

中 华 人 民 共 和 国 大 使 馆
Embassy of the People's Republic of China

*15 Coronation Drive, Yarralumla
ACT 2600, Australia
Tel: (02) 62734785
Fax: (02) 62734987*

18 March 2003

Senator the Hon Marise Payne
Chair
Senate Legal and Constitutional Legislation Committee
c/- The Secretariat
Room S1.61, Parliament House
CANBERRA ACT 2600

Dear Sir/Madam:

Customs Legislation Amendment Bill (No. 2) 2002

On behalf of the Chinese government, I wish to express to the Committee the concern of the Chinese side on the amendments to the antidumping provision of the Customs Law of Australia.

Over recent years, Sino-Australian bilateral economic and trade relations have witnessed rapid development and the two countries have become important trading and investment partners. Bilateral trade volume hit another record high of USD 10.436 billion in 2002, growing by 16% over 2001. In the breakdown, China's export to Australia stood at USD 4.586 billion and import from Australia, USD 5.85 billion, ending in a trade deficit of USD 1.264 billion on the Chinese side. Under the circumstance of trade deficit with Australia, we have never taken any negative approaches to restrict import from Australia or other trade protectionist measures. Instead, we have made positive efforts helpful to the success of the ALNG Corporation in the bid for the Guangdong LNG supply project with a total value of 25 billion Australian dollars last August, which boasts the biggest contract for the export of single product in the history of Australia.

The economies of China and Australia are strongly complementary. Every year,

China imports huge amounts of iron ore, wool and other products from Australia and exports electromechanical, costume and textile products to Australia. After China's accession to the WTO, while the Chinese economy is rapidly growing and such trade barriers as tariff and quota are phasing out, China's export to Australia has been quickly rising. Thanks to China's big comparative advantage in labor and raw materials, high quality and reasonably-priced Chinese products enjoy a ready market in Australia, and at the same time pose competition with Australia industries to some extent.

What worries us is that the Australian government, without consulting public opinions, submitted to its Parliament the bill for amending the antidumping provisions of the 1901 Customs Law at the end of last year. The bill involves antidumping investigations on the exports of economies in transition including China. However, no Chinese parties were consulted and none of them were given the opportunities to fully express their views. Obviously, this is inconsistent with the transparency principle of the WTO. As the biggest exporter to Australia among the economies in transition, China would be hit harder if the "Amendment" were passed, although it was reported that the Australian side claimed that the Amendment was directed against eastern European countries.

The Amendment does not require the applicant to prove that the price has been "controlled" by the government of an economy in transition. It provides that the Australian Customs Service can disregard the Chinese price and use relevant information, like the price in a surrogate country, in the determination of the normal value of the goods being investigated upon proof that the price has been "significantly affected" by the government. However, "significantly affected" is an ambiguous term which may increase the discretion of the Australian Minister for Justice and Customs. When the normal value of the goods is determined, it is more likely to use the price of the third country, which is unfair to the investigated party and increases more possibilities of abusing the antidumping measures. In comparison, the test of "price control" is evidently more compatible with the stipulation of Article VI of GATT (the Anti-Dumping Agreement of WTO) and is more helpful to resolve the antidumping issues fairly and properly.

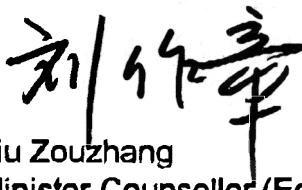
Furthermore, according to the Amendment, if the exporters fail to answer questionnaires within the period decided by Australian Customs, the Australian

Customs Service will ignore the information they provide. The harsh practice of shifting the burden of proof from importers to exporters and making no provisions on request of extension for the time period obviously runs counter to the requirements of Article 6.2 and paragraph 6 of Annex II of the WTO's Anti-Dumping Agreement, which will injure the legitimate rights and interests of the exporters.

During the past over 20 years of reform and opening up, the Chinese government has been dedicated to the economic reform and has made great achievements in the development of market economy. As a full member of the WTO, China is making positive efforts to honor its commitments, further open its market to the outside world and create more business opportunities for enterprises of the WTO members including Australia. Meanwhile, we look forward to the further improvement of the export environment for Chinese products. It's unacceptable to the Chinese side if the adoption of the bill results in a setback of the Australian antidumping policy on China and brings adverse impact on Sino-Australian trade. We hope that both the Australian Parliament and Australian Government could give full consideration to the concern of the Chinese side.

I enclose copies of letters which were sent by my Minister of Foreign Trade and Economic Cooperation, Shi Guangsheng, to Ministers Ellison and Vaile, about the proposals concerning "normal value" in the Bill. I ask that the committee take note of these letters.

Yours sincerely,



Liu Zouzhang
Minister Counsellor (Economic & Commercial)
Embassy of the People's Republic of China

28/02 03 FRI 09:03 FAX

001

February 27, 2003
Beijing, China

Hon. Mark Vaile
Minister for Trade
Australia

Honorable Minister,

On behalf of the Chinese government, I would like to express to you the concern of the Chinese side on the amendments to the antidumping provision of the Customs Law of Australia.

China and Australia are strongly complementary economically and enjoy a good momentum of development for bilateral economic and trade relationship. Australia is China's ninth biggest trading partner and China is the no. three trading partner of Australia. Bilateral trade volume hit another record high in 2002 to USD 10.436 billion, growing by 16% over 2001 and 119 times over the level when the two countries established diplomatic relations. In the breakdown, China's export to Australia stood at USD 4.586 billion and import from Australia, USD 5.85 billion, ending in a trade deficit of USD 1.264 billion on the Chinese side. Under the circumstances of trade deficit with Australia, we have never taken any negative approach to restrict import from Australia or other trade protectionist measures. Instead, we have made positive efforts to achieve the successful bidding of the Australian side for the Guangdong LNG supply project with a value of 25 billion Australian dollars last August.

What worries me is that the Australian government, without soliciting public opinions, submitted a bill for amending the antidumping provision of the 1901 Customs Law to the Parliament at the end of last year. The Chinese side has had no opportunity to look into the relevant bill in a comprehensive manner so as to fully express our position and concern. Obviously, this is inconsistent with the transparency principle of the WTO.

The major change in the content of the Law is to replace the standard "the price has been controlled by the government" with "the price has been significantly affected by the government". The former standard is evidently more compatible with the stipulation of Article VI of GATT and it is under this standard that

28/02 03 FRI 08:42 FAX

003

many antidumping issues between us have been properly solved. While the latter is more ambiguous, which can easily result in the abuse of antidumping measures, thus generating adverse impact on the further development of Sino-Australian trade.

It is known to your Excellency that China is already a full member of the WTO. Over the one odd year since its entry to the WTO, China has been making positive efforts to honor its commitments, open its market wider to the outside world and bring about more business opportunities for enterprises of WTO members. Meanwhile, we look forward to the further improvement of export environment for China. If the adoption of the bill results in backset of the Australian antidumping policy on China, it will be unacceptable to the Chinese side. In order to ensure the sound and stable development of bilateral economic and trade relations and the world multilateral trade, I hope you could give the most deliberative consideration to the concern of Chinese side.

During the past over 20 years since the inception of reform and open up policy, the Chinese government has always been dedicated to its economic reform and has set up a market economic system. We hope the issue of "market economy status" for Chinese enterprises could be settled as soon as possible. We are convinced that through concerted efforts of both sides, Sino-Australian economic and trade cooperation will enjoy a broader prospect.

Sincerely,

SHI Guangsheng

Minister

The Ministry of Foreign Trade and Economic Cooperation

The People's Republic of China

28/02 03 FRI 08:50 FAX

001

February 27, 2003
Beijing, China

Hon. Christopher. Ellison
Minister for Justice and Customs
Australia

Honorable Minister,

On behalf of the Chinese government, I would like to express to you the concern of the Chinese side on the amendments to the antidumping provision of the Customs Law of Australia.

With the joint endeavor of both sides, Sino-Australian bilateral economic and trade relations have witnessed rapid development over recent years and the two countries have become important trading and investment partners to each other. Bilateral trade volume reached USD 10.436 billion in 2002, 120 times the level 30 years ago when the two countries established diplomatic relations. In the breakdown, China's export to Australia stood at UAS 4.586 billion and import from Australia, USD 5.85 billion. Under the circumstances of trade deficit on the Chinese side, we have never taken any negative approach to restrict import from Australia or other trade protectionist measures. Instead, we have continued our efforts to help the Australian side get the contract for Guangdong LNG supply project with a total value of 25 billion Australian dollars last August.

What worries me is that your government has recently submitted an "amendment bill" to the Parliament to revise the antidumping provision of the 1901 Customs Law. Judging from its preparation and submission process, the "amendment bill" represents a tendency for stricter antidumping measures. The Australian government submitted the bill to the Parliament without soliciting public opinions, therefore the Chinese government has had no opportunity to look into the relevant bill comprehensively so as to fully express the position and concern of the Chinese side. Obviously this is inconsistent with the transparency principle of the WTO and may have adverse impact on the further development of Sino-Australian trade.

RECEIVED TIME 18. MAR. 19:36

PRINT TIME 18. MAR. 19:39

The major change in the content of the Law is to replace the standard "the price has been controlled by the government" with "the price has been significantly affected by the government". The former standard is evidently more compatible with the stipulation of Article VI of GATT and it is under this standard that many antidumping issues between us have been properly solved. While the latter standard is more ambiguous, which can easily result in the abuse of antidumping measures, thus affecting normal export from China to Australia and the further development of economic and trade relations between the two countries.

It is known to your Excellency that China officially joined the WTO in December 2001. We are making active efforts to implement our commitments on WTO accession, further open our market to the outside world and bring about more business opportunities for enterprises of WTO members. Meanwhile, we look forward to an improved export environment for China. If the bill gets adopted, the problems of antidumping between China and Australia will deteriorate instead of being resolved, which is unacceptable to the Chinese side. In order to ensure the sound and stable development of bilateral economic and trade relations and the world multilateral trade, I hope you could give the most deliberative consideration to the concern of Chinese side.

China has established a market economy system through 20 odd years' economic reform. We hope through concerted efforts of both countries, the issue of "market economy status" for Chinese enterprises could be settled as soon as possible, thus further accelerating the development of Sino-Australian economic and trade cooperation.

Sincerely,

SHI Guangsheng
Minister
Ministry of Foreign Trade and Economic Cooperation
The People's Republic of China