

Submission to the Productivity Commission Inquiry into the Implementation of Ecologically Sustainable Development by Commonwealth Departments and Agencies

Introduction

1. In its Issues Paper on the Implementation of Ecologically Sustainable Development by Commonwealth Departments and Agencies (September 1998), the Productivity Commission notes that the Department of Foreign Affairs and Trade is one of a number of Commonwealth departments and agencies with environmental and sustainable development responsibilities, notably in the areas of pursuing Australia's interests and policies on global environmental issues.
2. Australia's Foreign and Trade Policy White Paper In the National Interest (August 1997) outlines the policy framework within which DFAT pursues Australia's foreign and trade interests. As the White Paper makes clear, the Government will work for an outcome which makes trade and environment policies mutually supporting (para. 115) as a key approach to ensuring that Australian and international policies contribute to the objectives of sustainable development.
3. The Department of Foreign Affairs and Trade has responsibility for coordinating and integrating Australia's position in international environment negotiations. The Department has lead responsibility in a number of international environment treaty negotiations in reflection of this role. The Department also has specific portfolio responsibilities to promote and safeguard Australia's economic and trade competitiveness interests and has the lead role in international trade negotiations. In recognition of the increased profile and importance of the international environment agenda, the Australian Government has specifically appointed an Ambassador for the Environment to represent Australian interests internationally.
4. The 1992 Rio Earth Summit was the turning point in the international environment agenda. At Rio, the nexus between environmental goals and sustainable economic growth was made explicit. Rio not only provided the blue-print for international environmental action, it set the stage for the international environment agenda stimulating a whole range of international environment negotiations on new environment treaties.
5. The international negotiation of Multilateral Environment Agreements (MEA) has been stepped up since Rio. Negotiations completed or which are still in progress include the UN Framework Convention on Climate Change and the Kyoto Protocol to that Convention, the Convention on Biological Diversity and the Biosafety Protocol, Prior Informed Consent (PIC) Convention governing trade in hazardous chemicals, Persistent Organic Pollutants Convention, amendments to the Montreal Protocol on ozone depleting substances, and the Basel Convention on transboundary movement of hazardous wastes. These MEAs address global environmental issues resulting from actions with emissions with transboundary impacts or from the direct impact of international trade in goods. The overall environmental goals of these treaties reflect the view and will of the international community and, in many cases, the adoption of the precautionary principle has been an important consideration. Impacts on individual countries as a result of actions taken under these treaties, however, have the potential to vary significantly from country to country, and could arise because of the international regulation of trade directly or because of the substantial economic and trade impacts of mitigation action. The White Paper observes that, in international environment negotiations which contribute to sustainable development, Australia must be active in protecting its fundamental national interests (para. 114), just as other countries and groups of countries are likewise active in promoting their national interests in these negotiations. Consequently, Australia has been active in arguing that MEAs result in the equitable treatment of all parties.
6. The international community's increasing acceptance of the notion of sustainable development was also part of the international context to the Uruguay Round negotiations. The objectives of the World Trade Organization (WTO), as set in the preamble to the Marrakesh agreement establishing the WTO, are largely based on those of the GATT (1948). But, significantly, these have been modified to make direct reference to the objective of sustainable development and the need to protect and preserve the environment. In line with the recognition of the objective of promoting sustainable development, the Marrakesh Ministerial Meeting which concluded the Uruguay Round agreed that the WTO should initiate a work program on trade and environment issues. Key issues covered in the work program include the relationship between WTO rules and the use of trade measures for environmental purposes, including measures taken pursuant to MEAs; the effects of environmental measures on market access and international trade; and the environmental benefits of removing trade restrictions and distortions. The work program is being conducted by a Committee on Trade and Environment (CTE). The focus of the Committee's work has been analysis of the issues on its work program. However, it has also organised annual information sessions with the Secretariats of a broad range of MEAs

aimed at improving policy coordination at the national and international levels. In addition, the WTO Secretariat has organised several symposiums on trade, environment and sustainable development, which have brought together WTO members, industry, environment and development NGOs to discuss the issues on the CTE's program.

Institutional structure for community consultations

7. Flowing from the application of the principles of ESD, DFAT developed an extensive institutional structure designed to facilitate widespread community consultation on trade and environment issues and to provide input into the development of Australia's position for international negotiations. The Department consults widely with other Commonwealth Departments and Agencies, with States and Territories, and with community stakeholders in industry and non-government organisations (NGOs). Notably, the International Environment Issues Advisory Group (IEIAG) serves as the peak consultative body to allow the examination of the international environment policy agenda. The meetings provide a structure for NGOs to formally communicate their views to the Federal Government. It is chaired jointly by the Minister for Foreign Affairs and the Minister for the Environment and Heritage. It has a focused membership (including a NGO for scientists) that retains a cross-section of representation from business and industry associations, environmental, consumer, professional and development groups. This diversity of membership is in line with the ESD approach recommended at Rio. The Group meets twice-yearly to discuss developments in international environmental negotiations. It also covers some trade and environment issues that arise within international economic organisations such as the OECD and World Trade Organization.

8. In addition to IEIAG, a Trade and Environment Working Group brings together Commonwealth officials and non-government organisations to facilitate both information exchange and NGO input into policy formulation. It is chaired by a senior official from the Department of Foreign Affairs and Trade, who has overall responsibility for trade and environment issues within that department. This Group meets once or twice yearly, and provides a forum for a discussion of specialised trade and environment issues, for the exchange of information, and a means for groups outside of government to have an input into policy formulation. These formal consultations are complemented by a range of informal sub-committees for industry, non-government organisations and states and territories which are convened by the Department to consult on specific environmental issues under negotiation on a regular basis.

9. Development of Australian positions for participation in international forums such as the WTO Committee on Trade and Environment, the OECD Joint Session and the Commission on Sustainable Development, has involved widespread consultation among Commonwealth departments lead by DFAT and the Department of Environment and Heritage. When examining MEAs that are under negotiation, as well as looking at the international and domestic environmental aspects, the impacts of the options being considered on the trade competitiveness of Australian industry and the international trading environment overall are assessed. Coordination within DFAT and with other Commonwealth Government agencies, including the Department of the Environment and Heritage and industry departments, ensures that economic and trade as well as environmental aspects of MEA negotiations are assessed at an early stage and fully taken into account in the development of Australian positions.

10. There are extensive consultations held in relation to particular international environment treaty negotiations and on trade and economic issues where trade, economic and environment aspects overlap. These take different forms, including standing consultative bodies, one-off meetings and other forms of communication. These involve community NGOs, business, State Governments and others. A number of Commonwealth Government/State and Territory government coordination bodies are given debriefs and the chance to comment on key international environmental and trade and environment related developments as well.

11. For example, the development of Australian policy for the negotiations for a PIC Convention was assisted by regular consultations with NGOs through formal debriefing sessions, circulation of papers for comment, and invitations for NGOs to join Australian delegations in international fora (attendance is at the NGO's expense and they are formally bound to the agreed Australian position). Consultation has also been an integral aspect of Australia's implementation of its obligations under the existing voluntary PIC procedure. For example, in order to prepare the required inventory of banned or severely restricted chemicals, extensive consultations were conducted with State and Territory Governments. The resulting advice has been circulated to relevant Commonwealth departments for comment and industry has also been invited to comment. The final results will be publicized widely so that stakeholders will be made aware of any obligations that arise.

12. In recognition of the significant economic and environmental implications that the Kyoto Protocol to the Framework Convention on Climate Change was likely to have for Australia, the Federal Government released an Issues Paper prepared by officials in the lead up to the Conference in Kyoto. The Issues Paper was used as a means of informing States and Territories, industry and the broader community about the potential impact of

the agreement. For example, the paper made clear that, while the international community would weigh up the global costs and benefits of mitigation (and therefore the environmental benefit) in deciding upon the collective mitigation effort, the effects of various proposals on the Australian economy could lead to an inequitable distribution of economic impacts. The Issues Paper reviewed a number of economic modelling studies on the effects on the Australian economy of proposals being considered under the negotiations for the Kyoto Protocol, with the broad economic impacts ranging from 1-3% of Australia's GDP. The studies reviewed included work conducted by the Industry Commission, ABARE and private consultants (DRI/McGraw Hill and McKibbin and Pearce). The Issues Paper set out Australian Government positions taken in the negotiations and sought feedback to inform the Government's consideration of these matters in advance of the Kyoto Conference. The Issues Paper was the subject of consultations in capital cities around Australia with State and Territory Governments, non-government organisations, industry and other stakeholders. This demonstrated the Government's concern to more effectively integrate economic aspects of this policy and the environmental objectives, reflecting the essence of the ESD approach.

13. DFAT has an overview page on the international environment and a more specialised page on trade and environment on its website to enhance public access to information. The page includes Australian submissions, recent speeches by Ministers and the Ambassador for the Environment and brief reports on recent meetings of multilateral environment negotiations as well as trade and environment meetings such as the OECD Joint Session of Trade and Environment and the WTO Committee on Trade and Environment (CTE).

14. National Interest Analyses (NIAs) are prepared in respect of treaties the Federal Government is considering becoming a party to (such as by ratification). These are tabled before Parliament's Joint Standing Committee on Treaties, which usually conducts its own inquiries. NIAs outline Australia's interests and, where relevant, include a discussion of the economic, environmental, social and cultural effects of the treaty; the obligations imposed by the treaty; its direct financial costs to Australia; how the treaty will be implemented domestically; what consultations have occurred in relation to the treaty and whether the treaty provides for withdrawal or denunciation. The Treaties Council, an adjunct to the Council of Australian Governments and formed to enhance Commonwealth/State consultations on treaties, also has an advisory role and provides a forum for State and Territory views to be heard in the treaty-making process.

The global dimension of environmental issues and the importance of multilateral cooperation

15. ESD principles should also be considered when examining the global dimensions of environmental, economic, trade and development issues and the desirability of close multilateral cooperation in any policy response to these issues. Multilateral cooperation is necessary to ensure that environmental issues arising directly from international trade are addressed (examples include the negotiations on a Biosafety Protocol, the Prior Informed Consent Convention, Basel Convention on trans-boundary movement of hazardous wastes, Convention on Trade in Endangered Species). It is also necessary for global environmental issues resulting from the trans-boundary pollution effects of production and consumption patterns to be addressed in ways which are environmentally effective and which impose the lowest possible costs on complying parties. The developmental interests of poorer countries often need to be given special consideration in these cases as well.

Regulation of international trade

16. The growth in world trade in chemicals over the past three decades has led to increasing concerns about the environmental and health risks of using hazardous chemicals, one example being pesticides in developing countries which did not have the necessary expertise or infrastructures to ensure their safe use.

17. A Prior Informed Consent (PIC) procedure was developed in 1989, which was embodied in the Food and Agriculture Organisation International Code of Conduct on the Distribution and Use of Pesticides and the United Nations Environment Programme London Guidelines for the Exchange of Information on Chemicals in International Trade.

18. The PIC procedure developed in 1989 was voluntary and was unanimously accepted by member countries of the Food and Agriculture Organisation and the United Nations Environment Programme, as well as the leading chemical industry associations and a variety of non-governmental organisations.

19. At a Food and Agriculture Organisation Council meeting held in 1994, and a United Nations Environment Programme Governing Council meeting held in 1995, it was agreed that negotiations would begin for a draft PIC Convention. In March 1998, after two years of negotiations, representatives from Australia and 94 other countries reached agreement on the text for a PIC Convention.

20. The PIC Convention is based on the voluntary PIC procedure and is intended to help participating countries learn more about the characteristics of potentially hazardous chemicals that may be shipped to them, initiates a decision making process on the future import of these chemicals by the countries themselves and facilitates the dissemination of this decision to other countries. The aim is to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of certain hazardous chemicals being traded internationally.

21. The Convention will formalise and strengthen the existing voluntary arrangements, administered by the Food and Agriculture Organisation and the United Nations Environment Programme. It will ensure that a country is able to make an informed decision as to whether or not it wishes to import a chemical that has been banned or severely restricted by another country because of its health and/or environmental risks, and under what conditions.

22. The final Convention text is in close accord with important Australian objectives for the negotiations. Notably, the PIC Convention preserves countries' sovereign right to manage chemicals domestically according to their own priorities and conditions and will not adversely affect Australia's access to pesticides, chemical feedstocks or chemical technology. Under the Convention, national action will be the trigger for consideration of inclusion of any chemical on the PIC list. Information exchange requirements under the Convention are comprehensive. The PIC Convention recognises that conditions and priorities vary among countries and there is flexibility to allow national governments to continue to make decisions on whether to import and use PIC listed chemicals. Measures adopted under the PIC Convention are consistent with the objective of making trade and environment policies mutually supportive, including through an open, equitable and non-discriminatory multilateral trading system, and do not include trade bans and phase outs.

23. The PIC Convention will assist Australia, by highlighting chemicals which may be of concern due to decisions taken by other countries to ban or severely restrict those chemicals, thus providing a basis for Australia to focus resources on those chemicals of potentially greatest risk. At the same time, Australia will benefit from the PIC Convention procedures which provide basic information and the means for obtaining further information needed for making health and environmental decisions concerning future use of the identified chemicals.

Global environment, economic interdependence and competitiveness issues

24. In advancing Australian positions in MEA negotiations, DFAT has sought to highlight the implications of increasing globalisation of the world economy and the resulting higher levels of integration between the economies of individual countries. Globalisation, which is facilitated by the freeing up of the international trading and financial system and the application of new technologies in transport and information industries, has helped countries to lift living standards by taking greater advantage of their different resource endowments.

25. One of the important effects of globalisation is the relocation and integration of production processes among countries. More and more, products consist of components made in a range of countries, reflecting the most favourable cost structures and resources available. For example, the large OECD economies - the EU, Japan and the United States - have increasingly relied on imports from economies such as Australia's to meet their rising demand for energy intensive goods. These economies have increased their imports of aluminium (one of the most energy-intensive goods) by 300% since the 1980s. Correspondingly, in economies such as Australia, exports of these goods have grown.

26. In respect of global climate change, the environmental impact of these shifting trade patterns is negligible or hard to determine since the global environment is indifferent to the location of greenhouse emissions because they disperse throughout the atmosphere quickly and evenly. Nonetheless, there has been a strong shift in the distribution of greenhouse gas emissions arising from the manufacture of goods produced to satisfy the growing consumption of the major consumer markets. For example, DFAT estimates that Australia's greenhouse emissions in 1990 were around 25% higher than they otherwise would have been because of Australia's particular economic structure and trade patterns. Many other countries - including the large OECD economies and many of our neighbouring trading partners in East Asia - have lower emissions as a result of this international trade. Any assessment of the appropriateness of particular measures to be adopted under MEAs needs to take into consideration the interdependence of economies and the links between consumption, production and international trade.

27. Interdependence gives rise to issues of competitiveness. Competitiveness concerns are an ever present feature of MEA negotiations (for example, the US Senate has indicated that it will not ratify the Kyoto Protocol without the adoption of emission commitments by major developing countries and the Dutch government has

linked the achievement of its commitments to agreement to co-ordinated policies within the EU and ratification by the United States and Japan).

28. Australia is actively cooperating with other governments to ensure trade and economic issues are fully taken into account in formulating solutions to the respective global environmental challenges under consideration. In these processes Australia has worked to ensure that adequate consideration is given to the full range of options available for addressing the environmental concerns, that measures adopted do not impose inappropriate or unnecessary trade restrictive burdens, and that effective and proportionate policy approaches are adopted.

29. In the case of the negotiations for the Kyoto Protocol, Australia's negotiators emphasised that Australian exporters were more exposed to competitiveness pressures than other OECD countries. This is due in part to the particular structure of Australia's industry. Australia's submissions to the negotiating parties argued for the emission commitments of parties to take specific account of the likely degree of competitiveness pressures and costs to industries engaged in international trade associated with meeting particular emission commitments. In Australia's case, it was estimated by DFAT that Australia's exports of goods generate twice the emissions of the OECD average because of differences in trade structures and, therefore, that Australia's export industries are more exposed to competitiveness pressures arising from particular emission commitments.

30. Competitiveness concerns also arise because of the continuing absence of comparable commitments for developing countries. One of the disappointing features of the Kyoto Protocol was the omission of an article to facilitate the voluntary adoption of emission commitments by developing countries. While Australia recognises that developed countries need to take the lead in mitigation action, and that it may be several years before many developing countries are in a position to be able to negotiate equitable and realistic targets for themselves, nonetheless, the continued absence of developing countries from emission commitments raises the risks of competitiveness problems for Australian exporters. Around 50% of Australia's merchandise trade is directed toward developing countries and many of Australia's direct competitors, especially in primary products and processed primary products, are located in developing countries. In contrast, the European Union directs around 15% of its exports to developing countries and is far less exposed to competitive pressures from the lack of emission commitments by developing countries.

Multilateral cooperation and environmental effectiveness

31. Competitiveness pressures can give rise to the relocation of exporting industries. In the case of the Kyoto Protocol, there is a risk of 'carbon leakage' as energy intensive industries will be likely to seek to minimise cost impacts of mitigation action by relocating from countries with emission commitments to those without. This pattern will tend to undermine the environmental effectiveness of the agreement. This relocation could make sense since, under the Kyoto Protocol, developing countries do not as yet have emission commitments in conjunction with the fact that Annex I countries (ie those with commitments) do not have to account for the emissions generated in other countries in the production of their imports. Consequently, the trend of rising imports of emissions intensive goods such as aluminium, identified above, may be likely to continue as a result of the Kyoto Protocol. The Second Assessment Report of the IPCC indicated that this 'carbon leakage' could be significant.

32. Limits to the extent of multilateral coverage of commitments is important for other environmental reasons also. The emission commitments for Annex I parties specified in the Kyoto Protocol cover a proportion of global emissions which is currently greater than 50% of total emissions. However, this proportion will decline over time. Although non-Annex I countries' greenhouse gas emissions are currently at lower absolute levels relative to emissions from Annex I countries, emissions are growing more rapidly in developing countries than in developed countries. The growth in emissions in countries outside Annex I has the potential to substantially raise global emissions even as Annex I parties' emissions fall. For example, according to the IPCC, even if Annex I party emissions were to be reduced to only 10% of 1990 levels, and no mitigation was undertaken of non-Annex I country emissions, global emissions would approximately double their 1990 level by the end of the next century, if emissions in countries outside of Annex I follow the IPCC 92a 'mid-range' scenario (Bolin, Report to SBSTA-7).

Multilateral cooperation in the WTO

33. Both ESD and multilateral cooperation are important aspects of achieving ESD-based outcomes when dealing with international environmental problems, and have been important in recent WTO disputes. Australia was a third party to the WTO dispute on the embargo placed by the U.S. on shrimp imports. The dispute centred on the US ban on imports of shrimp from countries that did not have a national regulatory program in place requiring the use of turtle excluder devices in shrimping vessels. The US action is an example of a unilateral measure being taken in pursuit of an international environmental goal.

34. Australia's submissions to both the Dispute Settlement Panel and Appellate Body emphasised that we shared the concerns of the U.S. in relation to the conservation of marine turtles, but disagreed with the means

used to advance these concerns. They outlined the approaches taken by governments, industry, research organisations and fisheries management bodies in Australia to marine turtle conservation including in reducing turtle bycatch. Input into the preparation of the submissions was invited from a range of industry and environmental organisations. Australia's submissions have been made publicly available through the DFAT website.

35. The WTO dispute panels have been careful to emphasise that their findings do not call into question the importance and legitimacy of the US concerns about sea turtle conservation. However, their findings highlight the fact that the United States engaged in unilateral and non-consensual procedure in its resort to an import ban rather than seeking to advance its concerns through cooperative and diplomatic approaches to other countries. This exploratory approach being far more likely to capture appropriate mechanisms which consider local conditions and views, and realistically incorporate this into an achievable outcome.

Least cost instruments

36. Australia has supported the adoption of flexible and cost effective policy instruments in international environment negotiations to ensure least cost approaches to addressing environmental problems. This is an important guiding principle of ESD. The most far reaching example of the pursuit of a least cost approach is international emissions trading under the Kyoto Protocol. The Protocol will apply to the period 2008-2012 and makes clear that emission trading will be permitted. However, the Protocol is largely a framework document and has left the operational details of international emissions trading to later negotiation. The fourth Conference of the Parties to the UNFCCC (COP-4), which met in Buenos Aires from 2-13 November, agreed that the negotiation of these details should, desirably, be completed by the end of 2000 (at COP-6). Australia supports an open, comprehensive and efficient trading system which provides for least cost outcomes. Such an approach is necessary to ensure the long term sustainability of international cooperation on climate change.

37. Australia has also worked in the WTO CTE to identify ways in which trade reforms can contribute to the advancement of environmental goals. A good illustration of this is Australia's approach under item six of the CTE work program where we have pointed to the great potential for improvements in both economic/trade and environmental outcomes in natural resource sectors (e.g. agriculture and fisheries) where currently trade distorting policies are prevalent. Australia has joined other WTO Members in pointing to the contribution which reform to agricultural and fisheries subsidies, as well as trade-distorting border measures, could make to reducing the environmental harm associated with certain economic activities. The CTE is also looking at key issues with ESD implications including WTO rules, interaction with MEAs, eco-labelling and green taxation.

EFIC

Export Finance and the Environment

38. The Department of Foreign Affairs and Trade has portfolio responsibility for the Export Finance and Insurance Corporation (EFIC), Australia's official export credit agency. EFIC provides a diverse range of export finance and insurance services to facilitate Australian exports. Australian investment overseas and exports of manufactured goods and related services are often associated with ecologically sensitive developments.

39. The Department has further responsibility for Australia's participation in an international agreement under the auspices of the OECD, the Arrangement on Guidelines for Officially Supported Export Credits (known as the Arrangement or the Consensus). The main purpose of the Arrangement is to provide the institutional framework for an orderly export credit market. This has effectively eliminated an export credit race in which exporting countries compete on the basis of financing terms rather than on the basis of price, quality and service.

40. The growing interplay between environmental issues and export finance is being reflected in international fora. In paragraph 24 of the Communique from the G8 Summit in Denver (June 1997), under "Environmental Standards for Export Credit Agencies", governments declared:

"Private sector financial flows from industrial nations have a significant impact on sustainable development world-wide. Governments should help promote sustainable practices by taking environmental factors into account when providing financing support for investment in infrastructure and equipment."

41. This position was further endorsed by G8 Foreign Ministers in their May 1998 Conclusions statement;

"Building on efforts in the OECD on taking environmental factors into account when providing official export credits, we encourage further work by the OECD to this end and ask for a report back next year."

42. In considering applications for export finance, insurance or guarantees, in support of export contracts or overseas investments, EFIC is bound by domestic legislation, the Environmental Protection (Impact of Proposals) Act 1974 (the EPIP Act). The EPIP Act sets out steps which must be followed by EFIC in its decision making processes. In order to comply with the provisions of the EPIP Act, before deciding whether to enter into a transaction, EFIC must determine whether the decision will affect the environment to a significant extent. If so, then the proposed decision must be referred to the Commonwealth Environment Protection Group

(EPG). Much of EFIC's environmental assessment activity is focussed upon achieving compliance with the EPIP Act.

43. While all medium to long term transactions are subject to some level of environmental assessment, the depth of environmental assessment which is appropriate varies between transactions. In addition to complying with the EPIP Act, EFIC has to be satisfied that the project will not be jeopardised by substandard environmental practices (i.e., environmental standards are also relevant to risk assessment) . EFIC takes into account environmental considerations of the wider project even when it provides insurance cover or finance support for an "environmentally neutral part" of a whole project.

44. In the context of the OECD, the Members of the Working Party on Export Credits and Guarantees (ECG), including Australia, have been considering the issue of export credits and the environment since 1993. Members of the ECG have been aware of the international agreements concerning the environment, such as the Montreal Protocol agreed in 1987 and the Kyoto Protocol to the United Nations Framework Convention on Climate Change which could also have significant effects for officially supported export credits. The first of these agreements specifically mentions export credits.

45. In 1997, the ECG agreed to move forward on the basis of a project specific Informal Exchange of Information, on a voluntary basis. Limited consideration was given in 1997 to the possibility of concentrating on a "sectoral approach" focussing on certain types of projects, projects in sensitive locations, and/or projects above a specified threshold. While no progress has been made on a "sectoral approach", the US EximBank provided a list of sectors in which projects would most likely warrant environmental reviews. The sectors identified are; Hydro-electric power plant; forestry, pulp and paper mills; mining and milling; oil and gas development; thermal, gas turbine and engine driven power plant; forest operations; logging and petrol refineries and petrochemical facilities.

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