



## Disposal options

1. **Long-term storage:** This is not considered a disposal option. It is a temporary measure for determining the eventual disposal method for seized refrigerants and there are storage costs. Some countries have time limitations how long seized goods can be stored
2. **Sending back disallowed refrigerants:** Applies to illegal refrigerants which have been disallowed for clearance and release to the domestic market. They might immediately be sent back at the border (sometimes referred to as “rejected”). Or they might be placed in temporary detention to allow time to ascertain the facts and to determine their status (legal or illegal). If detained refrigerants are found to be illegal, they can be sent back or be seized. They are not considered “imported goods” if they have not been cleared and released to the domestic market. Usually, illegal refrigerants are sent back without applying any fines, and the shipment is not tracked. They could be smuggled back to the country at a different time or through the same or a different entry point..
3. **Re-exporting seized refrigerants to the country of origin:** Applies to illegal refrigerants which have been seized after being imported illegally. Seized refrigerants can be re-exported to the producer / exporter in the country of origin if they are known from the invoices or shipment papers. Usually, such re-exports are not tracked, and the refrigerant could go elsewhere or be smuggled back to the country at a different time or through the same or a different entry point. Depending on the terms of the trade, the producer / exporter in the country of origin or the importer in the destination country is liable to cover the costs. If the cost of re-export cannot be borne by the offender, it might need to be paid from other sources e.g. the State budget or an environmental fund.
4. **Destruction or export for destruction:** Applies to seized refrigerants which can no longer be legally used in the country or in other countries, and to contaminated refrigerants which cannot be reclaimed to recommended standard specifications at reasonable costs. Seized refrigerants can be destroyed in the country or exported to other countries for destruction. It might require Basel Convention procedures if the country does not have own destruction facilities and needs to export for destruction. National legislation might prevent the export, transit or import for destruction.

The cost of destruction is in the order of USD 5 per kg which does not include costs for chemical analysis, transport, storage or other transaction costs. Overall destruction costs are in the order of USD 10 and more. Depending on the terms of the trade, the producer / exporter in the country of origin or the importer in the destination country is liable to cover the costs. If the cost of destruction cannot be borne by the offender, it might need to be paid from other sources e.g. the State budget or an environmental fund.

5. **Auctioning of seized refrigerants:** Auctioning applies to seized refrigerants which can still be legally used in the country or in other countries if they comply with national legislation, import / export licensing requirements and import quota allocations (as applicable), recommended standard specifications, labelling requirements, packaging requirements (i.e. ban on non-refillable cylinders) and if they are not counterfeit. Auctioning should not be envisaged for globally banned substances (chlorofluorocarbons or CFCs) or for counterfeit refrigerants to protect the interests of legitimate producers.

Successful auctioning can be a complex operation which needs careful preparation and consideration of a whole range of aspects. National legislation might prevent the auctioning of seized refrigerants. The seized refrigerant must be analyzed to ensure that recommended standard specifications are met. However, it has important economic and environmental advantages since it avoids the destruction with the associated high destruction costs, emissions and energy use. At the same time, it satisfies the legitimate need in a country where the refrigerant can still be legally used, thus it avoids the production of new substances for legitimate use with the associated production costs, emissions, use of energy and resources.

The income from auctioning can cover the costs of the auctioning process including duties, cost of clearance, chemical analysis, refilling, re-packaging, re-labeling, storage, purchase of storage and transport cylinders, disposal of old cylinders, publicizing etc. Depending on the terms of the auctioning, the buyers might pay part of the costs to ensure conformity with applicable legislation and requirements. Therefore, auctioning can prevent costs to the State where the offenders cannot pay the costs or cannot be identified.

## Checklist for successful auctioning of seized refrigerants

### 6. Fact finding - what has been seized and shall be auctioned?

- Refrigerant type
- Refrigerant quantity
- Number of refrigerant cylinders
- Type of refrigerant cylinders
- Size of refrigerant cylinders
- Labelling of refrigerant cylinder e.g. producer, safety indication in national language, ADR transport symbol and UN number (mandatory in EU)
- Packaging of refrigerant cylinders and labeling on the packaging
- Country of origin
- Documentation e.g. shipment papers, bill of lading, invoices
- Safety data sheets in national language with CAS number, CE registration, producer name and address and emergency number (mandatory in EU)
- Advise on how cylinders can be returned for refilling (mandatory in EU)
- Analysis of the refrigerant whether it meets specifications.

If it is contaminated refrigerant or does not meet recommended standard specifications and cannot be reclaimed to meet specifications at reasonable costs, consider destruction.

### 7. What was the reason for the seizure and what is required for auctioning?

- Smuggling / misdeclaration / no shipment papers – prepare correct shipment papers
- No import / export license – request import / export license (if applicable)

- Without import quota – request import quota in current year or next year (if applicable)
- Non-conformity with packaging requirements (ban on non-refillable cylinders) – decant into compliant cylinders (refillable cylinders) and use compliant packaging
- Non-conformity with labelling requirements – use compliant and non-detachable labelling
- Contamination or non-conformity with recommended standard specifications for refrigerants – reclaim prior to auctioning if it is possible at reasonable costs
- Other national legislation or requirements (import bans, placing on the market bans, use bans) – auction to other countries where it can still be legally imported / used / placed on the market

If it is a counterfeit refrigerant, consider destruction to protect the rights of legitimate producers

#### 8. Who is the owner of the illegal refrigerants?

In general, the ownership of traded goods can be with the producer / exporter in the country of origin or the importer in the country of destination, depending on the terms of the trade. Once the refrigerants are seized because of a legislative breach, and the State has confirmed the contravention, the ownership is usually transferred to the State. However, the original owner remains liable and may be held responsible to fulfil certain requirements. National customs legislation may differ.

- Is it the producer / exporter in the country of origin depending on the terms of the trade?
- Is it the importer in the country of destination depending the terms of the trade?
- Did the Court decide on the forfeiture of the seized refrigerants to the State?
- Did the original owner request transferring the ownership to the State and did the State accept? The State might not accept ownership for banned, restricted or contaminated refrigerants which require destruction.

#### 9. Can seized refrigerants be auctioned for placing on the market in the country where the refrigerant has been seized or other destination countries?

- Does national legislation allow auctioning for placing on the market?
- Is it possible to include in current or next year's import quota? Refrigerants should only be auctioned to registered companies which have enough import quota (if applicable).
- Is it possible to obtain import licenses? Refrigerants should only be auctioned to registered companies which have valid import licenses (if applicable).
- Is it possible to meet packaging requirements e.g. refilling into refillable cylinders or ISO containers in countries where non-refillable cylinders are banned?
- Is it possible to meet labelling requirements e.g. compliant non-detachable labels?
- Is it possible to meet recommended standard specification e.g. through reclaim?



If the seized refrigerant cannot be auctioned for placing on the market in the country where it has been seized, consider auctioning for placing in the market in other destination countries.

If it cannot be auctioned for placing in the market in other destination countries, consider other disposal options including destruction or amend national legislation if possible.

#### Auctioning of HFCs in European Union member states

The European Commission informed member states that it was possible to auction the seized goods provided that from the very beginning of the procedure it should be explicitly stated that HFCs can't be released for free circulation in any territory of the EU without repackaging in multiple-use containers, quota covering the imported quantities and proper labelling. If handled in this way, the importer would be in compliance with the requirements of Regulation (EC) 517/2014.

#### 10. How to prepare a successful auctioning?

- Analyze the seized refrigerant to ensure that it meets recommended standard specifications.** This can be done in a customs laboratory using gas chromatography. In case of many refrigerant cylinders, a representative sample of cylinders could be tested, or the refrigerant could be decanted into larger cylinders or ISO containers prior to being analyzed. Contaminated refrigerants or refrigerants not meeting recommended standard specifications might not find a buyer and might need to be reclaimed or destroyed.
- Obtain prior agreement of the Montreal Protocol competent authority in the country or other potential destination countries** and confirmation that the import / placing on the market of the auctioned refrigerant is legal, authorized, with valid import licenses and allocated import quota (as applicable), and that it is compliant with packaging and labelling requirements and recommended standard specifications.
- Obtain proof of the potential buyer that it is an authorized company in the country or other potential destination countries**, with valid import licenses and allocated import quota (as applicable), and that it has not been involved in illegal business in the past.
- Publish all conditions and requirements related to the auctioning process** on the customs website and send separate communications to the competent authorities in the country or other potential destination countries. Request them to inform authorized companies in their respective countries accordingly and provide a contact in case of questions.



- ❑ **Consult experts in more experienced countries in** case there are doubts about the auctioning process, the conditions and requirements, the minimum auctioning price etc. OzonAction might help to identify such experts.
- ❑ **Release the shipment of the auctioned refrigerant only once all conditions and requirements are met** as specified above. If the destination country has banned the import / use of non-refillable cylinders, the refrigerant must be decanted into refillable cylinders or ISO containers prior to the release of the shipment. Or if the destination country has specific labelling requirements, compliant and non-detachable labels would need to be applied to the refrigerant cylinders and packaging prior to the release of the shipment.
- ❑ **Setting the right auctioning price is crucial.** It should be below the market price in the destination country (not necessarily in the country where the auctioning takes place) and consider the price in the main producing countries. The minimum auctioning price should be low enough to attract potential buyers but high enough to cover the costs the auctioning process. It also depends whether the costs of meeting all conditions and requirements are covered by the buyer or by the income from the auctioning.
- ❑ **Monitor the shipment of the auctioned refrigerants** from the storage in the auctioning country to the final destination. If the refrigerant is auctioned to other destination countries, this includes monitoring in eventual transit countries. The shipment and arrival at the final destination should be well documented.
- ❑ **Report to the Ozone Secretariat** the illegal trade case on a voluntary basis consistent with paragraph 7 of decision XIV/7 of the Meeting of the Parties to the Montreal Protocol. If the seized refrigerants were illegally imported, report the import and re-export as part of Article 7 data reporting. The destination country should equally report the import of the auctioned refrigerant as part of Article 7 data reporting.

In the spirit of Decision XIV/7, the Ozone Secretariat encourages the reporting of illegal trade and seizures of ozone-depleting substances (e.g. HCFCs), fluorinated greenhouse gases (e.g. HFCs), mixtures of these substances as well as products and equipment containing or relying on them.

#### Acknowledgement

**Author:** Mr. Halvart Koeppen (CAP Europe and Central Asia)

**Review and additional inputs:** Mr. Gilbert Bankobeza (Ozone Secretariat), Mr. Roux Raath (WCO), Ms. Anna Kobylecka (Polish Customs), Mr. Allen Karpman (EFCTC), Mr. Neil Everitt (CoolingPost), Mr. Pipat Poopeerasupong (CAP Asia Pacific), participants of the ECA enforcement meeting in Kiev, Ukraine, 24-25 September 2019

**Page layout:** Vardan Dallakyan