



**Non-confidential**

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

7 January 2015

**Your reference: ADN 2014/38**

Dear Joanne,

**Certain crystalline silicon photovoltaic modules and panels exported from China**

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

This submission is made in response to the TVS verification visit undertaken by the Commission on 27 June 2014 and the Commission's decision to apply a weighted average dumping margin in respect to the determination of dumping for the investigation. In addition, TVS wishes to reiterate the issues raised in TVS's initial submission dated 23 July 2014 (**the Original Submission**).

**Executive Summary**

TVS respectfully requests that:

- the Commission acknowledge and consider the application of the product margin as the appropriate method for the determination of dumping in this investigation. This is on the basis that fundamentally, there are two distinct types of goods that are subject to this investigation, i.e. PV modules and panels that are made up of poly-crystalline cells, or PV modules and panels that are made up of mono-crystalline cells. This request is also made in light of the Commission's decision to apply a weighted average method to the determination of dumping margins for the investigation. Given the shift in market preference away from mono-crystalline cells during the investigation period to the current market preference for poly-crystalline cells, TVS considers that the Commission's current weighted average approach unduly distorts the resulting dumping margin. To avoid distorting any potential dumping margin calculation, our client submits that a product margin is the most effective way to ensure that any dumping measures imposed in respect to the two different types of goods are reasonable and appropriate in the circumstances;

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- the Commission give due regard to the substantial body of factors autonomous to the export to Australia of PV modules and panels from China that must have caused significant economic harm to the applicant. TVS submits that these other factors are a clear indication that material injury was caused to the Applicant by the Australian solar market conditions during the investigation period, therefore breaking the causal link between the export of the Goods and the alleged injury to Tindo. These other factors include:
  - Tindo entering the market at a time when federal and state based financial incentives for PV modules or panels had been substantially reduced or removed. These incentives were directly responsible for causing market transformation and increased demand for solar PV systems in Australia;
  - Tindo being a new entrant to the contracting Australian solar industry in 2012;
  - global advances in the manufacturing and technology of solar PV systems which have 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;
- the Commission consider the findings in the Australian Government's recent report in relation to the Renewable Energy Target which confirms that the above factors have caused significant decline in the Australian solar PV industry since 2009, including the Government's recommendations for the potential repeal of the financial incentives available for the solar PV industry;
- the Commission provide detailed commentary to substantiate the Commission's view that a substantial process of manufacture is undertaken by the Applicant in relation to the production of Tindo's solar panel system; and
- detailed analysis is provided by the Commission regarding the assertion in *Consideration Report 237* that a market situation exists in China and therefore the normal value in relation to domestic sales in China should be disregarded.

TVS also notes that following publication of this submission, TVS intends to request a meeting with the Commission in order to seek acknowledgement from the Commission that due regard will be given to these matters in the findings published in the Statement of Essential Facts (SEF).



## **A product margin should be applied in order to determine the existence of dumping**

TVS understands that the Commission is proposing to calculate a combined export price for poly-crystalline and mono-crystalline cells via a weighted average method in order to determine the existence of dumping during the investigation period. On the basis of TVS's understanding that demand in the Australian solar panel market has shifted since the investigation period from mono-crystalline cells to a preference for poly-crystalline cells, TVS considers that applying a weighted average method will distort the assessment of the dumping margin.

As a result, the Commission's proposed approach is an issue of critical concern should the Commission make their determination in the SEF of dumping on this basis. Given that the purpose of the Commission's investigation process is to determine whether or not dumping is occurring, it is imperative that the correct analysis in regard to the determination of dumping is applied in order to ensure an appropriate outcome for all interested parties to the investigation.

As stated in section 269TACB of the Customs Act 1901 (**the Customs Act**), the determination of dumping should be applied based on the most appropriate method given the circumstances of each investigation. This is also supported by guidance from the Commission and the WTO in its *WTO Anti-Dumping Agreement*<sup>1</sup> which affirms that there is no one method that is preferred to determine the existence of dumping.<sup>2</sup> Therefore, the determination of dumping must be considered on a case by case basis. TVS submits that given the above legislation and policy guidance regarding the interpretation of the legislation, the Commission's proposed export price calculation and resultant determination of dumping must be considered in light of what is appropriate in the current circumstances.

Based on TVS's understanding of the Australian solar panel market, TVS is of the view that the volume of mono-crystalline PV modules and panels imported into Australia significantly decreased following the investigation period due to a change in market preference for mono-crystalline PV modules and panels. As a result, the lower demand in the Australian market for mono-crystalline cells means that generally, the export price of mono-crystalline cells relative to poly-crystalline cells is lower than the export price of poly-crystalline cells.

Therefore, should the Commission combine the poly-crystalline and mono-crystalline export price to determine a weighted average; the export price of mono-crystalline cells will be artificially lowered given the change in volume of these types of goods.

Given the change in volume of the two types of PV modules and panels imported into Australia since the investigation period, TVS is of the opinion that combining the poly-crystalline and mono-crystalline export price will distort the dumping margin due to the relatively higher constructed normal value and lower export price of mono-crystalline cells when compared to poly-crystalline cells.

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<sup>1</sup> The *Implementation of Article IV of the General Agreement on Tariffs and Trade 1994* and the *WTO Agreement on Subsidies and Countervailing Measures* form the basis of the WTO's Anti-Dumping Agreement

<sup>2</sup> Chapter 20.2, *'Determination of Dumping Margins'* Anti-Dumping Commission, *Dumping and Subsidy Manual* (December 2013), page 114



TVS also understands that on a global scale, demand for mono-crystalline cells is generally lower than that of poly-crystalline cells. Therefore, it is submitted that the mono-crystalline manufacturing lines of the solar manufacturers do not achieve comparable economies of scale to the poly-crystalline manufacturing lines. In addition, it is also generally accepted within the solar industry that the mono-crystalline cell manufacturing process is more expensive than the poly-crystalline process due to the time involved in creating the uniform silicon crystals required for mono-crystalline cells. Therefore, TVS considers that the normal value for mono-crystalline cells is higher than the normal value for poly-crystalline cells.

As a result, the key concern for TVS regarding the proposed weighted average approach is that combining the poly-crystalline and mono-crystalline export price has the potential to misrepresent the export price of the two types of goods by over-representing the relatively lower normal value of the poly-crystalline cells with the higher-value mono-crystalline cells.

It is likely that this approach will inflate the dumping margins in relation to the exporters identified in the investigation and produce outcomes that are not a fair and accurate representation of the pricing of these two types of PV modules and panels. TVS respectfully submits that subject to section 269TACB of the Customs Act, a weighted average approach is not the most appropriate method for the determination of dumping as it does not accurately reflect the circumstances of this investigation.

As an alternative, TVS proposes that in these circumstances, the Commission consider the application of a product margin for the determination of dumping. This is in line with the fundamental principle of 'fair comparison' in relation to the determination of dumping outlined in the *WTO Anti-Dumping Agreement* and in guidance from the Commission.

In particular, the *WTO Anti-Dumping Agreement* outlines that when determining dumping, a fair comparison must be made between the export price and normal value. This is in order for due allowance to be made for differences which affect price comparability in each investigation. This principle is also incorporated into Australia's anti-dumping legislation at sections 269TAC and 269TACB of the Customs Act to enable adjustments to the normal value so that the domestic price can be fairly compared to the export price.

In addition, guidance from the Commission states that to achieve a fair comparison, adjustments should be made to the normal value when there is evidence that a particular difference affects price comparability.<sup>3</sup> The *WTO Anti-Dumping Agreement* provides a non-exhaustive list of differences which may affect price comparability, including, amongst others, **physical characteristics**.

The Commission outlines that adjustments are generally made to achieve fair comparison in relation to differences in physical characteristics, such as production cost differences for different types of goods, including: quality; chemical composition; structure; or design.<sup>4</sup>

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<sup>3</sup> Chapter 14.2, 'Due Allowance' Anti-Dumping Commission, Dumping and Subsidy Manual (December 2013), page 58

<sup>4</sup> Chapter 14.3, 'Due Allowance' Anti-Dumping Commission, Dumping and Subsidy Manual (December 2013), page 61

Therefore, given the principle of fair comparison, both the Customs Act and the Commission have endorsed assessing the determination of dumping via a product margin approach.<sup>5</sup> A product margin can be applied in circumstances where there are different types or models in relation to the nominated good under consideration in order to determine ‘margins of dumping’ for each type or model. In particular, in assessing dumping at the product level, subsection 269TACB(10) of the Customs Act sets out that regard should be given to export volumes:

*“... any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.”*

In the International Trade Remedies Branch *Report No. 175* into the reinvestigation of the aluminium extrusions case (please refer to **ITR 148**), the CEO of the Australian Customs and Border Protection Service concluded that based on the clear differences between the prices of the various finishes of the aluminium extrusions captured under the investigation, it was reasonable to establish a separate ascertained export price for each finish.<sup>6</sup> This was because by combining the export price of the various types of goods, it was likely that the determination of dumping would result in an unduly low ascertained export price for certain ‘high-value’ finishes, therefore misrepresenting the types of goods under investigation.

The reinvestigation into the aluminium extrusions case established the concept that where there is a clear distinction between the price and costs of different types of goods captured under the goods under consideration relevant to the investigation, the correct approach for the determination of dumping is to compare the normal values and export prices of each type of good.

Furthermore, *Report No. 175* held that where there are distinct types of goods with different variable factors, it is both **reasonable** and **appropriate** to impose measures by the distinct subcategories.<sup>7</sup> This is to ensure that the measures are effective in providing relief from the effects of dumping across the categories of the goods.

Analogous to the different types of goods in the aluminium extrusions case, TVS considers that as PV modules and panels can be clearly distinguished between modules and panels made up of either mono-crystalline cells or poly-crystalline cells, it is therefore **reasonable** and **appropriate** to apply a product margin to determine the existence of dumping in this case.

This is also supported by the PV modules and panels *Consideration Report 239* which at page 8 clearly outlines that the Goods subject of the Application fall into two subcategories:

*“... composed of ... the two key species of silicon crystalline cells ... poly crystalline and mono crystalline silicon cells”.*

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<sup>5</sup> Please refer to Chapter 20.3, ‘Determination of Dumping Margins’ Anti-Dumping Commission, Dumping and Subsidy Manual (December 2013) at page 116 for more information on product margins

<sup>6</sup> International Trade Remedies Branch, *Report No. 175 - Reinvestigation of Certain Findings in Report No. 148 Regarding Certain Aluminium Extrusions Exported from China*, page 37

<sup>7</sup> International Trade Remedies Branch, *Report No. 175 - Reinvestigation of Certain Findings in Report No. 148 Regarding Certain Aluminium Extrusions Exported from China*, page 37



Consideration Report 237 goes on to describe the differences in the physical characteristics of the two types of goods in terms of structure and design:

- *mono-crystalline*: consists of silicon in which the crystal lattice of the entire solid is continuous and will generally require less space than a poly-crystalline cell in order to produce the same energy output; and
- *poly-crystalline*: composed of a number of smaller crystals and consists of multiple small silicon crystals).<sup>8</sup>

Given the clear differences in terms of physical characteristics between poly and mono-crystalline cells and precedent established in relation to the aluminium extrusions investigation to impose dumping measures in relation to different types of goods according to the distinct subcategories, TVS submits that it is both reasonable and appropriate to determine dumping via a product margin in these circumstances. On this basis, TVS respectfully requests that subject to section 269TACB of the Customs Act, the Commission acknowledge and consider the application of the product margin as the most reasonable and appropriate method for the determination of dumping in this investigation.

**Factors autonomous to the export of PV modules and panels from China are the material cause of the injury to the Applicant to the investigation**

As set out in detail in TVS's Original Submission, 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.

In addition and further to subsection 269TAE(2A) of the Customs Act, TVS wishes to emphasise that the Commission **must** have regard to factors other than the export of the PV modules and panels from China in making their findings and recommendation to the Minister in the SEF. Subsection 269TAE(2A) has been recently upheld by Justice Mortimer in the Federal Court of Australia in the decision of *GM Holden Limited v Commissioner of the Anti-Dumping Commission [2014] FCA 708* which confirmed at paragraph 148 that:

*"...Other factors need to be considered to ensure that their impact is not wrongly attributed to dumping, but I do not consider that the legislation imposes a requirement to calculate the quantitative impact of each separate factor individually."*

Despite Justice Mortimer suggesting that the other factors do not need to be assessed for their quantitative impact, it is clear that Justice Mortimer recognises and emphasises that other factors must be considered in determining whether the injury was caused by the export of the identified goods or from other factors.

In particular, as outlined in TVS's Original Submission, there is a substantial body of publically available evidence confirming that factors other than the export of PV modules and panels to Australia by Chinese exporters has resulted in the perceived injury to the Applicant to the investigation.

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<sup>8</sup> Anti-Dumping Commission, 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*, page 8



Significantly, it is TVS's view these other factors are the principal and sole cause of Tindo's alleged injury (and not the perceived dumping of the PV panels and modules from China). These other factors include:

- Tindo entering the market at a time when federal and state government 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.

Please refer to TVS's Original Submission for detailed consideration of these other factors.

In addition to the above, during 2014, the Australian government performed a review of the Renewable Energy Target (**RET**) in order to obtain advice on whether the objectives of the RET scheme are still appropriate, including the options for financial incentives in relation to alternative energy sources. The findings of this review were published on 15 August 2014 and included the recommendation that the small-scale renewable energy scheme (the current scheme that provides incentives for the small-scale solar PV systems) be either removed in its entirety or wound back through an accelerated phasing-out of the scheme.<sup>9</sup>

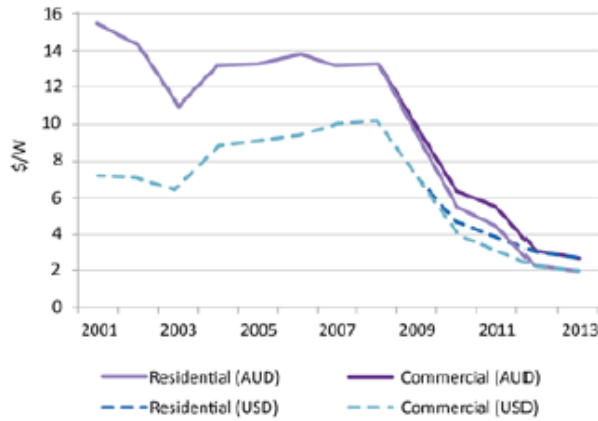
The RET Report also comments on the state of the Australian solar industry with reference to the phasing out, or removal of, the state based feed-in tariffs causing installations of residential solar PV systems to fall by approximately 40% in since January 2013.<sup>10</sup> Furthermore, the Report states that the costs of rooftop solar PV systems has also declined rapidly since 2009 which reflects the global decline in the PV module costs together with the strong Australian dollar and is illustrated in the below diagram:

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<sup>9</sup> Commonwealth of Australia, *Renewable Energy Target Scheme, Report of the Expert Panel*, August 2014, Executive Summary, page iv

<sup>10</sup> Commonwealth of Australia, *Renewable Energy Target Scheme, Report of the Expert Panel*, August 2014, Executive Summary, page 65

**Figure 1: Average solar PV system price<sup>11</sup>**



Source: Bloomberg New Energy Finance

The RET Review has been comprehensively covered in the Australian media due to the broad ranging impacts of the RET to the Australian economy, environment and society. In particular, the Review has highlighted other factors which have, and may continue to, cause injury to Tindo and the Australian solar PV industry. The Review confirms that these factors are the principle cause of any injury experienced by Tindo. TVS submits that these other factors have broken the causal link between the export of the PV modules and panels from China and the injury incurred by Tindo. This is supported by comments made by Tindo in relation to the RET Review, including:

- “The long-term stable framework of the RET policy has provided the confidence for Tindo to establish the solar PV manufacturing plant in 2012”;<sup>12</sup>
- “An abolishment of the SRES (small-scale renewable energy scheme) will see a full scale collapse of the Australian PV market and the loss of thousands of jobs”;<sup>13</sup>
- “An abolishment of the SRES has serious implications for Tindo Solar and will most likely result in the cessation of manufacturing solar panels in Australia with the associated loss of jobs”;<sup>14</sup>
- “Tindo has invested significantly on the back of the RET and any reforms need to be carefully considered given the investment made by Tindo and the broader renewable energy industry”;<sup>15</sup> and

<sup>11</sup> Commonwealth of Australia, *Renewable Energy Target Scheme, Report of the Expert Panel*, August 2014, Executive Summary, page 65

<sup>12</sup> Tindo Solar, *RET Review Submission*, 16 May 2014, page 2

<sup>13</sup> Tindo Solar, *RET Review Submission*, 16 May 2014, page 4

<sup>14</sup> Tindo Solar, *RET Review Submission*, 16 May 2014, page 5

<sup>15</sup> Tindo Solar, *RET Review Submission*, 16 May 2014, page 5



- Tindo’s claims that:
  - the potential repeal of the RET will “*kill the solar panel and wind industries*”;<sup>16</sup>
  - the likelihood that Tindo will not survive if the RET is reduced;<sup>17</sup> and
  - the Australian solar panel PV industry has been “*knee-capped*” as a result of the RET Review<sup>18</sup>.

In summary, the above are all factors autonomous to the export of PV modules and panels from China which confirm that the Australian solar panel industry has been going through an ongoing period of decline which is predicted to continue into the immediate future with the impact of the potential repeal and/or phase-out of the RET. Given the extensive amount of information currently available in this regard, it is simply not possible to review the state of the Australian solar PV industry without taking the above market conditions into serious consideration.

This submission seeks to reiterate that subject to subsection 269TAE(3)(ii) of the Customs Act, the Commission **must** have regard to any submissions made prior to the publication of the SEF in respect to the investigation **whilst also** having due regard to factors autonomous to the export of the Goods under consideration from China as listed in TVS’s Original Submission. On this basis and given the significant impact these factors have had on the PV module and panel industry in Australia during the investigation period, as well as the injury analysis period, TVS respectfully submits that mere statements in the SEF will not be acceptable to discount this significant body of evidence.

### **Insufficient information currently available to substantiate that the Applicant to the investigation meets the manufactured in Australia threshold required by the Australian dumping legislation**

Currently, based on all available information, it is not certain that Tindo meets the manufactured in Australia threshold required by the Australian dumping legislation and guidance set out by the Commission.<sup>19</sup> TVS considers that an assessment of Tindo’s solar panel production process against the substantial manufacturing process requirement under the Customs Act is necessary in order to establish whether Tindo meets this legislative test. If Tindo does not meet this test, TVS requests that the investigation be terminated on the basis that Tindo does not meet the manufacturing threshold required by Australia’s anti-dumping legislation.

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<sup>16</sup> <http://www.tindosolar.com.au/2014/08/solar-energy-subsidy-slashed-93/>

<sup>17</sup> <http://www.businessspectator.com.au/news/2014/9/2/solar-energy/tindo-solar-fears-end-ret-reduction>

<sup>18</sup> <http://www.theguardian.com/world/2014/sep/21/ret-uncertainty-threatens-further-blow-to-south-australian-industry>

<sup>19</sup> Chapter 1.2, ‘Applying for Anti-Dumping or Countervailing Notices’ Anti-Dumping Commission, Dumping and Subsidy Manual (December 2013), page 5

TVS notes that it raised this issue during the Commission’s verification visit of TVS on 27 June 2014 and subsequently in its Original Submission. Furthermore, the Tindo verification report (published after the publication of the TVS Original Submission), does not provide any further information to establish whether Tindo qualifies as an Australian producer on the basis that it performs a substantial manufacturing process in relation to the Goods.

To summarise TVS’s position in its Original Submission, TVS considers that Tindo merely assembles solar PV systems in Australia on the basis of the following evidence:

- the majority of the components that form part of the Tindo’s solar PV systems are sourced from overseas suppliers, including: solar PV cells, anti-reflective glass, encapsulation material, sealant, polymeric backing sheets, junction boxes, micro-inverter (where applicable) and aluminium extrusion framing materials;
- Tindo’s Application which simply states that Tindo’s process “*to assemble modules*” is to solder cells “... *together with flat wires or metal ribbons to produce a string of cells*”. A frame is then added to allow for installation and an inverter may or may not be attached (the application of an inverter will depend on the particular installation);
- many of the functions undertaken by Tindo as part of their “manufacturing” process are also performed by TVS in Australia in relation to the PV modules and panels TVS sold to its customers;
- an article published on the CleanTechnica website stating that Tindo’s solar PV systems can be regarded as ‘Assembled in Australia’ rather than ‘Made in Australia’<sup>20</sup>; and
- the investigations in the US, Europe and India in relation to the alleged dumping of solar PV systems explicitly include both photovoltaic crystalline cells and modules/panels as the nominated goods under consideration. In these investigations, it is generally accepted that the modules and panels are a ‘value-add’ to the more complicated photovoltaic cell. In particular, the Indian Ministry of Commerce stated at paragraph 16 (ii) of its Final Findings into the alleged dumping of certain solar panels from China, Malaysia, Chinese Taipei and the USA:

*“A solar module/panel is nothing but a packaged, connected assembly of solar cells which would render generation of electricity through photovoltaic technique. It is also noted that **there is no major value addition or major manufacturing process involved in placing cells on a module/panel**. Submissions on record of the Authority show that a lot of module manufactures are importing cells from subject countries and are assembling them into modules. Authority holds that Cells and Modules are not different products as modules or panels are nothing but an array of cells to make the practical use of cells.”<sup>21</sup>[**Emphasis added**]*

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<sup>20</sup> <http://cleantechnica.com/2012/03/20/australian-made-tindo-solar-panels-to-take-on-chinese-giants/> (accessed 3 November 2014)

<sup>21</sup> Government of India, Ministry of Commerce & Industry, Department of Commerce, (Directorate General of Anti-Dumping and Allied Duties), Notification, Final Findings, 22 May 2014, page 24



Given the above information, TVS considers that Tindo merely assembles the imported components in Australia and does not perform a substantial manufacturing process in relation to the Goods. As noted by Tindo in its own Application, the essential function of the Goods subject to the Application 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 the manufacture of the Goods.

TVS submits that in accordance with subsection 269TAE(3)(ii) of the Customs Act, the Commission must have regard to any submissions made prior to the publication of the SEF in respect to the investigation. On this basis, TVS expects that evidence is produced to contradict the above assessment of Tindo's 'manufacturing' capability and capacity in the SEF in order to satisfy the substantial process of manufacture required in order to validate the investigation.

### **Further evidence is required to substantiate the market situation claim**

At page 25 of the *Consideration Report 237*, 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.

Currently, TVS considers that 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.

Subject to subsection 269TAE(3)(ii) of the Customs Act, the Commission must have regard to any submissions made prior to the publication of the SEF in respect to the investigation. Therefore, in light of this submission and TVS's Original Submission, TVS expects that clear evidence is provided to make a finding that a market situation exists in China in relation to the Goods subject to the investigation given that the price distortions in the Australian solar industry (e.g. feed-in tariffs, STCs, bundled package supplies of goods and installation services etc.) should deem the Chinese export price reliable for the purposes of this investigation.

### **Summary of position**

In support of TVS's Original Submission and 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 been caused by the exportation of PV modules or panels from China.



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

- the applicability and appropriateness of the product margin for the determination of dumping in this investigation given the two different types of goods subject to the investigation;
- the causal factors outlined in this submission autonomous to the alleged dumping which TVS considers are solely attributable to any injury suffered by Tindo during the investigation period;
- the findings in the Government's RET Report in relation to the solar PV industry and in particular, the impact to the industry following either the repeal and/or phasing-out of the scheme;
- 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, US and Indian administrations in relation to dumping of solar PV systems consider that photovoltaic modules and panels and crystalline cells are treated as one product and therefore these investigations cannot be treated as precedent as the goods under consideration are not comparable for the purposes of the Commission's investigation.

As always, TVS is pleased 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', written in a cursive style.

Bill Cole  
Tax & Legal