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**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**

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Item 7 of the provisional agenda*

Proposed adjustments to the Montreal Protocol

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Note by the Secretariat

Pursuant to paragraph 9 of Article 2 of the Montreal Protocol the Secretariat is circulating in the annex to the present note a joint proposal for adjustment of the Montreal Protocol submitted by Kenya and Mauritius.

The text of the proposal is circulated as received and has not been formally edited by the Secretariat. The proposal is also posted on the Secretariat website (<http://ozone.unep.org>) as document UNEP/OzL.Pro.WG.1/28/3.

* UNEP/OzL.Pro.WG.1/28/1.

Annex

Proposal by Kenya and Mauritius

Proposed adjustment to the Montreal Protocol to reduce the allowance of methyl bromide produced for “basic domestic needs” in developed countries for export to Parties operating under paragraph 1 of Article 5

1. Countries submitting the proposed adjustment

Kenya and Mauritius

2. Summary

- The Montreal Protocol’s Maximum Production Allowance (MPA) permitted for methyl bromide (MB) produced in non-Article 5(1) Parties for Basic Domestic Needs (BDN) is 10,076 metric tonnes per year, which is 80% of the annual average of the production reported by eligible non-Article 5(1) Parties for the period 1995 to 1998 inclusive;
- The consumption of MB in Article 5(1) Parties continues to decrease to a record low of 7,022 metric tonnes in 2006;
- We propose to reduce the MPA for MB-BDN from 10,076 metric tonnes per year to 5,038 metric tonnes per year (equivalent to 40% of the MPA for MB-BDN), to ensure that the supply is not substantially greater than the demand for MB from 1 January 2010;
- A review of MB-BDN production not later than 2010 will permit the Parties to adjust the BDN to a level sufficient to meet the needs of Article 5(1) Parties until 2015;
- Our proposal will avoid potentially excessive production of MB which, if left unaddressed, would delay the adoption of available alternatives in developing countries, undermine MLF-funded projects on alternatives in Article 5(1) Parties, and further damage the ozone layer;
- Using the Protocol’s Adjustment procedure to reduce the MPA for MB-BDN is consistent with the suggestions of the contact group which met in 2007 to consider harmful trade in MB;
- The proposed Adjustment for BDN does not affect the permitted uses of MB for quarantine and pre-shipment.

3. Goal

To reduce the maximum production allowance for methyl bromide for Basic Domestic Needs, so that the supply is not substantially greater than the demand from 2010 until 2015.

4. Context

4.1 Exports of methyl bromide for Basic Domestic Needs

The quantity of MB used for pest control continues to reduce annually as alternatives to replace this ozone-depleting pesticide have been developed, registered (when necessary) and implemented in both Article 5(1) and non-Article 5(1) Parties.

Article 5(1) Parties have made significant progress eliminating their uses of MB. UNEP’s Methyl Bromide Technical Options Committee (MBTOC) reported in 2007 that 80% of Article 5(1) Parties had reduced their MB consumption to less than half of their 2005 national base levels. Moreover, more than half of the ninety-five Article 5(1) Parties that consumed MB in the past have totally eliminated their consumption.

The MB consumption for controlled uses in Article 5(1) Parties, reported to the Ozone Secretariat pursuant to Article 7 of the Montreal Protocol, was 18,100 tonnes in 1998; 17,669 tonnes in 2001; 12,697 tonnes in 2002; 11,831 tonnes in 2003; 10,512 tonnes in 2004; 9,497 tonnes in 2005; and 7,022 tonnes in 2006, which is about 45% of the Article 5(1) base level.

With regard to production, Article 5(1) Parties reported production to the Ozone Secretariat of 969 tonnes in 2006. In non-Article 5(1) Parties, only France, Israel and the United States are eligible to produce MB for BDN, as they were the only MB-producing Parties that reported data to the Ozone Secretariat for the period 1995 to 1998 inclusive¹, which subsequently allowed the calculation of the maximum BDN production allowance affecting these Parties².

The MPA for MB-BDN for the period 2005 to 2014 is 6045.5 ODP tonnes² per year, equivalent to 10,076 tonnes, which is 80% of the annual average production reported by France, Israel and the United States for the period 1995 to 1998 inclusive³. This MPA for MB is about 43% more than the amount consumed by Article 5(1) Parties in 2006.

Figure 1 below illustrates the MPA of 80% MB-BDN from 2005, which is currently in force. However, according to the data reported under Article 7, the consumption of MB in Article 5 Parties has trended downwards since 2001 (solid line), according to the data reported pursuant to Article 7. This trend is expected to continue in the future (dotted line) as alternatives to MB become even more widespread in Article 5(1) Parties. Accordingly, we propose an adjustment of the MPA for MB-BDN from 80% to 40%, effective from 1 January 2010, to take account of this downward trend in MB consumption.

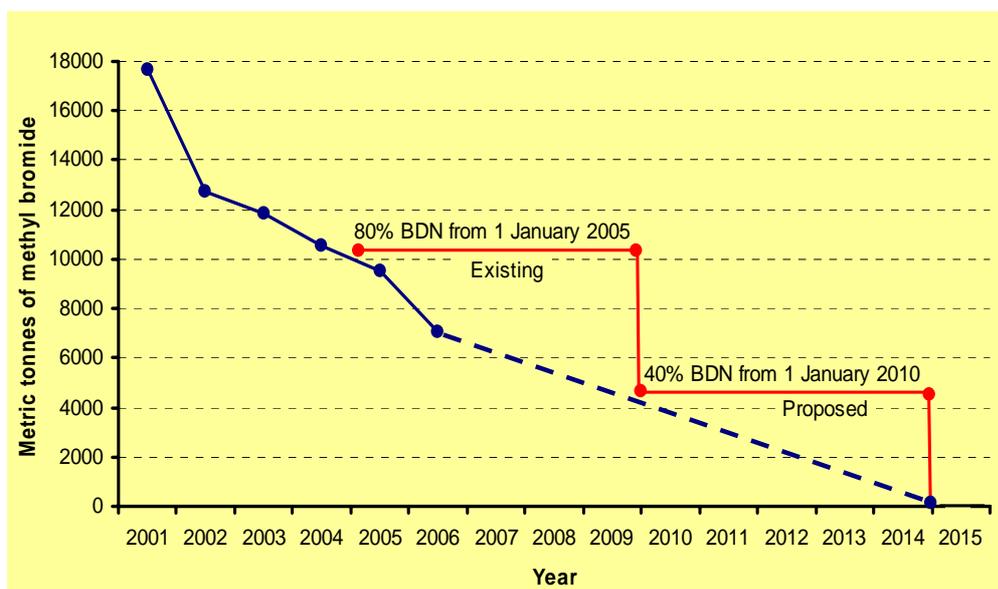


Figure 1: Consumption of methyl bromide in Article 5(1) Parties, shown as reported by Parties (as a solid line) and projected into the future (dotted line). Also shown is the existing maximum production allowance for methyl bromide for Basic Domestic Needs from 1 January 2005 (80%), and our proposal for BDN from 1 January 2010 (40%).

In the light of technical alternatives existing for almost all controlled uses of MB⁴, and considering that the demand from 2007 and successive years is most likely to be less than the quantity of MB consumed in 2006 due to the success of the MLF-funded projects and other actions taken at the national level, our proposal for a 40% MPA for MB-BDN will be more than adequate to meet the demand from 1 January 2010.

However, in order to ensure that the MPA for MB-BDN is not excessive from 2012 onwards, taking into account the rate of MB reduction in Article 5(1) Parties, we also propose that the Parties review the MPA for MB-BDN no later than 2010.

¹ Pursuant to Article 2H paragraphs 5bis and 5ter of the Montreal Protocol.

² Production and Consumption of Ozone Depleting Substances under the Montreal Protocol 1986 – 2004. [Ozone Secretariat](#) UNEP November 2005; page 32;

³ Pursuant to Article 2H, paragraphs 5 bis and 5 ter of the Montreal Protocol

⁴ Synthesis Report (2006). 2007. [UNEP/OzL.Pro.WG.1/27/3](#); Page 6.

Therefore, we propose that the MPA for MB-BDN would remain at 80% until 31 December 2009. However, from 1 January 2010 and until any further Adjustment by the Parties, we propose the MPA for MB-BDN would be 40%.

Our proposal would avoid excessive production of MB-BDN which, if left unaddressed, would encourage increases in MB consumption in Article 5(1) Parties, delay the adoption of available alternatives thereby undermining the work of the MLF-funded projects on alternatives to MB, and further damage the ozone layer.

4.2 Harmful trade

The Parties first highlighted their concerns with excess supplies of MB entering developing countries, which they considered as harmful trade, in a decision⁵ agreed by the Parties in 2004. In response to this decision in 2006, TEAP 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 TEAP also reported at that time that harmful trade may originate from global stockpiles of MB and from global production. TEAP recommended that non-Article 5(1) Parties should make a special effort to declare all stocks and ensure that MB from these stocks is not exported, except for critical uses or for quarantine and pre-shipment (QPS) uses.

In regard to production, TEAP noted that the Protocol allows non-Article 5(1) Parties until 2015 to produce each year 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. TEAP cautioned that this quantity needed to be regulated carefully to prevent harmful trade.

Based on these conclusions in the TEAP report, ten Parties⁶ proposed a draft decision in 2007 on harmful trade in MB, which was considered by the Parties at their Open-Ended Working Group meeting in June, and again at their nineteenth Meeting in September (MOP19).

It was generally agreed at MOP19 that harmful trade was an important issue affecting Article 5(1) Parties. However, a contact group established to further consider the draft decision was not able to reach consensus. The contact group suggested that the proponents submit a proposal to the Protocol for an Adjustment that provides for a reduction in the production of MB-BDN, and that such a proposal would need to be submitted at least 6 months before the meeting at which it was to be considered.

Accordingly, the proposed legal text is submitted in Section 4 below. The proponents of the Adjustment confirm that only paragraph 5 in Article 2H is changed. As a result, the permitted uses of MB for QPS, which are described in paragraph 6 of Article 2H, remain unaffected.

4. Legal text of the proposed adjustment

Article 2H

A new paragraph is inserted after *5 bis*, as follows:

5 ter. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010 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 forty per cent of the annual average of its production of the substance for basic domestic needs for the period 1995 to 1998 inclusive. A Meeting of the Parties shall review, not later than 2010, the 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 5⁷.

⁵ Decision Ex.I/4, paragraph 9(a). First Extraordinary Meeting of the Parties, 24-26 March 2004

⁶ Angola, Botswana, Burkina Faso, Kenya, Malawi, Nigeria, Sierra Leone, Tanzania, Uganda & Zambia

⁷ The changes to the legal text are shown here underlined for clarity, but would not be in underlined in the final text

The current paragraph 5 *ter* is renamed 5 *qua*.

5. Conclusions

There is no “automatic” procedure currently in place to adjust the MPA for MB-BDN to take account of the reduced demand in developing countries.

An Adjustment of the MPA for MB-BDN by the Parties to 40% from 1 January 2010, followed by a review by the Parties of the MPA for MB-BDN no later than 2010, will ensure that MB can be produced in non-Article 5(1) Parties in quantities sufficient to support the basis domestic needs for MB in Article 5(1) Parties.
