



Australian Government
Anti-Dumping Commission

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CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 239

APPLICATION FOR A DUMPING DUTY NOTICE

**CERTAIN CRYSTALLINE SILICON PHOTOVOLTAIC
MODULES OR PANELS EXPORTED FROM THE PEOPLE'S
REPUBLIC OF CHINA**

14 May 2014

CON 239 - Certain Crystalline Silicon Photovoltaic Modules or Panels– China

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ABBREVIATIONS

\$	Australian dollars
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	Tindo Manufacturing Pty Ltd
COGS	Cost of goods sold
Commission	Anti-Dumping Commission
the Commissioner	the Anti-Dumping Commissioner
CTM	Cost to make
CTMS	Cost to make & sell
FOB	Free On Board
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
USP	Unsuppressed Selling Price

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Tindo Manufacturing Pty Ltd (Tindo) for the publication of a dumping duty notice in respect of certain crystalline silicon photovoltaic modules or panels (PV modules or panels) exported from the People's Republic of China (China) to Australia.

1.2 Application of law to facts

Division 2 of Part XVB of the *Customs Act 1901* (the Act)¹ sets out procedures for considering an application for a dumping duty notice.

1.2.1 The role of the Commission

The Commission is responsible for preparing a report for the Anti-Dumping Commissioner (the Commissioner) examining an application for a dumping duty notice.

In this report, the following matters are considered in relation to the application:

- whether the application complies with subsection 269TB(4);
- whether there is, or is likely to be established, an Australian industry in respect of like goods;
- whether there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

1.2.2 The role of the Commissioner

The Act empowers the Commissioner, after having regard to the Commission's report and to any other information the Commissioner considers relevant, to reject or not reject an application for the publication of a dumping duty notice.

If the Commissioner decides not to reject the application, the Commissioner must give public notice of the decision providing details of the investigation.

1.3 Findings and conclusions

The Commission has examined the application for the publication of a dumping duty notice in relation to certain PV modules or panels exported from China.

The Commission is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (the reasons for being satisfied are set out in Chapter 3 of this report);
- there is an Australian industry in respect of like goods (as set out in Chapter 4 of this report); and

¹ All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

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- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in Chapters 5, 6 and 7 of this report).

1.4 Recommendation

The Commission recommends that the Commissioner decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Appendix A** indicating that the Commission will inquire into whether the grounds exist to publish a dumping duty notice.

2 BACKGROUND

2.1 Application

On 4 February 2014, Tindo lodged an application requesting that the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) publish a dumping duty notice in respect of certain PV modules or panels exported to Australia from China.

The applicant alleges that the Australian industry has suffered material injury caused by certain PV modules or panels exported to Australia from China at dumped prices.

The applicant claims the industry had been injured through:

- lost sales revenue;
- price depression;
- price suppression;
- loss of profit; and
- reduced profitability.

2.2 The goods the subject of the application

2.2.1 Description

The goods the subject of the application (the goods) are:

Certain crystalline silicon photovoltaic modules or panels, whether exported assembled or unassembled, and whether or not they have an inverter, capable of producing any power in terms of watt.

Exclusions:

The following product types are excluded from the application:

- cells and wafers of the type used in PV modules or panels;
- solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries; and
- PV products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s).

The application contains the following additional information in relation to the goods the subject to the application.

A PV module is a packaged, connected assembly of solar PV cells. A solar PV cell is an electrical device that converts the energy of light directly into electricity by the photo-electric effect. It is a form of photoelectric cell which, when exposed to light, can generate and support an electric current without being attached to any external voltage source, but does require an external load for power consumption.

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The two key species of silicon crystalline cells in commercial use are poly crystalline (also known as multi crystalline) and mono crystalline cells². Both PV modules composed of poly crystalline and mono crystalline silicon cells are the goods the subject of this application.

A solar panel (or array) is a set of PV modules electrically connected and mounted on a supporting structure. The PV module can be used as a component of a larger PV system to generate and supply electricity in commercial and residential applications.

The relationship between PV cells, modules and panels (or arrays) is illustrated in the following diagram.

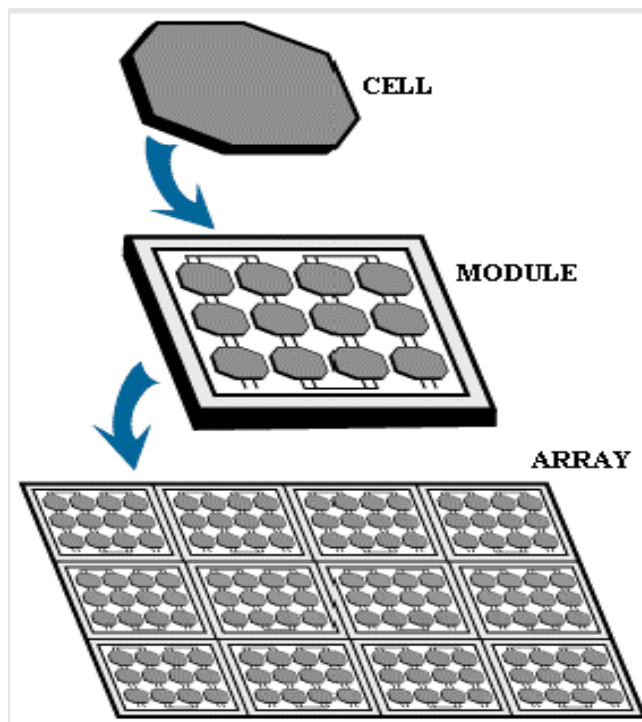


Figure 1: Relationship between PV cells, modules and panels

The two forms of power generated by the two different types of PV modules or panels are alternating current (AC) and direct current (DC). The AC modules or panels are ready to be plugged into the grid by use of an on-board micro-inverter, while the DC PV modules or panels need to be connected to a separate inverter that converts the electricity generated to AC power. Both AC and DC PV modules or panels are included in the description of the goods.

² The difference between the two silicon crystalline structures lies at the atomic level, namely, mono-crystalline silicon (Si) or single-crystal Si, or mono-Si, consists of silicon in which the crystal lattice of the entire solid is continuous, unbroken (with no grain boundaries) to its edges. Poly- (or multi-) crystalline silicon is composed of a number of smaller crystals or crystallites and consists of multiple small silicon crystals. Both are used to perform the underlying function of the PV modules or panels that is to convert sunlight to electrical current.

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2.2.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the Customs Tariff Act 1995:

- 8541.40.00, statistical code 53;
- 8501.61.00, statistical codes 33 and 24;
- 8501.62.00, statistical code 34;
- 8501.63.00, statistical code 40; and
- 8501.64.00, statistical code 41.

The Australian Customs and Border Protection Service's (ACBPS) tariff branch has advised the Commission that the goods can be imported under tariff classifications 8541 and 8501. The Commission notes that the goods under consideration are defined by the description, not the tariff classification.

The rate of Customs duty payable under each of the tariff subheadings is as follows:

- 8541.40.00 (statistical code 53); 8501.63.00 (statistical code 40) and 8501.64.00 (statistical code 41) are duty free; and
- 8501.61.00 (statistical codes 33 and 24) and 8501.62.00 (statistical code 34) have a duty rate of 5 per cent for all countries except for DCS countries (4 per cent) and DCT (5 per cent). China is defined as DCS therefore duty is payable at the rate of 4 per cent.

2.2.3 Tariff Concession Orders

There is currently no tariff concession order (TCO) applicable to the goods.

2.3 Consideration of the application

Under subsection 269TC(1) the Commissioner must examine an application for the publication of a dumping duty notice upon its receipt and, within 20 days of lodgement (or 20 days of lodgement of further information in support of the application), decide whether or not to reject the application.

This application was receipted by the Commission on 4 February 2014. Additional information was provided by the applicant on 21 February 2014, 6 March 2014, 26 March 2014, 2 April 2014 and 17 April 2014 making the date for the Commissioner's decision in relation to the application no later than 7 May 2014.

Subsection 269TC(1) specifies that the Commissioner shall reject the application if he is not satisfied that:

- the application complies with subsection 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2.4 Previous investigations and current measures

There have been no previous investigations into PV modules or panels, and thus there are no current anti-dumping measures on the goods exported to Australia.

2.5 Other administrations

- In December 2013, the European Commission (EC) imposed definitive dumping and countervailing duties on crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) exported from China. The dumping margins ranged from 27.3 per cent to 64.9 per cent. The subsidy margins found ranged from 0.0 per cent to 11.5 per cent.
- In November 2012, the United States International Trade Commission (USITC) imposed final dumping and countervailing measures on crystalline silicon photovoltaic cells and modules exported from China. The dumping margin found ranged from 18.32 per cent to 249.96 per cent. The subsidy margins found ranged from 14.78 per cent to 15.97 per cent.
- In January 2014, the United States International Trade Commission (USITC) initiated a dumping investigation into crystalline silicon photovoltaic products exported to United States of America from China³ and Taiwan and a subsidy investigation into crystalline silicon photovoltaic products exported from China.

³ In its previous dumping and subsidy investigations (concluded in November 2012), the USITC excluded Chinese PV modules or panels assembled using non-Chinese solar cells.

3 DOES THE APPLICATION COMPLY WITH SUBSECTION 269TB(4)?

3.1 Finding

Based on the information provided in the application, the Commission is satisfied that the application complies with subsection 269TB(4) of the Act.

3.2 Legislative framework

Subsection 269TB(4) requires that the application must:

- be in writing; and
- be in an approved form; and
- contain such information as the form requires; and
- be signed in the manner indicated by the form; and
- be supported by a sufficient part of the Australian industry.

3.3 Approved form

The application is in writing, is in an approved form (a B108 application form), contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form.

Confidential and public record versions of the application were submitted. The Commission considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

3.4 Supported by Australian industry

An application is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 per cent of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25 per cent of the total production or manufacture of like goods in Australia.

Tindo advised that it is the sole Australian manufacturer of the goods subject to the application.

During consideration of the application, the Commission became aware that there may be another Australian industry producing like goods to the goods the subject of this application. The Commission sought clarification with Tindo regarding this matter. Tindo advised that the company identified by the Commission has not produced PV modules or panels in Australia since 2012. It further claims that currently the only function performed

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by that company is the framing of imported PV modules or panels and that it does not consider this to be a substantial process in the manufacturing of like goods.

3.5 The Commission's assessment

The Commission will make enquiries of the additional identified company during the course of the investigation to establish whether it forms part of the Australian industry producing like goods.

Based on the information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

4 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

4.1 Finding

Based on the information provided in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application and that the data provided within the application is sufficient for the purpose of analysing the economic condition of the Australian industry.

4.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

4.3 Locally produced like goods

Subsection 269T(1) defines like goods as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

4.3.1 Applicant's claims

Tindo submitted that the imported PV modules or panels possess the same essential characteristics as locally manufactured PV modules or panels as follows:

(i) Physical likeness

PV modules or panels manufactured by Tindo generally have the same rectangular shape, dimensions and appearance as those imported. PV modules or panels manufactured by Tindo or imported are required to meet the same standards in order to be installed in the Australian market for the end-use application.

(ii) Commercial likeness:

PV modules or panels manufactured by Tindo and imported PV modules or panels directly compete across all Australian market sectors, namely residential and commercial applications. The goods are distributed in the market either by direct sales and/or installation to the end-user by the importer or the Australian industry, or via a distribution network of retailers and/or installers.

(iii) Functional likeness

The imported PV modules or panels and the Australian produced PV modules or panels are put to the same end-use, which is to convert sunlight to electricity. Although different panels may have different power outputs (for example some PV modules have an on-board micro-inverter while some are connected to an

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inverter), the primary function remains the same being the generation of 240V AC power.

(iv) Production likeness

PV modules or panels manufactured in Australia, and imported PV modules or panels are produced in a similar manner subject only to varying degrees of automation. The same raw material inputs (solar PV cells) are used, which is separately patented technology.

4.3.2 The Commission's assessment

The application contains a table setting out the range of PV modules or panels measured in terms of power output (wattage) that are either currently produced, or are certified to be produced by Tindo and comparing them to the imported goods. The application claims that the goods currently produced by Tindo that are slightly above or slightly below the range imported are considered to be 'like' goods even though they produce slightly higher or lower power output. This is because the number of PV modules or panels can be varied to achieve the same level of power output. For example to produce 10,000W of power; either 40 x 250W or 50 x 200W PV modules or panels are required.

Based on the information provided in the application, the Commission is satisfied that the evidence supports the above claims made by the Tindo in relation to the like goods and is therefore satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

4.4 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that, for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Tindo claims that it is certified to sell for installation the following AC and DC PV modules or panels within Australia on the AS5033 compliant PV modules or panels list maintained by the Clean Energy Council (CEC) until 29 May 2015:

- Karra-215
- Karra-220
- Karra-225
- Karra-230
- Karra-235
- Karra-240
- Karra-245
- Karra-250
- Karra-255
- Karra-260.

Notwithstanding with the above certification, Tindo submitted that since its establishment

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in July 2012, it has only produced and sold Karra 240 and Karra 250 AC and DC PV modules or panels.

4.4.1 Applicant's manufacturing operations

Tindo manufactures PV modules or panels at its Mawson Lakes factory in Adelaide, South Australia. The Commission visited Tindo during consideration of the application and viewed its manufacturing operation.

Tindo's manufacturing process is summarised below:

- the basic raw material, solar PV cells, is imported;
- PV cells are soldered together with flat wires or metal ribbons to produce a string of PV cells known as 'PV modules'. Glass is used on top and a polymeric backing sheet to the bottom;
- a solar panel (or array) is a set of PV modules electrically connected and mounted on a supporting structure;
- all components are assembled into a finished product and its functionality quality tested; and
- frames are usually used to allow the mounting in the field (e.g. on rooftops). The module may, or may not, have an inverter attached to the circuit.

All other raw materials such as anti-reflective glass, encapsulation material, sealant, polymeric backing sheets, junction boxes, micro-inverters and aluminium extrusion framing materials are imported.

Tindo claims that both AC and DC PV modules or panels are manufactured using the same process. The only difference is that the AC modules or panels are ready to be plugged into the grid by use of an on-board micro-inverter, while the DC module needs to be connected to a separate inverter that converts the energy generated to AC power. Both AC and DC PV modules or panels perform the same function, which is to convert solar energy to a form of electrical current. The application claims that Tindo manufactures both AC PV modules or panels and DC PV modules or panels.

Tindo provided a flow chart diagram of its manufacturing process (**Confidential Attachment A-3.6.1** of the application refers).

4.4.2 The Commission's assessment

Based on the above description of the manufacturing process, the Commission is satisfied that there is at least one substantial process of manufacture is performed in Australia and, therefore, that the goods may be taken to have been produced in Australia.

4.5 Australian market

The application submitted that Tindo is a newly established Australian based company that commenced operating in July 2012. Tindo manufactures the goods while its related

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entity Tindo Solar Pty Ltd (Tindo Solar) is responsible for the sale of the goods into the residential sector of the Australian market and another related entity Tindo Commercial Pty Ltd (Tindo Commercial) is responsible for the sale of the goods into the commercial sector of the Australian market.

PV modules or panels are designed to convert energy from sunlight into electricity. The use of PV modules or panels as a renewable energy source has been relatively new in Australia. To encourage cleaner energy sources the Australian government, both at federal and state levels, provides incentives in the form of rebates, feed-in-tariffs, mandatory renewable energy targets and subsidy funding to households and businesses to encourage the installation of PV modules or panels on their houses and/or building roof tops.

According to the Clean Energy Regulator's database⁴, between April 2001 and February 2014, Australia produced 3.2 gigawatts (GW) of power using installed PV modules or panels. Furthermore, the agency's website states that PV modules or panels installed in the preceding 12 months produced 700 megawatts (MW) of power. At a capacity factor of 14 per cent, this would contribute 1.1 per cent of Australia's electrical energy. The Australian Renewable Energy Agency's (AREA) website states that the volume of installed PV modules or panels in Australia has increased 10-fold between 2009 and 2011. Feed-in tariffs and mandatory renewable energy targets designed to assist renewable energy commercialisation in Australia have largely contributed for the rapid increase. The various forms of government incentives provided to the PV modules or panels industry are discussed below.

Rebates

The Australian Government provides a rebate program that offered up to A\$8,000 rebates for installing PV modules or panels on homes and community use buildings (other than schools), through the '*Solar Homes and Communities Plan*'. However, in June 2009 this program was phased out and replaced by *the Solar Credits Program*, where an installation of a solar system would receive 5 times as many Renewable Energy Certificates for the first 1.5 kilowatts of capacity under the Renewable Energy Target (RET)⁵.

Schools were eligible to apply for grants of up to A\$50,000 to install 2kW solar panels and other measures through the *National Solar Schools Program* beginning July 2008, which replaced the *Green Vouchers for Schools program*. Applications for the program ended in November 2012.

Feed-in-Tariffs

Feed-in-tariffs incentive program was introduced by a number of states to increase the amount of solar PV power generation. Under a *feed-in tariff*, eligible renewable electricity generators such as PV modules or panels, including homeowners, business owners,

⁴ Source: <http://pv-map.apvi.org.au/analyses>

⁵ Source: Office of Renewable Energy Regulator's website

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farmers and private investors, are paid a cost-based price for the renewable electricity they supply to the grid.

The *feed-in-tariff* rates provided by the Australian states have been phasing out since 2011 and was abolished by end of 2013. From various media reports and internet sites⁶ the Commission is aware that the price of PV modules or panels has been decreasing since the States started to reduce the *feed-in-tariff* in 2011 that was abolished by end of 2013.

Mandatory Renewable Energy Target

The Federal Government's *mandatory renewable energy target* (MRET) is to ensure renewable energy obtains a 20 per cent share of electricity supply in Australia by 2020. The MRET will increase from current 9,500 gigawatt-hours to 45,000 gigawatt-hours by 2020. The scheme is expected to last until 2030⁷.

The MRET requires wholesale purchasers of electricity (such as electricity retailers or industrial operations) to purchase Renewable Energy Certificates (RECs), created through the generation of electricity from renewable sources. These sources include Wind, Hydro, Landfill Gas and Geothermal, Solar PV and Solar Thermal, providing a stimulus and additional revenue for these technologies.

Subsidy funding

The *Solar Flagships program* set aside \$1.6 billion for solar power. The government funding is for 4 new solar plants that produce coal plant scale power (in total up to 1000 MW - coal plants typically produce 500 to 2,000 MW). This subsidy would need additional funding from the plant builders and/or the operators.

4.6 Marketing and distribution

The application states that the two channels to the residential segment of the market are wholesale to installers/businesses and direct retail sales.

- Wholesaling to installers / businesses

The PV modules or panels are sold directly to PV panel/system installers, who then on-sell the PV modules or panels in a contract to supply and install the goods to the residential customer. Tindo submitted that Tindo Solar operates at the wholesaler/distributor level of trade in this channel to the residential market.

- Direct retail sales

⁶ source: <http://reneweconomy.com.au/2013/australian-solar-market-decline-to-continue-without-policy-certainty-60223>

⁷ Australian Government Office of the Renewable Energy Regulator

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The PV modules or panels are sold directly to the residential customers, either with or without a contract to install. Tindo submitted that Tindo Solar operates at the retailer level of trade in this channel of the residential market.

Tindo claims that the small-scale systems and industrial rooftop installation market tends to follow the channels to the residential segment of the market. Tindo submitted that Tindo Commercial operates at the retailer level of trade in the small-scale commercial and industrial market.

The application stated that in the case of large scale installations (ground-mounted or rooftop), both the Australian industry and exporters supply PV modules or panels directly to the solar farm proponent and/or the developer.

The application claims that the residential and small-scale commercial and industrial market segments have no commercially significant market substitutes for the Australian produced and imported PV modules or panels.

4.7 Market segmentation

Tindo claims that the Australian PV modules or panels market is split into the commercial/industrial sector and the residential sector. The commercial/industrial sector can be distinguished between the following segments:

- commercial-scale system (>30kW); and
- small-scale systems (<30kW).

The commercial scale systems segment within the commercial/industrial market sector displays the following features:

- public investment; and
- utility scale electricity feed-in tariffs.

Tindo submitted that PV modules or panels sold into the commercial-scale and small-scale systems market segments may be either rooftop or ground mounted installations. The commercial-scale systems are ground mounted.

4.8 Market size

4.8.1 Tindo's claims

Tindo advised that the Australian market for PV modules or panels is supplied by imports predominantly from China and local production by itself.

In the application Tindo claims that with the highly automated production facility, it has a capacity to produce 24 completed modules per operating hour based on a single 8-hour shift. With a three 8-hour shift structure, the Tindo stated that it has capacity to produce 138,240 PV modules per annum (across a 48 week year).

Tindo completed **Confidential Attachment A2** using the data obtained from the Australian Bureau of Statistics (ABS). It estimates the market size of the PV modules or panels in Australia from 1 July 2012 to 30 June 2013 to be approximately 4.4 million units

(i.e. volume of PV modules or panels) with a total value of around \$670 million. Tindo claims that it was not able to obtain reliable import trade data for the period 1 July 2013 to 31 December 2013.

4.8.2 The Commission's assessment

The Commission compared the import volumes in the application to the data in the ACBPS import database. From the ACBPS import data it was difficult to identify total imports of PV modules or panels under the relevant tariff classification as it contained various goods (including goods not subject to this application such as power generators and alternators), components and kits of PV modules or panels such as solar PV cells, semi-conductor devices and other electrical goods. Furthermore, the goods description in the ACBPS import data did not identify the modules or panels in terms of power output (watts), whether poly crystalline or mono crystalline, and whether it was AC modules or panels or DC PV modules or panels.

The Commission attempted to cleanse the ACBPS import data by filtering the description of the goods by 'solar panels', 'arrays', and 'modules'. The Commission then eliminated all goods with unit prices less than \$100 and greater than \$2,000. The Commission then compared the volume of imports of PV modules or panels provided in the application with that in the ACBPS import database. The ACBPS data was approximately 15 per cent higher than the data provided by the applicant for the period 1 July 2012 to 30 June 2013 (**Confidential Appendix 1 refers**).

The Commission considers that given the goods are imported under various different tariff classifications which include some goods that are not the subject of the application, the ACBPS import data provides a reasonable estimate of the total imports of the goods in the investigation period.

Figure 1 below indicates the volume of sales (units) for PV modules or Panels from 1 January 2010 to 31 December 2013 using ACBPS import database and Tindo's sales volume (units) from 1 July 2012 to 31 December 2013.

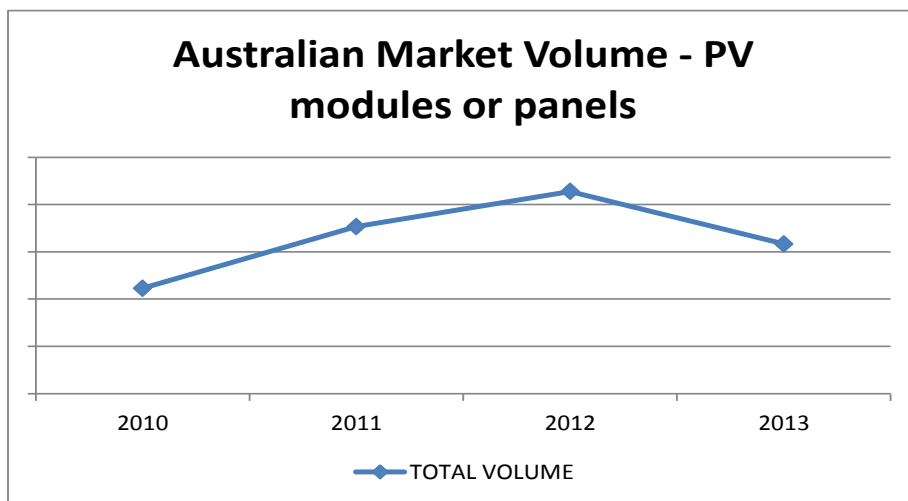


Figure 1: sales volume (units) of PV modules or panels using Tindo's data and ACBPS Import database

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Figure 1 illustrates that the sales of PV modules or panels reached its peak in 2012 and declined in 2013.

The sales data submitted by Tindo (**Confidential Appendix A4** of the application refers) in relation to its own sales was also assessed and considered reasonably reliable.

Consequently, the Commission considers that the import data and sales information submitted by Tindo from 1 July 2012 to 31 December 2013 is suitable for estimating the relative size of the Australian market for PV modules or panels. The Commission's assessment of the Australian market for PV modules or panels is at **Confidential Appendix 2**.

4.9 Australian industry information

4.9.1 General accounting/administration

Tindo, Tindo Solar, Tindo Commercial and Tindo Equipment Leasing Pty Ltd (Tindo Leasing) are all wholly owned subsidiaries of Tindo Pty Ltd., an Australian based company located at Mawson Lakes near Adelaide, South Australia.

Tindo advised that its financial year is from 1 July to 30 June.

Tindo submitted that for the purpose of the application it has consolidated the financial activities of Tindo, Tindo Solar and Tindo Commercial given they are all involved with the manufacture and/or sale of the goods in Australia. Along with its application, Tindo supplied copies of a draft audited financial statement and trial balance for Tindo, Tindo Solar and Tindo Leasing for the financial year 2013. Tindo stated that a Trial Balance for Tindo Commercial is not available as it commenced trading in July 2013 and has not completed a full fiscal period.

During the course of the investigation, the Commission will obtain Tindo Commercial's management accounts for 6 months ending 31 December 2013 to access the economic condition of the Australian industry.

4.9.2 Sales information

Tindo provided sales volume and value information in the application, as required in the relevant **Confidential Appendices A2, A3, A5 and A6**, for the period 1 July 2012 to 31 December 2013 inclusive, together with **Confidential Appendices A1** (Australian production) and A4 (detailed Australian sales data).

The Commission examined the information provided and compared the information provided to the various **Confidential Appendices** stated above. No major discrepancy was noted.

For the purposes of this report, the Commission considers that Tindo's appendices are reliable for assessing the economic condition of the Australian industry in respect of PV modules or panels.

4.9.3 Cost information

Tindo completed a **Confidential Appendix A6** cost to make and sell (CTMS) spreadsheet for all sales. The information provided in this appendix included sales volumes, manufacturing costs, selling (including distribution), general and administrative (SG&A) expenses on a quarterly basis for the period 1 July 2012 to 31 December 2013.

The Commission examined the information provided, and the link between other appendices, and considers the information reliable for the purposes of preliminarily assessing the economic condition of the Australian industry in respect of certain PV modules or panels.

4.9.4 Other economic factors

Tindo completed **Confidential Appendix A7** for the period 1 July 2012 to 31 December 2013 inclusive showing movements in assets, capital investment, revenue, return on investment, capacity, capacity utilisation, employment, productivity and closing stocks.

4.10 The Commission's assessment – Australian Industry

Based on the information in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application, and that the information contained in the application is sufficient for the purposes of a preliminary analysis of the economic condition of the Australian industry in respect of certain PV modules or panels for the period 1 July 2012 to 31 December 2013.

5 REASONABLE GROUNDS – DUMPING

5.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- PV modules or panels have been exported to Australia from China at dumped prices (refer section 5.6);
- the volume of PV modules or panels that appears to have been dumped from China is greater than 3 per cent of the total Australian import volume of the goods, and therefore is not negligible (refer section 5.5); and
- the estimated dumping margin for China is greater than 2 per cent and is therefore not negligible (refer section 5.6).

5.2 Legislative framework

Article 5.2 of the World Trade Organisation (WTO) Anti-Dumping Agreement (AD Agreement) states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods. This issue is considered in the following sections.

5.3 Export Price

5.3.1 Tindo's claims

Tindo provided export price quotations from various Chinese suppliers for each quarter from July 2012 to December 2013. The prices were expressed in USD per watt (USD/W) for all quarters except for the last quarter ending 31 December 2013, which was in AUD/W. The applicant converted that quote to USD/W using the average RBA exchange rate for that month. The applicant claims that PV modules or panels exported from China were predominately DC PV modules or panels.

For the purpose of calculating the export price of AC⁸ PV modules or panels, Tindo used its own import price (ex-works price (EXW) in US dollars) of micro-inverters for each quarter from January 2013 to December 2013 for a 250W capacity inverter. The applicant claims that raw materials supplied in China have a cost advantage. To support its claims,

⁸ The difference between AC and DC PV modules or panels is discussed in section 4.4.1 of this report.

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Tindo provided a journal report that compared Australian manufacturing costs to Chinese manufacturing costs using 2008 profit and loss statements samples. In that report, Chinese sourced materials were reported to be substantially lower (**Confidential Attachment B-4.1.5.2** to the application refers). To reflect an estimate of the raw material cost in China, the applicant discounted its import price of the micro-inverters by using the proportion of the cost difference shown in that report and added this cost to the export price of the DC PV modules or panels (obtained from various quotations) to calculate the export price of an AC PV module or panel in USD /Watt.

In the application Tindo claims that the USD export prices in section B-2.1 of the non-confidential application adequately reflect actual export values. The evidence provided by the applicant included confidential email correspondence between the applicant and/or its representative and the Chinese suppliers. The quotations included a range of power output in watts, USD value per watt (except for one quote which was in AUD/W) and FOB delivery terms for first two quarters in 2013. For the third quarter the delivery terms were not known and the fourth quarter was EXW.

Tindo did not make adjustments where the export price was EXW price and where the delivery terms were not known and assumed those prices to be FOB prices. Tindo claims that the EXW price and the price where the terms were unknown were higher than the FOB adjusted amount so it assumed that the obtained prices reflected a FOB value. Some of the quotations included details such as mono crystalline or poly crystalline PV modules or panels. Where not defined (or where a price range was provided), the applicant took the lower value as the price for the poly crystalline PV modules or panels. This was because Tindo claims that the poly crystalline PV modules or panels are less expensive than mono crystalline PV modules or panels.

5.3.2 The Commission's assessment

The Commission compared the value of the data contained in the ACBPS import database with the data provided in the application from 1 July 2012 to 30 June 2013. The Commission found that the data contained in the application was not dissimilar. For the reasons explained in section 4.8.2 of this report, the Commission was not able to calculate the export price for the PV modules or panels in terms of the power output, whether it was an AC or DC PV module or panel and whether it was mono or poly crystalline.

Noting the above limitations, the Commission considers that the export prices provided by the applicant were actual quotations for PV modules or panels from the Chinese suppliers in the investigation period. However from the quotations provided not all quotes defined whether the goods were for AC or DC PV modules or panels and whether they were mono or poly crystalline PV modules or panels. The Commission also considers that the discount factor calculated by Tindo using 2008 P&L samples to adjust the price for the AC PV modules or panels was not appropriate.

Based on the above assessment, the Commission re-calculated the export price using the information provided in the application as detailed below.

For the EXW price and where the terms of trade was unknown, the Commission assumed the unknown price to be EXW and used a delivery costs from another case involving China to adjust those prices to FOB level. The Commission used the highest quote

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provided in each quarter and did not distinguish between AC or DC and Mono or Poly crystalline PV modules or panels. The Commission also did not make any adjustment for the cost of micro-inverters. This was because according to the applicant, the majority of the exports to Australia from China were DC PV modules or panels as such no adjustment was required to estimate the export price for the AC PV modules or panels.

The Commission considers that using the highest quoted price in each quarter and not adjusting the prices for the micro-inverters provides a conservative estimate of the export price for the AC PV modules or panels.

The export price in USD/W for all PV modules or panels for each quarter from 1 January 2013 to 31 December 2013 calculated by the Commission is at **Confidential Appendix 3**.

5.4 Normal Values

5.4.1 Particular market situation

China is treated as a market economy country under Australia's Anti-Dumping provisions. Australia's provisions are in accordance with the WTO AD Agreement and provide for the rejection of domestic selling prices in market economy countries where it can be established that the situation in the exporting country renders domestic selling prices unsuitable for normal value purposes.

Generally, the Commission calculates the normal value of the goods as the price for like goods sold for home consumption in the country of export (s.269TAC(1) of the Act refers)⁹.

One of the exceptions to using domestic selling prices for determining normal values is set out in s.269TAC(2)(a)(ii) of the Act, which broadly provides that the domestic selling prices are not an appropriate basis for normal value if the Minister is satisfied that:

"...the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under s.269TAC subsection (1)" (i.e. a 'particular market situation' exists).

One of these situations may be where the domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

The existence of a particular market situation potentially affects the approach that the Commission takes to calculating normal values under the Act in undertaking an assessment of whether goods have been exported to Australia at dumped prices.

5.4.2 Tindo's market situation claims

The application submits that the Government of China's (GOC) involvement in the Chinese domestic PV modules or panels industry has materially distorted competitive conditions in China in terms of the GOC providing "policy loans" and credit facilities by the state owned Chinese banks at preferential rates that do not take into account commercial

⁹ This price is subject to adjustments under s269TAC(8) of the Act to ensure any differences do not affect the comparison with the export price.

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risk and prudential lending practices that otherwise applied in the Chinese capital credit market. This has resulted in a particular market situation (market situation) making PV modules or panels prices in the Chinese domestic market unsuitable for the normal value purposes.

The Australian industry alleges that as a consequence of the “policy loans” prices of PV modules or panels were artificially low to the extent that domestic and export sales are unprofitable. Tindo provided financial details of three Chinese solar module manufacturers and exporters (**Non-Confidential Attachment B-4.1.2 refers**) that indicated an average loss of 28 per cent in 2011 by those companies. Tindo claims that those three companies are the top three companies in China representing almost 20 per cent of global PV modules or panels suppliers.

5.4.3 The Commission’s assessment – market situation

The Commission is aware that one of the main raw materials used in the production of solar PV cells is ‘silicon metal’. Solar PV cells are used in the production of PV modules or panels as described in section 2.2.1 of this report. The Commission is currently investigating the alleged dumping and subsidisation of silicon metal exported to Australia from China (Investigation number 237 (INV 237) refers). The applicant in that investigation alleges that the selling price of silicon in China is distorted due to actions by the GOC in the silicon metal market. The preliminary assessment of information considered by the Commission in that investigation is contained in consideration report number 237 (CON 237).

Given that silicon metal is one of the main raw materials used in the production of solar cells which in turn are used in the production of PV modules or panels, the Commission’s market situation findings in the silicon metal industry in China will be directly relevant to the PV modules or panels industry in China.

The Commission considers that it is not clear from the evidence provided in the application that the alleged ‘policy loans’ provided by the GOC to the manufacturers of PV modules or panels of itself would create a market situation such that the domestic selling prices of the PV modules or panels in China would not be suitable for normal value. The applicant has provided evidence of loans provided to a small number of manufacturers but there is insufficient evidence at this stage to assess how pervasive the provision of the alleged policy loans is such that it would affect the entire market for solar panels.

Based on the preliminary assessment of the information provided by the applicant and preliminary assessment of information considered in CON 237, the Commission considers it is appropriate to examine Tindo’s market situation claims during the course of the investigation. The Commission will seek the necessary information from Chinese exporters and the GOC in order to independently assess the market situation claims.

The Commissioner notes that a finding of a market situation and the potential impact on the methodology under which normal value is determined may remove the obligation on the Parliamentary Secretary to consider application of the lesser duty rule – pursuant to s.8(5BAA)(a) of the Customs Tariff (Anti-Dumping) Act 1975. Accordingly, associated with its assessment of Tindo’s market situation claims, the Commissioner will make recommendations to the Parliamentary Secretary as to the level of any duties to be applied.

5.4.4 Tindo's constructed normal value claims

Tindo has alleged that the Chinese domestic selling prices for PV modules or panels are artificially low and that there are conditions in that market that renders sales of solar PV modules or panels in that market not suitable for determining prices under subsection 269TAC(1) of the Act. The market situation claim is discussed in section 5.4.2 above. As such Tindo has constructed a normal value as detailed below.

To construct normal values Tindo considered published financial records of the three Chinese suppliers namely Trina Solar (Trina), Yingli Solar (Yingli) and Suntech Power (Suntech). Tindo claims that Yingli is not as efficient a producer of solar PV modules or panels and that Suntech has not published comprehensive quarterly financial results capable of determining the cost to make and sell solar PV modules since December 2011. Therefore, the applicant has conservatively estimated the normal values based on Trina's published financial information as discussed below.

Tindo submitted that for Trina, actual sales volumes in terms of Megawatts (MW) were available. Accordingly, production costs and losses were allocated on a unit basis (USD/W) across total sales in the respective fiscal period.

Based on Trina's FY (31 December) 2013, financial reports (**Non-Confidential Attachment B-4.1.2(d)** to the application refers), Tindo was able to allocate Trina's selling expenses on the basis of Chinese and export sales. This was done to ensure that there was no over allocation of selling expenses to a constructed normal value based on Chinese domestic sales.

Tindo claims that although Trina was operating at a loss for the FY2013, it produced a net profit of approximately USD0.01/W in quarters 3 and 4 of that fiscal period. Accordingly, a profit of that amount has been applied to the constructed the normal value.

Tindo stated that Trina's available financial data did not differentiate between poly crystalline and mono crystalline PV modules or panels. The available price index data¹⁰ suggest that solar PV cells used in the production of mono crystalline solar PV modules traded at a 31 per cent premium (between April 2013 to March 2014) to the solar PV cells used in the production of poly crystalline cells (**Non-Confidential Attachment B-4.1.6** to the application refer).

Tindo claims that Trina produces both mono and poly crystalline PV modules or panels. Therefore it discounted the material cost for poly crystalline PV modules or panels by 31 per cent and did not apply any premium to the price of the more expensive mono crystalline PV modules or panels. Tindo claims that this is a conservative adjustment, favourable to the Chinese exporter because it significantly undervalued the constructed normal values of both the mono and poly crystalline PV modules or panels.

The applicant constructed the normal value for the AC PV modules or panels based on Tindo's assumption that the price model was for the DC PV modules or panels by adjusting DC PV modules or panels, on a unit (USD/W) basis for the inclusion of micro-

¹⁰ Source: <http://pvinsights.com/PriceDownload/PriceDL.php>

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inverters. The value of micro-inverters has been determined using Tindo's import price and discounted to reflect Chinese costs as discussed in section 5.3.1.

Tindo constructed normal values for poly crystalline AC and DC PV modules or panels and for mono crystalline AC and DC PV modules or panels in USD/W on a quarterly basis from 1 January 2013 to 31 December 2013.

Tindo stated that the normal values are measured in terms of USD/Watt, delivered to the customers under the then effective supply contracts during the relevant period. Therefore, Tindo has assumed that whether delivered to the FOB cleared point at port, or to the customer, there is an element of inland delivery charge that makes these values comparable to a FOB delivery terms.

The applicant's normal value calculation is at **Confidential Table B-4.1.1** to the application.

5.4.5 The Commission's assessment – normal value

The Commission examined the calculation and the methodology to construct normal values of certain PV modules or panels contained in the application.

Tindo based its calculations on Trina's published financial information. The application claims that Trina is among the largest PV modules or panels suppliers in terms of watts. From the ACBPS import database, the Commission noted that Trina exported some PV modules or panels to Australia in the investigation period.

From the evidence provided the Commission noted that Trina's actual sales volumes and the production costs allocated on a unit basis (USD/W) were published and available for each quarter for FY2013. The Commission also noted from Trina's website that it has published Form 20-F for FY2013 that was submitted to US Securities and Exchange Commission, which included detailed audited financial information. The Commission is not aware if Yingli and Suntech have published comprehensive quarterly financial results for 2013 capable of determining the cost to make and sell solar PV modules or panels. Therefore, the Commission considers that Trina's available financial data for FY2013 is more reliable than Yingli's and Suntech's to construct the normal value for PV modules and panels.

Tindo constructed selling prices for PV modules or panels on the basis that domestic selling prices in China could not be used due to an alleged market situation. As discussed at section 5.4.3 the Commission considers the market situation claim at this stage is not adequately substantiated. However, Trina's published financial information shows that it incurred an overall loss on the sale of solar panels during FY2013. The notes to the published statements acknowledge the poor result for Trina during the year. The Commission considers it possible that if the ordinary course of trade test was conducted on Trina's domestic sales of PV modules or panels it would result in no sales made in the ordinary course of trade as required under s269TAAD of the Act. In this situation it would be reasonable to construct a selling price based on Trina's cost to make and sell, with the addition of a profit if relevant. The Commission therefore considers Tindo's constructed cost methodology reasonable in the circumstances.

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However, the Commission considers that Tindo's methodology to allocate Trina's selling expenses based on its proportion of revenue (domestic v exports) does not appropriately allocate the domestic costs because the published financial information explicitly states the quantum of handling and distribution expenses applicable to export sales and included in its total selling expenses. Form 20-F indicated that approximately 45 per cent of the total selling expenses related to the export sales. Therefore, to calculate the selling costs for each quarter, the Commission removed the export selling expenses from the total selling expenses and apportioned the remaining selling expenses across the total sales volume for all PV modules and panels.

The Commission also considers that to adjust the price of AC PV modules or panels using Tindo's own import price of micro-inverters does not appropriately reflect the costs of those inverters as it is likely to include a profit element in that import price. Furthermore, the use of discount factor for the reasons discussed in section 5.3.2 of this report to adjust the prices of the micro-inverters is unreliable. The 31 per cent price premium used for the adjustment of mono crystalline PV modules or panels seems to have been derived by using data from April 2013 to March 2014 which is partly outside the investigation period.

Therefore, based on the reasons above, the Commission re-constructed the normal value using Trina's actual financial quarterly data, information contained in the Form 20-F for FY2013, the application and information available on Trina's website as discussed below.

Based on the information available on Trina's website, Trina manufactured some other goods not covered in the application. The Commission noted that in Form 20-F for FY2013, the average selling price of PV modules was 0.64 USD/W and the total volume of PV modules sold was 2584.3 megawatts (MW)¹¹. The Commission converted the sales volumes from megawatts to watts to calculate the total volume of PV modules and panels sold in FY 2013 and calculated its proportion to the total sales revenue. The Commission noted that the sales revenue of the PV modules in form 20-F equates to 93 per cent of the total sales revenue in FY2013. Therefore, for the purpose of constructing the normal value, the Commission considers that the total cost is reasonably representative of the cost to make and sell the goods subject to the application. The Commission used the actual quarterly volume (watts) and costs to construct the normal values.

To calculate the cost per watt, the Commission converted the total sales volume from megawatts to watts and divided the relevant costs (in USD) by the total sales volume (watts) for each quarter. The quarterly costs calculated were in USD/watt.

To calculate the quarterly interest expenses, the Commission used the total interest expense in USD (watts) for each quarter and divided by the total sales volume (watts) in that quarter to derive interest expense (USD/W).

Form 20-F for 2013 showed that Trina had been operating at a loss since 2011. Therefore, the Commission has not added any profit for the purpose of assessing the normal value.

¹¹ 1 Megawatt (MW) = 1,000,000 Watts(W)

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Form 20-F also did not specify if the goods were mono or poly crystalline or whether they were AC or DC PV modules or panels. As such, the Commission did not distinguish the different types and/or forms of PV modules or panels and assumed all domestic sales to be the 'like goods' to the goods exported for the purpose of constructing the normal value and made no adjustments on that basis.

The Commission's calculation for the constructed normal value is at **Confidential Appendix 3**

The Commission notes that while Tindo's market situation claims (if founded) may result in some costs of production being assessed as not reflecting competitive market costs (being understated), the Commission has used the actual representative costs for the goods under consideration, adjusted based on information published by Trina. If any costs are understated this would increase the normal value.

5.5 Import Volumes

From the information available from the ACBPS import database, imports of PV modules or panels from China represent more than 3 per cent of the total import volume of PV modules or panels in the 18 month period ending December 2013 and are therefore not in negligible volumes as defined in subsection 269TDA.

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5.6 Dumping Margin

Dumping margins for PV modules or panels calculated by Tindo and provided in its application are summarised in Table 1 below. The dumping margin ranges from 21.6 per cent to 60.3 per cent.

Fiscal Qtr ending 2013	Terms	Model	Export Price Section B-2.1	Normal Value Section B-4.1.1	Dumping Margin %
31-Mar	FOB, USD/watt	Polycrystalline			
		DC	\$ 0.53	0.77	45.7%
		AC	\$ 0.72	0.96	33.7%
		Mono-crystalline			
		DC	\$ 0.68	1.01	48.8%
		AC	\$ 0.87	1.20	38.2%
30-Jun	FOB, USD/watt	Polycrystalline			
		DC	\$ 0.55	0.71	29.1%
		AC	\$ 0.74	0.90	21.6%
		Mono-crystalline			
		DC	\$ 0.68	0.93	36.8%
		AC	\$ 0.87	1.12	28.7%
30-Sep	FOB, USD/watt	Polycrystalline			
		DC	\$ 0.50	0.70	39.5%
		AC	\$ 0.69	0.89	28.7%
		Mono-crystalline			
		DC	\$ 0.57	0.91	60.3%
		AC	\$ 0.76	1.10	45.3%
31-Dec	FOB, USD/watt	Polycrystalline			
		DC	\$ 0.50	0.66	33.0%
		AC	\$ 0.69	0.85	23.7%
		Mono-crystalline			
		DC	\$ 0.65	0.86	33.6%
		AC	\$ 0.84	1.05	25.9%

Table 1: Applicant's calculation of dumping margins

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Dumping margins for PV modules or panels calculated by the Commission are summarised in Table 2 below. The dumping margin ranges from -5 per cent to 14 per cent. While it is not possible at this stage to calculate an overall dumping margin for the proposed investigation period due to difficulties in establishing export volumes in watts, the Commission considers it likely the below dumping margins by quarter would result in an overall dumping margin above 2 per cent.

Fiscal Qtr ending 2013	Terms	Model	Export Price	Normal Value	Dumping Margin	Dumping Margin %
31-Mar	FOB, USD/watt	all models	0.68	0.77	0.09	14%
30-Jun	FOB, USD/watt	all models	0.68	0.71	0.03	4%
30-Sep	FOB, USD/watt	all models	0.62	0.70	0.07	12%
31-Dec	FOB, USD/watt	all models	0.69	0.66	-0.03	-5%

Table 2: the Commission’s calculation of dumping margins

The Commission’s dumping margins calculations are at **Confidential Appendix 3**

6 REASONABLE GROUNDS – ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Findings

Having regard to the information contained in the application, and to other information considered relevant, the Commission is satisfied that Tindo appears to have experienced injury in terms of:

- lost sales revenue;
- price depression;
- price suppression;
- loss of profit ; and
- reduced profitability

6.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under sections 269TG and 269TJ, one of the matters that the relevant Parliamentary Secretary must be satisfied of to publish a dumping duty notice, because of dumping of the goods, material injury has been or is being caused or is threatened to the Australian industry producing like goods.

6.3 Approach to injury analysis

The injury analysis detailed in this section is based on information submitted by Tindo in its application and import data from ACBPS import database from 1 January 2010 to 31 December 2013. Tindo provided production, cost and sales data for certain PV modules or panels on a quarterly basis for the period 1 July 2012 to 31 December 2013.

The information provided by Tindo was used as the primary basis for assessing Tindo's claims of material injury caused by the alleged dumping of PV modules or panels.

The Commission's assessment of the economic condition of the Australian solar industry is at **Confidential Appendix 4**.

6.4 The applicant's injury claims

Tindo alleges that the Australian industry has suffered material injury caused by certain PV modules or panels exported to Australia from China at dumped prices. The applicant claims the industry had been injured through:

- lost sales revenue;
- price depression;
- price suppression;
- loss of profit ; and

- reduced profitability.

6.5 Commencement of injury

Tindo alleges that material injury caused by dumped imports of PV modules or panels from China commenced in July 2012.

Tindo submitted that the sale of like goods produced by the Australian industry has remained unprofitable since its establishment in July 2012. Furthermore Tindo submitted that it sold the goods below the cost of production to enter the market that was predominantly supplied by China. Tindo provided its sales and costs data on a quarterly basis from 1 July 2012 to 31 December 2013.

6.6 Volume and market share effects

6.6.1 Volume

Tindo has not claimed injury from lost sales volume. The data provided with the application shows that its sales have grown since its establishment in July 2012.

6.6.2 Market Share

The following graph illustrates the Australian market share using data submitted by Tindo (from 1 July 2012 to 31 December 2013) and the ACBPS import database from 1 January 2010 to 31 December 2013.

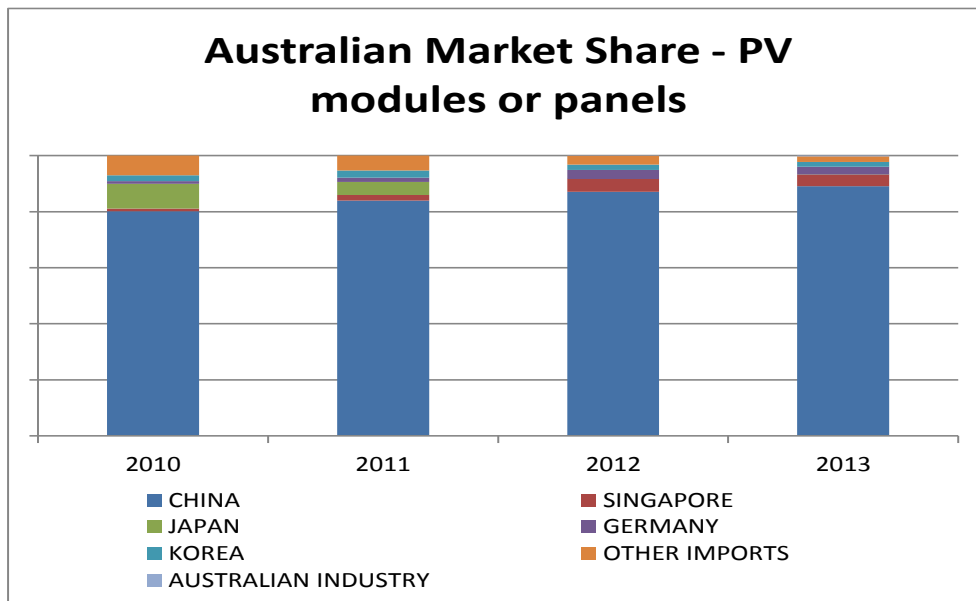


Figure 2 – Australian market share

Figure 2 illustrates that China dominates the PV modules or panels market in Australia. It is noted that Tindo’s market share remains relatively low compared to the imports.

6.6.3 Conclusion – volume effects

The Australian industry has operated for a relatively short period of time in the market and while it could not be said to have lost volume or market share, it may be hindered from gaining volume and market share due to the presence of allegedly dumped imports from China.

6.7 Price effects

6.7.1 Price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Based on the data submitted by the Australian industry, the total revenue was below total costs for the entire 18 month period ending 31 December 2013. The unit revenue was also below unit costs for the same period.

The Commission assessed the quarterly data submitted by the Australian industry and noted that while total costs remained higher than the total revenue for the entire 18 months to 31 December 2013, in the last quarter (quarter 4 of 2013) the total cost and total revenue were almost breakeven with total costs only slightly higher.

From the available data it is evident that the Australian industry was not able to increase its unit prices above the unit CTMS in the 18 month period ending 31 December 2013.

6.7.2 Conclusion – price effects

Based on this analysis, there appear to be reasonable grounds to support the claim that dumped imports have caused injury to the Australian industry in the form of price depression and price suppression.

6.8 Profit and profitability effects

Based on data submitted by the Australian industry, the Commission calculated the total profit and profitability for the entire 18 month period ending 31 December 2013. The Commission also calculated profit and profitability of the Australian industry on a quarterly basis.

The Commission noted that Tindo incurred a loss and has negative profitability for the entire 18 month period. This is reflected in losses and negative profitability in each quarter ending 31 December 2013.

6.8.1 Conclusion – profit and profitability effects

Based on this analysis, there appear to be reasonable grounds to support the claim that dumped imports have caused injury to the Australian industry in the form of reduced profit and profitability.

6.9 Other economic factors

Tindo completed **Confidential Appendix A7** for PV modules or Panels for the period 1 July 2012 to 31 December 2013.

Given the limited period of time that Tindo has been in operation there is no trend that can be examined from the other economic factors in Appendix A7.

Tindo's claims in relation to other injury factors will be further examined during the course of the investigation.

7 REASONABLE GROUNDS – CAUSATION FACTORS

7.1 Findings

Having regard to the matters contained in the application, the Commission is satisfied that the goods under consideration exported to Australia from China at allegedly dumped prices appear to have caused material injury to the Australian industry.

7.2 Tindo's claims

Tindo commenced operating in July 2012. Tindo claims that the Australian market for PV modules or panels is supplied by itself and by imported products. Tindo claims that it was only able to grow its market share by selling at a loss and at negative profitability.

Tindo submitted that it constantly monitors the price offerings and issued price lists of its competitors supplying imported PV modules or panels from China and responds to those prices by undercutting its own price offers to compete with those Chinese suppliers. Tindo provided confidential attachments that indicates the prices offered by Chinese suppliers undercuts its price by between 50 per cent and 57 per cent (**Confidential Attachments A-9.5.18 and A-9.5.19 refers**)

In some instances where Tindo lost its bid, its potential customers informed that the successful bidder sourced the goods from a Chinese supplier whose quote was cheaper than Tindo's.

For successful bids, Tindo provided evidence that it revised its original quotations downwards between 2 per cent and 26 per cent. Tindo stated that in the course of its price negotiations, the identities of its competitors' suppliers were disclosed and the goods were sourced from China.

The applicant also provided EXW Sydney price for a poly crystalline PV modules or panels (AUD/W) from a local distributor who sourced the goods from China in the investigation period. The local distributor's price appears to be substantially lower than the applicant's prices for a similar model of PV modules or panels.

7.3 Factors other than dumping

Tindo submitted that in February 2013, it conducted a survey of its customer to determine what factors influenced their PV modules or panels purchase decisions. Tindo submitted that the results of the survey indicated that price was a major driver. The general feedback from its customers was that Tindo needed to better match the prices of the goods offered by its competitors. Some of the respondents who participated in the survey named their suppliers who were of Chinese origin, while others indicated that their suppliers sourced the goods from China without identifying the names of their suppliers. . A summary of the survey results is at **Confidential Attachments A-9.5.14** to the application.

Tindo did not identify any other possible causes of injury.

7.4 The Commission's assessment

The Commission assessed the applicant's claims and evidence submitted in relation to price undercutting, suppression and depression.

The price undercutting by Chinese suppliers appears to have caused price depression and price suppression, and the Australian industry was unable to increase its prices to break-even the costs. As a newly established company attempting to penetrate the market, the Australian industry sold the goods at a loss and at a negative profitability. On the available information, the injury caused by the alleged dumping appears to be material.

The Commission is aware that since the Australian state governments started reducing feed-in- tariff's provided to the Australian households and businesses to encourage installation of PV modules or panels in 2011 (most states have now abolished this scheme), the demand for PV modules or panels in Australia has been declining. This may be a factor affecting the Australian industry. This issue will be further analysed during the course of the investigation.

As an additional test of whether there is a causal link between the alleged dumping and material injury, the Commission sought to compare export prices from China to estimates of a non-injurious price (NIP) for the 12 months ending 31 December 2013 (**Confidential Appendix 5 refers**).

To calculate the estimated NIP, the Commission assumed that the unsuppressed selling price (USP) for Tindo in the twelve months ending 31 December 2013 may have been the equivalent of its full weighted average CTMS for that period. Tindo being a newly established company and having operated at a loss since its establishment, the Commission has applied no profit for the purposes of this test. This is because the Commission considers that due to the significant capital investment at start-up it is reasonable to expect a company to generally remain unprofitable for a period of time immediately after commencing business.

The Commission then deducted amounts from that USP for importer 'into-store' costs and overseas freight. Generally the goods exported from China are duty free, although it was noted that a negligible amount of customs duty was paid for some goods. The Commission used overseas freight data obtained from the ACBPS import database. In relation to the other deductions, the Commission used importation costs, importer SG&A and importer profit from a recent investigation involving China.

The calculations provided for a NIP that was assumed to be at delivery terms of FOB which is suitable for comparison to the export prices provided by Tindo in USD/W (for AC or DC and mono or poly crystalline modules or panels). The Commission calculated the average export price USD/W and converted to a 250W module in AUD by using average RBA exchange rate for the calendar year 2013.

The comparison showed that the average export price for the 12 months was well below the non-injurious price (NIP). The Commission regards this finding as being consistent with Tindo's claim that the allegedly dumped goods have caused material injury.

8 CONCLUSION

The Commissioner has examined the application and is satisfied that:

- the application complies with subsection 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of dumping duty notice in respect of the goods the subject of the application.

Accordingly, the Commissioner has not rejected the application for the publication of a dumping duty notice under subsection 269TB(1).

For the purposes of the investigation:

- the investigation period to determine whether dumping has occurred will be from **1 July 2012 to 31 December 2013**; and
- The Commissioner will examine the Australian market and the economic condition of the industry from **1 January 2010** for the purposes of injury analysis.

The Commissioner will also examine whether the trade in the dumped goods provides a basis for any dumping duty notice to apply retrospectively, pursuant to section 269TN of the Customs Act 1901.

9 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	ACBPS import data v data submitted by Tindo
Confidential Appendix 2	Australian Market
Confidential Appendix 3	Export Price, Normal Value and Dumping Margin
Confidential Appendix 4	Injury Analysis
Confidential Appendix 5	NIP and USP