



**Non-confidential**

**To** Director, Operations 3 – Australian Anti-Dumping Commission  
**From** Vivian Wang / Andrew Korbel / Andrew Percival  
**Date** 23 June 2014  
**Subject** **Dumping Investigation - PV modules or panels – Material Injury**

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As you are aware, together we act for the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (**CCCME**) in this investigation.

We have been instructed to make the following submission in relation to the allegations made by Tindo Manufacturing Pty Ltd (**Tindo**) that:

- it has suffered material injury during the period from 1 July 2012 to 31 December 2013 (**Injury Period**);
- that material injury was caused by alleged dumped exports of the subject goods from China; and
- a particular market situation exists in China's PV modules or panels market.

CCCME understands that it is entitled to make further submissions in the following stages of the investigation, and intends to do so, particularly as more information becomes available to it<sup>1</sup>.

**1 Summary of submission**

In summary, as explained in this document, it is CCCME's submission that:

- the alleged dumped imports did not cause a decline in the sales volume and market share of the subject goods manufactured by Tindo – that is, there was no volume effect;
- the alleged dumped imports did not depress or suppress the selling price of the subject goods manufactured by Tindo - that is, there was no price effect;
- the alleged dumped imports did not cause Tindo's profit and profitability to fall – that is, there was no profit or profitability effect;

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<sup>1</sup> For instance, despite its efforts CCCME has not been able to obtain yet from the Australian Bureau of Statistics the comprehensive import data that has been available to the Applicant.

- if Tindo did suffer any material injury (which is denied), that injury was not caused by the alleged dumping but instead was caused by other factors, including that
  - as a new entrant to the already crowded PV modules and panels market, Tindo was simply unable to compete on a range of levels (including but not limited to the cost to make and sell) with the Chinese exporters involved in the investigation, some of which are among the largest producers of solar panels and modules in the world;
  - Tindo entered the market after its peak and at a time when demand had commenced to decline rapidly, mainly due to the phase-out of the incentives associated with State-based feed-in tariffs. It also focussed its production and sales on AC modules, when the market for those modules was significantly smaller than the market for DC modules;
  - Tindo imports most of the raw materials used for the production of the subject goods and, therefore, is subject to fluctuations in foreign exchange rates and the price of raw materials; and
- there is no evidence showing that the Chinese domestic selling price of the subject goods is so distorted as to become unsuitable for comparison with their export price, and accordingly there is no basis to conclude that there is a “particular market situation” in China’s PV modules or panels market.

## **2 Comments on injury**

### **(a) Australian industry**

Tindo’s application (**Application**) and the Anti-Dumping Commission’s (**Commission**) Consideration Report No 239 (**Consideration Report**) show that:

- Tindo commenced its operations in July 2012 and, therefore, at the time that it alleges that it began to suffer injury it was a new entrant into the Australian PV modules and panels market;
- Tindo is the sole manufacturer of the goods under consideration (**GUC**) in Australia;
- Tindo manufactures two types of modules, namely AC modules and DC modules;
- when making the GUC, Tindo relies heavily on imports of solar PV cells, anti-reflective glass, encapsulation material, sealant, polymeric backing sheets, junction boxes, micro-inverter and aluminium extrusion framing materials; and
- Tindo’s market share in the Australian market was 0.018% in FY 2013.

It is not apparent from the Application or the Consideration Report how Tindo expected to operate profitably in the highly competitive solar panel market when entering at a time of declining demand, and what it expected to be its competitive advantage. If there is a

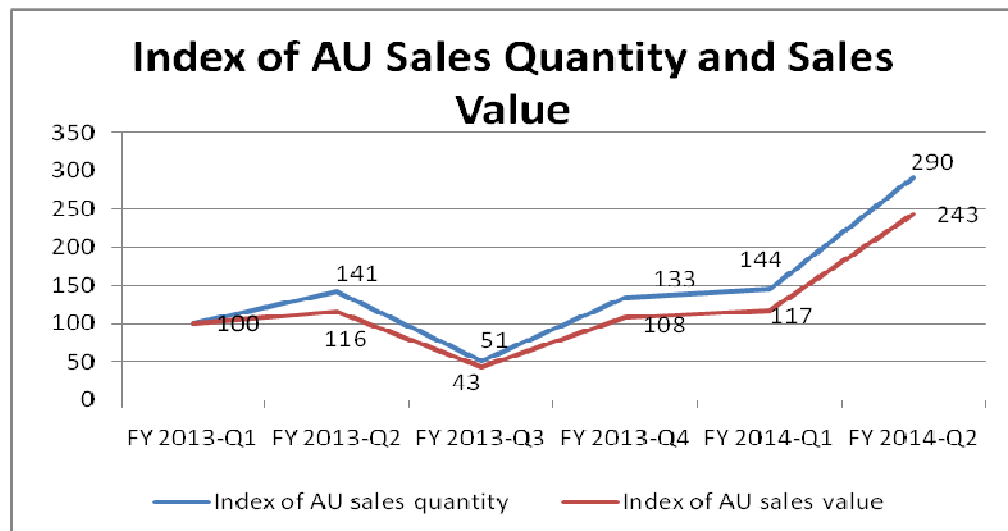
business plan that sheds light on that then its fundamentals need to be placed on the public file so that interested parties are able to comment on the extent to which it was viable. In the absence of such information, interested parties such as CCCME are left to speculate.

**(b) Analysis on volume effects and market share**

Diagrams A-9.1.1, A-9.1.2 and A-9.5.1 in the Application demonstrate that Tindo’s sales volume and market share increased in FY 2013, despite the decline in the size of the Australian market overall. In particular, in the fourth quarter of FY 2013, the market share of Tindo increased while that of the allegedly dumped imports from China decreased. This suggests that at the end of FY 2013 Tindo started to take market share from imports from China.

The table and diagram below, which is based on the data provided on page 20 of the Application, show a clear trend of increase in Tindo’s sales volume and sales value during the Injury Period.

Period	FY 2013-Q1	FY 2013-Q2	FY 2013-Q3	FY 2013-Q4	FY 2014-Q1	FY 2014-Q2
Index of AU sales quantity	100	141	51	133	144	290
Index of AU sales value	100	116	43	108	117	243



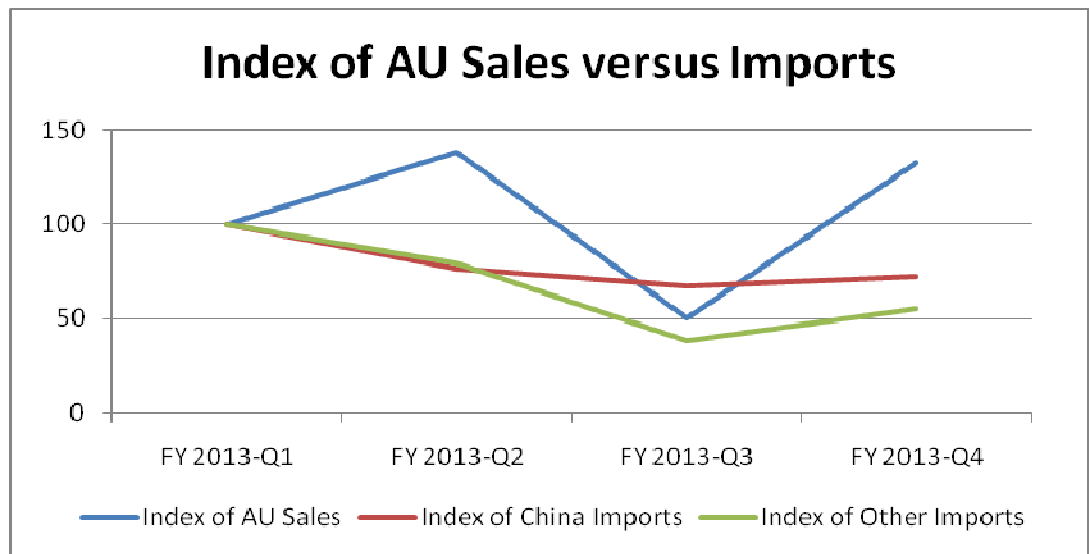
The Consideration Report also makes clear that Tindo did not lose volume or market share during the time of its operation. However, the Consideration Report states that

*The Australian industry has operated for a relatively short period 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. (p. 34)*

That statement is not supported by any reliable or objective evidence; nor does the Commission analyse how and to what extent the presence of the imports from China might hinder Tindo from gaining volume and market share. Nor does Tindo claim to have been hindered in gaining volume or market share. To the contrary, the Application suggests that while Tindo increased its sales volume and market share in FY 2013, exports of the subject goods from China decreased by 28%: see the table and diagram below.

Period	FY 2013-Q1	FY 2013-Q2	FY 2013-Q3	FY 2013-Q4
Index of AU Sales	100	138	50	132
Index of China Imports	100	76	67	72
Index of Other Imports	100	79	38	55



Further, the Application suggests that:

- during the Injury Period, AC modules accounted for a majority of Tindo's production of the subject goods. Based on the data on page 26 of the Application, AC modules appear to account for around 94% of Tindo's total production in the first quarter of FY 2013, and around 89% in the second quarter of FY 2014; and
- Tindo's production of AC modules and DC modules both increased during the Injury Period, with a significant increase in the production of DC modules from an indexed figure of 100 to 595.

Accordingly, during the Injury Period Tindo managed to increase its production of the subject goods despite the alleged dumping. This increase in production corresponds with the increase in Tindo's sales volume and market share as shown above.

In addition, CCCME has undertaken a survey among the Chinese exporters of the subject goods (**CCCME Survey**) and has received responses to the survey from more than 40 exporters covering both small and large exporters. The survey shows that almost all GUC exported from China to Australia are DC modules and suggests that the demand for AC modules is less than 1% in the Australian market. However, despite the Chinese exports of DC modules to Australia, Tindo has significantly increased its production of those modules and managed to gain volume and market share of such modules.

Accordingly, the evidence demonstrates that imports of the GUC from China at allegedly dumped prices did not, and will be unlikely to, cause material injury to Tindo in so far as volume or market share is concerned. Further, if there was any injury, that injury was at least partly the result of Tindo's focussing on AC modules rather than on the production of the more popular DC modules, for which there was much more significant customer demand.

**(c) Analysis of price effects**

The tables on pages 27 and 28 of the Application show that during the Injury Period, Tindo's overall unit selling price decreased by 16% while its overall unit cost of production decreased by 41%.

In relation to AC modules, the unit selling price appears to have decreased by 14%, while the unit cost of production appears to have decreased by 40%. In relation to DC modules, the unit selling price is said to have decreased by only 9%, while the unit cost of production is said to have decreased by 50%. This indicates that the alleged dumping did not depress or suppress the selling price of the goods manufactured by Tindo. This is confirmed by the data on pages 28 and 29 of the Application which show that the profit and profitability of both of the modules produced by Tindo increased during the Injury Period.

In addition, the overall demand for solar panels declined during the Injury Period because of the phase-out of the feed-in tariffs, causing the overall demand for the subject goods to fall in the Australian market. In that context, there was a significant fall in the volume of Chinese exports to Australia. The lower demand would have been expected to lead to increased competition and reduced prices. However, according to our analysis above, Tindo managed to maintain a minor decrease in price while achieving a significant cost reduction.

Accordingly, there seems to be no evidence to substantiate that the alleged dumping caused material injury to Tindo in so far as price is concerned.

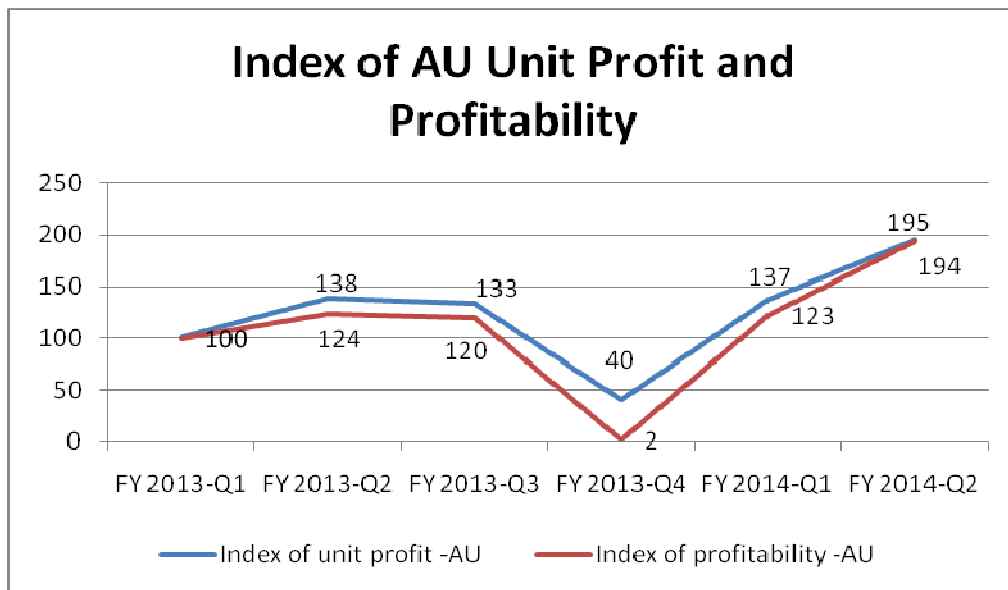
At page 36 of the Consideration Report the Commission suggests that Tindo's prices were undercut by between 50-57% during FY 2013. However, when the Commission formed its preliminary view about dumping margins, it assessed that during the same period they ranged between -5% and 14%. This tends to suggest that even if, contrary to our submission, Tindo's selling price was suppressed by dumped imports, even without that dumping its Unsuppressed Selling Price would be likely to be completely uncompetitive.

If that analysis is correct, then the imposition of dumping measures would be futile, and contrary to the public interest – as it would simply increase prices, without resulting in a competitive Australian industry.

**(d) Profit and Profitability**

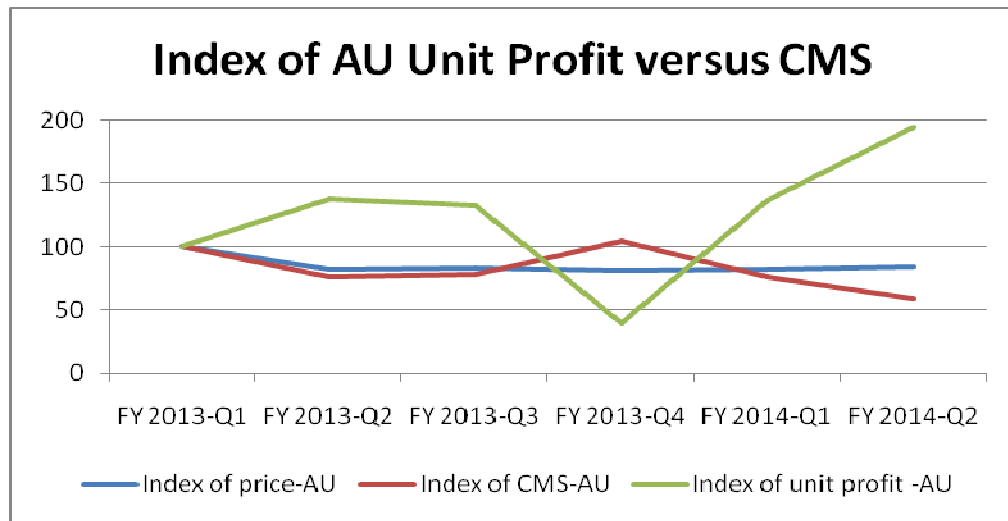
The Application makes clear that notwithstanding that Tindo was (as perhaps expected of a start-up) unprofitable throughout the Injury Period, Tindo's profit and profitability in fact improved during FY 2013 and into FY 2014, despite the alleged dumping. That positive trend is reflected in the table and diagram below.

Period	FY 2013-Q1	FY 2013-Q2	FY 2013-Q3	FY 2013-Q4	FY 2014-Q1	FY 2014-Q2
Index of unit profit -AU	100	138	133	40	137	195
Index of profitability -AU	100	124	120	2	123	194



The Application shows that Tindo's profit and profitability fell in the fourth quarter of FY 2013. However, this fall seems to be caused by factors other than the alleged dumping. The table and diagram below, based on the relevant data in the Application, show that the cause of the decrease in the profit and profitability of Tindo was most likely to be the increase in the cost of production during that period.

Period	FY 2013-Q1	FY 2013-Q2	FY 2013-Q3	FY 2013-Q4	FY 2014-Q1	FY 2014-Q2
Index of price-AU	100	82	83	81	82	84
Index of CMS-AU	100	76	78	105	76	59
Index of unit profit -AU	100	138	133	40	137	195



Accordingly, there is little or no evidence in the Application or the Consideration Report to support the assertion that Tindo has suffered material injury in so far as profit and profitability are concerned.

### 3 No causation between dumping and material injury

#### (a) Competition and new entrant

The Australian PV modules and panels market has existed for a considerable number of years and has grown significantly over the last 5 to 10 years. As a consequence there are a large number of participants in the market, leading to a high level of competition. For example, the CCCME Survey suggests that there were in excess of 40 exporters to Australia from China alone during the period of the investigation. Some of those exporters from China have been exporting the subject goods to Australia for 8 or 9 years. It is likely that the same is true of other countries exporting the subject goods to Australia.

Tindo is a start-up, which only commenced operations in the period of the investigation. During that period it would have needed to develop (for the first time) relationships, sales channels, product and marketing expertise, and to begin to develop efficiencies in production. As a start-up it would be expected to take some time to build up production volumes, and reduce its production costs – but it would also be expected to take

some time to build up demand for its products in a market where there was no shortage of suppliers.

If, as appears to be the case, Tindo was attempting to compete on quality rather than price, then it would need to establish its name and reputation in the market – something which could reasonably be expected to take in excess of 18 months.

As a new entrant, Tindo has no comparative advantage over the major Chinese suppliers who have been engaged in the production and sale of the subject goods in the international market for years. Most of the Chinese producers and exporters of the subject goods, including the exporters selected by the Commission for further investigation, are experienced and reputable suppliers of the subject goods. For instance, three of the four selected exporters, namely Renesola Jiangsu Ltd.<sup>2</sup>, Trina Solar Ltd.<sup>3</sup> and Wuxi Suntech Power Co. Ltd,<sup>4</sup> are listed companies on the New York Stock Exchange and are leading and recognised manufacturers and suppliers of the subject goods globally.

With over 10 years experience in the market and business operations and distribution channels worldwide, these exporters have achieved not only significant economies of scale but also technological advancement, enabling them to compete with any suppliers in the international market. Accordingly, it is not a surprise that these exporters have significant advantages over Tindo, a small start-up, in terms of efficiencies, costs, brand recognition and reputation.

Moreover, it appears from both the data in the Application, and from the marketing material on its website, that Tindo had determined to focus its efforts on the production and sale of AC modules – which are more expensive to produce, more expensive for customers, and in the experience of CCCME's members, for which there is little demand in the market. That strategic decision needs to be taken into account as a further factor which would have hindered Tindo's growth in the market, and affected its profitability.

**(b) Cost of production**

Tindo imported most of the raw materials for the production of the subject goods such as solar PV cells. This would expose its business to fluctuations in the cost of raw materials and exchange rates and would be likely to affect its cost of production.

The solar module parts imported by Tindo from Germany or other countries are, we understand, high-quality components. Tindo itself admitted that “raw materials supplied in China have a cost advantage” (p. 22, Consideration Report). This suggests that Tindo has a higher cost of production than, and hence a price disadvantage in competing with, its Chinese counterparts. Further, in FY 2013 the Australian dollar devalued significantly.<sup>5</sup> A weaker Australian dollar would have caused the import price of Tindo's imported components to increase and, hence, increase the price of the solar modules and panels it produces.

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<sup>2</sup> <http://ir.renesola.com/phoenix.zhtml?c=210622&p=irol-irhome>

<sup>3</sup> <http://www.trinasolar.com/ap/index.html>

<sup>4</sup> <http://www.suntech-power.com/menu/about-suntech.html>

<sup>5</sup> <http://www.rba.gov.au/statistics/historical-data.html#exchange-rates>



**(c) Feed-in tariffs**

It is well known that as a result of government incentives, there was a rapid expansion of the market for solar panels, with around 1GW of new installations in each of 2011 and 2012.

That was followed by a contraction in demand for solar panels in 2013 (that is, Q3 and Q4 of FY 2013) of up to 30%.<sup>6</sup>

The Consideration Report acknowledges that the phase-out and abolition of the incentives in the form of higher feed-in tariffs over the period 2011 until 2013 caused a significant decline in the overall demand for the subject goods in the Australian market. This resulted in greater competition, a decline in volume and a decline in prices (pp. 16-17).

We understand that for the period from January to June 2013, the feed-in tariff rates in South Australia, Queensland and Victoria had decreased from 44 cents kWh to 14 cents kWh, and further decreased to 7-9 cents kWh in September 2013. This suggests that Tindo entered the market after its peak, and at a time when demand had commenced to decline rapidly.

However, while imports from China declined in FY 2013 as a result of these changes in the Australian market, Tindo was able to increase its production and market share of the subject goods. At the same time, Tindo also managed to limit its price movements to a minor decrease, while achieving a significant cost reduction, thereby increasing its profits and profitability.

It follows from each of the issues discussed above, that if Tindo did suffer any material injury during the relevant period, that it was caused by factors other than the alleged dumping. Tindo's application for protection by dumping duties seems to be intended to reduce competition rather to remedy any material injury.

**4 Particular market situation**

Tindo has claimed that the Chinese domestic PV modules and panels market has been materially distorted by the Government of China's (GOC) provision of "policy loans" and credit facilities to Chinese manufacturers of the subject goods through state-owned commercial banks at non-commercial and preferential rates. However, the Commission has taken the view that the evidence submitted by Tindo in support of its claim is insufficient to establish that a "particular market situation" exists (page 25, Consideration Report). The CCCME agrees with the Commission's view.

However, the Commission has indicated that it intends to consider whether the selling price of silicon metal, which the Commission claimed to be one of the main raw materials used in the production of solar panels, has been distorted by the influence of the GOC in the Chinese silicon metal market, hence giving rise to a "particular market situation". Tindo does not raise this issue in its Application and has provided no evidence in this regard. Accordingly, the Commission's decision to continue to consider the issue of "particular market situation" is entirely unfounded.

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<sup>6</sup> See "Global Market Outlook for Photovoltaic 2014-2018" report issued by European Photovoltaic Industry Association.

Even assuming that the Commission's consideration of "particular market situation" based on evidence yet to be available is justified (which the CCCME denies), it is unclear as to whether the subject goods in the silicon metal investigation are the raw materials used for the production of PV panels the subject goods of the present investigation. The CCCME will follow the Commission's assessment of this issue in the later stages of the investigation and make further submissions on it at an appropriate time.

In addition, the CCCME submits that in its consideration of "particular market situation", the Commission must fully observe WTO rules.

First, the Commission cannot find that a "particular market situation" exists unless such a finding is supported by objective and positive evidence. Such evidence must be sufficient to establish that the domestic selling price of solar panels or modules is so distorted as to become unsuitable for comparison with their export price. If the Commission finds that it is the selling price of silicon metal that is distorted by the GOC's intervention in the silicon metal market and hence distorts the selling price of solar panels or modules, then the Commission's finding must, at least, be based on evidence substantiating that the alleged government intervention in the market of the raw materials concerned has actually "flowed through" to, or distorted, the selling price of the end products leading to the domestic selling price of the subject goods unsuitable for comparison with the export price of the goods.<sup>7</sup>

Second, even if the Commission were to find that the "flowing through" mentioned above did occur, the Commission must be satisfied that the export price of the subject goods is not equivalently affected. If the export price and the domestic selling price of the subject goods are affected even-handedly by the "distorted" price of raw materials, then the Commission cannot find that the comparability of the two prices is affected and hence a "particular market situation" exists.

Third, if the Commission finds that the export price and the selling price of the subject goods are equivalently affected but still finds that a "particular market situation" exists, then the Commission must ensure that its comparison between the export price (which is based on the "distorted" and lower price of raw materials) and a constructed normal value (which is based on a surrogate and higher price of raw materials) is a fair comparison in accordance with Article 2.4 of the WTO Anti-Dumping Agreement. This would require an downward adjustment of the constructed normal value to the extent of the surrogate cost of raw materials in excess of the "distorted" cost of raw materials.

The CCCME will observe the Commission's assessment of the issues above and make further submissions in due course.

## **5 Conclusion**

In light of the above, it is our strong opinion, and that of CCCME, that it is not evident from either the Application or the Consideration Report that Tindo has suffered material injury due to alleged dumped imports from China.

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<sup>7</sup> *United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada*, WT/DS257/AB/R, paras. 140-141.

If there was any material injury caused to Tindo, that injury was caused by known factors other than imports from China.

If you have any queries in relation to these submissions, please do not hesitate to contact any of us.

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