



Submission:

Exposure draft of the Carbon Pollution Reduction Scheme Regulations 2009

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Carbon Pollution Reduction Scheme Regulations

Part/s	Division/s	Clause/s	Comment
3	14-19		<p>A3P notes the inclusion of six EITE activities covering the major operations undertaken by the Australian pulp and paper manufacturing industry. The definitions are broadly consistent with A3P's expectations based on substantial consultation with the Department of Climate Change.</p> <p>A3P notes that no activity definition/s has yet been agreed to cover the manufacturing of wood panels. A3P considers the panel board manufacturing industry in Australia to be seriously exposed to international competition if/when a carbon price is imposed without a similar measure in countries where major competitors operate. A3P urges the government to ensure that EITE assistance is provided to the panel board manufacturing industry.</p> <p>Furthermore, it is possible that the six 'pulp and paper' activities may need to be added to or changed in the future as the industry continues to evolve. There is no transparent mechanism for the determination by the Minister of additional eligible activities for EITE assistance or modification of the initial activities. Such a mechanism should be defined in the regulations, and there should also be provisions for the decision to reject an application for eligibility to be appealed.</p>
3	17	317 (1) (d) and 317 (4) (d)	Both these clauses should be deleted. Packaging and industrial paper is not coated. Cartonboard is coated.
4		401	<p>There is no mechanism for interested parties to determine the appropriateness, consistency and/or accuracy of the baselines for allocation set out in this clause. There should be some mechanism for participants to review and/or appeal allocative baselines.</p> <p>No allocative baselines are given for the Tissue Paper Manufacturing activity. A3P understands that the Government is not willing to set baselines for this activity because of the failure of one company that undertakes this activity in Australia to provide the necessary data. A3P urges the Government to address this issue by obtaining the necessary information or reaching a conclusion in its absence. One uncooperative company should not be allowed to increase uncertainty for those companies that have provided the requested information. Depriving those companies who have been fully compliant with DCC processes of allocations because of circumstances outside their control should not be an option.</p> <p>This issue is of real and substantive concern, regardless of the fate of the CPRS legislation, because of the continued linkage between the EITE activity definitions under the CPRS and the RET. Companies will be relying on the CPRS EITE activity definitions as the basis for seeking RET EITE assistance in the second half of 2010 and this issue must be resolved well in advance of that time.</p> <p>A3P appreciates and supports the Government's decision to reduce administrative burden and unnecessary duplication by using the same activity definitions for the two EITE assistance measures.</p>

8			<p>A3P supports the tightening of the timelines for consideration and decision making on applications.</p>
9	5	907(4)	<p>As detailed in a number of previous submissions on the CPRS in general and the previous draft EITE regulations, A3P is opposed to the arbitrary 1.3% decay of the EITE assistance (or the so-called 'carbon productivity contribution'). The EITE assistance program has two key objectives:</p> <ul style="list-style-type: none"> ▪ To reduce the likelihood of carbon leakage; and ▪ To provide transitional support to EITE industries. <p>Any reduction in EITE assistance over time should be linked to any change in the likelihood of carbon leakage associated with a particular activity, e.g. as a result of countries in which relevant activities are undertaken introducing carbon pricing mechanisms. Assistance should not be reduced universally at an arbitrary rate.</p> <p>The Government is clearly cognisant of this issue as demonstrated by the proposed "Review of Carbon Productivity Contribution" for EITEs detailed in the 24 November 2009 statement of proposed CPRS changes. Rather than implying the enshrining of the arbitrary reduction in assistance through to 2021, the Regulations should provide specific details for the review process and mechanism including the "70 per cent of relevant competitors" test detailed in the 24 November statement.</p>
9	7	911	<p>A3P is opposed to the 100% cap on allocations as brought into effect by this clause. The 100% cap fundamentally changes the nature of the EITE assistance measure by removing a substantial incentive for companies undertaking EITE activities to invest in emissions abatement activities and potentially penalising those companies that have invested in emissions reduction in the past. The removal of this reward and incentive shows a lack of good faith as it is clearly contrary to the Government's own rationale for the design of the EITE measure as outlined in the White Paper (<i>Carbon Pollution Reduction Scheme: Australia's Low Pollution Future, December 2008</i>).</p> <p>The White Paper specifically states that <i>"the program is based on the expectation that all industries should contribute to the national emissions reduction effort and provides strong incentives for all entities to pursue abatement opportunities."</i> (p12-1). Furthermore, Policy Position 12.1 (p12.-7) states <i>"The provision of assistance to EITE industries will support production and investment decisions that would be consistent with a global carbon constraint"</i>.</p> <p>Basing allocations on industry average and historical emissions would provide assistance to companies undertaking EITE activities but it would do this whilst still rewarding those companies whose emissions performance per unit of production is better than the industry average and providing an incentive for companies to invest in further reducing their emissions per unit of production in the future. This was the clear the intent of the design of the EITE mechanism as communicated to industry both formally and informally by Ministers and Government officials.</p> <p>Imposing a 100% cap will substantially reduce the reward for previous better-than-average performance and remove much of the incentive for investment in emissions reduction by companies engaged in EITE activities. The ability to invest, reduce emissions and gain surplus credits for sale to partially offset the investment cost would have been an efficient and effective means of financing real, long-term and substantial emissions</p>

			<p>reduction.</p> <p>Not only will the 100% cap remove this incentive, it may create a perverse incentive for companies to invest in more emissions intensive options where the cost of these is lower (e.g. using coal instead of gas because it is cheaper, and shielding companies from increased emissions costs instead of rewarding them for reducing emissions).</p> <p>A3P understands that a number of companies have or will provide 'commercial-in-confidence' information to DCC to illustrate some of the potential emission reduction investments which could have been encouraged under the original EITE design but which will be stifled by the proposed 100% cap. The use of renewable biomass and/or switching to lower emissions fuels are the most obvious type of investments for which the incentive will be substantially negated by the 100% cap.</p> <p>Without an incentive for EITE industries to transition to a lower emissions profile, the CPRS will not result in long-term viable structural change.</p> <p>It is acknowledged that the 100% cap will only be triggered in certain situations. A3P is not in a position to estimate the nature and magnitude of these situations at this time. A3P appreciates that the Government has endeavoured to introduce the 100% cap without requiring the collection of additional information (e.g. actual annual emissions from each EITE activity/facility). However, the application of NGERs company/facility based data to an activity based system may result in some perverse outcomes driven more by company structures than by emissions performance.</p> <p>Industry-wide discussions have revealed substantial uncertainty and differences of opinion about the intended operation of this clause and how the inconsistencies between EITE activities and NGERs reports will be dealt with. This clause requires further clarification and subsequent additional consultation before the mechanism is finalised.</p> <p>A3P also notes that previous advice from the Government has been that companies receiving EITE assistance will not be able to access the Climate Change Action Fund (CCAF) as this would constitute double-dipping. However, if the Government insists on the removal of the investment incentive for EITE companies via the 100% cap it is A3P's view that it should reverse its decision in relation to CCAF or provide an alternative source of funding as an incentive for EITE industries to invest in the many emissions reduction opportunities available to them. By their very nature, EITE activities probably offer the greatest potential for emissions reduction with minimum transaction costs but not at no cost.</p>
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General comments

A3P welcomes the opportunity to comment on these draft Regulations and, as has been the case throughout the development of the CPRS, is ready and willing to assist the Government by defining issues and implications of various options for the Australian pulp and paper manufacturing industry.

Nothing in this Submission should be interpreted to mean that A3P withdraws any of the views expressed in previous submissions and any other issues or concerns raised in relation to the design of the CPRS.

A3P welcomes the improvements made in the draft Regulations relating to true-up and approval timelines.

As set out above, these draft regulations represent a fundamental change to the operation and implication of the CPRS for businesses. As a general principle, and regardless of the ultimate nature of the CPRS legislation and accompanying regulations or any other arrangements which may eventuate to create an emissions trading scheme,

A3P would urge the Government to acknowledge that businesses (and the Government Regulator) will need an adequate lead-time (probably a minimum of 12 months or one full financial year) to put in place the necessary systems and processes to operate the Scheme. This lead-time should be built into any/all proposals of this nature regardless of their precise design. As a result of the failure of the CPRS to pass the Parliament in accordance with Government's previous schedule, the Government should now move all the scheduled operational dates for the CPRS forward by twelve months.

As a result of continued uncertainty on climate change policy both internationally and domestically it is becoming increasingly difficult for businesses to justify investment in climate change related systems and processes (e.g. accounting and auditing) when the requirements for these are constantly changing.

Please return **by 5pm (AEST) on Thursday 28 January 2010** to:

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