MINERALS COUNCIL OF AUSTRALIA

> REACH FACTSHEET

MAY 2005

What is REACH ?

REACH is the proposed Regulation of the European Commission for the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). It is the centrepiece of the New Chemicals Policy (NCP). It is designed to be a consolidated chemicals regulation system for the European Union (EU). It will replace 40 pieces of legislation and will require producers, importers and users of chemicals to be responsible for the provision of data and the assessment of risks to support their registration and authorisation for specific use.

Why will bulk minerals exports be covered by legislation designed to deal with chemicals imports?

The inclusion of bulk minerals appears to be an unintended consequence of introducing such a sweeping reform of chemicals regulation in the European Union. The coverage of the legislation is much more comprehensive than the chemicals management regime of any other OECD country. In addition to new chemicals, it is estimated that approximately 30,000 existing substances will be subject to registration under the REACH system.

The interpretation of the definition, of chemical, and therefore the scope, of the legislation includes minerals, produced or imported in quantities of more than 1 tonne, including:

- primary raw materials (ores and ore concentrates);
- massives (this means 'solid' as distinct from powder or dispersive materials);
- all metal compounds and complex preparations (like alloys) that are classified as hazardous, [alloys are considered as products, but made of materials/substances that are required to be authorised, therefore alloys do not need to be registered, but their use does];
- articles that include hazardous substances intended to be released; and
- secondary raw materials for recycling (recyclable materials).

The proposed system will apply to all of the above commodities that are imported in amounts of more than 1 tonne, effectively giving blanket coverage to all Australian minerals (excluding coal) or metal exports to the EU, which are exempt from corresponding legislation in Australia.

The timing of the implementation of REACH will be based on a volumetric, as distinct from risk-based criteria. Mineral commodities are typically traded in volumes in excess of the REACH trigger level of 1000 tons per annum and will be subject to a shorter phase-in period of three years.

Bulk exports of oil, coal and natural gas to the EU will be exempted from the REACH system.

What Australian minerals exports to the Europe Union will be covered by the legislation?

Affected Australian minerals exports are likely to include iron ore, nickel, zinc, alumina, copper ores and concentrates, and uranium ores.

According to official data, exports of minerals and metals to the European Union were valued at A$1.6 billion in 2004. These exports account for 6 per cent of total Australian exports of metals and minerals, and about 12 per cent of merchandise exports to the EU in 2004.

It is important to note that Australian exports of coal (worth $1.8 billion in 2002-03), as an organic product, will NOT be affected by the legislation.

How does the REACH system work?

REACH is a system of checks through which all substances being manufactured or imported to the European Union must pass before being made available on the market.

The basic steps in the process are:

Registration: which involves an initial lodgement of data on the substance including any known risks from the substance (such as whether it is toxic, flammable etc) as well as the procedures in place to manage risks to human health and the environment.

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This information must be lodged with the European Chemicals Agency for all EU producers and importers of chemicals (which are different from products in EU Legislation) greater than 1 tonne for:

> all substances;

> preparations containing greater than 1 tonne of hazardous substance; and

> minerals and concentrates/secondary raw material streams with greater than 1 tonne of hazardous substance [all concentrates and most, if not all, recyclables contain impurities which are hazardous, eg. arsenic, mercury, selenium, and cyanide];

Evaluation: of all substances (as above) in quantities greater than 10 tonnes – this constitutes registration plus the submission of a more detailed report on hazard assessment, effects assessment, risk assessment and proposal for risk management, known as a Chemical Safety Report.

If, following the evaluation of a substance, it is found to be of high concern due to its potential effects on human health and/or the environment, a specific authorisation must be sought;

Authorisation: applies to all substances of high concern, and involves an evaluation of industry-provided data on specific chemicals. The Authorisation process is based on a thorough assessment of the potential dangers that a substance may cause to human health and the environment. The authorisation process pays particular attention to the risks that the substance poses due to any carcinogenic, mutagenic, and/or reprodotoxic (CMR) properties. All substances imported in quantities over 1 tonne that contain more than 0.1 per cent CMR material must be authorised before gaining access to the EU market. Authorisation provides a permit for specific uses and can be requested by 'producer' or 'user'.

Restriction: which can apply to any substance, and is intended as a safety net to manage risks not adequately covered by other processes (such as substances imported in quantities of less than 1 tonne).

Timing: the implementation of REACH is based on the volume imported per annum. For imports over 1000 tonnes per annum, REACH is required to be phased in within 3 years of the legislation coming into force.

What are the minerals sector's main concerns about the legislation ?

The MCA is concerned that the EU's New Chemicals Policy will:

> impose a significant cost burden to industry without demonstrable improvements in human health and safety or environmental protection;

> put the minerals/metals industry at a competitive disadvantage to directly substitutable products, ie. organics, such as oil, gas and coal and their derivatives - such as plastics;

> directly impact on Australian producers' costs of doing business, and not just in the EU, for ores, massives, concentrates and metal products, because Australia, historically, and prospectively, relies on surrogate data from the EU and the US in establishing regulatory, community and environmental health standards;

> create barriers to entry and therefore global trade distortions to the extent that this new regime either denies market access, puts products at a competitive disadvantage and/or increases the cost of doing business in the EU:

- will distort trade in scrap metal and other recyclable minerals and metal products, creating disincentives to sustainability of metals which have a unique capacity for continual reuse; and
- could envisage trade to EU more in the form of metal products produced offshore without the costly regulatory requirements of the EU system - this could distort industrial production in the EU which has been a large importer of ores and concentrates and then exporter of the product, eg. 50% of the world's nickel plate comes from EU and 30% is exported as stainless steel;

> create new technical barriers to trade that are not in compliance with the WTO Agreement on Technical Barriers to Trade:

- is more trade restrictive than necessary to fulfil a legitimate objective; and
- threatens to have a disproportionate negative effect on like products/materials imported from third countries, including Australia (eg. including less favourable treatment of imports vis a vis already EU registered substances); and

> the EU is overtly promoting their new chemicals policy as a model for a harmonised global chemicals management system.

Has there been any quantitative assessments on the impact of the legislation on regional and global trade flows, business costs etc ?

There have been as many as 36 studies that have addressed various aspects of the impact of the legislation. But none has

focused on the impact of the proposed regulatory regime on global trade flows, and how that trade disruption and diversion will adversely impact the EU itself. The MCA has commissioned the Australian Bureau of Agricultural and Resource Economics (ABARE) to undertake an Impact Study to assess the economic impact to the EU of the REACH Regulation, on account of the trade and economic impact to Australia and other regions, particularly developing countries. The preliminary report of this study has now been completed, with further reports to follow in late May/early July.

What were the main findings of the Australian REACH study?

The preliminary stage of the study has found that the main adverse impacts from REACH will be in the European Union itself. The study found that EU producers "can be expected to lose competitiveness on world markets for processed ores and concentrates as they incur additional costs that are not fully shared by other trading partners."

The study finds that by 2010 Australia lead imports to Europe will fall by 71.5 per cent and 21.2 per cent under the high and low restriction scenarios respectively. Zinc exports will slump by 73.4 per cent and 20.3 per cent, and nickel exports by 75.2 per cent and 25.8 per cent. The impact on EU metals industry will be considerable, and could contribute to the hollowing out of the powerful EU metals industry business.

The study found that the most significant impact on Australian industry from REACH would be in the zinc sector, due to the higher export orientation towards the EU market. It should be noted that these projections are only preliminary, and are designed to provide an initial view of the broad direction of the likely impacts of REACH to guide further analysis.

Why were the trade restriction scenarios set at 25% and 75%?

Given the current uncertainty with how the authorisation provisions of the REACH legislation will be applied in practice, the study modelled a range of possible outcomes for Australian exporters of lead, zinc, and nickel. The three scenarios chosen were

> A baseline scenario that takes into account the costs of compliance with REACH, but does not apply any restrictions on access to the EU;

> A low trade restriction scenario, where it is assumed that 25% of Australian exports of nickel, lead and zinc are refused access to the EU market due to restrictions on end-uses of these commodities; and

> A high trade restriction scenario, where it is assumed that 75% of Australian exports of nickel, lead and zinc are refused access to the EU market due to restrictions on end-uses of these commodities

These 'ball park' scenarios were chosen to provide an initial view as to where the main impacts from the REACH legislation would be likely to lie, in order to provide a guide for further analysis.

Have other studies focused on the effect of REACH on international trade?

No. Most other studies have focused on the direct costs of the legislation, and have not looked at the wider effects of REACH. While these are significant, the main costs from REACH are expected to be indirect costs arising from the distortion in international trade in minerals, particularly given the differential treatment of inorganics such as iron ore and zinc ores, and the organic sector such as oil and polymers.

What will be included in the next tranche of the study?

It should be made clear that this is only the preliminary report from a wider Australian study on REACH. Further analysis is now underway, and will take into account:

- a wider spectrum of mineral ores and concentrates, with an initial focus on copper and iron ore;
- a wider cross-section of economies that are important from a minerals export perspective, particularly those from developing regions;
- a more comprehensive database on the relative composition of ores and concentrates across all major exporters to the EU and;
- information on the value added chain for specific minerals.

Does the MCA oppose the fundamental objectives of the REACH legislation ?

No. The fundamental goals of REACH are eminently supportable, these being principally, the health and environmental aims of the legislation; the introduction of risk assessment and risk based management; and the requirements for decisions to be based on sound science. Moreover, the changes will also bring EU chemicals regulation into line with the US and Australian systems, in that the originator (producer and importer) of the substance seeking regulatory clearance (registration/authorisation) will generate and manage the supporting regulatory data. In other words, the responsibility for data generation and risk assessment shifts to industry.

Is the minerals sector advocating the defeat of the legislation ?

No. The MCA's focus is on putting forward constructive amendments, not outright opposition.

The EU is committed to the eventual passage of the legislation. Now the Luxembourg Presidency and it is expected the UK Presidency in the second half of 2005 will follow suit.

What changes does the Australian minerals industry want to the REACH legislation ?

The scope of the legislation is too broad, and captures many products that present little or no risk to human health. The legislation should be refined to focus on the substances that present the greatest risk.

The minerals sector believes that the following amendments are essential to ensure the workability of the REACH system:

- the exclusion of naturally occurring raw materials concerning ores and metal concentrates from REACH[1], providing consistency in the application of the system with naturally occurring organic materials (crude oil, gas and coal);
- the exclusion of secondary raw materials (recyclables) from REACH, given that these substances are already regulated under separate legislation and additional unjustified regulatory imposts would be a significant disincentive to sustainability;
- the inclusion of a definition of alloys consistent with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) which will treat alloys as a substance in their own right rather than as a preparation of components substances, again providing consistency in the treatment of alloys with organic polymers;
- recognition that minerals and metals in their massive[2] form pose a greatly reduced risk to human health and the environment and therefore may be exempted from the authorisation requirement of the legislation on account of their massive form;
- the recognition that the current definition of a 'substance' needs further clarification to avoid uncertainty in the application of the legislation to chemicals that vary in impurities which may or may not be a hazardous substance (this is particularly pertinent to the minerals sector given the heterogeneity of ores and concentrates);
- consideration of changes to the administration of REACH, where that applies to the streamlining of different uses and exposures to standardised exposure scenarios founded in a risk-based method of categorisation and thereby reducing costs for SMEs and downstream users;
- changing the prioritisation of REACH implementation (the roll-out) from a simple volume basis to a risk-based system that uses a set of criteria, agreed with regulators covering the exposure, volume and hazard properties of the substance; and
- decoupling the timing of implementation of REACH from the adoption of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) by the European Union.

Further, the Minerals Council strongly supports the exclusion from the regulation of a persistent bio-accumulative and toxic substances (PBTs) evaluation for authorisation of minerals and metals. It is now recognised that the current 'organic risk assessment' methodologies cannot apply for metals and there is a need to determine a risk assessment methodology for metals and 'inorganics.

If adopted, these amendments should mitigate against what appears to be unintended, serious negative impacts of the legislation. These amendments should:

- ensure that the costs borne by industry relate to demonstrable likely improvements in human health and safety or environmental protection;
- remove the competitive disadvantage to inorganics in favour of organics;
- remove the anti-competitive effects to Australian producers compared to their European counterparts;
- ensure that science-based data is both available and accurate from the EU as surrogate data for the purposes of supporting regulatory, community and environmental health standards both in Australia and internationally;
- remove disincentives for the use of scrap metal and other recyclable minerals and metal products; and
- remove distortions to trade and resource allocation, notably increased pressure on European metal producers and other manufacturers to relocate capacity outside of Europe to maintain competitiveness.

Significantly, the amendments proposed above do not compromise the underlying fundamental objectives of REACH, notably a science and risk assessment based regulatory system for the improved protection of human health and the environment, shifting responsibility for the generation and management of data in support of registration and authorisation to industry. In this, the EU's regulatory system will further align with that of Australia and the United States.

[1] Providing that the substance is not in itself toxic or otherwise dangerous.
[2] For the purposes of the EU REACH legislation, massive means 'solid' by opposition to powder or dispersive materials.

Is the REACH legislation consistent with World Trade Organisation rules, and if so, does the minerals industry support action in the dispute settlement action against the EU ?

It is premature to make a definitive judgement on the WTO-consistency of the REACH legislation, given that it is still in draft form. The MCA remains hopeful that the legislation will be amended along the grounds outlined above.

However, in its current form, the legislation does pose some potential breaches of WTO rules in the following respect.

In particular it is more onerous, restrictive and burdensome than is necessary to achieve the safety and health objectives outlined. This represents an apparent breach of Article 2 of the WTO's Agreement on Technical Barriers to Trade that states that 'technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective.'

Are other Australian industry sectors likely to be affected ?

The Department of Foreign Affairs and Trade has indicated that several sectors of Australian industry could be adversely affected by disruptions to global supply chains. In a submission to the WTO's Technical Barriers to Trade committee in 2004, DFAT noted that Australian industry relies heavily on essential inputs from the EU – not only for the chemicals industry, but also mining, textiles, autos, paints and plastics. DFAT also noted that Australia is a net importer of these substances, many of which are used in further manufacturing processes. "Australian companies would therefore be severely affected by any reduction in the availability or affordability of such inputs," DFAT said in the submission.

Is there concern about the REACH legislation within the European Union ?

Yes. The MCA, Australian companies and the Australian Government have been working closely with European industry groups, members of the European Parliament, and concerned member states to develop constructive solutions to the problems posed by the draft legislation. Several member states and industry groups within the EU have suggested amendments to the legislation, including the UK, France, the Czech Republic and Sweden, some of which, if passed, should address Australian industry concerns.

Is Australia's concern about the REACH legislation shared by other trading nations ?

Yes. The Australian Government and industry groups are working with a range of other trading nations, including developing nations, who have expressed concern about the impact of the legislation.

Member economies of the 21-member Asia-Pacific Economic Cooperation (APEC) Chemical Dialogue last year wrote to the European Commission expressing concern that the REACH legislation will excessively restrict trade and adversely affect developing economies. The letter's signatories warned that, as currently drafted, the legislation continues to have the potential to 'disrupt international chemicals markets,' 'inhibit innovation,' and 'significantly increase costs.'

FURTHER INFORMATION:

European Union gateway – REACH page.

http://europa.eu.int/comm/enterprise/reach/index.htm

Euractiv – EU News and policy positions

http://www.euractiv.com

EuroMetaux – The European Association of Metals

http://www.eurometaux.org/content/default.asp