

Received 4/6/15

(English Translation for Reference)

Mr. Dale Seymour

Commissioner of the Anti-Dumping Commission, Australia

June 2, 2015

Dear Mr Seymour,

I am writing to you again to express my concerns about the new development in the investigation on certain crystalline silicon photovoltaic modules or panels exported from China. On May 26, 2015, the Commission issued the particular market situation(PMS) questionnaire to the Government of China. The Chinese side is deeply concerned about and strongly opposes the practice adopted by the Australian investigating authority. The reasons are as follows:

First, the Commission's current practice has serious procedural defects. There are specific articles, in both the Antidumping Agreement of WTO(ADA) and the Australian domestic legislation, to stipulate the investigation procedure. The final determination by the investigating authority shall be based on the essential facts collected in the due procedure. The Commission published its Statement of Essential Facts(SEF) in April 7, 2015, which meant the procedure for the collection of information was finished, and the period of comments afterwards was for the interested parties to make their arguments about the findings in SEF, instead of

submitting new evidence and allegations. As a matter of fact, the investigation had last for one year and the applicant had already been given sufficient time to submit evidence in the process. The Commission made the finding in the SEF that here was insufficient evidence to prove the existence of PMS. It is extremely inappropriate for the Australian investigating authority to receive new information at this stage, nor should it issue questionnaires for information collection or even re-conduct the investigation. The Chinese side cannot accept the practice.

Secondly, the Chinese side reiterates its position regarding the application of PMS. According to the Article 2.2 of ADA, PMS is the situation caused by the market itself in which the export price and the domestic price cannot be properly compared. The government policies do not fall into the category of PMS, instead, it could be dealt with by the Agreement on Subsidies and Countervailing measures (ASCM). Therefore, the Chinese side is deeply concerned by the practice of the Commission to issue PMS questionnaire to the Government of China in antidumping investigations, which is very inappropriate and may cause adverse effects.

Thirdly, the policies of the Government of China do not constitute significant influence on the economy and industries. The Chinese side would like to clarify the nature of the relevant policies. The Five Year Plans set out every government's blueprint for economic development, which have no material difference with the promises

or the administrative programme made by the Australian Premier before or after the election. The industry policies are with the same function, such as to show the objective of future development, improve the efficiency, save energy and resources, protect environment, increase employment and etc. The Australian government also has the similar practice and provides a lot of incentives and support for the steel, automobile, and new energy industries. The Chinese side believe, each responsible government has the duty to make policies to regulate domestic economy, and it should not be found as significant influence.

Based on the abovementioned points, the Chinese side asks the Australian investigating authority to conduct the investigation with precaution and in accordance with ADA rules, stop the re-opening of PMS investigation, withdraw the questionnaire to the Government of China, and maintain the findings regarding dumping and injury in the SEF.

Yours sincerely,

Ms. Zhou Xiaoyan  
Director General  
Trade Remedy and Investigation Bureau  
Ministry of Commerce of the People's Republic of China

# 中华人民共和国商务部

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戴尔·西摩先生

澳大利亚反倾销委员会主任

2015年6月2日

我再次写信旨在就澳对华晶体硅光伏组件或面板反倾销案的最新进展表达中方立场。5月26日，中国政府收到澳反倾销委员会发出的关于特殊市场情况的调查问卷。中方对澳调查机关此做法表示严重关注并坚决反对，具体理由如下：

第一，澳反倾销委员会的目前做法在程序上存在严重瑕疵。无论是世贸组织《反倾销协定》，还是澳大利亚的反倾销法规和条例，都对调查程序做出了明确的规定，调查机关的最终裁决应当基于在适当的调查程序中收集的基本事实做出。澳大利亚反倾销委员会在2015年4月7日发布了基本事实报告，意味着收集信息的调查程序已经完成，随后的评论期是给利害关系方针对基本事实报告中的认定提供抗辩的机会，而非提出新的证据材料和指控。事实上，该案的调查已经进行了1年时间，申请方在此前有充分的时间提交证据材料，澳反倾销委员会也已经在基本事实报告中认定，没有充分证据证明特殊市场情形的存在。调查机关在目前阶

段接受新的信息是非常不合适的，更不应该发出调查问卷收集信息，甚至重新进行调查，中方对此不能接受。

第二，中方重申中国政府对于适用特殊市场情形的立场。根据世贸组织反倾销协议第 2.2 条的规定，特殊市场情形是指市场本身造成的使得出口价格和内销价格不能适当比较的情形。政府政策不属于第 2.2 条规定的特殊市场情形，而是由《补贴与反补贴协定》处理。因此，中方对澳方在反倾销调查中向中国政府发放问卷的做法表示严重关切，认为极为不妥，可能产生不良影响。

最后，中国政府的有关经济政策不是对于经济和产业的“重大干预”。中方希望澄清中国政府有关经济政策的性质。中国政府的五年规划是每一届政府对经济发展的规划蓝图，和澳大利亚总理竞选前对选民的承诺和当选后的施政纲领没有实质性区别。有关产业政策的作用也是类似的，目的在于指明产业发展方向，提高产业运营效率、节约能源资源、保护环境、促进就业等等。这方面澳大利亚政府也有类似的做法，并对钢铁、汽车、新能源产业等出台了大量支持措施。中方认为，这是各国政府管理经济的重要职能，并不构成对市场的重大干预。

鉴于此，中方要求澳大利亚调查机关按照世贸组织《反倾销协定》相关规则，审慎调查，停止对于特殊市场情况的重新调查，收回对中国政府发放的问卷，维持基本事实报告

中对于倾销和损害的认定。

Handwritten signature in black ink, appearing to read '周乾燕'.

贸易救济调查局局长  
中华人民共和国商务部