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**Nineteenth Meeting of the Parties to  
the Montreal Protocol on Substances that  
Deplete the Ozone Layer**

Montreal, 17–21 September 2007

Item 5 (b) of the provisional agenda of the preparatory segment\*

**Consideration of methyl-bromide related issues:  
report and proposal on preventing harmful trade in methyl bromide  
stocks to Article 5 Parties (report of the Eighteenth Meeting of the Parties  
to the Montreal Protocol (UNEP/OzL.Pro.18/10), para. 97)**

**Decision XIX/[ ]: Prevention of methyl bromide trade that is  
harmful to Parties operating under paragraph 1 of Article 5<sup>1</sup>**

**Draft decision submitted by Kenya and supported by Burkina Faso, Uganda,  
Tanzania, Malawi, Zimbabwe, Nigeria, Angola, Sierra Leone, Botswana and  
Zambia**

*The Meeting of the Parties decides:*

*Noting* with appreciation the report prepared by the Technical and Economic Assessment Panel in accordance with paragraph 9 (a) of decision Ex.I/4, in which the Panel considered options for preventing potential harmful trade of methyl bromide stocks with Parties operating under paragraph 1 of Article 5 of the Montreal Protocol (Article 5 Parties) as consumption is reduced in Parties not so operating (non-Article 5 Parties),

*Recognizing* that the Technology and Economic Assessment Panel defines harmful trade as any trade that adversely impacts the implementation of control measures by any Party, allows back sliding from the implementation of alternatives to methyl bromide already achieved or is counter to the domestic policy of either the importing or the exporting Party,

*Acknowledging* that methyl bromide in Article 5 Parties originates from stockpiles in non-Article 5 Parties, from production in non-Article 5 Parties to meet the basic domestic needs of Article 5 Parties and from production and stockpiles in Article 5 Parties,

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\* UNEP/OzL.Pro.19/1.

<sup>1</sup> The present draft decision takes into account comments submitted to the Secretariat by Parties following the twenty-seventh meeting of the Open-ended Working Group of the Parties to the Montreal Protocol on an earlier version of the draft decision set out in the report of the twenty-seventh meeting of the Open-ended Working Group (UNEP/OzL.Pro.WG.1/27/9, annex I, draft decision B). The draft decision is accompanied by explanatory text prepared by the submitting Parties which explains the reasons for the draft decision and each of its paragraphs. The explanatory text is presented as received by the Secretariat and has not formally edited.

*Noting* with appreciation the significant achievements of Article 5 Parties reported by the Methyl Bromide Technical Options Committee in 2007, which showed that 80 per cent of such Parties had consumed less than 50 per cent of their national baselines in 2005 and that 47 out of 95 of them that consumed methyl bromide had achieved zero consumption by 2005,

*Recognizing* that the Methyl Bromide Technical Options Committee reported in 2007 that methyl bromide consumption was 9,285 tonnes<sup>2</sup> in Article 5 Parties in 2005 and predicted to be 7,000 tonnes<sup>3</sup> in 2007 and that Article 5 Parties reported production of 538 tonnes<sup>4</sup> in 2005,

*Recognizing* that the maximum basic domestic needs production allowance for the period 2005–2014 is 10,075 tonnes<sup>5</sup> for three industrialised Parties that have reported pursuant to paragraphs 5 *bis* and 5 *ter* of Article 2H, which is approximately 36 per cent more than is required in Article 5 Parties,

*Acknowledging* that, in the light of the achievements outlined above, the basic domestic needs production allowance significantly exceeds the requirements for methyl bromide of Article 5 Parties,

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2 Methyl Bromide Technical Options Committee 2006 Assessment Report, page 35.

3 Methyl Bromide Technical Options Committee 2006 Assessment Report, page 35.

4 Methyl Bromide Technical Options Committee 2006 Assessment Report, page 32.

5 Production and Consumption of Ozone Depleting Substances under the Montreal Protocol 1986 – 2004. Ozone Secretariat, UNEP, November 2005, page 32.

*Mindful* that the progress in the reduction and phase out of methyl bromide in Article 5 Parties could be undermined by harmful trade resulting in increased methyl bromide consumption and further damage to the ozone layer,

1. To request non-Article 5 Parties to put in place procedures that ensure that stocks of methyl bromide are accurately quantified and reported to the Ozone Secretariat and that any stocks exported are designated specifically for quarantine and pre-shipment uses or to meet the critical use needs of eligible Parties;
2. In order to satisfy the basic domestic needs of Article 5 Parties, to consider adopting at the twentieth Meeting of the Parties an adjustment to Article 2H that would limit the quantity of methyl bromide that could be produced by Parties not operating under paragraph 1 of Article 5 to 50 per cent of their annual average methyl bromide production for the period 1995–1998 inclusive;
3. To request Article 5 Parties to submit to the Ozone Secretariat in September of each year a notification of their expected total methyl bromide imports in tonnes for the following year, divided according to quarantine and pre-shipment and non-quarantine and pre-shipment needs, substantially in the form set out in the annex to the present decision, and to request the Secretariat to publish the information contained in such notifications on its website as a guide to potential exporters and importers;
4. To encourage Article 5 Parties to put in place further practices to prevent the import of methyl bromide in excess of expected demand.

**Annex to decision XIX/[ ]**

**Form of notification to the Ozone Secretariat of expected methyl bromide imports**

**To be submitted by each Article 5 Party in September of each year, beginning in 2009, until the phase-out of methyl bromide by that Party**

**“Notification of expected methyl bromide imports for the year [ ]**

**[Name of country] expects to import approximately [x] tonnes of methyl bromide for quarantine and pre-shipment uses and [y] tonnes for non-quarantine and pre-shipment uses in [year], which is below the quantity authorized by the Parties to the Montreal Protocol and consistent with [name of country]’s national methyl bromide phase-out plan.”**

## 1. Explanatory text

### ***PREVENTION OF METHYL BROMIDE TRADE THAT IS HARMFUL TO PARTIES OPERATING UNDER PARAGRAPH 1 OF ARTICLE 5***

#### **INTRODUCTION**

The present explanatory text is not intended to be published with any agreed decision. Rather, it seeks to explain the reasons for the draft decision that it accompanies and the text within each paragraph of that draft decision.

Draft<sup>6</sup> decision B. XIX/[ ] “*Prevention of Methyl Bromide Trade that is Harmful to Parties Operating Under Paragraph 1 of Article 5*” was proposed by Kenya, Burkino Faso, Uganda, Tanzania, Malawi, Nigeria, Angola, Sierra Leone, Botswana and Zambia at the twenty-seventh meeting of the Open-Ended Working Group of the Parties. A copy of the draft decision as amended is contained in Annex 1.

The aim of this draft decision is to implement practices that result in the quantity of methyl bromide (MB) exported to A5(1) Parties being close to the quantity required to meet the needs of pest control where alternatives have not yet been implemented. In other words, supply and demand should be approximately equal.

Excess supply of MB will undermine the progress made in the reduction and phase out of MB in Article 5(1) Parties. Quantities of MB in excess of demand exported to A5(1) Parties are very likely to increase their MB consumption, delay MB reduction and phase out, and lead to further damage to the ozone layer.

In response to a request in 2005 by the Parties, TEAP provided a report in 2006 in response to paragraph 9(a) of Decision Ex.I/4. The TEAP report recommended several options for preventing potential harmful trade of MB with A5(1) Parties as consumption is reduced in nonA5(1) Parties. A copy of the relevant section of the TEAP report is attached in Annex 2.

The definition of ‘*harmful trade*’ is included in the preambular text to our Decision and is taken from the TEAP report that defined ‘*harmful trade*’ as “...*any trade that adversely impacts the implementation of control measures by any Party, allows back sliding from the implementation of alternatives to methyl bromide already achieved, or is counter to the domestic policy of either the importing or the exporting Party.*”

The reasons for the text in each of the four operative paragraphs are described below.

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<sup>6</sup> Report of the Twenty-Seventh Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol (UNEP/OzL.Pro.WG.1/27/9) Annex 1, page 31; Advanced Copy. Also recorded as CRP7/Rev.1 at OEWG27.

**Paragraph 1 concerning accurate reporting of stocks**

TEAP stated that MB in Article 5(1) Parties originates from stockpiles in non-Article 5(1) Parties, from production in non-Article 5(1) Parties to meet the Basic Domestic Needs of Article 5(1) Parties, or from production and stockpiles in Article 5(1) Parties.

Paragraph 1 calls for non-A5(1) Parties to put in place procedures that accurately quantify stocks and reporting on them to the Ozone Secretariat so that any stocks exported are designated specifically for QPS or for CUEs. We note that not all Parties report their stocks as required for the use of MB for CUEs, and that even where reports are made there are discrepancies in reporting between the stocks held at the end of one year and the beginning of the next. A5 Parties do not want to receive excess MB that has been produced by non-A5(1) for CUEs.

**Paragraph 2 concerning exports of MB for basic domestic needs (BDN)**

MBTOC reported in 2007 that 80% of A5(1) Parties achieved a MB consumption of less than 50% of their respective national base levels in 2005, and that 47 out of 95 A5(1) Parties that consumed MB in the past had achieved zero consumption by 2005.

MBTOC also reported in 2007 that methyl bromide consumption was 9,285 tonnes<sup>7</sup> in Article 5(1) Parties in 2005; that consumption was predicted to be 7,000 tonnes<sup>8</sup> in 2007; and that Article 5(1) Parties reported production of 538 tonnes<sup>9</sup> in 2005;

The maximum Basic Domestic Needs production allowance for the period 2005 to 2014 is 10,075 tonnes<sup>10</sup> for the three industrialised Parties that have reported pursuant to Article 2H, paragraphs 5 *bis* and 5 *ter*, which is approximately 36% more than is currently required in Article 5(1) Parties;

In the light of these achievements, the Basic Domestic Needs production allowance significantly exceeds the requirements for methyl bromide of Article 5(1) Parties.

Paragraph 2 therefore asks the Parties to consider adopting at their 20<sup>th</sup> meeting in 2008 an adjustment to the non-A5 control measure that results in non-A5 Parties being able to produce up to 50% of their annual average 1995 to 1998 MB production for meeting the Basic Domestic Needs of A5 Parties.

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<sup>7</sup> MBTOC 2006 Assessment Report, page 35.

<sup>8</sup> MBTOC 2006 Assessment Report, page 35.

<sup>9</sup> MBTOC 2006 Assessment Report, page 32.

<sup>10</sup> Production and Consumption of Ozone Depleting Substances under the Montreal Protocol 1986 – 2004. Ozone Secretariat UNEP November 2005; page 32.

This paragraph signals that a proposal for an adjustment of the non-A5(1) MB production level for Basic Domestic Needs will be submitted next year.

### **PARAGRAPH 3 CONCERNING NOTIFICATION OF THE QUANTITY OF IMPORTS OF MB THAT WILL MATCH DEMAND**

The amount of MB imported needs to be sufficient to meet the expected demand for pest and disease control, taking into account the alternatives to MB that have been implemented. In the vast majority of cases, the amount of MB imported will be at a level below the quantity entitled by the control measure.

The publication of the expected demand has a precedent in a Decision agreed by the Parties that discourages the import of equipment that depends on CFCs for its functioning. According to the criteria agreed in Decision X/9, Parties can notify the Ozone Secretariat annually that they do not wish to receive such equipment, as such imports increase the developing country's dependency on CFCs. This notification has been effective in reducing imports of unwanted equipment that operates on CFCs.

Paragraph 3 therefore requests A5(1) Parties to notify the Ozone Secretariat of the expected demand for MB expressed as QPS and non-QPS quantities, and to request the Ozone Secretariat to publish on its website the expected demand for MB for A5 Party. This will guide potential importers and exporters on the expected quantities. The licensing system operational in A5 Parties will ultimately control the quantity that can be imported.

An example of the notification requirement has been included in Annex 1 to the draft Decision in order to facilitate A5 notification to the Ozone Secretariat.

### **PARAGRAPH 4 – ADDITIONAL PRACTICES**

Finally, the draft Decision calls on A5 Parties to put in place further practices that seek to limit imports that would be additional to the licensing procedures. This could include, for example, publicity on alternatives, less import tax on alternatives and more import tax on MB imports.

## **2. TEAP report 2006**

### **TEAP 2006 MAY PROGRESS REPORT Pages 124-125**

#### **8.7 Options which Parties may consider for preventing potential harmful trade of methyl bromide stocks to Article 5(1) Parties as consumption is reduced in non –Article 5 Parties (decision ExI/4, paragraph 9)**

[Paragraph 9(a) of] Decision ExI/4 asked TEAP to *identify options which Parties may consider for preventing potential harmful trade of MB stocks to Article 5(1) Parties as consumption is reduced in non– Article 5(1) Parties and to publish its evaluation in 2005*. In its May 2005 Progress Report to the Parties, the TEAP noted that it had been unable to complete this task and promised to do so in 2006.

The TEAP defined harmful trade as any trade that adversely impacts the implementation of control measures by any Party, allows a back sliding from the implementation already achieved, or is counter to the domestic policy of either the importing or exporting Party.

The MB involved in such trade may have 3 sources:

1. Stockpiles in non –Article 5(1) Parties (these have already phased out the consumption of MB but for CU and QPS uses)
2. Production allowed for the non-Article 5(1) Parties for meeting the BDN of Article 5(1) Parties
3. Production and stockpiles of Article 5(1) Parties.

It is possible that some companies in non-Article 5(1) Parties might not have declared stock piles to their governments. Therefore, non-Article 5(1) Parties may wish to take special efforts to get all the stock piles declared and ensure that these are not exported except for CUs or QPS.

The Protocol allows until 2015 the production by the non-Article 5(1) Parties up to 80% of their average production for the four year period from 1995 to 1998 to satisfy the BDN requirements of Article 5(1) Parties. It is this quantity that needs to be regulated carefully to prevent harmful trade. Many Article 5(1) Parties have never consumed MB except for QPS (India for example). Many other Article 5(1) Parties have phased their consumption already with the assistance of the Fund and some others are committed to do so much before 2015 and have reduced their consumption significantly.

Please refer to Table 8.1, “Summary of MB consumption in Article 5(1) and non-Article 5(1) countries” at the beginning of this report. Article 5(1) Parties that have phased out MB or reduced their consumption significantly may not have the regulatory capacity to prevent imports of MB in excess of their needs. In such a

situation, the sales skills of the MB distributors may lead to (re) introduction of MB in Article 5(1) Parties for new or renewed uses.

The same danger arises from the production of Article 5(1) Parties unless regulatory systems are in place.

The Parties may wish to consider the following options to prevent harmful trade in MB:

1. Article 5(1) Parties may put stronger systems in place for licensing and follow-up of trade (specifically) in MB, as a part of the licensing regimes they already have or intending to have for CFCs.
2. All producing Parties may insist on prior informed consent of the importing Party before allowing shipment and delivery.
3. Parties may levy appropriate taxes on the trade of MB and tax concessions for alternatives to promote adoption of alternatives. The revenue from MB tax can be used to finance customs enforcement and to subsidize alternatives and alternative research.
4. The Article 5(1) Parties may inform their actual needs for MB periodically and these needs may be lower than the level allowed by the Protocol for production for the purposes of BDN. The Ozone Secretariat may be the repository for this information.

### 3. STATISTICS

#### Calculations for draft Decision on "Harmful Trade", with reference to legal text

<b>Consumption in A5's</b>	
2,005 2007 Estimated	9,285 tonnes <b>7,000 tonnes</b>
Less A5 Production	538 tonnes
A2 production needed in 2007	6,462 tonnes
<b>TOTAL</b>	<b>7,000 tonnes</b>

**MBTOC 2006**  
Assessment page 35

**MBTOC 2006**  
Assessment page 32, last paragraph

**Art 2H 5 bis.**  
Each Party shall ensure that for the twelve-month period commencing on **1 January 2005** and in each twelve-month period thereafter, its calculated level of production of the controlled substance in Annex E for the basic domestic needs of the Parties operating under paragraph 1 of Article 5 does not exceed **eighty percent** of the annual average of its production of the substance for basic domestic needs for the period 1995 to 1998 inclusive.  
(Blue Handbook, page 11)

Green booklet UNEP 1986 - 2004 Reporting Art.7  
Page 32  
Maximum BDN production allowance for Parties that have reported pursuant to Art 2H, paragraphs 5 bis and 5 ter, for the period 2005 to 2014



**Conclusion:**  
A5's need 6,462 tonnes so amount permitted of 10,076 tonnes is 36% more than A5 requirements.

**Art 2H para 6**  
The calculated levels of c&p in this Article excludes QPS uses.  
(Blue Handbook, page 11)

	ODP tonnes	As tonnes
France	287.8	479.7
Israel	3,283.1	5,471.8
United States	2,474.6	4,124.3
	6,045.5	10,075.8

	100%	Needed	As Percentage
	12,594.8	6,462	51%

Art 2H 5bis: The calculation is based on 80% of the average 1995 to 1998 production for BDN [exports].

