LEGAL IMPEDIMENTS TO A FREE TRADE AGREEMENT – AN AUSTRALIAN LAWYER'S PERSPECTIVE

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The *Australia-China Trade and Economic Framework* signed in October 2003 demonstrates a formal commitment to ongoing trade liberalisation and facilitation between Australia and China, and sets the direction for the future development of the strong and expanding trade and economic relationship between our two nations.[2]

China's continuing economic reform, recent WTO accession and tremendous progress towards the establishment of a market-based economy have resulted in it emerging as an important regional and global economic player, and an important export market for East Asia and Asia Pacific nations.

A strong trading partnership already exists between Australia and China. Australia is China's eleventh largest trading partner. China is Australia's third largest trading partner after Japan and the United States, with Australian exports to China amounting to $12 billion in 2002.[3] The attractiveness of a bilateral trade agreement between our two countries lies in trade complementarity. China's core competitiveness remains largely in labour intensive production (such as clothing, footwear and toys)[4] while its markets for raw materials are rapidly expanding. Australia is well placed to supply these demands, and two-thirds of Australian merchandise currently exported to China consists of raw materials and primary

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[2] Australian Department of Foreign Affairs and Trade, "Trade and Economic Framework between Australia and the People's Republic of China", as found at http://www.dfat.gov.au/geo/china/framework/economic_framework.html on 28 March 2004.

[3] Tim Colebatch, "Target of free trade with China by 2010", The Age (Melbourne) October 23, 2003.

[4] Australian Department of Foreign Affairs and Trade - East Asia Economic Analytical Unit, *China's Industrial Rise: East Asia's Challenge* (2003) as found at http://www.dfat.gov.au/publications/chinas_rise/index.html on April 8, 2004.

products.[5] The vastly different economic endowments and strengths of Australia and China means that both countries presently face relatively little competition from each other in export markets, and strongly complement each other as trading partners.[6]

One of the important elements of the *Australia-China Trade and Economic Framework* is the commitment of both governments to undertake a joint feasibility study into a possible bilateral free trade agreement (FTA). The study will examine the opportunities and challenges of such a free trade agreement, and will allow both governments to consider whether to proceed with FTA negotiations.[7]

While a FTA between Australia and China would provide opportunities and benefits to both nations, the feasibility study does not commit the countries to negotiate a free trade agreement. The Australian government will be accepting submissions from State governments, industry groups, business and other stakeholders to assess the impact of the removal or reduction in existing barriers to goods and services trade and investment, and to determine Australia's negotiating priorities for inclusion in the Study.[8]

Every FTA has its own issues and challenges. I expect, for example, that the issues confronting our countries in negotiating a FTA will be significantly different from those that were faced during the negotiation of the recently completed Australia – Singapore and Australia - USA FTA's. The aim of this paper, then, is to:

1. Identify and raise awareness of three core issues likely to be regarded as critical by Australia in any negotiations for a FTA between our countries. They are:
    (a) Competition law and policy;
    (b) Dumping; and
    (c) Protection of intellectual property rights; and

[5] Ibid.

[6] Ibid.

[7] Australian Department of Foreign Affairs and Trade, "FAQ's – Australia-China Free Trade Agreement Feasibility Study" as found at http://www.dfat.gov.au/geo/china/fta/faq.html on March 28, 2004.

[8] Australian Department of Foreign Affairs and Trade, "FAQ's – Australia-China Free Trade Agreement Feasibility Study" as found at http://www.dfat.gov.au/geo/china/fta/faq.html on March 28, 2004.

2. Raise awareness for Chinese organisations involved in international trade and keen to benefit from the improved access to Australian markets, and indeed those of other countries, should such an agreement be reached between our governments.[9]

COMPETITION LAW & POLICY

Introduction

The WTO Ministerial Declaration adopted in Doha stated in paragraph 25:

"Further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels, modalities for voluntary co-operation; and support for progressive re-inforcement of competition institutions in developing countries through capacity building. Full action shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them"

The Doha declaration indicates the WTO's interest in developing the relationship between trade and competition.

In recent WTO working group discussions, the view was expressed that a multi-lateral framework on competition law and policy would:

- ensure that the gains from liberalisation were not undermined by anticompetitive behaviour of private actors;
- establish a coherent set of principles for sound competition policy among all members;
- promote a more transparent and predictable climate to encourage foreign trade and investment;
- assist Members lacking a competition law in drafting an appropriate law and establishing an enforcement authority; and
- encourage beneficial cooperation among members which was important, given the increasing prevalence of cross border anti-competitive activities.[10]

[9] There are non-tariff barriers that need to be considered however, and traders need to be aware of the possible Australian legal and policy impediments that may affect trade with Australian business.

The negotiations on what are commonly referred to as the "Singapore Issues" – competition policy, investment, transparency in government procurement and trade facilitation – were to take place after the 5th Ministerial Conference in Cancun in September 2003. Members were to agree on the modalities (guidelines) for negotiating an agreement on these four issues, however, talks broke down and the conference ended without any agreement on how to engage in future negotiations in relation to the four issues.

However, what did become apparent from the breakdown in negotiations was the significant differences in the positions of developed and developing countries in relation to the Singapore Issues, with the developing countries questioning their developmental contribution.

Despite members failing to agree on the modalities for negotiations on competition policy, competition law and policy have become a common inclusion in Australia's free trade agreements, highlighting the importance of such issues to the Australian government and Australian businesses and exporters.

The substantive requirements of competition law

Competition law, which is subject of paragraphs 23-25 of the Doha declaration, includes laws governing:

- the prohibition of cartels or anti-competitive agreements among firms such as agreements to exclude competitors from the market, boycotts, and price fixing;
- the control of vertical anti-competitive practices or restraints such as exclusive dealing, vertical price fixing;
- the prohibition of abuses of dominant market power by large firms or monopolies by engaging in conduct for the purpose of eliminating competitors, preventing entry into markets or deterring or preventing competitive conduct; and
- the control and review of mergers and acquisitions and agreements between competitors (such as joint ventures) which may lead to the creation of a dominant firm or monopoly or have the purpose or effect of lessening competition in the operative market.

Effective competition law and policy are an essential element of market orientated economic reforms and effects include:

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[10] *Report (2003) of the Working Group on the interaction between trade and competition policy to the general council* WTO Doc WT/WGTCP/7 (2003) 5.

- the promotion of greater economic efficiency, which in turn facilitates growth, employment and living standards;

- making the operation of domestic markets more efficient and transparent, effective competition policies and thereby enabling traders and investors to benefit from existing market access conditions but did not necessarily confer greater access;[11]

- increasing firm efficiency, productivity and profitability;

- encouraging the use of and investment in better technology;

- consumer benefits such as lower prices, bigger range, and better quality as high cost producers are forced out of the market.

China is highly attractive market for foreign investment because of low local production costs and market growth potential. And as Chinese authorities continue the reform and restructure of the economy, benefits will continue to flow, such as a growing private sector, increasing efficiency, higher returns. All result in a more predictable operating environment for Australian businesses wishing to trade with China.

The UNCTAD note that while trade liberalisation and entry to the WTO are eroding government trade barriers such as tariffs and non-tariff barriers, there is an increasing need to ensure that anti-competitive practices do not replace the governmental barriers.[12]

The OECD noted in its 2002 report on domestic policy challenges faced by China[13] that, *prima facie*, China's product markets appear to be reasonably competitive, with low market concentration and a high level of entry of new firms. However, limits to competition in China are evident in ways other than the degree of market concentration.

Its report identifies the main weaknesses in China's economy as being:[14]

- established enterprises and local governments seek to prevent entry by newcomers;

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[11] *Report (2003) of the Working Group on the interaction between trade and competition policy to the general council* WTO Doc WT/WGTCP/7 (2003) 6.

[12] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/197 (2002) (Communication from UNCTAD) 7.

[13] OECD, *China in the World Economy – the Domestic Policy Challenges (Synthesis Report)* (2002) OECD Publications Service, France, 48.

[14] Ibid.

- product market competition is limited by overt barriers to entry, distortion in the tax code and distribution system and by locally imposed restrictions;

- different legal and regulatory frameworks applying to state owned, collective, private and foreign enterprises;

- key sectors which are wholly or mainly reserved to state-owned enterprises, other than natural monopolies.

Poland faced similar problems to those faced by China when it was making the transition to its ideal of a socialist market economy. It successfully enhanced competition by:[15]

- privatising SOEs;

- facilitating the establishment of new firms;

- encouraging competition between new and existing firms;

- gradual withdrawal of government subsidies; and

- establishing a competition agency.

Competition Culture

China's entry into the WTO in 2001, required the Chinese Government to undertake wide ranging economic reforms to the legal system, bureaucracy, banking system, financial markets, state owned enterprises, foreign exchange and corporate governance.

These reforms will continue to progress the economy towards being more market orientated.

However, China is still in a period of transition and the market has yet to fully develop. The high degree of government intervention that has characterised China's economy in recent times means China faces unique challenges in implementing an effective and operative competition policy.

At the current stage of economic development, market competition is insufficient and distorted due to the lack of a 'competition culture'.[16] The key concerns follow.

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[15] *Report (2003) of the Working Group on the interaction between trade and competition policy to the general council* WTO Doc WT/WGTCP/7 (2003) 35.

[16] Wang Xiaoye, "The Prospect of Antimonopoly Legislation in China" (2002) 1&*2 Washington University Global Studies Law Review* 201, 207.

1. Administrative Restrictions

Administrative restrictions on competition refer to acts of government and governmental departments, on all levels, which use the administrative power held to restrict competition in certain markets.[17] As noted by China's State Administration for Industry and Commerce, the government remains powerful and active in various markets that should be free from intervention government's intervention in markets and the enforcement of competition law as against government departments will be a major challenge.[18]

Of particular concern to Australia is the Chinese government's intervention in the grain market. The grain market is also linked with the problems faced by foreign investors in monopolistic markets.

A case study of government intervention in the grain market from Australia's Department of Foreign Affairs & Trade,[19] noted that in 1998, the state controlled two thirds of China's grain marketing and although around half the grain market transactions were conducted at close to market prices, the Government's remaining purchases were at controlled prices.

Despite reforms introduced 1998 and 2000 which led to the freeing up of up grain distribution and ceasing discrimination against private distribution investment as well as the phasing out of subsidised grain purchasers, state intervention, pricing controls and import restrictions still distort local grain markets.[20]

Another major problem relates to the use of a government or administrative position to engage in or facilitate anti-competitive conduct. Wang Xiaoye notes that enterprises may have a 'government connection' in the follow ways:[21]

- companies that function both as administrative departments and producers or businesses;
- large enterprise groups with the task of industrial administration;

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[17] Ibid p210.

[18] *OECD Global Forum on Competition* OECD Doc CCNM/GF/COMP/WD(2004)16 (2004) (Challenges/Obstacles faced by competition authorities in achieving greater economic development through the promotion of competition – Contribution from China).

[19] Economic Analytical Unit, "China Embraces the World Market" (2002) Department of Foreign Affairs and Trade, Canberra.

[20] Ibid.

[21] Wang Xiaoye, "The Prospect of Antimonopoly Legislation in China" (2002) 1&*2 Washington University Global Studies Law Review* 201.

- enterprises affiliated with certain bureaus or ministries.

These enterprises possess competitive advantages over other firms, including more favourable treatment by government bureaucracies, and the ability to operate in a government created monopoly positions (eg in raw materials market).[22]

Firms operating, or new firms entering markets in which these enterprises operate are at a major competitive disadvantage, which is artificially created. This is of major concern to foreign firms trying to operate in a new market with many bureaucratic obstacles.

Further, by treating certain enterprises or divisions more or less favourably, a market is created which results in the retention of low efficiency enterprises and the failure of high efficiency enterprises.[23]

2. Local Protectionism

Regional governments, in an attempt to protect local enterprises, sometimes restrict competition by creating substantial barriers to entry in that geographic market or by blocking products that are competitive with ones produced within their jurisdiction. This problem has been identified by the Permanent Mission of China in its communication to the WTO, and the OECD as an obstacle to a competitive economy in China.[24]

The OECD in its Global Forum on Competition report noted that previously, government planning emphasised local self-sufficiency the result of which is that, even though there may be many firms operating in a particular product market, many of the firms may have market power in their traditional geographic market.[25]

Local governments have an economic interest[26] (mainly as a result of the tax system) in maintaining the success of their regional enterprises. This protectionism has led to a lack of geographic integration, which in turn has facilitated the operation of regional monopolies.

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[22] Ibid.

[23] Ibid p209.

[24] *OECD Global Forum on Competition* OECD Doc CCNM/GF/COMP/WD(2004)16 (2004) (Challenges/Obstacles faced by competition authorities in achieving greater economic development through the promotion of competition – Contribution from China) ; OECD, *Preventing Market Abuses and Promoting Economic efficiency, growth and opportunity* (2004) OECD Publications Service, France, p46.

[25] OECD, *Preventing Market Abuses and Promoting Economic efficiency, growth and opportunity* (2004) OECD Publications Service, France, p46.

[26] *OECD Global Forum on Competition* OECD Doc CCNM/GF/COMP/WD(2004)16 (2004) (Challenges/Obstacles faced by competition authorities in achieving greater economic development through the promotion of competition – Contribution from China) - The SAIC note that this is a result of the Chinese tax

Such acts of protectionism may include the following:[27]

- prohibition on certain foreign (both overseas and from outside the particular region) products from entering the local market;
- preventing raw material produced in the local market from being exported;
- refusing to issue business licences to enterprises engaged in wholesaling or retailing of products originating outside the local market;
- imposing fines or penalties, which may or may not be disguised, eg in the forms of "service fees".

3. State Owned Enterprises and Monopolies

As China continues along the path towards a market orientated economy, the ownership structure of Chinese enterprises has progressed from predominantly state owned to the co-existence of state, collective and private ownership.[28]

Despite the gradual decrease in the number of state-owned enterprises and the fact that only a few major enterprises in key sectors remain publicly owned, certain special market privileges are enjoyed by state owned companies.

The majority of state-owned enterprises in China receive government subsidies. This has the effect of sustaining unprofitable, inefficient enterprises. A reduction in such privileges would promote efficiency and fairness in market - an important factor in the minds of foreign enterprises used to operating in market economies.

Prior to, and following entry into the WTO, China has engaged in reform of some monopoly sectors of the economy, such as the oil and petrochemical industries.

According to a report in China's People Daily,[29] the State Development and Reform Commission recently issued the instruction for China's economic reform for 2004. According

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system which requires revenue collected on products is shared by central government and the local government – the more products sold by local enterprises the more benefit received by local government.

[27]Wang Xiaoye, "The Prospect of Antimonopoly Legislation in China" (2002) 1&*2 Washington University Global Studies Law Review* 201, 211.

[28] Ibid p203.

[29] "Economic Reform focuses on 7 Fields in 2004" *People's Daily* 18 April 2004 as found at www.chinadaily.com.cn/english/doc/2004-04/18/content_324288.htm on 14 April 2004.

to the report, economic reform will focus on seven fields, one of which is restructuring of the state-owned economy.

China must continue to work to break down the monopolies that operate in key industrial sectors such as electricity grids, railway operations, and telecommunications. By doing so, it will decrease the barriers to the entry of new firms in the market which will increase competition and the benefits associated with it.

Following reform of monopolies (natural or otherwise), they will need to be guided by competition principles to ensure they do not abuse their dominant power with respect to end users. This is identified as a concern by the UNCTAD in its report to the WTO working group.[30]

What Needs to be Done?

Despite extensive reform prior to and since it accession to the WTO, the concerns I have identified highlight the need for reform. The areas that need focussed attention are:[31]

- The inadequacies of the national competition law;
- The inadequacy of an existing competition law (eg due to the non-inclusion of agreed core principles);
- The non-application /non-enforcement of a competition law; and
- The discriminatory or non-transparent application of competition law.

1. Inadequacies of the National Competition Law

Current competition framework in China is the 1993 *Unfair Competition Law* and 1999 *Price Law* plus specific regulations and decrees. In China's communication to the WTO Working Group the Permanent Mission to China conceded that China's competition law was "far from being comprehensive and complete." [32]

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[30] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/197 (2002) (Communication from UNCTAD). The UNCTAD suggests that these industries have special sectoral regulators created to supervise the operations of the network operators and these regulators be given competition responsibilities, shared with the competition authority.

[31] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/240 (2003) (Communication from OECD) 2.

[32] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/227 (2003) (Communication from China).

The laws are currently enforced by State Administration for Industry and Commerce (SAIC) and the State Development Planning Commission (SDPC).

These laws prohibit some overt anti-competitive practices such as price fixing as well as unauthorised actions by local government agencies or officials.[33] However, both the OECD and the SAIC note that these laws have not been effective in prevent such conduct – most likely due to ineffective enforcement.[34] The law as it currently stands does not prohibit monopoly abuses, cartels, or restrictive distribution agreements, or prevent entry to market, thereby restricting competition.

An Anti-monopoly law is currently being drafted. The object of the Anti-monopoly law under draft is stated in article 1 (of one particular version) as "prohibiting monopoly, safeguarding fair competition, protecting rights and interests of businesses and consumers and public interests and guaranteeing wholesome development of socialist market economy."[35]

In November 2003, the Interim Regulations on Prohibition of Monopolistic Pricing Acts (Interim Regulations) took effect. While only a temporary measure until the Anti-monopoly law is finalised, the regulations importantly introduce the concept of abuse of market power.

The Interim Regulations address five categories of "monopoly pricing acts" – most of which have been addressed previously in the *Law Against Unfair Competition* or the *Price Law*. These five categories are:

- collusion and price fixing;
- resale price maintenance;
- use of market power to seek exorbitant profits;
- use of market power to dump products at prices below cost; and
- discriminatory pricing.

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[33] OECD, *China in the World Economy – the Domestic Policy Challenges (Synthesis Report)* (2002) OECD Publications Service, France, 48.

[34] OECD, *China in the World Economy – the Domestic Policy Challenges (Synthesis Report)* (2002) OECD Publications Service, France.

[35] *OECD Global Forum on Competition - The Objectives of Competition Law and Policy and the Optimal Design of a Competition Agency* OECD Doc CCNM/GF/COMP/WD(2003)1 (2003) (Submission from China).

The core principles of competition law are addressed in these interim regulations and are likely to be improved and expanded upon when the *Anti-Monopoly Law* is enacted. However, the effect of regulatory reform will be nullified unless the core issue of enforcement is addressed.

2. Enforcement of Competition Law

In China's communication to the WTO Working Group the need for improvement of the implementing and enforcement of current laws and regulations was recognised.[36]

As the economy progresses to a market orientated system, and the markets gradually become more competitive anti-competitive horizontal agreements between competitors determining supply and/or pricing and vertical anti-competitive agreements such as tie-ins, resale price maintenance, or other exclusive dealing practices have become prevalent.

The event and overt nature of such activities highlights the current inadequacies in the Chinese competition law and its capacity to be enforced.

At a minimum, Australian businessmen would expect that China have sufficient mechanisms in place to actually implement and enforce its laws on competition.

The establishment of an independent enforcement authority is an essential element of a competition policy.

Aside from monitoring and enforcement compliance with the legislative framework, the other major role of an enforcement authority, according to the WTO, is to promote a competitive culture in the economy. This is achieved through:[37]

- public awareness activities;
- participation in the process of forming legislation in order to prevent new laws from introducing anti-competitive solutions;
- participation in the privatisation process in order to eliminate the possibility that state owned monopolies become private monopolies;

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[36] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/227 (2003) (Communication from China).

[37] *Report (2003) of the Working Group on the interaction between trade and competition policy to the general council* WTO Doc WT/WGTCP/7 (2003) 35.

- identification and elimination of barriers of competition; and

- international cooperation and technical assistance in order to develop sound and reasonable policies.

According to a report in China's People Daily on 12 January 2004[38], a national anti-monopoly authority will be set up in line with the anti-trust law to implement uniform competition rules for the Chinese market. It is essential that this authority have the autonomy and authority to deal effectively with the monopolies in China, without any political interference.

3. Access to Justice

Concerns remain over the capacity of the judiciary to effectively enforce the competition regulatory framework, once the reform process is complete.

The OECD Synthesis recognises the need to strengthen the independence and clarify the jurisdiction of courts, particularly with respect to government bodies. The OECD notes the following key problems with the Chinese legal system:[39]

- neither the independence of the Courts nor their jurisdiction (as we understand them) is adequately established;

- their remain concerns re political interference with the judiciary;

- legal obligations of other government entities to enforce or obey court decisions is not adequately established; and

- the proliferation of conflicting decisions depending on the geographical jurisdiction of the Court.

Aside from the issues above, the Australian experience shows that judicial determination of competition law disputes involves complicated and sophisticated economic and legal issues. Given that Chinese judges have not previously needed a working knowledge of market-orientated economics, the capacity of the judiciary to adequately deal with these issues is under question.

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[38] "China Due to Launch Anti-monopoly Agency" *China's People Daily* 12 January 2004 as found at http://english.peopledaily.com.cn on 21 April 2004.

[39] OECD, *China in the World Economy – the Domestic Policy Challenges (Synthesis Report)* (2002) OECD Publications Service, France, 51.

What might Australia seek in a FTA?

Many free trade agreements contain provisions in relation to competition law and policy (eg EU, NAFTA), although there are significant differences among the agreements.

It is important to note, from China's perspective, that the majority of such agreements are between developed and developed countries, and very few competition law provisions are contained in such agreements.[40]

Quite obviously, China and Australia have different economic circumstances, including a history of state intervention in China, different legal and administrative systems, and different levels of development and competitiveness in their respective markets.

However, it is likely that, in an attempt to secure fair market access for Australian exports and some degree of predicability in the Chinese markets, Australia would certainly be looking to agree upon a common set of principles, similar to those above. Certainly, again in the interests of Australian businesses, the Australian government would look to the extent to which China is implementing reform to the areas identified above.

Ideally, an agreement regarding competition law and policy between China and Australia would contain:

1. **Core principles**.

Australia considers the WTO core principles of transparency, non discrimination and procedural fairness to be the key foundations necessary to underpin any successful competition regime.[41]

2. **Main competition principles**

These pertain to the prohibition of cartels, control of vertical restraints, abuse of market power.

According to the UNCTAD, the following core principles are found in most competition laws (see also UNCTAD Model law[42]):

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[40] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/197 (2002) (Communication from UNCTAD) p 7.

[41] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/211 (2002) (Communication from Australia) 1.

[42] United Nations Conference on Trade and Development – Model Law on Competition Genevea 2003.

(i) prohibition of cartels;

(ii) case by case control of vertical restraints; and

(iii) control of concentrations through mergers and acquisitions or JVs where they would lead to concentration of market power or a monopoly.[43]

3. **Cooperation rules**

That is, dispute settlement mechanisms, consultations, reviews.

What can we learn from the two FTA's entered into by Australia recently?

Singapore-Australian Free Trade Agreement (SAFTA)

At the time of entering into the SAFTA, Singapore had only recently commenced the process of developing a general competition regime. Consequently, the SAFTA makes provision for a review of the scope and operation of the chapter 6 months after a generic competition law comes into effect in Singapore.[44]

The purpose of the competition provisions is stated to be to "contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti competitive practices."[45]

The core principles of competition law are addressed broadly in the definition of "anticompetitive practices". This term is defined to mean[46] business conduct or transactions that adversely affect competition such as:

(a) anti competitive horizontal arrangements between competitors;

(b) misuse of market power, including predatory pricing;

(c) anti competitive vertical arrangements; and

(d) anti competitive mergers and acquisitions.

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[43] *WTO Working Group on the interaction between trade and competition policy* WTO Doc WT/WGTCP/W/197 (2002) (Communication from UNCTAD) p12.

[44] Article 6, clause 2 *Singapore-Australia Free Trade Agreement*

[45] Article 1, clause 1 *Singapore-Australia Free Trade Agreement.*

[46] Article 1, clause 2 *Singapore-Australia Free Trade Agreement.*

Of particular relevance is the requirement that the parties take reasonable measures to ensure that "governments at all levels do not provide any competitive advantage to any government owned businesses in their business activities simply because they are government owned."[47]

China could expect a similar clause to be sought by Australia in negotiating any trade agreement with China, although at this stage of economic reform, such a clause would likely be little more than symbolic.

Australia-United States AUSFTA

The AUSFTA was agreed in February 2004 (yet to be ratified). The key provisions of the AUSFTA in relation to competition law are more specific and are generally reflective of the advanced state of competition, anti-trust, and consumer protection laws in both countries.

As expected, the agreement contains requirements that each party shall maintain or adopt measures to proscribe anti-competitive businesses and shall maintain an authority.

The Agreement, then however expands in to more specific provisions – the "designated monopolies provisions" – which imposes obligations upon each party to ensure that any designated monopolies do not engage in anti-competitive practices and act in accordance with commercial considerations.[48]

Similar to the SAFTA, the AUSFTA states that the parties must ensure that Governments at all levels do not provide any competitive advantage to any government businesses simply because they are government owned.[49]

ANTI-DUMPING

Dumping is a form of price differentiation between markets, where goods are exported at a price that is below the price of the good manufactured in the country of export. While dumping is not prohibited in international trade, remedial action can be taken by governments to protect domestic industries if it can be established that the dumped goods have caused material injury to the local producer. The measures taken generally involve the imposition of anti-dumping duties at the time of import in order to offset the effects of the dumped goods.

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[47] Article 4 clause 1 *Singapore-Australia Free Trade Agreement.*

[48] Article 14.3 *Australia-United States Free Trade Agreement.*

[49] Article 14.4 clause 3 *Australia-United States Free Trade Agreement.*

Given that the *Australia-China Trade and Economic Framework*[50] provides that a bilateral FTA will only follow Australia's recognition of China's full market economy, dumping is clearly a significant issue between our two countries.

The WTO "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994" (the Anti-Dumping Agreement) governs the application of anti-dumping measures by members of the WTO. This Agreement establishes the basic principle that an anti-dumping measure may not be imposed unless the Member determines, pursuant to an investigation conducted in accordance with the provisions, that there are dumped imports, that there is material injury to a domestic industry, and that there is a causal link between the dumped imports and the injury.[51]

Anti-dumping activity has clearly taken an upward trend in recent years, with an annual average of 255 cases investigated since the WTO was established in 1995. Australia is one of the major users of anti-dumping actions, and in 1999-2000, Australian firms accounted for almost 8 per cent of the anti-dumping actions initiated worldwide, while its share of world imports amounted to only 1.3 per cent.[52] Chemicals (largely petrochemicals) represented nearly half of the number of claims in Australia.[53]

Exports from the so-called 'economies in transition' have been particularly vulnerable to anti-dumping measures, and WTO statistics indicate that China has been the number one target of anti-dumping initiations worldwide.[54]

China is one of the world's lowest cost producers and thus has the ability to sell a wide range of products at prices lower than many of its competitors.[55] Although this is one explanation for the high proportion of anti-dumping measures taken against the country, it is the

[50] Paragraph 8.

[51] "Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994", World Trade Organisation, as found at www.wto.org/english/tratop_e/adp_e/antidum2_3.htm on March 29, 2004.

[52] "Global Trade Protection and Australian Anti-Dumping Activity", Department of Parliamentary Library, Research Note, 2002-2003, No.2, 20 August 2002, Michael Priestley, Economics, Commerce and IR Group, p. 2.

[53] Chemlink 1997 – Australia's chemical industry – "Dumping and Anti-dumping legislation in Australia". as found at http://www.chemlink.com.au/dumping.htm on April 3, 2004.

[54] WTO "Anti-dumping initiations: reporting Member vs exporting country - From 01/01/95 to 30/06/03" as found at http://www.wto.org/english/tratop_e/adp_e/adp_stattab3_e.pdf on April 20, 2004.

[55] Robert McGee, *Antidumping and the People's Republic of China: Five Case Studies*, as found at http://ideas.repec.org/p/wpa/wuwlit/9805003.html on at March 31, 2004.

classification of the Chinese economy as a 'non-market' economy by many of its trading partners which is the primary basis for the successful establishment of dumping claims. Where China is considered a 'non-market' economy in anti-dumping investigations, information relating to the price of the goods in the non-market economy is generally rejected. As an alternative, information from surrogate third countries with market economies, and considered to be at a similar level of economic development are used to determine the 'normal value' of the goods.[56] This has been seen to produce an unfair result where the costs of production (such as material and labour costs) used to calculate the value of Chinese exports in the chosen surrogate country are much higher than in China.

The Chinese economy has undoubtedly undergone a tremendous transformation over the past two decades, including the reforms implemented pursuant to its accession to the WTO in 2001. Whether China should be treated as a market economy is a question which requires the consideration of numerous and varied factors relating to the economic environment of the country. Although a consideration of the classification of China's economy is not within the scope of this paper, it is China's Protocol of Accession to the WTO which specifically allows investigating countries to apply non-market methodologies in their anti-dumping investigations against China.

For the first 15 years of its WTO membership, China has agreed to its treatment as a non-market economy, and many of the actions against China have taken advantage of Article 15 of the People's Republic of China Protocol of Accession to the WTO. Article 15 of the Protocol permits the use of a special procedure for anti-dumping cases against China if the producers under investigation "cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product."[57] Under Article 15, Chinese exporters should be given the opportunity to establish that they operate in the context of a market economy, and that the cost and price information provided is not distorted by the operation of a non-market economy. It may be the case that Chinese exporters can establish that market economy conditions prevail in the case of specific industry sectors of an otherwise non-market economy country.[58]

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[56] Andrew Stoler, 'Treatment of China as a non-market economy: implications for antidumping and countervailing measures and impact on Chinese company operations in the WTO Framework' (Paper presented at the Forum on WTO System & Protectionism: Challenges China Faces After WTO Accession, 1-2 December 2003).

[57] "Protocol on the Accession of the People's Republic of China" as found at http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN002123.pdf on March 31, 2004.

[58] Andrew Stoler, op. cit.

Australian Anti-Dumping Legislation

As a WTO Member, Australia is obliged to ensure that its anti-dumping legislation and procedures comply with the WTO's Anti-Dumping Agreement. The *Customs Act 1901* (Cth) contains Australia's anti-dumping law, and provides that where the weighted average of export prices of a good over a period is less than the weighted average of corresponding normal values over that period, those exported goods are taken to have been dumped.[59] The general rule is that the 'normal value' of the exported goods is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export.[60]

The Australian government recently introduced controversial amendments to the anti-dumping provisions[61] which primarily affect countries of export considered to be 'economies in transition'. China strongly objected to the introduction of these new anti-dumping provisions, and believed that the provisions were specifically aimed at the country in response to pressure from Australian manufacturers.

Under the new provisions, if the Minister is satisfied that the country of export has an 'economy in transition', and that market conditions do not prevail in the country in respect of the domestic selling price of the goods, the 'normal value' of the exported goods is an amount determined by the Minister[62], as opposed to the actual price paid for the goods in the country of export.

A country is defined to have an 'economy in transition' if the Government of the country has a monopoly or a substantial monopoly, in the trade of that country and determines, or substantially influences, the domestic price of goods.[63] The Minister's determination of whether market conditions prevail must consider certain prescribed matters which include:[64]

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[59] Section 269TACB *Customs Act 1901* (Cth).

[60] Section 269TAC(1) *Customs Act 1901* (Cth).

[61] The amendments were contained in the *Customs Legislation Amendment Act (No.1) 2003* (Cth).

[62] Section 269TAC(5D) *Customs Act 1901* (Cth).

[63] Section 269T(5C) *Customs Act 1901* (Cth).

[64] Section 269TAC(5E) *Customs Act 1901* (Cth).

1. whether the entity makes decisions about prices, costs and inputs in response to market signals and without significant interference by a government of the country of export;
2. whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export;
3. whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy in the country of export;
4. if land on which the entity's facilities are built is owned by a government of the country, whether conditions of rent are comparable to those in a market economy; and
5. whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.[65]

Anti-Dumping and the *Trade and Economic Framework*

Although the new amendments to Australia's anti-dumping legislation can in some cases affect the calculation of the normal value of exported goods in countries with 'economies in transition', the application of these provisions to China have been suspended via the *Australia-China Trade and Economic Framework.*

Under paragraph 8 of the *Framework*, the Australian government has agreed to recognise the progress and achievements of China in establishing a market economy, and renounce the application of Article 15 of China's Protocol of Accession to the WTO during the course of the study.[66] The paragraph continues by indicating the intention that our countries should negotiate on an equal basis, and that a bilateral FTA will only follow Australia's recognition of China's full market economy status. It has been suggested that this move by the Australian government could suggest that anti-dumping investigations should start with the premise that China should be recognised as a market economy.[67]

If Australia was to permanently recognise China as a market economy, it would overcome many problems associated with anti-dumping cases against Chinese importers, and may also set a precedent for anti-dumping investigations against China in other countries.

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[65] Schedule 1 *Customs Amendment Regulations 2003* (No. 9) 2003 No.319 (Cth).

[66] "Trade and Economic Framework between Australia and the People's Republic of China", Department of Foreign Affairs and Trade, as found at http://www.dfat.gov.au/geo/china/framework/economic_framework,html on March 28, 2004.

[67] "Controversial Anti-Dumping Legislation Finally Passed" Hunt & Hunt Lawyers Publication, Andrew Hudson, as found at http://www.hunthunt.com.au/hunthunt/asp/news_detail.asp?NewsID=161 on March 28, 2004.

What do Chinese traders need to do?

Chinese traders should not be discouraged by the high proportion of anti-dumping investigations against the country. As the Chinese economy continues to implement the reforms required for its accession to the WTO, more of its trading partners may be likely to recognise it as having a full market economy.

Chinese businesses involved in international trade can facilitate a FTA between Australia and China by taking a number of steps including:

1. Becoming aware of both the WTO Agreement provisions on Anti-Dumping, and the domestic anti-dumping provisions and procedures which apply in Australia;
2. Being equipped with vital information and knowledge about the product in question – including the cost and price of the product in the home country, its price in the export market and the prices of other like products in the export market, and the market share of the product in the importing country. This ensures that relevant evidence is readily available should an anti-dumping investigation be initiated;[68]
3. Diversify the markets to which goods are exported in order to minimise the potential for a dumping allegation in the sole market of export; and
4. Concentrate on improving the quality aspect of products and building brands, as this may be conducive to increasing the price of the goods in export markets and improve the competitiveness of Chinese exports in international trade.[69]

Protection of Intellectual Property Rights

A vital and constantly expanding component of international trade is information, ideas and knowledge. The world has taken, and continues to take, significant steps towards becoming an information based society, where exchange of information holds more value than trade of land, labour, capital and goods. However, trade of information can only hold value if legal rights are attached to the information. Unlike most other forms of property, possession, high fences and security guards do little to protect information.

[68] Xu Binglan, "Learning more about anti-dumping", *China Daily (North American ed)* (New York), February 18, 2004, 11.

[69] Zhang Jin, "Improved quality in exports planned", *China Daily (North American ed)* New York, March 10 2004, 9.

The laws of intellectual property seek to redress this problem by instilling legally recognised value in information. However, the legal recognition of intellectual property in one nation is worthless if that intellectual property is traded to another nation that does not recognise and in turn does not liquidate the value. The problem is magnified if the product with attached intellectual property rights (IPRs) is then counterfeited or pirated in that nation and in turn internationally exported. This section of the paper seeks to examine IPRs as a potential mechanism to impede liberalised trade between Australia and China.

Counterfeiting and Piracy: Prevalent Breaches of Foreign IPRs in China

Unfortunately, the PRC is globally recognised as the world's largest source of counterfeit products, which in the year 2000 accounted for approximately 8 percent of the country's GDP.[70] Theft of trade secrets and proprietary information is also equally prevalent.

To define counterfeiting, Low explains that it involves individuals or companies attempting to profit on the value built up in popular and profitable products bearing a certain trademark. A counterfeiter re-creates the product in almost identical form, so that consumers believe they are buying the trademarked product. The resultant product hurts the trademarked product by decreasing sales of the authentic product, and injures the reputation of the trademark owner for the quality of the counterfeit good is usually inferior compared to that of the trademark owner.[71]

The failure of China to enforce its intellectual property laws, allowing gross levels of counterfeiting of goods which are protected by patents, designs, copyright or trade marks in their country of origin will impede liberalised trade with Australia in two key ways:

First, Australian companies are reluctant to import Chinese goods into Australia for fear of unwittingly importing counterfeited goods.

Second, Australian companies will be deterred from directly investing in China, for fear that their products with attached IPRs will be counterfeited or pirated.

These two impediments are discussed in detail below.

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[70] James Hsiung, 'The Aftermath of China's Accession to the World Trade *Organisation'* (2003) 3 *The Independent Review* 87, 92.

[71] Alex Low, 'To Counterfeit in China is Divine: Or is it?' (2002) 7 *Deakin Law Review* 2, 15.

1. The Concern of an Influx of Counterfeited Goods into the Australian Market

To parallel the tremendous growth of luxury branded goods available on the international market in the past thirty to forty years, so too has there been a tremendous growth in counterfeiting. In the mid 1980s there was an apparent absence of counterfeit products for sale in China and even in 1990, counterfeiting was in small quantities, primarily in cigarettes.[72] However, in the early 1990s there was a marked explosion in production, domestic sale and export of counterfeited goods in China due to the increase in foreign investment.[73]

The industries affected by Chinese produced counterfeit and pirated products is enormous. The International AntiCounterfeiting Coalition lists the following infringing products produced in China and marketed domestically and exported[74]:

- Pharmaceuticals and vision care products;
- Electronics and home appliances;
- Office machines and accessories;
- Shampoos, toothpaste, soaps and detergents;
- Skin care, perfume and other cosmetic products;
- Razors;
- Auto parts, eg windshields, brake pads, filters;
- Tools;
- Cigarettes;
- Clothing apparel, shoes and bags;
- Film, batteries;
- Motorbikes;
- Mobile phones;
- Food and beverages;
- Software, computers and peripherals;
- Toys
- Stationary items.

[72] Ibid, 2.

[73] Ibid.

[74] Submission of the International AntiCounterfeiting Coalition, Inc, to the United Staes Trade Representative, February 13, 2003, pages 11-12.

Counterfeiting is now affecting goods on which consumer health and safety are dependent.[75] Examples from recent years include fake fire-fighting systems in Boeing aircraft engines, cardiac pumps with counterfeit components and cars with counterfeit brakes, all of which were detected due to faulty operation of the fake parts.[76] In the United States of America, counterfeit amphetamines were the cause of death of a dozen people.[77]

There are any number of theories that attempt to account for the extensive counterfeiting problem in China. Some attribute it to a lack of local appreciation of foreigners' ownership of intangible property, compounded by a weak law enforcement system and motivated by the quick profiteering for individuals and enterprises. When one company can afford to import new products or technology, hundreds of other companies turn to counterfeiting those items due to lack of finance to import or innovate their own product, and the assurance that the counterfeited item will be successful due to the popularity of the foreign brand.[78]

Others say there are a number of causes to the increasing supply and demand for counterfeit products:

- Freeing of China's internal market and semi-privatisation of companies;
- Increased spending power of the Chinese people;
- The continued shift of manufacturing from Hong Kong and Taiwan to China;
- The greater access of Chinese manufacturers to world markets through the lowering of export controls;
- Improvements in China's communication and transport infrastructure;
- Successful implementation of trade-related treaties such as GATT which effectively liberalised world trade. The reduction of tariff and non-tariff trade barriers worldwide means small and medium-sized companies can now easily source products from around the world; and
- The internet gives even the smallest manufacturer the ability to advertise and sell its wares worldwide.[79]

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[75] Jill McKeough and Andrew Stewart, *Intellectual Property in Australia* (2nd ed, 1997) 480.

[76] Ibid.

[77] Ibid.

[78] Kui Hua Wang, *Chinese Commercial Law* (2000) 175-205.

[79] Alex Low, op. cit., 3.

It is important to emphasise the level of intellectual property protection also often relates to the stage of a country's economic development. A more developed nation has the capacity to more adequately protect intellectual property than a developing nation, which places the country's economic development ahead of protecting intellectual property as a private right. Japan had a similar transition in the years after World War 2.

What must be recognised is that while counterfeiting activities bolster China's economy in the short term, continued piracy will jeopardise China's economy in the long term because Chinese products will not be imported by Australian and other foreign companies because of the risk of prosecution for unwittingly importing counterfeits.

There have been a number of high profile counterfeiting cases in Australian courts in recent years, including several computer software and game station CD-ROM cases.[80] Additionally, Australian enforcement authorities have been actively co-operating to stage raids and seize counterfeit goods. On 30 March 2001, nearly 90 Australian enforcement authorities, including the Customs Service, Taxation Office, Immigration Department and New South Wales Police, worked with corporate in-house and outside investigators to arrest 30 people in Sydney involved in counterfeiting. An extensive array of counterfeit products were seized, including watches, shirts, hats and other products infringing popular trademarks such as Adidas, Calvin Klein, Guess, Fila, Fubu, Nike, Oakley, and Timberland.[81]

In February 2003 there was a Federal Court of Australia decision regarding counterfeited sunglasses being imported from China. In *Oakley Inc v Franchise China Pty Ltd*[82], Oakley, the internationally renowned manufacturer of sunglasses brought an action against a company known as Franchise China Pty Ltd. Franchise China was an Australian company, that specialised in importing goods from China to Australia.

In October 2001 there were three importations into Australia of counterfeit Oakley sunglasses which were seized by the Australian Customs Service. The Court made several orders,

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[80] *Microsoft Corp v Goodview Electronics Pty Ltd* (2000) 49 IPR 578*; Microsoft Corporation v Auchina Polaris Pty Ltd* (1996) 71 FCR 231; *Kabushi Kaisha Sony Computer Entertainment v Stevens* [2003] FCAFC 157; *Microsoft Corp v Blanch* [2002] FCA 895; *Fendi Adele SRL v Firedland* [2002] FCA 352; *Sony Computer Entertainment Australia Pty Ltd v Dannoun* [2001] FCA 1235; *Sony Computer Entertainment Australia Pty Ltd v Saleh* [2001] FCA 717*; Sony v Reilly* [1999] FCA 1694.

[81] International AntiCounterfeiting Coalition, *Australian Authorities Cooperate in Major Raid* (2001) as found at www.iacc.org/teampublish/109_471_1654.cfm as at 29 March 2004.

[82] [2003] FCA 105.

including orders that the seized goods be forfeited to the Australian government, Oakley's damages be paid, destruction of all promotional material related to the seized goods, and Oakley's costs of the legal action be paid.

Cases such as *Oakley* demonstrate the seriousness with which counterfeiting is treated by Australian domestic law. However, these domestic legal proceedings have little impact on those individuals and enterprises in China who are engaging in the counterfeiting activity. As trade is liberalised between Australia and China, Australia will have a direct interest in ensuring that there are effective mechanisms in place to prevent IPR infringements in China.

In some circumstances the principles of private international law may permit a person to take legal action in one jurisdiction to vindicate a right that exists in another jurisdiction. However, it has been held by the Courts in Australia that no such protection may be claimed for rights arising under foreign statutory regimes, since they have no extra-territorial effect.[83] That is to say, an Australian company could not commence an action in Australia for breach of its IPRs in the Chinese jurisdiction, utilising Chinese intellectual property laws.

The consequence is that Australian businesses with IPR's have a vested interest in opposing a free trade agreement with China.

2. Counterfeiting of Australian Direct Investor's Goods

Counterfeiting is a serious and growing concern for foreign investors in China. Investors are not always willing to transfer their technology to China for fear that their ownership rights in the technology will not be protected. Sometimes, outdated technology may be used instead of the latest technology.

The dilemma that China has is its need to modernise the economy at an accelerated rate utilising the latest technology available, yet investors are recoiling from China unless the technology is protected. The United States of America has considered the problem so serious as to threaten to impose trade sanctions on China if the protection of IPR was not improved, citing the "shortcomings in China's prosecution of copyright piracy" and "the inadequate damage awards available to plaintiff's intellectual property cases."[84]

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[83] *Potter v Broken Hill Proprietary Co Ltd* (1906) CLR 479; *Norbert Steinhardt & Sons Ltd v Meth* (1961) 105 CLR 440.

[84] [84] Kui Hua Wang, op. cit, 176.

Foreign direct investment by way of 'large scale licensing-out' of the right to manufacture products with attached IPR is a major cause of counterfeiting, in that licensors effectively lose control of the quality of their products, making it easier for counterfeiters to copy goods indistinguishable from the genuine item, or purposely producing similar products to look like famous brands.[85]

Many intellectual property owners are finding that their goods are being copied even before the genuine article reaches the market place. A prime example of this is in the designer clothing industry, where often designs are produced in limited quantities in a variety of fabrics on a subcontract basis by factories in China for the purpose of samples.[86]

What can China do about this problem?

Due to the Chinese government's concerted efforts over the last three decades, a comprehensive legislative scheme of intellectual property law has been established in China mostly in compliance with the TRIPS requirements and has not been brought before the WTO Dispute Settlement Body (DSB) for non-compliant legislation[87].

China faces its most challenging hurdle in enforcing that which it has legislated.

An essential difference between China and some other nations with which it seeks to liberalise trade, including Australia, is the 1979 decision of the Chinese government to decentralise power from the federal government to the local and provincial governments in order to facilitate the country's transition to a market economy.[88] Local governments in China are capable of functioning as independent fiscal entities responsible for managing local expenditure which is in marked contrast to westernised nations who are dependent upon the central national economy. Our perception is that in China, local officials are much more focused on protecting local interests, and can therefore be reluctant to pursue action against IPR infringers that provide income and employment opportunities in the region.[89]

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[85] Alex Low, op. cit, 3.

[86] Mark Cohen, A Bang and Stephanie Mitchell, *Chinese Intellectual Property Law and Practice* (1999) 388.

[87] There have not been any proceedings in the WTO against any country for not enforcing what has been legislated.

[88] Vincent Liu, 'Copyright and Software Protection: Is it working in China?' 16(1) (2003) *Intellectual Property Law Bulletin* 12, 19.

[89] Ibid.

My personal experience in endeavouring to protect the IPR's of a client is that for all practical purposes, it is essentially impossible to obtain the support of officials to protect or assist in the prevention of breaches.

Enforcement procedures are *available* under Chinese law, but there is a strong perception among Australian businesses that they are not effectively enforced in the following areas:

1. 'Effective' action can not be taken against an act of infringement in China;
2. Remedies are not expeditious;
3. Remedies and penalties are not severe enough to constitute a deterrent;
4. Minimal criminal prosecution standards are not met for an act of counterfeiting or breaching copyright; and
5. Effective border measures are not implemented (vital to preventing counterfeited and pirated goods from entering the foreign state).

The two most fundamental remedial tasks it can undertake to satisfy Australian business that their IPR's are not at risk are to:

1. Instead of dealing with breaches administratively and lightly (if dealt with at all), which defeats the deterrence aims of Part 111 of TRIPS, impose effective criminal sanctions; and
3. China must reinforce and strengthen its current border control measures to slow and reduce trade in pirate and counterfeit goods through all border enforcement authorities being active in stopping goods prior to export or while in transit.

Professor Zhang Chu, a noted Beijing expert in IPR law stated "Domestic companies should learn to do business in the long term. You may make some money by infringing upon others' copyrights and patents in the short term, but sooner or later you will have to pay dearly for it."[90]

CONCLUSION

The move to closer economic ties between Australia and China is both exciting and challenging. But fear and ignorance on the part of Australian businesses – who have a large

[90] China Daily, *Chinese businesses pay for lack of IPR awareness* (2003) as found at www.chinadaily.com.cn/en/doc/2003-10/24/content_275175.htm at 29 March 2004.

impact on the Government when it negotiates any FTA – must be taken seriously. Whereas many Chinese have received education at prestigious universities in Australia, the USA and the UK, the number of Australians who have been educated in China or immersed in Chinese culture, while growing, remains very small.

As Australians, we must do better.

The International Relations Committee of the Queensland Law Society is committed to working with our Chinese colleagues to ensure the mutual exchange of information, education and ideas to improve our understanding of each other and strengthen our friendship. Last year, we signed a Memorandum of Understanding with the Shanghai Bar Association to that end.

For these reasons I have been deeply honoured to have been invited to present this paper to such an auspicious gathering.

Thank you.