



## SUMMARY OF EXTRAORDINARY MEETING OF THE PARTIES TO THE MONTREAL PROTOCOL: 24-26 MARCH 2004

The Extraordinary Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (ExMOP) took place from 24-26 March 2004, in the International Civil Aviation Organization Conference Center in Montreal, Canada. Over 350 participants attended, representing 114 governments, as well as UN agencies, non-governmental organizations (NGOs), inter-governmental organizations (IGOs), industry and academia. Parties addressed a series of issues relating to methyl bromide that had been left unresolved at the Fifteenth Meeting of the Parties (MOP-15) in Nairobi in November 2003. Compromise was reached by adopting a double-cap concept distinguishing between use and production for critical-use exemptions, and by establishing an *ad hoc* working group to review the working procedures and terms of reference of the Methyl Bromide Technical Options Committee. Delegates to the ExMOP also adopted decisions relating to further specific interim reductions of methyl bromide for the period beyond 2005, applicable to Article 5 Parties and conditions for granting and reporting critical-use exemptions for methyl bromide.

### A BRIEF HISTORY OF THE OZONE REGIME

Concerns that the Earth's stratospheric ozone layer could be at risk from chlorofluorocarbons (CFCs) and other anthropogenic substances were first raised in the early 1970s. At that time, scientists warned that the release of these substances into the atmosphere could deplete the ozone layer, thus hindering its ability to prevent harmful ultraviolet (UV-B) rays from reaching the Earth. This would adversely affect ocean ecosystems, agricultural productivity and animal populations, as well as harm humans through higher rates of skin cancers, cataracts and weakened immune systems. In response to this growing concern, the United Nations Environment Programme (UNEP) convened a conference in March 1977 that adopted a World Plan of Action on the Ozone Layer and established a Coordinating Committee to guide future international action on the issue.

**VIENNA CONVENTION:** In May 1981, the UNEP Governing Council launched negotiations on an international agreement to protect the ozone layer and, in March 1985, the

Vienna Convention for the Protection of the Ozone Layer was adopted. The Convention called for cooperation on monitoring, research and data exchange, but did not impose obligations to reducing use of ozone depleting substances (ODS). To date, the Convention has 187 Parties.

**MONTREAL PROTOCOL:** Efforts to negotiate binding obligations on ODS continued, leading to the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer in September 1987. The Montreal Protocol introduced control measures for some CFCs and halons for developed countries (non-Article 5 Parties). Developing countries (Article 5 Parties) were granted a grace period allowing them to increase their use of these ODS before taking on commitments. To date, the Protocol has 186 Parties. Since 1987, several amendments and adjustments to the Protocol have been adopted, with amendments adding new obligations and additional ODS, and adjustments tightening existing control schedules. Amendments require ratification by a defined number of Parties before they enter into force, while adjustments enter into force automatically.

**LONDON AMENDMENT AND ADJUSTMENTS:** Delegates to MOP-2, which took place in London in 1990, tightened control schedules and agreed to add ten more CFCs to the list of ODS, as well as carbon tetrachloride (CTC) and methyl chloroform. To date, 171 Parties have ratified the London Amendment. In addition, MOP-2 established the Multilateral Fund for the Imple-

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mentation of the Montreal Protocol. The Fund meets the incremental costs of developing country implementation of the Protocol's control measures and finances clearing-house functions, including technical assistance, information, training and costs of the Fund's Secretariat. The Fund is replenished every three years, and has disbursed over US\$1.3 billion since its establishment.

#### **COPENHAGEN AMENDMENT AND ADJUSTMENTS:**

At MOP-4, held in Copenhagen in 1992, delegates tightened existing control schedules and added controls on methyl bromide, hydrobromofluorocarbons (HBFCs) and hydrochlorofluorocarbons (HCFCs). MOP-4 also agreed to enact non-compliance procedures, including the establishment of an Implementation Committee. The Implementation Committee examines cases of possible non-compliance by Parties and the circumstances surrounding these, and makes recommendations to the MOP aimed at bringing about full compliance. To date, 159 Parties have ratified the Copenhagen Amendment.

#### **MONTREAL AMENDMENT AND ADJUSTMENTS:**

At MOP-9, held in Montreal in 1997, delegates agreed to further tightening existing control schedules and a new licensing system for the import and export of ODS. They also agreed to a ban on trade in methyl bromide with non-Parties to the Copenhagen Amendment. To date, 113 Parties have ratified the Montreal Amendment.

#### **BEIJING AMENDMENT AND ADJUSTMENTS:**

At MOP-11, held in Beijing in 1999, delegates agreed to controls on HCFC production and bromochloromethane (BCM), and to reporting on methyl bromide for quarantine and pre-shipment applications. To date, 66 Parties have ratified the Beijing Amendment. In addition, MOP-11 agreed to replenish the Multilateral Fund with US\$477.7 million for the triennium 2000-2002.

**MOP-12:** MOP-12 took place in Ouagadougou, Burkina Faso, in 2000. MOP-12 decisions included: a correction to the Beijing Adjustments; measures to phase out CFC-based metered-dose inhalers (MDIs); and monitoring of international trade. MOP-12 also adopted the Ouagadougou Declaration, which encourages Parties to, *inter alia*: take steps to prevent illegal production, consumption and trade in ODS and ODS-containing equipment and products; and harmonize customs codes.

**MOP-13:** MOP-13, held in Colombo, Sri Lanka, in 2001, adopted decisions on: the terms of reference for a study by the Technology and Economic Assessment Panel on the 2003-2005 replenishment of the Multilateral Fund; monitoring of international trade and prevention of illegal trade in ODS; and other issues. MOP-13 also adopted the Colombo Declaration, which encourages Parties to, *inter alia*: apply due care in using substances that may have ozone depleting potential; and determine and use available, accessible and affordable alternatives and technologies that minimize environmental harm while protecting the ozone layer.

**MOP-14:** MOP-14 convened in Rome, Italy in 2002. Delegates adopted 46 decisions, covering such matters as the Multilateral Fund's fixed-exchange-rate mechanism, compliance issues, phase-out of CFC-based MDIs, and interaction with the World Trade Organization. MOP-14 agreed to replenish the Multilateral Fund with US\$573 million for 2003-2005. Delegates also considered the phase-out of methyl bromide, the destruction of ODS, and synergies between ozone depletion and climate change.

**MOP-15:** MOP-15 convened in Nairobi, Kenya, in November 2003. MOP-15 adopted a number of decisions, including on: implications of entry into force of the Beijing Amendment, particularly

as it relates to HCFCs; status of destruction technologies for ODS and the code of good housekeeping; handling of ODS in foams and industry plants; and compliance issues. Parties could not reach agreement on four items relating to methyl bromide and decided to continue their consideration at an extraordinary MOP.

**CURRENT ODS CONTROL SCHEDULES:** Regarding the ODS control schedules resulting from the various amendments and adjustments to the Montreal Protocol, non-Article 5 Parties were required to phase out: halons by 1994; CFCs, CTC, methyl chloroform and HBFCs by 1996; and BCM by 2002. They must still phase out: methyl bromide by 2005 and consumption of HCFCs by 2030 (with interim targets up to those dates). Production of HCFCs must be stabilized by 2004. Article 5 Parties were required to phase out HBFCs by 1996 and BCM by 2002. They must still phase out: CFCs, halons and CTC by 2010; methyl chloroform and methyl bromide by 2015; and consumption of HCFCs by 2040 (with interim targets up to those dates). Production of HCFCs must be stabilized by 2016.

### **EXMOP REPORT**

Opening the ExMOP on Wednesday, 24 March 2004, ExMOP President Jiri Hlavacek (Czech Republic) noted that informal consultations preceding the ExMOP contributed to promoting agreement between Parties. He asked Parties to retain their determination to phase out ozone-depleting substances while maintaining uses that are critical or essential because of the absence of feasible alternatives or substitutes.

UNEP Executive Director Klaus Töpfer highlighted aspects of the Montreal Protocol's decision-making procedure central to past achievements. He stressed the need to address: compliance issues; ODS not listed in the Protocol; illegal trade; and linkages with other processes, including the UN Framework Convention on Climate Change and the Stockholm Convention on Persistent Organic Pollutants.

ExMOP President Hlavacek introduced, and delegates adopted, the provisional agenda (UNEP/OzL.Pro.ExMP/1/1) without amendment.

Jukka Uosukainen (Finland) and Oladapo Afolabi (Nigeria), Co-Chairs of the open-ended informal consultations held in Montreal on 23 March 2004, introduced their summary of the consultations. Regarding the consultations' conclusions on conditions for granting critical-use exemptions (CUEs), Co-Chair Uosukainen reported that participants agreed to forward to the ExMOP the principles governing the CUE process identified at the Buenos Aires informal consultations, convened from 4-5 March 2004. On elements for conditions for granting CUEs, participants agreed to forward to the ExMOP the recommendation that the Technology and Economic Assessment Panel (TEAP) study the potential for harmful trade in surplus methyl bromide. On nomination for CUEs, Co-Chair Afolabi said participants generally supported multi-year exemptions for three years, with several non-Article 5 Parties stressing the need for justification through a scientifically-based management strategy. Regarding consideration of the working procedures of the Methyl Bromide Technical Options Committee (MBTOC) relating to the evaluation of critical-use nominations (CUNs), Co-Chair Uosukainen noted general agreement on the need to revitalize, strengthen, and reconstitute the MBTOC, and said the ExMOP should agree on a process and timetable for doing so. On further specific interim reductions applicable to Article 5



Parties, Co-Chair Afolabi reported that several Parties supported some interim reductions, but that agreement had not been reached on their timing or number.

MBTOC Co-Chair Jonathan Banks presented the TEAP/MBTOC 2004 supplementary report on CUNs. He said that in reviewing CUNs, the MBTOC supplemented the technical information from Parties with its own expertise, expertise from other nominations, and all available sources of information. When unable to verify information based on its own expertise, the MBTOC deferred to the expertise of nominating Parties, giving them the "benefit of the doubt." He noted that the MBTOC is seeking guidance from Parties on: the definition of economic feasibility; the evaluation of multi-year CUNs; CUNs that contribute to increases in methyl bromide use; CUNs for using equal amounts of methyl bromide over several years; dealing with the large number of small quantity CUNs; and phase-out plan requirements.

Delegates then heard statements by Parties and observers. Bangladesh, Japan and Jordan said that CUEs should be granted on an annual basis. Japan called for flexibility in granting CUEs, warning that a requirement that CUEs be lower in subsequent years would not allow for adjustments based on emergency needs. Guatemala supported CUEs to solve practical problems. On conditions for granting CUEs, Switzerland emphasized common but differentiated responsibilities and the need for a continuous decline in the amount of Parties' CUE requests. Norway, Costa Rica and Japan asked that CUEs be minimized. Brazil urged delegates to define clearer conditions for granting future CUEs. India expressed support for recommendations made by the MBTOC for the approval of CUEs. Regarding CUNs, India expressed concern over the total quantity submitted for exemptions. Brazil noted that the high level of submitted CUNs challenges the exceptional nature of CUEs, and may undermine the efforts by Article 5 Parties to phase out methyl bromide.

Uganda stressed the need for technical and financial assistance for research, alternatives, public awareness, and training activities. Brazil called on Parties to address the concerns of Article 5 Parties. The Philippines suggested that elements recognized in a decision on interim reductions include: accelerated phase-out of controlled uses of methyl bromide with support by the Multilateral Fund (MLF); the difficulties faced by Article 5 Parties in phasing out methyl bromide due to the impact of ongoing consumption in non-Article 5 Parties; and a more flexible approach.

Switzerland stressed the importance of MBTOC transparency. Norway emphasized the need for a clearer mandate for the TEAP and MBTOC in future evaluations. Japan called for strengthening the MBTOC. Egypt and Senegal prioritized developing effective and affordable alternatives to methyl bromide. Jordan urged the MBTOC to continue its work on methyl bromide alternatives. Guatemala expressed concern over the inability of Parties dependent on agriculture to find feasible alternatives within specific timeframes.

Bangladesh asked Parties to take steps against unreported methyl bromide stockpiling, smuggling, and dumping in developing countries. Nigeria called on Parties to retain the integrity of the Montreal Protocol. The Netherlands, on behalf of the EU, stressed the need to find cooperative solutions. Turkey outlined national measures undertaken in phasing out methyl bromide. Colombia highlighted its zero consumption of methyl bromide since 1997 without support from the MLF.

Expressing concern over the size of CUEs sought by the US and others, the Natural Resources Defense Council requested that Parties protect the integrity of the Montreal Protocol by requiring that Parties, *inter alia*: reduce the use of methyl bromide as alternatives become available; report on existing stockpiles; and provide updates of regulatory actions to consider the latest health and safety data on methyl bromide. He also called on Parties to reduce the size of CUE requests below 30% of baseline, and to refuse multi-year exemptions.

The ExMOP met in plenary sessions on Wednesday, Thursday and Friday to review progress and adopt decisions. Contact groups on nominations for CUEs, conditions for granting and reporting CUEs, and revitalizing the MBTOC also convened. This report summarizes discussions and decisions on each agenda item, according to its consideration in plenary and contact groups.

#### **CONDITIONS FOR GRANTING AND REPORTING CUES**

On Wednesday, Parties agreed to convene a contact group on conditions for granting and reporting CUEs, co-chaired by Pierre Pinault (Canada) and Sergio Sánchez Martínez (Mexico).

The contact group met on Wednesday and Thursday to discuss: requirements for annual reporting; technical and financial assistance for identifying methyl bromide alternatives; a proposed TEAP clarification of exemptions for critical uses; and two conference room papers (CRPs) submitted by the US and the EC, respectively, on conditions for CUEs for non-Article 5 Parties (UNEP/OzL.Pro.ExMP/1/CRP.4 and 5). Some Parties expressed concern over the progressive reduction and ultimate phase-out of CUEs, and requested establishing specific timetables and limits.

On Thursday, the contact group considered a revised CRP incorporating elements of the US and EC submissions (UNEP/OzL.Pro.ExMP/1/CRP.5/Rev.1). One Party emphasized that lack of trade implications should not be a condition for granting CUEs. Delegates agreed on wording requesting the TEAP to identify factors that Article 5 Parties may take into account in evaluating whether they should undertake new accelerated phase-out commitments through the MLF or seek changes to already agreed accelerated phase-out projects. Following bilateral consultations, Parties agreed to remove a preambular reference to stockpiles of banked or recycled methyl bromide. Co-Chair Pinault adjourned the contact group and announced that he would forward its results to the contact group on CUNs for its consideration.

In plenary on Thursday, the California Certified Organic Farmers said that financial concerns of individual farmers cannot be considered more important than environmental concerns or human health. The Environmental Investigation Agency urged Parties to take account of stockpiles before granting CUEs.

In plenary on Friday evening, Co-Chair Pinault introduced the draft decision and noted the addition of a preambular reference to ensure consistency with the principles elaborated in the report on the Buenos Aires informal consultations, namely fairness, certainty and confidence, practicality and flexibility, and transparency. On the TEAP review of CUNs, the EC and Japan, opposed by the US, called for the review to be according to "a precise application" of the decisions set forth in Decision IX/6 (Critical use exemptions for methyl bromide). Parties discussed whether the review should also be according to other relevant criteria agreed by the Parties. After informal consultations, Parties agreed to request the TEAP to review CUNs annually, and apply the criteria set forth in Decision IX/6. Delegates adopted the draft decision with these amendments.



**Final Decision:** In the final decision on conditions related to authorization of methyl bromide exempted for critical uses (UNEP/OzL.Pro.ExMP/1/CRP.5/Rev.1), the ExMOP decides that Parties should submit information on methyl bromide alternatives (available or under development) to the Secretariat, and requests that the Secretariat post this information in a Methyl Bromides Alternatives database on its web site.

The ExMOP also requests Parties to, *inter alia*: submit a national management strategy for phase-out of critical uses to the Secretariat before 1 February 2006, if filing a CUN after 2005; consider and implement TEAP and MBTOC recommendations on actions to reduce critical uses; and describe in its nomination the methodology used to determine economic feasibility.

The decision includes a CUE mandate for the TEAP, under which the ExMOP requests the TEAP to, *inter alia*:

- identify options for preventing potential harmful trade of methyl bromide stocks to Article 5 Parties as consumption is reduced in non-Article 5 Parties, and publish its evaluation in 2005 in order for MOP-17 to decide on suitable mitigating steps;
- identify factors Article 5 Parties may wish to take into account in evaluating whether they should undertake new accelerated phase-out commitments through the MLF or seek changes to already agreed accelerated phase-outs;
- assess “economic feasibility,” based on the nominating Parties’ methodology, in making recommendations on CUNs;
- submit a report to the 26th meeting of the Open-Ended Working Group (OEWG-26) on the possible need for methyl bromide critical uses over the next few years;
- review CUNs on an annual basis, and apply the criteria set forth in decision IX/6 (Critical use exemptions for methyl bromide);
- recommend, for adoption by MOP-16, an accounting framework for reporting quantities of methyl bromide produced, imported and exported by Parties under CUEs; and
- report annually on the status of re-registration and review of critical uses and on the status of registration of alternatives and substitutes.

TEAP is also requested to provide a format for a CUE report, based on the content of the decision’s annex on requirements for annual reporting.

In the annex, it is noted that Parties will have the opportunity to review annual reporting parameters at a future date to ensure that they: continue to meet their expectations of providing transparent and adequate data on exemption holders’ progress in achieving transition; provide a streamlined format that does not compromise the level of data required for scrutiny by Parties; and do not place an unnecessarily onerous burden on nominating Parties.

The annex provides a template for reporting transition efforts and activities. According to the annex, where nominations have been approved on the basis of economic infeasibility of an alternative, the exemption holder should report any significant changes to the underlying economics.

#### **NOMINATIONS FOR CUES**

On Wednesday, Parties decided to establish a contact group on CUNs, co-chaired by Oladapo Afolabi (Nigeria) and Jukka Uosukainen (Finland). The California Strawberry Commission (CSC) requested Parties to adjust the proposed CUEs granted to the CSC in order to support a transition to alternative fumigants. The US

asked the MBTOC to comment on this request. The MBTOC suggested that Parties adopt a flexible approach, and that the proposed CUE for CSC be adjusted accordingly. The EC expressed concern over the MBTOC response, argued that the original proposed CUE should stand, and sought clarification from both the MBTOC and TEAP. The MBTOC announced that it would meet with the TEAP before responding.

In the contact group on Wednesday and Thursday, Parties discussed proposals by the US and the EC. The proposals differentiated between two sets of numerical caps relevant to CUEs: a cap on production and consumption; and a cap on the amount allowed for critical uses. The US proposal incorporated multi-year exemptions, while the EC proposal required that CUE amounts decrease in every subsequent year. On Friday afternoon, the contact group agreed to a revised proposal on nominations for CUEs.

In plenary on Friday evening, Parties considered the contact group proposal and adopted it with minor changes. In response to the EC request for clarification from the MBTOC on the request made by the CSC, the MBTOC responded that it was misunderstood, and that it had not suggested that the proposed CUE be adjusted. He said that the issue could be addressed at its next meeting. He requested that the US provide a detailed summary of the tonnage that is now requested and a brief summary of the reasons for contemplating this change. Spain asked the MBTOC to comment on a request to amend its proposed CUE for strawberries, which had not been finalized by the MBTOC report. The MBTOC responded that the recommendations are as published in the TEAP/MBTOC 2004 supplementary report and that it was unable to make further recommendations. Spain’s request for additional CUEs was included in the draft report of the contact group, and approved by the Parties in the final document.

**Final Decision:** In the final decision (UNEP/OzL.Pro.ExMP/1/CRP.14), the ExMOP establishes agreed critical uses as recommended by the TEAP and as modified for Spain (Annex I), and levels of production and consumption which are necessary to satisfy those uses (Annex II). The permitted levels of production and consumption are: 145 tonnes for Australia; 47 tonnes for Belgium; 55 tonnes for Canada; 407 tonnes for France; 186 tonnes for Greece; 2,133 tonnes for Italy; 284 tonnes for Japan; 50 tonnes for Portugal; 1,059 tonnes for Spain; 128 tonnes for the UK, and 7,659 tonnes for the US. Parties with a CUE level in excess of the permitted levels of production and consumption are to make up such a difference by utilizing existing stockpiles. Although it agreed to allow only single-year exemptions for 2005, the ExMOP takes note of the US proposal for multi-year exemptions and defers consideration of the topic to MOP-16. It allows the MOP to reconsider an approved CUE in exceptional circumstances, bearing in mind that Parties should aim to significantly and progressively reduce their production and consumption of methyl bromide for CUEs.

#### **WORK PROCEDURES OF THE MBTOC RELATING TO THE EVALUATION OF CUNs**

On Thursday, delegates decided to convene a contact group on the revitalization of the MBTOC, co-chaired by Rosalinda Tirona (the Philippines) and Janusz Kozakiewicz (Poland).

On Thursday, the contact group considered a CRP submitted by the EC on reviewing the working procedures and terms of reference of the MBTOC (UNEP/OzL.Pro.ExMP/1/CRP.7). Delegates agreed that the review process should include consideration of



expertise in methyl bromide alternatives, agricultural economy, technology transfer, and the regulatory processes of registration. On establishing an *ad hoc* working group on this issue to be convened prior to OEWG-24 in July 2004, several delegates proposed that the meeting be held over three days, instead of one, and comprise six instead of ten representatives, from both Article 5 and non-Article 5 Parties. Many delegates opposed requiring OEWG-24 to take decisions related to the MBTOC on behalf of the MOP, while others stressed the need to provide guidance on the level of transparency of the upcoming MBTOC nomination review process. Several non-Article 5 Parties proposed additional text relating to the standard of review for CUNs. A non-Article 5 Party also called for publishing information tools used by the MBTOC in assessing the technical feasibility of CUNs.

On Friday, the contact group decided that reports by the TEAP and MBTOC should include a clear description of the nominating Party's request for an exemption and the reasons why the TEAP or MBTOC did not accept it, had they not recommended any part of the nomination. Participants agreed to postpone considering proposed text by the US and the EU on standards of review, pending outcome of negotiations in the contact group on CUNs.

In plenary on Friday evening, delegates considered the draft decision forwarded by the contact group. Regarding text on standards of review, the Netherlands, on behalf of the EU, opposed by Japan, suggested that the MBTOC assess, until Parties decide otherwise, the results of nominations as "recommended," "not recommended," and "unable to assess." Japan noted that Decision XV/54 (Categories of assessment being used by TEAP when assessing critical uses of methyl bromide) elaborates on standards of review. He expressed concern over abbreviating the decision's provisions, as proposed by the EU, and suggested including instead a preambular paragraph referencing Decision XV/54. Following informal consultations, Parties decided to include a preambular paragraph recalling Decision XV/54 on the categories of assessment to be used by the TEAP when assessing critical uses of methyl bromide, and to include an operational paragraph stating that the MBTOC should continue to assess the results of nominations as "recommended," "not recommended," and "unable to assess."

On text requesting OEWG-24 to formulate recommendations for MOP-16, the Philippines proposed deleting a reference requesting OEWG-24 to identify which elements for the review of MBTOC work procedures and terms of reference could appropriately be applied on an interim basis pending approval by the MOP. The EU opposed this proposal.

The US suggested, and Parties agreed, that OEWG-24 "identify which elements, if any, could be utilized on an interim basis pending review by MOP-16."

Regarding the composition of the *ad hoc* working group, Parties decided that it should include 12, instead of 10, representatives from the following Article 5 Parties: Argentina, Brazil, Chile, China, Costa Rica, Jordan, Kenya, Mauritius, Morocco, Nigeria, the Philippines, and Sri Lanka; and 12 from the following non-Article 5 Parties: Australia, Canada, Germany, Italy, Japan, the Netherlands, Norway, Poland, Spain, Switzerland, the UK, and the US. Parties adopted the draft decision with this amendment.

**Final Decision:** In the decision (OzL.Pro.ExMP/1/CRP.7/Rev.2), the ExMOP decides to establish a process to review the working procedures and terms of reference of the MBTOC as they relate to evaluating CUNs. The ExMOP decides that such a review shall consider elements, *inter alia*, relating to the:

- need to enhance the transparency and efficiency of MBTOC analysis and reporting on CUNs, including the communication between the nominating Party and MBTOC;
- timing and structure of MBTOC reports on CUNs;
- duration and rotation of membership, taking into account the need to provide for a reasonable turnover of members while also ensuring continuity;
- conflict-of-interest documents that must be completed by MBTOC members;
- expertise required in the MBTOC, taking into account that the MBTOC's composition should ensure that some members have practical experience with, in particular, methyl bromide alternatives;
- criteria and procedure for selecting the experts, including ensuring a balance between experts from Article 5 and non-Article 5 Parties; and
- further guidance on the application of criteria set forth in Decision IX/6 (CUEs for methyl bromide).

The ExMOP decides to establish an *ad hoc* working group that will meet for three days immediately prior to OEWG-24 and shall comprise 12 representatives of Article 5 Parties, and 12 representatives of non-Article 5 Parties. The ExMOP decides that the *ad hoc* working group should base its discussions on the MBTOC-related elements and issues outlined in the decision and report its findings and recommendations to OEWG-24.

The ExMOP requests OEWG-24 to formulate recommendations for consideration and approval at MOP-16 and to identify which elements of the MBTOC work procedures and terms of reference, if any, could be utilized on an interim basis pending review by MOP-16. Finally, the ExMOP decides that the MBTOC should continue to assess the results of nominations as "recommended," "not recommended," and "unable to assess."

#### **FURTHER SPECIFIC INTERIM REDUCTIONS FOR ARTICLE 5 PARTIES**

Delegates considered two proposals by Argentina under this agenda item (UNEP/OzL.Pro.ExMP/1/CRP.8 and 10). The first proposal addresses the concerns of Article 5 Parties implementing early phase-outs on a voluntary basis and under agreements with the MLF Executive Committee, in the face of ongoing methyl bromide consumption by some non-Article 5 Parties. Delegates first considered this proposal in the contact group on CUNs on Thursday. The proposal requested the Executive Committee of the MLF to adopt a "flexible approach" when assessing compliance with the reduction steps of Article 5 Parties implementing early phase-out of methyl bromide given ongoing use in non-Article 5 Parties, and to consider a "prolongation" of the final reduction step. While many delegates supported the proposal, one Party expressed concern that pronouncements by the ExMOP about possible "prolongations" could discourage compliance by Article 5 Parties.

On Thursday evening and Friday, Parties met in small drafting groups to revise the draft decision contained in the proposal. On Friday, delegates adopted the draft decision as amended by Argentina and the EC. The amendment makes no reference to ongoing



consumption by non-Article 5 Parties but to “circumstances not envisaged,” and adds a request to the Executive Committee to adopt criteria for granting prolongations.

The second proposal defers until MOP-17 consideration of further adjustments on methyl bromide for Article 5 Parties. In Thursday’s plenary, several Article 5 Parties supported the proposal, stressing it reflected the difficulties of Article 5 Parties in adopting interim reductions between 2005 and 2015 while uncertainty remains about CUEs granted to non-Article 5 Parties. The EC noted that postponing discussions until MOP-17 was inconsistent with Decision IX/5 (Conditions for control measures on Annex E substances in Article 5 Parties), which requested Parties to consider interim reductions in 2003. A small drafting group convened on Friday morning to revise the draft decision contained in the proposal, and it agreed to defer the issue for consideration at MOP-16.

In plenary on Friday evening, many delegates expressed concerns over referring the issue to MOP-16, and a preambular reference to “agreed interim reductions.” Many delegates highlighted that no interim reductions had been agreed upon. A small group, including Brazil, Argentina and the EC, was requested to further refine the draft decision. Delegates adopted the decision as amended, agreeing to postpone consideration of “further,” rather than “agreed,” interim measures until 2006. Uganda, Japan and Morocco, however, expressed reservations with some aspects of the decision, including the reference to “further” specific interim reductions that have not yet been agreed upon, and referral of consideration of such reductions “preferably by 2006” when there is no guarantee of phase-out of CUEs by non-Article 5 Parties.

**Final Decisions:** In the decision on concerns of Article 5 Parties who are implementing early phase-outs on a voluntary basis and under agreements with the MLF Executive Committee (UNEP/OzL.Pro.ExMP/1/CRP.8/Rev.2), the ExMOP:

- requests the MLF Executive Committee to adopt a flexible approach in responding to instances where a country has not met a reduction step due to specific circumstances not envisaged at the time of the agreement’s adoption and review;
- invites the MLF Executive Committee to consider prolonging the final reduction step, not beyond 2015, in cases where Parties have had difficulties implementing alternatives; and
- calls upon the MLF Executive Committee to adopt criteria for such prolongations.

In the second decision (UNEP/OzL.Pro.ExMP/1/CRP.10/Rev.1), the ExMOP decides to: keep under review the interim reduction schedule as elaborated at MOP-15; and consider, preferably by 2006, further specific interim methyl bromide reductions by Article 5 Parties.

## OTHER MATTERS

### PROPOSALS FORWARDED TO OTHER MEETINGS:

On Thursday, ExMOP President Hlavacek opened discussion on proposals by Burkina Faso, Burundi, Cameroon, Côte d’Ivoire, the Democratic Republic of Congo, Mali, Niger and Senegal. He said the first proposal requests the MLF Executive Committee to increase technical and financial support to identify methyl bromide alternatives to combat soil parasites of essential crops, and the Secretariat to translate the MBTOC assessment reports on alternatives into all UN languages (UNEP/OzL.Pro.ExMP/1/CRP.2). He explained that the second proposal requests the TEAP to provide the scientific and technical bases for justifying CUEs for disin-

fecting agricultural foodstuffs for which alternatives were published in the 2002 MBTOC Report (UNEP/OzL.Pro.ExMP/1/CRP.3). The US said this discussion was beyond the mandate of the ExMOP. Chair Hlavacek suggested, and Parties agreed, to forward the proposals to OEWG-24.

Parties also decided to forward to OEWG-24 a proposal by Guatemala (UNEP/OzL.Pro.ExMP/1/CRP.9), which requests TEAP to conduct an assessment of the normative authorization of quarantine and pre-shipment and feedstock consumption of use for wooden pallet fumigation.

On Friday, ExMOP President Hlavacek introduced a proposal by Nicaragua, Guatemala and El Salvador on time constraints in phase-out schedules for Article 5 Parties (UNEP/OzL.Pro.ExMP/1/CRP.12). Australia expressed regret at the late introduction of the proposal, and Parties decided to refer the proposal to MOP-16.

### TEAP STUDY OF IMPACTS ON ARTICLE 5 PARTIES

**OF CUEs IN NON-ARTICLE 5 PARTIES:** On Thursday, the Dominican Republic presented a proposal to request a TEAP study of economic, trade-related and other impacts on Article 5 Parties caused by CUEs granted to non-Article 5 Parties (UNEP/OzL.Pro.ExMP/1/CRP.11). The US noted that these issues had been dealt with previously. Canada expressed its discontent with several aspects of the proposal and said the ExMOP should not discuss it in depth. Several delegates supported the proposal and stressed the need for its consideration in plenary. Delegates agreed to continue discussion on Friday.

On Friday, the Dominican Republic withdrew its proposal because elements of the proposal had been included in a proposal by Argentina on specific interim reductions for Article 5 Parties.

### CLOSING PLENARY

In the closing Plenary on Friday evening, the EC introduced a draft declaration, co-sponsored by Australia, China, Costa Rica, Czech Republic, Estonia, Mexico, New Zealand, Poland, Slovakia, Switzerland, El Salvador, Ethiopia, India, Jamaica, Jordan, Kiribati, Lebanon, Malaysia, Mozambique, St. Lucia, Serbia and Montenegro, Sierra Leone, South Africa, Sri Lanka, Thailand, Turkey, Syria, Indonesia, Japan, plus the EU and its Member States. The declaration states their national intention to take all appropriate measures to limit the production and consumption of methyl bromide to those applications which are strictly necessary, in keeping with the spirit of the Protocol (UNEP/OzL.Pro.ExMP/1/CRP.13). Among other things, Japan requested that the proposal be amended to incorporate the intention to completely phase out methyl bromide. Parties adopted the declaration as an annex to the report of the ExMOP, as amended by Japan.

The US introduced a statement on behalf of Australia, Canada, the Dominican Republic, Guatemala, Kenya, Malaysia, Qatar and Uganda, which acknowledged the guidance provided to the TEAP and MBTOC by Parties in their decision, and stressed the necessity for the MBTOC and TEAP not to apply standards in their decision making that have not been approved by the Parties. Australia commended the work of the MBTOC.

Parties then reviewed the report of the meeting (UNEP/OzL.Pro.ExMP/1/L.1 and L.1/Add.1) and adopted it with minor changes.

ExMOP President Hlavacek thanked delegates for their work, and the Government of Canada and the Secretariat for their support during the meeting. He invited Parties to Prague for MOP-16. He gavelled the meeting to a close at 11:00 pm.



## A BRIEF ANALYSIS OF THE EXMOP

Since its 1987 adoption in Montreal, the Protocol on Substances that Deplete the Ozone Layer has become the poster child of environmental treaties. Yet, at its fifteenth Meeting of the Parties (MOP-15) in Nairobi in November 2003, Parties were unable to reach agreement on a series of issues relating to methyl bromide, an ozone-depleting substance used as a pesticide and scheduled for a 2005 phase-out by non-Article 5 Parties. At the heart of MOP-15's failure were the polarized positions of the US and EC. The EC favored annual critical use nomination (CUN) reviews, stressed the need for ratcheting down the size of exemptions, and called for bolstering the review process against undue influence from Parties or special interests. In contrast, the US emphasized the practicality of multi-year exemptions, cited the lack of economically feasible alternatives as justification for its large CUN, and preferred the *status quo* of the review process.

By the conclusion of the first extraordinary MOP in the Protocol's history, Parties had overcome these differences and hammered out a compromise on methyl bromide critical use exemptions (CUEs) and on the future consideration of interim reductions for Article 5 Parties. In the final agreement: the recommended CUNs were accepted along with a cap on production and consumption for critical uses; MBTOC revitalization will be discussed by an *ad hoc* group; and review of further interim measures for Article 5 Parties has been postponed to MOP-16.

This brief analysis focuses on the negotiations on CUEs for non-Article 5 Parties and on the Methyl Bromide Technical Options Committee (MBTOC) and will explore some implications of the ExMOP's decisions for the ozone layer, the ozone regime, and the broader international environmental arena.

### THE CRITICALITY OF CRITICAL USES

Although informal consultations in Buenos Aires prior to ExMOP did help to reduce the divide between the US and EC positions, many disagreements remained as Parties set out to review the recommendations on CUNs as reclassified and finalized by MBTOC in February 2004. Article 5 Parties, in particular those already using little or no methyl bromide, expressed concern over the large amounts requested for critical use by non-Article 5 Parties, such as the US, Spain and Italy, noting that when originally negotiating CUEs their intent was only to allow for exceptional and minimal uses. Such large exemptions may have alarming implications both on the scheduled 2015 phase-out of methyl bromide in non-Article 5 Parties and on Article 5 Parties' often large agricultural sectors. Article 5 Parties fear that if they have phased out methyl bromide, their agricultural products will be less competitive than those from non-Article 5 Parties who are still using it due to granted CUEs. Furthermore, while nominating producers stressed the lack of appropriate substitutes, others highlighted that granting significant, and in particular multi-year, exemptions would be counterproductive and act as a continued disincentive for Parties to promote the development, registration and use of alternatives.

In the end Parties adopted 13,256 tonnes of CUEs for 11 non-Article 5 Parties for 2005 only. The introduction by the US and EC of a double-cap concept distinguishing between old and new production was central to reaching this compromise. According to the concept, a cap is set for new production at 30% of the baseline of their 1991 levels. This means that for 2005, Parties must use existing stockpiles if the capped amount is insufficient for their

CUE needs. As noted by several participants, precise accounting of existing methyl bromide stockpiles will be central to minimizing loopholes of the approach.

### REVITALIZING MBTOC

Many delegates were dissatisfied that the MBTOC, when lacking sufficient access to information, gave nominating Parties the "benefit of the doubt" by deferring to their expertise. Others saw this as a signal that the MBTOC needs greater support, both financial and logistical, to bolster its ability to take informed decisions and be less dependent on information submitted by Parties.

The large tonnage of recommended critical uses, in particular from the US, coupled with confusion over continuing MBTOC deliberations with some nominating Parties (and even with individual groups such as the California Strawberry Commission) were on Parties' minds during negotiations. While the ExMOP's full approval of the CUEs recommended by the MBTOC may be interpreted as confidence in the technical body, it may encourage Parties to transfer aspects of the policy debate to the MBTOC in order to have a greater influence on CUN decisions.

Such increased attention to the MBTOC, however, may yet lead to its strengthening, in particular by prompting calls for its revitalization. An *ad-hoc* group mandated to review the MBTOC in July 2004 will further discuss transparency, representation, and precise application of criteria. Noting that it will bring together twelve participants each from Article 5 and non-Article 5 Parties, one scientist expressed hope that this would also bolster efforts to ensure equal representation between Article 5 and non-Article 5 experts on MBTOC. As a result of the *ad hoc* group's work, specific guidelines for CUN review can be expected for consideration at MOP-16 and may contribute to preventing similar negotiation delays in the future.

### GLOBAL REPERCUSSIONS

Parties agreed to adopt recommendations for 13,256 tonnes of methyl bromide critical uses, representing, for some Parties, as much as 34% of their baseline. While this continued use for 2005 might not in itself have a major effect on the status of the ozone layer, it remains to be seen how long these exemptions will continue and to what extent they will delay the reduction of methyl bromide uses by Article 5 Parties.

The irresolvable disagreements in Nairobi cast a dark cloud on a regime that many had assumed was quietly rolling along towards a total phase out of ozone depleting substances. The rumors surrounding the ExMOP that the CUNs issue could lead to a withdrawal by the US from the Protocol were rebutted by high-level government involvement and reiterated commitments to the Protocol's goals. This renewed interest, if sustained through to MOP-17, bodes well for the next replenishment of the Multilateral Fund, whose assistance will be critical in helping Article 5 Parties meet their methyl bromide phase-out targets.

It is likely that the difficult beginnings of the CUN review process under the ozone regime will serve as an example to treaties operating under analogous phase-out schedules, for example the Stockholm Convention on Persistent Organic Pollutants, which will enter into force in May 2004. This stumbling block highlighted, for instance, the need to iron out specific details of reporting and review needs prior to the first round of exemption requests. Furthermore, the contrast of the ease in achieving a phase-out in cooperation with the chemical sector, as opposed to the more



diffuse and often more vocal agricultural sector, is worthy of note for treaties whose success depends on shifting agricultural practices, such as the Stockholm Convention.

### STAYING POWER

As the meeting came to a close there was disappointment at the considerable continued use of methyl bromide in non-Article 5 Parties. However, many Parties and environmental non-governmental organizations were pleased at having prevailed on limiting nominations to annual, and not multi-year, exemptions, and were satisfied by the increased awareness of the impact of CUEs on Article 5 Parties. At the end of their late-night closing plenary, Parties left confident that their crucial task had been fulfilled: thanks to sheer persistence through excruciating and elaborate deliberations, they had reached a compromise, committed to continued reduction of CUEs, and demonstrated the continued robustness, persistence and relevance of the ozone regime.

## THINGS TO LOOK FOR BEFORE MOP-16

### METHYL BROMIDE TECHNICAL OPTIONS

**COMMITTEE:** The Methyl Bromide Technical Options Committee of the Technology and Economic Assessment Panel of the Montreal Protocol will meet from 28 March-1 April 2004, in Montreal, Canada. For more information, contact: Ozone Secretariat, UNEP; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: ozoneinfo@unep.org; Internet: <http://www.unep.org/ozone>

**MEETING OF THE EXECUTIVE COMMITTEE OF THE MULTILATERAL FUND FOR THE MONTREAL PROTOCOL:** The 42nd meeting of the Executive Committee of the Multilateral Fund for the Implementation of Montreal Protocol will take place from 29 March-2 April 2004, in Montreal, Canada. For more information, contact: Secretariat of the Multilateral Fund; tel: +1-514-282-1122; fax: +1-514-282-0068; e-mail: secretariat@unmfs.org; Internet: <http://www.unmfs.org>

**15TH ANNUAL EARTH TECHNOLOGIES FORUM AND MOBILE AIR CONDITIONING SUMMIT:** The summit will take place from 13-15 April 2004, in Washington DC. It will address global climate change and ozone protection policy and technology issues, including a proposal by the European Commission to phase out HFC-134a in mobile air conditioning by 2009. For more information, contact: Conference Secretariat; tel: +1-703-807-4052; fax: +1-703-528-1734; e-mail: earthforum@alcalde-fay.com; Internet: <http://www.earthforum.com>

**FIRST GENERAL ASSEMBLY OF THE EUROPEAN GEOSCIENCES UNION:** The first General Assembly of the European Geosciences Union will take place from 15-30 April 2004, in Nice, France. For more information, contact: EGU Office, Germany; tel: +49-5556-1440; fax: +49-5556-4709; e-mail: egu@copernicus.org; Internet: <http://www.copernicus.org/EGU/ga/egu04>

**THIRD SESSION OF THE OPEN-ENDED WORKING GROUP (OEWG) OF THE BASEL CONVENTION:** The third session of the OEWG is scheduled to be held from 26-30 April 2004, in Geneva, Switzerland. For more information, contact: Basel Secretariat; tel: +41-22-917-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>

## TWENTIETH SESSIONS OF THE SUBSIDIARY

**BODIES TO THE UNFCCC:** The twentieth sessions of the subsidiary bodies to the UN Framework Convention on Climate Change will convene from 16-25 June 2004, in Bonn, Germany. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; Internet: <http://unfccc.int/sessions/sb20/index.html>

**24TH SESSION OF THE OPEN-ENDED WORKING GROUP TO THE MONTREAL PROTOCOL:** OEWG-24 will meet from 12-16 July 2004, in Geneva, Switzerland. For more information, contact: Ozone Secretariat, UNEP; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: ozoneinfo@unep.org; Internet: <http://www.unep.org/ozone/>

**INTERNATIONAL WORKSHOP ON MANAGEMENT OF HAZARDOUS SUBSTANCES AND GOODS:** This workshop, organized by the University of Applied Sciences Basel (FHBB), will be held from 6-17 September 2004, in Muttensz, Switzerland. For more information, contact: Priska Limacher; tel: +41-22-467-4560; fax: +41-22-467-4590; e-mail: p.limacher@fhbb.ch; Internet: <http://www.fhbb.ch/umwelt>

**11TH MEETING OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE ON THE PRIOR INFORMED CONSENT PROCEDURE (INC-11):** INC-11 will be held on 18 September 2004 in Geneva, Switzerland. For more information, contact: Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

**FIRST CONFERENCE OF THE PARTIES TO THE ROTTERDAM CONVENTION (COP-1):** COP-1 is expected to be held from 20-24 September 2004, in Geneva, Switzerland. For more information, contact: Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

**SECOND SESSION OF THE PREPARATORY COMMITTEE FOR THE DEVELOPMENT OF A STRATEGIC APPROACH TO INTERNATIONAL CHEMICALS MANAGEMENT (SAICM PREPCOM-2):** SAICM PrepCom-2 is scheduled to be held from 4-8 October 2004, in Nairobi, Kenya. For more information, contact: UNEP Chemicals; tel: +41-22-917-8191; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.chem.unep.ch/saicm>

**SEVENTH MEETING OF THE CONFERENCE OF THE PARTIES (COP-7) TO THE BASEL CONVENTION:** Basel COP-7 is tentatively scheduled to be held from 25-29 October 2004, in Geneva, Switzerland. For more information, contact: Basel Secretariat; tel: +41-22-917-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>

**16TH MEETING OF THE PARTIES TO THE MONTREAL PROTOCOL (MOP-16):** MOP-16 will be held from 22-26 November 2004, in Prague, the Czech Republic. For more information, contact: Ozone Secretariat, UNEP; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: ozoneinfo@unep.org; Internet: <http://www.unep.org/ozone>