

Report 152

Treaty tabled on 16 June 2015

Amendments to the Annexes of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 and Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. (London, 17 October 2014)

2015 Amendment to Annex G of the Australia-New Zealand Closer Economic Relations Agreement ('ANZCERTA') to effect the HS2012 transposition

Amendments, Adopted at Santa Cruz de Tenerife on 8 May 2015, to Annex I of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament;
 - (ii) a Minister; or
 - (iii) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

AMSA	Australian Maritime Safety Authority
ANZCERTA	Australia-New Zealand Closer Economic Relations Agreement
DFAT	Department of Foreign Affairs and Trade
HGO	Heavy Grade Oil
HS	Harmonised System
IAPP	International Air Pollution Prevention Certificate
IMDG	International Maritime Dangerous Goods Code
IMO	International Maritime Organisation
JSCOT	Joint Standing Committee on Treaties
MARPOL	Marine Pollution
MEPC	Marine Environment Protection Committee
NIA	National Interest Analysis
NO	Nitrous Oxide
RIS	Regulation Impact Statement
ROO	Rules of Origin
WCO	The World Customs Organization



List of recommendations

2 Amendments to the Annexes of Protocols to the International Convention for the Prevention of Pollution from Ships

Recommendation 1

The Committee supports the amendments to the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the amendments to the Annex of the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the following treaty action tabled on 16 June 2015:
 - Amendments to the Annexes of the Protocol of 1978 relating to the *International Convention for the Prevention of Pollution from Ships, 1973* and Amendments to the Annex of the Protocol of 1997 to Amend the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto. (London, 17 October 2014)
- 1.2 In addition, the Report contains the Committee's views on two Minor Treaty Actions:
 - 2015 Amendment to Annex G of the *Australia-New Zealand Closer Economic Relations Agreement (ANZCERTA)* to effect the HS2012 transposition
 - Amendment to Annex 1 of the *Agreement on the Conservation of Albatrosses and Petrels*
- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.
- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by the Government. This document considers arguments for and against the treaty, outlines the treaty obligations and

any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.

- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. An RIS was not required for the treaty under consideration in this report.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 A copy of the treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
 - http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/16_June_2015.

Conduct of the Committee's review

- 1.9 The treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. The Committee invited written submissions by 10 July 2015.
- 1.10 The Committee invited all State Premiers, Territory Chief Ministers and the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.11 The Committee held a public hearing into treaty in Canberra on Monday 22 June 2015.
- 1.12 The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaties tabling date, being:
 - 16 June 2015.
- 1.13 A list of submissions received and their authors is at Appendix A.
- 1.14 A list of witnesses who appeared at the public hearing is at Appendix B.

Amendments to the Annexes of Protocols to the International Convention for the Prevention of Pollution from Ships

Introduction

- 2.1 This chapter examines amendments to the Annexes of the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the *Protocol of 1997 to Amend and the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (collectively referred to as MARPOL).
- 2.2 MARPOL provides an international regulatory framework for dealing with six classifications of marine pollution: oil; noxious liquid substances in bulk; harmful substances in packages form; sewage; garbage; and air pollution. Regulations for each of these classifications are contained in annexes to MARPOL.¹
- 2.3 MARPOL is administered by the International Maritime Organisation (IMO), and decisions on the amendment of MARPOL are made by the Marine Environment Protection Committee (MEPC) of that Organisation.²
- 2.4 Amendments to the Convention, its protocols and annexes take place through a deeming mechanism. That is, amendments are discussed at a meeting of the MEPC, and, if agreed to, will automatically come into force

1 NIA, para 1.

2 NIA, para 1.

at a specified date unless a specified number of parties to MARPOL lodge objections.³

- 2.5 The three amendments being considered here were agreed at a meeting of the MEPC in London in October 2014, and will automatically come into effect on 1 September 2015.⁴
- 2.6 Having been agreed in October 2014, the amendments were not tabled in Parliament until 16 June 2015. The Committee queried the delay and the Australian Maritime Safety Authority (AMSA) explained that the final versions of the resolutions were released in November 2014. The resolutions were then subject to the usual treaty processes as stakeholders were consulted, the National Interest Analysis prepared, and determination made on the need for a Regulation Impact Statement. However, the tacit acceptance procedures introduced by the IMO for amendments considered minor and technical have made it difficult to meet the timeframe for the domestic treaty making process.⁵
- 2.7 On 10 June 2015, the Department of Foreign Affairs and Trade (DFAT) wrote to the Committee requesting that consideration of these amendments be expedited so that the Committee's recommendation on the amendments could be made before the amendments were scheduled to come into force on 1 September 2015.
- 2.8 At the private meeting on 15 June 2015, the Committee agreed to expedite consideration of the amendments.

Overview and national interest summary

- 2.9 The proposed amendments will amend **Annexes I** (relating to oil pollution); **III** (relating to harmful substances carried at sea in package form); and **VI** (relating to air pollution).⁶

Amendment to Annex I

- 2.10 This amendment relates to **Regulation 43** of **Annex I**. This Regulation prohibits the carriage of heavy grade oil (HGO) in bulk in the Antarctic. The prohibition on heavy grade oil in practice means that ships in the
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3 *International Convention for the Prevention of Pollution from Ships* Amended by Resolution MEPC.111(50) Amended by Resolution MEPC.115(51) Amended by Resolution MEPC.116(51), Article 16, < [http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20\(copies\)/MARPOL.pdf](http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20(copies)/MARPOL.pdf) >, accessed 17 June 2015.

4 NIA, para 2.

5 Department of Infrastructure and Regional Development, *Submission 7*.

6 NIA, paras 7, 11 and 16.

Antarctic are restricted to the carriage and use of either marine diesel oil, marine gas oil or other lighter fuel blends. The prohibition does not apply in emergency or rescue situations.⁷

- 2.11 Adopted in 2010, **Regulation 43** reflected the relative cost and difficulty of cleaning up a heavy grade oil spill in the Antarctic.⁸
- 2.12 In 2014, a fishing vessel using heavy grade oil as ballast⁹ sank in the Antarctic. The NIA states that the flag state refused to take remedial action as it interpreted **Regulation 43** as not applying to heavy grade oil used as ballast.¹⁰
- 2.13 The Department of Infrastructure and Regional Development explained that water is usually carried as ballast:
- ... nobody anticipated this sort of occurrence happening ... water is the ballast of choice, and for fairly obvious reasons.¹¹
- 2.14 Given the original reasoning behind **Regulation 43**, the amendment to **Annex I** will close this apparent loophole.¹²

Amendment to Annex III

- 2.15 The amendment to **Annex III** clarifies the regulations for the carriage of radioactive material in packaged form. Currently **Annex III** requires harmful substances, which includes radioactive material, to be packaged and labelled to a particular standard. The amendment will exclude radioactive materials from the scope of the 'harmful substance' criteria and instead refer uses to the *International Maritime Dangerous Goods Code (IMDG)* which deals with radioactive materials.¹³
- 2.16 In May 2014, the IMO amended the IMDG to harmonise the code with the *United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations*. The amendment ensures harmonisation with decisions of other UN bodies in relation to codes for the transport of dangerous goods by rail, road and internal waterways.¹⁴

7 NIA, para 7.

8 NIA, para 8.

9 Ballast is any material used to provide stability to a ship by adding to its weight below the water line.

10 NIA, para 9.

11 Mr Michael Sutton, General Manager, Maritime and Shipping Branch, Surface Transport Policy Division, Department of Infrastructure and Regional Development, *Committee Hansard*, 22 June 2015, p. 3.

12 NIA, para 10.

13 NIA, para 11.

14 NIA, para 12.

- 2.17 According to the NIA, the amendment will not impact on safety or environmental outcomes and will harmonise the international legal regimes governing the transport of dangerous goods, clarify their application to Australia and simplify compliance burdens.¹⁵

Amendments to Annex VI

- 2.18 There are two amendments to **Annex VI**:
- an amendment relating to the emissions of nitrous oxide from the burning of gas fuel; and
 - an amendment relating to the recording of compliance with IMO regulations.¹⁶

Nitrous oxide emissions

- 2.19 Nitrous oxide emissions from gas fuel used in ships is currently covered by **Regulation 13** of **Annex VI**. This regulation applies only to ships that use a fuel mix of diesel and gas fuel.¹⁷
- 2.20 Previous amendments to **Regulation 13** have made gas-fuel only marine engines a more attractive proposition for ship builders and owners. This type of marine engine has not previously been widely used.¹⁸
- 2.21 The amendment to **Regulation 13** extends this Regulation so that it applies to ships using gas-fuel only engines as well. The regulation will apply only to ships manufactured after 1 March 2016.¹⁹
- 2.22 There are no Australian ships to which the amended **Regulation 13** applies.²⁰

Records of compliance

- 2.23 **Regulation 2** of **Annex VI** requires that all vessels over 400 gross tonnes keep a record of their compliance with the **Annex VI** regulations. This document is called an *International Air Pollution Prevention Certificate* (IAPP) and is issued by the flag state of the ship.²¹

15 NIA, paras 14 and 15.

16 NIA, para 17.

17 NIA, para 19.

18 NIA, para 18.

19 NIA, para 18.

20 NIA, para 18.

21 NIA, para 19.

- 2.24 The amendment to **Regulation 2** improves the transparency of the IAPP, and is expected to make the Certificate more easily understood, allowing quicker verification.²²
- 2.25 There are 178 Australian flagged ships to which this amendment will apply.²³

Reasons for Australia to take the proposed treaty action

- 2.26 The amendment to **Annex I** will ensure that the text clearly reflects the intent of the State Parties to MARPOL.²⁴ The NIA states that it will provide the legislative authority to enforce a more comprehensive ban on the carriage of HGOs in the Australian Antarctic Territory.²⁵
- 2.27 The amendment to **Annex III** removes the duplication requirement for labelling radioactive material in packaged form.²⁶
- 2.28 The amendment to **Annex VI** is considered to be non-controversial as dual-fuel ships are already included in **Annex VI** and gas fuelled ships are already regulated by other parts of MARPOL.²⁷
- 2.29 The changes to the IAPP Certificate improve transparency and the amendments are machinery in nature.²⁸

Obligations

- 2.30 The amendment to **Annex I** will ensure that the original intent of the Parties to MARPOL is given effect by explicitly banning the carriage of HGO in bulk as cargo in ballast tanks in the Antarctic Area.²⁹
- 2.31 The amendment to **Annex III** will exclude radioactive materials from the scope of **Annex III's** regulations for the prevention of pollution by

22 NIA, para 21.

23 NIA, para 20.

24 NIA, para 25.

25 NIA, para 26.

26 NIA, para 29.

27 NIA, para 30.

28 NIA, para 31.

29 NIA, para 33.

harmful substances carried by sea in packaged form. Such material is already regulated by the IMDG Code.³⁰

- 2.32 Amendments to **Annex VI** would affect **Regulations 2, 8 and 13**. **Regulation 2** would be amended to change the definition of: *fuel oil* to include gas; and *marine diesel engine* to include a gas fuelled engine constructed after 1 March 2016.³¹
- 2.33 **Regulation 13** would be amended to clarify the documentation of engines' compliance with NOx emission standards.³²
- 2.34 The supplement to the IAPP Certificate, which is **Appendix I** under **Annex VI** would be amended to: reflect the amendment to **Regulation 13**; require clear documentation of the length of a recreational vessel to assist in identifying its NOx emissions obligations; and recognise the updated Standard Specification for Shipboard Incinerators 2014, which was adopted by MEPC in 2014 (**MEPC.244 (66)**).³³

Implementation

- 2.35 According to the NIA, in order to implement the amendments to MARPOL, a minor amendment if required to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.³⁴ The AMSA will enforce the new measure through its usual processes.³⁵
- 2.36 The other amendments will automatically be given effect under the current legislative framework and require no legislative changes for implementation.³⁶

Conclusion

- 2.37 The Committee supports Australia's ratification of the amendments to the Annexes of the *Protocols to the International Convention for the Prevention of Pollution from Ships* and recommends that binding treaty action be taken.

30 NIA, para 34.

31 NIA, para 35.

32 NIA, para 36.

33 NIA, para 38.

34 NIA, para 39.

35 NIA, para 27.

36 NIA, para 40.

Recommendation 1

- 2.38 **The Committee supports the amendments to the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the amendments to the Annex of the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* and recommends that binding treaty action be taken.**

Minor Treaty Actions

Introduction

- 3.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 3.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee's website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

Minor treaty action

- 3.3 There are two minor treaty actions reviewed in this chapter. The Committee determined not to hold a formal inquiry into these treaty actions, and agreed that binding treaty action may be taken.

2015 Amendment to Annex G of the Australia-New Zealand Closer Economic Relations Agreement (ANZCERTA) to effect the HS2012 transposition

- 3.4 The proposed amendment to ANZCERTA [1983] ATS 2 (as amended) to effect the HS2012 transposition is technical in nature and concerns ANZCERTA rules of origin (ROO) under Annex G. The practical, legal and financial effect of the amendment would be negligible due to its technical nature.
- 3.5 The Harmonized Commodity Description and Coding System (Harmonised System or HS) is a structured nomenclature that assigns a 6-digit code to every good. The World Customs Organization (WCO)

updates the HS regularly, usually every five years, to keep it relevant to the needs of the international community. The HS2012 came into effect on 1 January 2012.

- 3.6 ROO are used to determine the eligibility of goods to access tariff commitments made by Australia and New Zealand in ANZCERTA. The proposed amendment would update the Product Specific ROO in Annex G of ANZCERTA consistent with the current nomenclature and numbering of tariff lines.
- 3.7 The Explanatory Statement states that it has taken longer than anticipated for Australia to finalise with New Zealand a transposition of Annex G to ANZCERTA into HS2012 form but does not provide a reason for the delay. The final text of the treaty action was negotiated between the Parties in October 2013 and confirmed as the final accurate transposition on 23 June 2014. It was provided to JSCOT in April 2015.
- 3.8 Australia is taking this treaty action to ensure that the tariff line numbers which identify goods in Annex G of ANZCERTA accurately reflect HS2012, and are consistent with proposed parallel amendments to Australian Customs regulations.
- 3.9 The proposed amendment will be implemented in Australian domestic law via an amendment to the Customs (New Zealand Rules of Origin) Regulations 2006 (regulations) to reflect HS2012.
- 3.10 Following consideration of a request from the Minister for Trade and Investment, the Committee resolved on 25 August 2014 that all amendments to free trade agreements implementing regular changes to the HS be referred as category three treaty actions.

Amendment to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels

- 3.11 The proposed amendment to the Agreement on the Conservation of Albatrosses and Petrels adds a trans-equatorial petrel species, the Pink-footed Shearwater (*Ardenna creatopus*, syn. *Puffinus creatopus*) to Annex 1 of the Agreement. Annex 1 lists all the species to which the Agreement applies, including conservation measures as adopted by the Meeting of the Parties.
- 3.12 The practical, financial and legal effect of the proposed amendment for Australia is negligible. The range of the Pink-footed Shearwater does not overlap with fisheries within Australian territory, or any part of Australia's jurisdiction. The inclusion of this species in Annex 1 of the Agreement is not expected to require any significant change to Australia's

negotiating position in regional fisheries management organisations to which it is a Party, nor any change to the practices of Australian fishers.

- 3.13 The proposed amendment to Annex 1 will automatically come into force on 6 August 2015.

Mr Wyatt Roy MP

Chair

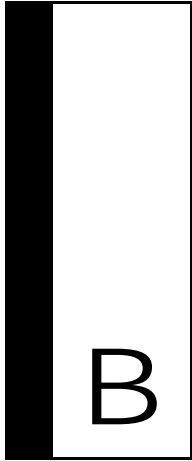
13 August 2015



Appendix A - Submissions

Treaty tabled on 16 June 2015

- 1 Australian Maritime Safety Authority
- 2 Department of Infrastructure and Regional Development



Appendix B - Witnesses

Monday, 22 June 2015—Canberra

Australian Maritime Safety Authority

Mr Matthew Johnston, Acting General Manager, Marine Environment
Division

Department of Infrastructure and Regional Development

Ms Katrina Cristofani, Acting Director, Maritime Safety and Environment
Section, Maritime and Shipping Branch, Surface Transport Policy Division

Mr Peter Good, Acting Senior Policy Advisor, Maritime Safety and
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