol that are ratified by Vanuatu from time to time;

“plastic foam” means any plastics in cellular mass which are formed with the use of any gas or volatile liquid introduced into liquid plastic to make bubbles;

“solvent” means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface.

- (2) Words used in this Order shall have the same meaning as is given to them in the Montreal Protocol, unless a contrary intention appears.

## **2. Prohibitions on the importation of ozone depleting substances**

- (1) The importation into Vanuatu of any goods containing any quantity of a controlled substance specified in Parts I to VI (inclusive) of the Schedule is prohibited.
- (2) The importation into Vanuatu of any quantity of a controlled substance specified in Parts I to VI (inclusive) of the Schedule in bulk is prohibited.

## **3. Prohibitions on the importation of certain goods containing ozone depleting substances**

- (1) Subject to paragraph (2) of this Order, the importation into Vanuatu of the following goods (whether new or second hand) is prohibited -
- (a) any aerosol spray that contains any quantity of a controlled substance, other than methyl bromide;
  - (b) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using any controlled substance specified in Part I or Part II of the Schedule (including any extruded polystyrene foam, polystyrene boardstock and any thermoformed plastic packaging such as supermarket meat/produce trays, egg cartons, fast-food containers, disposable plates and cups, horticultural packaging trays and packaging netting);
  - (c) any dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
  - (d) any fire extinguisher that contains any quantity of a controlled substance; and
  - (e) any dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any quantity of a controlled substance listed in Part I and Part II of the Schedule.
- (2) Nothing in paragraph (1) of this Order shall prohibit –
- (a) the import of any controlled substance, or any goods containing any controlled substance, that is or are used only as packaging, or part of the packaging, of any other imported goods; or
  - (b) the import of any goods that are personal or household effects, and in respect of which the Director of Customs is satisfied that they are not

intended for any other person, or for gift, sale or exchange.

- (3) The importation into Vanuatu from a country that is not a party to the *Montreal Protocol*, of any of the following goods containing any quantity of a controlled substance (other than one specified in Part VII or Part VIII of the Schedule) is prohibited –
- (a) Refrigerators and freezers;
  - (b) Dehumidifiers and domestic and commercial refrigeration, air conditioning and heat pump equipment;
  - (c) Air conditioning and heat pump units;
  - (d) Automobile and truck air conditioning units (whether incorporated in vehicles or not);
  - (e) Ice machines and water coolers;
  - (f) Aerosol products (other than medical aerosols);
  - (g) Portable fire extinguishers;
  - (h) Insulation boards, panels and pipe covers; and
  - (i) Pre-polymers (a reactive mixture of isocyanate and polyoll to which chlorofluorocarbons are added to make rigid plastic foams).

#### **4. Restrictions on the importation of HCFC's**

Notwithstanding any other provision of these Orders, controlled substances specified in Part VII of the Schedule may be imported into Vanuatu if –

- (a) the Director of Environment certifies that the importation is consistent with the requirements applying under the Convention and the *Montreal Protocol*; and
- (b) all requirements applying under any law regulating controlled substances have been complied with, including any applicable quota scheme that may apply from time to time.

#### **5. Exemptions for medical and quarantine uses**

- (1) Notwithstanding any other provision of these Orders, a product containing a controlled substance may be imported into Vanuatu if the Director of Health certifies that the product has a medical application relating to the protection of life or health in Vanuatu.
- (2) Notwithstanding any other provision of these Orders, methyl bromide may be imported into Vanuatu if the Officer in charge of the Vanuatu Quarantine and Inspection Service certifies that it is to be used for legitimate quarantine or pre-shipment applications in Vanuatu.
- (3) For the purposes of paragraph (2) of this Order –
  - (a) “quarantine applications” mean any treatments to prevent the introduction, establishment or spread of quarantine pests (including diseases), or to ensure their official control; and
  - (b) “pre-shipment applications” mean any treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country, or the existing phytosanitary or sanitary requirements of the exporting country.

#### **6. Prohibition of exports of controlled substances**

The exportation from Vanuatu of any bulk controlled substance specified in Part I - VI of the Schedule to any other country is prohibited.

## 7. Restrictions on exports of controlled substances

- (1) No person may export any bulk controlled substance unless he or she notifies the Director of Customs in writing at least 14 days prior to the exportation.
- (2) All notifications given under paragraph (1) and shall give particulars of –
  - (a) the substance exported;
  - (b) the date and amount of the export; and
  - (c) the destination of the exported substance.
- (3) Approval may be given under the hand of the Minister of Environment to the export of any bulk controlled substance which has been retrieved from vehicles, goods and equipment in Vanuatu and which is to be exported for the purposes of safe disposal in a foreign country.
- (4) An approval given under paragraph (3) shall be subject to the conditions that the storage, movement and disposal of the controlled substances shall be -
  - (a) in accordance with any requirement applying under the Convention and the Montreal Protocol; and
  - (b) undertaken in accordance with accepted international best practice.

## 8. No restrictions apply to substances imported for transshipment

- (1) Nothing in these Orders shall prevent an exemption being granted by the Director of Customs in respect of the import and subsequent export of any substances or goods only for the purpose of being transhipped into another ship or aircraft for carriage to a destination that is outside the territorial limits of Vanuatu.
- (2) The Director may impose any conditions on any exemption granted under paragraph (1) of this Order to ensure the safe storage, transportation or handling of any substance or goods during transshipment.

### SCHEDULE

#### CONTROLLED SUBSTANCES

##### PART I

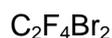
##### CFCs (CHLOROFLUOROCARBONS) (HS Code - 2903.40)

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
CFCl <sub>3</sub>	CFC-11	2903.41.00
CF <sub>2</sub> C1 <sub>2</sub>	CFC-12	2903.42.00
C <sub>2</sub> F <sub>3</sub> C1 <sub>3</sub>	CFC-113	2903.43.00
C <sub>2</sub> F <sub>4</sub> C1 <sub>2</sub>	CFC-114	2903.44.10
C <sub>2</sub> F <sub>5</sub> C1	CFC-115	2903.44.90

##### PART II

##### HALONS (HS Code - 2903.40)

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
CF <sub>2</sub> BrCl	Halon 1211	2903.46.10
CF <sub>3</sub> Br	Halon 1301	2903.46.20



Halon 2402

2903.46.90

**PART III**  
**OTHER CFCS (CHLOROFLUOROCARBONS) (HS Code - 2903.45)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
$CF_3C1$	CFC-13	2903.45.10
$C_2FC1_5$	CFC-111	2903.45.15
$C_2F_21_4$	CFC-112	2903.45.20
$C_3FC1_7$	CFC-211	
$C_3F_2C1_6$	CFC-212	
$C_3F_3C1_5$	CFC-213	
$C_3F_4C1_4$	CFC-214	
$C_3F_5C1_3$	CFC-215	
$C_3F_6C1_2$	CFC-216	
$C_3F_7C1$	CFC-217	

**PART IV**  
**CARBON TETRACHLORIDE (HS Code - 2903.10)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
$CCl_4$	Carbon tetrachloride	2903.14.00

**PART V**  
**METHYL CHLOROFORM (HS Code - 2903.19)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
$C_2H_3Cl_3$	1,1,1-trichloroethane	2903.19.10

This formula does not refer to 1,1,2-trichloroethane.

**PART VI**  
**HBFCs (HYDROBROMOFLUOROCARBONS) (HS Code - 2903.49)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
$CHFBr_2$		2903.49
$CHF_2Br$	(HBFC-22B1)	2903.49.30
$CH_2FBr$		2903.49
$C_2HFBr_4$		2903.49
$C_2HF_2Br_3$		2903.49
$C_2HF_3Br_2$		2903.49
$C_2HF_4Br$		2903.49
$C_2H_2FBr_3$		2903.49
$C_2H_2F_2Br_2$		2903.49
$C_2H_2F_3Br$		2903.49
$C_2H_3FBr_2$		2903.49
$C_2H_3F_2Br$		2903.49
$C_2H_4FBr$		2903.49
$C_3HFBr_6$		2903.49
$C_3HF_2Br_5$		2903.49
$C_3HF_3Br_4$		2903.49
$C_3HF_4Br_3$		2903.49
$C_3HF_5Br_2$		2903.49
$C_3HF_6Br$		2903.49
$C_3H_2FBr_5$		2903.49

C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>4</sub>	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>3</sub>	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br	2903.49
C <sub>3</sub> H <sub>3</sub> FBr <sub>4</sub>	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>3</sub>	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>2</sub>	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br	2903.49
C <sub>3</sub> H <sub>4</sub> FBr <sub>3</sub>	2903.49
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Br <sub>2</sub>	2903.49
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Br	2903.49
C <sub>3</sub> H <sub>5</sub> FBr <sub>2</sub>	2903.49
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Br	2903.49
C <sub>3</sub> H <sub>6</sub> FBr	2903.49

**PART VII**  
**HCFCS (HYDROCHLOROFLUOROCARBONS) (HS Code - 2903.49)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
CHFCI <sub>2</sub>	(HCFC-21)	2903.49
CHF <sub>2</sub> CI	(HCFC-22)	2903.49.11
CH <sub>2</sub> FCI	(HCFC-31)	2903.49
C <sub>2</sub> HFCl <sub>4</sub>	(HCFC-121)	2903.49
C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	(HCFC-122)	2903.49
C <sub>2</sub> HF <sub>3</sub> Cl <sub>2</sub>	(HCFC-123)	2903.49.19
CHCl <sub>2</sub> CF <sub>3</sub>	(HCFC-123)	2903.49.19
C <sub>2</sub> HF <sub>4</sub> CI	(HCFC-124)	2903.49.19
CHFClCF <sub>3</sub>	(HCFC-124)	2903.49.19
C <sub>2</sub> H <sub>2</sub> FCI <sub>3</sub>	(HCFC-131)	2903.49
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-132)	2903.49
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> CI	(HCFC-133)	2903.49
C <sub>2</sub> H <sub>3</sub> FCI <sub>2</sub>	(HCFC-141)	2903.49.19
CH <sub>3</sub> CFCl <sub>2</sub>	(HCFC-141b)	2903.49.15
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> CI	(HCFC-142)	2903.49.19
CH <sub>3</sub> CF <sub>2</sub> CI	(HCFC-142b)	2903.49.19
C <sub>2</sub> H <sub>4</sub> FCI	(HCFC-151)	2903.49
C <sub>3</sub> HFCl <sub>6</sub>	(HCFC-221)	2903.49
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	(HCFC-222)	2903.49
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	(HCFC-223)	2903.49
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	(HCFC-224)	2903.49
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	(HCFC-225)	2903.49
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	(HCFC-225ca)	2903.49
CF <sub>2</sub> ClCF <sub>2</sub> CHClF	(HCFC-225cb)	2903.49
C <sub>3</sub> HF <sub>6</sub> CI	(HCFC-226)	2903.49
C <sub>3</sub> H <sub>2</sub> FCI <sub>5</sub>	(HCFC-231)	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	(HCFC-232)	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	(HCFC-233)	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	(HCFC-234)	2903.49
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> CI	(HCFC-235)	2903.49
C <sub>3</sub> H <sub>3</sub> FCI <sub>4</sub>	(HCFC-241)	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	(HCFC-242)	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	(HCFC-243)	2903.49
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> CI	(HCFC-244)	2903.49
C <sub>3</sub> H <sub>4</sub> FCI <sub>3</sub>	(HCFC-251)	2903.49
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-252)	2903.49

C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	(HCFC-253)	2903.49
C <sub>3</sub> H <sub>5</sub> FCl <sub>2</sub>	(HCFC-261)	2903.49
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Cl	(HCFC-262)	2903.49
C <sub>3</sub> H <sub>6</sub> FCl	(HCFC-271)	2903.49

**PART VIII**  
**METHYL BROMIDE (HS Code - 2903.39)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>HS Code</i>
CH <sub>3</sub> Br	(Mono) bromomethane	2903.39.11
CH <sub>2</sub> BrCl	Bromochloromethane	2903.49.80

## Attachment 2

### DRAFT OZONE LAYER PROTECTION ACT

### OZONE LAYER PROTECTION

Act xx of 2010

#### ARRANGEMENT OF SECTIONS

##### **PART 1 – PRELIMINARY**

1. Interpretation
2. Objects and application of the precautionary principle

##### **PART 2 – PROHIBITIONS AND RESTRICTIONS ON CONTROLLED SUBSTANCES**

3. Prohibitions and restrictions on the importation of controlled substances
4. Prohibitions on the importation of certain goods
5. Exemptions in relation to imports
6. Regulation of exports of controlled substances
7. Prohibitions on manufacture of controlled substances
8. Prohibitions on sales of controlled substance
9. Exemptions in relation to sales

##### **PART 3 – PERMITS, LICENSING AND CERTIFICATION**

10. General principles to be applied in relation to permits
11. Quarantine and pre-shipment permits
12. Medical and health related permits
13. Base year permits for HCFC's
14. General provisions in relation to permits
15. Goods for which no permit may apply
16. Registration of Approved Importers and Approved Workshops
17. Provision of information relevant to controlled substances

##### **PART 4 – ENFORCEMENT AND OFFENCES**

18. Powers of officers
19. Seizure of substances and goods
20. Forfeiture of seized substances and goods and duties to dispose
21. Call-up of substances and goods
22. Offences and penalties

##### **PART 5 – MISCELLANEOUS PROVISIONS**

23. National Ozone Advisory Committee
24. Regulations

Be it enacted by the President and Parliament as follows –

### OZONE LAYER PROTECTION ACT

**An Act to control ozone depleting substances in Vanuatu in accordance with the obligations applying under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol, and for related purposes.**

#### **PART 1 – PRELIMINARY**

##### **1. Interpretation**

- (1) In this Act, unless the contrary intention appears:

“aerosol spray” and “aerosol” means any substance packed under pressure in a container with a device for releasing it directly into the atmosphere as a foam or fine spray, or a liquid or solid stream;

“bulk”, in relation to any controlled substance:

- (d) means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture; and
- (e) includes any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, that has been recovered, cleaned (by filtering or drying) or reclaimed (by filtering, drying, distillation or chemical treatment); but
- (f) excludes any controlled substance that is in a manufactured product;

“controlled substance” means any substance specified in the Schedule;

“Convention” means the *Vienna Convention for the Protection of the Ozone Layer* (Adopted at Vienna on 22 March 1985);

“Director” means the Director of Environment;

“export” and “exportation” means to take or cause to be taken out of Vanuatu;

“import” and “importation” means to bring or cause to be brought into Vanuatu;

“Minister” means the Minister of Environment;

“Montreal Protocol” means the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Adopted at Montreal on 16 September 1987), and includes all amendments to the Protocol that are ratified by Vanuatu from time to time;

“National Ozone Advisory Committee” means the Committee established under section 23;

“non-complying country” means any country that is not a party to the Montreal Protocol;

“Officer” means an officer appointed under the Environmental Management and Conservation Act [Cap. 283], any police officer and any customs officer appointed under the Customs Act [Cap. 257];

“plastic foam” means any plastics in cellular mass which are formed with the use of any gas or volatile liquid introduced into liquid plastic to make bubbles;

“sale” means every method of disposition for valuable consideration (including barter), and includes:

- (a) the disposition to an agent for sale on consignment;
- (b) offering for sale or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting any of these things to be done;
- (c) disposal by way of lottery, raffle or game of chance –

and “sell” and “sold” shall have corresponding meanings; and

“solvent” means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface.

- (2) Words used in this Act shall have the same meaning as is given to them in the Montreal Protocol, unless a contrary intention appears.

## **2. Objects and application of the precautionary principle**

- (1) The objects of this Act are to:
  - (a) protect human health and the environment from adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer;
  - (b) phase out ozone depleting substances as soon as possible except for essential uses; and
  - (c) give effect to the Vanuatu’s obligations under the *Convention for the Protection of the Ozone Layer* and the *Montreal Protocol on Substances that Deplete the Ozone Layer*.
- (2) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the use, manufacture, sale, handling, storage or movement of ozone depleting substances within Vanuatu, shall apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.
- (3) For the purposes of this section, the precautionary principle is applied if, in the event of a threat of damage to the environment or a risk to human health in Vanuatu, a lack of scientific certainty regarding the extent of adverse effects is not used to prevent or avoid a decision being made to minimise the potential adverse effects or risks from the importation, use, storage, handling or movement of ozone depleting substances within Vanuatu.

## **PART 2 - PROHIBITIONS AND RESTRICTIONS ON CONTROLLED SUBSTANCES**

### **3. Prohibitions and restrictions on the importation of controlled substances**

- (1) The importation into Vanuatu of any controlled substance specified in Parts I to VI (inclusive) of the Schedule is prohibited.
- (2) Subject to section 5, the importation into Vanuatu of the following is prohibited:
  - (a) any bulk methyl bromide, as specified in Part VIII of the Schedule; and
  - (b) any bulk hydrochlorofluorocarbons, as specified in Part VII of the Schedule (whether alone or in a mixture).

### **4. Prohibitions on the importation of certain goods**

- (1) Subject to section 5(2), the importation into Vanuatu of the following goods (whether new or second hand) is prohibited:
  - (f) any aerosol spray that contains any controlled substance, other than methyl bromide;

- (g) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using any controlled substance specified in Part I or Part II of the Schedule (including any extruded polystyrene foam, polystyrene boardstock and any thermoformed plastic packaging such as supermarket meat/produce trays, egg cartons, fast-food containers, disposable plates and cups, horticultural packaging trays and packaging netting);
  - (h) any dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
  - (i) any fire extinguisher that contains any controlled substance; and
  - (j) any dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any controlled substance listed in Part I and Part II of the Schedule.
- (2) Subject to section 5(2), the importation into Vanuatu of any of the following goods containing any controlled substance (other than one specified in Part VII or Part VIII of the Schedule) is prohibited:
- (j) Refrigerators and freezers;
  - (k) Dehumidifiers and domestic and commercial refrigeration, air conditioning and heat pump equipment;
  - (l) Air conditioning and heat pump units;
  - (m) Automobile and truck air conditioning units (whether incorporated in vehicles or not);
  - (n) Ice machines and water coolers;
  - (o) Aerosol products (other than medical aerosols);
  - (p) Portable fire extinguishers;
  - (q) Insulation boards, panels and pipe covers; and
  - (r) Pre-polymers (a reactive mixture of isocyanate and polyoll to which chlorofluorocarbons are added to make rigid plastic foams).

**5. Exemptions in relation to imports**

- (1) The following exemptions may be given in relation to imports referred to in section 3, in accordance with a permit issued under Part 3 as follows:
- (a) a Quarantine and Pre-shipment Permit in accordance with section 11 in relation to methyl bromide;
  - (b) a Medical or Health Related Permit in accordance with section 12 in relation to medical products using any controlled substance; and
  - (c) a Base Year Permit in accordance with section 13 in relation to controlled substances specified in Part VII of the Schedule.

- (2) Nothing in section 4 shall make it unlawful for any person to:
- (c) import any controlled substance, or any goods containing any controlled substance, that is or are used only as packaging, or part of the packaging, of any other imported goods; or
  - (d) import any goods that are personal or household effects, and in respect of which the Director of Customs is satisfied that they are not intended for any other person, or for gift, sale or exchange.
- (3) Nothing in this Act shall prevent an exemption being granted by the Director of Customs in respect of the import or subsequent export of any substances or goods only for the purpose of being transhipped into another ship or aircraft for carriage to a destination that is outside the territorial limits of Vanuatu.

**6. Regulation of exports of controlled substances**

- (1) The exportation from Vanuatu of any bulk controlled substance specified in Part I - VI of the Schedule to any country is prohibited.
- (2) Any person who exports any bulk controlled substance shall, within 14 days after the exportation, notify the Director in writing and shall give particulars of:
- (a) the substance exported;
  - (b) the date and amount of the export; and
  - (c) the destination of the exported substance.
- (3) The Minister may give approval for the export of any bulk controlled substance which has been retrieved from vehicles, goods and equipment in Vanuatu and which is to be exported for the purposes of safe disposal in a foreign country.
- (4) An approval given under subsection (3) must be consistent with all requirements applying under the Convention or the Montreal Protocol, and shall require that the storage, movement and disposal of the controlled substance be undertaken in accordance with accepted international best practice.

**7. Prohibitions on manufacture of controlled substances**

The manufacture within Vanuatu of the following substances or goods is prohibited:

- (a) any controlled substance;
- (b) any aerosol spray that contains any controlled substance other than methyl bromide;
- (c) any plastic foam, or any goods that contain plastic foam, that is or are manufactured using any controlled substance specified in Part I or Part II of the Schedule (including any of the goods referred to in section 4(1)(b));
- (d) any dry-cleaning machine that contains or is designed to use any

controlled substance as a solvent; and

- (e) any fire extinguisher that contains any controlled substance.

#### **8. Prohibitions on sales of controlled substances**

Subject to section 9, the sale in Vanuatu of the following goods is prohibited:

- (a) any goods specified in section 7 (a) – (d) (inclusive); and
- (b) any fire extinguisher that contains any controlled substance listed in Parts I – VI (inclusive) of the Schedule.

#### **9. Exemptions in relation to sales**

Nothing in section 8 shall make it unlawful for any person to sell:

- (a) any second hand goods; or
- (b) any goods in respect of which a permit granted under Part 3 applies.

### **PART 3 – PERMITS, LICENCING AND CERTIFICATION**

#### **10. General principles to be applied in relation to permits**

(1) The following matters shall be taken into account in the consideration of any application for a permit under this Part:

- (a) the obligations of Vanuatu under the Convention and the Montreal Protocol;
- (b) the need to phase out ozone depleting substances, except for essential uses;
- (c) whether any alternative products are available to be used instead of the ozone depleting substance;
- (d) the application of any import quota in accordance with any regulations made under this Act;
- (e) the need to ensure that all licensed importers of controlled substances under permits are given fair and equitable access to rights of importation under permits granted in accordance with this Part; and
- (f) any requirement that may be imposed in relation to the use of any ozone depleting substance so as to minimise its effect on the ozone layer.

(2) No permit shall be granted under this Part if the grant is inconsistent with any recommendation made by the National Ozone Advisory Committee.

#### **11. Quarantine and pre-shipment permits**

(1) In this section:

- (c) “quarantine applications” mean any treatments to prevent the introduction, establishment or spread of quarantine pests (including diseases), or to ensure their official control; and

- (d) “pre-shipment applications” mean any treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country, or the existing phytosanitary or sanitary requirements of the exporting country.
- (2) The Minister may grant a permit under this section in relation to the importation of methyl bromide where the Minister is satisfied, after consulting the Director of Quarantine, that it is to be used for legitimate quarantine or pre-shipment applications.
- 12. Medical and health related permits**
- (1) The Minister may grant a permit under this section in relation to the importation of any product containing a controlled substance, where the Minister is satisfied, after consulting the Director General of Health, that it has a medical application relating to the protection of life or health.
- (2) The Minister may grant a permit for the importation of any product containing any controlled substance specified in Parts I, II, IV of the Schedule if the Minister is satisfied, after consulting with the National Ozone Advisory Committee, that the product is necessary for human health or safety.
- 13. Base year permits for HCFC’s**
- (1) A permit under this section may only be granted in relation to a controlled substance specified in Part VII of the Schedule, and may only be issued to a person or business whose activities will not contravene the Montreal Protocol or any provision of this Act.
- (2) Any permit granted under this section may require the reduction of the consumption of the relevant controlled substance in accordance with the timetable applying to that controlled substance under the Montreal Protocol (taking into account the application of Article 5 relating to developing countries).
- (3) A permit issued under this section shall cease to apply on a date which may be determined by the Minister, or such other date as is specified in the permit, or by reason of section 14(1)(g) or (h).
- (4) The Minister shall only grant a permit under this section permitting the importation and use of a controlled substance, if the importation and use will not constitute a breach of Vanuatu’s obligations under the Convention or the Montreal Protocol, and any permit that is not consistent with this requirement shall be null and void.
- (5) Regulations made under this Act may impose quotas on the importation of any controlled substance specified in Part VII of the Schedule, and any matter concerning the application of a quota scheme to such imports.
- (6) All quota schemes imposed under subsection (5) must be consistent with any recommendation made by the National Ozone Advisory Committee.
- 14. General provisions in relation to permits**
- (1) The following requirements shall apply to all permits issued under this Part:
- (a) an application shall be made to the Director on a form approved from time to time by the Director, and must otherwise be in accordance with

any requirements imposed by the Director;

- (b) the applicant shall provide any information, or further information, required by the Director;
- (c) the application shall be accompanied by a fee of VT10,000, and such additional fees as may be determined from time to time by the Minister (except in relation to an application made by any Department or agency of Government, which shall be exempt from fees);
- (d) a permit may not be transferred;
- (e) the permit holder shall submit a report to the Director by the 30<sup>th</sup> January of each year to which the permit applies specifying the amount of any controlled substance imported or consumed, the uses to which the controlled substance was put, and any other matter that the Minister may from time to time require be included in the report;
- (f) any permit shall be subject to such conditions as may be imposed by the Minister, including any condition requiring compliance with any approval, permission, licence or accreditation available in another country relating to any controlled substance, any equipment used in relation to a controlled substance, or the manner in which a controlled substance may be used;
- (g) the Minister may revoke any permit if the Minister is satisfied that the permit holder:
  - (i) has been convicted of any offence against this Act or any other offence involving ozone depleting substances;
  - (ii) provided any false or misleading information in relation to the application for the permit; or
  - (iii) the permitted import contravenes any obligation under the Convention or the Montreal Protocol;
- (h) subject to section 13(3), permits granted under this section may not be valid for a period exceeding 12 months from the date of issue, and may be renewed for periods not exceeding 12 months; and
- (i) all imports made under any permit shall be subject to the Customs Act [Cap. 257] and the Quarantine Act 1997.

**15. Goods for which no permit may apply**

- (1) No permit issued under this Part may allow the importation of the following:
- (a) any dry-cleaning machine which contains or is designed to use any bulk controlled substance as a solvent;
  - (b) any goods specified in section 4(2) imported from any non-complying country; and
  - (c) any aerosol or fire extinguisher prohibited by this Act, except where its use is necessary for human health.

- (2) Any permit that contravenes subsection (1) shall be null and void.

**16. Registration of Approved Importers and Approved Workshops**

- (1) Any person who wishes to import or purchase any controlled substance must apply to the Minister to be registered as an Approved Importer or an Approved Workshop.
- (2) The Minister may approve the registration of any person or organisation as an Approved Importer or Approved Workshop if the Minister is satisfied, on the recommendation of the National Ozone Advisory Committee, that the person or organisation -
- (a) has not been convicted of any offence against this Act or any other offence involving ozone depleting substances;
  - (b) has not provided any false or misleading information in relation to the application to be registered; and
  - (c) has the necessary skills, trained staff and equipment to minimise emissions of the controlled substance, and to recover, store and deal with controlled substances in a manner which does not contravene any obligation or requirements under the Convention and the Montreal Protocol and is in accordance with accepted best practice.
- (3) A person or organisation approved under this section may be registered as an Approved Importer or Approved Workshop for a period of up to three years, provided that the person or organisation does not commit any offences under this Act.
- (4) The Director of Environment shall maintain a register of Approved Importers and Approved Workshops and shall make the register available for public inspection.
- (5) The Director of Environment may from time to time impose conditions in relation to the registration of any Approved Importer or Approved Workshop, including operational requirements applying to the recovery, recycling, storage and management of controlled substances.

**17. Provision of information relevant to controlled substances**

- (1) The Director may make a written request to any person holding a licence, permit or registration under this Act, and any person who possesses or controls any controlled substance, to submit reports or records relating to a controlled substance, or to provide relevant information or data for the purpose of reporting under the Convention and the Montreal Protocol.
- (2) Any person, to whom a written request has been made under subsection (1), who refuses or fails to comply with the request, commits an offence and shall be liable upon conviction to a fine not exceeding VT25,000.
- (3) The Director shall be entitled to have access to all information held by any Ministry or government agency relating to controlled substances in Vanuatu for the purpose of reporting under the Convention and the Montreal Protocol.

**PART 4 - ENFORCEMENT AND OFFENCES**

**18. Powers of officers**

- (1) Subject to the provisions of subsections (2) and (3) an Officer may enter:
- (a) any land or building (other than a dwelling house) at any time;
  - (b) a dwelling house at a reasonable time during daylight hours; and
  - (c) vessels, ships, aircraft, vehicles or other form of conveyance at any time for the purposes of -
    - (i) investigating the commission of any offence or the breach of any lawful obligation under this Act; or
    - (ii) enforcing any provision of this Act.
- (2) An Officer shall not exercise the powers conferred by subsection (1)(a) or (b) except for the purpose of investigating an alleged offence where the Officer has reasonable and probable grounds to believe that such entry will produce evidence in relation to the offence.
- (3) The powers conferred by subsection (1)(b) shall not be exercised unless reasonable notice has been given to the owner or occupier of the land building or dwelling house, or unless a search warrant has been obtained from a magistrate or island magistrate.
- (4) The provisions of the Criminal Procedure Act [Cap.136] shall apply to the issuance of search warrants for the purposes of this section.
- (5) In the exercise of the powers conferred by this section, an Officer may:
- (a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing relevant to ozone depleting substances, or to determine whether any offence has been committed;
  - (b) take samples for the purpose of analysis and testing;
  - (c) take photographs or measurements;
  - (d) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence;
  - (e) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by this law;
  - (f) require from any person any assistance that is relevant to the investigation or monitoring activity; and
  - (g) seize any item used in the commission of an offence against this Act.

**19. Seizure of substances and goods**

- (1) Any Officer, in the course of exercising a power under this Act, the

*Environmental Management and Conservation Act [Cap. 283]* or the *Customs Act [Cap. 257]* may seize any controlled substance, any goods containing any controlled substance or any equipment using or used in connection with any controlled substance, which the officer reasonable suspects is the subject of a breach of any prohibition under this Act.

- (2) Any controlled substance, goods or equipment seized under this section:
  - (a) shall be stored at a place, and in a manner, in accordance with a direction given by the Director; and
  - (b) may be retained until such time as the Director has been satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a prohibition under this Act.
- (3) Where it is agreed by the owner of the controlled substance, goods or equipment that they are in breach of a prohibition under this Act, or where the owner has not satisfied the Director under subsection (2) within 6 months from the date of seizure, the controlled substance, goods or equipment may be disposed of or destroyed in a manner directed by the Director.

#### **20. Forfeiture of seized substances and goods and duties to dispose**

- (1) Where any person is convicted of an offence against this Act, the court may order that any controlled substance, goods or equipment in relation to which the offence was committed, shall be forfeited to the government.
- (2) All substances, goods and equipment forfeited under subsection (1) shall be disposed of in a manner determined by the Director.
- (3) In all cases the importer or owner of any controlled substance which is imported, owned or used in contravention of this Act or of the Convention and the Montreal Protocol shall have the duty to properly dispose of the substance, and any equipment in which the substance is contained.
- (4) Disposal under subsection (3) must be by re-export in accordance with law, or by any other means which the Director determines from time to time.

#### **21. Call-up of substances or goods**

The Minister may, from time to time, issue a public notice requiring that any controlled substance, any goods containing any controlled substance or any equipment using or used in connection with any controlled substance:

- (a) be stored or handled in accordance with any direction that the Minister or the Director gives;
- (b) be delivered at a designated time to a designated place for storage or disposal; and
- (c) be otherwise disposed of or destroyed in accordance with any direction that the Minister or Director gives.

#### **22. Offences and penalties**

- (1) Any person who:
  - (a) does any act in contravention of any requirement or prohibition under

this Act;

- (b) aids or abets any person in contravening any requirement or prohibition under this Act; or
- (c) conspires with any person to do any act in contravention of any requirement or prohibition under this Act:

commits an offence, and shall be liable upon conviction to a fine not exceeding VT5,000,000, or to imprisonment for a term not exceeding 6 months, or both.

- (2) Any person who fails to comply with:

- (a) any condition of a permit, licence or registration under Part III; or
- (b) a notice given by the Minister under section 21:

commits an offence, and shall be liable upon conviction to a fine not exceeding VT5,000,000, or to imprisonment for a term not exceeding 1 month, or both.

- (3) Any person who, in the course of servicing any equipment used in relation to any controlled substance, wilfully or negligently permits any controlled substance to be discharged into the atmosphere commits an offence and shall be liable upon conviction to a fine not exceeding VT1,000,000, or to imprisonment for a term not exceeding 6 months, or both.

- (4) Any person who:

- (a) hinders or obstructs an Officer in the performance of his or her duties under this Act, or the exercise of a power under this Act;
- (b) induces or incites any other person to hinder or obstruct an Officer acting in accordance with this Act;
- (c) by words or conduct falsely represents that he or she is an Officer, or who otherwise impersonates an Officer; or
- (d) provides false or misleading information to an Officer who is exercising any power under this Act, or in any application made under this Act, or in any return required to be provided under this Act:

commits an offence, and shall be liable upon conviction to a fine not exceeding VT250,000 if the person is an individual, or to a fine of VT500,000 if the offence is committed by a corporation, or to a term of imprisonment not exceeding 3 months, or both such fine and term of imprisonment.

- (5) Where a corporation, Approved Importer or Approved Workshop commits an offence under this Act, any officer, director or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and shall be liable to the penalty provided for the offence.

## **PART 5 – MISCELLANEOUS PROVISIONS**

### **23. National Ozone Advisory Committee**

- (1) A National Ozone Advisory Committee is established to:
- (a) advise the government on any matter concerning the control of ozone depleting substances in Vanuatu;
  - (b) perform the roles and functions specified in this Act;
  - (c) formulate schemes of incentives to encourage the change-over of equipment so as to minimise the use of controlled substances permitted in accordance with this Act; and
  - (d) otherwise ensure that Vanuatu complies with its obligations under the Convention and the Montreal Protocol.
- (2) The National Ozone Advisory Committee shall consist of the Director of Environment, the Director of Customs, the Director General of Health, the Director of Quarantine and not more than 2 persons appointed by the Minister to represent businesses which use controlled substances.
- (3) Any member of the National Ozone Advisory Committee may nominate another appropriate officer to attend meetings of the Committee and to participate in the deliberations of the Committee.

### **24. Regulations**

- (1) The Minister may, with the consent of Cabinet, make Regulations for the purposes of implementing the provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make regulations to:
- (a) deem any substance to be a controlled substance for this purposes of this Act and to make the Schedule consistent with any change to the Montreal Protocol from time to time;
  - (b) determine that any substance is not longer a controlled substance if the Montreal Protocol is amended to that effect;
  - (c) impose requirements for the training and certification of technicians handling controlled substances, and the licensing of importers and workshops;
  - (d) impose duties and obligations on users of equipment containing controlled substances to avoid leaking and venting of the substances, to adequately maintain the equipment and to apply best practice in relation to the recovery, recycling, storage and management of controlled substances;
  - (e) impose quota schemes for the importation of controlled substances specified in Part VII of the Schedule, and controls over the sale and stockpiling of substances imported under the quota scheme;

- (f) to apply incentives to encourage the change-over of equipment so as to minimise the use of controlled substances; and
  - (g) to make any other arrangement that is required to implement and enforce the Convention and the Montreal Protocol (as amended).
- (3) Regulations made under section may prescribe offences for breaches of the regulations and impose penalties for such breaches being fines not exceeding VT5,000,000.

**SCHEDULE**  
**CONTROLLED SUBSTANCES**

**PART I**  
**CFCs (CHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CFCl <sub>3</sub>	CFC-11	1.0
CF <sub>2</sub> Cl <sub>2</sub>	CFC-12	1.0
C <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	CFC-113	0.8
C <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	CFC-114	1.0
C <sub>2</sub> F <sub>5</sub> Cl	CFC-115	0.6

**PART II**  
**HALONS**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF <sub>2</sub> BrCl	Halon 1211	3.0
CF <sub>3</sub> Br	Halon 1301	10.0
C <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	Halon 2402	6.0

**PART III**  
**OTHER CFCs (CHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF <sub>3</sub> Cl	CFC-13	1.0
C <sub>2</sub> FCl <sub>5</sub>	CFC-111	1.0
C <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	CFC-112	1.0
C <sub>3</sub> FCl <sub>7</sub>	CFC-211	1.0
C <sub>3</sub> F <sub>2</sub> Cl <sub>6</sub>	CFC-212	1.0
C <sub>3</sub> F <sub>3</sub> Cl <sub>5</sub>	CFC-213	1.0
C <sub>3</sub> F <sub>4</sub> Cl <sub>4</sub>	CFC-214	1.0
C <sub>3</sub> F <sub>5</sub> Cl <sub>3</sub>	CFC-215	1.0
C <sub>3</sub> F <sub>6</sub> Cl <sub>2</sub>	CFC-216	1.0
C <sub>3</sub> F <sub>7</sub> Cl	CFC-217	1.0

**PART IV**  
**CARBON TETRACHLORIDE**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CCl <sub>4</sub>	Carbon tetrachloride	1.1

**PART V**  
**METHYL CHLOROFORM**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
C <sub>2</sub> H <sub>3</sub> Cl <sub>3</sub>	1,1,1-trichloroethane	0.1

This formula does not refer to 1,1,2-trichloroethane.

**PART VI**  
**HBFCs (HYDROBROMOFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHBr <sub>2</sub>	(HBFC-22B1)	1	1.00
CHF <sub>2</sub> Br		1	0.74
CH <sub>2</sub> FBr		1	0.73
C <sub>2</sub> H <sub>2</sub> FBr <sub>2</sub>		2	0.3-0.8
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>3</sub>		3	0.5-1.8
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>2</sub>		3	0.4-1.6
C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> Br		2	0.7-1.2
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>3</sub>		3	0.1-1.1
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>2</sub>		4	0.2-1.5
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br		3	0.7-1.6
C <sub>2</sub> H <sub>3</sub> FBr <sub>2</sub>		3	0.1-1.7
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Br		3	0.2-1.1
C <sub>2</sub> H <sub>4</sub> FBr		2	0.07-0.1
C <sub>3</sub> H <sub>2</sub> FBr <sub>6</sub>		5	0.3-1.5
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>5</sub>		9	0.2-1.9
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>4</sub>		12	0.3-1.8
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>3</sub>		12	0.5-2.2
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br <sub>2</sub>		9	0.9-2.0
C <sub>3</sub> H <sub>2</sub> F <sub>6</sub> Br		5	0.7-3.3
C <sub>3</sub> H <sub>3</sub> FBr <sub>5</sub>		9	0.1-1.9
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>4</sub>		16	0.2-2.1
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>3</sub>		18	0.2-5.6
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br <sub>2</sub>		16	0.3-7.5
C <sub>3</sub> H <sub>3</sub> F <sub>5</sub> Br		8	0.9-1.4
C <sub>3</sub> H <sub>3</sub> FBr <sub>4</sub>		12	0.08-1.9
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>3</sub>		18	0.1-3.1
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>2</sub>		18	0.1-2.5
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br		12	0.3-4.4
C <sub>3</sub> H <sub>4</sub> FBr <sub>3</sub>	12	0.03-0.3	
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Br <sub>2</sub>	16	0.1-1.0	
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Br	12	0.07-0.8	
C <sub>3</sub> H <sub>5</sub> FBr <sub>2</sub>	9	0.04-0.4	
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Br	9	0.07-0.8	
C <sub>3</sub> H <sub>6</sub> FBr	5	0.02-0.7	

**PART VII  
HCFCs (HYDROCHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHCl <sub>2</sub>	(HCFC-21)	1	0.04
CHF <sub>2</sub> Cl	(HCFC-22)	1	0.055
CH <sub>2</sub> FCl	(HCFC-31)	1	0.02
C <sub>2</sub> H <sub>2</sub> FCl <sub>4</sub>	(HCFC-121)	2	0.01-0.04
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>3</sub>	(HCFC-122)	3	0.02-0.08
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>2</sub>	(HCFC-123)	3	0.02-0.06
CHCl <sub>2</sub> CF <sub>3</sub>	(HCFC-123)	-	0.02

C <sub>2</sub> HF <sub>4</sub> Cl	(HCFC-124)	2	0.02-0.04
CHFCICF <sub>3</sub>	(HCFC-124)	-	0.022
C <sub>2</sub> H <sub>2</sub> FCl <sub>3</sub>	(HCFC-131)	3	0.007-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-132)	4	0.008-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl	(HCFC-133)	3	0.02-0.06
C <sub>2</sub> H <sub>3</sub> FCl <sub>2</sub>	(HCFC-141)	3	0.005-0.07
CH <sub>3</sub> CFCl <sub>2</sub>	(HCFC-141b)	-	0.11
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Cl	(HCFC-142)	3	0.008-0.07
CH <sub>3</sub> CF <sub>2</sub> Cl	(HCFC-142b)	-	0.065
C <sub>2</sub> H <sub>4</sub> FCI	(HCFC-151)	2	0.003-0.005
C <sub>3</sub> HFCl <sub>6</sub>	(HCFC-221)	5	0.015-0.07
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	(HCFC-222)	9	0.01-0.09
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	(HCFC-223)	12	0.01-0.08
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	(HCFC-224)	12	0.01-0.09
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	(HCFC-225)	9	0.02-0.07
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	(HCFC-225ca)	-	0.025
CF <sub>2</sub> ClCF <sub>2</sub> CHClF	(HCFC-225cb)	-	0.033
C <sub>3</sub> HF <sub>6</sub> Cl	(HCFC-226)	5	0.02-0.10
C <sub>3</sub> H <sub>2</sub> FCl <sub>5</sub>	(HCFC-231)	9	0.05-0.09
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	(HCFC-232)	16	0.008-0.10
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	(HCFC-233)	18	0.007-0.23
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	(HCFC-234)	16	0.01-0.28
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	(HCFC-235)	9	0.03-0.52
C <sub>3</sub> H <sub>3</sub> FCl <sub>4</sub>	(HCFC-241)	12	0.004-0.09
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	(HCFC-242)	18	0.005-0.13
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	(HCFC-243)	18	0.007-0.12
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Cl	(HCFC-244)	12	0.009-0.14
C <sub>3</sub> H <sub>4</sub> FCl <sub>3</sub>	(HCFC-251)	12	0.001-0.01
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	(HCFC-252)	16	0.005-0.04
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	(HCFC-253)	12	0.003-0.03
C <sub>3</sub> H <sub>5</sub> FCl <sub>2</sub>	(HCFC-261)	9	0.002-0.02
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Cl	(HCFC-262)	9	0.002-0.02
C <sub>3</sub> H <sub>6</sub> FCI	(HCFC-271)	5	0.001-0.03

**PART VIII  
METHYL BROMIDE**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone-Depleting Potential</i>
CH <sub>3</sub> Br	(Mono) bromomethane	0.6

## ODS ORDER (TO BE MADE UNDER THE CUSTOMS ACT)

### IMPLEMENTATION STEPS

#### A. *DRAFTED OUTPUTS*

- Draft ODS Order
- Draft Policy Paper for Council of Ministers
- Final Report

#### B. *TABLE OF STEPS*

	<i>NATURE OF REQUIRED ACTION</i>	<i>ACTION OFFICER</i>
1.	Confirmation with Customs Department	DEC Customs
2.	Confirmation with State Law	DEC SLO
3.	Approval by Council of Ministers	DEC/Customs
4.	Order signed into effect	Minister for Customs
5.	Gazettal of Order	DEC/SLO

## DRAFT OZONE LAYER PROTECTION ACT

### IMPLEMENTATION STEPS

#### A. *DRAFTED OUTPUTS*

- Draft Ozone Layer Protection Act
- Final Report

#### B. *TABLE OF STEPS*

	<i>NATURE OF REQUIRED ACTION</i>	<i>ACTION OFFICER</i>
1.	Final Review of Draft Act	DEC
2.	Confirmation of the Draft by State Law Office	DEC/SLO
3.	Approval of Draft by Council of Ministers	DEC
4.	Publication of approved draft for consultations	DEC
5.	Final Approval of the draft Act by the Council of Ministers	DEC
6.	Enactment by Parliament	