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**Ad Hoc Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**

**Meeting on the review of the working procedures
and terms of reference of the Methyl Bromide
Technical Options Committee (decision Ex.I/5)**
Geneva, 10–12 July 2004
Items 3–5 of the provisional agenda¹

**Membership of the Methyl Bromide
Technical Options Committee**

**Working procedures of the Methyl Bromide
Technical Options Committee with regard
to the evaluation of nominations for critical
uses of methyl bromide**

**Further guidance on the criteria for the evaluation
of nominations for critical uses of methyl bromide**

**Methyl Bromide Technical Options Committee: background
information for consideration by the ad hoc working group**

Note by the Secretariat

I. Introduction

1. During the first Extraordinary Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, held in Montreal from 24 to 26 March 2004, the Parties decided, in decision Ex.I/5, to review the working procedures and terms of reference of the Methyl Bromide Technical Options Committee (MBTOC). The Parties established an ad hoc working group to meet for three days immediately prior to the twenty-fourth meeting of the Open-ended Working Group to discuss the elements contained in paragraph 2 of the same decision and report its findings and recommendations to the Open-ended Working Group.

¹ UNEP/OzL.Pro/AHWG.MBTOC/1/1.

2. This note provides background information on MBTOC and its current procedures as well as some comments that the ad hoc working group may wish to consider in its deliberations on MBTOC and its processes.

II. Membership of the Methyl Bromide Technical Options Committee

A. Duration and rotation of membership (decision Ex.1/5, paragraph 2 (c))

3. Paragraph 2 (c) of decision Ex.1/5 provides that the review of MBTOC should consider “the duration and rotation of [the committee’s] membership, taking into account the need to provide for a reasonable turnover of members while also ensuring continuity.”
4. During the past 12 months, six members have resigned from MBTOC and five new members have joined the committee. There are currently 39 serving MBTOC members, including one co-chair from an Article 5 country (Mexico) and another from a non-Article 5 country (Australia). The length of service of each MBTOC member is indicated in the table contained in annex I to the present document. A summary is provided below:
- 0-2 years: 7 members
 - 2-5 years: 11 members
 - 5-10 years: 10 members
 - 10 or more years: 11 members
5. The ad hoc working group may wish to consider the issue of the appropriate duration and rotation of MBTOC membership.

B. Conflicts of interest (decision Ex.1/5, paragraph 2 (d))

6. Paragraph 2 (d) of decision Ex.1/5 provides that the review of MBTOC should extend to “the conflict-of-interest documents which must be completed by members of the Methyl Bromide Technical Options Committee”.
7. Establishing clear rules of conduct with respect to conflicts of interest during and after service as a member of the Technology and Economic Assessment Panel (TEAP) or one of the technical options committees is a requirement under the code of conduct contained in the TEAP terms of reference adopted by the Parties in decision VIII/19. The TEAP terms of reference are reproduced in annex II to the present document.
8. MBTOC members complete a disclosure of interest declaration specified in the TEAP terms of reference. The forms completed by the members are held by the MBTOC co-chairs and the forms completed by the MBTOC co-chairs are held by the TEAP co-chairs.
9. A further disclosure of interest form is completed in relation to consideration of nominations for critical uses. The form is reproduced in annex III to the present document. The forms completed by the members are held by the MBTOC co-chairs.
10. The extent of disclosed conflict of interest determines whether and in what ways a member of MBTOC may participate in evaluating critical use nominations. A member of MBTOC with no conflict of interest may fully participate in all aspects of an evaluation, while a member directly involved in the development of a nomination or with a financial or professional interest in the outcome of an evaluation must be recused from all discussions relating thereto.
11. The ad hoc working group may wish to consider the current procedure for disclosure of interest.

C. Expertise required in MBTOC (decision Ex.1/5, paragraph 2 (e))

12. Paragraph 2 (e) of decision Ex.1/5 provides that the review of MBTOC should take into account:

“The expertise required in the Methyl Bromide Technical Options Committee, taking into account among other things that the composition of the Methyl Bromide Technical Options Committee should ensure that some members have practical and first-hand experience which should relate, in particular, to replacing methyl bromide with alternatives, and that within that composition reflected the appropriate skills and expertise required to perform the work of Methyl Bromide

Technical Options Committee, including expertise in the field of agricultural economy, technology transfer and regulatory processes of registration”.

13. Annex I to the present document shows the affiliations and expertise of the members of MBTOC. The affiliations fall in the following categories: “Government aid organization”, “Government research”, “Government regulatory”, “academia”, “non-governmental organization”, “fumigator” and “international organization”.

14. The ad hoc working group may wish to consider the current expertise of MBTOC members and the appropriate composition of MBTOC in the light of the mandate of MBTOC.

D. Criteria and procedure for selecting experts (decision Ex.1/5, paragraph 2f)

Paragraph 2 (f) of decision Ex.1/5 provides that the review of MBTOC should include “the criteria and procedure for selecting the experts, including ensuring a balance between experts from Article 5 and non-Article 5 Parties, pursuant to the qualification requirements as set forth in subparagraph (e) above”.

16. The current criteria and procedure for selecting the experts to serve as co-chairs and expert members follow the procedures set out in the TEAP terms of reference (see annex II to the present document).

17. New members are nominated by individual Parties or actively sought by MBTOC and TEAP to maintain and improve the balance between Article 5 and non-Article 5 members and to respond to the need to maintain expertise on the committee appropriate to the changing tasks assigned to TEAP and MBTOC by the Parties. At each meeting of the Open-ended Working Group, TEAP presents a summary of its membership and encourages Parties to nominate qualified experts to all technical options committees and TEAP.

18. The countries of residence of the members of MBTOC are indicated in the table in annex I to the present note. Currently there are 12 members from Article 5 countries and 27 members from non-Article 5 countries.

19. The ad hoc working group may wish to consider ways of improving and ensuring appropriate balance in the MBTOC membership.

III. Evaluation of nominations for critical uses of methyl bromide

A. MBTOC working procedures

20. The procedure for evaluating critical use nominations is based on decisions IX/6 and XIII/11 and the Handbook on Critical Use Nominations for Methyl Bromide, which was prepared by TEAP and MBTOC in 2002, pursuant to decision XIII/11, and revised in August 2003 in response to the experience gained during the consideration of nominations submitted by the Parties in early 2003. Some improvements to the process were set out in decision Ex. I/4 and are being applied to evaluate nominations received in 2004. The procedure is as follows:

(a) Parties submit their nominations in accordance with the procedure set forth in decision XIII/11 and the handbook. The handbook requires the nominations to be submitted by 31 January of each year to enable evaluation by TEAP in its progress report that is prepared in time for the meeting of the Open-ended Working Group held each year in June or July;

(b) The nominations are submitted to the Ozone Secretariat and the Secretariat forwards them to the MBTOC and TEAP Co-Chairs;

(c) MBTOC evaluates the nominations following the criteria established by the Parties in Decision IX/6. MBTOC has also developed a set of “informal ground rules” as internal guidelines to enable consistent scrutiny and evaluation of the nominations;

(d) Nominations that lack adequate information are identified and clarifications or additional information are sought on such nominations from the relevant Parties through the Ozone Secretariat;

(e) MBTOC prepares its interim report, which is reviewed by TEAP at its annual meeting. On each nomination except those on which clarifications or additional information are being sought, TEAP either “recommends for approval” or indicates that it is “unable to recommend”. The recommendations of TEAP are submitted to the Open-ended Working Group. With respect to nominations that lacked sufficient information, TEAP indicates that it was “unable to assess” at this stage;

(f) The Open-ended working Group reviews the Panel report and recommends a decision for consideration by the Parties;

(g) MBTOC prepares a draft final report on the basis of the review by the Open-ended Working Group and responses to clarifications or additional information sought from the relevant Parties through the Ozone Secretariat, for review by TEAP and publication prior to the Meeting of the Parties;

(h) The Parties take decisions on the exemptions to be granted at the meeting of the Parties.

The chronology of events for the first round of the 2003 critical use exemption process (which commenced in 2003 and continued into 2004) is set out in the following table:

2003	
15 February	Deadline for submission, as extended by Ozone Secretariat and
17-22 March	MBTOC meeting (Cape Town, South Africa)
30 April-2 May	Agricultural Economics Task Force (AETF) meeting (Manchester)
5-8 May	Annual TEAP meeting on the preparation of the progress report
May	Distribution of the TEAP 2003 report (including the interim report)
7-11 July	23 rd Open-ended Working Group meeting (Montreal), including Parties
August	Revised handbook published by MBTOC
10 September	Parties submitted supplementary information to Ozone Secretariat
22-24 September	MBTOC extraordinary meeting (Brussels)
October	MBTOC supplementary report on critical use nominations released
10-14 November	Fifteenth Meeting of the Parties (Nairobi, Kenya)
2004	
31 January	Deadline for submission of additional information by Parties
10-12 February	MBTOC extraordinary meeting (Long Beach, California, USA)
13-14 February	TEAP select extraordinary meeting (Long Beach, California, USA)
28 February	Deadline for submission of nominations for 2005 for consideration
17-21 March	MBTOC meeting (Montreal, Canada) to consider new nominations
24-26 March	Extraordinary Meeting of the Parties (Montreal, Canada); decision

B. Confidentiality and the code of conduct

22. Other important issues in the MBTOC critical use nomination evaluation process include confidentiality of information supplied with nominations and application of the code of conduct. Thus, the handbook urges Parties to consolidate similar nominations to minimize the need to include confidential information that can easily be traced to one producer or organization and to clearly indicate which information should be kept confidential.

23. TEAP and its technical options committees make arrangements to protect the confidentiality of information that submitting Parties deem confidential. The 2004 TEAP progress report suggests that the Meeting of the Parties may wish to consider amending the terms of reference of TEAP:

(a) To prohibit any member from revealing any information given by a Party on a confidential basis to anyone outside TEAP and its technical options committees and to encourage all members of TEAP and its technical options committees to do their best to protect such information;

(b) To instruct TEAP and its technical options committees to prepare their reports in such a manner as not to reveal any confidential information;

(c) To provide that if TEAP and its technical options committees consider that they cannot prepare a report without revealing all or part of the confidential information, they should inform the Party of this fact. In this way the Party will have the choice between having TEAP prepare its report without the benefit of the confidential information or waiving confidentiality with respect to all or part of the information.

24. Members of MBTOC are required to comply with the code of conduct contained in the TEAP terms of reference contained in annex II to the present note.

C. Evaluation and reporting on nominations

25. Another important element of MBTOC treatment of critical use nominations to be examined is the manner in which the committee evaluates and reports on nominations. Specifically, paragraph 2 (a) of decision Ex.I/5 provides that the review of MBTOC should encompass “the need to enhance the transparency and efficiency of the analysis and reporting by the Methyl Bromide Technical Options Committee on critical-use nominations, including the communication between the nominating Party and the Methyl Bromide Technical Options Committee”.

26. Transparency is one of the principles referred to in the first preambular paragraph of decision Ex.I/4, where reference is made to the report of the Buenos Aires Informal Consultation on Methyl Bromide (UNEP/OzL.Pro.ExMP/1/INF/1). In the Buenos Aires report it is stated that since the decisions taken by the Parties on the critical use nominations have major impacts on the nominating Parties, there must be full transparency in the evaluation process and in how TEAP recommendations are reached. It is also noted that transparency is needed, particularly in regard to the manner in which the specific circumstances of each nomination are taken into account in accordance with decision IX/6.

27. The ad hoc working group may wish to consider ways of improving transparency and efficiency.

D. Timing and structure of MBTOC reports on critical-use nominations (decision Ex.I/5, paragraph 2 (b))

28. The chronology of events for the 2003 round of nominations and their evaluation, including the preparation and release of the report of TEAP and MBTOC, is outlined in the table following paragraph 21, above. TEAP and MBTOC set out the results of their evaluations in three separate reports, namely, the 2003 TEAP progress report, the TEAP supplementary report of October 2003 and the TEAP supplementary report of February 2004.

29. Pursuant to decision Ex.I/5, paragraph 8, TEAP and MBTOC conducted an initial assessment of the nominations submitted in 2004 and produced an interim report, entitled, “Report of the Technology and Economic Assessment Panel: Critical Use Nominations: Interim Evaluation of 2004 Nominations”. The report was distributed to all Parties in June 2004. At the time the present note was being prepared, requests for further information and clarification on nominations that TEAP and MBTOC were “unable to assess” were being prepared for transmission to the nominating Parties concerned. After consideration by the Open-ended Working Group and submission of additional information, further MBTOC and TEAP meetings will be held to provide a final evaluation for consideration at the preparatory meeting to take place immediately prior to the Meeting of the Parties.

30. The schedule for consideration of the nominations, as set out in the handbook of August 2003, allows for nominations to be submitted almost two years in advance of the time the associated exemption would come into force. There is also provision for new nominations, or supplementary submissions to the nominations already submitted, to be made eleven months before the associated exemption would come into force. Parties may wish to consider whether this additional complexity is of value and whether the process could be simplified to allow simpler evaluation and reporting.

31. In order to allow more time for the complex evaluation of the diverse and numerous nominations, including the time required to seek clarifications and additional information from the nominating Parties and re-evaluate any new information, the ad hoc working group may wish to consider the possibility of setting a new timetable for the evaluation process with an earlier deadline date for submission of nominations.

32. The ad hoc working group may wish to consider the structure and number of the reports of TEAP and MBTOC on critical use nominations, as well as the timing of their issuance, in the light of the timetable for the evaluation process.

E. Modalities for submission of MBTOC annual work plans to the Meeting of the Parties (decision Ex.1/5, paragraph 2h)

33. Rule 10 of the rules of procedure for the Meetings of the Parties to the Montreal Protocol provides that the provisional agenda together with supporting documents for each ordinary meeting, should be distributed by the Secretariat to the Parties at least two months before the opening of the meeting. The Secretariat normally sends the documents for ordinary meetings six to eight weeks prior to the meetings. The reports of TEAP and the technical options committees (e.g. the progress report of TEAP) are normally sent to the Secretariat in time to fulfil this requirement.

34. The work plans, including meeting schedules of MBTOC and other technical options committees, are decided by TEAP and the technical options committees every year based on the mandate given to them by the Meetings of the Parties and taking into account the timing of the various submissions from the Parties. The dates set for the meetings of the Open-ended Working Group and the Meetings of the Parties are decisive factors in scheduling the work of TEAP and the technical options committees. The schedule of meetings is reported to the Secretariat early in the year to enable the Secretariat to facilitate the meetings. There is no practice, so far, of submitting these plans to the Meetings of the Parties.

35. The ad hoc working group may wish to discuss the issue of annual work plans to be prepared by MBTOC, including modalities for the submission of such work plans to the Meeting of the Parties.

Budget proposals for the conduct of the work of MBTOC (decision Ex.1/5, paragraph 2 (j))

Paragraph 2 (j) of decision Ex.1/5 provides that the review of MBTOC should include consideration of “modalities for [MBTOC] to provide the Meeting of the Parties with budget proposals for the conduct of the Committee’s work through the Secretariat”.

37. In accordance with the terms of reference for the administration of the Trust Fund for the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Parties at their second Meeting and as amended by decision XIV/41, the proposed budget is dispatched by the Secretariat to all Parties at least ninety days before the date fixed for the opening of the next ordinary meeting of the Parties to the Protocol.

38. The budget for the trust fund of the Montreal Protocol incorporates the funds necessary for the travel of experts from Article 5 Parties participating in the assessment panels and technical options committees, including MBTOC. The costs of convening the meetings of the panels and technical options committees are also included in the budget. The co-chairs of the panels and the committees provide the Secretariat with cost estimates for their meetings by 31 May of each year.

39. The average cost of a meeting of MBTOC, based on the last four MBTOC meetings amounted to \$19,500, which included the cost of hiring meeting rooms, providing audiovisual equipment, producing documents and meeting other administrative costs. The budget for the cost of travel and daily subsistence allowance for the 11 Article 5 members of MBTOC, including one co-chair, is \$55,000 for one MBTOC meeting.

40. Experts from non-Article 5 countries find their own means to fund their participation in MBTOC meetings. The funds are normally provided by the Governments, organization or companies at which the experts work. With rare exceptions, experts from non-Article 5 and Article 5 countries are not paid from the trust fund for their time spent preparing for and participating in MBTOC meetings.

41. The ad hoc working group may wish to consider the modalities for provision of budget proposals to the Meetings of the Parties.

42. The work of the ad hoc working group focuses on the modalities for MBTOC to provide the Meeting of the Parties with budget proposals. Elements for the budgets themselves may not necessarily be an issue for discussion by the ad hoc working group. However, some possible elements are provided below for consideration at an appropriate time by the Parties or the ad hoc working group:

- (a) Provision of financial support to cover the cost of travel for the non-Article 5 Party experts is an issue that needs consideration by the Parties. For the special meeting of MBTOC held in Los Angeles from 10 to 12 February 2004, the cost of participation of most experts, both from Article 5 and non-Article 5 Parties, was exceptionally paid out of the trust fund, in accordance with decision XV/54;
- (b) Additional budgetary allocation would be required as and if the number of experts from Article 5 Parties increases as a result of reconsideration of MBTOC membership;
- (c) Covering the cost of one co-chair, either from an Article 5 or non-Article 5 Party, and a technical assistant to work at least half-time on the critical use exemption process and to cover their costs under the trust fund (i.e., fee, travel and administrative costs);
- (d) Budgetary provisions for enabling field visits by two or three MBTOC members;
- (e) Budget for workshops to create awareness and share solutions would benefit the effort to achieve complete phase-out of methyl bromide, including critical uses.

IV. Further guidance on the criteria for the evaluation of nominations for critical uses of methyl bromide

A. Further guidance on the application of the criteria set forth in decision IX/6 (Ex.1/5, paragraph 2 (g))

43. Decision IX/6 is reproduced in annex IV to the present document. Some of the key criteria to be used by MBTOC for evaluating critical use nominations specified in the decision include the following:

- (a) Lack of technically and economically feasible alternatives or substitutes;
- (b) Minimization of critical use and any associated emission by taking all technically and economically feasible steps;
- (c) Lack of stocks of banked or recycled methyl bromide;
- (d) Efforts to develop and deploy (non-Article 5 Parties) or adopt (Article 5 Parties) alternatives, including efforts to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes;

44. In addition to the criteria contained in decision IX/6, the Parties in decision Ex.1/4 elaborated on the conditions for granting and reporting critical-use exemptions for methyl bromide including, for example, submission of a phase-out management plan, information on available alternatives and registration, and a description of the methodology used to determine economic feasibility.

45. At the twenty-third meeting of the Open-ended Working Group, the fifteenth Meeting of the Parties and the First Extraordinary Meeting of the Parties, several issues were raised by the Parties with regard to the criteria for evaluating nominations for critical uses of methyl bromide. MBTOC had also requested further guidance from the Parties on several issues regarding the criteria, as contained in the TEAP supplementary reports on critical use nominations of October 2003 and February 2004. Some of the key issues are recalled and summarized below.

1. Duration and aggregation of exemptions

46. Decision IX/6 does not specify the length of time for which exemptions are to be granted. For the nominations made in 2003 and 2004, MBTOC and TEAP recommend single-year exemptions. The Parties, at their Extraordinary Meeting, granted critical use exemptions for only one year, but also decided to consider the elaboration of criteria and methodology or authorizing multi-year exemptions at the Sixteenth Meeting of the Parties (decision Ex.1/3, para. 6).

47. The ad hoc working group may wish to consider if any issues need to be brought to the attention of the Parties on the issue of duration and aggregation of critical use exemptions.

2. Economic feasibility

48. Criteria for assessing the economic feasibility of alternatives have not yet been agreed by the Parties.

49. At its twenty-third meeting, the Open-ended Working Group considered the recommendation of TEAP and its Agricultural Economics Task Force (AETF) on economic feasibility. The economic feasibility threshold of \$24/ODP kilogramme was proposed, but no agreement was reached on the value or the approach involved. There was general agreement at the twenty-third meeting of the Open-ended Working Group that further work needed to be undertaken on the model for assessing economic feasibility (UNEP/OzL.Pro/WG.1/23/5, para. 95).

50. MBTOC and TEAP sought further guidance from the Parties on economic feasibility.

51. The Parties, at their Extraordinary Meeting, decided that any Party submitting a critical-use nomination after 2004 should describe the methodology used to determine economic feasibility if economic feasibility is used as a criterion to justify the critical use. Section 4 of annex I of the report of the Extraordinary Meeting would serve as a guide for describing the methodology (decision Ex.I/4, para. 6). Furthermore, the Parties requested TEAP to assess economic infeasibility for each nomination based on the methodology submitted by the nominating Party, with a view to encouraging the adoption of a common approach (decision Ex.I/4, para. 9 (c)).

52. The ad hoc working group may wish to discuss the issue of economic feasibility with a view to providing further guidance to MBTOC, taking into account the current situation.

3. Individual circumstances of nominations

53. In evaluating nominations for critical uses of methyl bromide, MBTOC and TEAP take into account the individual circumstances of the nominations.

54. MBTOC sought further guidance from the Parties on a number of situations concerning specific circumstances of nominations. Such situations include:

- (a) Nominations for increases or for equal amounts of methyl bromide over several years, for example due to increases in usage associated with increases in acreage;
- (b) Nominations for small quantities of methyl bromide.

55. The ad hoc working group may wish to consider these issues. With regard to nominations for small quantities of methyl bromide, for example less than 1 metric tonne, the ad hoc working group may wish to consider simplifying the procedure and information requirements in order to reduce the workload for the nominating Parties and MBTOC.

4. Stocks

56. Decision IX/6 permits the production and consumption of methyl bromide for critical uses only if it is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide. Information on stocks was not available during the 2003 round of critical-use exemption process. At the Extraordinary Meeting of the Parties, exemptions for critical uses were granted in terms of "critical use exemption level" and "allowable production and consumption". Any Party whose exemption level exceeded the allowable production and consumption were to make up the difference with stocks. Furthermore, each Party was given the responsibility to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks (Ex.I/3, paras. 2, 3 and 5).

57. The Parties at their Extraordinary Meeting requested TEAP to recommend an accounting framework to be used annually starting from 2005, for reporting quantities of methyl bromide produced, imported and exported under the terms of critical use exemptions. As with the accounting framework for reporting on the essential uses of CFCs and halons, the accounting framework reports would enable the determination of amounts of methyl bromide that may remain unused at the end of each year.

58. The ad hoc working group may wish to consider if there is any further guidance on how the MBTOC should take into account the issue of stocks in its evaluation of nominations for critical uses for the 2004 round of nominations and beyond. In particular, the working group may wish to address the

question of how any unused quantities of methyl bromide at the end of each year should be dealt with starting in 2005.

5. Reporting requirements

59. The Parties at their Extraordinary Meeting adopted requirements for annual reporting of critical-use exemptions for methyl bromide (annex I of the report of the First Extraordinary Meeting of the Parties) and requested TEAP to provide, in consultation with interested Parties, a format for a critical-use exemption report, based on those requirements. It is envisaged that affected Parties will be required to report annually, starting from 2005. (decision Ex.I/4, para. 9 (g)).

60. Parties that make critical use nominations after 2005 are also requested to submit a national management strategy for phase-out of critical uses of methyl bromide before 1 February 2006 (decision Ex.I/4, para. 3) and furthermore, the Meeting of the Parties is to take into account this information when considering granting critical use exemptions after 2006 (decision Ex.I/3, para.4).

61. In paragraph 1 (b) (iii) of decision IX/6, one of the criteria for assessing a critical use nomination is whether the nominating Party has: "...demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes....."

62. The working group may wish to discuss how MBTOC and TEAP should take into account the reports provided by the Parties in evaluating their critical use nominations. This may include the issue of what level of effort by Parties to commercialize and secure national regulatory approval of alternatives and substitutes as required by decision IX/6 should be deemed appropriate.

6. Handbook on Critical Use Nominations for Methyl Bromide

63. The Handbook on Critical Use Nominations for Methyl Bromide was prepared by TEAP and MBTOC pursuant to decision XIII/11 and revised in August 2003 in response to the experience gained during the consideration of nominations submitted by the Parties in early 2003. The forms included in the handbook are designed to guide Parties in providing the information necessary for evaluation of nominations in the light of decision IX/6 and to allow for the consistency in the preparation and evaluation of nominations.

64. At the Extraordinary Meeting of the Parties in March 2004, the Parties decided in decision Ex.I/4 on the conditions for granting and reporting on critical use exemptions for methyl bromide. In paragraph 9 (k) of that decision, TEAP was requested to modify the handbook to reflect the new provisions included in decision Ex.I/4 for submission and consideration by the Parties at their Sixteenth Meeting. TEAP and MBTOC are currently working on the modification of the handbook; the revised version will be made available at least six weeks prior to the Sixteenth Meeting of the Parties.

65. The ad hoc working group may wish to consider if there are information requirements in the handbook with respect to which the Parties nominating critical use exemptions find compliance difficult. The working group may wish to address the question of how MBTOC could deal with situations in which information to evaluate nominations against the criteria in decision IX/6 is unavailable.

B. Instances in which MBTOC should seek the guidance of the Meeting of the Parties in conducting its work (decision Ex.1/5, paragraph 2 (i))

Paragraph 2 (i) of decision Ex.1/5 provides that the review of MBTOC should encompass "[t]he instances where the Methyl Bromide Technical Options Committee should seek the guidance of the Meeting of the Parties in conducting its work".

67. The ad hoc working group may therefore wish to discuss the circumstances under which MBTOC should seek guidance from the Meeting of the Parties.

Annex I

Current membership of the Methyl Bromide Technical Options Committee

Names	Gender	Affiliation		Length of service	Country	Article 5 status
Co-Chairs						
1. Jonathan Banks	M	Consultant		a	Australia	Non-A5
2. Nahum Marban Mendoza	M	Universidad Autonoma Chapingo	Academia	c	Mexico	A5
Members						
3. Alessandrio Amadio	M	UNIDO	International organization	d	Italy	Non-A5
4. Marten Barel	M	Consultant		d	Netherlands	Non-A5
5. Chris Bell	M	Central Science Laboratory	Government research	b	UK	Non-A5
6. Antonio Bello	M	Centro de Ciencias Medioambientales	Government research	a	Spain	Non-A5
7. Mohamed Besri	M	Institut Agronomique et Vétérinaire Hassan II	Government research	b	Morocco	A5
8. Cao Aocheng	M	Chinese Academy of Agricultural Sciences	Government research	c	China	A5
9. Fabio Chevarri	M	IRET-Universidad Nacional	Academia	c	Costa Rica	A5
10. Ricardo Deang	M	Consultant		b	Philippines	A5
11. Patrick Ducom	M	Ministère de l'Agriculture	Government research	b	France	Non-A5
12. Hodayah Finman	F	United States Environmental Protection Agency	Government regulatory	d	US	Non-A5
13. Volkmar Haase	M	Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH	Government aid organization	d	Germany	Non-A5
14. Saad Hafez	M	University of Idaho	Academia	c	US	Non-A5
15. Rick Keigwin	M	United States Environmental Protection Agency	Government regulatory	c	US	Non-A5
16. George Lazarovits	M	Agriculture & Agr-food Canada	Government research	c	Canada	Non-A5
17. Michelle Marcotte	F	Consultant		a	Canada	Non-A5
18. Cecilia Mercado	F	UNEP DTIE	International organization	b	Thailand	A5
19. Melanie Miller	F	Consultant		a	Belgium	Non-A5
20. Andrea Minuto	M	Agroinnova Università Torino	Academia	d	Italy	Non-A5
21. Mitsusuda Mizubuchi	M	MAFF (government research)		d	Japan	Non-A5
22. Mokhtarud-Din Bin Husain	M	Department of Agriculture	Government research	c	Malaysia	A5
23. Kazufumi Nishi	M	Nat Institute of Vegetables and Tea	Government research	d	Japan	Non-A5

24. David Okioga	M	Science Ministry of Environment and Natural Resources	Government regulatory	a	Kenya	A5
25. Marta Pizano de Marquez	F	Hortitecna Ltda		b	Colombia	A5
26. Ian Porter	M	Institute for Horticultural Development	Government research	b	Australia	Non-A5
27. Christoph Reichmuth	M	BBAGermany	Government research	b	Germany	Non-A5
28. John Sansone	M	SCC Products	Fumigator	a	US	Non-A5
29. Jim Schaub	M	United States Department of Agriculture	Government regulatory	c	US	Non-A5
30. Sally Schneider	F	United States Department of Agriculture	Government research	c	US	Non-A5
31. Don Smith	M	Consultant		a	New Zealand	Non-A5
32. JL Staphorst	M	Plant Protection Research Institute	Government research	b	South Africa	A5
33. Akio Tateya	M	Japan Fumigation Technology Association	Non-governmental organization	a	Japan	Non-A5
34. Robert Taylor	M	Natural Resources Institute	Government research	a	UK	Non-A5
35. Alejandro Valerio	M	Department of Agriculture	Government research	c	Argentina	A5
36. Ken Vick	M	United States Department of Agriculture	Government research	a	US	Non-A5
37. Nick Vink	M	University of Stellenbosch	Academia	c	South Africa	A5
38. Jim Wells	M	Novigen Sciences, Inc., International	Consultant	a	US	Non-A5
39. Chris Watson	M	IGROX Ltd	Fumigator	b	UK	Non-A5
Totals	M =33 F =6			a = 11 b = 10 c = 11 d = 7		A5=12 Non-A5=27

a - >10 years
b – 5-10
c – 2-5
d - <2 years

Annex II

Terms of reference of the Technology and Economic Assessment Panel (TEAP)

(As adopted by the Eighth Meeting of the Parties to the Montreal Protocol under decision VIII/19)

Parties have requested that the Technology and Economic Assessment Panel (TEAP) annually update the status of technical feasibility and the phase-out progress.

1. Scope of Work

The tasks undertaken by the TEAP are those specified in Article 6 of the Montreal Protocol in addition to those requested from time to time at Meetings of the Parties. The TEAP analyses and presents technical information. It does not evaluate policy issues and does not recommend policy. The TEAP presents technical and economic information relevant to policy. Furthermore, the TEAP does not judge the merit or success of national plans, strategies, or regulations.

2. Organization of Technology and Economic Assessment Panel (TEAP), Technical Options Committees (TOCs) and Temporary Subsidiary Bodies (TSBs)

2.1 Size and Balance

The membership size of the TEAP should be about 18-22 to allow it to function effectively. It should consist of the Co-Chairs of the TEAP, the Co-Chairs of all the TOCs and 4-6 Senior Experts for specific expertise or geographical balance not covered by the TEAP Co-Chairs or TOC Co-Chairs. Each TOC should have two or, if appropriate, three Co-Chairs. The positions of TOC Co-Chairs as well as of the Senior Experts must be filled to promote a geographical and expertise balance. The overall goal is to achieve a representation of about 50 per cent for Article 5(1) Parties in the TEAP and TOCs.

2.2 Nominations

Nominations of members to the TEAP and TOCs may be made by individual Parties to the Secretariat through their relevant government organization. Such a nomination will be forwarded to the TEAP for consideration and, in the case of nominations of the TEAP for recommendation to the Meeting of the Parties. Any nominations made by the TEAP will be communicated to the relevant Party for consultation before recommendations for appointment are made.

2.3 Appointment of Members of TEAP

In keeping with the intent of the Parties for a periodic review of the composition of the assessment panel, the Meeting of the Parties shall appoint the members of the TEAP for a period to be determined by the Parties, subject to re-endorsement by the Parties. In appointing or re-endorsing members of the TEAP, the Parties should ensure continuity as well as a reasonable turnover.

2.4 TOC Co-Chairs

The Co-Chairs of a TOC should not normally act as Co-Chairs of another TOC.

2.5 Appointment of Members of TOCs

Each TOC should have about 20-35 members. The TOC members are appointed by the TOC Co-Chairs in consultation with the TEAP.

2.6 Termination of Appointment

TEAP/TOC Co-Chairs can dismiss a member by a two-thirds majority vote. A dismissed member has the right to request a vote of its relevant Panel, Committee or TSB and will be restored if supported by one-third of the members of that body. A dismissed member of the TEAP has the right to appeal to the next Meeting of the Parties through the Secretariat. A dismissed member of a TOC can appeal to

TEAP, which can decide on such issues with a two-thirds majority vote, and can appeal to the next Meeting of the Parties.

2.7 Replacement

If a TOC Co-Chair/Senior Expert relinquishes or is unable to function, the TEAP after consultation with the nominating Party can temporarily appoint a replacement from amongst its bodies for the time up to the next Meeting of the Parties, if necessary to complete its work. For the appointment of a new member at the Meeting of the Parties, the procedure set out in paragraph 2.2 should be followed.

2.8 Subsidiary Bodies

Temporary Subsidiary Technical Bodies (TSBs) can be appointed by the TEAP/TOCs to report on specific issues of limited duration. The TEAP/TOCs may appoint and dissolve, subject to review by the Parties, such subsidiary bodies of technical experts when they are no longer necessary. The Code of Conduct must be followed by the members of TSBs to avoid conflict of interests in the performance of their duties. For issues which cannot be handled by the existing TOCs and are of substantial and continuing nature TEAP should request the establishment by the Parties of a new TOC.

2.9 Guidelines for Nominations

The TEAP/TOCs will draw up guidelines for nominating experts by the Parties. The TEAP/TOCs will publicize a matrix of expertise available and the expertise gap in the TEAP/TOCs so as to facilitate submission of appropriate nominations by the Parties.

3. Functioning of TEAP/TOCs/TSBs

3.1 Language

The TEAP/TOCs/TSBs meetings will be held and reports and other documents will be produced only in English.

3.2 Scheduling of Meetings

The place and time of the TEAP/TOCs/TSBs meetings will be fixed by the Co-chairs.

3.3 Rules of Procedure

The rules of procedure of the Montreal Protocol will be followed in conducting the meetings of the TEAP/TOCs/TSBs, unless otherwise stated in the terms of reference for TEAP/TOCs/TSBs approved by a Meeting of the Parties.

3.4 Observers

No observers will be permitted at the TEAP, TOC or TSB meetings. However, anyone can present information to the TEAP/TOCs with prior notice and can be heard personally if the TEAP/TOCs consider it necessary.

3.5 Functioning by Members

The TEAP/TOCs/TSBs members function on a personal basis as experts, irrespective of the source of their nominations and accept no instruction from, nor function as representatives of Governments, industries, NGOs or others.

4. Report of TEAP/TOCs/TSBs

4.1 Procedures

The TEAP/TOCs/TSBs will be developed through a consensus process. The reports must reflect any minority views appropriately.

4.2 Access

Access to materials and drafts considered by the TEAP/TOCs/TSBs will be available only to TEAP/TOCs members or others designated by TEAP/TOCs/TSBs.

4.3 Review by TEAP

The final reports of TOCs and TSBs will be reviewed by the TEAP and will be forwarded, without modification (other than editorial or factual corrections which have been agreed with the Co-Chairs of the relevant TOC or TSB) by the TEAP to the Meeting of the Parties, together with any comments the TEAP may wish to provide. Any factual errors in the reports may be rectified through a corrigendum following publication, upon receipt by TEAP or the TOC of supporting documentation.

4.4 Comment by Public

Any member of the public can comment to the Co-Chairs of TOCs and TSBs with regard to their reports and they must respond as early as possible. If there is no response, these comments can be sent to the TEAP Co-Chairs for consideration by TEAP.

5. Code Of Conduct by Members of The Technology And Economic Assessment Panel

Code of Conduct

Members of the TEAP, TOCs and the TSBs have been asked by the Parties to undertake important responsibilities. As such, a high standard of conduct is expected of Members in discharging their duties. In order to assist Members, the following guidelines have been developed as a Code of Conduct.

1. This Code of Conduct is intended to protect Members of the TEAP, TOCs and TSBs from conflicts of interest in their participation. Compliance with the measures detailed in these guidelines is a condition for serving as a Member of the TEAP, the TOCs or the TSBs.

2. The Code is to enhance public confidence in the integrity of the process while encouraging experienced and competent persons to accept TEAP, TOC and/or TSB membership by:

- establishing clear rules of conduct with respect to conflict of interest while and after serving as a Member, and
- by minimizing the possibility of conflicts arising between the private interest and public duties of Members, and by providing for the resolution of such conflicts, in the public interest, should they arise.

3. In carrying out their duties, Members shall:

- perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the TEAP, TOCs and TSBs are conserved and enhanced;
- act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law of any country;
- act in good faith for the best interest of the process;
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- not give preferential treatment to anyone or any interest in any official manner related to the TEAP, TOCs or TSBs;
- not solicit or accept significant gifts, hospitality, or other benefits from persons, groups or organizations having or likely to have dealings with the TEAP, TOCs or TSBs;

- not accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the Member;
 - not step out of their role as a Member to assist other entities or persons in their dealings with the TEAP, TOCs or TSBs where this act would result in preferential treatment to any person or group;
 - not knowingly take advantage of, or benefit from, information that is obtained in the course of their duties and responsibilities as a Member of the TEAP, TOCs and TSBs, and that is not generally available to the public; and
 - not act, after their term of office as a Member of the TEAP, TOCs or TSBs in such a manner as to take improper advantage of their previous office.
4. To avoid the possibility or appearance that Members of the TEAP, TOCs or TSBs might receive preferential treatment, Members shall not seek preferential treatment for themselves or third parties or act as paid intermediaries for third parties in dealings with the TEAP, TOCs or TSBs.
5. TEAP, TOC and TSB Members shall disclose activities including business or financial interest in production of ozone-depleting substances, their alternatives, and products containing ozone depleting substances and alternatives which might call into question their ability to discharge their duties and responsibilities objectively. TEAP, TOC and TSB members must annually disclose such activities. They must also disclose any financing from a company engaged in commercial activities, for their participation in the TEAP, TOC or TSB.
6. TEAP is responsible for the interpretation and TEAP/TOC/TSB Members for the application of this Code of Conduct.

Annex III

Assessment of critical use exemption applications Guidelines for MBTOC for disclosure of interest

Introduction

In order to make the most informed recommendations on applications for Critical Use Exemptions, MBTOC should establish procedures that use all the expertise present at the meeting wherever possible. However, it is also important that evaluation processes are transparent, fair and equitable to all applicants. The procedures must ensure that an applicant is neither advantaged nor disadvantaged by having someone with a potential conflict of interest being involved in the decision making for that particular application. These procedures must also be consistent with the code of conduct for TEAP and TOC members. The code requires the disclosure of activities, including business or financial interest in production of ozone-depleting substances, their alternatives, and products containing ozone depleting substances and alternatives, which might call into question their ability to discharge their duties and responsibilities objectively. Members must also disclose any financing from a company engaged in commercial activities, for their participation in TEAP and the TOCs.

The key point is that there will be occasions when MBTOC members' personal or professional roles and/or activities bring them close to an application or to a potential competing technology or alternative. Using the principle of self-disclosure, members must evaluate when it would be inappropriate for them to lend their expertise to assessment of an application. The Chair will verify the categorisation of the interest disclosed and, if necessary, place restrictions on the member's participation in the evaluation process. Depending on the degree of the potential for conflict of interest, it may be necessary for the member to completely abstain from the evaluation of a particular application, or alternatively to not act as an advocate for or against the application, but to be available to comment if requested.

It should be noted that the process of selection of MBTOC members has already eliminated many obvious conflict of interest situations.

The following lists describe a hierarchy of degrees of interest and some actions that the Committee should adopt as a result of a disclosure of interest.

Categories of Interest

Thirteen types of interests that MBTOC members may have are shown below. A member has an interest if she or he:

1. Is employed by an applicant and either holds a position of responsibility, was involved in the application for an exemption or will be associated with the implementation of the critical use.
2. Provided advice, for commercial gain, to an applicant on the application.
3. Will receive any other direct benefit if the application is approved or declined (e.g. will receive returns on patent rights).
4. Participated in the preparation of the application as part of duties for a third party (does not include facilitating the transfer of publicly available information to the applicant).
5. Works for, advises or receives financial assistance from the competent authority forwarding the application and was substantially associated with the processing of the application.
6. Is employed by, or receives financial assistance from the applicant, but has not been associated with the application and does not expect to be affected by any consequences of the decision on the application.
7. Works for or receives financial assistance from a commercial enterprise promoting an alternative to the specific proposed critical use but is not associated with the promotion or introduction of that alternative.
8. Is engaged in research directly related to the specific proposed critical use (on either the proposed use or an alternative) that is funded by parties with an interest in the application. This does not include minor payments or in-kind assistance.

9. Works for or receives financial assistance from a commercial enterprise promoting an alternative to the specific proposed critical use and would be directly associated with the promotion and introduction of that alternative.
10. Is engaged in research directly related to the specific proposed critical use (on either the proposed use or an alternative) that is funded by parties independent from the application.
11. Works for or receives financial assistance from the competent authority forwarding the application (but is otherwise not associated with the application).
12. Is or has been engaged in research developing or assessing potential alternatives for the proposed critical use, but which is not a candidate alternative for the specific proposed critical use at the time of evaluation.
13. Is a citizen/resident of the country that has forwarded the application (but is otherwise not associated in any of the above ways).

An interest of type 13 does not need to be declared.

Type of Actions to be taken as the Result of a Disclosure of Interest

A.	Takes no role	Does not comment at any time. Absents themselves from the room when the application is being considered. Takes no part in any discussion or decision.
B.	Takes no role unless asked	Remains present while the application is being considered, but does not contribute to the discussion except to answer specific questions of a technical nature. Does not otherwise participate in discussion or decision.
C.	Fully participates	Can fully participate in the evaluation, including the discussion and decision-making.

Proposed Action to be taken in the Event of a Declared Interest

The following chart summarises the action that should be taken in response to a member disclosing an interest.

Type of Conflict	Actions Taken		
	A	B	C
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

The Declaration of Interest Form is given below. Each MBTOC member involved in evaluating Critical Use Exemption applications will be asked to mark and sign the Form showing where they are declaring an interest. The Form is both a record of the declarations of interest and the actions taken and also a tool for meeting chairs to use to assist in running the meeting and ensuring that members with declared interests are absent for particular evaluations, or do not participate in the relevant discussions.

MBTOC MEETING – CRITICAL USE EXEMPTIONS

DECLARATIONS OF INTEREST

MEMBER'S NAME: _____

Member to Complete			Cochairs to Complete		
Application No.	Description of Interest	Interest Code	Code Verified	Action Taken	Action Code

Member's Signature: _____

Cochairs' Signatures: _____

Annex IV

Decision IX/6. Critical-use exemptions for methyl bromide

1. To apply the following criteria and procedure in assessing a critical methyl bromide use for the purposes of control measures in Article 2 of the Protocol:

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:

- (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and
- (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;

(b) That production and consumption, if any, of methyl bromide for critical uses should be permitted only if:

- (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;
- (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;
- (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination and the special needs of Article 5 Parties, including lack of financial and expert resources, institutional capacity, and information. Non-Article 5 Parties must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. Article 5 Parties must demonstrate that feasible alternatives shall be adopted as soon as they are confirmed as suitable to the Party's specific conditions and/or that they have applied to the Multilateral Fund or other sources for assistance in identifying, evaluating, adapting and demonstrating such options;

2. To request the Technology and Economic Assessment Panel to review nominations and make recommendations based on the criteria established in paragraphs 1 (a) (ii) and 1 (b) of the present decision;

3. That the present decision will apply to Parties operating under Article 5 and Parties not so operating only after the phase-out date applicable to those Parties;