



Cabinet Economic Growth and Infrastructure Committee

EGI Min (12) 8/4

Minute of Decision MFE
BY

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Emissions Trading Scheme Review 2011: Proposed Amendments Relating to the Synthetic Greenhouse Gases Sector

Portfolio: Climate Change Issues

On 9 May 2012, the Cabinet Economic Growth and Infrastructure Committee:

Background

- 1 **noted** that a statutory review of the New Zealand Emissions Trading Scheme (ETS) was completed in 2011, and that the ETS Review Panel (the Panel) gave specific attention to the inclusion of Synthetic Greenhouse Gases (SGG) within the ETS;
- 2 **noted** that the Panel made eight recommendations in relation to the SGG sector, with the most significant being to remove some activities from the ETS and instead use a simpler levy system;
- 3 **noted** that:
 - 3.1 because of the complexity and number of issues covered, advice on proposed ETS amendments is being provided over a series of papers [CAB Min (12) (8/7)];
 - 3.2 the paper under EGI (12) 74, which is the second paper in that series, seeks in-principle agreement to the policy changes focussed on the SGG sector;
- 4 **noted** that all the policy proposals outlined below are for “in principle” decisions, and will be subject to the broader outcomes of the current ETS consultation process;

HFC/PFC in goods and motor vehicles

- 5 **noted** that importers of hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) in goods and motor vehicles incur relatively substantial ETS compliance costs compared to other sectors, and that the Panel recommended that their ETS obligations be removed and replaced with an administratively simpler levy system;
- 6 **agreed in principle** to remove all ETS obligations for importers of HFC/PFC contained in goods and motor vehicles;
- 7 **agreed in principle** that a levy on the importation of goods (excluding motor vehicles) containing HFC/PFC, from all countries, will apply from 1 July 2013;

- 8 **agreed in principle** that a levy on motor vehicles containing specified HFC/PFC will apply at the first point of on-road use registration from 1 July 2013;

Rate of the levies

- 9 **noted** that, given the levies are not charges for services or cost recovery and will be directed to the consolidated fund, the levy formula (used for both levies) should be specified in legislation;
- 10 **agreed in principle** that the Climate Change Response Act 2002 (the Act) specify that the levy will be calculated on the following basis (subject to Parliamentary Counsel Office drafting):

$$\text{Levy Rate} = \text{SGG Rate} \times \text{GWP} \times \text{Averaged Carbon Price}$$

SGG Rate The amount of SGG that regulations designate is to be treated as contained in a category of items (e.g. either a category of motor vehicles or a category of goods);

GWP The global warming potential of the SGG that regulations designate is contained in a category of items;

Averaged Carbon Price The average of a specified emission unit price in the Crown Accounts over the 12 month period preceding 1 July of the year in which the regulations prescribing the Levy Rate being calculated are created;

- 11 **agreed in principle** that the initial period for the calculation of the Averaged Carbon Price will need to cover a different 12 month period as the levies apply from 1 July 2013 rather than the start of the year;
- 12 **agreed in principle** that any price cap or limits implemented in the ETS be factored into the calculation of the levies;
- 13 **agreed in principle** that the HFC/PFC levies will be imposed by an amendment to the Act, with empowering provisions inserted to allow the New Zealand Transport Agency (NZTA) and the New Zealand Customs Service (Customs) to collect the HFC/PFC levies revenue through their electronic collection systems (Customs would do this subject to applying a de minimis policy to the levy);

Monitoring and compliance of the levies

- 14 **agreed in principle** that Customs will be able to use the relevant powers in the Customs and Excise Act 1996 in collecting the HFC/PFC levy on goods;
- 15 **agreed in principle** that the NZTA will be able to use the relevant powers in relevant transport legislation to collect the specified HFC/PFC levy on motor vehicles;
- 16 **agreed in principle** that the Environmental Protection Authority (EPA) will continue to be responsible for the monitoring and compliance of the entire SGG sector (ETS and levy provisions) under consequential amendments to extend existing penalties and offences sections in the Act to the levies where applicable;
- 17 **agreed in principle** that aggregated reporting on activity under the levies will be provided quarterly by Customs and the NZTA to the Inventory Agency and the EPA;

Regulatory and consequential powers needed for the levies

- 18 **agreed in principle** to create a regulatory ability to restrict eligibility as a participant for exporting or destroying SGG (including SGG contained in goods);
- 19 **agreed in principle** to create regulation-making abilities for:
- 19.1 categories of items to be levied;
 - 19.2 assumed amounts of SGG per category;
 - 19.3 levy rates per category;
- 20 **noted that**:
- 20.1 there will be other consequential amendments to the Act to ensure that relevant parts of the Act also apply to the levies where applicable;
 - 20.2 any consequential amendments to relevant transport and customs legislation will be completed in consultation with the relevant Ministers and agencies;
- 21 **agreed in principle** that there will be no requirement to consult affected persons other than Customs and NZTA over changes to the rates of levies because of the transparency on calculation methodologies, triggers for rate recalculation, and sufficient lead time before new rates apply;

Wilful release of SGG

- 22 **noted** that the wilful release of SGG is not currently prohibited, although Ozone Depleting Substances are not allowed to be knowingly released to atmosphere;
- 23 **agreed in principle** to create an offence in the Act, prohibiting the release of SGG into the atmosphere knowingly or without lawful justification or excuse while installing, operating, servicing, modifying, or dismantling any electrical switchgear or refrigeration or air-conditioning equipment or other heat-transfer medium;
- 24 **agreed in principle** to create a defence in the Act where the release occurred during the connection or disconnection of equipment used to transfer controlled substances from one container to another container and the release could not reasonably have been avoided;

Sulphur hexafluoride (SF₆) activities

- 25 **noted** that the ETS currently treats importers of sulphur hexafluoride (SF₆) inequitably, as ETS obligations are currently greater than the obligations of the government due to differences in when emissions are reported;
- 26 **agreed in principle** that the mandatory point of obligation for SF₆ emissions should be shifted from importers of SF₆ to users of SF₆ in electrical switchgear who have more than one tonne of SF₆ installed;
- 27 **agreed in principle** that, in light of the change in surrender obligations, the removal activities of exporting or destroying SF₆ should be deleted from the Act;

Financial implications of SGG policy package

- 28 **noted** that the in principle proposals outlined above would have an indicative net negative impact on the operating balance of \$5.424 million across the forecast period, at the current carbon price;
- 29 **noted** that these in principle proposals are subject to the outcomes of the broader ETS consultation, and therefore that changes to appropriations will be made when Cabinet makes decisions on the final package of ETS changes by July 2012;
- 30 **noted** that officials advise that the amendments proposed above will give rise to new operating costs for Customs, the NZTA and the EPA totalling \$0.900 million across the forecast period, which Customs and the NZTA have advised cannot be met through existing agency baselines;
- 31 **agreed in principle** that the operating costs for the levies be considered against the "Emissions Trading Scheme Review implementation contingency" process that has been established to fund the implementation costs that cannot be met through existing agency baselines [CAB Min (12) 8/7];
- 32 **agreed in principle** that levy revenues collected by Customs and the NZTA will be paid into the Crown bank account;

Process

- 33 **noted** that the Minister for Climate Change Issues will engage with the SGG sector to explain Cabinet's decisions, but that consultation with the SGG sector will only take place as part of the regulation making process;
- 34 **authorised** the Minister for Climate Change Issues to:
- 34.1 further clarify and develop policy matters relating to the amendments proposed in the paper under EGI (12) 74, in a way that is not inconsistent with Cabinet's decisions;
 - 34.2 consult on parallel regulatory provisions;
 - 34.3 be responsible for the communication and engagement regarding the proposed amendments and response to the Panel's recommendations;
- 35 **invited** the Minister for Climate Change Issues to issue drafting instructions to the Parliamentary Counsel Office, based on Cabinet's "in principle" decisions on the above policy proposals;
- 36 **noted** that the paper under EGI (12) 74 and the associated Regulatory Impact Statement will be released following confirmation by Cabinet (subject to any withholding of information consistent with the Official Information Act 1982);

37 **noted** that the Minister for Climate Change Issues intends to share the paper under EGI (12) 74, drafts of further Cabinet papers on related issues, related Cabinet minutes, drafting instructions to the Parliamentary Counsel Office, subsequent drafts of amendments to the Act or regulations, and related documents, with the NZTA, as a key agency in the proposed amendments.

Reference: EGI (12) 74
