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DE BRAUW BLACKSTONE WESTBROEK

District Court of The Hague
Hearings on 1, 3, 15 and 17 December 2020
Case number: C/09/571932 19/379

PLEADING NOTES:
FACTS AND QUESTIONS FROM THE DISTRICT COURT
15 DECEMBER 2020
of *mr.* J. de Bie Leuveling Tjeenk, *mr.* N.H. van den Biggelaar and mr. D. Horeman

in the case of:

MILIEUDEFENSIE ET AL. versus
ROYAL DUTCH SHELL PLC

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1 INTRODUCTION

1. In this first part of today's oral arguments, we will discuss a number of factual elements of RDS's defence, in response to the questions that the District Court put to RDS about Shell's ambitions during the hearing days on 1 and 3 December. In addition, we will discuss the comments made by Milieudefensie et al. in the opening arguments about Shell's lobbying activities.

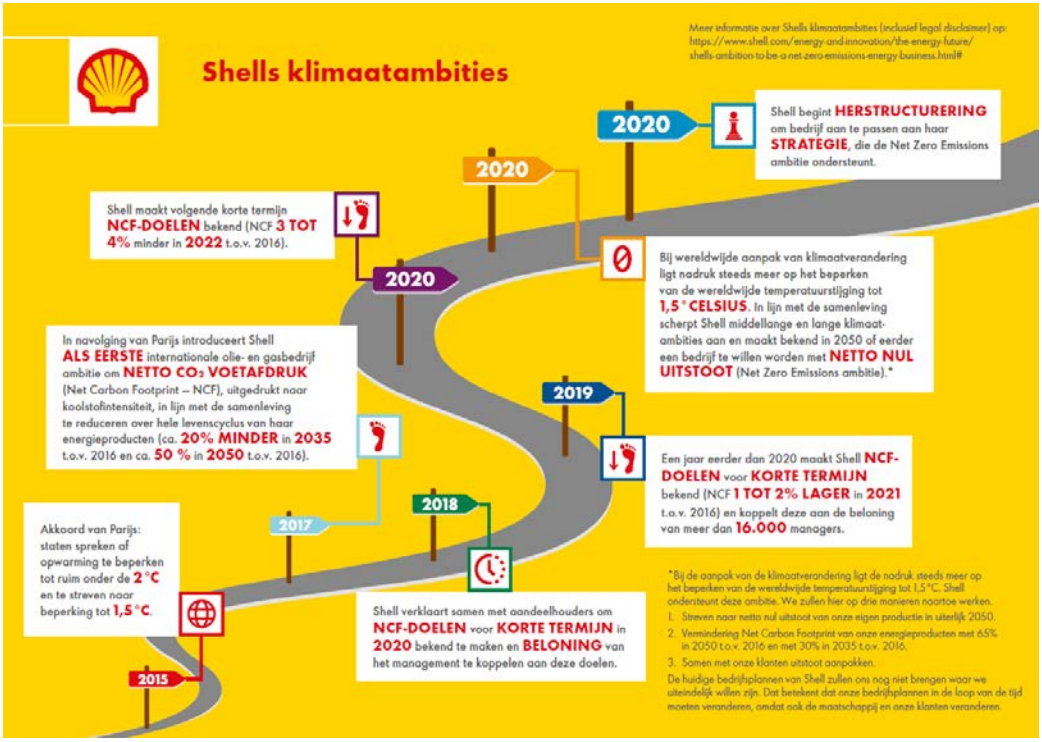
2 FACTUAL QUESTIONS FROM THE DISTRICT COURT REGARDING SHELL'S AMBITIONS

2.1 Development of climate ambitions

2. At the hearing on 3 December, the court asked a number of questions about Exhibit RK-32(a)-(c). Those questions were partly answered during that hearing. RDS would also like to answer the District Court's questions that had not yet been addressed in full. In order to avoid any

misunderstanding about the facts, RDS considers it important to do so in the context of an explanation of the ambitions it has published.[1]

3. The figure below shows the development of Shell's climate ambition over time.



2.2 *Net Carbon Footprint* (NCF) ambition in 2017

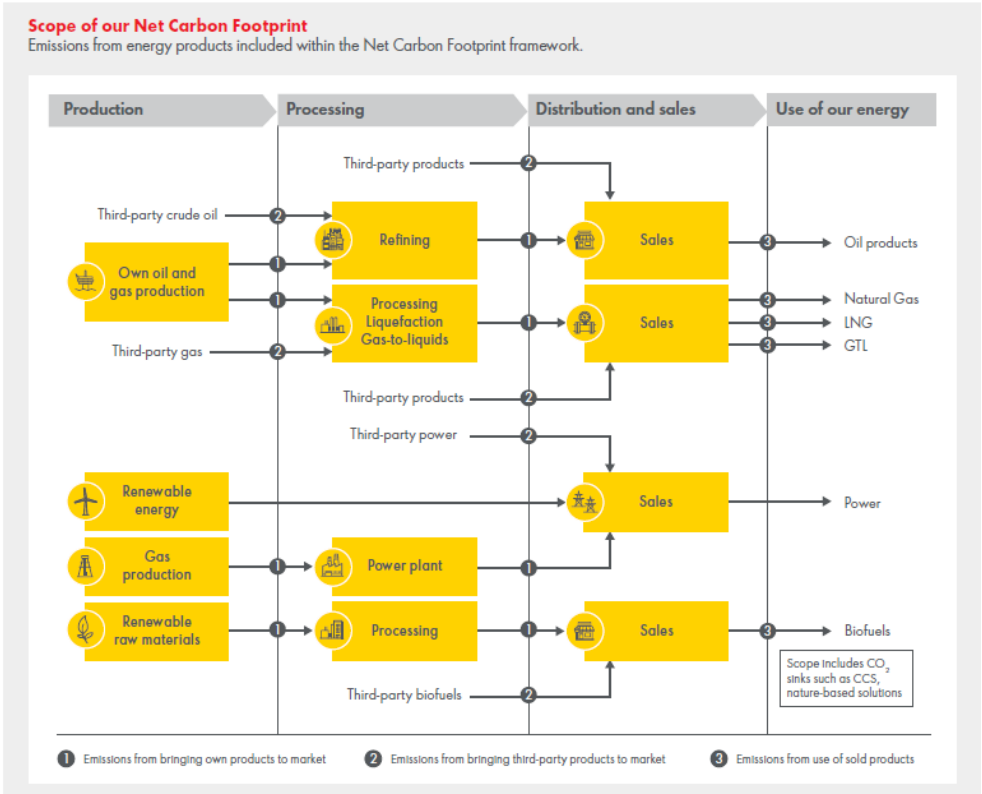
4. In 2017, RDS published the *Net Carbon Footprint* (NCF) ambition: an ambition to reduce the CO_2 intensity of Shell's energy products, in line with society moving towards the objectives of the Paris Agreement.[2] The NCF Ambition pertains not only to emissions from Shell's activities, but also to emissions caused by the use of Shell's products. This made RDS the first holding company of an energy company to announce such an ambition. RDS's Annual Report shows the scope of the calculation of the *Net Carbon Footprint* by indicating per step in the process (from production, processing, distribution to use of the

1 In this respect, see also Written Arguments Part I RDS, margin numbers 12-15.

2 **Exhibit RO-39**, Shell, Shell's Net Carbon Footprint ambition: frequently asked questions and Statement of Defence, part 2.3.2.

products) which emissions are included therein (see the figure below).[3] The NCF methodology and the manner in which it is calculated are also publicly available on Shell's website.[4]

The diagram below illustrates the scope of the Net Carbon Footprint calculation:



5. As this figure shows, the *Net Carbon Footprint* therefore covers not only the scope 1 and 2 emissions of Shell's own activities, but also the scope 3 emissions that arise when end-users use energy products *sold* by Shell (and therefore not only the energy products produced by Shell). At the hearing on 3 December, when asked, we also explained this to the District Court, but it seems good to emphasise this again.[5] These scope 3 emissions contain approximately 85% of all the emissions to which Milieudefensie et al.'s claim relates.[6] It should be

3 **Exhibit RO-251**, RDS, Annual Report 2019, p. 97.

4 Available online at: https://www.shell.com/energy-and-innovation/the-energy-future/what-is-shells-net-carbon-footprint-ambition/_jcr_content/par/expandablelist_copy_/expandablesection_49667105.stream/1586968094020/863276ce89c1204cc35997c56925b8f97818b458/the-ncf-methodology-rev.pdf

5 With reference to **Exhibit RK-32(c)**, Shell 16 April 2020, Responsible Investment Annual Briefing, p. 3. See also **Exhibit RO-39**, p. 3.

6 Statement of Defence, margin numbers 99 and 429.

borne in mind in this respect that Shell's scope 3 emissions are 'scope 1 emissions' for Shell's customers, which they can, in principle, address themselves in a manner similar to how Shell deals with its own scope 1 emissions. We have already explained earlier that Shell helps them with this, and we will come back to that later.

6. The 'net' part of the *Net Carbon Footprint* pertains to the offsetting of emissions by the use of CCS or nature-based solutions (NBS). Shell only does this offsetting in so far as it concerns CCS solutions or NBS activities in which Shell itself is involved, but not to the extent its customers do this themselves (without Shell).

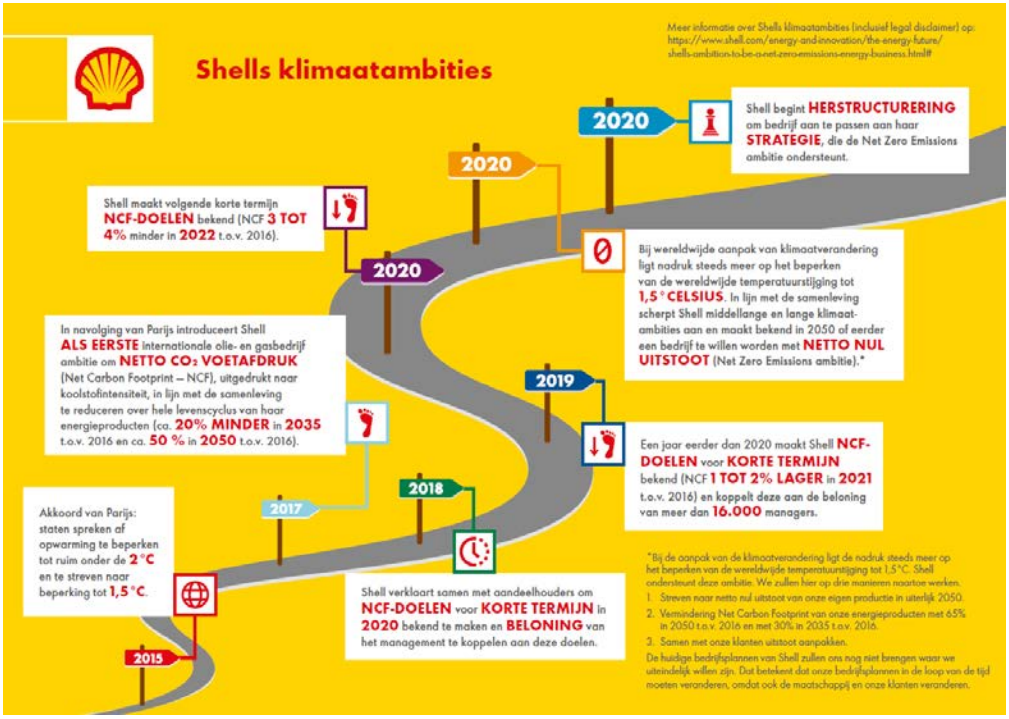
7. The NCF is therefore a standard designed to monitor the change in the emission intensity of the energy products that Shell supplies. It is an intensity-based metric because the NCF focuses on the type of energy that Shell supplies and is, contrary to what Milieudefensie et al. argue, a serious method for monitoring and reducing emissions. Other (energy) companies also use an intensity standard. Shell's NCF does not focus on the elements of the energy system over which Shell has no control, such as the total energy demand, or the extent to which manufacturers market alternative technologies with low CO_2 emissions or the extent to which other parties (end-users, customers) use CCS or their own nature-based solutions to compensate their emissions.

8. The NCF ambition in 2017 pertained to a reduction of the NCF by approximately 50% in 2050, with an intermediate step in 2035 of approximately 20%.[7]

9. From 2018 onwards, RDS's NCF ambition has been included in its Annual Reports for 2017 and is reported on in, inter alia, RDS's annual Sustainability Reports, and is carefully drawn up in line with the applicable (international) reporting obligations. The District Court specifically asked about this during the hearing on 3 December.

7 Written arguments Part I RDS, margin number 13(b).

2.3 Short-term targets in 2018

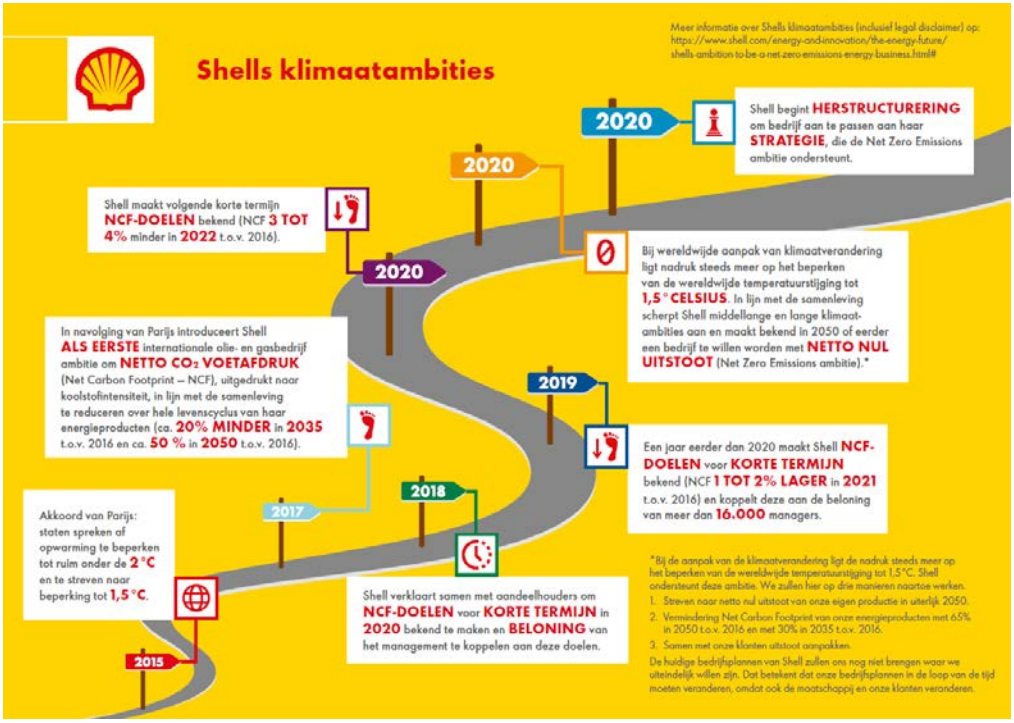


10. Subsequently, in 2018, in a joint statement with a few shareholders,[8] it was indicated that from 2020 onwards, short-term NCF targets would also be set, with a link to the remuneration of senior management.[9] In the end, this step was taken a year earlier, in 2019. RDS reported in its 2019 annual report on the progress of the NCF and short-term targets.

8 **Exhibit RO-88**, Joint Statement RDS and Climate Action 100+, 3 December 2018.

9 See, inter alia, **Exhibit RK-32(c)**, Shell 16 April 2020, Responsible Investment Annual Briefing, Slides, slide 9.

2.4 Raising of ambitions in April 2020



11. That brings us to April of this year: Exhibit RK-32(a)-(c), which your court requested, pertains to RDS's raising of its ambition. During the hearing days on 1 and 3 December, we already devoted attention to the fact that this is a publicly announced ambition, but not a binding objective. Nor can it be, because Shell has to deal with various dependencies and uncertainties with regard to the future. We have already discussed this. The raised ambition means that Shell wants to be "*a net-zero emissions energy business by 2050 or sooner*," in line with society.[10] In doing so, Shell is moving along with society, which increasingly focuses on limiting the average global temperature increase to 1.5°C above the pre-industrial level. The raised ambition was welcomed by institutional investors, as evidenced, for example, by statements from various investors such as the Church of England Pensions Board and the ABP in a press release from the Institutional Investors Group on Climate Change (IIGCC).[11]

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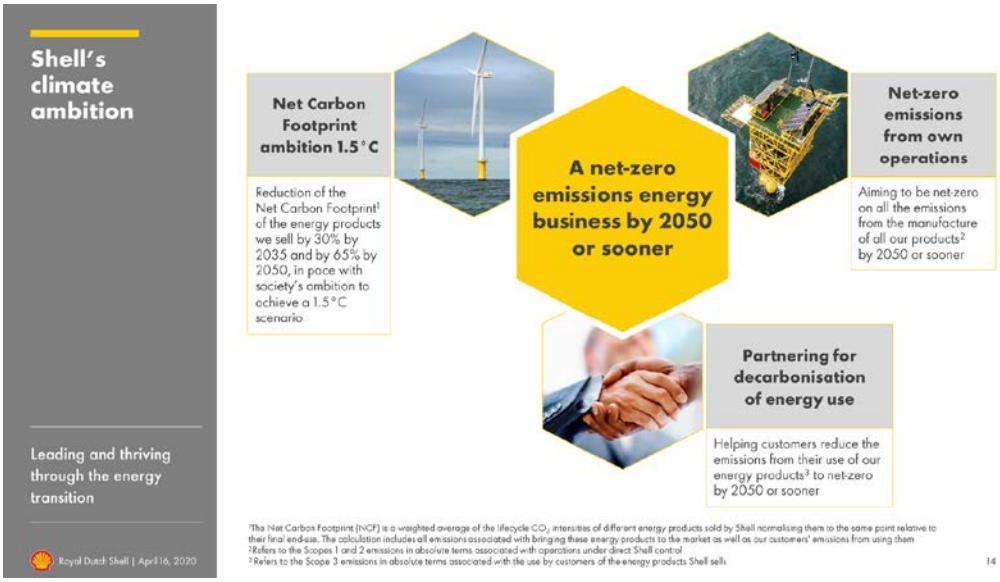
10 **Exhibit RK-32(a)**, p. 1.

11 See: https://www.iigcc.org/news/investors-welcome-net-zero-emissions-commitment-agreed-with-shell/.

12. The raised ambition comprises three pillars, as also explained in the opening arguments:

- net zero emissions related to the *production of all Shell products* no later than in 2050 (scope 1 and scope 2 emissions);
- a larger *reduction of the Net Carbon Footprint of the energy products that Shell sells*, thus reducing the carbon intensity of those products per unit of energy; and
- collaboration with customers and social parties to identify and facilitate sector-oriented, decarbonisation pathways to address the remaining emissions arising when customers use the energy products purchased from Shell that emit CO_2 (scope 3 emissions).

13. In April 2020, this was summarised as follows.[12]



14. We first go through those pillars and then discuss the lessons learned in the past by way of background, and current developments. When discussing the second pillar and the third pillar, we will address a number of the court's questions in succession.

12 **Exhibit RK 32(c)**, p. 14.

15. The <u>first pillar</u> is pursuing net zero emissions related to the *production of all Shell products* no later than in 2050.

16. This 'net zero' emissions ambition includes the emissions created by Shell's activities, including the emissions related to the energy that Shell consumes (scopes 1 and 2).[13] The steps to get there include improving energy efficiency, the use of low-carbon fuels and - for the (still) unavoidable remaining emissions - using CCS and NBS. The internal operational instruments used for this purpose are presented in the slide below under the heading "*Governance*" and include the internal pricing of CO_2 emissions used by the Shell companies, the implementation of emission targets in greenhouse gas and energy management plans and the application of performance standards and industry benchmarks for new projects.

17. The <u>second pillar</u> is the larger *reduction of the Net Carbon Footprint of all the energy products that Shell sells*, thus reducing the carbon intensity of the products per unit of energy.[14] Shell will therefore have to sell more energy products with lower carbon intensity, such as electricity from renewable energy, biofuels and hydrogen.

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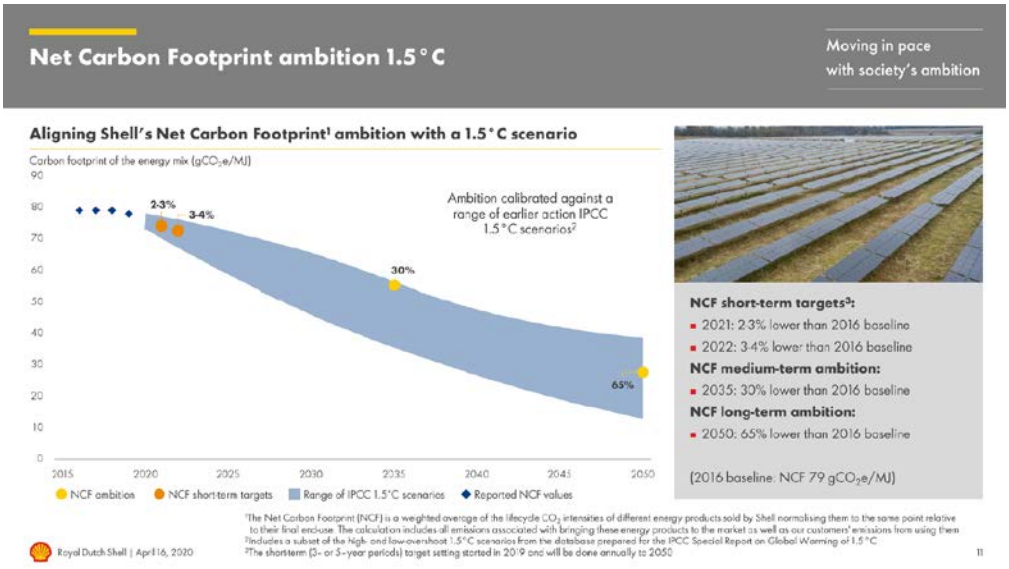
13 **Exhibit RK-32(c)**, p. 12.

14 **Exhibit RK-32(c)**, p. 3 and **Exhibit RO-39**, p. 3.

18. The ambition for reducing this NCF goes beyond 2017 and now mentions some 30% in 2035 (which was approximately 20%) and 65% in 2050 (which was approximately 50%) compared to 2016. In the presentation of April 2020, the reduction of the NCF was explained as follows.[15]



19. By way of explanation of this slide and in the context of the second pillar of the ambition, we would like to address two questions from this District Court that were asked at the hearing on 3 December and had not yet been answered in full. These are, respectively:

a) the question about the meaning of the "*range of earlier action"*; and

b) the question of why an interim NCF target was chosen in 2035 and not in 2030.

Re a) IPCC scenarios and "range of earlier action"

20. The IPCC 1.5ºC scenarios are based on a reduction in greenhouse gas emissions such that the 1.5°C temperature target is achieved. The reference to "*range of earlier action IPCC 1.5°C scenarios*," as requested by the District Court at the hearing on 3 December, means that when determining the NCF target, Shell used those scenarios

15 **Exhibit RK-32(c),** p. 11.

from the IPCC scenario dataset which assume an approach with very drastic measures and societal changes to achieve the 1.5°C objective, including an early and unparalleled strong efficiency improvement, introduction of alternative energy carriers and behavioural changes of consumers in all sectors and in all countries.[16] This in order to become less dependent on later CO_2 emission reduction or removal measures. By choosing these early action scenarios, Shell chose to use "stricter" preconditions to derive its NCF ambition.

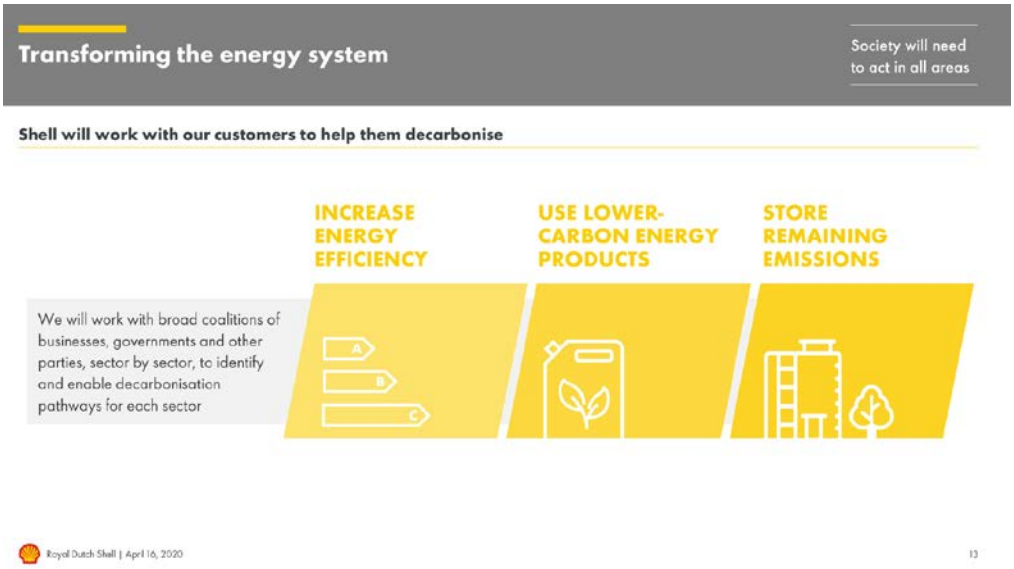
Re b) Why was the interim target set for 2035 and not for 2030?

21. The interim NCF ambition of 2035 was chosen as a reference point somewhere in the middle of the period between 2016 (the selected base year at the first NCF target in 2017) and 2050. After the amendment of claim, Milieudefensie et al. now focused its claim on 2030, but for Shell that year has no more or less significance in implementing its NCF ambition than other years in the timeline. However, it is important to realise that a linear timeline cannot simply be drawn towards 2050.

22. This brings us to the third pillar, with which Shell intends to work with its customers to tackle the remaining emissions created when customers use the energy products purchased from Shell that emit CO_2 (scope 3). We already said in the opening arguments that Shell can help customers in this, but to a limited extent because it cannot force end-users, so that end-users also have a role and responsibility.[17]

16 The scenario database can be consulted here: https://data.ene.iiasa.ac.at/iamc-1.5c-explorer/#/login.

17 Written arguments Part I RDS, margin numbers 13(c) and 30.



23. The District Court asked about the manner in which Shell specifically fleshes out this third pillar of the ambition. In a general sense, with reference to slides 15 and 20 in Exhibit 32(c), RDS pointed out that Shell, often by entering into strategic partnerships, can help improve the energy efficiency of processes or vehicles or supply fuels with a low or lower carbon intensity. At the hearing on 3 December, we discussed, among other things, an example of cooperation in the aviation sector (Amazon Air).[18]

24. Yesterday, in response to the District Court's question, RDS submitted three exhibits to the proceedings that provide more insight into this. First of all, it is a (non-exhaustive) overview of existing Shell partnerships with various companies, scientific and other organisations and governments, with a reference to the public sources.[19] In the Statement of Defence and in the Written Arguments Part I, RDS already pointed out a number of these joint ventures. RDS submitted this overview in order to gain a better picture of the scope and size of these joint ventures. In addition, RDS refers to the presentation submitted by Shell, in which the sectoral approach in the cooperation sought by Shell with parties is made concrete with examples. These examples show how, with Shell's contribution or

18 Written arguments Part I RDS, margin number 13(c).

19 **Exhibit RO-282**, Shell Partnerships.

participation, emission reduction and decarbonisation pathways are being fleshed out in the shipping, aviation, road and industry sectors.[20] These examples also clearly show that Shell is much more than an "oil and gas company"; Shell is also a technology and trading company focused on energy. Finally, RDS refers to the world map on which the many Shell projects in the *New Energies business* are projected worldwide.[21]

25. I would like to mention three examples from the list submitted of partnerships and projects carried out within the framework of the sectoral approach:

- For the maritime sector, the *Getting to Zero* coalition was announced at the UN Climate Summit in New York in 2019. This was a collaboration initially between Maersk, Citigroup, Shell and the Danish government. This coalition has now been expanded to include approximately 130 companies and organisations in the shipping sector, from port companies to shipbuilders and logistics partners. The coalition is trying to find a way to get a commercial ship at sea that no longer adds greenhouse gases to the atmosphere by 2030. In other words, a ship with a net emission of zero.[22] In the maritime sector, Shell is also working with Deloitte Netherlands and Deloitte UK on decarbonisation of shipping.[23]

- In order to reduce emissions in road freight traffic, Shell is working in the US with, among others, the Airflow Truck Company on a hyper-aerodynamic, superefficient class 8* concept truck: *Starship* (for illustration, see the visualisation below).[24] By bringing together the best of the current and adapted technologies, Shell wants to find out how energy efficient road freight transport can be today.

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20 **Exhibit RO-283**, Shell, Working together to achieve net-zero emissions by 2050, Sectoral decarbonization.

21 **Exhibit RO-284**, Shell, Overview of New Energies projects.

22 See also Shell's website: https://www.shell.com/media/speeches-and-articles/2019/shaping-the-future-of-transport-together.html.

23 See also Shell's website: https://www.shell.com/business-customers/trading-and-supply/trading/news-and-media-releases/decarbonising-shipping-report.html.

24 See also Shell's website: https://www.shell.com/motorist/oils-lubricants/rimula-truck-heavy-duty-engine-oil/airflow-starship.html.

The *Starship* initiative investigates what is possible in terms of truck design, fuel saving and CO_2 reduction.

- The third and final example is the joint venture that Shell recently entered into in China with the Zhangjiakou City Transport Construction Investment Holding Group Co. Ltd. Through this joint venture, both parties will invest in the construction of a 20 MW sustainable hydrocarbon electrolysis project and hydrogen fuelling stations in Zhangjiakou City to support the development of the hydrogen and clean energy industries in the city and the Beijing-Tianjin-Hebei region.[25]

26. The ultimate ambition is to be a *net zero emissions* company in 2050. Net zero emissions does not mean that there are no emissions, but that the still unavoidable emissions are compensated by carbon sinks such as CCS and NBS.

27. RDS makes no secret of the fact that the ambition of being a *net zero emissions* company by 2050 is not easy to implement.[26]

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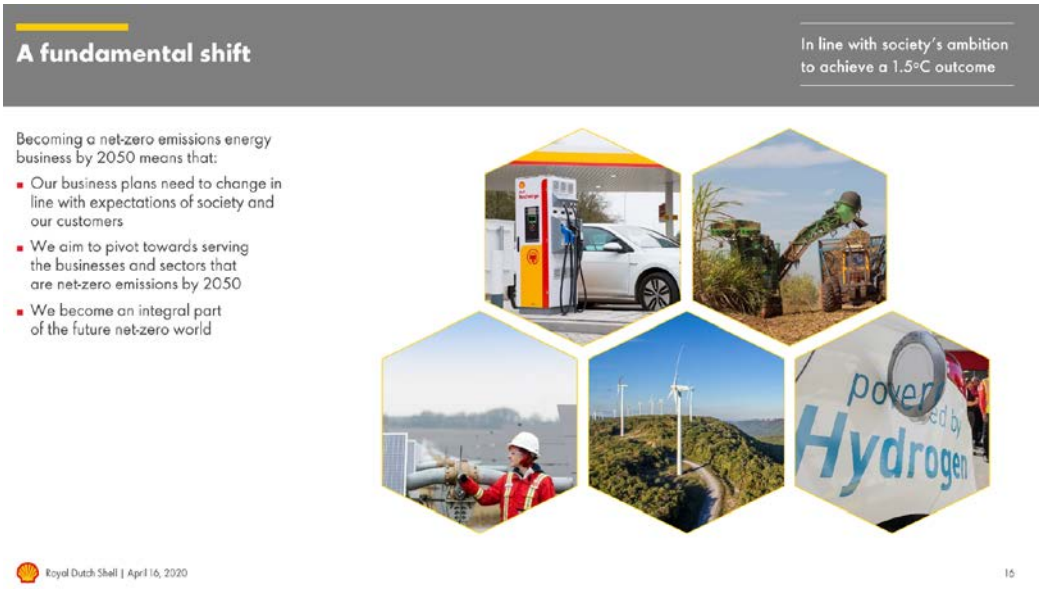
25 https://www.shell.com.cn/en_cn/media/media-releases/2020-media-releases/zhangjiakou-city-transport-and-shell-new-energy-co-limited-formed-to-develop-hydrogen-value-chain.html.

26 **Exhibit RK-32(c)**, p. 16.

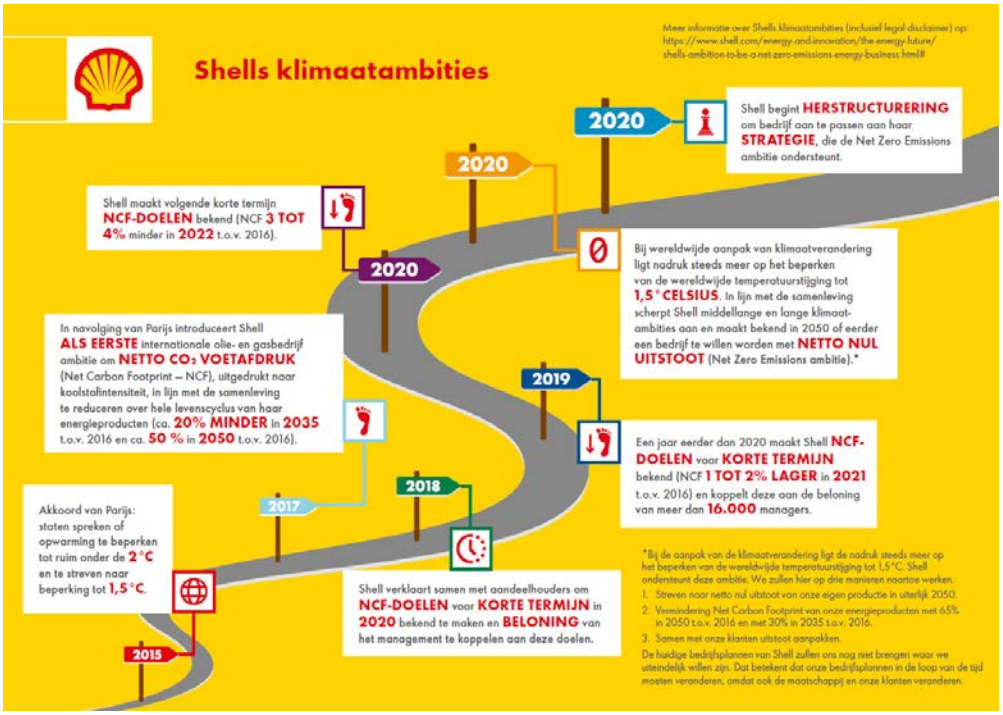


28. RDS's CEO said the following about this at the presentation in April this year:[27]

> "*This is going to take a lot of work. It will not be easy. Some of the necessary technologies – like hydrogen-powered planes, or zero-emissions ships – do not exist yet. And, today, Shell's business plans will not get us to where we want to be. That means our business plans will have to change over time as society and our customers also will have to change overtime.*"

27 **Exhibit RK-32(b)**, p. 9.

2.5 The further elaboration of the raised ambition



29. The raised ambition has now been elaborated this year, as evidenced by the presentation in October this year, which was explained in more detail at the hearing on 3 December.[28]

28 **Exhibit RO-281**, slides 15 and 22 as shown on numbered pages 18 and 29 of the presentation.

30. This shows what role Shell sees for itself in various phases of the transition (see slide 15, included above), and in which transition and future activities play a very explicit role. Those future activities are the *growth business*, including:*integrated power*, *hydrogen, biofuels, nature-based solutions and carbon sequestration as a service*, and the *marketing business*.

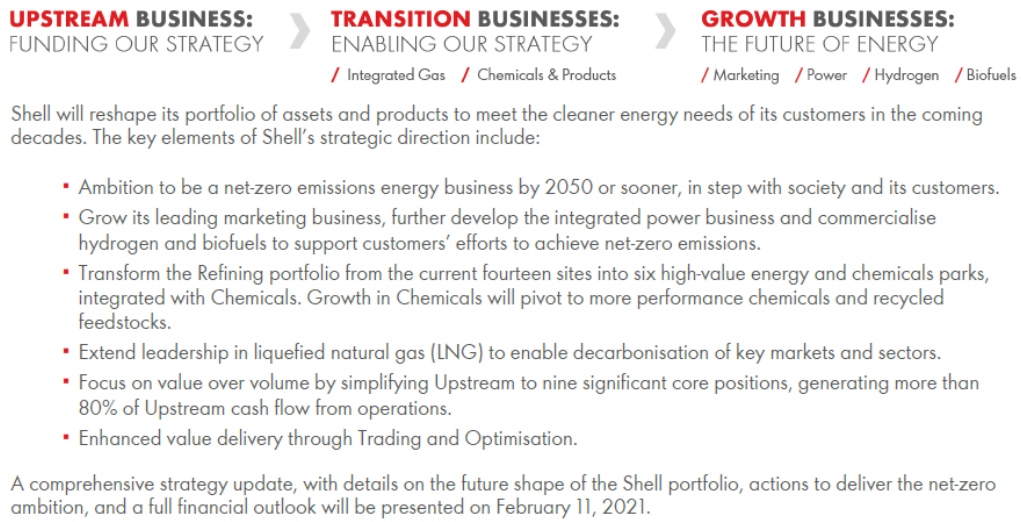
31. As RDS also indicated in its Response,[29] that presentation also shows that the part of the budget specifically intended for that *growth business* is considerable for the coming period, while the total budget will be lower due to lower oil and gas prices and the impact of COVID-19:[30]

/ Reapportion near-term $19-22 billion Cash capex:
  / 35-40% Upstream business, 35-40% Transition businesses, ~25% Growth businesses
  / Inorganic capex included in range

32. The ambitions and developments require time to adjust the organisation accordingly. In October 2020, RDS indicated which

29 **Exhibit RO-281**, p. 9 (slide 7).
30 RDS's Response, margin number 11.

changes are to be expected. Those changes will be explained in more detail in February 2021. RDS summarised this as follows:[31]



2.6 Past experience and practical example now

33. In doing so, we went through the entire timeline of Shell's ambition to date. Further to that, I would like to also briefly discuss the significance of Shell's ambition in the entire energy system.

34. It is not surprising that Shell expresses itself in terms of ambitions, and emphasises that it is part of an energy system and a society that needs to change as a whole, in which Shell not only can, but will have to work with, among others, its customers to be a *net zero emissions* energy company in 2050.

35. Because in all scenarios, including the IPCC Special Report, oil and gas still play a role in the future (including in the *hard to abate sectors*, which we discussed in the opening arguments),[32] Shell will continue to supply products to meet that demand. That is also the reason why Shell's NCF ambition cannot be a 100% reduction, but is based on an NCF reduction of 65%, in response to one of this District Court's questions that was discussed on 3 December. However, that does not

31 **Exhibit RO-281**, p. 2 of the press release.

32 Written arguments Part I RDS, margin numbers 54-61.

mean that Shell cannot be a *net zero emissions* company or that the world cannot be *net zero emissions*. After all, Shell's customers will also have to take action, in line with society, to limit or compensate their own (scope 1) emissions. As stated above, those actions and measures taken by customers were *not* included in Shell's *Net Carbon Footprint*. In order to be a '*net zero emissions*' energy company in 2050, Shell will therefore - and that is the third pillar - work with partners in the chain to help those customers limit or offset their own emissions arising from the use of Shell's energy products.

36. Society will need more energy, so the total amount of energy that Shell contributes is likely to increase. An intensity-based metric allows Shell to focus on supplying the energy that Shell's customers want, whereby Shell can, at the same time, contribute to decarbonisation by also supplying (a growing volume of) energy products with lower carbon content. And so Shell's scope 1 and scope 2 emissions could increase, but also make it possible to reduce scope 3 emissions (scope 1 for the end-user), so that a net reduction is made overall (in the energy system).

37. Let us give a concrete example here by way of illustration. In collaboration with the 'Development Research Center of the State Council of the Peoples Republic of China' ("**DRC**"), Shell conducted research in 2016/2017 into possibilities for arriving at a low-carbon energy mix in the short term.[33] China is by far the largest consumer of coal in the world, both in connection with electricity production, in industry and in households (for heating and cooking).[34] China emits approximately 30% of all energy-related CO_2.[35] Moreover, this high coal consumption leads to very serious local air pollution. The joint study by DRC and Shell focused on strategies to achieve significant emission reductions in the short term, from China, primarily due to air pollution problems, by increasing the share of gas in the energy mix. Natural gas produces over 40% less CO_2 emissions per energy unit

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33 "China's Gas Development Strategies": https://www.springer.com/gp/book/9783319597331.

34 **Exhibit RK-36**, IEA, World Energy Outlook 2020, p. 342, Table A3 Energy Demand – World and p. 394, Table A3 Energy Demand – China. Coal primary energy: 53%, in electricity generation: 49%, in Industry: 62% and in Buildings 55%.

35 **Exhibit RK-36**, IEA**,**World Energy Outlook 2020, p. 396, Table A.3 Electricity and CO2 emissions - China, column 2019 = 9.756 Mt and on p. 344 Table A.3 Electricity and CO2 emissions - World, the total CO2 for 2019 being 33.292 Mt = 29.3%.

than coal. It was clear that renewable energy sources such as solar and wind farms can make an important contribution to the electrification and are also used on a large scale. However, it was also clear that these renewable energy sources would not be available on time and on a sufficiently large scale. Natural gas is considered a much cleaner alternative to coal, while at the same time the (increasing) energy needs can be met. That is why natural gas is also considered a transition energy carrier worldwide.

38. Back to the example in relation to carbon intensity and emission reduction targets, viewed in the energy system. If an energy company - and let's take Shell as an example - is going to supply more gas in China because of the replacement of coal-fired power plants with gas plants (a change that can be brought about relatively quickly), Shell's emissions will increase (scope 1, 2 and also the scope 3 emissions). However, gas is (much) cleaner than coal: the gas supplied by Shell, with its corresponding higher emissions on the part of Shell, is used to substantially reduce the total CO_2 emissions in China's energy system because less coal - which is much more CO_2 intensive than gas - is burned.

39. This example shows that a focus on an absolute emission reduction by one energy producer does not contribute at all to the actual goal: achieving a global energy transition, in which substantial CO_2 emission reductions are achieved, the sooner the better. At global and system level, based on a given energy demand, it does not matter whether you apply absolute or relative standards for CO_2 reduction. Milieudefensie et al.'s claim, aimed at one individual player, completely fails to recognise this. We will return to this on the next hearing date when we discuss the relief sought in more detail. And to put the impact of the implementation of the results of the DRC-Shell study into perspective: the joint study increased the target of the gas share in China from 5% in 2014 to 15% by 2030 (compared to the expectation of growth to 10% at the time). This replacement of coal use by gas will reduce global CO_2 emissions by around 1% in 2030; that is approximately twice the amount of CO_2 emissions from energy from the Netherlands in 2019.

40. As stated, Shell is part of the energy system in a society that will have to change as a whole, in which Shell not only can, but will have to work with, among others, its customers to be a *net zero emissions* energy company in 2050. Shell cannot do this alone, there is a great interdependence between governments, businesses and the steps that society as a whole must take. RDS would like to briefly explain what is meant by this interdependence.

41. Milieudefensie et al. criticised investment decisions in the past, such as the decision to use new energy sources such as hydrogen for 2007 and to get rid of this.[36] But as RDS has already explained: Shell's early forays into the renewable energy sector demonstrated that businesses cannot sell products if consumers are (as yet) unwilling or (as yet) unable to use them or if there is a lack of technology or government policy to support new steps in that direction.[37] To make this even more tangible, the following.

    (a) Shell has confidence in the role that (green) hydrogen can play in the energy transition, a "*key role*" that the government now supports in 2020.[38] As evidenced by this year's projects and announcements, Shell, too, continues to believe in that key role and supports it.

    (b) But let's look back. Shell also saw those opportunities 20 years ago. It invested hundreds of millions of dollars to market hydrogen, including in a project for green hydrogen in Iceland.[39] Hydrogen did not lead to the desired breakthrough. The necessary technology on the demand side did not develop adequately, in particular the fuel cells needed to use hydrogen in vehicles. Support from society was limited because no urgency was felt.

    (c) A similar example can be given with regard to solar panels in the Netherlands in the nineties. There was no demand for solar

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36 Summons, margin numbers 569 and 577.

37 Statement of Defence, margin number 109.

38 Written arguments Part I RDS, margin number 16(b).

39 See, for example, Icelandic New Energy Ltd. | Hydrogen (hydrogeneurope.eu) (last consulted on 2 December 2020).

panels, and there was no government policy to stimulate demand. This has changed with the incentive packages developed in recent years.

42. These are just a few examples, but it does show how investing in new energy sources entails strategic risks, that Shell has traditionally been willing to take those risks where it sees opportunities, and how it is essential for Shell to do so as part of an energy system in a society that supports such developments. These experiences from the past help to explain why Shell still draws attention to this.

43. This brings me to the District Court's question regarding obstacles Shell is facing on the supply side of the market. In that respect, RDS refers as an example to the aforementioned green hydrogen project $NORTH_2$.[40] The project aims to generate some 10 gigawatts of electricity with offshore wind farms, to make around 800,000 tonnes of green hydrogen per year in 2040: almost 5% of the annual end consumption in the Netherlands, of which 3-4 gigawatts in 2030 already. Obstacles on the supply side stem from physical restrictions and regulatory risks: can the government grant the required permits for offshore wind farms in good time, in other words in record tempo? The infrastructure sits between supply and demand: will TenneT have the infrastructure for the transport of the electricity in good time? Will Gasunie have adapted the current natural gas network for hydrogen transport in good time? And technology: will the unprecedentedly large electrolysis installations - 20 of a type that will be 10 times larger than currently exist in Europe - be ready on time? Will end-users have sufficient equipment by 2030 that uses hydrogen, unlike the situation in Iceland earlier this century? Shell will take the step forward, but cannot do this without others.

44. Both the willingness to take steps and the dependencies on other parties in the energy system are evidenced by the presentations of April and October 2020.

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40 **Exhibit RO-252** and Written Arguments Part I RDS, margin number 16(b). This is a feasibility study and a FID has not yet been taken.

45. In closing, the following. The District Court asked what RDS thinks of the point submitted by Milieudefensie et al. that the next 10 years are of crucial importance. The development we outlined during the opening arguments and also just now shows that RDS is always looking at the future, and considers it relevant every year to take steps in tackling climate change, including over the next 10 years. But Shell cannot do that alone. Milieudefensie et al. also acknowledge this, but they prefer to disregard this when it comes to the relief sought.[41] As stated, we will discuss that relief sought on the next hearing date.

3 MILIEUDEFENSIE ET AL.'S OBSERVATIONS REGARDING ALLEGED LOBBYING ACTIVITIES IN THE OPENING ARGUMENTS

46. In the opening arguments, Milieudefensie et al. directed allegations against Shell at margin number 83 et seq. regarding alleged lobbying and PR activities in this decade. Milieudefensie et al. argued that these are *"expensive propaganda campaigns specifically intended to give the public and the political elite the idea that the oil and gas companies are socially responsible companies, who take voluntary action in the field of climate change and therefore do not need to be regulated*" (margin number 108).

47. RDS already explained in detail in the Statement of Defence and in the opening arguments that Shell cooperates constructively with national governments, international organisations and industry associations when it comes to climate change. Shell has long given public support to the objectives of the Paris Agreement, the Climate Agreement and many other initiatives, and recently also, for example, the European Commission's climate ambitions.[42] Shell has promoted all of this publicly and documented it at length in these proceedings. The example of the collaboration between DRC and Shell in China also shows that this collaboration can have a substantial and direct impact on CO_2 emission reductions.

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41 Inter alia, Summons, margin numbers 769-770.

42 See Statement of Defence, section 2.7.3 and Written Arguments Part I RDS, margin number 17.

48. RDS notes that although the allegations are far-reaching, Milieudefensie et al. did not provide any proper substantiation for these. RDS therefore rejects those allegations. Of course, there are contacts with governments, and it has been common for years to report on this to the public, which Shell therefore does.[43] There is nothing wrong with that. To a large extent, Milieudefensie et al. lapse into the same generalities that RDS has already refuted. For example, Milieudefensie et al. draw rather far-reaching conclusions from the Ruggie article. However, relevant references to Shell cannot be found in that article. In the Ruggie article,[44] Shell appears once, but in relation to a matter that is completely separate from the current problems and the present proceedings. In addition, Milieudefensie et al. refer to a few articles that assume that contacts with governments and spending on publicity by Shell and other players reported in those articles aimed to undermine policy, but without providing any substantiation, and, moreover, without any specific explanation of what Shell reportedly did that was unacceptable.[45] Moreover, the folder underlying The Guardian's article was drawn up by Milieudefensie (Friends of the Earth) and Greenpeace themselves.[46] Another source, which clearly intends to be extremely critical of the energy sector in general, notes that, according to them, "*Royal Dutch Shell and to some extent Total have made steps since 2015 to be more positive on a number of climate policy issues*."[47]

49. Milieudefensie et al. do specifically discuss Shell's role by referring to two exhibits, namely a statement by a subsidiary of RDS in the United States[48] and a publication by RDS.[49]

50. According to Milieudefensie et al., this first source shows that regarding CO_2 pricing, Shell:

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43 See Transparency Register - Search the register (europa.eu).

44 Exhibit MD-273.

45 Exhibits MD-324, 329 and 330.

46 Exhibits MD-329 and 330

47 Exhibit MD-328, p. 3.

48 Exhibit MD-319.

49 **Exhibit RO-90**, Shell, Industry Associations Climate Review 2019 in combination with Exhibit MD-315.

> *"in a diplomatic manner, [says] that Shell will have to be compensated for CO_2 pricing, as RDS might otherwise relocate Shell activities to other countries. These kinds of statements actually contain veiled threats, therefore: do not regulate us too hard, do not regulate us too quickly and make sure that we as a company do not suffer too much trouble because otherwise we may leave to another country where we are less stringently regulated or under better conditions."*

51. One may wonder whether it matters what Milieudefensie et al. are saying here: even if Shell were to ask for compensation for levies, this completely ignores the issue raised by Milieudefensie et al., if that compensation is structured in such a way that the ultimate objectives to be achieved are served.

52. But more importantly, Milieudefensie et al. insinuate all kinds of things that simply cannot be read in the source they cite. This is because the source states the following. Firstly, full support is expressed for the objective of the Paris Agreement:[50]

> Shell has long recognized that greenhouse gas emissions from the use of fossil fuels are contributing to the warming of the climate system. We welcomed the efforts made by governments to reach and adopt the Paris Agreement. We fully support the Paris Agreement's goal to keep the rise in global average temperature this century to well below two degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5°C. In pursuit of this goal, we also support the vision of a transition toward a net-zero emissions energy system. Shell agrees with the Intergovernmental Panel on Climate Change 1.5°C special report, which states that in order to limit warming to 1.5°C above pre-industrial levels, the world economy would need to transform in a number of complex and connected ways. Meeting this challenge would require an even more rapid escalation in the scale and pace of change in the coming decades than was foreseen in the Paris Agreement.

53. Secondly, there is full support expressed for CO_2 pricing:[51]

> Feasibility and legislative and regulatory stability are interlinked and important attributes of any approach. Carbon reduction targets, goals and mandates must be perceived as being reasonably feasible and underpinned by broad political support to give confidence to companies, investors and consumers.
>
> Shell believes that broad-based carbon pricing mechanisms are a first-best regulatory approach for governments to deliver their emission reduction goals including the goal established under the Paris Agreement. Establishing a price on carbon emissions informs choices by energy consumers and producers, stimulates the development of low-carbon technologies, helps drive energy efficiency, and encourages investment in the deployment of low-carbon technologies

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50 Exhibit MD-319, p. 2.

51 *Ibid.*

54. And subsequently, statements are made about how the legislator can shape any regulation. However, the tone of this is not, as Milieudefensie et al. suggest, such that regulation should not be effective, but rather that it must be structured in such a way that effective *incentives* are given to achieve what the policy aims. This requires more, such as systematic changes to build the necessary infrastructure for the transition, for example. And that, too, is what Shell proposes to the legislator in a constructive manner:[52]

> While carbon pricing has many merits, it is important to note that a carbon price alone will not deliver the necessary emission reductions. This will also require policy actions that address barriers to the carbon price signal being passed though the economy and that enable responses to that signal – for example, building enabling infrastructure that enables energy consumers to access low-carbon energy and providing information to consumers needed to induce behavioral changes. Convening participants across the supply chains of individual economic sectors (e.g. commercial road transport, aviation, marine, buildings, etc.) can help identify the policies and regulations needed to drive decarbonization within those sectors and encourage coordinated action that can accelerate the pace of change.

55. And as regards the risk of carbon leakage abroad, Shell does not say that this is a reason not to regulate, but that international cooperation is desirable and that protection is necessary for sectors that run the risk of carbon leakage (because they will have competition from countries with less regulation):[53]

> Carbon leakage in trade exposed sectors represents a lose-lose outcome that must be managed for carbon legislation to be effective. Loss of jobs and GDP entailed in the loss of competitiveness due to carbon pricing would undermine social and political support for climate legislation. The corresponding shifting of emissions to another country would negate the emission reductions made at home. While nations are enacting regulations to deliver their Nationally Determined Contributions (NDCs) and the use of carbon pricing is becoming more prevalent, it is unrealistic to expect all nations to move in sync such that carbon pricing per se does not impact competitiveness. Consequently, protections will be needed by those industries at greatest risk of carbon leakage.
>
> Industries that have the potential to improve energy efficiency and reduce emissions but haven't had the incentive to do so thus far present a special policy concern. For these industries, time-limited support could be provided to help them make the transition, and potentially even gain a competitive advantage by becoming best-in-class. For harder-to-abate sectors, if the industry is material to the economy, longer-term protections and measures could be considered.
>
> Finally, collaboration across nations can help alleviate competitive concerns and reduce the cost of the transition. Shell supports the Paris Agreement, the Carbon Offsetting Scheme for International Aviation, and other cooperative efforts to reduce emissions. Completion of the terms of Article 6 of the Paris Agreement to enable a global emissions trading system, including credits generated by natural sinks, would further these objectives.

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52 *Ibid.*

53 Exhibit MD-319, p. 3.

56. The insinuation there by Milieudefensie et al. is irrelevant: in the EU ETS, the European Union specifically recognised the importance of protecting industries that are affected by the risk of carbon leakage and, in view of that, is currently also considering a specific mechanism of levies in the EU ETS for exactly the same reason, as we have already said.[54] This example illustrates that Milieudefensie et al.'s allegations are rabble-rousing and are not supported by the facts. The example therefore also illustrates that Milieudefensie et al.'s positions on these topics cannot be accepted as correct without criticism.

57. And the suggestion that businesses should be compensated for the levy on the one hand? The production immediately shows that in any event, this is not proposed to counteract CO_2reduction, but to support it:[55]

> Designing the carbon pricing system to function effectively as part of a wider energy and carbon policy framework is just as important as the decision to deploy carbon pricing in the first place. Given the large financial commitments and long-lived investments inherent in the energy industry, the importance of operating within a stable carbon policy environment cannot be overstated. The risks taken by early investors are substantial; adding the risk that enabling policies might be reversed only increases the hurdle. A few design elements help to ensure robustness, efficiency and delivery of carbon reductions at lowest costs:
>
> - Avoidance of overlapping policies which could undermine the establishment of the carbon price signal needed to support investments in low-carbon technology R&D and conversion of energy systems;
> - Consideration on how to reinvest revenues to increase broad political resilience (impacts on low-income households and displaced workers), to promote innovation, and to increase the availability of affordable low-carbon energy options for the public and businesses; and
>
> - Protection of industry competitiveness and prevention of carbon emissions leakage that can undermine climate objectives.

58. And to complete this point: Milieudefensie et al. therefore give their own twist to what they think Shell means or intends. But they ignore what RDS itself writes about the positions that it supports, and the standard it submits to industry associations to evaluate their views on climate change. RDS is crystal clear about this in Exhibit RO-90. And

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54 Written arguments Part I RDS, margin number 95, first bullet point at the end. See also Written Arguments Part I RDS, margin number 91 regarding the already existing EU ETS.

55 Exhibit MD-319, pp. 3-4.

it certainly does not say what Milieudefensie et al. suggest, that RDS's position is supported by:[56]

56 **Exhibit RO-90**, Shell, Industry Associations Climate Review 2019, p. 11.

The four climate-related policy positions we used as the basis of the review are:

1. The goal of the Paris Agreement on climate change

Shell supports the goal of the Paris Agreement to limit the rise in global average temperatures this century to well below 2°C above pre-industrial levels. We support the aim to achieve net-zero emissions in the second half of the century.

Shell advocates governments create and implement policy frameworks aimed at reducing greenhouse gas emissions in line with the goal of the Paris Agreement.

2. Government-led carbon pricing mechanisms

Shell has long supported government-led carbon pricing mechanisms as an effective tool that gives choices to energy consumers and producers, stimulates the development of low-carbon technologies and helps to drive energy efficiency.

Governments can implement carbon pricing through various mechanisms, including cap-and-trade systems, which set a cap on the total amount of emissions and allow companies to trade emissions allowances with each other, and carbon taxes.

To be effective, we believe that government-led carbon pricing mechanisms must include measures to prevent certain industries from shifting to states or countries that do not put a price on carbon, so-called carbon leakage. We believe that revenues from carbon pricing should be used to promote development and deployment of low-carbon technologies, to reduce other taxes, or be returned to people in other ways.

3. Policy frameworks for low-carbon technologies

Shell believes innovation is key to achieving the transition to a low-carbon economy. Industry and governments both have a role to play in enabling innovation in low-carbon technologies.

We advocate different levels of government support, depending on the technical and commercial maturity of low-carbon technologies. For example, Shell calls for technology-neutral carbon pricing and targets to reduce emissions intensity for commercially viable sources of energy such as oil, natural gas, wind and solar.

We also advocate targeted government support of low-carbon technologies before they are commercially viable, such as advanced biofuels, electric and hydrogen-powered vehicles, carbon capture and storage (CCS) and carbon capture and utilisation (CCU). (See chart on page 12.)

4. The role of natural gas in the energy system

Shell supports the use of natural gas — the cleanest-burning hydrocarbon — in helping society make the transition to lower-carbon energy. Gas is an important source of lower-carbon energy in the transport, industrial and building sectors. It can replace coal in power generation, and can work efficiently alongside renewable energy such as wind and solar.

Realising the benefits of natural gas requires careful management of life-cycle emissions, especially methane emissions. In 2018, Shell set a target to maintain the intensity of methane emissions below 0.20% by 2025 for all production sites operated by our Upstream and Integrated Gas businesses.

We support government regulations to address methane emissions, including technology standards and accurate quantification and verification systems.

59. Whatever the case may be, and what RDS has already pointed out, Shell has also withdrawn from certain industry associations due to substantially different climate change policy views.[57] It is not only doing so now, it also did so in 1998, and already publicly accounted for this at the time.

> *Until recently Shell Oil in the USA had been a member of the coalition. Following Kyoto it became clear that the respective views of the Shell companies and the GCC were too far apart. Shell Oil withdrew its membership in April 1998. The main disagreement centred on the Kyoto protocol which aims to cut overall greenhouse gas emissions by 5% by the year 2012. The GCC is actively campaigning against legally binding targets and timetables as well as ratification by the US government. The Shell view is that prudent precautionary measures are called for.*

Milieudefensie et al. ignore that.[58]

60. It is striking that Milieudefensie et al. therefore use large words, but arrive at these by taking Shell's statements out of context and linking to these their own insinuations, that are not supported in any way in the source cited. Milieudefensie et al.'s argument must be rejected.

61. A thought in closing. Milieudefensie et al. are lashing out fiercely at the role of energy companies in general and Shell in particular. But what Milieudefensie et al. consistently lose sight of is that Shell is a relatively small player, as Professor Mulder, for example, makes abundantly clear in Chapter 4.5 of his report. The idea that Shell has policy at its fingertips, "*has sufficient control over the energy transition*" (Written arguments Part 1 Milieudefensie et al., margin number 98) and thus prevents regulation has been taken from thin air. In a democracy, the voter is in charge, and then politics. The voice of NGOs in the public debate is also widely represented.

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57 Statement of Defence, margin number 177.

58 **Exhibit RO-40**, p. 41 (not numbered).

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62. The simple conclusion is this: the insinuations by Milieudefensie et al. against RDS are insinuations that ignore what Shell actually promotes. And whatever the case may be, politicians and voters ultimately determine their own views.

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Attorneys