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AUSTRALIAN ANTI-DUMPING COMMISSION

IN THE DUMPING INVESTIGATION OF CERTAIN CRYSTALLINE SILICON PHOTOVOLTAIC MODULES OR PANELS EXPORTED FROM CHINA UNDER THE *CUSTOMS ACT 1901*

TINDO MANUFACTURING PTY LTD (the Domestic Industry)

CAPITAL SOLAR FARM PTY LIMITED (the End User)

CHANGZHOU TRINA SOLAR ENERGY CO. LTD (the Exporter)

RESPONSE OF THE AUSTRALIAN INDUSTRY TO THE SUBMISSION OF THE END USER

The Domestic Industry notes the role of Capital Solar Farm Pty Limited, as a joint venture company between Infigen Energy and Suntech Power, the latter having a direct financial interest in producers of the goods the subject of the investigation in China.

The Domestic Industry notes that the submission of the Exporter concurs with the submission of the End User.

In response to the submission of the End User, the Domestic Industry says as follows:

“It is Infigen Energy’s view that the photovoltaic modules being sourced for Capital Solar Farm, being a mix of 300 and 305 Watt 72 cell modules, cannot be replaced with equivalent goods currently being produced or manufactured in Australia”

The Domestic Industry rejects this claim by the End-User as misinformed. The Domestic Industry attaches a copy of its Data Sheet for its 72 cell modules, refer CONFIDENTIAL ATTACHMENT A.

Had the End User requested a quote from the Domestic Industry, then they would have been advised of the Domestic Industry’s capacity to manufacture, in Australia, 300 W (72 cell) modules; and with higher efficiency cells; 305 W (72 cell) modules. This claim by the Domestic Industry is supported by evidence in the form of quotes to produce and supply 300 W (72 cell) modules:

- Tender for the supply of 300 W (72 cell) modules to the [REDACTED] Solar Farm dated [REDACTED] 2013 (CONFIDENTIAL ATTACHMENT B); and
- Quote for the supply of 300 W (72 cell) modules to a [REDACTED] solar farm project dated [REDACTED] 2014 (CONFIDENTIAL ATTACHMENT C); and
- Negotiations for the supply of 300 – 310 W (72 cell) modules dated [REDACTED] 2014 (CONFIDENTIAL ATTACHMENT D).

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“The sole Australian manufacturer’s production capacity is extremely limited. Even if the Tindo factory was operating at maximum capacity and 100% of this production was dedicated to supplying Infigen, it would still take in excess of 15-16 months to produce the volume of modules required for the Capital Solar Farm.”

The Domestic Industry rejects this claim by the End-User as misleading.

The Domestic Industry has tendered for utility scale projects, as follows:

- Tender for the supply of [REDACTED] MW or [REDACTED] modules to the [REDACTED] Solar Farm (CONFIDENTIAL ATTACHMENT B); and
- Quote for the supply of [REDACTED] MW or [REDACTED] modules to a [REDACTED] region solar farm project (CONFIDENTIAL ATTACHMENT C).

The current capacity of the Domestic Industry is [REDACTED] units per annum, based on a three-shift, 20 working day per month structure. However, should the Domestic Industry have won the Capital Solar Farm project, then that would have resulted in increased employed through increased working days per month, and increased investment in capital equipment. Assuming, an increase in an additional four working days per month on a three-shift production schedule, would result in a 20% increase in production volume output, or [REDACTED] units per annum (refer CONFIDENTIAL APPENDIX A7).

However, the loss of the Capital Solar Farm project has resulted in material economic injury to the Australian Domestic Injury through the loss of volume, value and lost employment and capital investment opportunities.

“The cost of this delay on the project (resulting from a materially longer construction timeframe and resultant additional debt and construction costs) would make the project commercially unviable.”

The Domestic Industry rejects this claim by the End-User as speculative, and therefore irrelevant. The Domestic Industry was not given the opportunity to tender for the Capital Solar Farm project, and therefore any suggestion of factors being relevant other than price, are merely hearsay by nature.

In any event, the publicly available evidence indicates that planning permission for this project was granted in December 2010, and that by the End User’s own admission, the project is only now “construction ready”, four years later.

“Like goods” analysis

“Physical Likeness”

The Domestic Industry rejects the argument that 250 W, 60 cell modules are so dissimilar at a physical level, that they cease to be “like goods” to 300/305 W, 72 cell modules. A comparison of the physical characteristics are summarised as follows:

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Physical characteristics	250 W, 60 cell module	300/305 W, 72 cell module
Dimensions (W x L x D, mm)	1027 x 1695 x 55	1027 x 2012 x 55
Shape	Rectangular	Rectangular
Cell type	██████████	██████████
Standards	AS/NZS 5033	AS/NZS 5033
Accreditation authority	Clean Energy Council	Clean Energy Council
Tariff Classification	Identical	Identical
Output (W)	250	300 or 305

Although the Domestic Industry is not currently accredited by the Clean Energy Council (CEC) to sell a 300 or 305 W, 72 cell module, the domestic industry would face no barrier to obtaining such accreditation. The domestic industry makes that statement on the following grounds:

- The Domestic Industry currently has 10 models (ranging from 215 W to 260 W) accredited with the CEC;
- The materials currently used in its accredited 60 cell module would be compatible for use in its 72 cell module;
- The same supplier of solar PV cells used in its 60 cell module, would also supply the solar PV cells used in its 72 cell module;
- The materials and suppliers of those materials used by the Domestic Industry in its 60 cell module, and capable of being used in its 72 cell module, have achieved IEC/EN61730, and either IEC/EN61215 and IEC/EN61646 approval by the Domestic Industry; and
- The historic timeframe for accreditation of the Domestic Industry's modules to date has been ██████.

Given the only difference between the two models is their respective "efficiency", it is not open to the End-User to speculate that the "like goods" produced by the Australian Industry are so physically different from the imported goods, that they cease to have characteristics closely resembling each other.

In any event, the Domestic Industry is able to produce the model, and with certification, sell the 300/305 W modules to the End-User.

"Commercial Likeness"

The Domestic Industry rejects as inflammatory, the suggestion by the End-User that "[f]inanciers do not consider Tindo Solar a suitable supplier for the purpose of non-recourse project finance".

Specifically, the Domestic Industry says as follows:

- The Domestic Industry currently holds specialist product liability insurance, and sees no reason why it would be incapable of obtaining a proprietary policy, such as a PowerGuard Insurance policy, if that was required under the project specifications. The Domestic Industry does however question the enforceability of such a requirement given Australian *Competition Law*;

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- The suggestion that the Domestic Industry has an “inadequate balance sheet” is mischievous and speculative, given that the Domestic Industry was not even given the opportunity to respond to a request for tender;
- The concept of ‘bankability’ appears on the available commentary to be an arbitrary measure. The Domestic Industry notes comments such as the following:

“In addition “bankable” solar companies have been falling by the wayside. Just using the letter S we get: Suntech, Satcon, Schott, Shuco. All once bankable, not so much now.”

- Zimmer, E., ‘My Panel is Better than Yours- Bankability in Solar Project Development’, <http://tipenergy.com>, August 16, 2013 (accessed 20 June 2014)

- The suggestion that the Domestic Industry cannot be factory audited and are not certified is misleading, as the Domestic Industry is certified by the VDE Institute as an approved place for the manufacture of crystalline silicon terrestrial photovoltaic modules (see **CONFIDENTIAL ATTACHMENT E**). The VDE Institute is accredited by the Central Body of the Laender for Safety (ZLS) for the awarding of the VDE-GS mark for photovoltaic components and systems. Further, the Domestic Industry is certified to the following International Standards:
 - IEC 61215,
 - IEC 61730-1, and
 - IEC 61730-2.
- The suggestion that the Domestic Industry’s modules are not certified for ground-mounted systems in the CEC’s accreditation system is mistaken. The Domestic Industry’s modules are listed on the CEC’s database under Building approved (fire tested) modules. The Domestic Industry’s modules have passed Fire Safety Class C and can be used in both building and ground-mounting applications. The modules are certified to a higher standard than required by ground mount installations.
- The End-User’s arguments in relation to pricing differences between 250 W and 300/305 W modules is erroneous, the supply of modules is price on a per watt basis, regardless of module size. It is entirely possible, but not always, for a 300 W module may be cheaper per watt than a 250 W module. But this does not change the pricing structure that operates in the solar equipment market.

Accordingly, the Domestic Industry rejects the suggestion that there is any tangible commercial difference between the goods imported by the End-User, and the “like goods” produced by the Australia industry.

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“Functional Likeness”

The evidence of functional likeness has been addressed above, but in direct rebuttal of certain statements by the End-User, the Australian Industry says as follows:

- The suggestion that the Domestic Industry is incapable of producing a ground-mounted module is simply wrong. The Domestic Industry, produces modules that are capable of roof-top and ground mounted applications;
- Even if the Domestic Industry was incapable of producing a 300/305 W module, which is not admitted, but expressly denied, then a 250 W is completely interchangeable with a 300 W panel. The Domestic Industry recognises that at some point the unit module price, expressed on a per watt basis, may cease to complete due to additional overhead costs, but that is not an issue affect the degrees of likeness between the imported and domestically produced goods, but rather an issue that goes to factors other than dumping. Having said that, such an assessment needs to be carefully applied on a project by project basis, with consideration given to the assessment of tenders, and cannot be concluded on mere assertion. In this case, the issue of Australian produced 300/305 W modules is not at issue, as such goods were capable of being produced by the Domestic Industry, but for the price of the dumped Chinese modules;

“Production Likeness”

The Domestic Industry has a highly automated production process, that can produce either 250 W or 300/305 W modules. The key difference to the production of a 250 W module and 300/305 W module is the use of an additional 12 solar PV cells.

Conclusion

The Domestic Industry asserts that it is incorrect for the End User or the Exporter to submit that 250 W modules are not “like goods” to the goods the subject of this investigation. In any event, it is false for the End User to suggest that the Domestic Industry cannot produce a 300/305 W module. The output of modules are limited to the efficiencies of the cells used, and the specified size of the module structure. Currently, the conventional module size comprises of either 60 or 72 solar PV cells. The latter produces higher output modules. The issue of CEC accreditation is no impediment to production of the larger output module by the Domestic Industry.

Indeed, a large part of the End User, and by association, the Exporter’s submission is speculative and based on hearsay evidence, as there is no evidence of these factors being considered by the End Users in deciding to use the imported modules in preference to the Domestic Industry’s like goods.

DATED 23 June 2014



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On behalf of the DOMESTIC INDUSTRY