



Independent Paper Group

March 17, 2003

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The Secretary  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Sir,

### **Committee's Inquiry Into Customs Legislation Amendment Bill (No. 2) 2002**

I wish to make a brief submission to the abovementioned inquiry on behalf of the Independent Paper Group (IPG).

#### **The IPG and Its Activities**

The IPG consists of eighteen senior executives of independent merchants, overseas mill agents and importers supplying some two-thirds of Australia's fine paper (printing, writing and graphic papers) requirements from a wide range of countries, including China. It is thus an integral part of Australia's paper industry, together with the sole local producer of fine papers, Australian Paper, which in turn is part of the expansive PaperlinX Group which also encompasses substantial wholly owned paper distributors.

The IPG was formed in late 1999 to provide an independent view to governments on a range of industry and environmental issues – with the initial emphasis being submissions to government on Australia's Anti-Dumping System. In this regard, the IPG's submissions to the Minister/s for Justice and Customs have raised members' concerns with the local industry's use of the Anti-Dumping System as an anti-competitive tool and the perceived manipulation and politicisation of the system through constant and persistent lobbying of the responsible Minister and staff to delay and/or overturn recommendations put forward by Customs after extensive public inquiry and report.

A list of current IPG members is set out at Attachment A and further information on the IPG is available on the Group website at [www.independentpapergroup.com](http://www.independentpapergroup.com).

#### **Relevance of Inquiry**

The Terms of Reference requires the Committee to examine the issue of whether the proposals in Part 1 of Schedule 1 of the bill (concerning economies in transition) are incompatible with Australia's obligations to China under the WTO's system of international agreements and, if so, possible remedial options.

Put in the context of the preceding paragraphs, we believe that this inquiry has direct relevance to Group members currently supplying papers from China and other economies in transition in the future.

#### **Major Purpose and Aspects of the Bill**

In the Second Reading Speech (and Explanatory Memorandum) it is stated that one of the major purposes of the proposed anti-dumping and countervailing amendments is to provide greater clarity and certainty to the treatment of economies in transition – that is, those economies that are moving from a centrally planned to a free market model. In this regard,

the Second Reading Speech explains the major aspects of Part 1 of Schedule 1 of the bill as follows:

While in transition, such economies are subject to (current) provisions which enable Customs to inquire into the existence of 'price control' in the market for those goods that are the subject of a dumping application.

Since the introduction of the 'price control' concept in 1999, it has become apparent that there is uncertainty as to whether this includes both direct and indirect forms of government control over prices.

To overcome this uncertainty, it is proposed to replace the term 'price control' with 'price influence' as this more accurately reflects the Australian Government's intention, as set out in ministerial guidelines issued in December 2000. (It is to be noted that revised (less restrictive) guidelines were re-issued by the new Minister in June 2001 – refer Attachment B).

The bill also introduces clear requirements that exporters are to cooperate by providing the information necessary to assist in determining the presence or absence of 'price influence'.

If an exporter either fails to provide the necessary information or provides less than adequate information, then a recommendation will be made to the Minister that a price influence situation be found to exist.

## **IPG Views**

### ***Replacement of Term 'Price Control' With 'Price Influence'***

We have examined the proposed amendments in relation to the replacement of the term 'price control' with 'price influence', taking into consideration the current legislation and Ministerial Guidelines as well as the WTO Anti-Dumping Agreement and other relevant materials such as the Exporters Questionnaire. Resulting from this examination, it is our view that the replacement of the term 'price control' with 'price influence' does not provide greater clarity and certainty in respect to the treatment of economies in transition, in this case China. Indeed, the proposed change adds to the uncertainty which apparently now exists because of the extension of 'price control' to both direct and indirect forms of control over prices at any level of government. Surely this concept does not fit well with the definition of economies in transition – that is, economies moving from a centrally planned to a free market model. The term 'centrally planned' implies that prices are controlled by the central or national government and should not extend to other forms of indirect controls by regional or local levels of government which may have some remaining influence on prices during the transition period. Surely the adoption of this approach amounts to a harsher treatment of economies such as China's than that applied to a substantial number of allegedly market based economies where some form of overt or 'hidden' forms of government assistance and/or influence on prices exist.

Quite apart from the above factors, the proposed changes do not appear to conform to principles in relation to anti-dumping actions outlined in the WTO Anti-Dumping Agreement, let alone be in accord with Australia's obligations to China under the WTO's system of international agreements.

For all the above reasons, we believe that the proposal to replace the term 'price control' with 'price influence' be rejected, with required further amendment clearly indicating that a 'price

control' situation exists only in respect to direct control over prices for goods, the subject of an anti-dumping application, by the central or national government.

### **Requirements for Exporters to Provide Information**

The bill also introduces requirements that exporters are to cooperate by providing information necessary to assist (Customs) in determining the presence or absence of 'price influence' and if the exporter fails to provide the necessary information, or provides less than adequate information, it is perceived that a 'price influence' situation exists. It is expected that such information is to be provided by the exporter by completing a questionnaire (presumably the 'Exporters Questionnaire') within a quite limited time, in view of the overall legislated time constraints for anti-dumping inquiries

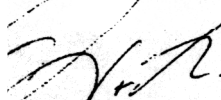
In effect, this proposal shifts the onus of proof onto the exporter rather than the local industry being required to gather and provide this information at the time of the lodgement of an anti-dumping and/or countervailing application, such as is the current position, where applicants must provide details of any alleged dumping and/or subsidisation. Thus the proposal is unfair to countries such as China vis-à-vis other countries.

Not only is the proposal unfair, it lacks commercial reality and does not take into account the sensitivities of providing highly confidential information by countries such as China which are additionally disadvantaged by cultural and language barriers. The current Exporters Questionnaire, comprising some 44 pages, requires the exporter to provide, within a limited time, a wide range of highly confidential and sensitive information on domestic and export markets and pricing etc. A copy of the table of contents from the questionnaire is attached at Attachment C and no doubt Customs can provide copies of the complete current version of the questionnaire if required by the Committee. From even a cursory study of the information required, it is easy to understand why exporting firms from countries such as China (or any other country for that matter) are loath to provide all or some of the critical information required by Customs within the time provided. To penalise countries such as China for not providing all or some of the information seems quite unfair and commercially unrealistic. In our view, the onus of proof as to the existence of 'price control' should remain with the applicant and be clarified through follow-up visits by Customs investigation officers on particular inquiries.

### **Summary**

In summary, we are of the firm view that the proposals contained in Part 1 of Schedule 1 of the bill are unfair, unduly harsh, and commercially unrealistic for economies in transition such as China, and do not appear to conform with the principles of the WTO Anti-Dumping Agreement, let alone Australia's obligations to China under the WTO's system of international agreements. Based on these conclusions, we have put forward a number of remedial actions for consideration by the Committee.

Yours Faithfully,



A. S. Wood

President

Independent Paper Group

cc. IPG members

## **Attachment A**

### **List of Members of Independent Paper Group**

# Independent Paper Group

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**Copy of Australian Customs  
Dumping Notice No. 2001/42  
(Revised) Ministerial Guidelines  
- Section 269 TAC (5B)  
Price Control Situation in Relation  
to an Economy in Transition**



**AUSTRALIAN  
CUSTOMS SERVICE**

**Australian Customs Dumping Notice  
No.2001/42**

*CUSTOMS ACT 1901*

**MINISTERIAL GUIDELINES - SECTION 269TAC(5E)**

**PRICE CONTROL SITUATION IN RELATION TO AN ECONOMY  
IN TRANSITION**

The Minister for Justice and Customs has issued the following guidelines in relation to a price control situation in an economy in transition.

**“Procedure**

Relevant producers or exporters in an economy in transition are to be advised they have the opportunity to submit information to show that a price control situation does not apply to the goods under consideration. Such information is to be provided in the context of answers to questions contained within the exporter's questionnaire. This information should deal with each of the considerations referred to below.

Adverse inferences may be drawn where there is failure by the producer or exporter to materially and substantially respond to the questions in the exporter's questionnaire.

**Principal Considerations**

In determining whether or not a price control situation applies, regard may be had to the following particular considerations:

- (A) Whether decisions of the relevant producers or exporters relating to prices, costs, inputs, sales, and investments are made in response to market signals and without significant state interference.

To assist in assessing this consideration, information should be provided as to whether:

- (i) genuinely private companies or parties hold the majority shareholding of the relevant producer or exporter;

- (ii) state or provincial officials appearing on the board or in key management positions are in a clear minority;

the relevant producer or exporter has the guaranteed freedom to carry on business activities. In this regard, information is sought as to whether:

- (a) there is no restriction on selling on the domestic market;
- (b) the right to do business cannot be withdrawn outside proper contractual terms; and
- (c) in the case of joint venture companies, profits can be exported and capital invested can be repatriated.

major production inputs of the relevant producer or exporter are or are not supplied by state owned or controlled enterprises at prices which do not substantially reflect free market conditions. Inputs include, inter alia, raw materials, labour, energy and technology costs.

- (B) Whether one clear set of basic accounting records is kept by the relevant producer or exporter and is independently audited and is maintained in accordance with generally accepted accounting principles in the country of export and in line with international accounting standards.
- (C) Whether the production costs and financial situation of the relevant producer or exporter are or are not subject to any significant distortions carried over from the non-market economy system.
- (D) Whether the relevant producer or exporter is subject to bankruptcy and property laws, which guarantee legal certainty and stability of performance.

### **Other Influencing Considerations**

In considering whether a price control situation exists, regard may also be had to the following further considerations:

- (1) Whether the relevant producer or exporter of the goods under consideration forms part of a broader market or sector in which the presence of a State owned enterprise or enterprises has influenced prices.



- (2) Whether the supply of utilities are guaranteed on the basis of contracts that reflect normal commercial terms and prices which are generally available throughout the economy.
- (3) Whether the land on which the facilities of the company are built are rented from the State at conditions comparable to those in a market economy country (eg. proper contractual leases).
- (4) Whether the company has the right to hire and dismiss employees and the right to fix salaries.

I shall also have regard to any other information received which is relevant to my consideration of the existence or otherwise of a price control situation.

The relative importance I give to any one or more of the above considerations will depend upon the facts as they emerge in the course of the particular anti-dumping inquiry."

This ACDN replaces ACDN No. 2000/60.

SUE PITMAN  
National Manager  
Trade Measures Branch  
CANBERRA ACT  
28 June 2001

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Customs 'Exporters Questionnaire'**

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