



**United Nations
Environment
Programme**



Distr.
GENERAL

12 March 2004

ENGLISH ONLY

INFORMAL CONSULTATION ON METHYL BROMIDE

Buenos Aires, 4-5 March 2004

REPORT BY THE CHAIRMAN

I. Introduction

1. The Informal Consultation on Methyl Bromide was convened on 4 and 5 March 2004 in Buenos Aires. The meeting was hosted by the government of Argentina.
2. The objectives of the meeting were to:
 - Provide a forum to discuss methyl bromide (MB) related topics on which agreement had not been reached at the Fifteenth Meeting of the Parties (MOP15);
 - Explore ways to move forward on these topics and to identify some possible options for agreement to be reached at the Extraordinary Meeting (EMOP) to be held from 24 to 26 March 2004;
 - Facilitate bilateral discussions; and
 - Determine if another informal consultation may be necessary before the EMOP.
3. The meeting was attended by 38 experts from 22 Parties to the Montreal Protocol. The experts were invited to participate in their personal capacity. Therefore, the views expressed by the participants including the options on the way forward do not necessarily reflect the positions of the Parties but merely the views of the individual experts. The full list of participants is attached as Annex I.
4. Ambassador Raúl Estrada Oyuela of Argentina chaired the meeting.
5. The meeting agreed on the following agenda:
 1. Introduction.
 2. Discussion of issues:

- (a) Critical use exemptions for methyl bromide – recommendations of the Technology and Economic Assessment Panel.
 - (b) Conditions for granting and reporting critical use exemptions for methyl bromide.
 - (c) Further specific interim reductions of methyl bromide for the control period beyond 2005, applicable to Article 5 Parties.
 - (d) The procedures of the Methyl Bromide Technical Options Committee in evaluating critical use nominations on methyl bromide
- 3. Other matters.
 - 4. Closure.

II. Substantive matters

6. The participants reaffirmed their firm commitment to the Montreal Protocol in general and to the complete phase-out of MB including the critical use exemptions as soon as technically and economically feasible, in accordance with their responsibilities under the Protocol.

A. Critical use exemptions for methyl bromide – recommendations of the Technology and Economic Assessment Panel

7. The participants recognised and expressed appreciation of the enormous work undertaken by MBTOC in evaluating the critical-use nominations (CUNs). The participants also noted that the members of the Methyl Bromide Technical Options Committee (MBTOC) work on voluntary basis with great commitment and dedication.

8. However, several participants raised concerns regarding the TEAP Report of 14 February 2004, including on a recommendation that Parties could gain credit for destruction of halons in exchange for the use of MB and on concepts and approaches followed by MBTOC and TEAP in evaluating CUNs and recommending critical use exemptions (CUEs) (for example, giving the “benefit of the doubt” and being “liberal” or expressing an ability to independently change the standard of review during the review without first getting the approval of the Parties). Opinions were expressed that TEAP went beyond its mandate by recommending policy. Several participants made the point that more MB was recommended for CUEs than would have been the case in a more precise interpretation of Decision IX/6.

9. Participants agreed that although a mandate had been provided to MBTOC and TEAP in the decisions of the Parties, there was a need for the Parties to provide further guidance to MBTOC and TEAP on the process and criteria to be followed for the CUN evaluation process.

10. On the issue of CUE approval by the Parties, the following comments were raised:

- (a) Any principles that might be agreed by the Parties for CUNs and CUEs should not apply retroactively to the nominations that are contained in the TEAP Report of 14 February 2004 (Annex I and II, and summarized in Tables 1 and 2).

- (b) Although there were problems with the CUN process, the Parties need to take decisions on the first round of 2005 CUN at the EMOP, hence there would be no further opportunities to re-assess each of these CUN against Decision IX/6. Consequently, some participants were of the view that the Parties may wish to consider approving the 2005 CUNs as recommended by the TEAP in its 14 February Report on the understanding that the CUN process would be improved for the future. It was noted however, that the approval of the TEAP recommendations as they now stand could lead to CUEs of above 30% of the baseline being approved for some countries.
- (c) The participants noted that the large quantities of CUNs had already caused significant negative impact in the willingness of Article 5 Parties to phase out early.
- (d) It would be useful to keep in mind that CUEs may not be equal to the actual production and/or consumption of MB set by the Montreal Protocol controls. Decision IX/6 requires the existing stocks to be used before production and consumption is permitted. Ways to ensure the use of stockpiles and proper accounting was further addressed. Some participants expressed opposing views on the treatment of stockpiles distinguishing between amounts existing prior to the total phase-out and amounts that were surplus accrued as a result of CUEs.
- (e) The approach of multi-year approval of CUEs was further explored. Parameters discussed in the context of a multi-year national commitment to reduce CUNs for MB are listed below. It was understood that not all countries might avail themselves of an opportunity to make a multi-year commitment. It was also understood that the requirements for a multi-year commitment would include most of those required for a single year CUE request, including those designated with an asterisk below.
- Duration – A three-year duration was most commonly discussed.
 - The plan should include a national strategy.
 - The strategy should include a review of activities to be undertaken during the duration of the plan. These would include a commitment to increased research and development activities.
 - Those who have approved multiyear plans must report annually on progress.*
 - Those who have approved multiyear plan must commit to a review of critical uses prior to allocation or licensing with a view toward allocating/licensing less than what was originally approved if this is determined possible.*
 - Those who have approved multiyear commitment must report to the secretariat whenever new alternatives are approved, and commit to undertaking an analysis of the degree to which the alternative might penetrate the market, and, where relevant, making appropriate reductions in the amounts of MB allocated.*
 - Multiyear agreements may have a narrowly defined safety valve to take into account the unavailability of historically used pesticide tools.
 - There should be clarity on how the compliance regime of the protocol would apply to multiyear commitments.

- Reduction targets of the multiyear agreements are binding on the nominating Party and must be agreed by the Parties, and the trend should be a downward one. TEAP and MBTOC should monitor progress.
 - Under all circumstances, an effort should be made to improve the MBTOC process by providing appropriate guidance and resources.
 - Reflect on the multi-year concept domestically and internationally and further develop the concept for consideration by the Parties.
 - The approach could ensure reduction of CUEs over time and define what those reduction steps will be for the multi-year time period.
- (f) Some participants expressed reservations on the approval of multi-year exemptions. The concept of multi-year exemption was already foreseen by TEAP but only in cases where it is clear that alternatives are not going to be available for several years. There are dangers associated with multi-year exemptions:
- Pressure for substitution will be reduced.
 - For national authorities that have been adopting a strict attitude to MB phase-out, their credibility will be reduced.
- (g) Issue of placing a cap on CUEs needs to be addressed further.

B. Conditions for granting and reporting critical use exemptions for methyl bromide.

11. The participants felt that the principles governing the CUN process should be (re)defined by the Parties. The following principles were deemed important:

(a) Fairness:

All Parties must be treated with equity. The decisions taken now for the non-Article 5 Parties will affect the process for the Article 5 Parties in the future and same process should apply to all. Sustainability of the decisions of the Parties for the future is an important matter to take into account. An additional point was also made on the issue of fairness within countries. The nominating Parties must also take into account fairness in treatment of the MB users.

(b) Certainty and confidence:

Strong commitment to decrease and eventually phase-out the CUEs is needed. Certainty of phase-out is an important political signal to the MB producers and users as well as the public. Without such a signal, industries cannot be expected to continue to invest in alternatives and it would be unfair to those who have already made such investments. Certainty and confidence were also considered important with respect to providing MB users and nominating Parties with a clear understanding as to how the Parties interpret the criteria under Decision IX/6 and apply their authority under Article 2H to determine the level of MB necessary to satisfy critical uses.

(c) Practicality and flexibility:

While recognizing that the phase-out of MB is the most important issue, practicality is also necessary. Some Parties face serious problems in phasing out the MB and require time to solve them. While giving certain/temporary flexibility to such Parties,

there is also a need to assess CUNs in light of Decision IX/6 and to remain firm on the conditions to be met. Such limits to “flexibility” need to be addressed. As each nominating Party is best-placed to identify the measures/actions that would achieve the quickest CUE phase-out, prescribing the phase-out measures/actions for those Parties would be counterproductive to the Protocol’s objective of timely MB phase-out.

(d) Transparency:

Since the decisions taken by the Parties on CUNs will have major impacts on the nominating Parties, there must be full transparency in the evaluation process and in how the TEAP recommendations are reached. Transparency is needed particularly in regard to the manner in which it took into account the specific circumstances of each CUN, in accordance with Decision IX/6.

12. It was pointed out that there is a need to define the principles clearly so that the Parties apply the principles with common understanding and unambiguous interpretation.

13. On the conditions for granting CUEs, the issues raised by the participants are summarized below. It was noted that over 20 conditions were on the table for discussion (including those mentioned in the second draft decision in Annex I of the Report of the twenty-third meeting of the Open-ended Working Group and the report of the Workshop on MB organised by the European Commission in February 2004). Some were believed to be relatively acceptable, and some were agreed to be contentious. Finally, it was agreed that some needed more work.

Close to agreement:

1. TEAP study of potential for harmful trade in surplus MB

Relatively acceptable but requiring more work:

1. A definition for economic feasibility
2. When new alternatives registered, parties consider implications for CUE
3. Parties need effective measures to ensure CUE MB gets where it is supposed to and QPS stays QPS
4. Detailed reporting framework
5. TEAP can suggest actions that a party might consider to reduce MB
6. All technically and economically feasible steps have been taken to minimise use and emissions (may be issue with MBTOC standards)
7. Accounting framework needs to be developed
8. Template for report on progress needs to be agreed (Australia CRP as basis)
9. Strategy should be submitted
10. Definitions of “alternative” and “technically feasible” (could go to subgroup)
11. Response/advice to TEAP and MBTOC on their approach to assessing future nominations as proposed in the TEAP Report of 14 February 2004
12. Advice to TEAP and MBTOC on the structure of their CUN assessment reports to increase transparency
13. MBTOC revitalisation (i.e. review and possible revision of the constitution of MBTOC and/or its function in the assessment of CUNs)

Contentious Issues:

1. Study on trade implications of CUEs
2. Conditions for CUEs in Article 5 Parties

3. Re-negotiation of Article 5 agreements with the Executive Committee (ExCom)
4. How to deal with stockpiles
5. Suggestion that a Party's significant market disruption decision rationale should be given to the Parties
6. Cap on CUEs
7. Requirement to impose economic incentives
8. CUEs only for food uses

14. In addition, the following points were mentioned as a possible addition to the above list:

- Preparation of a synthesis table of MB CUNs and CUEs for 2005
- Exploration of applicability and potential impact of economic incentives for Article 5 Parties

15. It was also pointed out that ensuring a more strict and efficient process for evaluating CUNs in the future would help Parties to have enough confidence in the overall process for the future. This may help the Parties to be more flexible towards the 2005 CUEs, which could be considered as a single event in the learning process rather than setting a precedent for the future CUN evaluation.

C. Further specific interim reductions of methyl bromide for the period beyond 2005, applicable to Article 5 Parties

16. The participants had divergent views regarding whether or not the interim reductions for MB phase out for Article 5 Parties were necessary. Some key issues raised include:

- (a) Some participants indicated that it would be politically unacceptable to agree on further interim reduction between 2005 and 2015 for MB for Article 5 Parties at the present time. It was also difficult to phase-out with an accelerated schedule when alternative technologies for some applications are yet to be established.
- (b) There were already a number of Article 5 Parties that have commitment to phase out faster than the requirements of the Montreal Protocol. Although some Article 5 Parties have agreed on accelerated phase-out on the assumption that alternatives are available for the MB uses, this is turning out not to be the case. Flexibility is needed in such situations.
- (c) CUE process should be started for Article 5 Parties as soon as they have phased out under the accelerated phase-out schedule.
- (d) Concerns were raised on how the existing agreements of some Article 5 Parties with the Multilateral Fund for accelerated MB phase-out would be affected if adjustments are made to the existing MB control schedule.
- (e) Concerns were also raised regarding appropriate technologies being transferred to and used in Article 5 Parties.
- (f) Some Article 5 Parties would find it difficult to meet the adjusted schedule.
- (g) Some participants indicated that there could be some financial repercussions for Article 5 Parties in the next triennium of Multilateral Fund implementation if the control schedule for MB remains as it now stands.

- (h) Until CUEs have been substantially reduced in non-Article 5 Parties, it would not be fair to discuss accelerated phase-out for Article 5 Parties.
- (i) There was no requirement for further data to be provided by the European Community.

D. The procedures of the Methyl Bromide Technical Options Committee in evaluating critical use nominations on methyl bromide

17. Revitalising, strengthening and reconstituting MBTOC was deemed important in achieving improvement to the CUN process, as well as providing proper guidance to MBTOC. The participants recognised that MBTOC has been requesting guidance from the Parties on the criteria for evaluating CUNs, including “economic feasibility”.

18. Elements of action for reconstitution of MBTOC included the following:

- Definition of the expertise required in MBTOC
- Elaboration of the criteria and procedure for selecting the experts including ensuring balance between Article 5 and non-Article 5 experts
- Definition of the time scale for the revitalisation (i.e. review and possible revision of the constitution of MBTOC and/or its function in the assessment of CUNs) taking into account the on-going evaluation of the additional CUNs for 2005 and 2006
- Financial resources to enhance involvement of MBTOC members

19. In terms of improving the process, a point was raised that the submission of CUNs and evaluation could be streamlined so that the nominations for a particular year will be evaluated and decided upon by the Parties in the preceding year. It was also pointed out that such a schedule for CUN submission and approval may have serious disadvantages as it would give CUN applicants only one month’s notice of the level of MB (if any) they were to receive, which would be insufficient time to make the arrangements (including financial and contractual arrangements) necessary to accommodate the decision of the Parties at their meetings.

E. Some key recommendations on the process to move forward

20. The participants identified the following processes for further work on the issues:

- (a) Every effort should be made to reach agreement at EMOP. However, for consideration of any unfinished business, an ad hoc working group of limited but geographically balanced number of Article 5 and non-Article 5 Parties, should be established. The group should meet before the next OEWG so that its recommendations could be considered by the OEWG for possible decision at the Sixteenth Meeting of the Parties.
- (b) Another informal consultation should be organized in connection with EMOP (23 March 2004). The meeting should be open-ended.

III. Closure

21. After the customary exchange of courtesies, the Chairman closed the meeting at 5:30 p.m. on 5 March 2004.

Annex I

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