

Mr Stavros Dimas
Environment Commissioner
European Commission
B-1049 Brussels
Belgium

19 December 2006

Dear Commissioner Dimas,

Re: Methyl Bromide Critical Use Exemptions: Disappointing Results of the Montreal Protocol Meeting of the Parties, November 2006, New Delhi

On behalf of the undersigned environmental non-government organizations, we are writing to express our disappointment and concern that the European Commission agreed to allow very large methyl bromide ‘critical use’ exemptions for 2008 for the United States (US) at the November 2006 Meeting of the Parties to the Montreal Protocol.

The exemptions authorised were 23% higher than the quantity that had been recommended by the Protocol’s technical advisory body. In addition, the Commission failed to insist that the tonnage of new production of methyl bromide in the USA should be reduced substantially to take account of large stockpiles.

This action by the European Commission was disappointing and damaging for a number of reasons:

- On legal grounds, it failed to comply with the Protocol’s Decision IX/6 which lays down the criteria for determining critical use exemptions;
- It contravened the stated public position of the European Commission and the 25 Member States on this topic;
- It set a very damaging precedent by undermining the recommendations made by the Protocol’s technical bodies, encouraging Parties to move away from basing their decisions on technical grounds;
- It undermines the market for alternative products and services;
- It allows unjustified production/consumption of an ozone depleting substance, contributing to the on-going problem of ozone layer depletion.

Our concerns are explained in more detail in the attached Annex.

We would be grateful to receive an explanation as soon as possible providing reasons why the European Commission allowed the USA to receive 23% more methyl bromide than recommended by TEAP/MBTOC, and why it failed to deduct a substantial quantity of stocks when authorising new production.

Methyl bromide is a highly toxic ozone-depleting pesticide. A recent Scientific Assessment of Ozone Depletion – an international consensus report produced for the Montreal Protocol - concluded that methyl bromide has more impact on ozone depletion than previously estimated. Studies found that about 38% of the observed decline in ozone depleting substances in the troposphere from 2000 to 2004 was due to reductions in methyl bromide use¹. Scientists have pointed out that “ozone depletion due to methyl bromide would end almost as rapidly as its use is halted.”² Making further reductions in methyl bromide is therefore our best tool for reducing ozone depletion in the near term, while the ozone layer is in its most vulnerable state.

The outcome of the New Delhi meeting was particularly surprising in the light of the progressive reductions achieved in 'critical use' exemptions in the EU from 2005 to 2007. The EU's exemptions were reduced to 8% of base level in 2006 and about 4% (689 tonnes) for 2007. In fact we wish to strongly commend the European Commission for having achieved substantial and rapid reductions in the EU's 'critical use' exemptions, setting a positive example for other regions to follow. We urge the EU to continue making further reductions for 2007 during the licensing stage, as in previous years, and to phase-out all exemptions as soon as possible.

We acknowledge and very much appreciate the efforts of the European Commission and its Member States in protecting the ozone layer in the past and sincerely hope that the actions of the Commission at the recent meeting are not representative of a shift in policy. We would be grateful to receive a response to the issues outlined in this letter at your earliest convenience and would be happy to discuss our concerns with you as appropriate.

Yours sincerely,

Dr Ezra Clark
Senior Campaigner, Environmental Investigation Agency

On behalf of the following organisations:

- Environmental Investigation Agency
- Friends of the Earth Europe
- Pesticide Action Network Europe

1 Source: Scientific Assessment Panel (2006) Executive Summary WMO/UNEP Scientific Assessment of Ozone Depletion: 2006. WMO and UNEP, August 2006

2 Source: Summary of the science symposium: challenges and perspectives – ozone layer protection, chaired by Prof. Mario Molina, Prague, 19 November 2004. UNEP/OzL.Pro.16/17, p.98-100

Annex

Methyl Bromide Critical Use Exemptions: Unacceptable Results of the Montreal Protocol Meeting of the Parties, November 2006, New Delhi

1. High tonnage allowed for critical uses

You will be aware that, under the Montreal Protocol, methyl bromide was scheduled to be phased out by 2005 in developed countries, with exceptions made for ‘critical uses’ that meet specific criteria in Decision IX/6 of the Protocol.

At the Protocol meeting in New Delhi (November 2006) the public position of the European Union, as in previous years, was for parties to continue making significant reductions in critical uses. The European Commission, speaking on behalf of the European Union and 25 Member States, also noted that developing countries (Article 5 parties) have done a lot of work to eliminate methyl bromide and some have already fully phased it out. The EU stated that “it was important ... for developed country Parties to set an example to Article 5 Parties...”¹

The technical advisory body of the Protocol, the Technology and Economic Assessment Panel (TEAP) and its sub-committee MBTOC, assessed 90 requests for ‘critical use’ exemptions submitted by seven parties. For the USA, TEAP/MBTOC recommended a total of 4,339 tonnes, equivalent to 17% of the USA’s historical base level consumption of 1991. The European Commission stated in plenary, on behalf of the EU and 25 Member States, that the TEAP/MBTOC recommendations were a sound basis for decisions on methyl bromide for 2007 and 2008², and stated that the EU accepted the TEAP/MBTOC recommendations.

The Plenary in New Delhi set up a Contact Group comprised of approximately nine Parties (including the EU and USA) tasked with reaching a consensus, if feasible, on the text of a draft decision that would specify the quantities of methyl bromide authorised for critical uses. The Contact Group met and discussed this issue during the 5-day meeting. TEAP/MBTOC informed the Contact Group participants that there were technical grounds³ for amending 5 of the 90 recommended tonnages for critical uses; these amendments related to Australia, Israel and New Zealand. TEAP/MBTOC did not agree that there were technical grounds for amending the recommendations for the USA.⁴

However, towards the end of the meeting the European Commission and the USA held private bilateral negotiations and agreed to allow the USA 5356 tonnes, which is 21% of the USA’s base level, although there were no technical grounds for allowing a tonnage higher than the amount recommended by TEAP/MBTOC (namely 4339 tonnes⁵, 17% of base level).

The decision reached between the European Commission and the USA contravenes the Protocol’s criteria for allowing Critical Use Exemptions (i.e. Decision IX/6 agreed in 1997) which requires that exemptions should be permitted only if there are no technically and economically feasible alternatives. The TEAP/MBTOC reports demonstrated that technically and economically feasible alternatives exist. The EU’s own published reports⁶ have documented the wide range of alternatives used instead of methyl bromide in EU Member States. Case studies and reports published by UNEP and other bodies have also confirmed that alternatives are used on a commercial scale in many other countries. Many of these alternatives are used and commercially available in the USA.

The decision reached between the Commission and the USA ran counter to the EU’s stated support for TEAP/MBTOC recommendations and the EU’s traditional policy of promoting significant reductions in exemptions.

¹ Source: UNEP 2006. Report of the Eighteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. UNEP/OzL.Pro.18/10. page 13. paragraph 74

² Note: In mentioning 2008, the EU specifically endorsed the TEAP recommendations made for the four countries (including the USA) that requested exemptions for 2008. TEAP recommendations relating to the EU Member States were for 2007 only.

³ The technical grounds comprised data corrections or new information relevant to the criteria of Decision IX/6

⁴ With the possible exception of 18 tonnes for sweet potatoes

⁵ Or an absolute maximum of 4357 tonnes taking account of 18 tonnes related to sweet potatoes

⁶ EU databases on available alternatives submitted to the Ozone Secretariat list dozens of alternatives used in commercial practice. The EU Management Strategy for the Phase-out of the Critical Uses of Methyl Bromide (2006) also confirmed substantial adoption rates feasible for key alternatives.

In fact, six specific US uses of methyl bromide (categories of critical-uses) ended up with larger tonnages authorised for 2008 than for 2007. This contradicted the USA's stated policy of "no growth" in its own exemptions which the EU had used successfully in the past as a means to press for reductions in methyl bromide.

The decision to grant 23% more methyl bromide than recommended by the technical bodies sets a very undesirable and unfortunate precedent because it undermines the work of TEAP, moving the Protocol away from making decisions on a technical basis to making decisions on purely political grounds. This change will make it more difficult to achieve progress in ozone layer protection in future Protocol meetings.

We find the European Commission's action at the Meeting doubly surprising because the European Commission has achieved substantial and rapid reductions in its own 'critical use' exemptions. Methyl bromide has been phased-out by 18 of the 24 Member States that used it. The Montreal Protocol initially authorised EU exemptions amounting to 23% of EU base level; the EU carried out a technical review under its licensing procedure and reduced this to 14% in 2005. The EU reduced its licensed exemptions to about 8% of base level in 2006, and the New Delhi meeting authorised 4% of base level (689 tonnes) for 2007. We wish to strongly commend the EU for the substantial reductions it has achieved from 2005 to date, and the positive example this provides for other regions. We urge the EU to continue making further reductions for 2007 during the licensing stage, as in previous years, and to phase-out all exemptions as soon as possible.

The recent Draft Pesticide Risk Assessment Report on methyl bromide⁷ (for the review of pesticides under the EU Plant Protection Products Directive, 91/414/EEC) concluded that methyl bromide is a mutagen and identified problems in the proposed conditions of use such as bystander exposure exceeding the proposed limit for repeated exposures, consumer intakes being exceeded 7 to 30-fold (measured in terms of Acceptable Daily Intakes (ADI) using two different models of consumption), and Acute Reference Dose (ARfD) being exceeded 14-fold, water contamination leading to fish mortalities, significant data gaps, and other problems. This indicates that methyl bromide should be withdrawn from the EU permitted list of pesticides, in the interests of protecting human health and the environment. We note that such a ban would prevent commodities treated with methyl bromide in non-EU countries from being imported because of planned EU restrictions on residues that have public health implications.⁸ If methyl bromide is indeed banned or further restricted in the EU, as we believe it should be, the substance will also be notified for Prior Informed Consent under the Rotterdam Convention, sending a strong message that this is a 'sunset chemical' to other regions. The scenario of further restrictions on the use of methyl bromide arising from health and environmental concerns provides another reason why it is fundamentally inappropriate to endorse the US's high use of methyl bromide for CUEs.

2. Failure to deduct substantial stocks

The TEAP/MBTOC report of September 2006 noted that the USA had reported methyl bromide stockpiles of 9974 tonnes existing at the end of 2005, amounting to 39% of base level consumption. The TEAP report also provided data on the stocks reported by the EU and other Parties that had exemptions: compared to the USA they held very small stocks, varying from 0 to 117 tonnes, which amounted to 0 - 2% of base level at the end of 2005.

During the New Delhi Meeting the US delegation confirmed that the USA held stocks of about 10,000 tonnes at the beginning of 2006, and claimed that these might perhaps be used up at the rate of approximately 3000 tonnes per year. Based on the USA's figures, several participants calculated that the USA would be expected to have stocks of up to about 5,000 - 6,658 tonnes on 1 January 2008. As required under Decision IX/6, it was therefore necessary for the Meeting to deduct up to 5,000- 6,658 tonnes of stocks when calculating the quantity of new methyl bromide that the USA is permitted to produce in 2008. Since the 'critical use' tonnage recommended by TEAP/MBTOC was smaller than the calculated stocks, the authorised quantity of new methyl bromide production was expected to be small or negligible, so that the USA would be obliged to use up most of its stocks.

Decision IX/6 of the Protocol, which specifies the criteria for granting exemptions for methyl bromide, requires the Parties to take account of stocks before permitting new production of methyl bromide:

⁷ Draft Assessment Report. Public Version. Initial Risk Assessment provided by the rapporteur member state the United Kingdom for the existing active substance Methyl Bromide. Volume 1, May 2006. PRAPER, European Food Safety Agency. <http://www.efsa.europa.eu/en/science/praper.html>

⁸ Regulation (EC) 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC

“Production... if any... of methyl bromide for critical uses should be permitted only if ... methyl bromide is not available in sufficient quantity ... from existing stocks...”.

During the Meeting the European Commission, on behalf of the EU and 25 Member States, stressed concern about the scale of the USA’s stocks relative to its critical-uses and stated that:

“...in line with Decision IX/6, the stocks should be taken fully into account when determining critical-use exemptions”⁹

The EU’s clear position was therefore for stocks to be taken fully into account when making the calculations. The head of the Finnish Presidency’s delegation also expressed concern in similar terms: “It was indeed a very big concern that there were quite substantial amounts of stock existing, which we consider that they should now consume as soon as possible”¹⁰. The EU representatives reiterated in the Contact Group that critical use tonnages should be taken from stocks so that production would be decreased. Even on the last day of the meeting the EU reassured observers that significant reductions in production and stocks would take place.

Under Decision IX/6 the EU was in the advantageous position of having very strong technical justification and legal grounds for deducting substantial stocks, while the US was in a very weak technical/legal position on this topic. It was therefore extremely disappointing to many present on the final day of the meeting that, in contrast to the stated position of the EU, the European Commission agreed to allow no meaningful reductions in US stocks. It was even more alarming to learn that this agreement had been reached in private negotiations between the European Commission and the USA.

Moreover, the decision permitted new production/imports of methyl bromide at 18% of base level, which is an even higher tonnage than the quantity that TEAP had recommended for CUEs before taking any account of available stocks.

It is extremely worrying that we now have a situation where the US will be able to produce up to 4595 tonnes of new methyl bromide for ‘critical uses’, representing 18% of base level, in addition to existing stocks. This means the US is expected to have available a national supply of up to 9,595 - 11,253¹¹ tonnes comprising stocks + new methyl bromide in 2008, despite that fact that TEAP/MBTOC identified a ‘need’ for only about 4339 tonnes.

We wish to point out that TEAP has reported on a number of occasions that the availability of significant supplies of ozone-depleting substances on the market deters the adoption of available alternatives. The excessive supplies of methyl bromide in the USA will seriously undermine the market for alternative products and services. This will favour economically the producers of ozone-depleting substances at the expense of companies that have acted responsibly by developing alternatives.

⁹ Source: UNEP 2006. Report of the Eighteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. UNEP/OzL.Pro.18/10. page 13. paragraph 74

¹⁰ Quoted in Associated Press article ‘US OK’d for ozone-destroying pesticide’ by Rita Beamish, November 3, 2006

¹¹ In addition to this tonnage, the US is allowed to produce large amounts for QPS, exports to developing countries, and uses that are not controlled by the Montreal Protocol.