

**United Nations
Environment
Programme**

UNEP/OzL.Pro.WG.1/24/CRP.15
13 July 2004

Original: English

**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**
Twenty-fourth meeting
Geneva, 13–16 July 2004
Agenda item 11 (c)

**Report of the ad hoc working group on procedures and terms of reference of the
Methyl Bromide Technical Options Committee as they relate to the evaluation of
nominations for critical-use exemptions (decision Ex.I/5, paragraphs 5 and 6)**

**Proposals submitted by Canada regarding the guidelines for MBTOC for
disclosure of interest (annex III to UNEP/OzL.Pro/AHWG.MBTOC/1/2)
(dec. Ex.I/5, para. 2 (d))**

K0430542(E) 130704

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

[Decision XVI/xx

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Guidelines for MBTOC for disclosure of interest

Introduction

In order to make the most informed recommendations on applications for critical use exemptions, MBTOC is required, according to decision VIII/19 to should 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 that use all of 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.~~

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.

~~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. It is further proposed that the The Chair will 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 MBTOCs 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 the MBTOC shall be subject to the relevant provisions of paragraph 1 of this decision.

Annex IV

Declaration of interest formWhat is conflict of interest?

Conflict of interest means that the expert or his/her partner, or the administrative unit with which the expert has an employment relationship, has a financial or other interest that could unduly influence the expert's position with respect to the subject matter being considered. An apparent conflict of interest exists when an interest would not necessarily influence the expert but could result in the expert's objectivity being questioned by others. A potential conflict of interest exists with an interest that any reasonable person could be uncertain whether or not should be reported.

Different types of financial or other interests, whether personal or with the administrative unit with which the expert has an employment relationship, can be envisaged and the following list, which is not exhaustive, is provided for guidance to MBTOC (TEAP?) once a potential member has completed a disclosure of interest.

Categories of interest that should be declared:

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).
- 3 bis A current proprietary interest in a substance, technology or process (e.g. ownership of a patent), to be considered in – or otherwise related to the subject matter of – the meeting or work (Canadian proposal).
- 3 ter A current financial interest, e.g. shares or bonds, in a commercial entity with an interest in the subject matter of the meeting or work (except share holdings through general mutual funds or similar arrangements where the expert has no control over the selection of shares) (Canadian proposal).
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, and advises or receives financial assistance from the Government of the Party competent authority forwarding the application and was substantially associated with the processing of the application (Australian proposal).
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.
- 6 bis An employment, consultancy, directorship, or other position during the past four years, whether or not paid, in any commercial entity which has an interest in the subject matter of the meeting or work, or an ongoing negotiation concerning prospective employment or other association with such commercial entity (Canadian proposal).
- 6 ter Performance of any paid work or research during the past four years commissioned by a commercial entity with interests in the subject matter of the meetings or work (Canadian proposal).
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.
- 8 bis Payment or other support covering a period within the past four years, or an expectation of support for the future, from a commercial entity with an interest in the subject matter of the meetings or

work, even if it does not convey any benefit to the expert personally but which benefits his/her position or administrative unit, e.g. a grant or fellowship or other payment, e.g. for the purpose of financing a post or consultancy (Canadian proposal).

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.

9 bis (previously 11) Works for or receives financial assistance from the Government of the Party~~competent authority~~ forwarding the application (but is otherwise not associated with the application) (Australian proposal).

9 ter Works for an interest that could possibly be harmed by a decision to grant a critical-use exemption (USA proposal).

9 quatuor Provides advice to their Government on what position the Government should take in international negotiations relative to a critical-use exemption on policy discussed by MBTOC (USA proposal).

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. Moved to 9 bis per Australian and Polish Proposals.

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.

New: With respect to the above interests, a commercial interest in a competing substance, technology or process, or an interest in or association with, work for or support by a commercial entity having a direct competitive interest must similarly be disclosed.

Proposed action to be taken in the event of a declared interest:

For items 1 to 4 proposed action would be A (takes no role)

For items 4 to 9 proposed action would be B (takes no role unless asked)

For items 10 to 13 proposed action would be C (fully participates)

INFORMATION FOR THE POTENTIAL MEMBER ON HOW TO COMPLETE THE DECLARATION OF INTEREST FORM

How to complete this declaration

Please complete this declaration form and submit it to the MBTOC Co-chair for submission to the TEAP Co-chairs. Any financial or other interests that could constitute a real, potential or apparent conflict of interest should be declared: first, with respect to yourself or partner; and second, with respect to any administrative unit with which you have an employment relationship. Only the name of the commercial entity and the nature of the interest are required to be disclosed, no amounts need to be specified (though they may be, if you consider this information to be relevant to assessing the interest). With respect to points 3 bis and 3 ter in the list above, the interest should only be declared if it is current. With respect to points 6 bis and 6 ter and 8 bis, any interest during the past four years should be declared. With respect to point 8 bis, the interest ceases when a financial post or fellowship is no longer occupied or when support for an activity ceases.

Assessment and outcome

The information submitted by you will be used to assess whether the declared interests constitute an appreciable real, potential, or apparent conflict of interest in accordance with the provisions of decision VIII/19 and decision XVI/xx.

Information disclosed on this form shall reside within the Secretariat and shall be made available to the Meeting of the Parties, its Bureau and subsidiary bodies, as deemed appropriate.

DECLARATION OF INTEREST TO BE COMPLETED BY POTENTIAL MEMBERS

Declaration

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

Yes: ; if yes, please give details below (type of interest, e.g. patent, shares, employment, association, payment; name of commercial entity; whether the interests belong to you, your partner, or unit; current interest, or the year it ceased).

No:

Have you or your partner any interests in developing or advising national delegations in the positions that they should take in international negotiations in the subject matter or work in which you will be involved, which may be considered or constituting a real, potential or apparent conflict of interest?

Yes: ; if yes, please give details below.

No:

Do you have, or have you had during the past four years, an employment or other professional relationship with any entity directly involved in the production, manufacture, distribution or sale of substances or directly representing the interests of any such entity?

Yes: ; if yes, please give details below (type of interest, e.g. patent, shares, employment, association, payment; name of commercial entity; whether the interests belong to you, your partner, or unit; current interest, or the year it ceased).

No:

Is there anything else that could affect your objectivity or independence in the meeting or work, or the perception by others of your objectivity and independence?

I hereby declare that the disclosed information is correct and that no other situation of real, potential, or apparent conflict of interest is known to me. I undertake to inform you of any changes in these circumstances, including if any issue arise during the meeting or work itself.

Name; date; signature.

I hereby declare that I shall regulate my conduct in accordance with the provisions of paragraphs 3 and 4 of decision VIII/19 regarding the code of conduct by members of the Technology and Economic Assessment Panel.

Name; and signature.]