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**Ad hoc working group of the Parties to  
the Montreal Protocol on Substances that  
Deplete the Ozone Layer**

**Second meeting on the review of the working procedures  
and terms of reference of the Methyl Bromide  
Technical Options Committee (decision Ex.I/5)**  
Prague, 19 and 20 November 2004

Items 3, 4 and 5 of the provisional agenda\*

**Further guidance for the application of the criteria set forth in decision IX/6**

**Working procedures related to evaluation of critical use nominations and  
membership of the Methyl Bromide Technical Options Committee**

**Conflict-of-interest issues**

**Status of discussions on the issues before the ad hoc working group**

**Note by the Secretariat**

**I. Introduction**

1. At the first Extraordinary Meeting, held in Montreal from 24 to 26 March 2004, the Parties decided, in decision Ex.1/5, to review the working procedures and terms of reference of the Methyl Bromide Technical Options Committee (MBTOC) as they relate to the evaluation of nominations for critical use exemptions. 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 to report its findings and recommendations to the Open-ended Working Group.

2. The meeting of the ad hoc working group took place from 10 to 12 July 2004 in Geneva. The result of the deliberations of the ad hoc working group as contained in document UNEP/OzL.Pro/AHWG.MBTOC/1/3, and reported by the co-chairs of the ad hoc working group, was considered by the Open-ended Working Group at its twenty-fourth meeting.

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\* UNEP/OzL.Pro/AHWG.MBTOC/2/1.

3. The Open-ended Working Group established a contact group which continued the work to consolidate the various proposals that had been tabled by the ad hoc working group. In order to complete the pending issues, the Open-ended Working Group decided to reconvene the ad hoc working group for a two-day meeting immediately prior to the Sixteenth Meeting of the Parties.
4. The conclusions and recommendations of the ad hoc working group at its second meeting will be reported to the Sixteenth Meeting of the Parties.
5. The present document reviews the status of the discussions on the issues to be considered by the ad hoc working group at its second meeting.

## **II. Issues on the agenda**

### **A. Further guidance for the application of the criteria set forth in decision IX/6**

6. At the first Extraordinary Meeting, the Parties decided to consider the following items in the review of the working procedure and terms of reference of MBTOC:
  - (a) Further guidance on the application of the criteria set forth in decision IX/6 (Ex.1/5, paragraph 2 (g)); and
  - (b) Instances where the Methyl Bromide Technical Options Committee should seek the guidance of the Meeting of the Parties in conducting its work (Ex.1/5, paragraph 2 (i)).
7. After the first meeting of the ad hoc working group and the discussions by the contact group established by the Open-ended Working Group at its twenty-fourth meeting, the latter identified the issue of further guidance for the application of the criteria set forth in decision IX/6 as a central issue for discussion by the ad hoc working group at its second meeting.
8. It was agreed that Parties would submit to the Secretariat their comments on the issue of further guidance by 1 October 2004 and the Secretariat would make the comments available to the Parties prior to the meeting in order to facilitate the discussion. The comments received from Parties will be compiled into a working document for the meeting (UNEP/OzL.Pro/AHWG.MBTOC/2/3), which will be distributed during October 2004.
9. The ad hoc working group may also wish to take into consideration the proposals by delegations at the twenty-fourth meeting of the Open-ended Working Group on further guidance, prepared pursuant to decision Ex.I/5, paragraph 2 (g), and the draft decision submitted to the Working Group at the same session by the contact group on the review of the Methyl Bromide Technical Options Committee, which are attached to the present note as annex I and II respectively.

### **B. Working procedures related to the evaluation of critical use nominations and membership of the Methyl Bromide Technical Options Committee**

10. At the first Extraordinary Meeting, the Parties decided to consider the following items in the review of the working procedure and terms of reference of the MBTOC:
  - (a) Membership of MBTOC:
    - (i) Duration and rotation of membership, taking into account the need to provide for a reasonable turnover of members while also ensuring continuity (Ex.1/5, paragraph 2 (c));
    - (ii) Conflict-of-interest documents which must be completed by members of the Methyl Bromide Technical Options Committee (Ex.1/5, paragraph 2 (d));
    - (iii) 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 be designed to ensure that some members have practical and first-hand experience which should relate, in particular, to replacing methyl bromide with alternatives, and to reflect the appropriate skills and expertise required to perform the work assigned to the Committee, including expertise in the field of agricultural economy, technology transfer and regulatory

processes of registration (Ex.1/5, paragraph 2 (e));

- (iv) 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 2 (e) of decision Ex.1/5 (Ex.1/5, paragraph 2 (f));
- (b) Working procedures of MBTOC:
  - (i) 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 (Ex.1/5, paragraph 2 (a));
  - (ii) Timing and structure of the Methyl Bromide Technical Options Committee reports on critical-use nominations (Ex.1/5, paragraph 2 (b));
  - (iii) Modalities for the submission of annual work plans by the Methyl Bromide Technical Options Committee to the Meeting of the Parties (Ex.1/5, paragraph 2 (h));
  - (iv) Modalities for the provision of budget proposals for the conduct of the Committee's work through the Secretariat by the Methyl Bromide Technical Options Committee to the Meeting of the Parties (Ex.1/5, paragraph 2 (j)).

11. Significant progress was made by the ad hoc working group at its first meeting and by the contact group established by the Open-ended Working Group at its twenty-fourth meeting on consolidating the various proposals made by the Parties on the above items into a single draft decision with square brackets where agreement was not reached. The draft decision, as considered by the Open-ended Working Group at its twenty-fourth session, is attached in annex II to the present note, for further discussion by the ad hoc working group.

### **C. Conflict-of-interest issues**

12. By decision Ex.I/5, paragraph 2 (d), the Parties decided to include in the review of the working procedure and terms of reference of the MBTOC as they relate to the evaluation of critical use nominations the documents on conflict of interest which were to be completed by the members of MBTOC.

13. The two sets of proposals on the issue, as submitted to the Open-ended Working Group at its twenty-fourth session, are attached in annexes III and IV to the present note, for discussion by the ad hoc working group.

## Annex I

### Proposals by delegations on further guidance

#### Prepared pursuant to decision Ex.I/5, paragraph 2 (g), and considered by the Open-ended Working Group at its twenty-fourth session

##### A. Australia

Issue requiring further guidance	Procedure in place	Guidance provided
1. Duration and aggregation of exemptions	Partial (covers duration): agenda item 11(a) of the twenty-fourth Open-ended Working Group	No
2. Economic feasibility	Yes: decision Ex.I/4 paras. 6 and 9 (c)	Partial: decision Ex.I/4 paras. 6 and 9 (c)
3. Individual circumstances of nominations: (a) Nominations for increases or for equal amounts of methyl bromide over several years, e.g., due to increases in usage associated with increases in acreage (b) Nominations for small quantities of methyl bromide	No	No
4. Stocks	Yes: decision Ex.I/4 para. 9 (f)	Yes: decision Ex.I/3 paras. 2 and 5
5. Reporting requirements: (a) Accounting framework (b) Annual reporting and critical-use exemption re-application format	Yes: decision Ex.I/4 para. 9 (f) Yes: decision Ex.I/4 para. 9 (g)	No Yes: annex I to report of the Extraordinary Meeting of the Parties
6. Handbook on critical-use exemptions for methyl bromide	Yes: decision Ex.I/4 para. 9 (k)	No

In regard to issue 6 above, Australia proposes that TEAP and its MBTOC be requested to forward the draft revised handbook to the Secretariat as soon as possible for posting on the Ozone Secretariat web site.]

##### B. United States of America

[Application of the text from decision IX/6: “minimize the critical use and any associated emission of methyl bromide” requires further guidance from the Parties. In order to provide this guidance, the Parties require MBTOC to provide information on:

(a) Any presumptions underpinning recommendations that make reference to the use of virtually impermeable films; particular production methods, such as broadacre and strip; and, particular mixes of methyl bromide and chloropicrin; and

(b) The basis on which those presumptions have been identified as technically and economically feasible.]

## Annex II

### Draft decision submitted by the contact group on the review of the Methyl Bromide Technical Options Committee

As considered by the Open-ended Working Group at its twenty-fourth session

*The Sixteenth Meeting of the Parties decides:*

[...]

To adopt the following elements related to procedures and terms of reference of the Methyl Bromide Technical Options Committee related to the evaluation of nominations for critical uses of methyl bromide.

#### A. Working procedures of the Methyl Bromide Technical Options Committee relating to the evaluation of nominations for critical uses of methyl bromide

1. The schedule for the MBTOC assessment of critical-use exemptions will be revised as set out in the following table:

<b>Actions</b>	<b>Indicative completion date</b>
1. Parties submit their nominations for critical use exemptions to the Secretariat	[31 January] [15 December]
2. The nominations are forwarded to MBTOC co-chairs for distribution to the subgroups of appointed members	14 February
3. Nominations in full are assessed by the subgroups of appointed members. The initial findings of the subgroups, and any requests for additional information are forwarded to the MBTOC co-chairs for clearance	28 February
4. MBTOC co-chairs forward the cleared advice on initial findings and requests for additional information on to the nominating Party concerned and consult with the Party on the possible presumption therein	14 March
5. Nominating Party develops and submits its response to the MBTOC co-chairs	28 March
6. MBTOC meets as usual to assess nominations, including any additional information provided by the nominating Party prior to the MBTOC meeting under action 5 and any additional information provided by nominating Party through pre-arranged teleconference, [or through meetings with national experts/observers] advises the nominating Party of any outstanding information regarding the information requested under action 3 for those critical use nominations where it was unable to assess the nomination, and provides its proposed recommendations to TEAP	11 April
7. TEAP meets as usual in May, among other things, to assess the MBTOC report on critical use nominations and submits the finalized report on recommendations and findings to the Secretariat	early May
8. The Secretariat posts the finalized report on its web site and circulates it to the Parties	mid-May
9. Nominating Party has the opportunity to consult with MBTOC on a bilateral basis in conjunction with the Open-ended Working Group meetings	early July
10. The nominating Party submits further clarification for the critical use nomination in the "unable to assess" category or if requested to do so by the Open-ended Working Group, and provides additional information should it wish to appeal against a critical use nomination recommendation by MBTOC	early August
11. MBTOC meets to reassess only those critical use nominations in the "unable to assess" category, those where additional information has been submitted by the nominating Party and any critical use nominations for which additional information has been requested by the Open-ended Working Group	late August
12. MBTOC final report is made available to Parties through TEAP	early October

2. Standard presumptions that underlie MBTOC recommendations of critical use nominations need to be transparent, and should be clearly stated in their reports, and submitted to the Parties for approval at the Seventeenth Meeting of the Parties, and thereafter on an annual basis.
3. In the case a nomination has been recommended for rejection or reduction as assessed under action 6 above, MBTOC will give the nominating Party the opportunity to send detailed corroborating information taking into account the circumstances of the nomination. On the basis of this additional information (and possible consultations with the nominating Party by pre-arranged teleconference) MBTOC will re-assess this nomination.
4. Although the burden of proof remains with the Party to justify a request for a critical-use exemption, MBTOC will provide in its report a clear explanation of its operation with respect to the process of making determinations for its recommendations, and clearly state the approach, assumptions and reasoning used in the evaluation of the critical use nominations. When cuts or denials are proposed, the description should include citations and also indicate where alternatives are technically and economically feasible in circumstances similar to those in the nomination, as described in decision Ex.1/5 paragraph (8).
5. Communications between the nominating Party and MBTOC will be based on the principles of fairness and due process, on the basis of corroborating written documentation, and will be properly reflected in the MBTOC and TEAP reports.
6. The role of the Secretariat should be central in regard to assistance in organizational and administrative aspects of the process whereby the efficiency, operations and communications could be enhanced.
7. MBTOC is requested to develop and keep up to date an expanded matrix describing the conditions under which alternatives are technically and economically feasible. The matrix should include detailed references, such as citations of trial reports demonstrating this feasibility or case studies of commercial operation. Before application, the Parties should approve the matrix and any subsequent changes.
8. MBTOC, when holding its meeting, can consult the nominating Party through pre-arranged teleconference [or through face-to-face discussions with national experts] in order to facilitate a transparent exchange of information and understanding between MBTOC and the critical use exemption applicant.
9. Despite the opportunities given to the nominating Party to supply any additional information required in support of its nomination, MBTOC should categorize the nomination as unable to assess if there is insufficient information to make an assessment.

## **B. Membership of the Methyl Bromide Technical Options Committee**

10. TEAP and MBTOC are urged to apply strictly the current terms of reference of TEAP approved by the Eighth Meeting of the Parties in its decision VIII/9, in particular:
  - (a) To draw up guidelines for nominating experts by the Parties to be published by the Secretariat;
  - (b) To publish and keep current a matrix showing existing and needed skills for the MBTOC members. In so doing, MBTOC may like to use all available UNEP publications, the Secretariat web page, the regional ozone officers' network meetings and any other means considered appropriate. Parties, and in particular Article 5 Parties, are urged to consider nominating experts to MBTOC in those areas where missing skills and expertise have been identified by MBTOC;
  - (c) To ensure that MBTOC has about 20–35 members as set out in the terms of reference of TEAP, while also ensuring coverage of the required expertise;
  - (d) In order to meet the overall goal of achieving a representation of about 50 per cent for Article 5 Parties in the Committee, where Article 5 and non-Article 5 candidates have equivalent expertise and experience, the MBTOC co-chairs shall give preference to the appointment of those experts from Article 5 Parties. The MBTOC co-chairs, supported by the Ozone Secretariat, should aim to achieve a balanced membership within two years, or as soon as possible thereafter. The Parties shall monitor progress in pursuing a balanced membership by reviewing the advice provided in the work plan on the composition of MBTOC;

(e) Skills and expertise in the following fields, among others deemed necessary by MBTOC, should be represented:

- (i) Chemical and non-chemical alternatives to methyl bromide;
- (ii) Alternative methods of pest control that have replaced or could replace significant uses of methyl bromide;
- (iii) Technology transfer or extension activities related to alternatives;
- (iv) Regulatory processes of registration;
- (v) Agricultural economics;
- (vi) Weed control;
- (vii) Resistance management;
- (viii) Recapture and recycling of methyl bromide.

10. MBTOC should ensure a membership with substantive practical and first-hand experience. With respect to (i), (ii), (iii) and (vi) above, preference should be given to candidates who have experience in the implementation of more than one alternative.

11. With a view to supporting a timely review process and ensuring additional expertise that may be required for a particular critical use nomination, MBTOC may seek assistance from additional experts who, at the request of MBTOC, should provide written input and assist in the review of MBTOC documents. [These consulting experts can be invited by the MBTOC co-chairs, on an exceptional basis, to attend an MBTOC meeting. For reasons of transparency and accountability, the role and type of input of these consulting experts should be clearly set out.]

12. Candidates should be willing to undertake an evaluation of a proportion of the nominations before arriving at the meeting in order to take advantage of all the local resources available (library, internet, reports); and to undertake any work after the meeting necessary to finalize the report.

13. An annual work plan will enhance the transparency of, and insight in, the operations of MBTOC. Such a plan should indicate, among other things:

- (a) Key events for a given year;
- (b) Envisaged meeting dates of MBTOC, including the stage in the nomination and evaluation process to which the respective meetings relate;
- (c) Tasks to be accomplished at each meeting, including appropriate delegation of such tasks;
- (d) Timing of interim and final reports;
- (e) Clear references to the timelines relating to nominations;
- (f) Information related to financial needs, while noting that financial considerations would still be reviewed solely in the context of the review of the Secretariat's budget;
- (g) Changes in the composition of MBTOC, pursuant to the criteria for selection;
- (h) Summary report of MBTOC activities over the previous year, including matters that MBTOC did not manage to complete, the reasons for this and plans to address these unfinished matters;
- (i) Matrix with existing and needed skills and expertise; and
- (j) Any new or revised standards or presumptions that the MBTOC seeks to apply in its future assessment of critical use nominations, for approval by the Meeting of the Parties.

14. The annual work plan should be drawn up by MBTOC (supported by the Ozone Secretariat) in consultation with TEAP, which shall submit it to the Meeting of the Parties each year.

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

[15. MBTOC shall base its evaluations of critical-use nominations for the use of methyl bromide in future rounds on the following criteria:

- (a) Availability of technically and economically feasible alternatives;
- (b) Economic feasibility;
- (c) Duration and aggregation of nominations;
- (d) Individual circumstances of nominations;
- (e) Reporting requirements;
- (f) Handbook;
- (g) Standard presumptions;
- (h) Process of making recommendations;
- (i) Approach, assumptions and reasoning to be used in the evaluation;
- (j) Conflict of interest procedures;
- (k) Similar circumstances;
- (l) Reduction schedules.]

[16. Taking into account the fact that the language on stocks in the critical-use decision is the same language used in the essential-use decision, that stocks in the essential-use context have in some cases, been as high as six times larger than a country's nomination, and that the Parties have never taken any decision reducing an essential-use nomination based on stocks, countries submitting critical-use nominations should be asked to take into account in their nomination the level of stocks that they feel confident will be available to the applicants, and in light of the above, to review the issue of stocks prior to the allocation or licensing of the amount of the Parties grant for critical uses.

17. Taking into account that the language in the critical-use decision dealing with use and emissions of methyl bromide is the same as the language contained in the essential use decision, and that the language in the essential-use decision has never been used by Aerosols Technical Options Committee or the Parties to cut a particular countries nomination for an essential use, MBTOC should review Parties' efforts to limit use and emissions in a reasonable manner, and recommend cuts in the nomination only if it is clear that the Party is not taking any efforts to ensure tarping where it should be used, or is still using methyl bromide/chloropicrin mixes at historically high levels which have clearly been proven globally to be unnecessary.

18. Agreeing on the desirability of allowing MBTOC to take decisions on the basis of full information, as well as the desirability of allowing a Party to provide further information if it believes that MBTOC has recommended a rejection of or cut in its nomination on the basis of a misunderstanding, MBTOC is asked to make clear the basis of all of its relevant actions (recommended approvals, recommended cuts, not recommended, unable to assess), and not to revisit its recommendation for a full recommendation without providing the nominating party with sufficient notice to allow it to respond to any new MBTOC conclusion.

19. MBTOC should not apply the suggestion of TEAP related to the penetration of alternatives.]



## Annex III

### Proposals by delegations regarding the guidelines for MBTOC for disclosure of interest

As submitted to the Open-ended Working Group at its twenty-fourth session (annex III to document UNEP/OzL.Pro/AHWG.MBTOC/1/2)

#### Australia

[Reclassify categories of interest 5 and 11 so that they fall into “Type of action B”: “Takes no role unless asked”.

Revise text of category of interest 11 so that it reads:

“Works for or receives financial assistance from the Government of the Party forwarding the application (but is otherwise not associated with the application).”

Revise text of category of interest 5 so that it reads:

“Works for, advises or receives financial assistance from the Government of the Party forwarding the application and was substantially associated with the processing of the application.”]

#### Canada

[Add the following to the categories of interest:

- Have you or your partner any financial interest or interests in developing national positions in the subject matter of the meeting or work in which you will be involved, which may be considered or constituting a real, potential or apparent conflict of interest?]

#### Poland

[Re-categorize type of actions to be taken from C to B for categories of interest 11 and 13. Category 13 should apply in particular, to situations where the MBTOC member is an employee of any government authority other than the one which submitted the nomination (e.g., of the Ministry of Agriculture where the nomination was submitted by the Ministry of Environment).]

#### United States of America

[Add the following to the categories of interest:

- Works for an interest that could possibly be harmed by a decision to grant a critical-use exemption (action taken: B)
- Provides advice to their Government on what position the Government should take in international negotiations relative to a critical-use exemption or policy discussed by MBTOC (action taken: B).]

## **Annex IV**

### **Proposal by Canada regarding the guidelines for MBTOC for disclosure of interest: assessment of critical use exemption applications**

**As submitted to the Open-ended Working Group at its twenty-fourth session:  
(annex III to document UNEP/OzL.Pro/AHWG.MBTOC/1/2)**

#### **[Introduction**

In order to make the most informed recommendations on applications for critical use exemptions, MBTOC is required, according to decision VIII/19 to establish procedures to ensure that the best possible assessment of scientific evidence is achieved in an independent atmosphere free of either direct or indirect pressures. Thus, to ensure the technical integrity and impartiality of MBTOC work, it is necessary to avoid situations in which financial or other interests might affect the outcome of that work.

The procedures to be established 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.

It is proposed therefore that each expert be asked to declare any interests that could constitute a real, potential, or apparent conflict of interest, with respect to his/her involvement in the meeting or work, between, on the one hand, commercial entities and the participant personally, and, on the other hand, commercial entities and the administrative unit with which the participant has an employment relationship. The term commercial entity refers to any company, association (e.g. trade association), organization or any other entity whatsoever, with commercial interests.

It is further proposed that the Chair verify the categorization 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.

1. Further to decision VIII/19 the Meeting of the Parties decide to adopt the following procedure for the implementation of the declaration of interest form:

#### **Review process prior to appointment**

(a) Should the co-chair of MBTOC require further clarification as to the suitability of an expert, the co-chair shall discuss with the prospective expert. Depending on the outcome of these discussions, the co-chair may refer the matter to the Chair of TEAP. The Chair of TEAP shall review the matter and make a recommendation to the co-chair of MBTOC.

(b) Should the co-chair of MBTOC be in disagreement with the recommendation by the Chair of TEAP, the co-chair of MBTOC may request that the matter be considered by the Bureau of the Montreal Protocol and subsequently the Bureau may decide to refer the matter to the Meeting of the Parties.

### **Review process after appointment**

(c) All appointed experts shall be required to inform the co-chair of MBTOC (and in the case of the co-chairs of MBTOC to the chair of TEAP) of any changes in the information provided in a declaration of interests form previously submitted.

(d) In the course of the mandate of an expert, should the co-chair be of the opinion that a situation of conflict of interest could arise or has arisen, the co-chair shall discuss the matter with that expert and, where deemed appropriate, with the chair of TEAP. The chair of TEAP, in consultation with the Bureau of the Montreal Protocol, may recommend to the Meeting of the Parties the temporary suspension of the participation of the expert in some or in all the activities of MBTOC. A decision on the matter shall be taken by the Meeting of the Parties at its next session

### **General provisions**

(e) Subject to the provisions of decision VIII/19, the Secretariat to the Montreal Protocol shall take all necessary measures to safeguard the restricted character of the information provided in the declaration of interest forms (assuming that the forms reside with the secretariat). To the extent necessary for the implementation of decision VIII/19 and decision XVI/xx, this information may be provided to the Meeting of the Parties and its Bureau and subsidiary bodies, as deemed appropriate.

(f) Where the objectivity of a particular meeting has been called into question, the Meeting of the Parties shall define the conditions for the disclosure of all relevant information in addition to that which is provided in paragraph 1 (e) of this decision.

(g) The Meeting of the Parties shall consider any issue that is not covered by the present decision.

(h) The Meeting of the Parties shall keep under review the implementation of the present decision and, not later than five years after its adoption, it will carry out a comprehensive assessment of its implementation with a view to making such amendments thereto as may be required.

2. Decides that a declaration of interests form shall be completed by current members of MBTOC and submitted to the Secretariat before MBTOC's next session, due to be held 4 April 2005 (?) – should this also be a general requirement for all TEAP members (?). Thus declaration shall be considered under the provisions of Paragraph 1 (d). Further decides that any designation of new experts to serve in MBTOC shall be subject to the relevant provisions of paragraph 1 of this decision.]