

**INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL  
ANTI-FOULING SYSTEMS ON SHIPS  
DONE AT LONDON ON 18 OCTOBER 2001**

**Documents tabled on 4 March 2003:**

**National Interest Analysis**

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## **NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY SUMMARY PAGE**

### **International Convention on the Control of Harmful Anti-fouling Systems on Ships done at London on 18 October 2001**

#### **Date of Proposed Treaty Action**

1. 4 March 2003

#### **Nature and Timing of Proposed Treaty Action**

2. Australia signed the Convention on 19 August 2002. The Government proposes to ratify the Convention in accordance with Article 17 of the Convention.
3. The Convention will enter into force internationally 12 months after the date on which not less than 25 States representing 25 per cent of the world's merchant shipping tonnage have become Parties to the Convention. As at 31 December 2002 no country has ratified the Convention, although several have signed subject to ratification and others have advised that they are actively considering the Convention. It is expected that Australia will ratify the Convention before it enters into force internationally in 2004/2005.
4. The exact date of treaty action is the date on which Australia ratifies the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the Convention). Ratification is dependent on domestic legislation being passed by both Houses of Parliament. The Protection of the Sea (Harmful Anti-fouling Systems) Bill 2003 is expected to be introduced into Parliament in the Spring 2003 sittings.

#### **Overview and National Interest Summary**

5. The purpose of the Convention is to ban the use of organotin compounds which act as biocides in anti-fouling paints on ships, specifically tributyl tin (TBT) based anti-fouling paints. TBT acts as a biocide preventing the growth of algae, barnacles and other marine organisms on the ships' hull. This enables the ship to travel faster through the water and consume less fuel. For the last 20 years scientific investigations have shown that TBT-based paints pose a substantial risk of toxicity and other chronic impacts at both the species, habitat and ecosystem level. Effects of TBT-based paints have been reported on such ecologically and economically important marine organisms as oysters and molluscs as well as contaminating sediments in many port areas around the world. TBT is also highly toxic to a range of marine reef biota.
6. There are also concerns about the impact of TBT on human health, especially people who consume large quantities of seafood in their diet. A study recently completed in the United States showed that prolonged exposure to TBT can cause chronic disease in humans.
7. Without international action, there would be insufficient impetus for the shipping and marine coatings industries to restrict the use of harmful anti-fouling systems and develop replacement systems. The collective efforts of government and industry, working through the auspices of the IMO, have addressed this environmental concern. Cabinet agreed to the banning of organotin based antifouling paints through *Australia's Oceans Policy* in 1998.

## **Reasons for Australia to Take the Proposed Treaty Action**

8. Australia has played an active role in developing the Convention and internationally, has been a strong supporter of its early entry into force. Additionally, this action is in accordance with Australia's general obligations as a signatory to the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS), which provides for nations to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS).

9. Implementation of the Convention is in accordance with *Australia's Oceans Policy*, which commits Australia to banning the application of TBT-based paints to vessels being repainted in Australian docks from 1 January 2006, unless the IMO introduces an earlier date, in which case Australia would comply, noting Defence operational requirements. In addition, Cabinet specifically agreed to the phased withdrawal of the use of toxic organotin anti-fouling paint.

10. If Australia does not become a party to the Convention, the level of environmental protection in Australia will be lower than internationally adopted standards. Also, Australian ships trading to overseas ports would incur additional costs as a result of the need to have proper survey documentation confirming compliance with the Convention. Such documentation can only be issued by Administrations that have adopted the Convention.

11. Australia has demonstrated leadership in many areas of marine environment protection, as successive governments have recognised the importance of embracing internationally consistent measures in the maritime industry. Due to Australia's reliance on the international maritime industry to underpin our international trade, support and adoption of the Convention is essential to provide for adequate protection of Australia's marine environment.

12. By becoming a party to the Convention, Australia will be able to enforce the full range of controls on TBT-based anti-fouling paints on foreign and Australian flagged vessels.

13. Implementation of the Convention will establish a national approach to TBT-based paints by complementing current State and Territory regulations and policies, which already ban the use of TBT-based anti-fouling paints on vessels of less than 25 metres in length.

## **Obligations**

14. The Convention applies to all Australian and foreign ships as defined in Articles 2(9) and 3 of the Convention. This includes fixed or floating platforms, floating storage units (FSUs), and floating production storage and offtake units (FPSOs) used by the oil production industry. The Convention does not apply to warships, naval auxiliary or other ships used only on government non-commercial service (Article 3, paragraph 2).

15. Article 4 sets out the controls on the use of anti-fouling systems listed in Annex 1. Annex 1 states that by an effective date of 1 January 2003, all ships shall not apply or re-apply organotin compounds that act as biocides in anti-fouling systems, namely TBT-based anti-fouling paints. By 1 January 2008 (effective date), ships either:

- shall not bear such compounds on their hulls or external parts or surfaces; or
- shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems.

Waste material from the application or removal of TBT-based paints will be controlled in a safe and environmentally sound manner (Article 5). The Australian Paint Manufacturers' Federation

(APMF) will set up a web page outlining acceptable ways for disposal of surplus stocks of TBT-based paints.

16. Survey and certification of vessels will be required under the Convention (Article 10). The Australian Maritime Safety Authority (AMSA) and/or an authorised organisation will undertake this role as part of its flag State control function for Australian ships. Ships of 400 gross tonnage and above engaged in international voyages shall be subject to an initial survey before the ship is put into service and a survey when the anti-fouling systems are changed or replaced. This excludes fixed or floating platforms, FSUs, and FPSOs. Ships of 24 metres or more in length, but less than 400 gross tonnage engaged in international voyages are required to carry a declaration of anti-fouling system signed by the owner or owner's authorised agent.

17. Article 7 provides for the establishment of a technical group within the Marine Environment Protection Committee of the IMO to review proposals for amendments to controls on anti-fouling systems, specifically the addition of new anti-fouling systems. As and when required, appropriate Australian representatives will participate in the deliberations of the technical group.

18. The Convention provides for appropriate measures to promote and facilitate scientific and technical research on the effects of anti-fouling substances (Article 8), and provides for communication and exchange of information between parties to the Convention and the IMO (Article 9). Where permitted within relevant legislative confidentiality provisions, Commonwealth agencies will participate in the exchange of information between Parties to the Convention and the IMO.

19. The Convention provides for inspection of ships and detention for violations (Article 11). This will be undertaken by AMSA as part of their port and flag State control functions. Each Party to the Convention must also prohibit and enforce violations of the Convention under its domestic law (Article 12). Compensation may be provided for any loss or damage suffered if a ship is unduly detained or delayed while undergoing inspection for possible violations of the Convention (Article 13).

## **Implementation**

20. The Convention will be implemented through the *Commonwealth Protection of the Sea (Harmful Anti-fouling Systems) Act*. The legislation will apply to all jurisdictions, with suitable roll-back and savings provisions to preserve any existing or future State/NT legislation.

21. AMSA will make appropriate subordinate legislation such as Marine Orders and will also develop Instructions to Surveyors and/or Class Societies, as necessary based on guidelines being developed by IMO.

22. Through a separate process, the Department of Agriculture, Fisheries and Forestry is working to facilitate the deregistration of the use of TBT-based anti-fouling paints for painting, re-painting or repairing any ship in Australian waters, ports or shipyards and associated infrastructure, whilst preserving the integrity of the National Registration Scheme.

## **Costs**

23. The financial impact of compliance with the Convention is low. Alternative non-TBT-based anti-fouling paints are already available domestically and overseas. Also, as this requirement is based on an international convention, any additional costs to industry would be incurred for international trading vessels whether or not Australia adopts the new Convention.

24. Costs of enforcement of the Convention will be low as established inspection and certification procedures applied to other IMO environmental conventions are already in place. This primarily involves a system of port and flag State control functions undertaken by AMSA.

## **Consultation**

25. Consultation with State/NT transport agencies has been undertaken through the Australian Transport Council (ATC) and subordinate committees, which recommended that Australia ratify the Convention at its meeting on 8 November 2002.

26. Australian and foreign shipping represented by the Australian Shipowners Association and Shipping Australia Limited, respectively, have been consulted at all stages in the development of the Convention and provided input and briefing on a number of issues for the IMO Marine Environment Protection Committee meetings. Additionally, the international shipping industry has consultative status at IMO and participates actively in deliberations.

27. Consultation was also undertaken with relevant Commonwealth agencies, Premiers/Chief Ministers Departments in all States/NT, CSIRO, Association of Australian Ports and Marine Authorities, Australian Paint Manufacturers' Federation, World Wide Fund for Nature and the Australian Marine Conservation Society.

28. In regard to paint manufacturers, the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) has developed and circulated an information document outlining efficacy requirements for registration of anti-fouling paints, and conducted a seminar for registrants of anti-fouling paints at which the implications of the Convention and NRA risk-based registration requirements were fully described and discussed.

## **Regulation Impact Statement**

29. A Regulation Impact Statement is attached.

## **Future Treaty Action**

30. Article 16 outlines how amendments to the Convention can be made. Any Party can propose an amendment to an article or annex to the Convention. A proposed amendment to Annex 1 shall be subject to technical review before proceeding through the normal amendment process. Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Marine Environment Protection Committee of the IMO, on condition that at least one-third of the Parties are present at the time of voting.

31. Any adopted amendment is subject to a further acceptance procedure. An amendment will be accepted after two-thirds of the Parties have deposited a notification of acceptance (positive acceptance), or after the lapse of a specified period of time, as long as there have not been objections from more than one-third of the Parties (tacit acceptance). The amendment will enter into force, for those Parties accepting the amendment, six months after it has received positive or tacit acceptance.

32. All amendments would be subject to the Australian treaty process.

33. Any notification or declarations under Article 16 shall be made in writing to the Secretary-General of the IMO.

### **Withdrawal or Denunciation**

34. Article 19 provides that Australia may denounce the Convention by written notification to the Secretary-General of the IMO at any time after two years from the date on which the Convention enters into force for that Party. Denunciation would take effect one year after receipt or longer if specified in the notification.

35. Denunciation would be subject to the Australian treaty process.

### **Contact details**

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