



**Submission to the  
Senate Economics Committee**

on  
**Carbon Pollution Reduction Scheme Bill**  
-  
**Exposure Draft**

**27 March 2009**

## **ABOUT AIP**

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards.

AIP member companies play various roles in the fuel supply chain. They operate all of the petroleum refineries in Australia and handle a large proportion of the wholesale fuel market. However, AIP member companies directly operate and control only a relatively limited part of the retail market.

AIP is pleased to present this submission on behalf of the AIP's four core member companies:

BP Australia Pty Ltd  
Caltex Australia Limited  
Mobil Oil (Australia) Pty Ltd  
The Shell Company of Australia Pty Ltd

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## SUMMARY OF KEY POINTS IN SUBMISSION

### Emission intensive trade exposed (EITE) industry eligibility

- The rationale for EITE status is that a facility is entitled to assistance to offset the loss of international competitiveness when it competes against facilities that have no similar carbon costs.
- The Australian refining industry is trade exposed.
  - There are significant imports of all petroleum products into the Australian market and there are no meaningful barriers to entry for these imports.
  - Australian refineries price their product reflecting import parity prices and have no ability to pass additional costs through to customers.
  - Australian refineries compete against countries that do not impose carbon costs such as, Singapore, India, Taiwan and South Korea, which together supply around 25% of Australia's liquid fuel needs.
- Carbon leakage from the Australian economy will occur with the loss of future capital investment and transfer of Australian production to competitors located in nations that do not have carbon constraints and that appear very unlikely to introduce a carbon constraint in the foreseeable future.
- The allocation of permits to EITE industries should not be limited to 25% of the total permit pool (excluding agriculture).
  - The total volume of permits should be a function of the required permits to meet the government's stated election policy principles (refer Labor's Plan for a Stronger Resources Sector) to not disadvantage EITE industries with the introduction of an emission trading scheme.
  - The linkage of low income household assistance and low emission technology financial support to the CPRS revenue/permit stream is not valid, as successive governments have funded these measures from general revenue.

### Emission intensive trade exposed (EITE) assistance scheme

- AIP is particularly concerned that the draft legislation package includes no details of the rules and methodology to apply to EITE eligibility or the quantum of assistance to be provided under the EITE scheme.
  - In the absence of details it is not possible for industry to be clear about its eligibility or the level of assistance likely to be provided under the scheme.
  - In these circumstances, it is impossible for the industry to be assured that the level of EITE assistance to be provided under the EITE scheme will be sufficient to maintain the competitiveness of the Australian industry relative to other refineries across the Asia-Pacific region in countries that are not expected to impose a carbon price on liquid fuels in the foreseeable future.

#### Eligibility for assistance

- AIP supports the inclusion of the option based on industry value-added.
- AIP proposes this metric should be calculated on the basis of ALL significant costs, in accordance with Australian Bureau of Statistics definition of industry value added, including repairs and maintenance, and other clearly identifiable operating costs such as insurance, rents, royalties, professional services fees and licence fees.
- AIP believes that the current methodology does not fully comprehend the business lifecycle of industries such as the refining industry, and recommends that the financial data assessment should cover an extended time period at least from 2000.

### Quantum of assistance

- AIP does not support the concept of differentiating the level of assistance for EITE industries through artificially constraining otherwise sound and simple allocation methodologies (such as artificially constraining activity definitions that may lead to distortion of emissions or input/output data).
- Any decay of EITE assistance should be matched to the uptake of carbon constraints by regional competitor nations and not to the national emission trajectory.
- Permits should be allocated to individual facilities on the basis of actual emissions.
  - AIP still believes that the base index should be calculated for each refinery so that the multiple design and operating differences between refineries do not artificially advantage or disadvantage particular refineries.

### Administrative complexity

- In the absence of clear rules, the EITE methodologies have become extremely complex, requiring excessive amounts of work to segment otherwise standard emissions, production and financial data sets for well established business entities such as refineries.
  - Most of these complexities do not reflect a sound understanding of the business ventures, or the work required to dissect and audit the data concerned.
  - The requirements for auditing and verification of the data are onerous and expensive.

### **Consequences of insufficient EITE assistance**

- If sufficient EITE assistance is not provided Australian refineries will face significant additional costs not faced by competitors and there may be a rapid decline of the Australian refining sector.
- If Australian refineries close, there will be adverse impacts on Australia's liquid fuels supply security, loss of petrochemical industry feedstock, loss of engineering and other technical expertise and significant localised losses in economic activity and employment.
  - Box 1 provides a summary of the broader benefits of the refining industry.

### **CPRS Coverage**

- If all liquid fuels are to be included in the CPRS, an upstream point of acquittal for liquid petroleum fuels is the most administratively efficient option, with the point of acquittal for all liquid fuels being the point at which fuel excise is imposed on fuels entering the Australian market. This approach will ensure that all liquid fuels used in Australia are subject to an appropriate carbon price.
  - This approach should apply to liquid petroleum fuels used for stationary and transport purposes.
  - All fuels produced in Australia as well as all fuels imported into Australia should be covered by this approach.
- In principle, large emitters should be responsible for the emissions associated with the liquid fuels they use, however, given the Government's preferred approach of upstream acquittal for liquid fuels, the voluntary OTN process set out in the draft Bill provides a satisfactory and robust approach to liquid fuel self-acquittal by large users, bearing in mind the potentially large numbers of large liquid fuel users who may eventually wish to self acquit their emissions.
  - AIP supports large emitters bearing liability for their emissions on a mandatory basis once the necessary administrative arrangements can be implemented by both fuel suppliers and customers.

### **Fuel excise offsets**

- The Government will offset the impact of carbon prices on liquid fuel users for various periods of time by providing a reduction in the fuel excise rate that will continue indefinitely at the final excise reduction rate once the 3 years concludes.
- The excise offsets provides no direct benefit to the petroleum marketing industry as the reductions will be delivered to motorists and business users at the bowser or by fuel tax credits.
- The methodology being adopted by the Government will not exactly match the fuel excise reduction with the expected daily fluctuations in the carbon permit price, nor will the excise rate be adjusted frequently enough to match the carbon price movements at the bowser.
- AIP has previously identified ways to avoid this outcome, but they were rejected in the CPRS White Paper, i.e. maintain the current fuel excise rate, with Government hypothecating a portion of the excise revenues to the CPRS fund, and the Government retiring or issuing the appropriate number of emissions permits associated with the fuel use.
- AIP is concerned that the delivery of this mechanism cannot be analysed because the exposure draft for the Bill has not yet been developed. The specific concern is the implementation time and the workability of any proposals.
- The Henry Taxation Review considerations of the fuel excise arrangements may have an impact on the excise treatment of various alternative fuels and will need to be integrated into the CPRS legislation for an orderly start of the CPRS in mid 2010.

### **Other CPRS design features**

- AIP is concerned that the majority of the details of the auctioning framework will be included in Regulations or be made by an unspecified “legislative instrument” by the Minister or ACCRA. We do not consider it appropriate that we should comment on the form and conduct of permit auctioning without these details. This point is especially pertinent given that the downstream petroleum industry will be responsible for acquitting approximately 23% of the total permits issued in the initial years of the scheme.
- AIP is concerned about some of proposed limits on auction parcel sizes, which limits flexibility for permit purchases, which are considerable.
- AIP emphasises the importance of matching the CPRS reporting and assurance design features with those currently applying under the fuel excise arrangements. In particular, the creation of differing regulatory regimes under the fuel excise and CPRS systems should be avoided in the interests of administrative efficiency and regulatory certainty.
- AIP is particularly concerned that international and Australian accounting standards remain very unclear and ambiguous about the treatment of carbon emissions permits.

## 1 INTRODUCTION

The issues addressed in this submission are those which have a direct link to fuels/refinery issues in the Government's proposed Carbon Pollution Reduction Scheme (CPRS).

AIP member companies have a variety of views on the most effective way to reduce greenhouse gas emissions from transport sector activities, and will make those views known to the Committee. Nevertheless, AIP member companies recognise that the Government has chosen to proceed with the introduction of a cap and trade based emissions trading scheme as set out in the exposure draft Bill for a Carbon Pollution Reduction Scheme. Consequently, this submission focuses on issues associated with the effectiveness and implications for the downstream petroleum industry of the current legislative proposals.

In general, it is AIP's view that on those aspects of the CPRS design where there has been extensive and transparent consultation with industry and other stakeholders for almost 18 months, the outcomes, as reflected in the draft Bill are generally very workable and take a balanced account of stakeholder interests. This has also resulted in there being fulsome details about these aspects of the scheme in the draft Bill, with few uncertainties about how the legislation is likely to impact on the business activities of AIP member companies.

On the other hand, those features of the scheme that have not been subject to this level of clear and open dialogue, remain unclear, with no specification of the detailed rules to be applied, and almost no certainty about the basis on which decisions will be made. In many cases these rules are expected to be detailed in regulations subsequent to consideration of the legislation by Parliament. On matters as important as the EITE scheme, and the auctioning arrangements, AIP believes that it is unacceptable for these details to be covered in Regulations, and for the consideration of the effectiveness of the legislation to be undertaken in the absence of those details. In the case of the EITE arrangements it is also clear that important decisions impacting on the future viability of Australia's refining industry will not be based on a transparent process which is subject to independent appeal and scrutiny.

There are a broader range of issues associated with the design features of the CPRS which AIP member companies will be addressing through their contributions to other industry association submissions, such as submissions from the Business Council of Australia and the Australian Industry Greenhouse Network, as well as through their own submissions on company specific issues.

As flagged in the body of the submission, AIP expects to be making submissions to the Department of Climate Change on specific, detailed points in the draft Bill. These details will be provided to the Committee at that time.

## 2 ASSISTANCE FOR EITE INDUSTRIES

### The rationale for EITE assistance

#### Maximising economic benefits

The general approach of the CPRS White Paper concentrates on managing the transition to a low carbon economy without sufficient consideration of the impacts on economic growth and industrial development.

**The main purpose stated in the 2008 CPRS Green Paper (p. 295) of providing EITE assistance “is to provide assistance to those industries that face the greatest material impact of the carbon cost and that are constrained in their ability to pass through these costs because of international competition”. This approach recognises that Australian based businesses compete with similar businesses located in countries with no prospect of introducing a carbon price in the foreseeable future. AIP supports this approach to EITE assistance and continues to expect that the Australian Government will provide sufficient EITE assistance to ensure that Australian industry is not disadvantaged.**

These expectations were reinforced in the election platform of the Rudd Government that stated in Labor’s Plan for a Stronger Resources Sector that the government would:

- Ensure that Australia’s international competitiveness is not compromised by the introduction of emission trading;
- Consult with industry about the potential impact of emissions trading on their operations to ensure they are not disadvantaged; and
- Establish specific mechanisms to ensure that Australian operations of emissions intensive, trade exposed industries are not disadvantaged by emissions trading.

If Australian based businesses are subject to a carbon price and there is open trade in the product concerned, then the locally based business will lose market share to the imported product which is not subject to a carbon constraint. **Australian production will decline over time leading to a decline in Australian carbon emissions. However, this will result in Australian based emissions being replaced by the carbon emissions associated with the foreign production.**

On this basis, AIP had expected the Government to propose an EITE mechanism which sought to remove all risk of a decline in Australian businesses due to emissions trading while ever import trade competitors are not subject to equivalent carbon emissions costs. AIP does not believe, based on the Government’s election commitments, that it is appropriate to dismiss the case for full EITE assistance.

### **Box 1 Broader economic benefits of the Australian refining industry**

The Australian refining industry provides energy security for Australia:

- The refining sector provides a diversity of domestic fuel supply options in addition to those available through imports of petroleum products.
- There is greater national sovereignty over a range of important policy settings, such as fuel and emission standards, climate change policy, transport policy and the management of liquid fuel supply disruptions.
- The ability to convert domestic oil production into useable product provides a “production of last resort” for both fuel supply security and national security objectives.

While the Australian refining industry contributes a relatively modest 0.2% of GDP, the industry underpins the competitiveness of liquid fuel intensive industries such as mining, agriculture and transport.

- Australia has among the lowest pre-tax and post-tax fuel prices in the OECD.
- Refinery production underpins supply chain efficiencies and responsiveness to changes in demand.
- Fuel supply infrastructure is usually a key component of any infrastructure development. Uncertainty surrounding the sourcing of ongoing fuel supplies would require greater sizing of fuel storage and distribution infrastructure, making the central infrastructure asset less economic.

The Australian refining industry contributes the benefits of a high value added industry

- A highly skilled workforce of around 9,000 people.
- Domestic expertise on fuels issues and fuel technology assessments.
- Expertise from international affiliates flows readily into Australian policy debates and commercial practice.
- Domestic management of the liquid fuel supply chain.
- A considerable economic activity in its own right contributing significantly to the Australian economy and local communities. In 2007, the Australian refining industry generated the following financial contributions
  - \$47 billion in revenue (excluding excise payments)
  - \$15 billion in excise taxation collections
  - Almost \$1 billion tax payments (excluding excise)
  - \$1 billion in direct investment in Australia
  - \$400 million of wages and salaries payments.

If the refining industry was to reduce significantly in capacity, or to close down in Australia, these benefits would be lost and the following consequences would need to be addressed:

- The loss of a major competitive advantage for liquid fuels intensive business and higher costs for Australian consumers.
- The Australian liquid fuels supply system would be more vulnerable to fuel supply disruptions probably leading to:
  - Reduced ability of Australian governments to deal with supply disruptions
  - Additional risk premiums for industries exposed to liquid fuels supplies
  - Additional storage requirements and costs though the supply chain.

Australian refineries can be competitive under a global carbon price. However, managing the transition path when most competitors do not have a carbon constraint is a central policy challenge.

**AIP considers that Government policies that provide a clear transition path while taking adequate account of the transitional issues such as the lack of a global carbon constraint will maximise the economic benefits for Australia. In this context, AIP considers that EITE policy must fully recognise the disadvantage faced by Australian industry when competing with imports from countries with no carbon emission constraints.**

#### Carbon leakage

Carbon leakage should be a serious concern for policy makers as it reduces Australian production and jobs and, depending on the industry, adds to global carbon emissions,

particularly if the “carbon leakage” occurs when Australian production is transferred to a country that has no emission constraints.

Limiting EITE to 25% of emission units (excluding agriculture)

AIP considers that this limit on EITE emission units makes it impossible for the Government to meet its original EITE objective of offsetting the adverse competitive effects while major competitors have no prospect of any carbon cost for the foreseeable future.

The initial calculation of EITE assistance needs to be based on a sound understanding of the capital investment cycles, the technology deployment and emissions abatement opportunities of each particular industry. This will ensure the efficient use of capital and, in particular, the efficient retirement of capital.

**AIP is strongly of the view that the Australian emissions cap needs to be set on the basis of what other countries are prepared to do as well as the performance of those countries in maintaining their emissions within their cap. If Australia moves beyond the performance of other countries it will lead to premature shutdown of industries that would have survived under a global carbon price and result in potentially significant underutilised capital.**

In setting a 25% limit on EITE assistance, there also appears to be an underlying assumption that industries have a potential emissions reduction path that can ameliorate the impacts of the cost disadvantage imposed by the proposed framework. In the refining and other capital intensive industries this is not the case; the emission profile is largely fixed by the capital equipment that is installed. While there are some investments and process actions that can be employed to reduce emissions, these reductions are marginal in the Australian refining industry and in most cases have already been made (see Box 2).

AIP also has serious reservations about the argument that increasing EITE assistance will place an excessive burden on the rest of the economy, particularly households. This argument can only hold where the Australian cap decreases significantly faster than international competitors. If other nations do not commit to and deliver significant emissions decreases there is no case for significantly ratcheting down the Australian cap. AIP believes that increasing the available permits for allocation to EITE industries from 25% to 40% (excluding agriculture) would not have a significant impact on households or other sectors of the economy, particularly in comparison to the alternative economic impact of losing some of these EITE industries altogether.

**It is also important to recognise that any negative impacts on EITE businesses from the CPRS, including premature closure, will have potentially much greater impacts on households through loss of employment and financial losses through shareholdings and superannuation. This is especially so in the current global financial circumstances.**

AIP is also concerned that the proposals for a significant decay (1.3% per annum) of the EITE assistance will quickly undermine the impact of any assistance and contravenes the principles of the EITE assistance. As long as Australian industries are competing against countries that have no carbon constraints, the stated principles of the EITE assistance mean that the EITE assistance should offset this competitive disadvantage. To do otherwise, will cause Australian industries that could survive under a global carbon price to unnecessarily close.

We strongly believe that the decay function should be related to the introduction of carbon charges by major competitors. The Australian refining industry competes almost exclusively against facilities that are located in countries which have no carbon costs and are not likely to introduce these costs any time in the near future, for example, Singapore, China, South Korea, Taiwan and India. As such, AIP considers that EITE assistance should be based on at least 90% of emissions and only be reduced as competitor nations introduce carbon policies that provide a level playing field for Australian refineries.

With insufficient relief from EITE assistance policies, the Australian refining industry would lose attractiveness as an investment destination. Investment would be limited to maintaining essential assets and potentially preparing the facilities for closure. In this context, the five year average investment to 2007 for the Australian refining industry was almost \$1 billion per annum. In total, over the ten years to 2007, the downstream petroleum industry invested \$7.4 billion compared to net profits of \$8.6 billion.

In practical terms, our assessment is that inadequate EITE assistance will place significant pressure on the viability of a number of Australian refineries over the short to medium term to 2020. Besides the obvious business difficulties this places on individual companies we also consider that this has the potential to fundamentally undermine Australia's liquid fuel security where imports could exceed 50% of Australia's liquid fuels demand. This places increasing pressure on fuel import infrastructure and places increasing emphasis on the reliability of import sources. For example, past experience suggests that many of Australia's import sources have ceased exports when faced with domestic supply issues, such as the ceasing of Chinese gasoline exports in 2004.

#### **Box 2 - Australian refining emission reduction opportunities**

The greenhouse emissions from a petroleum refinery are largely determined by the configuration of the process units within the refinery, for example, a crude distillation unit, fluidised catalytic cracker and hydro-desulfurisation unit. Each unit will utilise a particular category of technology (vintage and type) that has an associated level of energy usage. As an energy intensive industry there are strong incentives for refineries to examine any opportunities for improvements in energy efficiency. In the case of Australian refineries, these opportunities were extensively considered during the significant refinery upgrades undertaken between 2005 and 2007 as part of the cleaner fuels program.

Ongoing assessment of energy efficiency opportunities are a key refinery management activity. However, the energy efficiency and therefore the resultant greenhouse emissions are constrained by the type and the age of equipment installed at the particular refinery. Recent studies on the European refining industry indicated an average 0.5% per annum energy efficiency improvement would be possible over the next 10 years, and there is no reason to believe that similar outcomes would not be achievable in Australia.

It follows that any major reductions in emission intensity from refinery production will be associated with new equipment probably embodying new technologies. In most cases this will entail a major retrofit of the refinery and probably a significant period of scheduled shut down followed by re-commissioning period. Given the relatively fixed configurations of refineries there are also limited opportunities for large scale fuel switching, for example, between fuel oil and natural gas, even if alternative fuel sources are available.

Nonetheless there exist a range of improvements that can be undertaken by the refinery that include:

- Process heat efficiencies, such as air pre heaters, heat exchangers and co-generation
- Process gas capture and re-use
- Regular upgrading of catalysts
- Regular maintenance of operating units.

These energy efficiency opportunities are actively pursued by refineries as part of normal management strategies. However, it needs to be recognised that such changes take time to implement (in some cases up to 2 to 4 years depending on available maintenance windows) even with attractive investment incentives.

While a cost of carbon would make these abatement activities more economically viable, it is unlikely that Australia refineries will be subject to major rebuild or retrofit programs. The fundamental reason is that the construction costs in Australia and ongoing operating costs work strongly against Australia as a future refinery investment location.

## The Australian refining industry

There are seven operating refineries in Australia located in Melbourne, Brisbane, Sydney and Perth. These refineries supply about 75% of Australia's petroleum products demand through a distribution system to major customers and almost 6,000 service stations. The refineries were constructed in the 1950s and 1960s but have been extensively modified since then. Australian refineries are small by international standards and compete against larger and more efficient export refineries in the Asia-Pacific region. Consequently, Australian refineries need to be extremely efficient in order to compete. Imports are landed in most Australian markets and almost exclusively supply northern Australia. For a more detailed description of the Australian refining industry see AIP's publication Downstream Petroleum 2007 <http://www.aip.com.au/topics/new.htm>.

### Defining the petroleum refining sector for EITE purposes

Petroleum refining involves the conversion of crude oil into marketable petroleum products. Petroleum products are defined in the National Greenhouse and Energy Reporting Scheme Regulations and include products such as petrol, diesel and jet fuel. Given the refinery process units are managed in an integrated manner (for example crude distillation units and cracking units produce key precursors for all products) it is not possible to separate the refining activity into separate product-based activities.

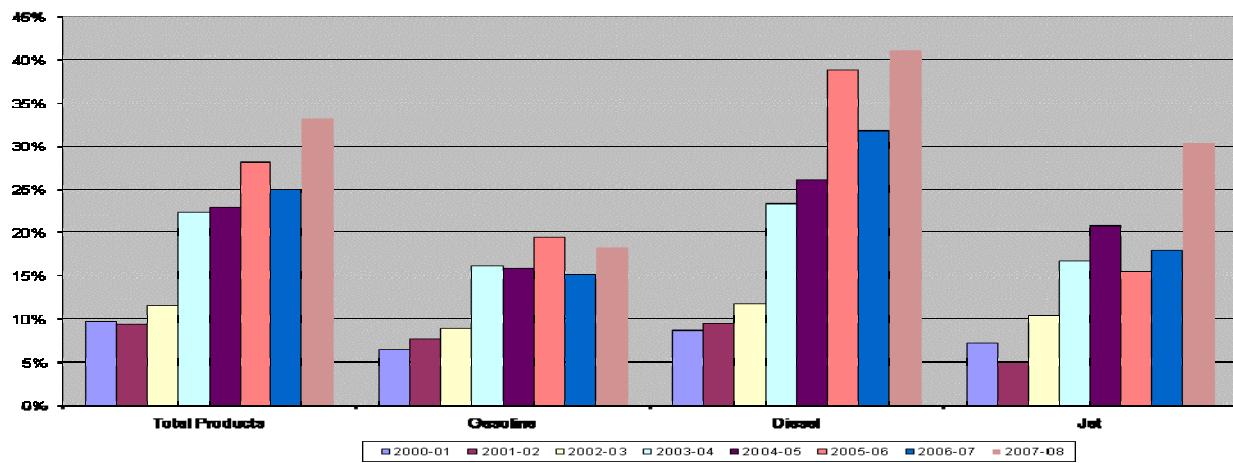
**The boundary of the refining activity commences at the crude oil unloading facilities and includes all the processing units within the refinery. The refining activity ceases when the marketable products are shipped from the location either at the refinery loading gantry or as the product leaves the refinery by pipeline.** The refining activity does not include any distribution activities, such as terminals, nor does it include crude oil transport prior to the refinery unloading facilities. Blending of biofuels usually occurs at the terminal and is not part of the refinery activity.

## The Australian refining industry is trade exposed

The Australian liquid fuels market is open and competitive. The proportion of imported products (including gasoline, diesel, jet and LPG) was just under 35% of total demand in 2007-08. With limited additional domestic refining capacity, growth in Australian demand will be met by imports.

The following figure shows the proportion of imports to total consumption for each major product. This shows that for all major products, imports have captured at least 15% of the Australian market. In some products such as diesel and LPG, the proportion of imports of total consumption exceeds 30% of the market. The significant level of imports indicates that the Australian fuels market is not only contestable in theory but that Australian liquid fuels production is in direct competition with imports.

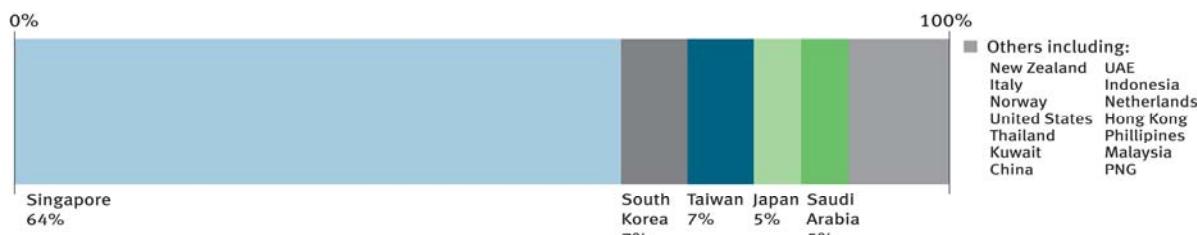
### Australian Petroleum Annual Import Proportion



Source: Australian Petroleum Statistics

The liquid fuel import infrastructure is well matched to current demonstrated needs of importers (including independent importers). Additional import terminal capacity is under construction, including by independent operators, in recognition of the clear long term needs and commitments by importers to use the facilities.

Liquid fuel imports to Australia are sourced from a variety of destinations but the majority are sourced from the Asia-Pacific region. Import sources will vary from year to year, based on, among other things, production levels and the availability of appropriate grade fuels, cost of the fuels including any exchange rate movements, and the availability and costs of shipping. Nonetheless, the largest source of imports has been Singapore, with data for 2006-07 showing that fuel was also sourced from South Korea, Taiwan, Japan and Saudi Arabia. The majority of these imports come from large, very efficient, export oriented refineries.



2006-07 Country of Origin of Australian Imports: Source: Australian Petroleum Statistics

With the exception of Japan none of these countries currently has a cost of carbon for refinery emissions or any stated intention of introducing a cost of carbon. Japan has introduced a voluntary carbon trading system that effectively subsidises abatement opportunities in companies by Japanese Government funding. Japan is also considering a broader emissions trading system but the deliberations are at the initial stages and there is no indication as to when the scheme may be implemented.

**Given the proximity of these supply sources and other new refineries in the region - such as Jamnagar (India) it is likely that the Asia Pacific region will remain the main marginal source of supply for the Australian liquid fuels market. It is also likely that none of the refineries competing for the Australian market will face a cost of carbon for the foreseeable future. Therefore, Australian refineries will face additional costs for carbon emissions that are not contemplated by regional competitors.**

### Import Parity Pricing

Australian petroleum products compete directly with imported product. More importantly, sales of Australian production reflect Import Parity Price (IPP) that includes:

- The international price of petroleum products (Mean of Platts Singapore - MOPS95 for petrol)
- Transport costs
- Wharfage
- Insurance

The IPP concept is a landed price for imported product that provides a benchmark price for domestic product. Australian refineries cannot price above the IPP or they will lose market share to imported product. In other words, domestic refineries cannot pass on additional costs to consumers above the IPP and have to absorb these costs to remain competitive with imports.

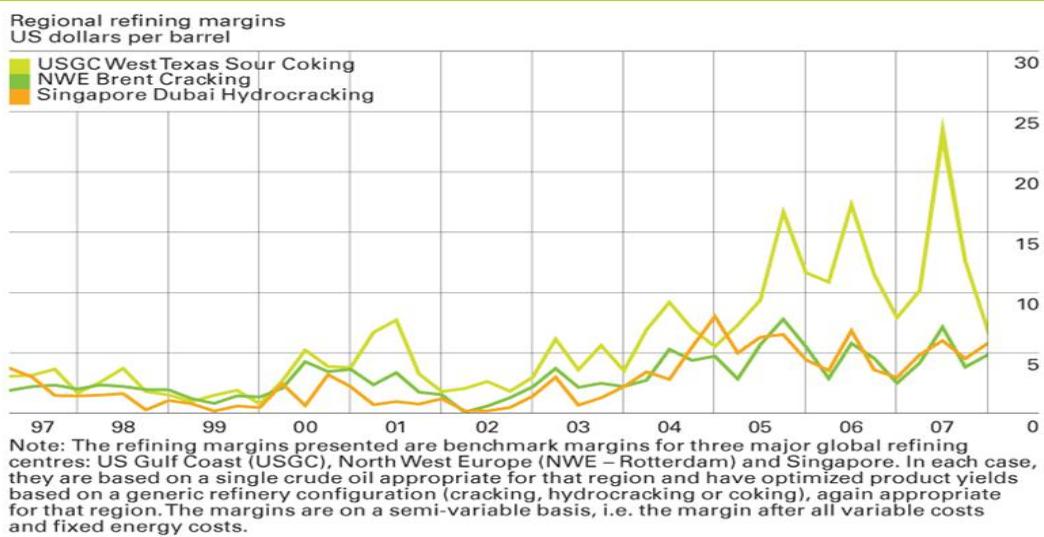
### Refinery emissions costs are significant compared to profits

The direct and indirect refinery emissions in calendar 2007 were about 7.7 million tonnes of CO<sub>2</sub>-e. This amounts to a cost disadvantage of \$192 million for the total refining sector at \$25 per tonne of CO<sub>2</sub>-e. This equates to about 22% of the annual average profit for the downstream petroleum industry over the last ten years to 2007. Since the relationship is linear, each \$1 increase in carbon price per tonne roughly equates to a reduction of about 0.9% of annual average profit over the last ten years for the downstream petroleum industry in Australia. Given the relatively low rates of return achieved by the downstream petroleum industry, this reduction represents an unacceptable impost, particularly since the refinery industry is entering a significant period of suppressed margins.

These impacts clearly demonstrate that there is a significant cost and risk to the refining sector of placing a cost of carbon on Australian refinery emissions. If Australian refiners sought to charge above the market price for domestic production there would be a loss of market share to the cheaper imported product. The future financial viability of the Australian refining industry can only be more accurately assessed once the emissions trajectories are set by government and related carbon prices become evident, and a judgement is made about the future course of historically volatile refining margins (see figure below). While refining margins were relatively strong between 2003 and mid 2008 (driven by regional growth in demand and a sluggish supply response), margins have dropped to very low levels along with the collapse in the oil price and the global financial crisis. A similar situation emerged in the period from 1998 through to 2002 following the Asian financial crisis when there was a period of weak refining margins that was caused by excess supply in the region. The impending regional oversupply was becoming evident even before the advent of the Global Financial Crisis.

## International refining margins

### Chart of regional refining margins



BP Statistical Review of World Energy 2008

© BP 2008

### The Australian Refining Sector is Trade Exposed - Key Conclusions

- There are significant imports of all petroleum products into the Australian market.
- Most imports into Australia are sourced from the Asia-Pacific region.
- There are no meaningful barriers to entry for imported petroleum products.
- Australian petroleum products are priced reflecting import parity price.
- Most refineries in the Asia-Pacific region will not face a cost of carbon in the foreseeable future.
- In the absence of EITE assistance, the profitability of Australian refineries would be substantially reduced, increasingly so as carbon permit prices increase.
- The regional refining industry is heading towards a period of oversupply that was evident before the advent of the Global Financial Crisis.

## **The Methodology for establishing eligibility for EITE assistance**

AIP is particularly concerned that there are no details of the EITE assistance methodology set out in the draft Bill, nor are there any draft Regulations available describing the rules to be applied in determining EITE assistance eligibility. Instead, industry is expected to work with the general descriptions of how EITE assistance might be calculated as set out in the CPRS White paper and in the Guidance notes released by the Government in mid February. The available material provides insufficient guidance on exactly how the basic calculations will be made (such as how production volume weightings will be applied to emissions and financial data) and how key issues will be dealt with in the EITE eligibility and permit allocation methodologies.

The key issues currently under consideration are:

- what financial costs to include or to exclude
- project boundary definitions
- treatment of electricity related emissions
- refinery input and output metrics

While there has been discussion with DCC staff on these matters, there has been no clarification of key details as of the date of this submission, and there has been no commitment given as to exactly how the Government will finalise these calculations and decide on EITE allocation factors for the refining sector.

AIP regards it as unsatisfactory for such a significant program to be implemented in the complete absence of stated rules that have not been subject to consideration by the Parliament. In the absence of rules there are also no avenues of appeal for industries that are dissatisfied with the application of administrative judgement in matters that impact so significantly on business viability.

**While AIP welcomed, in principle, the decision in the CPRS White Paper that a value added proxy based on revenue net of raw material and other input costs could be used for establishing eligibility for EITE assistance, AIP remains concerned that the proposed proxy arrangements diverge significantly from the well established ABS formula for measuring industry value-add. In particular, the case for exclusion of significant costs associated with maintaining business viability has not been publicly enunciated or justified. These costs include repairs and maintenance expenditure (ie operating expenses that exclude all new capital expenditure as defined in accounting and tax rules) and other general operating expenses such as insurance, rents, royalties and licence fees.**

The ABS definition of value added includes, *inter alia*, “purchases of materials, rent, leasing and hiring expenses, freight and cartage expenses, repairs and maintenance expenses, contract, subcontract and commission expenses.”

The DCC workshop on 4 March 2009 appeared to agree that raw materials, utilities and chemicals were legitimate costs for the EITE assessment.

The ABS definition of value added can be accessed at the following link and appears to include all the items that have been identified as legitimate costs for the EITE assessment by AIP member companies.

<http://www.abs.gov.au/websitedbs/c311215.nsf/43b68f1dafb94862ca256eb0000221a5/60ea01ae9711c688ca2570a3007ae6fb!OpenDocument>

## **The use of a value added proxy**

On the basis of the value added methodology outlined for EITE in the CPRS White Paper some of the normal costs (as per the ABS definition) have been excluded. This approach means that the value of the excluded costs is added to a normal value added calculation. In turn, this

means that the use of the value added proxy will mean a reduction from what would have been the ‘true’ value added EITE eligibility measure (i.e. emissions per value added).

The degree of the reduction in the eligibility index will vary depending on the extent to which the industry/activity diverges from the “average industry” model used in the CPRS White Paper.

To further illustrate this point.

The CPRS White Paper assumed that there was an ‘average’ relationship (i.e. across all industries) of revenue being three times value added. Under this relationship, the exclusion of 5% of normal value added costs would lead to a 9% reduction in EITE eligibility index. However, in the case of low margin/high turnover refining industry with significant late chain processes the average annual revenue is approximately twenty times value added. In this case, the exclusion of 5% of normal value added costs would lead to a 49% reduction in the EITE eligibility index.

Clearly, the exclusion of costs has a disproportionate impact on low margin businesses, such as the refinery industry.

### **Establishing industry baselines to determine the actual allocation of permits**

The White Paper envisages that once eligibility for EITE assistance is established for an industry, the actual allocation of permits to particular facilities (or processes) will be calculated using an industry average base index (weighted emissions per weighted unit of input or output) multiplied by the future annual input or output of the facility.

Significant issues are yet to be resolved in relation to the methodology of this calculation, including what refinery inputs or outputs might be included in the calculation, as well as what future changes to the proportions of future refinery inputs and outputs might invalidate a claim for a previously established EITE eligibility.

In addition, there are unresolved issues surrounding Government concerns about potential for over-allocation of permits in the future. These concerns appear to stem from a poor understanding by officials as to how the proposed methodology actually works to avoid the perceived problem of over allocation of permits.

AIP still considers that the base index for allocating permits to EITE industries should be based on the index for individual facilities rather than on the industry average. A facility based index will take account of the significant variations in design and operating features of the seven Australian refineries, and will avoid the need to resolve intra-industry equity issues which would otherwise arise from the use of an industry average index. AIP analysis indicates that facility based indices cover a spread of +/- 20% around the industry average index for refineries.

### **Administrative Complexity**

The administrative complexity of the EITE is far more complex than the general CPRS arrangements. In seeking to apply very consistent principles to the provision of assistance to industry activities, otherwise normal, integrated business activities have been artificially segmented for establishment of eligible activities under the EITE scheme. This has been further compounded by artificially excluding otherwise normal input and output materials from supply and production data, and excluding financial data which complies with normal accounting and financial/taxation definitions of operating costs and revenues.

The combination of all of these unusual design features, which are not clearly defined in a logical rules based approach, has lead to the most complex set of data with statistically inconsequential variations from otherwise standard and readily assembled data sets. This complexity has resulted in an enormous task of data preparation in anticipation of meeting as yet unspecified methodologies. In addition, there is no clear framework for auditing this complex data to the very high standard being asked by the Government.

Even when the data has been audited, there is no clear understanding of exactly what components of the data will be used by officials, in as yet unspecified methodologies, to determine the level and quantum of EITE assistance that will be provided to trade exposed businesses such as refineries in Australia.

### **Measuring Emissions Intensity - Key Conclusions**

- AIP is particularly concerned that the draft legislation package includes no details of the rules and methodology to apply to EITE eligibility or the quantum of assistance to be provided under the EITE scheme
  - In the absence of details it is not possible for industry to be clear about its eligibility or the level of assistance likely to be provided under the scheme
  - In the circumstances it is impossible for the industry to be assured that the level of EITE assistance to be provided under the EITE scheme will be sufficient to maintain the competitiveness of the Australian industry relative to other refineries across the Asia/pacific region in countries that are not expected to impose a carbon price on liquid fuels in the foreseeable future

#### Eligibility for assistance

- AIP supports the inclusion of the option based on industry value-added.
- AIP proposes this metric should be calculated on the basis of ALL significant costs, in accordance with Australian Bureau of Statistics definition of industry value added including repairs and maintenance, and other clearly identifiable operating costs such as insurance, rent, royalties and licence fees.
- AIP believes that the current methodology does not fully comprehend the business lifecycle of industries such as the refining industry, and recommends that the financial data should cover an extended time period.

#### Quantum of assistance

- AIP does not support the concept of differentiating the level of assistance for EITE industries through artificially constraining otherwise sound and simply allocation methodologies (such as artificially constraining activity definitions that may lead to distortion of emissions or input/output data)
- Any decay of EITE assistance should be matched to the uptake of carbon constraints by regional competitor nations and not to the national emission trajectory.
- Permits should be allocated to individual facilities on the basis of actual emissions.
- AIP still believes that the base index should be calculated for each refinery so that the multiple design and operating differences between refineries do not advantage or disadvantage particular refineries.

#### Administrative complexity

- In the absence of clear rules the EITE methodologies have become extremely complex, requiring excessive amounts of work to segment otherwise standard emissions, production and financial data sets for well established business entities such as refineries
  - Most of these complexities do not reflect a sound understanding of the business ventures, or the work required to dissect and audit the data concerned.

### 3 CPRS COVERAGE

AIP agrees that the proposed emissions threshold for direct obligations under the scheme should apply to entities with facilities which have direct emissions of 25,000 tonnes of CO<sub>2</sub> (e) per year or more. However, to avoid any confusion, we believe the CPRS rules need to explicitly indicate that this threshold figure includes emissions from use of liquid fuels by the entity, even though the entity may not be required to acquit the emissions from the use of those liquid fuels (as a result of up-stream acquittal of liquid fuel emissions).

#### Liquid fuels point of acquittal (domestic production and imports)

**AIP is strongly of the view that the point of acquittal for all liquid fuels should be at the point at which fuel excise is liable to be remitted on all liquid fuels entering the Australian fuels market.** As acknowledged in the CPRS White Paper, the fuel excise arrangements are very well defined in legislation, and have highly accurate and well established measurement, reporting, acquittal and assurance arrangements. The fuel excise arrangements also include detailed mechanisms for the exclusion of fuel that is exported, used for international transport, sequestered in plastics, and supplied to visiting defence forces and consular vehicles – activities which are subject to other specific arrangements under the CPRS.

**In order to ensure that no liquid fuels enter the Australian fuels market without being subject to a carbon permit liability, AIP supports the proposal for all fuel excise remitters and fuel importers to be subject to a carbon emissions permit liability for the emissions associated with the use of the liquid fuel they sell into the Australian market.**

#### Net out and self acquittal by large users

AIP supports the principle that large emitters should be responsible for acquittal of permits covering their direct emissions, including emissions from the use of liquid fuels.

**AIP supports the OTN mechanism within the CPRS for the transfer of liability for liquid fuel acquittal from the upstream entity to the fuel user, where the fuel user is registered under the CPRS as being a ‘liable entity’, the upstream entity and the fuel user are in agreement on the specific volumes of fuel for which emissions liability will be transferred, and ACCRA has established a system for recording such liability transfers and for incorporating such information as is appropriate in reporting about emissions liabilities.**

Given the time required for AIP member companies to design, modify and test appropriate accounting and data tracking systems once the detailed OTN arrangements are in place, it may not be possible for ‘net out’ arrangements to be in place from the start of the CPRS in mid 2010 for all liquid fuel users. For this reason, AIP supports the arrangements in the draft Bill for these net-out arrangements to be on a voluntary basis (i.e. with the concurrence of both parties).

The more widespread application of the concept of self acquittal by large emitters would be dependent on the establishment of robust, workable systems within ACCRA and the various liable entities to enable any ‘net out’ volumes to be tracked through a series of fuel distributors and resellers who potentially do not have an emissions liability under the CPRS.

AIP is committed to working with the Government to develop an administratively efficient and effective mechanism to ensure that all liquid fuels entering the Australian market are subject to a carbon emissions charge. AIP has identified a number of specific issues in relation to the provisions of the draft Bill concerning point of acquittal and OTNs – these issues are outlined in Attachment A which is a copy of the relevant AIP comments provided to the Department of Climate Change.

**Coverage - Key Conclusions**

- If all liquid fuels are to be included in the CPRS, an upstream point of acquittal for liquid petroleum fuels is the most administratively efficient option, with the point of acquittal for all liquid fuels being the point at which fuel excise is imposed on fuels entering the Australian market. This approach will ensure that all liquid fuels used in Australia are subject to an appropriate carbon price.
  - This approach should apply to liquid petroleum fuels used for stationary and transport purposes
  - All fuels produced in Australia as well as all fuels imported into Australia should be covered by this approach
- In principle, large emitters should be responsible for the emissions associated with the liquid fuels they use, however, given the Government's preferred approach of upstream acquittal for liquid fuels, the voluntary OTN process set out in the draft Bill provides a satisfactory and robust approach to liquid fuel self-acquittal by large users, bearing in mind the potentially large numbers of large liquid fuel users who may eventually wish to self acquit their emissions.
  - AIP supports large emitters bearing liability for their emissions on a mandatory basis once the necessary administrative arrangements can be implemented by both fuel suppliers and customers.

## 4 FUEL EXCISE OFFSETS

The CPRS White Paper proposes to offset the impact of carbon prices on certain liquid fuel users for various periods of time by providing a reduction in the fuel excise rate for those liquid fuel users:

- Motorists will have fuel excise reduced by the amount of the carbon price for three years.
- Heavy vehicle road users whose effective excise is limited to the value of the Road User Charge (RUC) will be assisted by removing the impact of the carbon price from their fuel use for one year.
- Some industries (fishing and agriculture) which are not subject to a net excise will also be assisted by removing the impact of the carbon price from their fuel use for three years.
- The excise rate will be permanently reduced at the end of the three years by the prevailing carbon price at that time.

The CPRS White paper indicated that these excise offsets will be introduced at the start of the CPRS (in mid 2010), and that further adjustments will be made at 6-monthly intervals thereafter if the average emissions permit price increases. The excise adjustments are to be based on the embodied carbon emissions in diesel.

**AIP is concerned that the details of how these excise changes will be calculated and applied are not in the draft legislation package and are not yet available as draft Regulations for consideration by the industry.**

In various discussions these excise rate reductions have been characterised as a benefit to the petroleum industry. Given the competitive nature of the liquid fuel market, the changes to taxation arrangements will be passed on to consumers with the large bulk of the revenue raised by these proposals going to private motorists and the remainder will go to business users.

A key industry concern is how the carbon costs that are associated with each fuel sale will be matched to the reduction of fuel excise given the government's initial commitment for a "cent for cent" excise offset. Even though there will some effective over adjustment of excise on petrol this will only amount to about 1.2 to 2.0 cpl on petrol and is unlikely to cover the potential movements in carbon permit prices on a daily basis over the prior 6-month period

As a consequence, AIP is concerned that retail fuel consumers will not easily be able to relate the day-to-day movements in the carbon price component of retail pump prices with the historical excise offsets that have been incorporated into the prevailing excise rates for fuels. It seems unlikely that six-monthly adjustments in fuel excise rates would enable the Government to accurately deliver a cent-for-cent offset of fuel excise for the carbon price related to the use of that fuel, unless the carbon permit prices remained very stable for long periods of time.

In its CPRS Green Paper submission, AIP indicated that there were other ways to deliver the "cent-for-cent" commitment that would ensure exact matching of the carbon price and excise offset at the bowser. This could involve leaving the excise rate the same but hypothecating the carbon revenue to the government carbon trading account. The White Paper asserted that this would remove these carbon permits from the trading system and was therefore, unacceptable. As noted in the AIP Green Paper submission, an alternative mechanism could involve primary fuel suppliers and large users being allocated permits (via regulator entries into registry accounts) which are priced at a fee explicitly linked to the price of carbon under the CPRS. Such a mechanism would apply when the fuel moves through the excise taxing point and could provide a robust, watertight and administratively simple way for motorists' emissions to remain part of the trading system.

### Other considerations

Detailed consideration will also need to be given to how these excise offset arrangements impact on the current and proposed excise treatment of alternative fuels, including LPG and

biofuels. To the extent that excise rates and fuel tax credits are adjusted to implement the fuel excise offsets proposals, careful consideration will need to be given to how those changes need to flow through the energy grants credits arrangements to biofuels etc. This will include maintaining the current approach to fuel based and user category concessions applied through the energy grants credits arrangements. In addition, there may be implications arising from changes to current price differentials between various fuels. As some of these issues are likely to be considered as part of the Henry Taxation Review, it will be essential that the Taxation Review considerations are well before the proposed mid 2010 start of the CPRS.

There are also considerable computer systems changes and other administrative changes associated with implementing the excise policy framework. To this end, it is important that all legislation and regulations are implemented by the end of 2009 for commencement of the CPRS on 1 July 2010.

#### **Fuel Excise Offsets - Key Conclusions**

- The Government will offset the impact of carbon prices on liquid fuel users for various periods of time by providing a reduction in the fuel excise rate
- The excise offsets provides no direct benefit to the petroleum marketing industry as the reductions will be delivered to motorists and business users at the bowser or by fuel tax credits.
- The methodology being adopted by the Government will not exactly match the fuel excise reduction with the expected daily fluctuations in the carbon permit price, nor will the excise rate be adjusted frequently enough to match the carbon price movements at the bowser.
- AIP has previously identified ways to avoid this outcome, but they were rejected in the CPRS White Paper, ie maintain the current fuel excise rate, with Government hypothecating a portion of the excise revenues to the CPRS fund, and the Government retiring or issuing the appropriate number of emissions permits associated with the fuel use.
- The Henry Taxation Review considerations of the fuel excise arrangements may have an impact on the excise treatment of various alternative fuels and will need to be integrated into the CPRS legislation for an orderly start of the CPRS in mid 2010.

## 5 OTHER CPRS DESIGN FEATURES

### **Carbon Market**

AIP is concerned that the Bill contains limited details of how the carbon market, particularly the auctioning arrangements will work. It is expected that the key details of the auction arrangements should be set out in the Bill, with some flexibility on certain elements being provided through regulations. It is also very unsatisfactory for industry to be expected to comment on this aspect of the CPRS in the complete absence of even the Regulations envisaged by the Government.

AIP is concerned about some of proposed limits on auction parcel sizes, which limits flexibility for permit purchases, which are considerable.

### **Reporting**

**AIP notes that careful consideration has been given to how emitters are expected to report emissions associated with fuels which are subject to an upstream point of acquittal.** In the case of liquid fuels, it is clearly envisaged that fuel users are likely to use some fuels for which the carbon emissions have been acquitted by the fuel supplier, and some fuels for which the fuel user has assumed an emissions liability. AIP is pleased to see that this issue has been co-ordinated between the NGERS Act and the CPRS Bill.

It remains AIP's view that all entities having a liquid fuel liability should be required to submit emissions reports assured by an accredited third party, not just larger emitters/liable parties. This approach is not expected to lead to additional effort or 'red-tape' for smaller companies as all companies who have an upstream liquid fuels liability will have had financial audits and ATO audits covering their excise remittance data and reporting. In this context, AIP believes it is essential for the results of these excise related audits to be recognised by any other party brought in (either by the liable entity or the CPRS Regulator) to assure the remainder of the data submitted to the CPRS Regulator.

### **Taxation and Accounting**

AIP also strongly urges the Government to seek an urgent resolution of the accounting standards treatment of emissions permits to ensure sound and consistent approaches are adopted in relation to the treatment of permits in corporate financial reports.



<b>Part</b>	<b>Division</b>	<b>Clause</b>	<b>Comment</b>
1		5	<p>1. Since the CPRS Scheme applies to all Australian external Territories, AIP will provide advice on any arrangements for the supply of fuel to those Territories that falls outside the fuel excise framework, and which would require additional provisions to ensure inclusion under the CPRS scheme. Note: the exposure draft for the amendments to the Excise Tariff Act has not been released and judgments on this issue would need to be made in conjunction with consideration of those amendments.</p> <p>2. AIP is of the view that the definition of liquid petroleum fuel is appropriate to cover all liquid fuels supplied into the Australian market; the definition does not need to be extended to cover items 20 &amp; 21 of the Schedule to the Excise Tariff Act.</p> <p>3. Depending on the final activity description for petroleum refining under EITE, there may need to be further consideration given to the definition of transformations.</p>
1		6	<p>The definition of 'supply' occurring when the supply is physically delivered needs to be clarified (possibly in the EM) to ensure that</p> <p>1. There is no confusion with the interpretation of when liquid fuels are 'entered for home consumption' under the Excise Act or the Customs Act and raise a liability under the CPRS as an eligible upstream fuel.</p> <p>2. There is no problem created with the transactions associated with the ongoing supply of fuel to an OTN holder who has 'quoted' the OTN under a term supply contract which will involve multiple physical deliveries over an extended period of time.</p>
3	4	31	<p>The language used in clause 31 (5) about the treatment of remissions, rebates, refunds under s 163 of the Customs Act, or drawbacks under s 168(1) of the Customs Act, is not clear that emissions associated with the quantities of fuel in these categories are to be deducted (netted out) from the provisional emissions number for imported liquid petroleum fuel entered for home consumption etc. This may need to be addressed in the Bill or in the EM to ensure that the intention is clear to all parties.</p> <p>It will also be desirable to provide a clear indication in the EM of the expected circumstances in which this general approach might be limited in the regulations under this Act.</p>
3	4	32	<p>The language used in clause 32(5) about the treatment of remissions, rebates, refunds under s 78 of the Excise Act, or drawbacks under s 79 of the Excise Act, is not clear that emissions associated with the quantities of fuel in these categories are to be deducted (netted out) from the provisional emissions number for liquid petroleum fuel manufactured in Australia and entered for home consumption etc. This may need to be addressed in the Bill or in the EM to ensure that the intention is clear to all parties.</p>
3	4	36	<p>It is not clear what circumstances the provisions of s36 (1)(c) apply to. It would be useful to include an example in the EM so that the purpose of this subclause is readily understood.</p>
3	4	37	<p>It would be useful if the EM indicated the sorts of matters that the Government intends to cover in the Regulations under s37(4) e.g., whether there would need to be any specific labelling on packages etc, limits on volumes in containers/packages, other possible issues. In addition, take particular note of General Point 1 on timing in respect of this clause, for example, any changes to systems and any particular requirements for package sizes and changes in labelling will take time to implement.</p>

3	5	46	<p>It will be important for the Bill to specify that the Authority must be satisfied that there are no outstanding current or potential liabilities of an OTN holder in relation to the use of that OTN, before approving the surrender of an OTN. AIP believes this is essential to ensure that no pathways are created for fuel supplied under an OTN as 'carbon price free' to find its way into the Australian fuels market without being subject to a carbon price for the embodied emissions.</p> <p>In this regard, there may be advantages in the Bill specifying elsewhere in the Bill that there must be very regular reporting by liquid fuel suppliers of the details of all fuel supplied under an OTN (ie quantities and OTN details).</p> <p>In order to comply easily with the provisions of this Bill, especially ss 67 and 68 it will also be essential for the Authority to establish a mechanism for advising fuel suppliers on a daily basis of all OTN surrenders and cancellations, to avoid the inappropriate use of OTNs after they have been surrendered (noting the potential for there to be a large number of liquid fuels related OTN in the future).</p>
3	5	47	<p>It will be important for the Bill to specify that the Authority must be satisfied that there are no outstanding current or potential liabilities of an OTN holder in relation to the use of that OTN, before approving the cancellation of an OTN. AIP believes this is essential to ensure that no pathways are created for fuel supplied under an OTN as 'carbon price free' to find its way into the Australian fuels market without being subject to a carbon price for the embodied emissions.</p> <p>In this regard, there may be advantages in the Bill specifying elsewhere in the Bill that there must be very regular reporting by liquid fuel suppliers of the details of all fuel supplied under an OTN (i.e. quantities and OTN details).</p> <p>In order to comply easily with the provisions of ss 67 and 68 of this Bill, it will also be essential for the Authority to establish a mechanism for advising fuel suppliers on a daily basis of all OTN cancellations, to avoid the inappropriate use of OTNs after they have been cancelled (noting the potential for there to be a large number of liquid fuels related OTN in the future, and for these OTNs to be associated with term contracts for the regular supply of liquid petroleum fuels).</p>
3	5	51	<p>It is suggested that s51(2)(c) be amended to ensure that the notice provided is in 'written' form. This is considered essential to ensure that fuel suppliers are able to require a written form of quotation of the OTN suitable for record keeping. Each company will implement procedures for the appropriate quoting of an OTN.</p>
3	5	55	<p>This clause applies to users of LPG as a feedstock. It will be essential for this clause to also apply to 'refinery grade propylene'. This may be addressed in this clause or possibly through the definition of LPG in this Act and in the NGERS Act. There is also a need to ensure that the definition in the NGERS ACT is consistent with the definition in the Excise Tariff Act.</p>
3	5D	56	<p>It would be very desirable for the EM to provide some indication of the issues to be covered in the Regulation - s56(4) – for example, the sorts of thresholds being considered, the circumstances when this might be changed for future liquid fuel use, etc.</p>
3	5D	57	<p>See comments on S37 above and General Comments Point 1.</p>
3	5E	66	<p>It would be very desirable for the EM to provide some indication of the issues to be covered in the Regulation - s66(2) – for example is the regulation expected to set out the process to be followed in rejecting the quotation of an OTN, or are other issues expected to be also covered.</p>
3	5E	68	<p>In view of the potential for actions required under s68(2) to be seen to be in contravention of the provisions of the Trade Practices Act concerning refusal to supply, it will be essential for a sub-clause similar to s66(2) to be added to this clause.</p>
17		296(3)	<p>The time limit for provision of additional information must be extended to 28 days in s 296(3), given the potentially complex nature of requests likely to be made to fuel suppliers. This would be consistent with the provisions of other legislation.</p>

	<b>General points</b>		
	1	<p>There are various places in the legislation where regulations are indicated and AIP considers:</p> <ol style="list-style-type: none"> <li>1. Draft regulations should be available at the time the CPRS Bill is considered by Parliament in June 2009 in order to facilitate a fulsome consideration of the Bills and associated instruments by industry.</li> <li>2. The planned passing of the regulations in Q1 2010 does not leave sufficient time to develop and implement the administrative systems. We suggest that such regulations should be included in the first tranche of regulations to be considered in Q3 2009.</li> </ol>	
	2	<p>Unless all entities within a group have different OTNs, it will be necessary for the OTN Register to specify which entities by name, address and ABN are entitled to use an OTN that applies to a whole group, or to a number of separate companies. At this stage it is not clear how this matter is treated under the draft Bill. If no amendments are to be made to the Bill, then it is suggested that suitable clarification be provided in the EM.</p>	
	3	<p>The treatment of lubricating oils under the point of acquittal and OTN arrangements is not clear and should be clarified in the EM. While lubricating oils and recycled lubricating oils are covered under the excise legislation, it would be desirable to ensure that these are to be treated under the CPRS as liquid petroleum fuels that are not combusted when they enter the market as lubricating oils. However, when waste lubricating oil is recycled as burner fuels etc and is combusted, the fuel will be subject to a carbon cost at the time of combustion.</p>	