



Non-confidential

Ms Joanne Reid
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra City ACT 2601

23 July 2014

Your reference: ADN 2014/38

Dear Joanne,

Certain crystalline silicon photovoltaic modules or panels exported from China

We act on behalf of True Value Solar Pty Ltd (ABN 11 143 232 482) (**TVS**). We refer to the recent initiation by the Anti-Dumping Commission (**the Commission**) of an investigation into the alleged dumping of certain crystalline silicon photovoltaic modules or panels (**PV modules or panels** or **the Goods**) exported from the People's Republic of China (**China**) in the Anti-Dumping Commission Notice 2014/38 (**ADN 2014/38**). We understand that the investigation follows an application (**the Application**) lodged by Tindo Manufacturing Pty Ltd (**Tindo**) which trades in Australia as Tindo Solar and Tindo Commercial.

This submission is made in response to the Application and relates to TVS' issues with the imposition of dumping duties on importers of PV modules or panels from China.

Executive Summary

On the basis of the information set out below, TVS submits that there is no dumping occurring in the Australian market for PV modules or panels, and in particular, Tindo has failed in its Application to establish a causal link between the importation of the PV modules or panels from China and any injury purported to have been suffered by Tindo.

The following are TVS' reasons for seeking the termination of the dumping investigation in relation to PV modules:

- There is compelling evidence to indicate that any injury suffered by Tindo is not attributable to the alleged dumping. Rather, any injury suffered by Tindo has arisen from other factors autonomous to the export of PV modules or panels from China, including:



- Tindo entering the market at a time when federal and state based financial incentives for PV modules or panels which had caused transformative and increased demand for solar PV systems had been substantially reduced or removed;
 - Tindo being a new entrant to the contracting solar industry in 2012;
 - global advances in the manufacturing and technology of solar PV systems which had decreased the cost of PV modules and panels;
 - Tindo's higher cost of production associated with producing alternating current (AC) PV modules or panels; and
 - Tindo's decision to produce and sell a product that was not the Australian market preference during the investigation period.
- TVS does not necessarily accept that Tindo is a manufacturer of the goods under consideration as the assembly process undertaken by Tindo in relation to the production of PV modules or panels does not constitute a "substantial process" for the purposes of the *Customs Act 1901* (**the Customs Act**). Nor does TVS accept that the US and European dumping investigations regarding PV modules and cells can be regarded by the Commission as precedent for this investigation.
 - TVS considers that Tindo's Application lacks sufficient information to allow the Commission to construe a market situation and therefore disregard the normal value in relation to domestic sales in China and therefore, it is not a reason to assess whether or not a market situation exists in China in respect to PV modules or panels.

Overview of True Value Solar

Since its establishment in 2009, TVS has become one of the leading solar power suppliers to the residential and commercial sectors in Australia. TVS is owned by the M+W Group, a global engineering and construction partner for technology based clients with headquarters located in Germany. M+W was founded in 1912 and is recognised as a market leader in both the photovoltaic and semiconductor industries.

Due to M+W's global presence, position in the market and relationship with suppliers, TVS is able to procure high quality solar power systems at a competitive price in the Australian market. The backing of TVS by a global leader in the solar industry is fundamental to TVS' success as the largest solar company in Australia.

TVS generally supplies 250 Watt polycrystalline direct current (DC) PV modules or panels together with the installation services in relation to the goods to its customers, therefore broadly capturing the majority of TVS' customers within the small-scale solar market, the key sector in the Australian solar industry. TVS purchases its PV modules or panels directly from offshore suppliers and local wholesalers.



Our client is aware that Tindo predominantly produces 240 Watt and 250 Watt AC PV modules in Australia. Our client also understands that Tindo produces 240 Watt and 250 Watt DC PV modules. The key difference in terms of componentry between AC and DC PV modules or panels is that AC PV modules or panels have micro-inverters built into each PV module or panel whereas DC PV modules or panels have one inverter per solar PV system. The micro-inverters enable each PV module or panel to function independently to produce power in all conditions. As a result of the micro-inverter technology, AC modules or panels are generally a more expensive product than DC PV modules or panels.

The Commission has failed to establish a causal link between the perceived injury of Tindo and alleged dumping, and the Commission has not had due regard to factors autonomous from dumping

Anti-dumping measures can only be imposed where the Minister is satisfied that goods exported to Australia have been dumped, and because of that dumping, material injury to an Australian industry producing like goods has been, or is being caused, or threatened. Therefore, before any action can be taken against the alleged dumped goods, it must be demonstrated that the Australian industry (i.e. Tindo) producing like goods is injured and that the injury is caused by dumped imports.

On page 32 of the Commission's Consideration Report 239 in relation to the alleged dumping of PV modules or panels, the Commission considers that Tindo may have experienced injury in the form of price depression; price suppression and loss of profit.

Tindo alleges that material injury caused by the dumped imports of the Goods from China commenced in July 2012. As a result of the alleged dumped Goods, the sale by Tindo of like goods produced in Australia has remained unprofitable since its establishment in July 2012.

On this basis, the Commission considers that as a start-up business, Tindo may have been hindered during the investigation period by gaining volume and market share due to the presence of the alleged dumped imports from China.

In order for Tindo to establish material injury, Tindo must also demonstrate the required nexus between the injury and the alleged dumping of goods exported to Australia. Section 269TG(1) of the Customs Act states:

- (1) *“Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:*
 - (a) *the amount of the export price of the goods is less than the amount of the normal value of those goods; and*
 - (b) *because of that:*
 - (i) *material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;”*



Section 269TG(1) requires that the test can only consider goods that have been exported and because of the alleged dumping of the goods, there has been, or there is threatened, material injury to an Australian industry producing like goods.

The Commission's *Dumping and Subsidy Manual (December 2013)* (***Dumping and Subsidy Manual***) sets out at page 120 that all available evidence will be examined in establishing whether a causal link between the dumped imports and the Australian industry exists. This is important exercise as the *Ministerial Direction of Material Injury (April 2012)* makes it clear that injury caused by other factors must not be attributed to dumping. Therefore, the Commission is required to have regard to any other factors that may have caused injury to a domestic industry so that injury from these sources is not attributed to the impact of the dumped imports.

Specifically, section 269TAE(2A) of the Customs Act sets out a non-exhaustive list of factors that the Minister must consider in coming to a view on whether there exists other factors that cause injury to the industry other than imported goods. Section 269TAE(2A) of the Customs Act states:

- (2A) *“In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*
- (a) the volume and prices of imported like goods that are not dumped; or*
 - (b) the volume and prices of importations of like goods that are not subsidised;
or*
 - (c) contractions in demand or changes in patterns of consumption; or*
 - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
 - (e) developments in technology; or*
 - (f) the export performance and productivity of the Australian industry;*
- and any such injury or hindrance must not be attributed to the exportation of those goods.”*

This section reflects the provisions of Article 3.5 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* which has been considered by the Appellate Body in *Dumping Measures on Certain Hot-Rolled Steel Products from Japan AB-2001-2*. The Appellate Body relevantly stated:



“223. ... If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties...”

Therefore, for purposes of this investigation, it must be considered whether the alleged hindrance to the establishment of Tindo by way of volume and market share has been caused or threatened by a factor other than the exportation of the solar PV modules or panels from China. Subject to section 269TAE(2A) of the Customs Act, any consideration by the Commission of the alleged dumping of PV modules or panels cannot be viewed in isolation based on price.

We note that in its Application for dumping duties, Tindo has submitted that price is the only cause of claimed material injury and has not identified any other factors which may have caused the claimed injury. With respect, our client disagrees with this statement as it is our client's view that the material injury allegedly suffered by Tindo is entirely attributable to commercial and market factors autonomous of dumping.

TVS considers that the Commission's assessment of other factors is particularly pertinent in this investigation, given the dynamic and volatile market factors highlighted in this submission which have had a significant impact on all participants in the Australian solar PV industry in the last five years. As such, TVS requests that the Commission places heavy weighting on the other causal factors outlined below (pursuant to section 269TAE(2A) of the Customs Act) and their respective roles at 'breaking the causal link' between the alleged injury and the exported Goods from China.

We also submit that subject to section 269T(2AD) of the Customs Act, it is both permissible and necessary for the Commission to consider the market for small-scale solar PV systems since 2009 (outside of the injury analysis period of 1 January 2010) as part of its examination of material injury. As outlined at page 120 of the Commission's *Dumping and Subsidy Manual*, consideration of material injury data and information prior to the investigation period may be useful in identifying injury factors unrelated to the exportation of goods that have occurred before the investigation period but continue to impact on the industry's performance after the commencement of that period. On this basis, TVS requests that subject to section 269T(2AD) of the Customs Act, the Commission examines the Australian market for small-scale solar from 2009, so that critical benchmarks and trends can be established.

Please find outlined below a number of factors autonomous to dumping that TVS considers the Commission must consider in order to make a valid assessment of whether or not PV modules or panels exported from China at dumped prices.



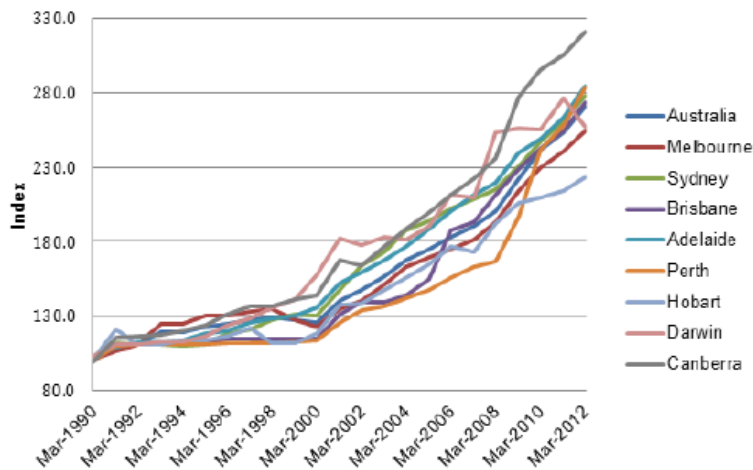
Tindo entered market at a period in time when federal and state-based incentives had significantly reduced

In light of Australia’s international commitments to reduce its greenhouse gas emissions, a key Government policy since the early 2000’s has been the development of renewable energy in Australia via the Renewable Energy Target (**RET**). In order for Australia to meet its emissions reductions targets, through the RET, consumers of solar power are eligible to financial incentives from the Government in the form of small-scale technology certificates (**STCs**) and solar credits. The amount of the financial incentive is determined by the amount of electricity generated by the solar PV system over the course of its lifetime.

In addition, for the last five years, all state and territory governments have provided feed-in tariffs for households and businesses to encourage the rapid uptake of solar PV systems. Feed-in tariffs provide households and businesses producing their own renewable and eligible low-emissions energy with a financial return for the excess power they feed into the grid. Specifically, the feed-in tariffs were developed following the move to electricity being generated on an individual state basis and fed back into the state-owned grid in order to supply directly to the state.

From a policy perspective, the government incentives were put in place to help compensate households and businesses for installing new and expensive technology. Alongside the growing concern about rising power bills (please refer to Diagram One), consumers increasingly looked to solar PV systems as an attractive alternative for the provision of electricity. As a result of the federal and state/territory targeting via financial incentives, the residential market became the key solar market in Australia and accounted for 95% of capacity installed in 2011 and 2012.¹

Diagram One²: Electricity price indices by capital city (1990 to 2012)



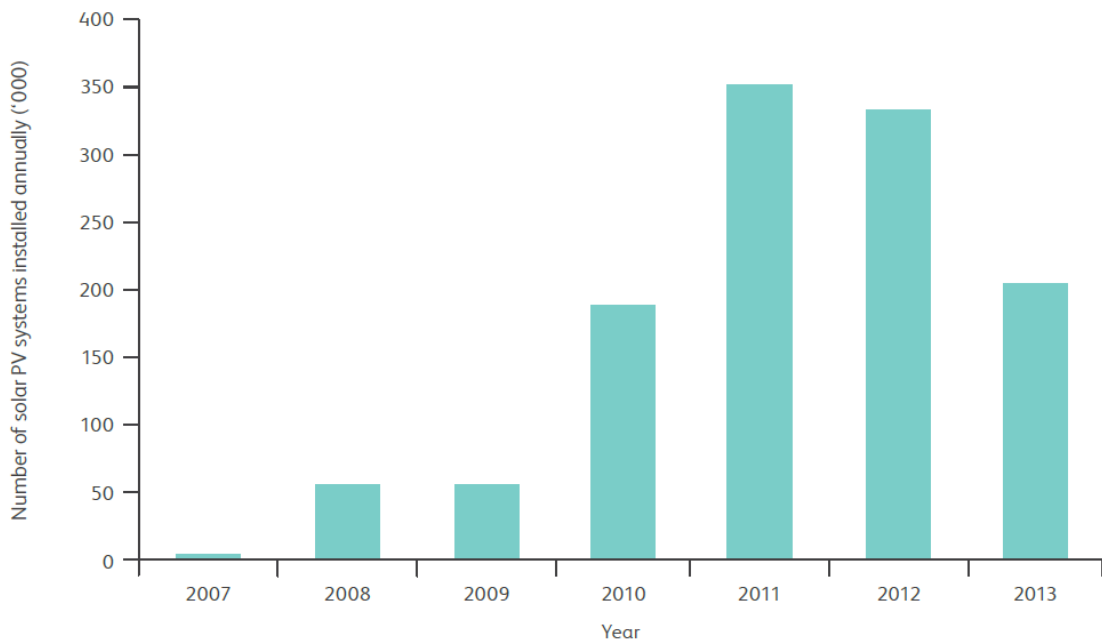
**Base year = 1989-90
Source: ABS 6401.0 Consumer price Index, Australia, current data as at March 2012*

¹ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 27

² Energy Supply Association of Australia, *Electricity Price Growth: fact sheet*

As a result of these incentives and in particular, the feed-in tariffs, the small-scale solar PV industry experienced both tremendous growth and transformative change, growing exponentially in a short space of time, before reaching its peak in 2011 (as illustrated in Diagram Two).

Diagram Two³: Annual number of solar PV system installations in Australia during 2007 to 2013



As a result, the Australian market was faced with increased competition and demand for small-scale solar driven by the government incentives, together with decreasing demand and decreasing prices as suppliers established economies of scale and reduced their prices to compete in the market.

However, from late 2011, various state and territory governments began to wind-back or reduce the amount of the financial credit available under the feed-in tariff schemes. This was partly driven by the fact that the cost of electricity generated from PV modules or panels had begun to reach parity with retail electricity prices paid by households. Because the government incentives were put in place to encourage households and businesses to convert to solar power through financial compensation for their new and expensive technology, once price parity was achieved, the rationale for subsidisation weakened.⁴ As a result, by in large, most government incentives had been phased out or reduced nationwide by the time that Tindo had entered the market.

³ Clean Energy Council, *Clean Energy Australia Report 2013*, page 54

⁴ IBISWorld Industry report OD4042: *Solar Panel Installation in Australia – Shadow on the horizon: Revenue to fall in future as state-level subsidisation recedes*, October 2013, page 4



For example, in Victoria, the Premium Feed-In Tariff started in late 2009 and had closed to new applicants by the end of 2011. The Scheme offered households, businesses or community organisations with small-scale solar systems a credit of at least 60 cents per kilowatt for excess electricity fed back into the grid. In 2014, the current Victorian feed-in tariff credit is now 8 cents per kilowatt and is proposed to drop to between 7 to 6 cents in 2015.

The Victorian feed-in tariff example demonstrates the marked decrease in the amount of the financial subsidies available to purchasers and consumers of solar power within a short period of time. The decrease in financial incentive is also reflected in the decline in solar PV system installations from the 2011 peak as Australian consumers made the choice not to purchase solar PV systems as there was less or no tangible financial incentive to do so. By 2013, the residential market share of the solar PV system installations had fallen to 85%.⁵

As previously outlined, the intense growth and demand for small-scale solar PV systems in Australia had been driven by the government incentives. Therefore, with a key driver behind the consumption of solar PV systems no longer encouraging the purchase of solar PV systems, the small scale-solar industry entered a period of contraction and consolidation as there were fewer consumers willing to make an expensive discretionary purchase without the financial incentive to do so. Currently, activity in the industry is expected to slow with a forecast compound annual decline in revenue of 19.7% in the five years through to 2018-2019.⁶

In addition, there have been a number of industry exits in the Australian market, as less profitable solar businesses are pushed out. In 2013, there were 4,595 solar system installers across Australia, a 5% reduction in installers in 2012 which reflects the general contraction and consolidation of the industry following the cessation of the feed-in tariffs.⁷ Furthermore, approximately 180 solar PV businesses are understood to have been liquidated or deregistered in 2012/2013, confirming the pressure on the industry and on those within it to survive.⁸

Because solar PV systems are a discretionary purchase for most households and businesses, the price of the goods will be a key factor for the decision to buy. However, as outlined in the Commission's *Dumping and Subsidy Manual*, price must not be looked at in isolation in the context of an assessment of whether or not goods have been dumped in Australia. Being a discretionary item, the level of sales in the domestic market, marketing and promotional activity as well as any government policy and incentives associated with the goods will also significantly impact the consumer's decision of whether or not to purchase a solar PV system.

⁵ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 27

⁶ IBISWorld Industry report OD4042: *Solar Panel Installation in Australia – Shadow on the horizon: Revenue to fall in future as state-level subsidisation recedes*, October 2013, page 4

⁷ Clean Energy Council, *Clean Energy Australia Report 2013*, page 45

⁸ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 20



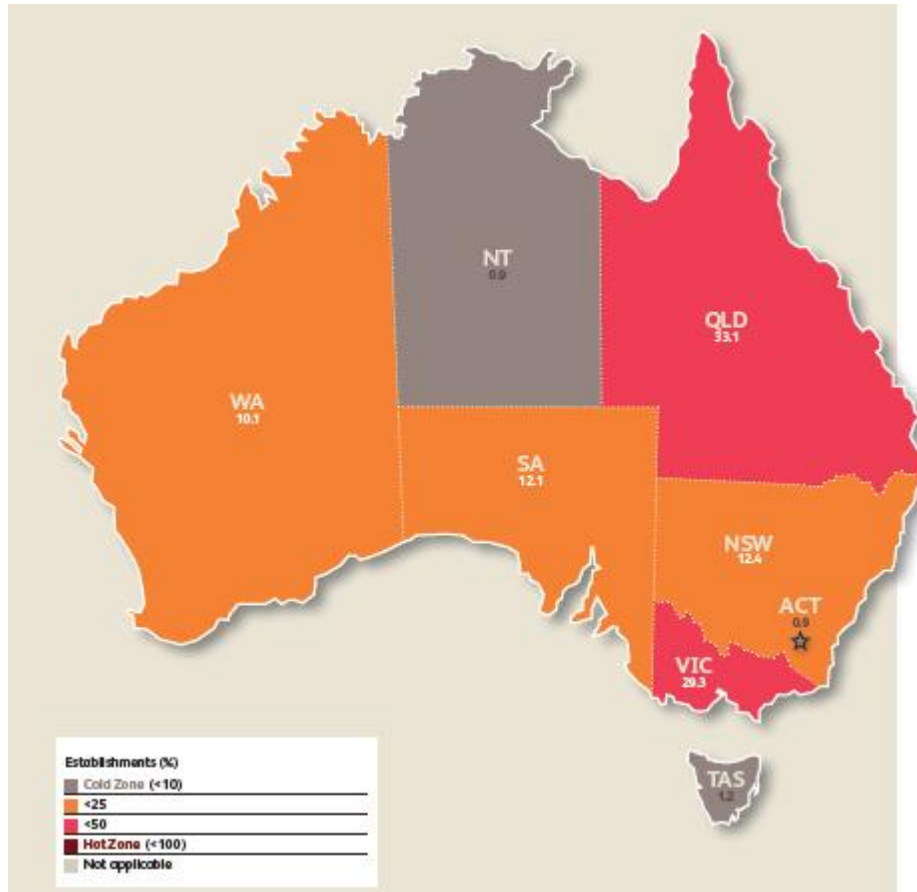
TVS considers that pursuant to subsection 269TAE(2A)(c) of the Customs Act, the contraction in demand in Australia for PV modules or panels during the investigation period is a significant and detrimental factor which is likely to have caused material injury to Tindo. Furthermore, it is our client's view that this injury cannot be attributed to the exportation of PV modules or panels from China. Therefore, TVS' respectfully requests that the Commission conducts a thorough analysis of the solar PV market in Australia as a cause of material injury which threatened the establishment of Tindo during the investigation period. In addition, our client would expect the above to be addressed in any Statement of Essential Facts issued by the Commission as there is sufficient evidence to warrant further investigation on this matter.

Location and the impact of market saturation on demand for Tindo's solar PV systems

With the move to electricity being generated by state-owned grids, the need to ensure supply security has encouraged growth in the solar PV industry across Australia as PV modules or panels produce the most output in periods of peak demand for the grid.

As described above, the demand in Australia for small-scale solar PV systems has been strongly influenced by government policy and incentives, and in particular, the feed-in tariffs. Each state or territory has different feed-in tariff schemes which have all been reduced or removed all together during the investigation period. This environment created surges in demand for solar PV systems prior to the reduction or removal of a tariff scheme. Furthermore, some states and/or territories have been more receptive to solar PV systems than others, due to generous feed-in tariff schemes, sunnier climates and no burdensome regulatory barriers in relation to installation. Diagram Three below further illustrates the market differentiation across Australia in terms of geographical location and the popularity and demand for solar PV systems based on solar PV installation businesses by location.

Diagram Three: Percentage of solar PV system installation businesses by location in 2013-2014



In addition to propelling the growth of the small-scale solar industry across Australia, the financial incentives but have also added to the volatility of the industry revenue.¹⁰ For example, in 2013, solar PV system installations in Queensland and South Australia were supported by attractive feed-in tariffs, whilst feed-in tariffs in New South Wales, Western Australia or Victoria in the same period were either non-existent or significantly reduced and therefore these states experienced decreased demand for solar PV systems. Since 2013, the demand in Queensland and South Australia for small-scale solar has also decreased due to these markets being considered within the industry to be saturated.¹¹

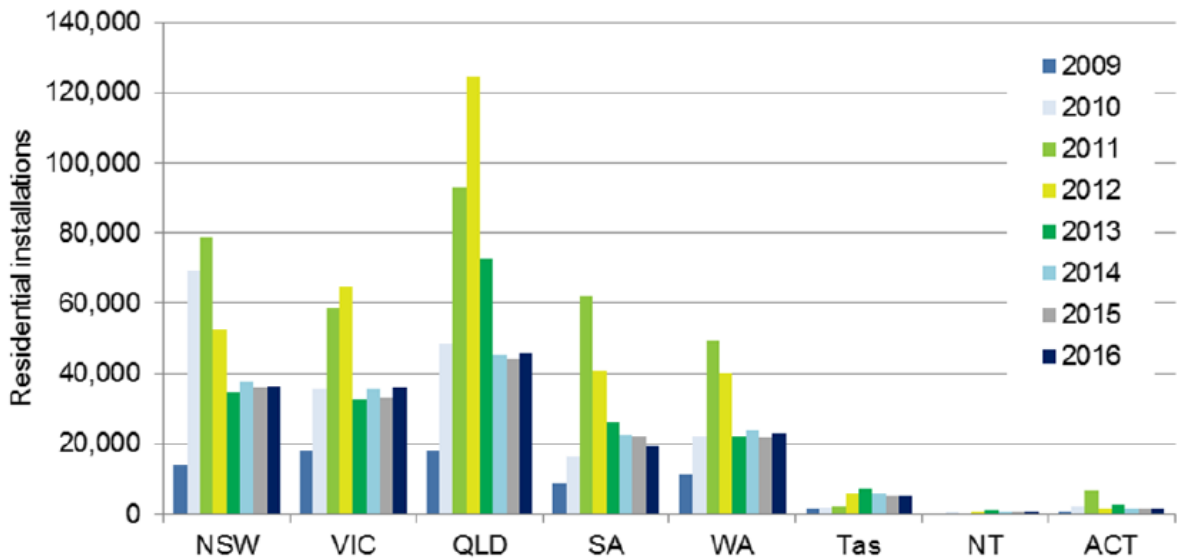
⁹ IBISWorld Industry report OD4042: *Solar Panel Installation in Australia – Shadow on the horizon: Revenue to fall in future as state-level subsidisation recedes*, October 2013, page 16

¹⁰ IBISWorld Industry report OD4042: *Solar Panel Installation in Australia – Shadow on the horizon: Revenue to fall in future as state-level subsidisation recedes*, October 2013, page 6

¹¹ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 30



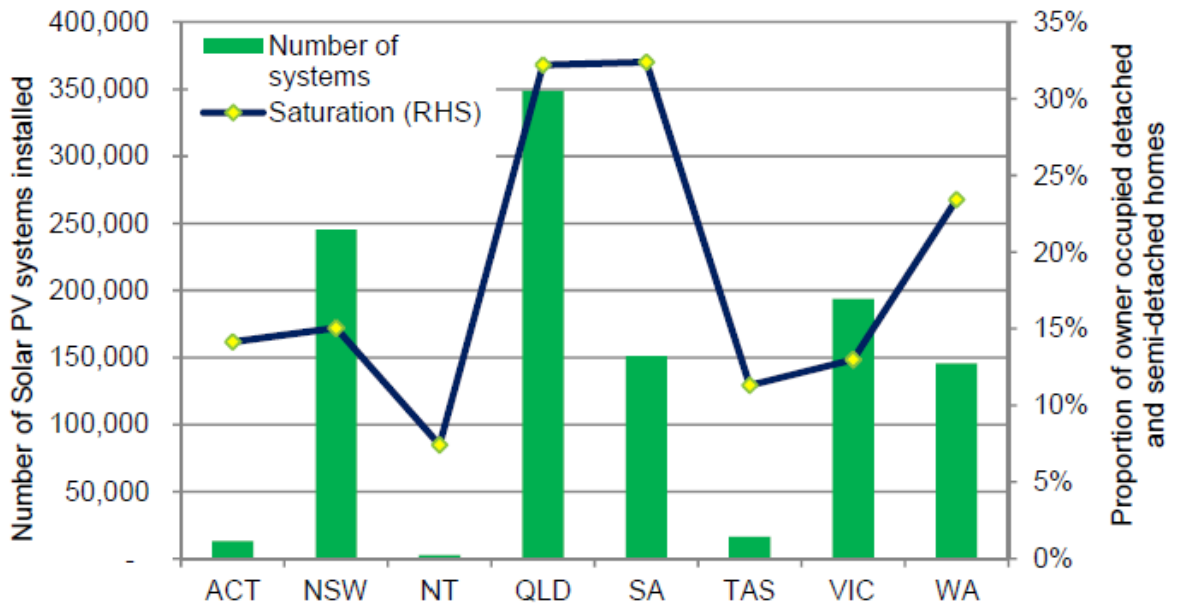
Diagram Four¹²: Residential solar PV systems installed by state/territory, including projections to 2016



As Tindo is located in South Australia, it is likely that it enjoyed a strong share of the South Australian market from its commencement. However, as outlined in the Diagram Four above, sales in South Australia had peaked in 2011 and had declined heavily by the end of the investigation period. As discussed, by the end of the investigation period, the South Australian small-scale solar PV system market was saturated as discretionary demand had been met (please refer to Diagram Five outlining the total PV systems installed and creating STC's by state/territory in 2013). On this basis, our client considers that it is likely that injury was caused to Tindo from when it commenced operations as Tindo's 'local market' was saturated as well facing declining demand from the cessation of feed-in tariffs.

¹² Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator, January 2014, page 30*

Diagram Five¹³: Total solar PV systems installed and saturation rates by state/territory at 30 September 2013



Pursuant to subsection 269TAE(2A)(c) of the Customs Act, TVS considers that market saturation in relation to PV modules or panels in South Australia and the impact of geographical locations on the uptake of solar PV systems during the investigation period is a factor which is likely to have caused material injury to Tindo. Therefore, TVS submits that market saturation cannot be attributed to the exportation of PV modules or panels from China.

On this basis, our client respectfully requests that the Commission conducts a thorough analysis of market saturation and the impact of geographical locations on the uptake of solar PV systems during the investigation period as a cause of material injury which threatened the establishment of Tindo during the investigation period. TVS considers that market saturation and the impact of geographical locations is a factor autonomous to dumping which is likely to have caused injury to Tindo. In addition, TVS would expect the above to be addressed in any Statement of Essential Facts issued by the Commission as there is sufficient evidence to warrant further investigation on this matter.

¹³ Report for the REC Agents Association prepared by Green Energy Markets Pty Ltd, *Household Solar in Australia: State of the Small-scale Renewable Energy Scheme*, November 2013, page 6

Decreases in the cost of the PV modules or panels due to global advances in manufacturing and technology

Broadly speaking, in Australia, solar PV systems are mainly imported. Therefore, due to manufacturing and technology advances in the global solar PV industry in line with the global push for clean, green and sustainable technology and a reduction in greenhouse gases, the price of solar PV systems and their associated parts have decreased. The average net installed cost of a PV module or panel in Australia dropped markedly between 2009 and 2012, as illustrated in Diagram Six:

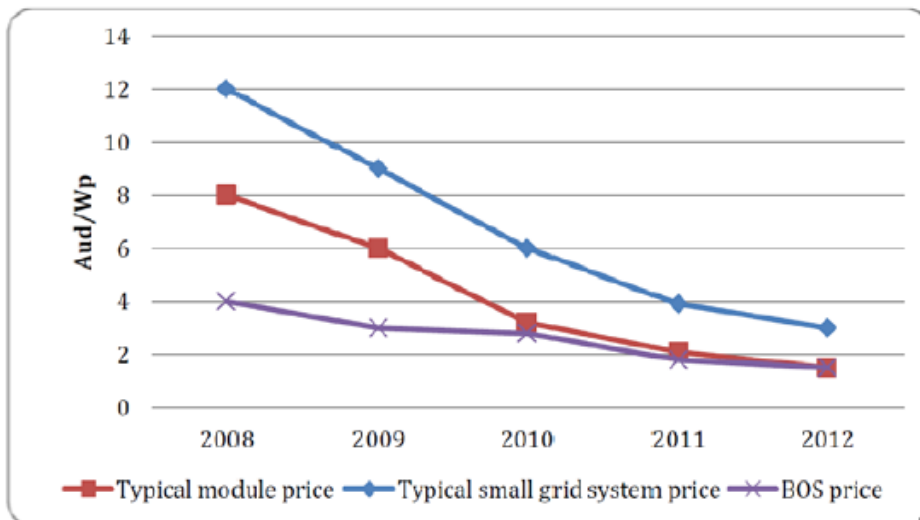
Diagram Six¹⁴: Average net installed cost of <5 kW solar PV systems in Australia



This decrease in the price of an installed solar PV system can also be demonstrated in Diagram Seven which illustrates that the cost in 2012 of a typical PV module is a quarter of the price in 2008. Whilst prices have dropped dramatically in a short period of time, it is considered that the installed cost of solar PV systems has bottomed as solar retailers are unable to squeeze any additional costs and still maintain a margin.

¹⁴ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 23

Diagram Seven¹⁵: Typical module, system and balance of system costs in Australia during 2008 to 2012



Similar to the government incentives, TVS considers that under section 269T(2AD) of the Customs Act, it is vital for the Commission to assess whether developments in the manufacturing and technology of solar PV systems prior to and during the investigation analysis period have caused injury to Tindo in isolation to the export of the Goods from China. Given the material decreases in the cost of PV modules or panels during 2008 to 2012 due to advances in manufacturing and technology processes, TVS considers that it is necessary for the Commission to examine how developments in technology since 2008 have influenced the price of the Goods during the investigation period.

As a result, our client considers that pursuant to subsection 269TAE(2A)(e) of the Customs Act, developments in technology in relation to PV modules or panels during the investigation period is a factor which is likely to have caused material injury to Tindo as these developments have substantially altered the cost of the Goods and therefore decreased the price paid by the customer within a short period of time.

TVS submits that global manufacturing and technology advancement cannot be attributed to the exportation of PV modules or panels from China alone. Therefore, TVS respectfully requests that the Commission conducts a thorough analysis of how manufacturing and technology advancements in the solar industry which have in turn decreased the cost of the Goods are a cause of material injury which threatened the establishment of Tindo during the investigation period. In addition, our client would expect the above to be addressed in any Statement of Essential Facts issued by the Commission as there is sufficient evidence to warrant further investigation on this matter.

¹⁵ Report for the REC Agents Association prepared by Green Energy Markets Pty Ltd, *Household Solar in Australia: State of the Small-scale Renewable Energy Scheme*, November 2013, page 7



AC vs DC: Tindo has a higher cost of production and produces an expensive product that is not the current preference of the Australian market

As outlined in Tindo's Application, Tindo produces AC PV modules or panels which are a more sophisticated technology than the traditional DC PV modules or panels. The advantages of AC PV modules or panels include higher energy yield, built-in micro-inverters and the flexibility to be installed on most roofs.

On the basis that AC PV modules or panels are a more sophisticated product than DC PV modules or panels, the price of an AC PV module or panel is more expensive to manufacture, and more expensive for the final consumer. This is because there is a higher cost of production involved in order to produce an AC PV module or panel, in part largely due to the micro-inverter technology that differentiates AC from DC PV modules or panels. Our research has identified that for the final consumer, AC PV modules or panels can be on average approximately 10% to 25% more expensive than a comparative DC model.

Given that [REDACTED] to [REDACTED] of TVS' customers purchase DC PV modules or panels and TVS' position as the largest solar company in Australia, it can be assumed that currently, the small-scale solar PV system market preference in Australia is for DC PV modules or panels, and not the AC PV module/panel product sold by Tindo.

Tindo has positioned itself at the premium end of a discretionary market by marketing its value in the high quality imported inputs to manufacture and for being an "Australian made" product. However, our client considers that in doing so, Tindo has caused injury to itself by focusing its business model on a product which was not what the majority of consumers of small-scale solar systems during the investigation period wanted to purchase.

In addition, Tindo's production processes operate at a high cost base due to the qualities of the German inputs to manufacture that it requires in order to produce its premium product. We are also not aware of Tindo engaging in homogenous production runs which would allow Tindo to benefit from economies of scale, as we understand that Tindo designs and produces PV modules or panels on a made to order basis. As such, Tindo is disadvantaged both in terms of leveraging from the global market in order to acquire its inputs to manufacture (including the expensive micro-inverter technology) and by not achieving least cost efficiencies in terms of large scale production runs.

Tindo's cost to make and sell its premium AC PV modules is also increased by installation, fitting and commission costs which are specific to each order placed with Tindo; foreign exchange rate fluctuations in relation to the imported inputs to manufacture; and fluctuations in the value of the Australian dollar increasing the cost of the goods produced.

Therefore, during the investigation period, Tindo had to rely on its brand, reputation and the quality of its product in order for a consumer to make the decision to purchase a more expensive product, and, a product that is currently not the market preference in Australia.

On this basis, TVS considers that under subsection 269TAE(2A)(d) of the Customs Act, the differences between premium AC and traditional DC PV modules or panels is a factor which is likely to have caused material injury to Tindo during the investigation period and will continue to cause material injury to Tindo regardless of the exportation of PV modules or panels from China. This is because Tindo has chosen to produce a premium end discretionary product with a higher cost of production in order which also sits outside of the general market preference for solar PV systems.



As such, our client respectfully requests that the Commission conduct a thorough assessment of whether the business decision to produce a high cost premium AC PV module is likely to be a cause of material injury which has threatened the establishment of Tindo during the investigation period. In addition, our client would expect the above to be addressed in any Statement of Essential Facts issued by the Commission as there is sufficient evidence to warrant further investigation on this matter.

Tindo – a new entrant to the contracting solar PV industry in 2012

TVS acknowledges that the anti-dumping legislation includes the provision of measures to ensure that new entrants to an industry, for example, Tindo, are able to establish themselves and not be hindered from obtaining market share and volume of sales by the exportation of like goods at dumped prices.

However, it is our client's view that in July 2012, when Tindo entered the Australian solar market, the competitive landscape and volatile pricing of solar PV panels and modules was fully entrenched. As a result, regardless of whether or not PV modules or panels were being imported from China, the market forces had imposed substantial pressure on participants to be agile and adapt prices to meet customer demand on a monthly basis. This environment would make it extremely difficult for any new participant to enter the industry, let alone hope to gain a fair share of available sales. In addition, TVS considers that the following trade impediments at the time Tindo commenced operations would have made the establishment of Tindo's business difficult for the following reasons:

- the technology and manufacturing efficiencies of established manufacturers;
- the decreasing prices of the standard model DC PV modules or panels;
- a contracting small-scale solar market;
- positioning itself as a premium product producer;
- a discretionary market that is highly price elastic;
- the development of a reputable brand and brand recognition;
- the development of supply chain relationships in order to access a lower cost of production;
- a high cost of capital expenditure in order to commence operations;
- an inability to diversify; and
- a lack of access to financial support.

Given that Tindo entered the solar PV industry after the 2011 peak and at the beginning of the decline in the market it is not surprising that Tindo found it difficult to gain market share and volume. Furthermore, our research shows that by the end of 2013 (i.e. the end of the investigation period) there was a 12% decline in active solar PV businesses in 2013;¹⁶ therefore, the economic outlook for a newly established business such as Tindo was weak.

¹⁶ Green Energy Markets, *Small-scale technology certificates, Data modelling for 2014 to 2016, Report to the Clean Energy Regulator*, January 2014, page 17



In summary, TVS considers that the above barriers to entry are all factors that are likely to have caused material injury to Tindo during the investigation period and are all unrelated to the export of the Goods from China. Our client therefore respectfully requests that pursuant to section 269TAE(2A) of the Customs Act, the Commission considers whether the barriers to entry in the small-scale solar PV industry during July 2012 have caused injury to Tindo. TVS submits that the barriers to entry in the Australian solar PV industry in 2012 are a factor other than dumping which has caused injury to Tindo. In addition, TVS would expect the above to be addressed in any Statement of Essential Facts issued by the Commission as there is sufficient evidence to warrant further investigation on this matter.

Tindo's PV modules and panels are not like goods to the goods under consideration in the US and European dumping investigations and consideration of whether Tindo manufactures like goods in Australia

Tindo: assembled in Australia?

Given that any findings made by the Commission would need to consider whether the alleged dumping causes injury to a local Australian industry producing or manufacturing “like goods”, TVS submits that it is crucial to confirm whether Tindo produces or manufactures like goods in Australia in the first instance.

Under section 269T(2) of the Customs Act, goods (other than unmanufactured raw products) are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia. In particular, section 269T(3) states that goods will not be considered partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

There is no definition of “substantial process” in the Customs Act. However, guidance is provided by the Commission in its Dumping and Subsidy Manual which states:

*“The conversion of intermediate goods into final goods by virtue of a simple process such as dividing, sorting, **simple assembly**, packaging or labelling may not be regarded as substantial.” [our emphasis]*

Our research shows that Tindo does not wholly manufacture the like goods in Australia, as the majority of the components that form part of the Tindo goods are sourced from overseas suppliers. In particular, Tindo’s own Application states:

“Solar PV cells are imported, this is the basic raw material to which the manufacturing process... is performed in Australia.

The anti-reflective glass, encapsulation material, sealant, polymeric backing sheets, junction boxes, micro-inverter (where applicable) and aluminium extrusion framing materials are all imported.”



This is also outlined in an article published on the CleanTechnica website¹⁷, which states:

“For Silex [an Australian seller of solar panels]..., ‘Made in Australia’ came to mean ‘Assembled in Australia’.

Interestingly, the same could be said about Tindo, which sources its components from overseas and puts them together at its highly automated factory in Adelaide, South Australia... Tindo panels feature module-level Enecsys DC-AC micro-inverters... [the] silicon cells come from German manufacturer Q-Cells, Bridgestone makes the encapsulant, and DuPont makes the backsheets.”¹⁸

Given that Tindo does not wholly manufacture the like goods in Australia, it must be determined whether Tindo partially manufactures the like goods in Australia (i.e. whether a “substantial process” is performed by Tindo in Australia). In this respect, the Application outlines the assembly process conducted by Tindo, which includes:

“The PV modules convert sunlight into electricity. The conversion of sunlight into electricity is operated by photovoltaic cells.

To assemble modules, cells are soldered together with flat wires or metal ribbons to produce a string of cells. Mostly glass is used on top and a polymeric backing sheet to the bottom.

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.”

Based on the above, our client considers that Tindo merely assembles the imported components in Australia. As noted by Tindo in its own Application, the essential function of the Goods is to convert sunlight into electricity and this is performed by the PV cells. Therefore, Tindo’s processes do not add an essential or vital character to the finished product but are merely assembly processes that do not constitute “substantial processes” in manufacture of the goods. Furthermore, many of the functions undertaken by Tindo as part of their “manufacturing” process are also performed by TVS in Australia in relation to the Goods it then sells to customers.

Based on the above, TVS submits that Tindo does not manufacture like goods in Australia (either wholly or partially) for the purposes of the Customs Act and consequently cannot be considered an Australian manufacturer that is injured by alleged dumping.

¹⁷ <http://cleantechnica.com/>

¹⁸ J Martin II, *Australian-Made Tindo Solar Panels to Take on Chinese Giants?*, CleanTechnica, 20 March 2012 (please refer to <http://cleantechnica.com/2012/03/20/australian-made-tindo-solar-panels-to-take-on-chinese-giants/>)



The European and United States solar PV system investigations are not precedent for this investigation

On a related matter, we note that there is a significant difference between the goods under consideration in the current investigation and those under similar anti-dumping cases run by the U.S. International Trade Commission (**USITC**)¹⁹ and the European Commission (**EC**)²⁰. Specifically, the goods under consideration in the USITC and EC cases include PV cells, which have been explicitly excluded by Tindo in its Application given that it imports cells as part of its ‘manufacturing’ process.

In particular, the EC and USITC cases state that the goods under investigation are as follows:

- **EC**

*“The product subject to this investigation is crystalline silicon photovoltaic modules or panels and **cells and wafers** of the type used in crystalline silicon photovoltaic modules or panels. The cells and wafers have a thickness not exceeding 400 µm (‘the product under investigation’).”²¹ [our emphasis]*

- **USITC**

*“Crystalline silicon photovoltaic cells, and modules, laminates, and panels, **consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products**, including, but not limited to, modules, laminates, panels and building integrated materials. **These investigations cover crystalline silicon photovoltaic cells...** whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.”²² [our emphasis]*

It is likely that Tindo has deliberately excluded PV cells from its Application, given that these PV cells are imported by Tindo into Australia. Additionally, TVS considers that it is inconsistent for Tindo to allege dumping on the Goods and exclude PV cells (a key component of the Goods) from the investigation, whilst simultaneously importing the components for mere assembly in Australia.

Given the clear distinction between the goods under consideration in the EC and USITC investigations to the Goods identified by Tindo in its Application, TVS respectfully requests that the Commission does not treat the findings of the EC and USITC administrations as precedent as it considers that these goods are not comparable for the purposes of the investigation.

¹⁹ *Crystalline Silicon Photovoltaic Cells and Modules from China* (Investigation Nos. 701-TA-481 and 731-TA-1190) (December 2011)

²⁰ *Anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China* (AD590)

²¹ *Anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China* (AD590), page 269/5

²² *Crystalline Silicon Photovoltaic Cells and Modules from China* (Investigation Nos. 701-TA-481 and 731-TA-1190) (December 2011), page 5



Market situation

At page 25 of the *Consideration Report 237* in relation to the alleged dumping of PV modules or panels, the Commission states that based on the evidence provided by Tindo in their Application, they consider it appropriate to consider Tindo's market situation claim as part of the investigation.

In our client's view, the information presented in support of the market situation argument is not enough to substantiate the market situation claim by Tindo for the following reasons:

- In *Consideration Report 237*, the Commission refers to the current dumping and subsidisation investigation into silicon metal imported/exported to Australia from China. The Commission notes at page 25 that it is aware that silicon metal is one of the "main raw materials" used in the production of solar PV cells. The Commission goes on to state that its market situation findings in the silicon metal industry in China will be "directly relevant" to the PV modules or panels industry in China. As outlined in the 'Like Goods' section above, Tindo has explicitly excluded solar PV cells from its Application. On this basis, TVS respectfully submits that the Commission's silicon metal finding is not applicable to the determination of a market situation in relation to PV modules or panels exported from China as cells are not included in the goods under consideration for the purposes of this investigation.
- Secondly, TVS agrees with the Commission at page 25 of *Consideration Report 237* in that a "policy loan" provided by the Government of China to manufacturers of PV modules or panels, do not, in itself, confirm that a market situation exists in China. TVS submits however, that loans, regardless of source, are not indicative of pricing or cost distorting factors of production. It is therefore incumbent on the Commission to establish that the loans are not provided by the Government on a reasonable, commercial basis.

As such, TVS considers that based on the above, there is not enough supporting information provided in Tindo's Application to warrant that the normal value in relation to domestic sales in China to be disregarded and therefore a market situation analysis should not be performed by the Commission in relation to the export of PV modules or panels from China.

In the event that the Commission should make a finding that a market situation exists, our client considers that this will unfairly impact on the methodology used to calculate any dumping margins imposed on the PV modules or panels exported from China. TVS also considers that given the price distortions in the Australian solar industry, (e.g. feed-in tariffs, STCs, bundled package supplies of goods and installation services etc.) the Chinese export price should be deemed reliable for the purposes of this investigation.

Furthermore, should the normal value in relation to domestic sales in China be dismissed on a positive finding of a market situation, TVS would expect a more detailed analysis and conclusion to be provided of this finding in the Commission's Statement of Essential Facts.



Summary of position

For the reasons set out above, it is respectfully submitted that the investigation into the alleged dumping of PV modules or panels from China be terminated in accordance with section 269TG of the Customs Act.

This is on the basis of our client's belief that any perceived injury to the Australian industry during the investigation period (or the injury analysis period), as well as any threat or hindrance to the establishment of the Australian industry, is unrelated to the export of PV modules or panels from China, and therefore, the investigation must be terminated. Pursuant to subsection 269TAE(2A) of the Customs Act, our client is of the view that any perceived material injury suffered by Tindo is attributable to factors autonomous to dumping and has not be caused by the exportation of PV modules or panels from China.

In addition, our client requests that provided in the Commission's Statement of Essential Facts in relation to this investigation is a detailed assessment of the following matters:

- the causal factors outlined in this submission which TVS considers are solely attributable to any injury suffered by Tindo during the investigation period;
- whether or not Tindo does manufacture like goods in Australia;
- whether or not a market situation exists in China; and
- acknowledgement that the findings of the European and US administrations in relation to dumping of solar PV systems cannot be treated as precedent in this investigation as the goods under consideration are not comparable for the purposes of the Commission's investigation.

TVS is happy to assist the Commission with the investigation into the alleged dumping of PV modules or panels from China. Please feel free to contact me on (03) 8603 6043 if you have any questions in relation to this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bill Cole', with a stylized flourish at the end.

Bill Cole
Tax & Legal