



## SUMMARY OF THE SIXTEENTH MEETING OF THE PARTIES TO THE MONTREAL PROTOCOL: 22-26 NOVEMBER 2004

The Sixteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (MOP-16) took place in Prague, Czech Republic, from 22-26 November 2004. The meeting was attended by over 500 participants representing 126 countries, as well as UN agencies, intergovernmental and non-governmental organizations, academia, industry and agricultural interests.

MOP-16 opened with a preparatory segment, from 22-24 November, that addressed the MOP's substantive agenda items and related draft decisions. The preparatory segment was followed by a high-level segment from 25-26 November to adopt the decisions forwarded to it by the preparatory segment. However, the preparatory segment did not conclude its work on a number of issues until 26 November, as contentious topics, such as exemptions allowing the use of methyl bromide, slowed down progress.

MOP-16 adopted decisions on the Multilateral Fund for the Implementation of the Montreal Protocol, as well as issues related to ratification, data reporting, compliance and international and illegal trade, and financial and administrative matters. However, in spite of lengthy discussions both in the formal plenary meetings and in contact groups and informal gatherings, work on methyl bromide exemptions for 2006 was not completed. For only the second time in its history, Parties to the Montreal Protocol decided to hold an additional, "extraordinary" MOP. This meeting will take place in mid-2005 in conjunction with the 25th meeting of the Open-ended Working Group.

### 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, and 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.

**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 reduce the use of ozone-depleting substances (ODS). The Convention now has 189 Parties.

**MONTREAL PROTOCOL:** Efforts to negotiate binding obligations on ODS continued, leading in September 1987 to the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer. 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 ODS before taking on commitments. To date, the Protocol has 188 Parties.

Since 1987, several amendments and adjustments to the Protocol have been adopted, with amendments adding new obligations and additional ODS and adjustments tightening

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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, UK, in 1990, tightened control schedules and agreed to add ten more CFCs to the list of ODS, as well as carbon tetrachloride and methyl chloroform. To date, 175 Parties have ratified the London Amendment. In addition, MOP-2 established the Multilateral Fund for the Implementation of the Montreal Protocol. The Fund meets the incremental costs incurred by Article 5 Parties in implementing the Protocol's control measures and finances clearinghouse functions, including technical assistance, information, training, and the 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, Denmark, 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 Committee examines cases of possible non-compliance by Parties, and makes recommendations to the MOP aimed at securing full compliance. To date, 164 Parties have ratified the Copenhagen Amendment.

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

At MOP-9, held in Montreal, Canada, in 1997, delegates agreed to a new licensing system for the import and export of ODS, in addition to tightening existing control schedules. They also agreed to a ban on trade in methyl bromide with non-Parties to the Copenhagen Amendment. To date, 120 Parties have ratified the Montreal Amendment.

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

At MOP-11, held in Beijing, China, in 1999, delegates agreed to controls on HCFCs and bromochloromethane, and to reporting on methyl bromide for quarantine and pre-shipment applications. In addition, MOP-11 agreed to replenish the Multilateral Fund with US\$477.7 million for the triennium 2000-2002. To date, 83 Parties have ratified the Beijing Amendment.

**MOPs 12-14:** MOP-12, held in Ouagadougou, Burkina Faso, in 2000, adopted the Ouagadougou Declaration, which encouraged Parties to, *inter alia*, take steps to prevent illegal production, consumption and trade in ODS, and harmonize customs codes. The following year in Colombo, Sri Lanka, delegates to MOP-13 adopted the Colombo Declaration, which encouraged Parties to apply due care in using substances that may have ozone-depleting potential, and to determine and use available, accessible and affordable alternatives and technologies that minimize environmental harm while protecting the ozone layer. At MOP-14, held in Rome, Italy, in 2002, delegates adopted 46 decisions, covering such matters as the Multilateral Fund's fixed-exchange-rate mechanism, compliance issues, and interaction with the World Trade Organization. MOP-14 also agreed to replenish the Multilateral Fund with US\$573 million for 2003-2005.

**MOP-15:** Like its predecessors, MOP-15, held in Nairobi, Kenya, in November 2003, also resulted in decisions on a range of relevant issues, including on implications of entry into force of the Beijing Amendment. However, Parties could not reach agreement on four items relating to methyl bromide, an

ozone-depleting pesticide scheduled for a 2005 phase-out by non-Article 5 Parties. Disagreements surfaced over the size of exemptions to allow the use of methyl bromide beyond 2004 for "critical" uses where no technically or economically feasible alternatives are available. Some delegates argued that exemptions sought by the US, Spain, Italy and some other countries were excessive. Meanwhile, the US and the EC differed over the time period of exemptions, with the EC arguing that they should be approved on a yearly basis, while the US favored multi-year exemptions. As a result of these disagreements, delegates felt compelled to take the unprecedented step of calling an "extraordinary" MOP.

**EXTRAORDINARY MOP:** The Extraordinary Meeting of the Parties to the Montreal Protocol (ExMOP) took place from 24-26 March 2004, in Montreal. Parties achieved compromises on various methyl bromide-related issues, including nominations for critical-use exemptions (CUEs), conditions for granting and reporting on CUEs, and the working procedures of the Methyl Bromide Technical Options Committee (MBTOC).

On the key issue of exemptions, Parties adopted 13,256 tonnes of CUEs for 11 non-Article 5 Parties for 2005 only. The introduction by the US and the EC of a "double-cap" concept distinguishing between old and new production was central to reaching this compromise. According to the agreement, a cap was set for new production at 30% of Parties' 1991 baseline levels. This means that for 2005, Parties must use existing stockpiles if the capped amount is insufficient to supply their approved critical use needs. Exemptions beyond 2005 were not agreed at that time.

In addition, delegates established an *ad hoc* working group to review the MBTOC's working procedures and terms of reference. A review of further interim measures for Article 5 Parties was deferred to MOP-16.

**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, carbon tetrachloride, methyl chloroform and HBFCs by 1996; and bromochloromethane by 2002. These Parties must still phase out: methyl bromide by 2005 and consumption of HCFCs by 2030 (with interim targets up to those dates). Production of HCFCs was to be stabilized by 2004. Article 5 Parties were required to phase out hydrobromofluorocarbons by 1996 and bromochloromethane by 2002. These Parties must still phase out: CFCs, halons and carbon tetrachloride by 2010; methyl chloroform and methyl bromide by 2015; and consumption of HCFCs by 2040 (with interim reduction targets prior to full phase out). Production of HCFCs must be stabilized by 2016.

## **REPORT OF MOP-16**

### **PREPARATORY SEGMENT**

MOP-16's preparatory segment began on Monday, 22 November, with opening presentations from representatives of the host country and UNEP. Janusz Kozakiewicz (Poland), the Co-Chair of the Open-ended Working Group (OEWG), was named as Chair of MOP-16's preparatory segment. (The OEWG's other Co-Chair, Jorge Leiva (Chile), who had been slated to Co-Chair the preparatory segment, was unable to attend).



UNEP Deputy Executive Director Shafqat Kakakhel highlighted progress in dealing with the ozone challenge since the adoption of the Montreal Protocol in 1987, and commended countries that recently ratified the Protocol and its amendments. He then drew attention to six main topics on MOP-16's agenda: issues arising out of the Technology and Economic Assessment Panel (TEAP) reports; methyl bromide; the Multilateral Fund; ratification, data reporting, compliance, and international and illegal trade; membership of various bodies and committees; and administrative and financial matters.

Libor Ambrozek, MOP-15 President and Minister of Environment of the Czech Republic, called for a collective approach to applying the precautionary principle. He urged delegates to work in a spirit of consensus and to heed the recommendations of the Scientific Symposium, held immediately prior to MOP-16.

Chair Kozakiewicz introduced the agenda (UNEP/OzL.Pro.16/1). Delegates adopted it with minor amendments proposed by a number of Parties. Delegates also agreed on the organization of work for the meeting.

Throughout MOP-16, delegates discussed agenda items and corresponding draft decisions in plenary, contact groups and bilateral consultations. Draft decisions were approved by the preparatory segment, and forwarded to the high-level segment for adoption on Friday evening, 26 November. The description of the negotiations and the summary of the decisions and other outcomes can be found below.

#### **HIGH-LEVEL SEGMENT**

MOP-15 President Libor Ambrozek opened the high-level segment on Thursday, 25 November. He urged delegates to adopt and implement all decisions on the agenda, particularly on essential use nominations for non-Article 5 Parties, CUEs for methyl bromide, the Multilateral Fund's replenishment for 2006-2008, and compliance.

Stressing that the ozone regime is a success story and a model for other environmental instruments, UNEP Executive Director Klaus Töpfer urged Parties to send a clear signal of their commitment to phase out methyl bromide.

Czech Prime Minister Stanislav Gross praised the ambitious targets set by the Protocol, and their sound scientific foundations. He spoke about the Czech Republic's achievements in phasing out ODS, and its readiness to assist other Parties in their implementation of the Protocol.

Delegates elected members of the MOP-16 Bureau. Alan Flores (Costa Rica) was elected President, while Ndiaye Cheikh Sylla (Senegal), Abdul H.M. Fowzie (Sri Lanka), and Jukka Uosukainen (Finland) were elected Vice Presidents. Rodica Ella Morohoi (Romania) was appointed Rapporteur. The agenda was adopted without amendment.

#### **PRESENTATIONS BY THE ASSESSMENT PANELS:**

Parties then heard presentations by representatives of the Protocol's various assessment panels. Ayité-Lo Ajavon (Togo) presented the 2006 Scientific Assessment, reporting that the Scientific Assessment Panel had started its preparatory work. Janet Bornman, Co-Chair of the Environmental Effects Assessment Panel, presented the Panel's 2004 progress report on the environmental effects of ozone depletion and its interaction with climate change.

TEAP Co-Chair Stephen Andersen announced the following nominations for new technical options committee (TOC)

Co-Chairs: David Catchpole (UK) and Daniel Verdonik (US) for the Halons TOC; Masaaki Yamabe (Japan) and Ian Rae (Australia) for the Chemicals TOC; and Michelle Marcotte (Canada) and Ian Porter (Australia) for the MBTOC. Delegates then heard progress reports from the various TOCs, as well as on basic domestic needs, process agents, essential use nominations for metered-dose inhalers, critical use nominations, and the Intergovernmental Panel on Climate Change (IPCC)-TEAP Special Report.

#### **PRESENTATIONS BY IMPLEMENTING AGENCIES:**

Steve Gorman, World Bank, stressed the role of his institution in enabling Article 5 Parties to meet their obligations to reduce consumption and production of CFCs in a sustainable manner. Noting that the UN Development Programme (UNDP) has a portfolio of CFC-reducing activities in 92 countries, Suely Carvalho, UNDP, stressed the importance of developing synergies, national ownership, and enforcement of legislation in achieving the successful phase out of CFCs.

Rajendra Shende, UNEP, outlined the main activities of UNEP's Ozone Action Branch, including: regional delivery of assistance; direct actions at the country level; and early warning systems. Sidi Menad Si Ahmed, UN Industrial Development Programme (UNIDO), outlined structural changes in his organization's approach to assisting Article 5 Parties, and stressed the challenge of shifting from a project-based approach towards implementing national and sectoral phase-out plans.

#### **PRESENTATION BY THE MULTILATERAL FUND**

**EXECUTIVE COMMITTEE:** Marcia Levaggi (Argentina), Chair of the Executive Committee of the Montreal Protocol's Multilateral Fund, briefed delegates on recent meetings of the Committee, highlighted some of the key issues for the Fund, and drew attention to the Committee's report to MOP-16 (UNEP/OzL.Pro.16/10).

**COUNTRY STATEMENTS:** MOP-16 heard statements from heads of delegation on Thursday and Friday, 25-26 November (although due to time constraints, some delegates did not have an opportunity to speak). Many of those who spoke endorsed the goals of the Protocol and hailed the treaty as a model for other environmental agreements. They also thanked the Czech Republic for hosting MOP-16. In addition, speakers reported on domestic measures to phase out ODS, and reflected on a number of other topics, including methyl bromide use, the Multilateral Fund, CFCs, halons, illegal trade, education and awareness raising, and linkages with climate change.

**Methyl Bromide:** The US stressed the continuing need for limited amounts of methyl bromide. She noted that her country's request for methyl bromide CUEs for 2006 equates to just 1.5% of its use of ODS in 1989, adding that this final small amount is the hardest to phase out. She suggested that the MBTOC's recommendations had not been based purely on technical and scientific considerations, and seemed somewhat arbitrary. She argued that innovative approaches should be explored, such as providing methyl bromide credits in return for destruction of excess halons.

The Netherlands, on behalf of the EU, expressed concerns at the large amount of critical use nominations (CUNs) requested for methyl bromide, and called for a significant decrease in methyl bromide use. Expressing concern at the increasing amount of methyl bromide falling within the quarantine and pre-shipment exemption, he urged the adoption of heat treatment as an alternative.



Mexico reported on the conclusions of the Scientific Symposium held immediately prior to MOP-16, which urged against granting excessive exemptions for methyl bromide. Kenya expressed concerns that Article 5 Parties are receiving negative signals from those non-Article 5 Parties requesting large exemptions, while some Article 5 Parties are labeled as being in non-compliance for production and consumption volumes just above their relatively small caps. Japan indicated that it had nominated just 11.6% and 9.5% of its baseline for CUEs for 2005 and 2006, respectively. Argentina noted difficulties in replacing methyl bromide in the fruit sector, but noted progress in other areas such as tobacco. The Philippines said it had addressed the issue of potential non-compliance on methyl bromide. Malaysia supported a multi-year approach to CUNs.

**Multilateral Fund:** Many speakers commented on the crucial role played by the Multilateral Fund, and its success as a financial mechanism. China and Brazil stressed the importance of the 2006-2008 replenishment of the Fund, and warned against any complacency or weakening of the mechanism. Malaysia and Bangladesh supported the study on the Fund's terms of reference for the 2006-2008 replenishment.

**Illegal Trade:** Sri Lanka and Tanzania noted the serious problem posed by illegal trade, with the latter emphasizing the need for assistance to Article 5 Parties to combat such trade. China said illegal trade constitutes the most important potential obstacle to fulfillment of the Protocol, and urged countries to cooperate further on efforts to prevent it.

**Domestic Measures:** Parties outlined a range of domestic activities to meet their obligations under the Protocol. Jordan explained that his country had phased out 90% of ODS used in industry and 70% of methyl bromide used in agriculture. Rwanda reflected on its experience as a country that has only recently joined the Protocol. Saudi Arabia reported on implementation of its national strategy, noting that it had spent more than US\$200 million on meeting its obligations. Bosnia and Herzegovina noted its work on phasing out ODS during the country's post-war period. Romania highlighted work on strategies to decrease the use of methyl bromide and on a refrigerant management plan. The Russian Federation reflected on progress in reducing ODS used in industry and the elaboration of a national plan for 2005-2010. Japan outlined its work on ODS recovery, reduction and destruction. Burundi noted an 80% reduction in annual consumption of ODS, and Venezuela highlighted efforts to intensify technical, regulatory, legal and fiscal measures.

**CFCs:** Malaysia expressed its intention to phase out CFCs earlier than scheduled, but said efforts to phase out CFCs in metered-dose inhalers should not result in higher costs for patients. Noting the challenges facing his country due to its recent ratification of the Protocol, Bhutan requested an extension until 2006 of the deadline by which his country should achieve a 50% reduction in CFC consumption.

**Halons:** India indicated that it was phasing out halons well in advance of the agreed schedule, and Pakistan said it was taking steps to be removed from the non-compliance list for halons. Thailand supported action to modify requirements on halon use in new airframes.

**Education, Training, and Public Awareness:** Indonesia drew attention to its public awareness raising programmes, emphasizing the value of sharing experiences and lessons learned, the Republic of Korea proposed holding information exchange workshops in tandem with MOPs or OEWG meetings,

and using information and communication technologies. Mozambique highlighted its work on raising the awareness of key stakeholders.

**Climate Change:** Bangladesh supported increased consideration of the global warming potential of ODS alternatives, and greater cooperation between the Montreal Protocol and the UN Framework Convention on Climate Change.

**Offer to Host MOP:** Pakistan expressed its interest in hosting a future MOP.

### **MOP-16 OUTCOMES AND DECISIONS**

MOP-16 considered agenda items and related decisions on a variety of topics, including: issues arising from reports of the Technology and Economic Assessment Panel, methyl bromide; the Multilateral Fund; ratification, data reporting, compliance and trade issues; membership of various bodies; administrative issues; proposed adjustments and amendment of the Protocol; and several other matters. In total, more than 40 decisions were adopted, all of which are contained in the report of the meeting (UNEP/OzL.Pro.16/L.1/Add.3). Parties were unable to conclude their work on a number of issues, which were set aside for consideration at a later date. This section summarizes the negotiations and resulting decisions.

**ISSUES ARISING FROM THE TEAP REPORTS:** MOP-16 took up a range of issues raised by the reports of the TEAP. These included recommendations resulting from OEWG-24 discussions on essential-use nominations for non-Article 5 Parties, an assessment of chillers and transition to non-CFC equipment, carbon tetrachloride emissions, and a review of approved destruction technologies. MOP-16 also considered a TEAP assessment on CFCs and carbon tetrachloride for basic domestic needs for Article 5 Parties for 2004-2010, a plan of action for modifying the regulatory requirements for halon use in airframes, and a review of requests for consideration of specific process-agents.

**Essential-Use Nominations for Non-Article 5 Parties:** The issue of essential-use nominations was placed on the agenda as a result of a draft decision submitted by the European Community (EC), which dealt with nominations for exemptions allowing the use of CFCs for metered-dose inhalers (MDIs) for asthma and chronic pulmonary disease for 2005-2006 (UNEP/OzL.Pro.16/CRP.3). The topic was initially taken up on Monday, 22 November, during MOP-16's preparatory segment, when the EC introduced the draft decision. The decision included a request to TEAP to review essential-use nominations for CFC-propelled salbutamol MDIs for 2006. While some Parties supported the draft, the proposal was not well-received by others, including the US, Australia, Canada, Argentina and Japan. In particular, the US objected to the proposal's prohibition of the use of CFCs in salbutamol MDIs in non-Article 5 Parties for 2006. The US argued that such a prohibition would preempt an ongoing domestic process that had been initiated in the US to comply with an earlier agreement negotiated at MOP-15 (Decision XV/5), which requires the development of plans of action for CFC salbutamol phase out.

As a result of this disagreement, the US drafted an alternative draft decision (UNEP/OzL.Pro.16/CRP.15) that excludes the prohibition, submitting it to Parties on Wednesday, 24 November. While Japan and Argentina supported the US formulation, Norway, Switzerland, the US Stakeholders Group on MDI Transitions and the International Pharmaceutical Aerosol



Consortium (IPAC) continued to support the EC proposal. Informal negotiations continued on the issue over the next two days. On Friday afternoon, the US reported back to plenary that a revised text it had submitted had finally been agreed, adding that the text draws attention to the MOP-15 decision, and notes that the amount of CFCs approved for 2006 will be subject to a second review in 2005. The text was forwarded to the high-level segment, which adopted it later that day.

**Final Decision:** In its decision on essential-use nominations, MOP-16 authorizes the TEAP-recommended levels of production and consumption for essential uses of CFCs for MDIs for asthma and chronic obstructive pulmonary diseases for 2005 and 2006. These are contained in an annex to the decision, which notes, *inter alia*, that the amounts approved for 2006 include 1900 metric tonnes for the US, and 550 for the EC. However, the decision also notes that the 2006 figures are subject to a second TEAP review in 2005.

**Assessment of Chillers and the Transition to Non-CFC Equipment:** The assessment of the portion of the refrigeration service sector made up by chillers and the transition to non-CFC equipment was first taken up on Monday, 22 November, during the preparatory segment, when Chair Kozakiewicz introduced a draft decision on the subject (UNEP/OzL.Pro.16/3). Responding to a proposal by Cuba on the funding of additional demonstration projects, the US noted that incremental costs incurred in converting chillers are ineligible for funding, and that such projects cannot be funded in all countries. On Wednesday, 24 November, Parties agreed to forward the decision, with a minor amendment by Argentina, to the high-level segment and the decision was adopted during the closing plenary.

**Final Decision:** In this decision, the Parties note the report of the chiller task force and the long-term challenge the chiller sector poses for both developed and developing countries. Parties request the Multilateral Fund's Executive Committee to consider funding additional demonstration projects to show the benefits of replacing CFC-based chillers. They state that such funding should increase awareness of the impending CFC phase out and alternative options, and request countries preparing or implementing refrigerant management plans to consider developing measures to use ODS recovered from chillers "to meet servicing needs in the sector."

**Carbon Tetrachloride Emissions:** Delegates took up the issue of the sources of carbon tetrachloride emissions and means of reducing such emissions during the preparatory segment on Monday, 22 November (UNEP/OzL.Pro.16/3), forwarding a draft decision submitted by the EC and US to the high-level segment without amendment. The decision was formally adopted during MOP-16's closing plenary.

**Final Decision:** In this decision, MOP-16 expresses concern at the significant amounts of carbon tetrachloride measured in the atmosphere, and recognizes the need to further assess the sources of this ODS. It requests TEAP to assess global emissions of carbon tetrachloride from various sources, including feedstock and process agents, waste and incidental quantities. The MOP asks TEAP to assess potential ways to reduce emissions from those sources, and to prepare a report on the subject for consideration at MOP-18.

**Review of Approved Destruction Technologies:** At MOP-16's closing plenary, Parties adopted a draft decision introduced by Canada and approved by Parties earlier in the week on approved destruction technologies.

**Final Decision:** The decision contains a request from Parties to the Co-Chairs of the Task Force on Destructive Technologies to reconvene the Task Force in order to solicit information from proponents of these technologies on the "emerging" technologies identified in the 2002 report on the topic. Parties also request the Co-Chairs to report to OEWG-25 on whether these emerging technologies should be considered for addition to the list of approved destruction technologies.

**TEAP Assessment of CFCs and Carbon Tetrachloride Required for Basic Domestic Needs for Article 5 Parties for 2004–2010:** Delegates took up this issue on Monday, 22 November, when TEAP Co-Chair Lambert Kuijpers (Netherlands) presented the report of the TEAP Basic Domestic Needs Task Force. Noting the lack of reliable data on basic domestic needs production requirements, he called on Parties to examine their data reporting systems. The Environmental Investigation Agency, an NGO, expressed concerns over the data used in the basic domestic needs study, urging further consideration of market forces. He called for a study of the CFC market, drawing attention to illegal CFC production and trade, a supply surplus that has kept CFC prices from rising, and slower-than-expected take-up of alternatives. Delegates agreed to discuss the matter at OEWG-25. No formal decision was adopted on this issue. However, it is expected to be considered again at OEWG-25 in 2005.

**Halon Use in New Airframes:** The development of a plan of action for modifying the regulatory requirements on halon use in new airframes was considered during the preparatory segment on Monday, 22 November. Halons Technical Options Committee (HTOC) interim Co-Chair David Catchpole reported on discussions with the International Civil Aviation Organization (ICAO), as authorized by Decision XV/11, on moving away from mandating halon use in airframes. He noted that, as a result of these discussions, ICAO will issue regulations requiring the use of alternatives in new aircraft designs in 2009. There was no comment on this issue, and no formal decision was taken.

**Process-Agent Uses:** On Monday, 22 November, TEAP members Ian Rae, Masaaki Yamabe and José Pons reported to MOP-16's preparatory segment on the work of the Process Agents Task Force under MOP-15 Decision XV/7, which requested TEAP to review and make recommendations for changes to the list of process agent uses in Table A of Decision X/14. Rae and Yamabe outlined nine nominations submitted by five Parties. Pons urged Parties to clarify whether the process agent uses in Table A for which there are alternatives should be approved for both Article 5 and non-Article 5 Parties. He said the inclusion of process agents in Table A should not be viewed as an invitation for non-Article 5 Parties to use them, but should actually facilitate their phase out, with help from the Multilateral Fund.

On Wednesday, 24 November, Parties considered a draft decision containing a revised table listing controlled substances as process agents (UNEP/OzL.Pro.16/CRP.18). The EC proposed addressing the issue at the next meeting of the OEWG, as some information was lacking. The issue was debated again in a plenary session of MOP-16's preparatory segment the following day. The EC repeated that it could not agree to the table and suggested considering the matter at OEWG-25. However, the US disagreed, highlighting TEAP's work on this issue and arguing that the EC was "refusing to look at the information available." Chair Kozakiewicz said the table would be forwarded in brackets



to the high-level segment.

On Friday, 26 November, the EC repeated its objections in the high-level segment. As a consequence, no formal decision was taken on this issue. However, it is expected that the matter will be taken up again at OEWG-25.

**METHYL-BROMIDE RELATED ISSUES:** MOP-16 took up a range of issues relating to methyl bromide, including trade in products treated with methyl bromide, technical and financial support for methyl bromide alternatives, and the use of methyl bromide for quarantine and pre-shipment uses. Parties also considered a handbook for critical uses of methyl bromide and recommendations on the working procedures of MBTOC. Finally, MOP-16 also considered the level of exemptions for methyl bromide for 2005-2006, a particularly controversial issue.

**Trade in Products and Commodities Treated with Methyl Bromide:** This issue was first addressed in plenary on Monday, 22 November, when participants discussed a draft decision proposed by Kenya urging Parties not to restrict trade in products or commodities treated with methyl bromide (UNEP/OzL.Pro.16/3). Emphasizing the importance of agriculture to developing countries, Kenya said there should be no trade barriers to products treated with methyl bromide for Parties that comply with the Montreal Protocol. While many supported the draft decision, Switzerland, Japan and China expressed concerns about the proposal, including its implications for international law and other Protocol provisions, and the possible desirability of trade barriers to encourage a complete methyl bromide phase out.

On Wednesday, 24 November, delegates considered a revised version of Kenya's proposal (UNEP/OzL.Pro.16/CRP.13), and an alternative proposal put forward by Switzerland (UNEP/OzL.Pro.16/CRP.16). Switzerland explained that he had submitted an alternative draft decision because Kenya had not addressed all of his country's concerns, including a reference to alternatives to methyl bromide. Following informal talks between Kenya, Switzerland and other interested Parties, a revised draft decision (UNEP/OzL.Pro.16/CRP.13/Rev.1) was agreed and forwarded to the high-level segment. The decision was adopted on Friday in plenary without amendment.

**Final Decision:** The decision invites Parties not to restrict trade in products or commodities from Parties that have ratified the Protocol's provisions regarding methyl bromide and are otherwise in compliance with the Protocol, just because the products or commodities have been treated with methyl bromide, or have been produced or grown on soil treated with methyl bromide. It further welcomes the ongoing efforts by Article 5 Parties to develop alternatives to methyl bromide.

**Request for Technical and Financial Support Relating to Methyl Bromide Alternatives:** This issue was first addressed in plenary on Monday, 22 November. Chair Kozakiewicz explained that the issue had been introduced at the Extraordinary MOP in March 2004, and Burkina Faso had subsequently raised the matter at OEWG-24, resulting in a draft decision on the issue (UNEP/OzL.Pro.16/3). The US raised concerns about the interpretation of the decision and its cost implications, and Chair Kozakiewicz requested the US and Burkina Faso to draft a decision that satisfied interested Parties' concerns. On Wednesday, delegates agreed to forward the revised draft decision (UNEP/OzL.Pro.16/CRP.6) to the high-level segment, with a minor amendment proposed by Senegal. The decision was adopted in plenary on Friday evening.

**Final Decision:** The decision emphasizes that Article 5 Parties that use little or no methyl bromide need technical and financial assistance from the Multilateral Fund to identify environmentally-safe strategies to implement the Protocol's methyl bromide provisions, and requests the Secretariat to publish a summary of the alternatives-related components of the MBTOC's reports in the five UN languages.

**Assessment of the Normative Authorization of the Use of Methyl Bromide for Quarantine and Pre-Shipment, Feedstock and Wooden Pallet Fumigation:** This matter was first addressed on Wednesday, 24 November, in plenary, when Parties considered a draft decision submitted by Colombia and Guatemala (UNEP/OzL.Pro.16/CRP.12/Rev.1). The following day, delegates considered revised text on this issue submitted by Colombia and Guatemala (UNEP/OzL.Pro.16/CRP.12/Rev.2). The US expressed reservations over text requesting importing Parties "to accept the wood packaging treated with alternative methods to methyl bromide, in accordance with standard 15." Delegates agreed to compromise language proposed by Canada to replace "requests" with "encourages" and "accept" with "consider accepting," and the decision was forwarded to the high-level segment, where it was adopted Friday evening.

**Final Decision:** The decision highlights standard 15 of the International Standards for Phytosanitary Measures of the Food and Agriculture Organization's International Plant Protection Convention (IPPC), which approved fumigation by methyl bromide for wood packaging to reduce the risk of introduction and/or spread of quarantine pests. The decision, *inter alia*: requests the Ozone Secretariat to contact the IPPC Secretariat to exchange information with a view to encourage alternatives to methyl bromide; urges Parties to consider the use of heat treatment or alternative packaging materials; and encourages the importing Parties to consider accepting the wood packaging treated with alternative methods to methyl bromide.

**Assessment of the Volume of Methyl Bromide to be Replaced by the Implementation of Feasible Alternatives to Methyl Bromide's Quarantine and Pre-Shipment Uses:** This issue was discussed on Tuesday, 23 November, when Australia introduced a draft decision on reporting of information relating to quarantine and pre-shipment uses (UNEP/OzL.Pro.16/CRP.5). The draft decision proposed extending the deadline for the submission of data by Parties to TEAP. Delegates agreed to forward the draft decision to the high-level segment with some minor amendments introduced by the EC, the US and Japan.

**Final Decision:** The decision requests TEAP to establish a task force to prepare the report requested by Decision XI/3, and asks Parties to provide best available data by 31 March 2005. The decision further requests the task force to report the data submitted by Parties for the information of OEWG-25.

**Flexibility in the Use of Alternatives for Phasing out of Methyl Bromide:** This issue was first addressed in plenary on Wednesday, 24 November, when delegates considered text on methyl bromide alternatives submitted by Guatemala (UNEP/OzL.Pro.16/CRP.14). The US expressed concerns that the text might imply an attempt to alter the provisions of the Protocol. Guatemala revised its proposal (UNEP/OzL.Pro.16/CRP.14/Rev.1) and on Friday, 26 November, the US proposed some minor amendments. Delegates decided to forward the decision, as amended by the US, to the high-level segment, where it was adopted later that day.



**Final Decision:** The decision notes that: the development of alternatives to methyl bromide faces unforeseen difficulties for certain crops due to specific local conditions; agricultural technologies need to be adapted to those conditions; and Article 5 Parties require technical support and flexibility to adapt the technical assistance required to find satisfactory solutions. It further requests relevant bodies to evaluate the progress already made and the necessary adjustments to reach these goals.

**Handbook, Reporting Forms and Accounting Framework for Critical Uses of Methyl Bromide:** This matter was first addressed on in plenary on Tuesday, 23 November, when delegates discussed the latest version of the handbook for critical uses of methyl bromide prepared by TEAP and its MBTOC, including the reporting forms and accounting framework appended to it. The EC and Australia opposed adopting the handbook at MOP-16, stating it did not incorporate the results of the *ad hoc* working group, established at the ExMOP to review MBTOC's working procedures and terms of reference. However, the EC proposed adopting the accounting framework at MOP-16, as required by Decision Ex.I/4. Australia suggested deferring consideration of the handbook until MOP-17 and, with Canada, Japan and the US, proposed that Parties submitting nominations use it as a guidance document until it is formally adopted. On Wednesday, 24 November, Parties agreed to forward to the high-level segment a draft decision on this issue submitted by the EC (UNEP/OzL.Pro.16/CRP.9). The decision was adopted in MOP-16's closing plenary.

**Final Decision:** The decision adopts the accounting framework developed by TEAP pursuant to Decision Ex.I/4(9)(f), and requests TEAP to include the framework in the next version of the Handbook on Critical Use Nominations for Methyl Bromide.

**Ad Hoc Working Group Recommendation on MBTOC Working Procedures and Terms of Reference:** On Tuesday, 23 November, in plenary, delegates considered a draft decision on this issue (UNEP/OzL.Pro/AHWG.MBTOC/2/4), and an open-ended contact group, co-chaired by Maas Goote (Netherlands) and Elias Luna Santos (Brazil), was created to work on the bracketed text of the draft decision. The group's deliberations focused on the duration of CUNs for methyl bromide, the assessment methodologies, and stocks. On the first issue, some participants expressed concern at having multi-year exemptions, but most agreed they could be useful in some cases. Participants considered proposals by the US and the EC on a framework for multi-year CUEs, and eventually agreed on a separate draft decision on CUNs to be forwarded to plenary (UNEP/OzL.Pro.16/CRP.22). On Wednesday evening, Co-Chair Goote presented the two draft decisions, on the terms of reference of MBTOC and on review of CUNs. Delegates agreed to forward both decisions to the high-level segment, which adopted the two decisions on Friday evening.

**Final Decisions:** The decision on MBTOC includes a number of elements related to the procedures and terms of reference of the MBTOC related to the evaluation of methyl bromide CUNs, including: a schedule for the assessment of CUNs; membership of the MBTOC; and further guidance on the criteria for the evaluation of nominations for CUEs for methyl bromide. The latter includes guidance on aspects such as: the availability of technically and economically feasible alternatives; duration of CUNs; individual circumstances of nominations; and market penetration of alternatives.

The decision on duration of CUNs of methyl bromide notes that the basis for extending the duration of CUEs for methyl bromide for periods greater than one year requires further attention, and requires MOP-17 to elaborate, as far as possible, a framework for multi-year CUEs. It also agrees that a number of elements should be taken into account, including: annual reporting on the status of re-registration and review of methyl bromide; the status of registration of alternatives, and efforts to evaluate, commercialize and secure national regulatory approval of alternatives; review of downward trends for different instances; and the applicability of existing decisions and additional conditions to CUEs longer than one year.

**Provision of Financial Assistance to the MBTOC:** On Tuesday, 23 November, in plenary, Australia presented a draft decision on the provision of financial support in 2005 for the Co-Chairs of the MBTOC and Committee members attending certain meetings relating to the assessment of CUNs (UNEP/OzL.Pro.16/CRP.8). The discussion focused on the decision's financial implications, and the Secretariat was required to provide cost estimates to the Budget Sub-Committee, to be reported to the plenary the following day. Chair Kozakiewicz proposed establishing a contact group to consider the remaining bracketed text.

On Thursday, 25 November, delegates considered a revised draft decision on this issue (UNEP/OzL.Pro.16/CRP.8/Rev.1), including an annex containing three budget scenarios. The US questioned aspects of the decision's annex, including a "surprise" TEAP proposal to fund an additional non-Article 5 Co-Chair's attendance at certain meetings. With the issue remaining unresolved, the bracketed draft decision was forwarded to the high-level segment. When the topic was taken up on Friday in the high-level segment, Canada expressed concern about the additional Co-Chair nominated and the US said TEAP should have the discretion to use the amount specified in the decision in a manner that will best aid the MBTOC in meeting its demands. The decision was adopted on Friday evening without amendment.

**Final Decision:** The decision provides for: financial support to the positions of one Article 5 Co-Chair and one non-Article 5 Co-Chair of the MBTOC to cover the costs of their travel and accommodation for attendance at those meetings related to assessment of CUNs; some financial support to MBTOC's Co-Chairs to support the initial summarization of CUNs; and expert assistance with the preparation of the reports on such assessments to ensure the required levels of transparency and detail. The decision further indicates that the financial support should be provided within the existing budget level drawn from the Protocol's Trust Fund for 2005.

**Critical Use Exemptions for Methyl Bromide:** This issue was addressed in plenary on Monday, when delegates were briefed on MBTOC's report on CUEs for 2005-2006, dated October 2004. The discussion centered on whether the report's recommendations were the result of a technical assessment. A number of nominating Parties questioned the report's recommendations, arguing that the proposed 20% cuts in CUEs for 2006 were arbitrary, and that MBTOC had engaged in policy making. The MBTOC replied that CUNs had been assessed on an individual basis, and it had not sought to make policy recommendations. A closed contact group was created in order to discuss the issue. The group met on Tuesday and Wednesday to discuss the methodology used by the MBTOC to assess



CUNs. The MBTOC agreed to prepare a table incorporating the different aspects that were considered in reviewing CUNs and suggesting reductions. On Thursday, the group met throughout the day to consider two proposals, one by the EU and another by the US, on CUEs for 2005-2006. In accordance with Decisions Ex.I/3 and IX/6, the EU proposal requested Parties with CUE levels of production and consumption in excess of 30% of their 1991 baseline to make up the difference by using quantities of methyl bromide from available stocks. It also provided for an extraordinary meeting of the Parties to be held in conjunction with OEWG-25 to make a decision on the portion of the 2006 CUNs that remain controversial. Delegates requested contact group Co-Chair Blaise Horisberger (Switzerland) and the US to merge the two proposals. The group reconvened on Friday to consider the merged draft decision, and finally presented a compromise decision in plenary on Friday evening.

**Final Decision:** The decision on CUEs for methyl bromide for 2005 and 2006 (UNEP/OzL.Pro.16/CRP.28) permits, subject to the conditions of Decision Ex.I/4, supplemental levels of production and consumption for supplemental use categories for 2005 and consumption for the agreed use categories for 2006. However, the decision explicitly states that additional levels of production and consumption and categories of uses may be approved by the MOP. Moreover, it requests Parties to ensure that the criteria in Decision IX/6 paragraph 1 are applied when authorizing critical uses, taking into account available stocks. The decision further provides for an extraordinary MOP to be held in conjunction with OEWG-25 in order to adopt a decision with respect to additional nominations for 2006 CUEs, noting that the extraordinary MOP will not give rise to any financial implications.

**Interim Reductions for Methyl Bromide:** This issue was briefly considered in plenary on Monday, 22 November, with the EC presenting a proposed adjustment to the Montreal Protocol to introduce further interim reductions on methyl bromide for Article 5 Parties. Discussions focused on the appropriateness of adopting interim reductions for such Parties when CUEs are being granted to a number of non-Article 5 Parties, and on whether a contact group should be formed to consider the issue. Kenya, Jordan, Tunisia, Morocco and Iran opposed adopting interim reductions, stating that alternatives are not available for all uses. Brazil, Argentina and Mexico said it would be premature to create a contact group on interim reductions, and the Bahamas proposed deferring consideration of interim reductions. Brazil and others suggested discussing the issue as a "possible scenario" under the replenishment of the Multilateral Fund. Stressing the lack of consensus on establishing interim measures, Colombia and Japan opposed this idea. Chair Kozakiewicz suggested Parties consult informally on this issue. However, interested Parties were unable to reach agreement and discussions were deferred to a later date. No decision was taken.

#### ISSUES RELATED TO THE MULTILATERAL FUND:

**Evaluation and Review of the Financial Mechanism:** Chair Kozakiewicz introduced this item in plenary on Tuesday, 24 November, explaining that ICF Consulting had been selected to evaluate and report on the Montreal Protocol's financial mechanism. Mark Wagner, ICF Consulting, presented an overview of the report (UNEP/OzL.Pro.16/11). He said the report indicated that no fundamental changes to the Fund were required, but made a few recommendations relating to its improvement. Since the US, China and others did not agree with

all the recommendations in the report, informal consultations were conducted. Brazil introduced a draft decision to plenary on Wednesday (UNEP/OzL.Pro.16/CRP.23), which was approved by the high-level segment on Friday evening.

**Final Decision:** The decision requests the Executive Committee of the Multilateral Fund to consider the report of the 2004 evaluation and review of the financial mechanism of the Protocol, with a view to adopting its recommendations, in the process of improving the management of the Fund. The decision also requests the Executive Committee to regularly report back to and seek guidance from the Parties on the subject, to submit a preliminary assessment to OEWG-25, and to include a component in its annual report to the MOP.

#### Terms of Reference for the Study on the 2006–2008

**Replenishment of the Multilateral Fund for the Implementation of the Montreal Protocol:** This issue was introduced by the EC on Tuesday, 23 November, in plenary (UNEP/OzL.Pro.16/CRP.7). Following disagreement over text referring to the costs of the EC's proposed adjustment to the Montreal Protocol on methyl bromide, Chair Kozakiewicz suggested that informal consultations be held. A revised decision was presented by Austria on Wednesday in plenary (UNEP/OzL.Pro/CRP.7/Rev.1).

Also on Tuesday, Mexico, for the Latin America and Caribbean Group (GRULAC), introduced a draft decision urging non-Article 5 Parties to pay their outstanding contributions to the Multilateral Fund (UNEP/OzL.Pro.16/3). The two draft decisions were merged into one, which was adopted in plenary on Friday.

**Final Decision:** The decision requests TEAP to prepare and submit a report to MOP-17 to enable the latter to take a decision on the appropriate level of the 2006-2008 replenishment of the Multilateral Fund. In the decision, the MOP also requests TEAP to give due consideration to the 2004 evaluation and review of the financial mechanism of the Protocol, to consult widely with all relevant persons and institutions, and to complete its work in time to enable its report to be distributed two months before OEWG-25. The decision also notes that some non-Article 5 Parties have never paid their contributions to the Multilateral Fund, or have not done so in full, and urges those Parties to pay their outstanding contributions to the Multilateral Fund as soon as possible.

**Amendment to the Terms of Reference for Nominating and Appointing the Multilateral Fund's Chief Officer:** In a plenary session held on Tuesday, 23 November, Marcia Levaggi, Chair of the Executive Committee, recommended that the UN Secretary-General appoint the chief officer of the Multilateral Fund on the UNEP Executive Director's recommendation, who may in turn consider the Executive Committee's recommendations (UNEP/OzL.Pro.16/14). After discussions on this issue, Chair Kozakiewicz indicated that the MOP would await further communication from the Executive Office of the UN Secretary-General. No decision was taken.

**Equitable Geographical Representation in the Executive Committee of the Multilateral Fund:** A proposal to give a seat in the Executive Committee of the Multilateral Fund to a representative of Eastern Europe and Central Asia was introduced in plenary on Tuesday, 23 November, by the Former Yugoslav Republic of Macedonia, on behalf of this region (UNEP/OzL.Pro.16/3). On Thursday, 25 November, Mexico, on behalf of GRULAC, added a proposal to increase the size of the Committee, which some developed countries opposed. On Friday



morning, delegates were unable to agree to the compromise proposal presented by GRULAC to have a rotating seat, as China maintained that it was necessary to create a new seat. On Friday evening, China said it would be ready to accept GRULAC's proposal if language were added indicating that the creation of a new seat would be discussed at the next MOP.

**Final Decision:** In this decision, the MOP decides to amend the terms of reference of the Executive Committee so that it shall consist of seven representatives from non-Article 5 Parties and seven from Article 5 Parties. The decision further stipulates that the latter seats will be allocated as follows: two seats to the African region; two seats to Asia and the Pacific; two seats to Latin America and the Caribbean; and one seat to Eastern Europe and Central Asia.

**ISSUES RELATED TO RATIFICATION, DATA REPORTING, COMPLIANCE AND INTERNATIONAL AND ILLEGAL TRADE: Status of Ratification of the Convention, the Protocol and its Amendments:** On Tuesday, 23 November, in plenary, Gilbert Bankobeza, Secretariat, reported on the status of ratification (UNEP/OzL.Pro/Rat.83).

**Final Decision:** The decision on ratification urges all States that have not yet done so to ratify, approve or accede to the Vienna Convention and the Montreal Protocol and its amendments.

**Report by the President of the Implementation Committee on Non-Compliance Issues:** Implementation Committee President Hassen Hannachi (Tunisia) presented the report of the 33rd meeting of the Committee (UNEP/OzL.Pro/ImpCom/33/4) on Tuesday in plenary. A number of countries commented on their status as being listed as in non-compliance. Delegates took note of the report.

**Issues arising from the Implementation Committee:** Under this agenda item, delegates considered comments on the competence of the EC to ratify amendments on behalf of its member States, a clarification of Decision XIV/7, and recommendations on non-compliance.

**Comments on the Competence of the EC to Ratify Amendments on Behalf of its Member States (Decision XV/3):** On Wednesday, 24 November, in plenary, the US questioned the competence of the EC to ratify amendments on behalf of its member States. Noting that only some of the EC member States have independently ratified the Beijing Amendment, he indicated that non-Parties to the Protocol are subject to the provisions on control of trade with non-Parties contained in Article 4. Japan, Canada, Argentina, New Zealand and Australia also expressed concerns regarding the trade implications of the status of ratification. The Secretariat indicated that the documentation submitted by the EC was not considered a formal declaration of competence, and the EC agreed.

On Friday evening, the US submitted a unilateral declaration on this issue to the high-level segment. The EC argued that it had submitted the relevant documentation to support their competence in this regard, and indicated that it would endeavor to locate records of this submission to clarify the issue.

**Final Outcome:** The US declaration notes that the EC lacks the competence to ratify amendments on behalf of its member States and declares that those non-Article 5 States that have not individually ratified the Beijing Amendment should be considered "as States not Party to the Protocol." The declaration further notes that the Article 4 provisions on control of trade with non-Parties apply to any State not Party to the Protocol. The

declaration, which is non-binding on Parties, was noted by MOP-16 and was annexed to the final report of the meeting.

**Clarification of Decision XIV/7:** In a plenary session held on Wednesday, 24 November, Chair Kozakiewicz highlighted the need to clarify whether Decision XIV/7 allows the release of illegally-traded ODS on the domestic market within each Party's consumption limit. The Bahamas, Pakistan and Venezuela called for further guidance on the management of seized goods containing ODS. Parties agreed on the need for further guidance, but did not take a decision on this issue.

**Recommendations on Non-Compliance with Protocol Obligations:** On Tuesday, 23 November, Marco González, Executive Secretary, reported to plenary that the significant increase in data reported by Parties had facilitated compliance and the work of the Implementation Committee. Implementation Committee President Hannachi reported on potential cases of non-compliance addressed at its 32nd meeting. He introduced a compilation of draft decisions (UNEP/OzL.Pro.16/CRP.1 and /Add.1) on issues relating to:

- data and information provided by Parties;
- non-compliance with data-reporting requirements by recently ratifying Parties;
- potential non-compliance with consumption of halons by Somalia in 2002 and 2003, and requests for plans of action;
- potential non-compliance with consumption of methyl chloroform by Article 5 Parties in 2003, and requests for plans of action;
- requests for changes in baseline data;
- the establishment of licensing systems; and
- non-compliance with the Montreal Protocol by several Parties.

On Wednesday, 24 November, Nepal stated in plenary that illegally-traded goods containing CFCs that it had seized had not been released onto the domestic market. Delegates agreed to revise the draft decision to indicate Nepal's compliance. The compilation of draft decisions was adopted in plenary on Friday, with amendment to the decision on Nepal's compliance status.

**Final Decisions:** Sixteen decisions were adopted on non-compliance. The decision on data and information provided by the Parties in accordance with Article 7 highlights a failure to report data by: Botswana, Lesotho, Liberia, the Federated States of Micronesia, Nauru, the Russian Federation, Saudi Arabia, Solomon Islands, Turkmenistan and Tuvalu. The decision indicates that this places said Parties in non-compliance, and urges them to report.

The decision on non-compliance with data-reporting requirements for recently ratifying Parties notes the non-compliance of Afghanistan, Cook Islands and Niue, and urges them to work with UNEP and other implementing agencies to report to the Implementation Committee promptly.

Two decisions on potential non-compliance by Article 5 Parties in 2003 request these Parties to explain their excess consumption to the Implementation Committee and provide plans of action with timeframes for a prompt return to compliance.

The three decisions on non-compliance by Chile, Fiji and Libya request these Parties to submit plans of action with timeframes for a prompt return to compliance to the Implementation Committee.

The four decisions on non-compliance by Guinea-Bissau, Lesotho, Saint Vincent and the Grenadines and Pakistan outline these Parties' plan of action to return to compliance, and urge them to work with the relevant implementing agencies to



implement these plans.

The decision on Azerbaijan's non-compliance due to excess consumption of CFCs in 2001-2003 urges Azerbaijan to report 2004 consumption data and introduce a ban on the import of CFCs, in order to support complete phase out by 2005.

The decision on Nepal's compliance notes that Decision XV/39 has been clarified to mean that Nepal would only be considered to be in non-compliance if the amount of CFCs from seized stocks released onto the market in any one year exceeded its permitted consumption level. The decision outlines Nepal's plan of action to manage the release of seized CFCs, and indicates that Nepal commits itself to annual reporting on the quantity of CFCs released.

The decision on Oman's non-compliance notes that it is in non-compliance due to a methyl bromide consumption level in excess of its baseline for 2003, highlights the ban on imports of methyl chloroform introduced by Oman, and indicates that no further action is required.

The decision on requests for change in baseline consumption data accepts the request of Lebanon, the Philippines, Thailand and Yemen, and notes that these changes place the Parties in compliance for 2003.

The decision on the report on the establishment of import and export licensing systems urges the remaining 40 Parties to the Montreal Amendment that have not yet done so to establish systems or to provide information to the Secretariat where they have. It further urges all Parties to establish these systems, ensure their effective implementation and enforcement, and periodically review their status.

**Laboratory and Analytical Uses:** On Wednesday, 24 November, Canada noted in plenary that it should have had more time to confirm that domestic use of bromochloromethane fell under essential-use exemptions for laboratory and analytical uses, before being mentioned in the Implementation Committee's report as being in possible non-compliance. Canada submitted a draft decision on the issue (UNEP/OzL.Pro.16/CRP.17), which was adopted in plenary on Friday without amendment.

**Final Decision:** The decision includes substances listed under Annex C of the Protocol in the global laboratory and analytical use exemptions.

**Monitoring of Trade in ODS and Preventing Illegal Trade:** On Wednesday, 24 November, in plenary, delegates considered information reported by Parties on illegal trade in ODS (UNEP/OzL.Pro.16/7), streamlining information exchange on reducing such trade (UNEP/OzL.Pro.16/8), and a report by UNEP's Department of Technology, Industry and Economics on activities of the regional networks to combat illegal trade (UNEP/OzL.Pro.16/13). Delegates took note of the relevant documents.

**Feasibility Study on the Development of a System for Tracking International Trade:** On Wednesday in plenary, Georgia and Sri Lanka presented draft decisions on, respectively, the cross-checking of exports of controlled substances to prevent illegal trade (UNEP/OzL.Pro.16/CRP.11) and a feasibility study on the development of a system for tracking international trade in ODS (UNEP/OzL.Pro.16/3). Japan agreed to consolidate the decisions into one, taking into account concerns expressed by several Parties. Japan introduced the new draft decision on Thursday in plenary (UNEP/OzL.Pro.16/CRP.24). The US raised concerns regarding the funding implications of the decision. An amended decision (UNEP/OzL.Pro.16/CRP.24/Add.1) was adopted by the high-level segment on Friday.

**Final Decision:** In the decision on illegal traffic, the MOP notes the need for coordinated efforts among Parties to suppress illegal trade in ODS, and requests the Secretariat to seek input from Parties on the development of a system for tracking ODS trade and on improving communication between exporting and importing countries. It further requests the Secretariat to produce draft terms of reference for a feasibility and cost study on the development of a tracking system, and, funds permitting, to convene a workshop of experts to develop a framework for cooperation for consideration at MOP-17.

**Situation of Very Low-Volume Consuming Countries:** On Wednesday in plenary, the Maldives introduced a draft decision on the situation of these countries (UNEP/OzL.Pro.16/3). The US, supported by Japan, noted inconsistencies with the Protocol, but recognized the Maldives' need for assistance. Delegates agreed not to take a decision on this issue at MOP-16.

**MEMBERSHIP OF VARIOUS BODIES IN 2005:** On Friday, 26 November, Parties considered the membership of various bodies, agreeing on the membership of the Implementation Committee, the Executive Committee of the Multilateral Fund, and the Co-Chairs of the Open-ended Working Group.

**Final Decisions:** For the Implementation Committee, MOP-16 confirmed the membership of Australia, Belize, Ethiopia, Jordan and the Russian Federation for one more year, and selected Cameroon, Georgia, Guatemala, Nepal and the Netherlands as members of the Committee for a two-year period beginning 1 January 2005. The Netherlands was selected as President and Jordan as Vice-President and Rapporteur of the Implementation Committee for one year, effective 1 January 2005.

MOP-16 endorsed the selection of Austria, Belgium, Canada, Czech Republic, Japan, the UK and the US as non-Article 5 Party members of the Executive Committee, and of Brazil, Cuba, Niger, Syria, Thailand, Zambia and the former Yugoslav Republic of Macedonia as Article 5 Party members for one year, effective 1 January 2005. Paul Krajnik (Austria) will serve as Executive Committee Chair and Khaled Klaly (Syria) as Vice-Chair for one year beginning 1 January 2005.

Parties adopted a decision endorsing the selection of Tom Land (US) and David Okioga (Kenya) as OEWG Co-Chairs for 2005.

**ADMINISTRATIVE ISSUES: Financial report on the Protocol Trust Fund and Budget:** A sub-committee on financial matters met from Tuesday to Friday, 23-26 November, to discuss a draft budget prepared by the Secretariat (UNEP/OzL.Pro.16/5 and 6), as well as a proposal by Australia and Japan to provide financial support to the MBTOC in 2005 (UNEP/OzL.Pro.16/CRP.8). Discussions focused on the 2004 over-expenditure, the application of the UN scale of assessments and the operating cash reserve of 15%. A draft decision with bracketed text was presented by Canada on Friday during the high-level segment (UNEP/OzL.Pro.16/CRP.25). The EC strongly opposed the proposal by Argentina and others to include language allowing for flexibility in the application of the UN scale of assessments. As no compromise text was agreed upon, the decision was adopted without Argentina's proposal. Argentina and Mexico each made a statement reserving their right to review their contribution and flexibility in the application of the UN scale of assessments. Their statements will be reflected in the report of the MOP.



**Final Decision:** The preamble of the decision notes the over-expenditure in the 2004 budget and that the presence of a surplus and the agreement by MOP-16 to draw down from the fund balance had permitted the Secretariat to present a balanced budget. In the operative text of the decision, MOP-16 approves the revised budget in the amount of US\$5,424,913 for 2004 and the proposed 2005 budget for the Trust Fund in the amount of US\$4,514,917 and notes the proposed budget of US\$4,580,403 for 2006. The decision also urges all Parties to pay their outstanding and future contributions promptly and in full, and encourages parties, non-parties and other stakeholders to contribute financially and support the continued participation of members of the three assessment panels and their subsidiary bodies in the assessment activities.

**Proposal to Set the Dates of Meetings of the Parties Three Years in Advance:** The EC introduced a draft decision on this issue on Wednesday night in plenary (UNEP/OzL.Pro.16/CRP.2). The US, supported by Australia, voiced concern regarding the practicality of the proposal. After informal consultations, a revised version was presented in plenary by the EC on Thursday (UNEP/OzL.Pro.16/CRP.2/Rev.1) and was forwarded to the high-level segment after the US suggested clarifying that the dates cannot be finalized too far ahead of time. The draft decision that was forwarded to the high-level segment requested the Ozone Secretariat and TEAP to post the indicative dates for future meetings on their websites each year. The draft decision also requested TEAP to supply reports approximately seven months before the MOP. Delegates discussed the revised draft (UNEP/OzL.Pro.16/CRP.2/Rev.2) on Friday night but were unable to reach an agreement. It was decided, as suggested by the US, to address this issue at the next meeting of the OEWG.

**Cooperation Between the Protocol Secretariat and Other Conventions and Organizations:** A draft decision on this issue was introduced in plenary on Wednesday, 24 November, by Canada (UNEP/OzL.Pro.16/CRP.4) and was forwarded to the high-level segment after the introduction of amendments to clarify that the Secretariat cannot provide any "legal interpretation" of the Protocol's provisions.

**Final Decision:** The decision welcomes the enhanced cooperation between the Secretariat of the Montreal Protocol and other convention secretariats and international organizations. It requests the Secretariat to enhance this cooperation, to report to the MOP on any meetings that it attends, to monitor developments in other related conventions and organizations, and to reflect on ways of enhancing information flows on matters of common interest.

**DATES AND VENUE OF MOP-17:** During MOP-16's closing plenary on 26 November, Senegal offered to host MOP-17 in 2005 in Dakar. Parties endorsed the offer by acclamation.

**PROPOSED ADJUSTMENTS AND AMENDMENT OF THE MONTREAL PROTOCOL:** On Thursday, 25 November, in plenary, the EC briefed Parties on a side event it had held on a proposal to introduce further interim reduction steps for methyl bromide for Article 5 Parties and expedite the amendment of the Montreal Protocol. Parties agreed to an EC proposal to return to the issue at OEWG-25.

**OTHER MATTERS: Technical and Financial Assistance by the Multilateral Fund to Ensure Compliance After 2010:** On Wednesday, 24 November, France introduced a draft decision in plenary seeking to optimize technical and financial assistance by the Multilateral Fund to ensure compliance with the Protocol

after 2010 (UNEP/OzL.Pro.16/CRP.19). The draft text set out an agreement to consider "how the work of the Multilateral Fund might be handled differently after 2010." Switzerland and the US suggested amendments, but the issue was not resolved. The following day, Parties took up the issue again. Arguing that this was not an urgent matter and noting the heavy workload remaining for MOP-16, GRULAC suggested deferring consideration of the matter to a later MOP. However, Canada and Japan preferred moving forward on this at MOP-16. With Parties unable to agree on the decision, Chair Kozakiewicz said the issue could not be referred to MOP-16's high-level segment, and would instead be taken-up at a subsequent meeting. There was no formal decision taken on this issue.

**Declaration of 2007 as "International Year of Ozone Layer":** On Thursday, 25 November, MOP-16's preparatory segment considered a draft decision from Venezuela seeking to declare 2007 as the International Year of the Ozone Layer (UNEP/OzL.Pro.16/CRP.20/Rev.1). The US suggested a reference to the fact that the ozone layer is expected to recover by 2050 only if there is full compliance with the Protocol. The amended text was approved by the Parties, and adopted during the closing plenary on 26 November.

**Final Decision:** In this decision, MOP-16 recognizes the commitment shown by Parties to the Montreal Protocol in reducing the consumption of ODS since 1986 by 90 percent, notes the "transcendent success" of the Protocol, and declares 2007 to be the International Year of the Ozone Layer.

**Applications of Parties for Reclassification as Operating Under Montreal Protocol Article 5, Paragraph 1:** During the MOP-16 preparatory segment, delegates agreed to forward text on this issue to the high-level segment, including applications from Turkmenistan and Malta for reclassification under the Protocol (UNEP/OzL.Pro.16/12). Delegates adopted a decision on the reclassification of Malta on Friday in plenary. Turkmenistan's request was not approved.

**Final Decision:** The decision approves Malta's request to be removed from Article 5, and notes that Malta shall assume the obligations of a non-Article 5 Party.

**Prague Declaration:** On Friday evening, the Czech Republic introduced draft text for a "Prague Declaration" supporting collaborative efforts with other multilateral chemicals-related agreements (UNEP/OzL.Pro.16/CRP.26). The Czech Republic explained that the text sought to build on discussions about the need for greater cooperation between these multilateral environmental agreements, and that at least 60 Parties had expressed an interest in signing it. Argentina and Mexico expressed concern that they had not had time to consider the text. The US highlighted the Montreal Protocol's tradition of noting declarations that do not have to be adopted by all Parties, but that could be signed by those that agreed with it. Parties agreed to this suggestion, and the Parties took note of the Declaration.

#### **CLOSING PLENARY**

The closing plenary was held on Friday evening, 26 November. Parties examined the report of the meeting (UNEP/OzL.Pro.16/L.1 and L/1.Adds.1-4), and adopted it after making a number of minor amendments and statements of clarification.

MOP-16 President Alan Flores thanked delegates for their hard work, including on the issue of CUNs for methyl bromide. He expressed his gratitude to OEWG Co-Chair Janusz Kozakiewicz for chairing the preparatory segment.



China thanked US negotiator Paul Horwitz for his exemplary work on ozone issues over many years, and wished him every success in his new job as Deputy Executive Secretary of the Montreal Protocol Secretariat. Bolivia thanked Michael Graber, the outgoing Deputy Executive Secretary who is retiring in December, for his many years' service. President Flores then declared MOP-16 closed, shortly before 11:00pm.

## A BRIEF ANALYSIS OF MOP-16

### *CITY OF BRIDGES*

In the arena of multilateral environmental agreements, the Montreal Protocol has traditionally been seen as an exemplary forum where bridges are built, multilateralism thrives and Parties are willing to compromise. With this tradition, the decision to hold the sixteenth meeting of the Parties in Prague, the "City of Bridges," seemed entirely appropriate. Unfortunately, a breakdown in consensus at recent MOPs has shaken these assumptions about the ozone process. Just when it seemed the bridges were nearly complete and final actions to protect the ozone layer were secured, the gulf that the bridges need to span seems to have widened.

Delegates arrived at MOP-16 concerned about a possible continuation of the discord that emerged in 2003 at MOP-15 and resulted in the need for an unprecedented extraordinary MOP in March 2004. On the first day of MOP-16, there was already talk of another extraordinary MOP to resolve the ongoing dispute over critical use exemptions for methyl bromide for 2006. As it turned out, these predictions proved correct.

This analysis will consider the realities behind the MOP-16 negotiations on exemptions from the phase out of ozone depleting substances (ODS), highlight the financial implications of holding extraordinary MOPs, and assess the potential implications of MOP-16 for the continued evolution of the Montreal Protocol.

### ***ARE THE BRIDGES BEING DISMANTLED... OR IS THIS JUST A DELAY IN CONSTRUCTION?***

**Methyl Bromide:** As in Nairobi at MOP-15, the main obstacle to achieving progress in Prague was the issue of exemptions from the phase out of methyl bromide. Although this widely-used pesticide was supposed to be fully phased out in non-Article 5 Parties as of January 2005, the large requests for critical-use exemptions (CUEs) and controversy over the review of these requests have brought methyl bromide to the forefront of the MOP's agenda. It is only to be expected that as full phase out approaches, the marginal costs of eliminating uses increase, resulting in greater resistance from interest groups and contention among Parties.

Methyl bromide is, in many respects, unique in the array of ozone depleting substances (ODS) controlled under the Protocol. Its use in the agricultural sector is subject to uncertainty arising from climatic and pest variability. Thus, unlike most ODS, the technical and economic feasibility of alternatives is situation specific. This was recognized in the drafting of earlier decisions relating to methyl bromide CUEs and, as a result, the CUE process was differentiated from the essential-use process used for granting exemptions for other ODS. The CUE process is slightly more lenient, in that it allows consideration of the circumstances of use and does not require the uses to be necessary for health or safety, or critical for the functioning of society. However,

the result is a somewhat ambiguous process for determining the feasibility of alternatives, further obfuscated by the fact that methyl bromide's efficacy is nearly impossible to replicate with a single alternative.

This lack of clarity has, to some extent, reduced the power of national governments and of the Protocol's bodies to fight powerful agricultural and pesticide lobby groups, enabling certain pesticide and agricultural producers to co-opt the CUE process and push for ongoing use of methyl bromide in their sectors. The consequence is that, in some countries, critical use nominations (CUNs) exceed the penultimate phase-out level – 30% of 1991 levels – resulting in what some have sarcastically called a "phase-in" of methyl bromide. In contrast, the EC has taken a tougher line, supporting the view that approved CUEs should be a step down from the 30% phase-out level. This discrepancy has resulted in a deadlock over the size of methyl bromide CUEs, whether exemptions should extend beyond a single year, and whether approved CUEs over 30% of Parties' 1991 baselines should be met with existing stockpiles of methyl bromide. This latter issue proved to be especially contentious, given that, while some Parties have stockpiles large enough to fill needs for possibly a decade, others have virtually no stocks at all.

This deadlock has implications for the phase out of methyl bromide in Article 5 Parties, as well as for producers of methyl bromide alternatives, innovative growers and other methyl bromide users in non-Article 5 Parties. The producers of alternative pesticides that had based their product development strategies on the assumption that methyl bromide would be phased out by 2005 are now finding that the promised market may be slipping through their fingers. Some feel that users of methyl bromide who have diligently invested in new alternatives are not being rewarded for their efforts. Instead, they are finding that it is the users who have not prepared themselves for the phase out who are benefiting from their intransigence because, by not investing in research, they can more credibly claim that alternatives remain unproven for their particular uses and circumstances. In addition, many Article 5 Parties that have engaged in efforts to reduce methyl bromide use appear to be fearful that non-Article 5 Parties will continue to request and be granted large CUEs, with negative effects on domestic economies largely reliant on the agricultural sector.

Another outcome of the impasse has been a reassessment of the MBTOC's terms of reference and membership. According to observers, at the core of this reassessment sits a feeling on the part of some non-Article 5 Parties that the MBTOC has exceeded its mandate by recommending that Parties phase out their CUEs by, on average, 20% annually – a recommendation some Parties view as political rather than technical. One MBTOC member, while tacitly admitting that these suggested reductions were not technically based, said they represented a gentle way to phase out uses that should have been rejected when first nominated for 2005 exemptions. Regardless, some believe the allegations and the impasse have weakened the bridge between scientific assessments and Parties' political decisions, a connection that has been crucial to the Protocol's success in achieving a significant reduction in ODS.

Some experts worry that there may be far-reaching implications resulting from the fall out over methyl bromide. These consequences could include a possible erosion of the commitment of Article 5 Parties to phase out methyl bromide



and other ODS in light of the poor example set by non-Article 5 Parties. There is also the wider question of whether it is worth letting these exemptions “slip through” to ensure that some Parties do not consider withdrawing from the Protocol altogether.

**Metered Dose Inhalers:** Another crack appeared in the bridge over a heated disagreement between the US and the EC regarding 2006 essential-use exemptions for CFCs for metered-dose inhalers (MDIs) for 2006. The EC proposed a decision that would have disallowed CFCs in salbutamol MDIs in non-Article 5 Parties in 2006, and required a review of 2006 essential-use exemptions for CFC-salbutamol. Supported by a US consortium of patient and medical professional associations and the Industry Pharmaceutical Aerosol Consortium, the EC asserted that there were no medical reasons for the US to justify its reluctance to accept the full transition to non-CFC salbutamol MDIs. One observer suggested that current US stockpiles could meet the demand for CFC-salbutamol MDIs through 2007, without even requiring the 2006 essential-use allowances for production that the US had requested.

The US opposed the EC’s proposal for mandatory phase out of salbutamol MDIs by 2006, arguing that the proposal conflicted with an agreement negotiated at MOP-15. By opposing the EC proposal, the US has sought some flexibility in phasing out CFC-salbutamol, without having a phase out date imposed by the Parties. Observers believe the US opposition reflects its concern for the uninsured subset of its population, which may not be able to afford the higher prices for non-CFC inhalers under the country’s private health care system. This system transfers the costs of technology transitions onto patients – a very different approach to many other industrialized countries, which generally have public health systems.

MOP-16 did manage to patch up the cracks on this issue, reaching a compromise that grants the US the desired flexibility while keeping a review of the 2006 exemptions on the agenda.

**The Eternal Question of Finance:** The difficulties encountered in negotiating CUEs have resulted in added financial pressure on the Trust Fund. The 2004 Extraordinary MOP that drained the Protocol’s Trust Fund has made some Parties wary of supporting other important initiatives put forward at MOP-16, such as those on combating illegal trade, due to the lack of reserves to support such expenditures. In fact, countries’ contributions will need to increase significantly in order to replenish the reserve and provide funds for ongoing activities. While absorbing the costs of one Extraordinary MOP is painful, it is not unbearable. However, if the lack of consensus seen at the past three MOPs continues, the diversion of finances to extra meetings of both the Parties and the subsidiary bodies of the Montreal Protocol may reduce support for other activities necessary to ensure implementation of the Protocol.

**BRIDGE OVER TROUBLED WATERS?**

Despite the apparent disintegration of transatlantic bridges at MOP-16, some positive signs of progress were seen, especially with regard to Article 5 Parties’ success in implementing the Protocol’s provisions. Many Article 5 Parties are ahead of schedule in the phase out of CFCs, with relatively minor cases on non-compliance. However, the reviews of methyl bromide CUNs are likely to continue to represent a significant challenge facing Parties in the coming years.

While some Parties emphasized that CUEs constitute an insignificant volume of ODS when set against the ODS phase

out so far, the political significance of the exemptions and the controversy they have generated have implications beyond their contribution to ozone depletion. The apparent unwillingness of some Parties to negotiate on these exemptions may send a dangerous message to Article 5 Parties. More broadly, this meeting sends cautionary statements to other MEAs. When one of the most successful MEAs encounters such serious problems after so many successful years, other MEAs should take note. At no point can the Parties take it for granted that the carefully-constructed bridges built to deliver final ODS phase out are secure. While negotiation of the Protocol provisions is a difficult process, obstacles in the path of implementation can endanger even the most carefully negotiated agreements. Moreover, in the Montreal Protocol, as in other MEAs, the continued commitment of implementing agencies and technical bodies is immaterial without Parties’ political will to continue to support and implement the process. It remains to be seen whether the ongoing conflict over exemptions represents a short term breakdown, or whether these conflicts are the beginning of a deceleration in the progress of the Montreal Protocol. The high costs associated with implementing final phase out may imply that further complications lie around the corner.

**UPCOMING MEETINGS**

**TENTH CONFERENCE OF THE PARTIES TO THE UNFCCC:** The tenth Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) will take place from 6 -17 December 2004, in Buenos Aires, Argentina, to continue negotiations relating to the Convention and the Kyoto Protocol. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: [secretariat@unfccc.int](mailto:secretariat@unfccc.int); internet: [http://unfccc.int/meetings/cop\\_10/items/2944.php](http://unfccc.int/meetings/cop_10/items/2944.php)

**SPECIALTY CONFERENCE ON THE INDIRECT EFFECTS OF AEROSOLS ON CLIMATE:** This conference will take place from 5-7 January 2005, in Manchester, UK and is being organized by the International Global Atmospheric Chemistry project, the US National Oceanic and Atmospheric Administration (NOAA) and the National Aeronautics and Space Administration (NASA). For more information, contact: Dan Murphy, NOAA; e-mail: [Daniel.M.Murphy@noaa.gov](mailto:Daniel.M.Murphy@noaa.gov); internet: <http://www.al.noaa.gov/igac/>

**TWENTY-FIFTH MEETING OF THE OPEN ENDED WORKING GROUP / EXTRAORDINARY MEETING OF PARTIES TO THE MONTREAL PROTOCOL:** The 25th meeting of the Open-ended Working Group and the second extraordinary meeting of the Parties to the Montreal Protocol are tentatively scheduled to take place during the last week of June or the first week of July in Montreal, Canada. For more information, contact: Ozone Secretariat; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: [ozoneinfo@unep.org](mailto:ozoneinfo@unep.org); internet: <http://www.unep.org/ozone>

**SEVENTEENTH MEETING OF THE PARTIES TO THE MONTREAL PROTOCOL:** MOP-17 is tentatively scheduled to take place in November 2005 in Dakar, Senegal. For more information, contact: Ozone Secretariat; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: [ozoneinfo@unep.org](mailto:ozoneinfo@unep.org); Internet: <http://www.unep.org/ozone>