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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 of the provisional agenda*

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

**Comments received from the Parties on further guidance for the
application of the criteria set forth in decision IX/6**

Note by the Secretariat

Introduction

1. Following 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 Open-ended Working Group 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.
2. 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.
3. Two Parties, namely, the European Community and Mauritius, have submitted comments on the issue of further guidance. The comments are attached as annexes I and II to the present note.

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

Annex I

Procedures and terms of reference of MBTOC: considerations and views of the European Union

In the context of the work on procedures and terms of reference of MBTOC, the Open-ended Working Group, at its twenty-fourth meeting, invited Parties to provide written comments on the issue of further guidance. In response to that invitation, the European Union is pleased to submit the following considerations and views.

Approach, assumptions and reasoning to be used in the evaluation

1. Decision IX/6 is the basis for the assessment of critical use exemptions by MBTOC, in particular paragraphs 1 (a) (ii) and 1 (b).
2. In its report, MBTOC should make a clear and reasoned presentation for each critical use exemption, indicating whether it complies in full with each of the applicable criteria, notably the four criteria set out in paragraphs 1 (a) (ii) and 1 (b) of decision IX/6.
3. Exemptions must fully comply with decision IX/6 and other relevant decisions, and are intended to be limited, temporary derogations from the phase-out of methyl bromide. MBTOC should take a precise and transparent approach to the application of the criteria.
4. Each Party should aim at significantly and progressively decreasing its production and consumption of methyl bromide for critical uses with the intention of completely phasing out methyl bromide as soon as technically and economically feasible alternatives are available to critical users, according to decision IX/6.

Economical feasibility

1. The European Union recalls paragraphs 6 and 9 (c) of decision Ex.1/4, and section 4 of annex I to that decision.
2. Subject to further consideration, and having in mind the process set in motion by decision Ex.1/4, the European Union, at this point in time, could associate itself most with the following criteria, where appropriate, to determine economic feasibility:
 - The difference in purchasing costs between methyl bromide and the alternatives per treated area, mass or volume, and related costs such as new equipment, labour costs and the losses resulting from closing the fumigated object for an extended period of time;
 - Difference in yield, including its quality, per hectare between the alternative and methyl bromide;
 - Percentage change in net revenue if alternatives are used.

Aggregation of nominations

MBTOC should not give “blanket” recommendations for approval of critical use nominations, i.e., recommendations aggregated on the basis of a certain type of crop or use, but instead should consider each application annually on a case-by-case basis.

Individual circumstances of nominations

1. In the interest of fair and equal treatment, nominations should be assessed in light of compliance with the criteria of decision IX/6 and other relevant decisions, irrespective of the size or number of tonnes in the critical use nomination.

2. If a particular alternative product is not registered or subject to national or local regulatory restrictions, or if it becomes de-registered, MBTOC should recommend a critical use exemption, provided there are no other feasible alternatives according to decision IX/6 for the specific situation. MBTOC should request written advice from the manufacturer of an alternative and the nominating Party.
3. In cases where alternatives are currently in the registration process, MBTOC should note this fact and advise how the nominated tonnage could be reduced if registration were to be successfully completed before or during the year of the critical use exemption. Although it is acknowledged that a Party does not always have the capability to influence the registration of alternatives, it should report, where appropriate, on its best endeavours towards registration of alternatives, and should inform MBTOC when manufacturers do not want to register alternatives. MBTOC should take into account this information when recommending critical use exemptions.

Reporting requirements

In cases where MBTOC has requested additional information but an applicant does not provide, within a set time frame, sufficient information for MBTOC to determine whether it complies with decision IX/6, MBTOC should classify the critical use nomination as “not recommended”, and clearly explain what information was missing.

Availability of technically and economically feasible alternatives

1. The European Union notes the following definition of alternatives used by MBTOC, and recited in the June 2004 report of TEAP:
 - MBTOC defined “alternatives” as those non-chemical or chemical treatments and/or procedures that are technically feasible for controlling pests, thus avoiding or replacing the use of MB. “Existing alternatives” are those in present or past use in some regions. “Potential alternatives” are those in the process of investigation or development.
 - MBTOC assumed that an alternative demonstrated in one region of the world would be technically applicable in another unless there were obvious constraints to the contrary e.g., a very different climate or pest complex.
2. The definition is still under consideration by the European Union. We understand the definition to be applied in the context of, and with regard to, the specific circumstances of each critical use nomination. In that light, a first suggestion would be to rephrase the second part of the definition to read that “an alternative demonstrated in one region of the world would be technically applicable in another unless there were constraints to the contrary”.

Market penetration of alternatives

1. Methyl bromide users are expected to work with urgency to adopt alternatives as rapidly as possible because a phase-out date was established for methyl bromide during the 1990s, and many users in all countries have already adopted alternatives, where they appear or have proved to be successful in the circumstances used. When considering the market penetration of an alternative in a nominating Party, MBTOC should determine the appropriate duration for the critical use exemption based on knowledge of likely implementation time in the circumstances of the nomination. In deriving the appropriate time, MBTOC should request written advice from the manufacturer of an alternative, the supplier/distributor and the nominating Party.
2. In situations where MBTOC recommends a nomination on grounds that it is necessary to have a period for adoption, the basis for calculating the time period must be explained fully in the TEAP report, and take fully into account the information provided by the nominating Party, the supplier/distributor and/or the manufacturer. Relevant factors for such a calculation include the number of enterprises that need to transition e.g. the number of fumigation/pest control companies, estimated training time assuming full effort, opportunities for importing alternative equipment and expertise if not available locally, and costs involved.

3. A case-by-case approach by MBTOC for each specific application (on the basis of information by the nominating Party and the manufacturer of an alternative) is preferred above a one-size fits all, when considering penetration of alternatives and transition times.

Handbook on critical use nominations for methyl bromide

1. The handbook is a general reference for all those involved in the critical use exemption process, in part due to the convenience of using the handbook as a general reference volume for methyl bromide decisions, as well as the critical use nomination procedure. Therefore, the handbook should be reframed to become a comprehensive “one-stop shop” that includes information on methyl bromide decisions, working procedures and terms of reference of MBTOC, the critical use nomination process and other related topics. However, the text should be taken, as far as possible, directly from decisions of the Meetings of the Parties or other language that has been approved by the Parties.

2. The onus remains on the nominating Party to provide all the information in order for MBTOC to be able to assess whether critical use nominations comply fully with decision IX/6. The handbook should inform Parties precisely which information requirements are needed.

3. TEAP/MBTOC should be responsible for updating the handbook. TEAP/MBTOC should not put any new proposals in the handbook which do not have a basis in a decision of the Meeting of the Parties. Factual updates of the handbook do not require prior approval from the Parties.

Annex II

Comments from Mauritius on decision IX/6 of the Parties to the Montreal Protocol

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

The key issues which the ad hoc meeting is to consider are:

1. Duration and aggregation of critical use exemptions
2. Economic feasibility
3. Individual circumstances of nominations
4. Stocks
5. Reporting requirements
6. Handbook on critical use nominations for methyl bromide.

Our comments are as follows:

1. Duration and aggregation of critical use exemptions

- (a) In view of the current workload of MBTOC, it would be desirable to grant critical use exemptions on a multi-year basis in specific cases where alternatives are not available. The Parties which are submitting applications for such request should provide justifications by giving detailed information on the steps being taken to find alternatives and previous trials.
- (b) However, the issue of multi-year exemptions may encourage the Parties which have benefits from the latter authorization to relax without making many efforts to find alternatives, especially during the first years. Therefore, such exemptions could be allocated for a maximum of two years only.
- (c) In line with the recommendations of MBTOC and TEAP for a single-year exemption, it is viewed that seeking alternatives would be more effective.
- (d) With regards to the aggregation of the methyl bromide to be authorized, the quantum should be on a case-to-case basis and should consider all measures to prevent leaks by the country.
- (e) Considering the above points, Mauritius views that in most circumstances a single year exemption should be granted and the requested aggregate should be properly checked to ensure that there is no overuse. In cases where a multi-year exemption is authorized, it should be a maximum of two years except in special conditions where the alternative is non-existent. Alternatives should be sought as soon as possible by the Parties concerned.

2. Economic feasibility

- (a) As decided at the Extraordinary Meeting, Mauritius views 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.
- (b) Parties applying for such critical use nomination should undertake a comparative economic feasibility with available alternatives to give an indication of difference between the latter and the requested authorization for MBTOC.
- (c) We also concur with the proposal that TEAP should be requested 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.

3. Individual circumstances of nominations

- (a) With regard to nominations for increases or for equal amounts of methyl bromide, it is viewed that it is unacceptable that developed countries continue to apply for such critical use nomination especially to an increasing amount.
- (b) Authorization for critical use of larger amounts of methyl bromide for larger acres of production in developed nations may have a negative impact on measures being currently undertaken by developing countries.
- (c) Regarding nominations for small quantities of methyl bromide (less than 1 tonne), Mauritius is of the opinion that the procedure should be simplified to reduce the workload for the nominating countries as well as MBTOC.

4. Stocks

- (a) As requested in the Extraordinary Meeting, it is viewed that developing an accounting framework by TEAP for reporting quantities of methyl bromide produced, imported and exported under the terms of critical use exemptions would give an indication of the stocks available in the country.
- (b) A fact-sheet should be devised to consider the unused quantities of methyl bromide, stocks and request to grant the critical use nominations so that it is better understood how the final allocation is done by MBTOC.

5. Reporting requirements

- (a) In connection with the evaluation of their critical use nominations, Parties should prepare their report as per previous decisions, namely, annual reporting as from 2005, submission of a national management strategy for phasing-out of critical uses of methyl bromide before 1 February 2006.
- (b) Based on the above information, MBTOC and TEAP would be better able to decide on the course of action on the request for the nomination of the critical use of methyl bromide even after 2006.

6. Handbook on critical use nominations

- (a) In situations where nominating countries find compliance with the new provisions of the handbook difficult, it is viewed that the Parties should provide maximum information on the critical use nominations so that MBTOC can decide on the course of action. Moreover, advice should be sought from MBTOC and TEAP.
 - (b) In circumstances where the nominating countries find that the information to evaluate nominations against the criteria of decision IX/6 is unavailable, then it is viewed that advice from MBTOC and TEAP should be solicited.
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