

National Interest Analysis [2011] ATNIA 34

with attachment on consultation

**Amendments to MARPOL Annex VI on Regulations for the Prevention of Air Pollution
from Ships by Inclusion of New Regulations on Energy Efficiency for Ships**

**Resolution MEPC.203(62)
adopted at London on 15 July 2011**

[2011] ATNIF 25

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Amendments to MARPOL Annex VI on Regulations for the Prevention of Air Pollution from Ships by Inclusion of New Regulations on Energy Efficiency for Ships

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Nature and timing of proposed treaty action

1. The *International Convention for the Prevention of Pollution from Ships* (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution. MARPOL is administered by the International Maritime Organization (IMO).

2. The proposed treaty action is tacit acceptance of amendments to Annex VI of MARPOL ([2007] ATS 37), adopted by the IMO Marine Environment Protection Committee (MEPC) under cover of resolution MEPC.203(62) on 15 July 2011 (“the proposed amendments”). Annex VI contains regulations for the prevention of air pollution from ships. The purpose of the proposed amendments is to combat climate change by introducing mandatory carbon dioxide (CO₂) emissions standards for ships in order to reduce greenhouse gas (GHG) emissions from the international shipping sector.

3. In accordance with the amendment procedure set out in MARPOL, the proposed amendments shall be deemed to have been accepted on 1 July 2012 unless, prior to that date, not less than one-third of the Parties or Parties the combined fleets of which constitute not less than 50 per cent of the gross tonnage of the world’s merchant fleet, communicate to the IMO their objection to the proposed amendments (“tacit acceptance”). Upon acceptance, the proposed amendments will enter into force on 1 January 2013.

Overview and national interest summary

4. The international community has responded to the global challenge of climate change by setting the goal of limiting global average temperature rise to a maximum of 2 degrees Celsius above pre-industrial levels. This goal, agreed under the *UN Framework Convention on Climate Change* (UNFCCC, [1994] ATS 2), is broadly consistent with the Australian Government’s objective to stabilise atmospheric greenhouse gas concentrations at 450 parts per million CO₂-equivalent or lower. To achieve this goal, every industry sector, including international shipping, must play its part.

5. The proposed amendments introduce mandatory CO₂ emissions standards, termed a “required Energy Efficiency Design Index (EEDI)”, for ships that are new as well as certain ships that have undergone a major conversion, built after 1 January 2013 for international trade. All existing international ships of 400 Gross Tonnage (GT) and above would also require a Ship Energy Efficiency Management Plan (SEEMP). The proposed amendments also include consequential changes in Chapters 1 and 2 of Annex VI to MARPOL to clarify aspects of application of the regulations, and survey and certification requirements of ships engaged in international trade.

6. The proposed amendments represent the first mandatory GHG emission reduction measures for an international industry sector and help to close a gap in the existing international climate change framework, which currently excludes the shipping sector from emissions reduction targets. Adoption of the proposed amendments is expected to drive the uptake of energy-efficient technologies by the international shipping sector.

7. Assuming the proposed amendments enter into force on 1 January 2013, adoption of the measures by the international shipping sector is expected to remove between 45 and 50 million tonnes of CO₂ from the atmosphere annually by 2020, compared with business as usual (depending on the growth in world trade). For 2030, the reduction is expected to be between 180 and 240 million tonnes annually. Australia's adoption of the proposed amendments would assist in ensuring their broad international acceptance and demonstrate our support for global efforts to reduce emissions from the transport sector.

8. The proposed amendments would incur minimal costs for Australia, for the reasons set out at paragraph 25.

Reasons for Australia to take the proposed treaty action

9. It is important for every sector, including international shipping, to play a part in reducing GHG emissions to achieve the global temperature goal. International shipping accounted for approximately 870 million tonnes or 2.7 per cent of the global emissions in 2007 and worldwide seaborne trade has been increasing by approximately 4 percent a year for many years. The second IMO Greenhouse Gas Study (2009) projects that GHG emissions from shipping would increase by between 150 – 250 percent by 2050 in the absence of policies to reduce emissions.

10. International shipping emissions are not covered by the mandatory emission reduction obligations under the UNFCCC regime. The Kyoto Protocol to the UNFCCC (the Kyoto Protocol, [2008] ATS 2) expressly omits the international shipping sector from Developed Country Parties’ national emission reduction targets. Instead, the Parties to the Kyoto Protocol agreed to pursue limitation or reduction of emissions from international shipping through the IMO.

11. Australia has worked actively within the IMO to seek practical, non-discriminatory, non-trade distorting solutions to reducing GHG emissions from international shipping. In conjunction with eight other Parties to MARPOL, Australia sponsored the proposed amendments to Annex VI of MARPOL. Various studies suggest that ships can reduce their CO₂ emissions by as much as 25 percent by adopting better hull designs, energy efficient technologies and energy efficient operations. The proposed amendments seek to influence expeditious uptake of these

technologies by setting mandatory emissions standards for new ships that will be built in the future for international trade. The measures do not discriminate between countries. They apply to ships entitled to fly the flag of a Party to MARPOL, and ships not entitled to fly the flag of a Party but which operate under the authority of a Party.

12. It is likely that international ships would be slow in adopting available energy efficient technologies in the absence of such international regulations. Given the urgency with which climate change needs to be addressed, the proposed amendments would drive early adoption of energy efficient technologies by international shipping, and thereby contribute to global action to reduce GHG emissions.

13. Australia has demonstrated leadership in many areas of marine environment protection, and successive governments have recognised the importance of embracing internationally consistent measures and standards for the maritime industry. Australia's focus on marine environment protection is, in part, due to its heavy reliance on the international maritime industry to underpin its international trade. This measure adds a new dimension by setting mandatory standards for international shipping to minimise GHG emissions.

14. By implementing the proposed amendments, Australia would be provided with a basis for requiring Australian ships to meet the EEDI and SEEMP specifications contained in the amended Annex VI, which are set out in paragraph 2 above. If the proposed amendments to Annex VI to MARPOL are not implemented in Australia, there is a material risk that Australian international ships built after 1 January 2013 would be less energy efficient than foreign-flagged ships that adhere to the new IMO regulations and that these Australian ships would be unable to trade internationally if the proposed amendments were implemented by other nations.

Obligations

15. The proposed treaty action would mandate the EEDI and SEEMP requirements set out in paragraph 5 above at international law.

Energy Efficiency Design Index

16. The EEDI is a non-prescriptive, performance-based mechanism that sets the emission target for each new ship. The choice of technologies to use in a specific ship design to meet the emission target is left with the industry.

17. Regulation 19 provides that the regulations on energy efficiency for ships would apply to all ships of 400 GT and above excluding the ships solely engaged in voyages within waters subject to the jurisdiction of the flag state. Regulations 20 and 21 provide that the EEDI requirements would apply only to new ships and ships that have undergone a major conversion (Applicable Ships).

18. Regulation 20 provides that an "attained EEDI" shall be calculated for each Applicable Ship in accordance with IMO guidelines. The attained EEDI is specific to each ship and indicates the estimated energy efficiency performance of that ship. Regulation 21 provides that the attained EEDI shall be no greater than the "required EEDI", calculated in accordance with that Regulation.

The required EEDI represents the energy efficiency target each class of Applicable Ship is required to meet. The EEDI requirement would apply to new bulk carriers, gas carriers, tankers, container ships, general cargo vessels, refrigerated ships and combination carriers. Other ship types, such as passenger vessels and vehicle carriers, are not included as further analysis of data on these vessels is currently underway. The required EEDI would be reduced over three phases - 2015, 2020 and 2025 – with the amount of reduction varying according to ship type.

Ship Energy Efficiency Management Plan

19. The SEEMP establishes a mechanism that requires operators to improve the energy efficiency of ships during operations. Regulation 22 provides that each international ship, new and existing, of 400 GT and above, would be required to keep on board a Ship Energy Efficiency Plan, developed in accordance with IMO guidelines.

Survey and Certification

20. Regulation 5(4) provides that each Applicable Ship of any of the prescribed type built for international trade will need to be surveyed by the Administration of the flag State or a recognised organisation delegated by the Administration to determine that the attained EEDI is in accordance with Regulation 21.

21. Regulation 6 provides that the Administration will issue an “International Energy Efficiency Certificate” following successful completion of this survey. An International Energy Efficiency Certificate must be issued to an Applicable Ship before that ship can undertake international voyages to ports or offshore terminals under the jurisdiction of other Parties.

Implementation

22. Amendments to the *Navigation Act 1912* (Cth) (the Navigation Act), the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the Protection of the Sea Act) and Marine Orders Part 97 would be required to implement the proposed treaty action.

23. As the Navigation Act gives effect to ship survey and construction requirements of MARPOL, for consistency it is envisaged that the new EEDI regulations would be included in that Act. The new SEEMP regulation is an operational requirement and would be achieved by amending the Protection of the Sea Act. Marine Orders Part 97 would be amended to prescribe matters and technical requirements for the purposes of the new regulations.

24. Administration and enforcement would be by way of established procedures applied to other Annexes of MARPOL, primarily through port State control inspections. The Australian Maritime Safety Authority (AMSA) intends to enforce the new measure through its usual processes of port and flag state control. AMSA will also carry out investigations and prosecutions of alleged breaches where it has jurisdiction.

Costs

25. The proposed amendments would incur little or no cost on Australia as the EEDI regulations would only apply to prescribed ships that will be built after 1 January 2013 for international trade. These regulations would not apply to Australian ships that are currently in operation. Existing Australian international ships that are over 400 GT would be required to carry on board a SEEMP, an operational document, which can be achieved at a negligible cost.

Regulation Impact Statement

26. The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required.

Future treaty action

27. Future amendments to Annex VI or other Annexes to MARPOL will be in accordance with the amendment procedures set out in MARPOL. All amendments would also be subject to the Australian domestic treaty process.

Withdrawal or denunciation

28. Annex VI was added by the 1997 Protocol to MARPOL ([2007] ATS 37) and contains its own procedures and conditions for denunciation.

29. Article 7 of the 1997 Protocol provides that the 1997 Protocol (including Annex VI) may be denounced by any Party at any time after the expiry of five years from the date on which the Protocol enters into force for that Party.

30. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the IMO.

31. The denunciation would take effect 12 months after receipt of the notification of denunciation by the Secretary-General on or after the expiry of any other longer period which may be indicated in the notification.

32. Any decision to denounce would be subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

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ATTACHMENT ON CONSULTATION

Amendments to MARPOL Annex VI on Regulations for the Prevention of Air Pollution from Ships by Inclusion of New Regulations on Energy Efficiency for Ships

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CONSULTATION

33. The Australian Shipowners Association (ASA), which represents the Australian shipping industry, and Shipping Australia Ltd (SAL), representing foreign shipping lines, were consulted in June 2011, prior to the IMO Marine Environment Protection Committee's 62nd meeting in July 2011 (MEPC62). Both organizations indicated support for the proposed EEDI regulations that were subsequently adopted by MEPC62 as amendments to Annex VI to MARPOL. ASA and SAL were advised of the adoption of the proposed amendments following MEPC62. No comments were received.

34. In addition, a standing agenda item on environment issues is provided at the meetings of the Australian Maritime Safety Authority (AMSA) Advisory Committee, which are held regularly. AMSA provides a detailed paper to update the Committee on current issues associated with AMSA's environmental activities, including those that might impact on the maritime industry and the role of AMSA. Membership of the AMSA Advisory Committee includes senior representatives from many of AMSA's key stakeholders, including SAL, the National Offshore Petroleum Safety Authority, Ports Australia, ASA, Australian Antarctic Division and the Australian Maritime College.

35. State and Territory governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) and the Australian Maritime Group (AMG). Information on the proposed amendments was provided to State and Territory representatives for consideration at the SCOT meeting in September 2010. SCOT has not requested further information or provided any comments on the proposed amendments. In addition, Each meeting of the Australian Maritime Group (AMG) includes a standing agenda item on marine environment issues. In this forum, States and the Northern Territory are provided with a summary of amendments to relevant conventions and key issues relating to protection of the marine environment scheduled for formal adoption and/or discussion at IMO meetings. Via the AMSA web site, AMSA provides AMG members with access to IMO Committee and Sub-Committee documentation, including agendas and submitted papers. Members are invited to provide comment on these papers to the relevant Commonwealth contact as appropriate. No comments were received on the proposed amendments.