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17 March 2004

The Secretary
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT 2600

Dear Secretary

Submission to Senate Economics Legislation Committee - Inquiry Into the Customs Tariff Amendment (Greater Sunrise) Bill 2004

Woodside holds a 33.44% interest in and is Operator of the Sunrise Unit Area located in the Timor Sea. The other Sunrise participants include ConocoPhillips (30%), Shell (26.56%) and Osaka Gas (10%).

The Unit Area contains the Sunrise and Troubadour gas fields, discovered in 1974, which provide the basis for the Sunrise Gas Project, an A\$6 billion to A\$7 billion investment that will generate government revenues estimated to be A\$10 billion, to be shared between Australia and Timor-Leste over the life of the project.

The Sunrise Joint Venture has invested in excess of \$A200 million in exploration, appraisal and concept development activities for the project. Marketing to North Asian and North American west coast gas customers is underway and, at present, finalisation of the field development concept is anticipated by year end.

Over 2004 Woodside aims to capture gas customers and to progress the development to the next phase – detailed engineering and design. However, Sunrise will not progress to the next phase, take a final investment decision or secure gas customers until outstanding legal and fiscal issues are resolved, the most immediate being the entry into force of the International Unitisation Agreement (IUA). Investors and customers must be convinced that there is fiscal and legal certainty for the project. A large part of that certainty is delivered by a ratified IUA.

In effect, the IUA delivers certainty on the legal regime to be applied to the Sunrise Gas Project and allows the Sunrise participants to progress its development while the governments continue their negotiations on borders.

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Recent progress regarding fiscal and legal certainty

It is important to acknowledge the significant progress that has been made towards providing the legal and fiscal certainty required by the Sunrise participants and potential customers.

On 20 May 2002 the Timor Sea Treaty was signed to provide a framework for oil and gas investment in the Timor Sea. On 2 April 2003 the Timor Sea Treaty between Timor-Leste and Australia came into force establishing the Joint Petroleum Development Area (JPDA) (with effect from 20 May 2002). In turn, this enabled the Governments to jointly issue two new production sharing contracts in April 2003 (also effective 20 May 2002), JPDA 03-19 and JPDA 03-20, covering the portion of Sunrise within the JPDA. Shortly afterwards new regulations were issued for the JPDA, including a Petroleum Mining Code which provides specific detail concerning contractor obligations in the JPDA.

In May 2003 the Northern Territory and the Commonwealth Governments gave environmental approval for the Sunrise upstream development.

A very important recent step forward for fiscal and legal certainty was the signing of the IUA for Sunrise by the Governments of Timor-Leste and Australia on 6 March 2003.

Both Governments have devoted considerable resources to these issues, all aimed at creating an environment conducive to investment.

International Unitisation Agreement for Sunrise

Compliance with obligations in the Timor Sea Treaty and International Unitisation Agreement

Australia has an obligation under Article 9 of the Timor Sea Treaty to unitise fields extending across the JPDA border and a further obligation in Annex E to the Timor Sea Treaty specifically to unitise the Greater Sunrise fields.

Furthermore, in the Memorandum of Agreement signed by the Governments simultaneously with the Timor Sea Treaty, they agreed to work expeditiously and in good faith to conclude an international unitisation agreement for the Sunrise fields by 31 December 2002.

The IUA gives effect to these international obligations once it enters into force. However, the IUA does not enter into force until ratification by both Australia and Timor-Leste and an exchange of notes between the countries.

Notably, the IUA has been reviewed by the Joint Standing Committee on Treaties (JSCOT). JSCOT supported the IUA and recommended that binding treaty action be taken.

What effect does the IUA have on borders?

Importantly, by Article 2, the IUA expressly reserves the ability of the Governments to continue to negotiate final delimitation of borders. Similarly Article 27 contemplates an agreement on borders and the IUA then being replaced by an agreement that holds the Sunrise participants in equivalent terms. Article 8 contemplates, in the event of a redetermination of the Apportionment Ratio of Sunrise between Australia and Timor-Leste, a retrospective adjustment of past expenditures and receipts. All of these provisions are designed to ensure that Timor-Leste is not prejudiced by the ratification of the IUA. The

IUA's sole purpose is to provide an interim arrangement which delivers legal certainty for the Sunrise project while borders are negotiated.

Customs Tariff Amendment (Greater Sunrise) Bill 2004

Article 22 of the IUA contains an agreed position between Australian and Timor-Leste concerning customs duties.

The Customs Tariff Amendment (Greater Sunrise) Bill 2004 is a required part of the enabling legislation that must be passed if Australia is to satisfy its requirements for the entry into force of the IUA.

Why are customs duties exempted in the Unit Area?

The aim of unitisation is to enable the Sunrise fields to be developed in a coordinated and integrated way as a single entity for development and administration purposes, without prejudice to a permanent delimitation of the seabed.

For example, the IUA provides for a joint Australia and Timor-Leste administration of the Unit Area, by the Sunrise Commission, so that a coordinated application of regulations can apply in the Sunrise Unit Area.

Similarly, Article's 19, 20, and 21 (and Annex II), provide for a common legislative and administrative regime in relation to matters concerning safety, occupational health and safety and environmental protection. Further Annex III provides important fiscal certainty by setting out detailed petroleum valuation principles which apply across the Unit Area.

In this context, Customs is another example of a consistent coordinated approach across the Unit Area such that a common approach is established with respect to the application of Australian and Timor-Leste laws.

Article 15 of the Timor Sea Treaty provides that goods and equipment entering the JPDA are exempt from customs duties. Hence that part of the Sunrise Unit Area which is within the JPDA will be exempt from customs duties. This is a practical arrangement recognising that the JPDA is neither Australian nor Timor-Leste Territory.

In Article 22, the IUA extends the exemption to the remainder of the Unit Area. However, goods and equipment leaving the Unit Area for the purpose of permanently being transferred to either Australia or Timor-Leste will still be subject to customs duties.

Primarily the exemption in the IUA provides a simplified consistent approach to the provision of goods and services whether they enter that part of the Unit Area within the JPDA, or that part of the Unit Area outside the JPDA.

Moreover, significant administrative and operational complexities would arise in the event customs duties are applicable to only one portion of the Unit Area. The Bill, which provides that customs duties are not payable within the Unit Area, represents the pragmatic position of both countries agreeing to avoid the application of complex and regressive duties for goods that may be moved across multiple jurisdictions. It also avoids a situation in which either country may be adversely affected by variations to the rate of duty applied by either government.

The introduction of Australian customs duties to the eastern side of the Sunrise Unit Area would have the perverse effect of creating customs revenue for Australia at the expense of Timor-Leste - to the extent such imposts eroded profits, they would reduce Timor-Leste's share of "profit oil" under the Production Sharing Contract terms and reduce Timor-Leste's corporate tax revenues.

Practical Effect of the Amendment Bill

The Customs Bill should have little practical effect upon Australia's customs duties, while having the many benefits of consistency and simplicity referred to above. It will have no impact on Woodside's commitment to maximising opportunities for local industry.

The customs laws of Australia and Timor-Leste will continue to apply for goods moved into and out of the Sunrise Unit Area, and customs duties will continue to be payable where such goods are permanently transferred to either country.

In practice, much of the goods and equipment to be used in the Unit Area is already exempt from or would only be minimally exposed to customs duties. The level of duty payable has generally reduced across industry, and in some areas has been totally removed. Average customs duties for goods incorporated in infrastructure in the offshore petroleum industry have been progressively reduced from 25% in 1988 to 5% in 1996 and remains at that level today.

Also, the petroleum industry in Australia operates under the provisions of the Enhanced Project By-Law Scheme (EPBS) which provides customs duties exemptions. Applicants need to prepare Australian Industry Participation Plans which are reviewed and, if acceptable, are approved by AusIndustry before duty exemptions are provided to the applicant. Under the EPBS, duty concessions are available to goods not available in Australia and there are broad criteria included in the EPBS Administrative Guidelines (strictly adhered to by AusIndustry) defining the circumstances under which goods are considered to be available in Australia. The scheme applies to a range of manufacturing, agriculture and resources industries and enables goods required for major projects (including petroleum projects) to be imported without attracting duties due to their specialised nature and lack of availability or "substitutability" in Australia. This avoids projects incurring a cost penalty to their competitiveness when there is no industry protection or development benefit to be gained.

In the case of Sunrise, many of the offshore facilities are expected to qualify for duty exemption under the EPBS. The offshore production jacket being the largest of its type in the world, the subsea flowlines and compressors, for example, would readily qualify.

Australia also has a free trade agreement with Singapore (SAFTA) and is moving towards the implementation of a Free Trade Agreement (FTA) with the USA. Items sourced from these locations will enter duty free under the terms of those agreements. In the case of Singapore, goods that achieve a 50%+ Singaporean content can enter Australia duty free.

Woodside Local Content Practice

In any event, the exemption from customs duty for petroleum operations within the Sunrise Unit Area will have no significant impact on Woodside's approach to maximising local industry participation in the project.

In accordance with our usual practice, it is Woodside's intention to prepare a Local Industry Participation Plan for the project and to liaise with Australian and Timor-Leste stakeholders, including AusIndustry and the Industry Capability Network, regardless of the application of customs duty.

It should also be remembered that local industries will more readily access opportunities through onshore related activities associated with the Sunrise Gas Project, provided the circumstances are first created under which the project can proceed. For example, whereas large marine based installations might today contain Australian content in the order of around 40%, large onshore developments provide much greater opportunity. In the case of the North West Shelf Project, over the period 1986 to 2004, Australian participation in onshore infrastructure has been in the order of 70%.

The onshore development concepts being considered for Greater Sunrise involve many thousands of jobs being created throughout the economy in addition to a construction workforce that could reasonably be expected to peak at some 3,000. Furthermore, revenues to the host governments of some A\$10 billion will be lost or significantly delayed if the Sunrise participants cannot proceed with their marketing effort and design studies.

Conclusion

Failure to pass the Bill will prevent the IUA being ratified in accordance with the requirements for it to enter into force.

The Customs Tariff Amendment (Greater Sunrise) Bill 2004 is consistent with the undertakings entered into within the IUA and exemption of customs duty within the Sunrise Unit Area will have no significant impact on Woodside's approach to maximising local industry participation in the project.

Woodside will not be in a position to progress the development of Greater Sunrise unless petroleum operations can be conducted within the Sunrise Unit Area under a clear and consistent administrative framework supported by complimentary legislative provisions so as to provide legal certainty. The IUA delivers a large part of this legal certainty.

Passage of the IUA enabling legislation, including the Customs Bill, is essential if the Sunrise project is to proceed and Australia and Timor-Leste are to share in the considerable benefits to be derived from the project.

Yours faithfully
WOODSIDE ENERGY LTD.



PAUL KITSON
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