

ANNEX 5: RESPONSE TO DECISION EX.I/3(5) - EUROPEAN COMMUNITY PROCEDURES FOR LICENSING, PERMITTING OR AUTHORIZING METHYL BROMIDE FOR CRITICAL USES IN 2006, INCLUDING CONSIDERATION OF AVAILABLE STOCKS

The Parties decided in paragraph 5 of Decision Ex.I/3:

- 5) *That each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks. Each Party is requested to report on the implementation of the present paragraph to the Ozone Secretariat;*

Paragraph 1 of Decision IX/6 states:

1. *To apply the following criteria and procedure in assessing a critical methyl bromide use for the purposes of control measures in Article 2 of the Protocol:*
- (a) *That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:*
- (i) *The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and*
 - (ii) *There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;*

The following describes the authorisation procedures that the European Community has put in place in 2005 to licence methyl bromide for critical uses for use in 2006, pursuant to paragraph 5 of Decision Ex.I/3.

THE MONTREAL PROTOCOL AND EUROPEAN COMMUNITY REGULATION

Agreements in the Montreal Protocol are given effect in the European Community through the implementation of Regulation (EC) No. 2037/2000 on “Substances that Deplete the Ozone Layer” which came into force on 1 October 2000 in all Member States. The Regulation is also applicable to 25 Member States in the European Union including 10 countries that acceded to the European Union on 1 May 2004.

In applying the criteria relevant to the critical uses of methyl bromide contained in the Montreal Protocol and the Regulation, the Member States and the European Commission were mindful that exemptions for critical uses are intended to be limited derogations to allow a short period of time for the adoption of alternatives.

Articles 3(2)(i)(d) and 4(2)(i)(d) of this Regulation prohibit the production and import respectively of methyl bromide for all uses after 31 December 2004 except, among others, for critical uses in accordance with Article 3(2)(ii) and the criteria set out in Decision IX/6 of the Parties to the Montreal Protocol.

Decision IX/6 states that methyl bromide should qualify as “critical” only if the applicant determines that the lack of availability of methyl bromide for that specific use would result in a significant market disruption; and that there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination. Furthermore, the production and consumption, if any, of methyl bromide for critical uses should be permitted only if all technically and economically feasible steps have been taken to minimise the critical use and any associated emission of methyl bromide. An applicant should also demonstrate that an appropriate effort is being made to evaluate, commercialise and secure national regulatory approval of alternatives and substitutes; and that research programmes are in place to develop and deploy alternatives and substitutes.

ANALYSIS OF REQUESTS FOR CRITICAL USES

In 2005 and following the procedures described in Article 3(2), the Commission received 79 proposals for critical uses of methyl bromide from nine Member States including Belgium (44,070 kg), France (259,097 kg), Germany (19,450 kg), Ireland (1,250 kg), Italy (1,333,225 kg), Poland (45,900 kg), Portugal (50,000 kg), Spain (986,000 kg), The Netherlands (120 kg) and the United Kingdom (139,285 kg). A total of 2,878,397 kg was requested, comprising 2,690,275 kg (94%) for pre-harvest uses and 188,140 kg (6%) for post-harvest uses of methyl bromide. Germany subsequently informed the Commission that it had withdrawn all of its proposals as alternatives were now available.

The Commission applied the criteria contained within Decision IX/6, Decision Ex.I/3 and Article 3(2)(ii) of Regulation (EC) No. 2037/2000 in order to determine the amount of methyl bromide that is eligible to be licensed for critical uses in 2006.

The Commission analysed each request according to the technical and economic feasibility of chemical and non-chemical control methods, alone and in combination, that were able to substitute for methyl bromide to control pests and pathogens. An assessment was also made of any emission reduction steps that the applicant could take to minimise the use of any uses of methyl bromide considered critical, and the effort of the applicant to evaluate, commercialise and register alternatives, and plans to develop and deploy alternatives. Each Member State that had requested critical uses was invited to comment on the assessment. The assessments and comments were considered in bilateral discussions held between the Member State and the Commission in order to determine the amount of methyl bromide that could be considered eligible for licensing for 2006.

STOCKS

Decision IX/6 states that production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available from existing stocks of banked or recycled

methyl bromide. Article 3(2)(ii) states that production and importation of methyl bromide shall be allowed only if no recycled or reclaimed methyl bromide is available from any of the Parties.

Article 4(2)(ii) states that, subject to Article 4(4), the placing on the market and the use of methyl bromide by undertakings other than producers and importers shall be prohibited after 31 December 2005. Article 4(4) states that Article 4(2) shall not apply to the placing on the market and use of controlled substances if they are used to meet the licensed requests for critical uses of those users identified as laid down in Article 3(2).

Therefore, in addition to producers and importers, fumigators that are registered by the Commission in 2006 would be allowed to place methyl bromide on the market, and to use it for critical uses, after 31 December 2005. A fumigator typically requests an importer for both the importation and supply of methyl bromide. Fumigators registered for critical uses by the Commission in 2005 would be permitted to carry over to 2006 any remaining methyl bromide that had not been used in 2005 (referred to as ‘stocks’).

In accordance with Decision IX/6 and Article 3(2)(ii), the Commission determined that 116.5 tonnes of stocks were available for critical uses. The European Commission has put in place licensing procedures to deduct such stocks of methyl bromide before any additional methyl bromide is imported or produced to meet the licensed requests for critical uses in 2006.

Three uses of methyl bromide were categorised as ‘biocidal’ uses for which additional restrictions apply. Regulation (EC) No 2032/2003¹ records methyl bromide as a biocidal substance that cannot be placed on the market after 1 September 2006. The Commission may authorise a Member State to use methyl bromide after this date provided the Member State demonstrates compliance with the criteria for an “essential use” under Article 4a of Regulation (EC) No 2032/2003. The quantities of methyl bromide for biocidal uses for which an “essential use” authorisation pursuant to Regulation (EC) No 2032/2003 is required for any uses after 1 September 2006 are shown in Annexes 1, 4 and 8 of this decision.

RESULTS

The Commission found that adequate alternatives were available in the Community and had become more prevalent in many Parties to the Montreal Protocol in the period since the critical use proposals were compiled by Member States.

Pursuant to paragraph 4 of Ex.I/3 in which the Parties agreed that “...*each Party should endeavour to allocate the quantities of methyl bromide recommended by TEAP as listed in Annex II A to the report of the First Extraordinary Meeting of the Parties*”, the EC used similar critical-

¹ Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 307, 24/11/2003 p. 1), as amended by Regulation (EC) No 1048/2005 (OJ L 178, 09.07.2005, p. 1).

use categories to those defined in Section IIB in Decision XVI/2² and in Table A of Decision XVII/9 at the Seventeenth Meeting of the Parties to the Montreal Protocol³.

As a result of the analysis of the proposals and the bilateral discussions, and following the procedures described under Article 18 of the Regulation, the Commission determined that **1,607,587 kg** of methyl bromide can be used in 2006 to satisfy critical uses in each of the Member States that had requested the use of methyl bromide. This amount equates to **8.4% of 1991** consumption of methyl bromide in the European Community and indicates that more than 91.6% of the methyl bromide in 1991 has been replaced by alternatives.

IMPLEMENTATION

Article 3(2)(ii) requires the Commission to also determine which users may take advantage of the critical use exemption. As Article 17(2) requires Member States to define the minimum qualification requirements for personnel involved in the application of methyl bromide, and as fumigation is the only use, the Commission determined that methyl bromide fumigators are the only users proposed by the Member State and authorised by the Commission to use methyl bromide for critical uses. Fumigators are qualified to apply it safely, rather than for example farmers or mill owners that are generally not qualified to apply methyl bromide but who own properties on which it will be applied.

There are currently 91 fumigators that are registered by the Commission and that are authorised to request an import or production licence for the critical uses of methyl bromide. Each fumigator gains access to the ODS-website to draw-down on their quota allocation using a password. The licensing system ensures that each quota operative in each critical use category cannot exceed the amount agreed.

I should be grateful if you would post on the Ozone Secretariat website this Annex as evidence of the manner of implementation between the EC and its Member States of Decision Ex.I/3(5).

² UNEP/OzL.Pro.16/17. Report of the Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, held 22-26 November 2004 in Prague, Czech Republic. www.unep.org/ozone/Meeting_Documents/mop/index.asp

³ UNEP/OzL.Pro.17/11. Report of the Seventeenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, held 12-16 December 2005 in Dakar, Senegal. www.unep.org/ozone/Meeting_Documents/mop/index.asp