



Not confidential

To Director, Operations 2 - Australian Anti-Dumping Commission
From Vivian Wang, Andrew Korbel, Andrew Percival
Date 12 August 2015
Subject **Anti-Dumping Investigation - PV Modules or Panels from China**

As you know, we act for the China Chamber of Commerce for Import and Export of Machinery and Electronic Products.

We are instructed to make the following submissions to the Commission in response to the report prepared by Mr George Barker of Law and Economic Consulting Associates Ltd dated 13 July 2015 and titled “*Assessment of the Market Situation Factors in the People's Republic of China for Crystalline Silicon Photovoltaic Modules or Panels*” (**Report**).

Our submissions are set out below.

1. Terms of Reference

- 1.1 In a file note published by the Anti-Dumping Commission (**Commission**) on its public file in relation to this investigation, it was stated that because of ‘new information’ provided by the Australian industry concerning alleged policies and practices that may have impacted on the prices for raw materials and on the goods under investigation, the Commission had sought and obtained an extension of time within which to report to the Parliamentary Secretary. The file note said that the Commission had also appointed an external consultant:

“ to independently gather relevant information regarding the production and sale of PV modules or panels, and major raw materials (cells, wafers, ingots and polysilicon) used in the manufacturing of PV modules or panels, in China”. [emphasis added]

- 1.2 A copy of the consultant’s terms of reference setting out the terms of its appointment and the tasks on which the consultant was to report to the Commission were not included in the file note. Further, those terms of reference are not set out in the Report. It is, therefore, unclear precisely what work the consultant was to undertake and report back on to the Commission.
- 1.3 Further, it is unclear what information was provided or made available to the consultant by the Commission as part of the consultant’s brief. The consultant does make reference in the Report to having received a brief from the Commission. Details of what that brief consisted of have not been disclosed, nor what information was included in that brief.
- 1.4 We note that there are restrictions on the Commission in the disclosure of confidential information to third parties: see Part 6 of the *Australian Border Force*

Act 2015. It is unclear what information has been disclosed by the Commission to the consultant consistent with these provisions.

- 1.5 It is also unclear why the Commission appointed the consultant to undertake the work referred to in the Commission's file note when the grounds for termination of this investigation were that any injury incurred by the Australian industry from imports from China, whether at dumped prices or not, was negligible. That is, why or how could the consultant's report potentially affect the Commission's findings in this regard, especially when the consultant was not required to, and did not, report on this issue.
- 1.6 In the circumstances we would be grateful if the Commission would clarify:
- (a) precisely what were the terms of reference of the consultant's appointment;
 - (b) precisely what information was included in the brief to the consultant and, whether it included any confidential information of interested parties to this investigation; and
 - (c) how the disclosure of any confidential information of interested parties was consistent with the disclosure of information by the Commission under Part 6 of the *Australian Border Force Act 2015*; and
 - (d) why the Commission appointed the consultant to report on issues apparently concerning dumping margin calculations but seemingly were irrelevant to the grounds on which the Commission had determined to terminate this investigation (i.e. negligible injury).

2. Collection of information

- 2.1 As noted above it is apparent that at least part of the consultant's task, if not its sole task, was to "*independently gather relevant information regarding the production and sale of PV modules or panels, and major raw materials (cells, wafers, ingots and polysilicon) used in the manufacturing of PV modules or panels, in China*".
- 2.2 It is unclear from the Report whether any such information was collected by the consultant, and if so how it was collected.
- 2.3 Instead it appears from the Report that the consultant has relied predominantly upon:
- (a) information provided to it by the Commission as part of its brief (although it is not clear what that information was), for the purpose of preparing the economic analysis set out in the Report, and
 - (b) to a lesser extent, some publicly available information that does not appear to have been tested for its probative value in this investigation.

2.4 The consultant itself has noted in the Report that “... *it has proven very difficult to identify, and find information let alone document every policy intervention in detail ...*” (at section 3.0 on page 19 of the Report).

2.5 It appears, therefore, that the consultant has not undertaken the task it was appointed to undertake. This apparent failure by the consultant to undertake the task it was appointed to undertake has led to, among others, the shortcomings with its Report detailed below.

3. Shortcomings with the Report

3.1 The Report consists of a purported analysis of the Chinese PV module and panels market, based on economic theory and modelling. That analysis proceeds on **an assumption** that the Government of the People’s Republic of China (**GOC**) has, in a variety of ways, intervened in the market, and a **further assumption** to the effect that the PV modules and panels market in China is not a competitive market and prices for PV modules and panels do not represent competitive market prices.

3.2 Those assumptions were seemingly made on the basis of instructions or information provided to the consultant by the Commission in its brief. It does not appear that the consultant has independently obtained information concerning intervention in the Chinese PV modules and panels market, the nature of any such intervention and the effect, if any, of any such intervention on the PV modules and panels market in China.

3.3 The Report merely sets out what “may” occur or “may be expected” to occur or be “likely” to occur in the Chinese PV modules and panels market as a result of the kinds of GOC intervention that are assumed to have taken place in that market, and/or in upstream markets.

3.4 What is missing from the Report is any evidence or analysis of:

- (a) of whether the GOC actually intervened in the Chinese PV modules and panels market;
- (b) if it did so, why it did so and what was the nature of that intervention;
- (c) whether any such intervention actually affected those markets and, if so, the nature and extent of the effect of such intervention supported by objective, verified evidence;
- (d) whether the GOC actually intervened in upstream markets;
- (e) if it did so, what was the nature of that intervention; and
- (f) how and to what extent any intervention flowed through to the downstream PV modules and panels market.

3.5 Absent any evidence and analysis of evidence, there is simply nothing from the Report which would present the Commission with any basis to make any findings about matters such as the existence of a “particular market situation” or

“competitive market costs”. The Report merely presents speculation, based on assumptions together with economic theory and modelling.

- 3.6 Further, comparisons of pricing in China with pricing in other jurisdictions, such as the pricing contained in *Bloomberg New Energy Finance* (see page 8 of the Report) raise the question of whether the alternative prices referred to are themselves competitive market prices unaffected by government policies, policies and legislative instruments. In the absence of any investigation into factors affecting those alternatives, it is not known whether they are suitable for use as a comparator.

4. Conclusion

- 4.1 The Report does not address the grounds previously identified by the Commission for termination of the investigation, nor provide any substantive additional information or evidence that was not already before the Commission. In light of the foregoing, the Commission should proceed with the termination of this investigation, as proposed in the statement of essential facts.
- 4.2 For the reasons expressed in our submission of 29 May 2015, and in light of the matters that we have identified above, we once again urge the Commission to terminate the investigation without any further delay.

East & Concord Partners and Corrs Chambers Westgarth

Vivian Wang

Partner

+86 10 6510 7050

vivian_wang@east-concord.com

Andrew Korbel

Partner

(02) 9210 6537

andrew.korbel@corrs.com.au

Andrew Percival

Special Counsel

(02) 9210 6228

andrew.percival@corrs.com.au