

Australian Government Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 239

ALLEGED DUMPING OF CERTAIN CRYSTALLINE SILICON PHOTOVOLTAIC MODULES OR PANELS

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

7 April 2015

SEF 239 Certain Crystalline Silicon Photovoltaic Modules or Panels - China

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ABBREVIATIONS

\$ or AUD	Australian dollars	
AC	Alternating current	
ACBPS	Australian Customs and Border Protection Service	
ADN	Anti-Dumping Notice	
CCCME	Chinese Chamber of Commerce for Import and Export of Machinery and Electronic Products	
CFR	Cost and freight	
China	The People's Republic of China	
CIF	Cost, Insurance & Freight	
CON 239	Consideration Report Number 239	
СТМ	Cost to make	
CTMS	Cost to make & sell	
DC	Direct current	
EN	ET Solar Energy Limited	
ET Solar	TT, EN and NY	
ET Solar Australia	ET Solar Australia Pty Ltd	
FOB	Free On Board	
GAAP	Generally accepted accounting principles	
GOC	Government of China	
INV	Investigation	
Investigation Period	1 July 2012 to 31 December 2013	
NIP	Non-injurious price	
NY	ET Energy Co. Limited	
OCOT	Ordinary Course of Trade	
PAD	Preliminary Affirmative Determination	
PV modules or panels	Crystalline photovoltaic modules or panels	
ReneSola Australia	ReneSola Australia Pty Ltd	
ReneSola Jiangsu	ReneSola Jiangsu Limited	
Renesola Ltd	ReneSola Australia, ReneSola Jiangsu, ReneSola Zhejiang	
ReneSola Zhejiang	ReneSola Zhejiang Limited	
RMB	Chinese Yuan Renminbi	
SEF	Statement of Essential Facts	
SG&A	Selling, general and administrative expenses	
Suntech	Wuxi Suntech Power Co. Ltd	
Suntech Australia	Suntech Power Australia Pty Ltd	
TAU	Trina Solar (Australia) Pty Ltd	
TCZ	Changzhou Trina Solar Energy Co.,Ltd	

TED	Trina Solar Energy Development PTE Ltd	
the Act	Customs Act 1901	
the applicant or Tindo	Tindo Manufacturing Pty Limited	
the Commission	The Anti-Dumping Commission	
the Commissioner	the Commissioner of the Anti-Dumping Commission	
the Dumping Duty Act	the Customs Tariff (Anti-Dumping) Act 1975	
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC), in this case, certain crystalline photovoltaic modules or panels	
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science	
Trina Solar	TCZ, TST, TED, TSH and TAU	
TSH	Trina Solar Energy (Shanghai) Co., Ltd	
TST	Trina Solar (Changzhou) Science and Technology Co., Ltd	
ТТ	ET Solar Industry Limited	
USP	Unsuppressed Selling Price	
W	Wattage (or watts)	

1 SUMMARY AND RECOMMENDATIONS

This statement of essential facts (SEF) relates to the Anti-Dumping Commission's (the Commission's) investigation into allegations by Tindo Manufacturing Pty Ltd (Tindo) that dumped crystalline silicon photovoltaic modules or panels (PV modules or panels, or the goods) exported to Australia from the People's Republic of China (China) have caused material injury to the Australian industry producing like goods.

This SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to terminate this investigation.

1.1 Findings

The Commissioner has found that:

- PV modules or panels exported from China during the period 1 July 2012 to 31 December 2013 (the investigation period) were exported at dumped prices; but
- the injury to the Australian industry or the hindrance to the establishment of an Australian injury that has been, or may be, caused by those exports is negligible.

Based on these findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to terminate the investigation under subsection 269TDA(13) of the *Customs Act 1901*(the Act)¹.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

1.2.2 Application

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

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application².

1.2.3 Initiation of investigation

After examining the application, the Commissioner was satisfied that:

• there is an Australian industry in respect of like goods³; and

¹ All legislative references in this report are references to the Act unless otherwise stated.

² Subsection 269TB(1)

 there appears to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.⁴

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 14 May 2014.⁵

1.2.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows⁶, place a statement of the essential facts on which the Commissioner proposes to base his recommendation⁷.

In formulating the SEF, the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the investigation, and he may have regard to any other matters he considers relevant⁸.

The SEF was originally due to be placed on the public record on 1 September 2014. On 20 August 2014, the Parliamentary Secretary granted a 65 day extension to the date by which the SEF must be placed on the Public Record. Two further extensions of 120 days and 30 days have since been granted by the Parliamentary Secretary.

The due date for this SEF to be placed on the public record was on or before 4 April 2015, which falls on a weekend, therefore the due date for placement of the SEF on the public record is the next working day, being 7 April 2015.

1.3 Findings and conclusions

The Commission has made the following findings and conclusions based on available information at this stage of the investigation.

1.3.1 The goods and like goods (Chapter 3 of this report)

Locally produced PV modules or panels are like to the goods the subject of the application.

The Commission has received a number of submissions from interested parties seeking an exemption from any anti-dumping measures in relation to certain goods under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act). Based on the proposal to terminate the investigation the Commission has not made an assessment of these submissions at the time of this SEF.

³ Subsection 269TC(1)(b)

⁴ Subsection 269TC(1)(c)

⁵ Subsection 269TC(4)

⁶ Subsection 269ZHI

⁷ Subsection 269TDAA(1)

⁸ Subsection 269TDAA(2)

1.3.2 Australian industry (Chapter 4 of this report)

The Commission has found that there is an Australian industry producing like goods.

1.3.3 Australian market (Chapter 5 of this report)

The Commission considers that the Australian market for PV modules or panels is supplied by the Australian industry and imports, predominantly from China.

1.3.4 Dumping investigation (Chapter 6 of this report)

The Commission found that PV modules or panels exported to Australia from China during the investigation period were dumped. The volume of dumped goods, and the dumping margins, were not negligible.

The Commission found the following dumping margins:

Exporter / Manufacturer	Preliminary product dumping margin	
Trina Solar Ltd	4.0%	
ET Solar Ltd	3.0%	
Wuxi Suntech Ltd	8.7%	
Renesola Ltd	2.1%	
Residual Exporters	3.9%	

1.3.5 Economic condition of the industry (Chapter 7 of this report)

The Commission has found that, during the investigation period, the Australian industry producing like goods experienced injury in the form of:

- lost sales volume (to the wholesale sector only);
- price depression;
- price suppression; and
- reduced profit and profitability.

1.3.6 Causation (Chapter 8 of this report)

The Commission found that the injury, to the Australian industry or the hindrance, to the Australian industry's establishment, caused by PV modules or panels exported to Australia at dumped prices is negligible. This finding was based on an assessment of all relevant factors; however the Commission attached significant weight to:

- the size of the dumping margins found, relative to the quantum of the price undercutting by dumped imports;
- Tindo's primary product offering being alternating current (AC) PV modules or panels, which are a premium model and priced significantly higher than the imported direct current (DC) PV modules or panels; and

• changes in the PV modules or panels market in Australia during the injury analysis period.

1.3.7 Non-injurious price (Chapter 9 of this report)

The Commission found that injury or hindrance to the establishment of an Australian industry caused by dumped exports is negligible; therefore the Commission has not calculated a non-injurious price (NIP) for the purpose of this SEF.

2 BACKGROUND

2.1 Initiation

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

Following consideration of the application, the Commissioner decided not to reject the application and the Commissioner initiated an investigation on 14 May 2014. Public notification of the initiation of the investigation was made in *The Australian* newspaper on that day.

Anti-Dumping Notice (ADN) No. 2014/38 provides further details of the investigation and is available on the Commission's website at <u>www.adcommission.gov.au</u>.

In respect of the investigation:

- the investigation period for the purpose of assessing dumping is 1 July 2012 to 31 December 2013; and
- the injury analysis period is from 1 January 2010 to 31 December 2013.

2.2 Previous cases - Australia

There have been no previous investigations into alleged dumping in respect of PV modules or panels exported to Australia.

2.3 Responding to this SEF

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. However, it is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses before making a final decision to terminate the investigation or to submit a final report to the Parliamentary Secretary. If the Commissioner decides to submit a final report to the Parliamentary Secretary, that report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable. If the Commissioner does not terminate the investigation he must report to the Parliamentary Secretary by 19 May 2015⁹.

Responses to this SEF should be received by the Commissioner no later than <u>27 April 2015</u>. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the

⁹ Section 269TEA

Commissioner, prevent the timely termination or preparation of the report to the Parliamentary Secretary¹⁰.

Submissions should preferably be emailed to operations3@adcommission.gov.au. Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 3 Anti-Dumping Commission Customs House 5 Constitution Avenue CANBERRA ACT 2601 AUSTRALIA

'For Official Use Only' (Confidential) submissions must be clearly marked accordingly and a Public Record version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's website <u>www.adcommission.gov.au</u>.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification visit reports and other publicly available documents. It is available by request in hard copy in Canberra or Melbourne (phone (02) 6275 8008 to make an appointment), or online at <u>www.adcommission.gov.au</u>

Documents on the Public Record should be read in conjunction with this SEF.

¹⁰ Subsection 269TDAA(3)

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commission considers that locally produced PV modules or panels are like goods to the goods the subject of the application.

The Commission has received a number of submissions from interested parties in relation to the exclusion of certain goods from the investigation and any resulting anti-dumping measures due to them not being considered to be like goods as described below, or due to them being eligible for an exemption from those measures under the Dumping Duty Act.

Because the Commissioner proposes to terminate this investigation, the Commission has not assessed the applications for exemption at the date of this SEF.

3.2 The goods

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

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

Exclusions:

The following product types are excluded:

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

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

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

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

Mono-crystalline cells

- made from a single crystal of silicon and are more expensive to produce than poly-crystalline cells because mono-crystalline wafers are cylindrical in shape and when produced (wafers cut in octagonal shape), there is loss of material;
- require more rigid framework and specialised adhesives, with larger panels being more costly and more fragile¹¹; and
- are considered to be more efficient than poly-crystalline cells.

Poly-crystalline cells

- also referred to as multi-crystalline cells
- are effectively multiple silicon cells made from wafers which are rectangular in shape. The cells are square in shape therefore there is no loss of wafers and they are less expensive to produce than mono-crystalline cells; and
- have an efficiency of approximately two-thirds of the efficiency gained by mono-crystalline cells^{8.}

PV modules or panels produced using mono-crystalline and poly-crystalline cells are the goods the subject of this application.

Alternating and direct current PV modules or panels

The two forms of power generated by the two different types of PV modules or panels are AC and DC. The differences between the AC and DC PV modules or panels are discussed below:

- AC modules or panels are ready to be plugged into the grid by the use of an on-board micro-inverter. The micro-inverters add to the price of the panel because each PV module requires a separate micro-inverter. AC PV modules or panels are therefore more expensive and are considered to be a 'premium' product to DC PV modules or panels;
- the in-built micro-inverters used in the AC PV modules makes each module independent in the panel¹² and feeds electricity directly into the electricity grid (as illustrated in Figure 2 below);
- each AC PV module can be removed from the panel and repaired individually in the event of any damages or any performance issues with a particular module and/or micro-inverter while other modules used in the panel continue to operate normally;

¹¹ IBISWorld Industry Report OD4042 Solar Panel Installation in Australia

¹² A solar panel (or array) is a set of PV modules connected and mounted on a supporting structure.

- AC PV modules or panels are considered to be more flexible with regards to installation on varied roof designs, intermittent shading areas etc;
- DC PV modules or panels are connected to a separate single inverter that converts the electricity generated to AC power;
- given that DC PV panels require a single inverter for multiple PV modules connected in 'series' in a panel, the price of DC PV modules or panels is lower than AC PV modules or panels;
- the disadvantage of DC PV modules or panels is that in an event of any damages or any performance issues with a particular module and/or the inverter, the whole system needs to be disconnected leading to loss of electricity produced by the other functioning modules in the panel.

Figures 1 and 2 below demonstrate how the AC and DC modules fulfil the same enduse, with either an on-board or stand-alone inverter.



Figure 1 – DC PV modules



Figure 2 – AC PV modules

Both AC and DC PV modules or panels are included in the description of the goods.

3.3 Tariff classification

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

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

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

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

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

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

3.4 Like goods legislation framework

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

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

An Australian industry can apply for relief from injury caused by dumped imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

i. physical likeness;

- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.5 Like goods assessment

From the available information, the Commission has identified that Tindo is the sole Australian producer of the 'like goods' (the 'Australian industry'). Section 4 of this report discusses the Commission's findings regarding 'like goods' manufactured by the Australian industry.

The Australian industry manufactures a range of PV modules or panels measured in terms of power output (wattage) that are either currently produced, or are certified to be produced by Tindo. The goods description does not limit the goods under consideration to PV modules or panels of particular power output. The goods currently produced by Tindo that are slightly above or slightly below the complete range of power output possible are considered to be 'like' goods even though they produce slightly higher or lower power output. This is because the number of PV modules or panels can be varied to achieve the same level of power output.

The Commission has assessed, based on the information currently before it, that Tindo has demonstrated the following in relation to PV modules or panels:

(i) <u>Physical likeness</u>

PV modules or panels manufactured by Tindo generally have the same rectangular shape, dimensions and appearance as those imported. Tindo's PV modules or panels predominately include micro-inverters (AC modules), whilst the imported panels are without the inverters (DC modules). All PV modules or panels are required to meet the same standards in order to be installed in the Australian market for the end-use application.

(ii) <u>Commercial likeness:</u>

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

(iii) <u>Functional likeness</u>

The imported PV modules or panels and the Australian produced PV modules or panels are put to the same end-use, which is to convert sunlight to electricity. Although different panels may have different power outputs (for example some PV modules have an on-board micro-inverter while some are connected to an inverter), the primary function remains the same being the generation of 240 Volts AC power.

(iv) Production likeness

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

Based on the above assessments, the Commission is satisfied that the Australian industry produces like goods to the goods the subject of the application, as defined in subsection 269T of the Act.

3.6 Interested party claims – the goods, like goods and requests to exempt goods

The Commission has received submissions from various interested parties throughout the investigation relating to particular imported goods that should be exempted from antidumping measures due to the Australian industry not producing like or directly competitive goods to those imported.

The submissions have claimed that:

- PV modules or panels producing power output greater than or equal to 300 watts should be excluded from the investigation based on the following reasons:
 - PV modules or panels with power output of 300 watts and above are predominantly ground-mounted and are used for utility projects by large scale solar farms; and
 - Tindo did not produce, and is not certified by the Clean Energy Regulator to produce, PV modules or panels with power output of 300 watts and above.
- (ii) the following PV modules or panels producing power output less than or equal to 200 watts should be excluded from the investigation because Tindo does not manufacture such PV modules or panels:
 - PV modules or panels with power output of less than or equal to less than 200 watts are predominantly used for charging 12 Volt lead-acid batteries that are used for recreational and outdoor activities such as camping, caravanning, marine etc.; and
 - PV modules or panels used to generate electricity for 'stand-alone' power systems such as electric gates, irrigation flume gates for use by farmers, illuminated signage for roads etc.

Because the Commissioner is proposing to terminate the investigation, the Commission has not considered these submissions in detail at the time of placing the SEF on the public record.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

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

The Commission has found that there is an Australian industry consisting of Tindo that produces like goods in Australia.

4.2 **Production process**

In May 2014, a verification team from the Commission undertook a visit to Tindo's premises and manufacturing facility in Mawson Lakes, South Australia. The verification team observed Tindo's production process of PV modules or panels to be as follows:

- cells are loaded into the Tabbing Machine; which then automatically picks up, positions and solders the cells into strings;
- the Lay-up machine arranges the strings into the required panel configuration;
- the Bussing machine utilises robotics to solder the ribbons to the front and back of the cell. The automation process is extremely precise and monitors pre-heating and soldering temperatures to ensure a consistent and reliable electrical connection;
- the cells are then positioned on glass and a sheet of Ethylene Vinyl Acetate (EVA). A second layer of EVA is cut, positioned and taped into position over the cells;
- a back-sheet cutter/loader cuts the back-sheet which is placed on the panel and holes are cut in the back-sheet for the junction box connection;
- Electroluminescence (EL) testing is undertaken for all PV modules or panels to ensure that any cells defects are detected;
- the laminator heats the panel and cures two sheets of EVA on the panel;
- after laminating, a visual inspection is undertaken where the operator exposes the panel to light and checks for visible defects.;
- an aluminium frame is pressed onto the panel and an operator installs the junction box to the rear of the module;
- a PV Simulation Test is then undertaken to ensure that the panel is generating power as rated to its specifications;
- for AC modules , an operator then attaches a micro-inverter to the rear of the panel and connects to the junction box; and
- the panel is ready for dispatch after the final good is recorded in the daily production record register.

Tindo produces both AC and DC PV modules or panels using the above manufacturing processes. The only difference is that the AC PV modules or panels are ready to be plugged into the grid by the use of an on-board micro-inverter, while the DC PV module or panels needs to be connected to a separate inverter that converts the energy generated to AC power as detailed in section 3.2 of this report.

The Commission is satisfied that Tindo is the sole producer of PV modules or panels in Australia. Accordingly, the Australian industry consists of Tindo alone.

4.3 Interested party claims

The Commission has received submissions from various interested parties throughout the investigation claiming that Tindo does not partly manufacture or carry out a substantial process of manufacturing the PV modules or panels in Australia as all the major raw materials are sourced from overseas, predominantly from China.

Based on the Commission's inspection of Tindo's manufacturing plant and the production processes discussed above, the Commission is satisfied that at least one substantial process of manufacture is performed in Australia and that therefore the goods are produced in Australia.

5 AUSTRALIAN MARKET

5.1 Finding

The Commission has found that the Australian market for PV modules or panels is supplied by the Australian industry and imports, predominantly from China.

5.2 Background

The Commission considers that the PV modules or panels market in Australia is primarily driven by the residential and commercial sectors. PV modules or panels are supplied by imports from China (over 89 per cent during the investigation period), Singapore, Germany, Korea and other countries and local production by Tindo. Tindo did not import any PV modules or panels during the investigation period.

5.2.1 Type of PV cells

As discussed in Section 3 of this report, there are two types of cells, being poly-crystalline cells and mono-crystalline cells, used to manufacture PV modules or panels. Towards the end of the investigation period there was a clear shift in exporters to Australia moving away from mono-crystalline cells (as they are more expensive) to poly-crystalline cells. Tindo used only poly-crystalline PV cells to produce PV module or panels during the investigation period.

5.2.2 AC and DC PV modules or panels

As detailed in Section 3 of this report, the two forms of power generated by the two different types of PV modules or panels are AC and DC. The Australian industry predominantly produces AC PV modules or panels, which are more expensive compared to DC PV modules or panels due to various advantages as discussed in this report. None of the four selected exporters in this investigation exported AC PV modules or panels to Australia during the investigation period. The Commission is unable to discern from descriptions in the ACBPS import database whether any other exporters exported AC PV modules or panels to Australia.

5.3 Market structure

5.3.1 Australian production

The application was lodged by Tindo, the sole Australian manufacturer of like goods.

Tindo is a newly established Australian company that commenced sales in July 2012. Tindo manufactures the goods while its related entity, Tindo Solar Pty Ltd (Tindo Solar), is responsible for the sale of the goods into the residential sector of the Australian market. Another related entity, Tindo Commercial Pty Ltd (Tindo Commercial), is responsible for the sale of the goods into the commercial sector of the Australian market

Tindo submitted detailed financial data in its application for the investigation. The Commission undertook verification of this data with Tindo.

5.3.2 Importers

The Commission performed a search of ACBPS' import database and identified around 500 potential importers of PV modules or panels.

The Commission identified six major importers (by volume) and sought their cooperation with the investigation through the completion of an Importer Questionnaire. Five of those importers fully cooperated with the Commission's request, and verification visits were undertaken. These importers are as follows:

- Renesola Australia Pty Ltd;
- Solargain PV Pty Ltd;
- Solar Juice Pty Ltd;
- Trina Solar Ltd; and
- True Value Solar Pty Ltd.

The Commission estimates the above importers collectively account for approximately 28 per cent of the volume of the goods imported from China during the investigation period.

5.4 Market size and share

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

The Commission attempted to cleanse the ACBPS import data by filtering the description of the goods by 'solar panels', 'arrays', and 'modules'. The Commission then eliminated all goods with unit prices less than \$100 and greater than \$2,000 to eliminate imports that the Commission considered would clearly not be the goods based on their price.

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

The sales data submitted by Tindo in relation to its own sales has been verified by the Commission, as outlined in the Australian industry verification report (available on the Commission's website). This sales data was found to be complete, relevant and accurate.

Figure 3 indicates the volume of sales (units) for PV modules or panels from 1 January 2010 to 31 December 2013 using ACBPS import database and Tindo's sales volume (units) from 1 July 2012 to 31 December 2013.



Figure 3: Sales volume (units) of PV modules or panels

Figure 3 illustrates that the sales of PV modules or panels peaked in 2012 and declined in 2013.

The Commission has estimated Tindo's share of the Australian market to be less than one per cent during the investigation period.

5.5 Market segmentation and end use

The Australian PV modules or panels market is split into the commercial¹³ sector and the residential sector. The commercial sector can be distinguished between the following segments:

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

According to the Green Energy Markets - Report to the Clean Energy Regulator December 2014, approximately 85 per cent of PV modules or panels installed in Australia during the investigation period were to the small-scale residential sector and the remaining was to the commercial sector.¹⁴

5.6 Government Support

The Federal, State and Territory governments provided policies and incentives to

¹³ For the purpose of this SEF, the commercial sector includes the industrial sector

¹⁴ Green Energy Markets report – December 2014

encourage the development of clean energy sources such as energy generated by PV modules or panels and wind towers in Australia.

5.6.1 Feed-in-Tariffs

Feed-in tariffs (FITs) are a form of payment for the electricity that is put back into the electricity grid. The FIT rates vary between the States and Territories.

The FIT rates started to decline from 2010 and major State and Territory governments have recently abolished FIT incentives as shown in Figure 4 below.



Figure 4 – Feed-in-Tariff from 2010 to 2013¹⁵

The Commission considers that the reduction of FIT rates by the various States and Territories had a direct negative impact on the PV modules or panels market in Australia.

¹⁵ State and Territory Government websites

5.6.2 Other forms of incentives

(i) Renewable energy targets (RET) - the Federal Government's renewable energy target¹⁶ has been in operation since 2001. In 2009, the RET was increased to ensure renewable energy comprised 20 per cent (up from 2 per cent), or about 41,000 gigawatt (GW) hours of electricity supply in Australia, by 2020.

The RET comprises two components: the Small-scale Renewable Energy Scheme (which supports the installation of small-scale renewables like roof top solar panels and solar hot water systems) and the Large-scale Renewable Energy Target (which creates incentives for the establishment of renewable power stations, such as solar, wind and hydro-electric).

The RET scheme is designed to provide financial incentives to both large-scale renewable power stations and the owners of small-scale systems to create renewable energy certificates for every megawatt hour of power generated. The number of RET certificates, peaked in 2012 and then began to decline in line with the declining PV modules or panels market.

(ii) Small-scale Technology Certificates (STC) - are a tradable commodity attached to eligible installations of renewable energy systems, such as PV modules or panels, solar water heaters etc. When an eligible system is installed, a number of STCs can be claimed by residential households or commercial businesses depending on the geographic location, the kind of system being installed and the size of the system.

The number of STC's in all States and Territories other than Tasmania and the Northern Territory peaked in 2011 and then began to decline.

(iii) Rebates - the Federal Government provided rebates of up to \$8,000 for installing PV modules or panels on homes and community buildings (other than schools), through the 'Solar Homes and Communities Plan'. In June 2009 this program was replaced by the 'Solar Credits Program'.

Schools were eligible to apply for grants of up to \$50,000 to install 2kW solar panels under the '*National Solar Schools Program*¹⁷ from July 2008 to November 2012. This program was abolished in November 2012.

(iv) Subsidy funding - in 2009, the 'Solar Flagships program' was established. Through this program \$1.6 billion was set aside by the Government for the construction and demonstration of large-scale grid-connected solar power stations in Australia. While the funding is still available, the Commission is not aware of any successful projects that benefitted from this program.

¹⁶ previously known by 'the mandatory renewable energy target'

¹⁷ This program was later replaced by 'Green Vouchers for Schools program'

5.7 Interested party claims

Several interested parties claimed Tindo entered the PV modules or panels market when demand for PV modules or panels had started to decline, mainly due to the phasing out of the FITs across all states. Furthermore the submissions claimed that Chinese exporters involved in the investigation are the largest producers of PV modules and panels in the world and are hence able to take advantage of economies of scale and technological efficiencies.

As a result of the incentives described in section 5.6, in particular the introduction of the FITs, the small-scale PV modules or panels industry grew significantly from 2009 to 2010. However the phasing out of the various tariffs/rebates resulted in PV modules or panels installations falling by 5 per cent in 2012 and a further 40 per cent in 2013. The Commission notes that Tindo entered the market in July 2012, when the various incentives and tariff schemes were either reducing or were abolished.

6 DUMPING INVESTIGATION

6.1 Findings

The Commission found that PV modules or panels exported to Australia from China in the investigation period were dumped and that the volume of dumped goods was not negligible.

The Commission's calculations of export prices, normal values and dumping margins in respect of PV modules or panels are at **Confidential Appendix 1.**

6.2 Introduction

6.2.1 Volume of exporters

Prior to initiation of this investigation, a preliminary search of ACBPS' import database identified a large number (around 500) of Chinese suppliers of the goods during the investigation period.

6.3 Selection of exporters

Subsection 269TACAA(1) of the Act states that where the number of exporters from a particular country in relation to the investigation is so large that it is not practicable to examine the exports of all those exporters, an investigation may be carried out on the basis of information obtained from an examination of a selected number of those exporters who are responsible for the largest volume of exports to Australia that can be reasonably examined.

From the ACBPS import database the Commission identified that the percentage of the export volume to Australia represented by the top four exporters is around 35 per cent. The individual export volumes by the remaining suppliers each represented 2 per cent or less of the total export volume from China.

The top four exporters were selected for examination and asked to complete an exporter questionnaire. The Commission has, as provided under Section 269TACAA, used the information analysed for the selected exporters to make findings as to whether all other exporters have dumped the goods exported to Australia during the investigation period.

The Commission classified all exporters from China other than the four selected exporters as 'residual' exporters.

Detailed information about the exporter sampling process used for this investigation is in the Sampling Report which is available on the Commission's website.

6.3.1 Selected exporters

The exports of the following four exporters of PV modules or panels from China were selected for examination:

• Renesola Jiangsu Ltd;

- Trina Solar Ltd;
- ET Solar Energy Limited; and
- Wuxi Suntech Power Co. Ltd.

These four exporters are considered to be responsible for the largest volume of exports to Australia that can reasonably be examined.

The Commission invited these exporters to complete an Exporter Questionnaire containing necessary information to determine whether the goods were exported at dumped prices.

The Exporter Questionnaire sought information regarding the exporters' commercial operations and the goods exported to Australia, as well as information regarding the exporters' foreign and domestic sales, relevant costing information and information relevant to the assessment of whether a market situation exists.

All four of these selected exporters fully cooperated with the investigation and submitted responses to the Exporter Questionnaire within the required timeframe.

The Commission visited all four selected exporters between September and December 2014 to verify the data submitted by these exporters in their Exporter Questionnaire response, and to identify and verify any other information relevant to this investigation. The verification reports for each of the exporters are available on the Commission's website.

The Commission used the exporters' Exporter Questionnaires and information gathered and verified during the Commission's verification visits to determine dumping margins for each selected exporter.

6.3.2 Residual exporters

Subsection 269T(1) of the Act defines a residual exporter as:

...

an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the exporter's exports were not examined as part of the investigation, review or inquiry; and
- (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

For the purposes of this investigation, the Commission considers that residual exporters are all exporters of PV modules or panels from China during the investigation period, other than the four selected exporters named in section 6.3.1 of this report. The residual exporters were under no obligation to complete the Exporter Questionnaire.

Subsection 269TACAA(2) provides that if information is submitted by an exporter not initially selected for the purpose of an investigation, the investigation must extend to that exporter unless to do so would prevent the timely completion of the investigation.

The following eight residual exporters provided questionnaire responses to the Commission within the required timeframe:

- Shanghai JA Solar Technology Co., Ltd;
- Hefei JA Solar Technology Co., Ltd;
- Econess Energy Co., Ltd;
- Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company;
- Simax (Suzhou) Green New Energy Co., Ltd;
- Jiangsu Seraphim Solar System Co., Ltd;
- Wuxi C.A.N. Import & Export Co., Ltd; and
- Ningbo Qixin Solar Electrical Appliance Co., Ltd.

Given the high number of residual exporters seeking individual dumping margins and the timeframe for completion of the investigation, the Commission considers that making individual assessments of dumping for each of the eight exporters that completed a questionnaire would prevent the timely completion of the investigation.

Therefore, all exporters who provided information in response to the exporter questionnaire that were not selected to be part of the sample are considered residual exporters. In calculating dumping margins for residual exporters (including the residual exporters who did not opt to complete the exporter questionnaire), the Commission will not calculate:

- export prices that are less than the weighted average of export prices for cooperative exporters, excluding those export prices from cooperative exporters whose dumping margins were less than 2 per cent¹⁸, and
- normal values that exceed the weighted average of normal values for cooperative exporters, excluding those normal values from cooperative exporters whose dumping margins were less than 2 per cent¹⁹.

6.4 Particular market situation

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

¹⁸ In accordance with subsections 269TACAB(2)(c) and (3)(b)

¹⁹ In accordance with subsections 269TACAB(2)(d) and (3)(b)

Generally, the Commission calculates the normal value of the goods as the price for like goods sold for home consumption in the country of export (subsection.269TAC(1) of the Act refers)²⁰.

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

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

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

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

6.4.1 Tindo's market situation claims

In its application, Tindo submitted that domestic prices of PV modules or panels in China are not suitable for the determination of normal values under subsection 269TAC(1) of the Act, as a particular market situation in relation to those goods renders those domestic selling prices unsuitable.

Tindo submitted that the Government of China's (GOC) involvement in the Chinese domestic PV modules or panels industry has materially distorted competitive conditions in China in terms of the GOC providing 'policy loans' and credit facilities by the state owned Chinese banks at preferential rates that do not take into account commercial risk and prudential lending practices that otherwise applied in the Chinese capital credit market. Tindo claimed that this has resulted in a particular market situation making PV modules or panels prices in the Chinese domestic market unsuitable for normal value purposes.

6.4.2 The Commission's assessment

The only evidence provided by Tindo in support of its market situation claims was in relation to the provision by the GOC of 'policy loans' to manufacturers of PV modules or panels. In its investigations of the selected exporters, the Commission did not find any evidence that suggests that the alleged 'policy loans' were provided by the GOC to the manufacturers of PV modules or panels that created a market situation such that the domestic selling prices of the PV modules or panels in China would not be suitable for normal value.

In its consideration report for this investigation (CON 239) the Commission considered that one of the main raw materials used in the production of solar PV cells is silicon metal. At that time the Commission was also investigating the alleged dumping and

²⁰ This price is subject to adjustments under subsection 269TAC(8) of the Act to ensure any differences do not affect the comparison with the export price.

subsidisation of silicon metal exported to Australia from China (Investigation number 237 (INV 237) refers). The applicant in that investigation alleges that the selling price of silicon metal in China is not suitable for the purpose of assessing the normal value of silicon metal sold in China. In CON 239 the Commission suggested that the findings in INV 237 may be relevant to the assessment of market situation in relation to PV modules of panels.

However, during its investigations with the selected exporters and from information gathered during the course of the investigation, the Commission found that for the silicon metal case the subject raw materials were 'metallurgical grade silicon' which is different to 'solar grade silicon'.

In its submission, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) stated that metallurgical grade silicon normally contains 89 per cent to 99 per cent of silicon while solar grade silicon requires a purity of 6N which has at least 99.99 per cent silicon. The CCCME also stated that the metallurgical grade silicon is mainly used by aluminium producers and the chemical industry while solar grade silicon is used for PV products and by the semiconductors industry. The Public Record version of the CCCME's submissions is at the Commission's website.

At the time of publishing this SEF, the Commission had not received any submissions from interested parties disputing CCCME's claims. The Commission considers that the findings in INV 237 are therefore not relevant to its assessment of market situation in this investigation.

Based on the above assessment, the Commission found no evidence that the GOC's involvement in the Chinese domestic PV modules or panels industry has materially distorted competitive conditions in China such that the domestic selling prices of the PV modules or panels would not be suitable for normal value.

6.5 Dumping margins for selected exporters

6.5.1 Trina Solar

Trina Solar comprises a number of different entities. During the investigation period Changzhou Trina Solar Energy Co., Ltd (TCZ) and Trina Solar (Changzhou) Science and Technology Co., Ltd (TST) manufactured and sold PV modules or panels in the domestic market predominately through a related domestic trading company, Trina Solar Energy (Shanghai) Co., Ltd (TSH) and exported PV modules or panels to Australia through another two related trading companies, Trina Solar Energy Development PTE Ltd (TED) and Trina Solar (Australia) Pty Ltd (TAU).

Having considered that TCZ, TST, TSH, TED and TAU (together referred to as Trina Solar) are related entities, the Commission combined the data for all these related entities together for the purpose of analysis and the calculation of a dumping margin.

Export price

The Commission considers that;

- (i) in respect of export sales to Australia during the investigation period where TED purchased from TCZ and TST:
 - the goods have been exported to Australia otherwise than by the importer;
 - the goods have been purchased by the importer from the exporter;
 - the purchases of the goods by the importer were not arms length transactions; and
 - the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not an associate of the importer.

For these sales export prices have been established under subsection 269TAB(1)(b) of the Act, being the price at which the goods were sold by the importer less the prescribed deductions as set out in subsection 269TAB(2) of the Act; and

- (ii) in respect of export sales to Australia during the investigation period via TED and TAU:
 - the goods have been exported to Australia otherwise than by the importer; and
 - the goods have not been purchased by the importer from the exporter.

For these sales export price has been established under subsection 269TAB(1)(c) of the Act, having regard to all the circumstances of the exportation, being the invoice price at which the goods were sold by TED or TAU to unrelated customers less prescribed deductions.

Normal value

Section 269TAC(1) of the Act states that 'subject to this section, for the purpose of this Part, the normal value of any goods exported to Australia is the price paid or payable for <u>like goods sold in the ordinary course of trade [emphasis added]</u> for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods'.

Section 269TAC(8) of the Act states that 'where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported... (a) relate to sales occurring different times; or (b) are not in respect of identical goods.... that price paid or payable for like goods is to be taken to be such a price adjustment in accordance with directions by the Minister so that those differences would not affect its comparison with that export price'.

Poly-crystalline PV Modules

The Commission found sufficient volumes of poly-crystalline PV modules or panels sold in the domestic Chinese market by Trina Solar that were sold in the ordinary course of trade (OCOT) and were arms length transactions. Therefore, the normal value for poly-crystalline PV modules or panels sold to unrelated parties was established in accordance with subsection 269TAC(1) of the Act.

The Commission made adjustments to export inland freight and to the goods directly sold by TCZ (upward adjustment) in accordance with subsection 269TAC(8), to ensure a fair comparison of normal values with export prices.

Mono-crystalline PV Modules

The Commission found that there were insufficient volumes of mono-crystalline PV modules or panels sold by Trina Solar in the domestic market that were in OCOT.

The Commission considers mono-crystalline PV modules to be 'like goods' to the polycrystalline PV modules. Therefore the normal value of mono-crystalline PV modules was calculated by adjusting the selling price of poly-crystalline PV modules by:

- adding the quarterly cost to make and sell difference between poly-crystalline and mono-crystalline PV modules (USD per watt) during the investigation period; and
- adding an amount of profit to that cost difference, based on the profit on sales of all like goods in OCOT.

Dumping margin

The dumping margin for Trina Solar was established in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Trina Solar is 4.0 per cent.

6.5.2 Trina Solar's submission

In a submission²¹ to the Commission following publication of its verification visit report²² Trina Solar claims that:

- (i) the Commission has found no evidence that the sales between TCZ/TST and TED/TAU were non-arm's length transactions;
- (ii) an excessive rate of profit has been used by the Commission when calculating the deductive export price using TED and TAU sales to unrelated customers;
- (iii) part of the data has been omitted when calculating the export price;
- (iv) the weighted average cost difference between the poly-crystalline and mono- crystalline PV modules or panels should be calculated as an annual amount over the investigation period and not on a quarterly basis as determined by the Commission; and

²¹ Public Record version of Trina Solar's submission dated 16 March 2015

²² Trina Solar's verification visit report was published on the Commission's website on 10 March 2015

(v) an excessive amount of profit has been used by the Commission when calculating normal value for mono-crystalline PV modules or panels under section 269TAC(1) of the Act.

The Commission has considered the issues raised by Trina Solar in its submission as discussed below:

(i) Non-arm's length transactions between TCZ/TST and TED/TAU

The Commission found that the sales between TST/TCZ and TED/TAU are non-arm's length transactions for the reasons discussed in the exporter visit report (section 4.7 of the visit report). As discussed in the report the selling and administration expenses in relation to the sales made by TAU on behalf of TED were reimbursed by TCZ. The report also discussed that the income statement for FY2013 and for the 6 months to 31 December 2012 indicated that sales of PV modules or panels imported and sold by TAU and by TED in the Australian market during the investigation period were not profitable.

On 4 November 2014, subsquest to the Commission's verification visits, Trina Solar provided additional information in respect of the sales of PV modules or panels to unrelated Australian customers by TAU/TED that were sourced from TCZ/TST. That additional information included the purchase quantity (watts) and purchase price (USD) on a transaction by transaction basis. This was new information. Trina Solar did not provide any source documents in relation to those purchases such as invoices or proof of payments. In addition, in Trina Solar's calculation of the profitability of the sales by TAU/TED it did not include any SG&A expenses in relation to those sales. The Commission does not consider the information provided with the submission warrants an amendment to the original methodology applied.

In accordance with s269TAA(2), for the reasons outlined in the exporter visit report, the Commission considers that the sale of the imported PV panels by TAU and TED at a loss should be treated as indicating that the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit in respect of the whole or part of the price. Pursuant to s269TAA(1) the Commission has therefore treated the export sales between TCZ/TST and TED/TAU as not being at arms' length.

(ii) excessive rate of profit has been used by the Commission when calculating the deductive export price

Subection 269TAB(2)(c) of the Act states that the amount added should be "...the profit, if any, on the sale by an importer or, where the Minister directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate of profit on the sale by the importer".

Since TED and TAU are related entities to TCZ/TST, and the Commission found that the sales between the related entities are non-arms length, the profit used in the calculation was based on an average amount of profit of three importers that were unrelated to their suppliers. Trina Solar claims that the profit of a similar importer, meaning one that sells to distributors only, should be

used. The Commission considers the average profit achieved by the three importers adequately and appropriately reflects a profit that could be derived in transactions between parties at arms length.

(iii) Error in the calculation of export price due to Omission of some data

As noted in section 6.5.1 of this report and also detailed in Trina Solar's exporter visit report, the company exported PV modules or panels through various channels. The Commission found that data provided in the spreadsheet for TED's export sales of product manufactured by TST appears to be duplicated in the sales spreadsheets provided for TED and TAU as importers. The data in the two spreadsheets suggests that the 'customer details', 'date of sale', 'quantity' and 'value' of some of the sales closely resemble each other. To further confirm this the Commission compared the total number of PV modules or panels exported as per the ACBPS import database, with the volume set out in the various export sales spreadsheets of the Trina Solar entities. If the sales data that Trina Solar claims has been omitted is added to the existing export volumes used by the Commission in its calculation, the total imports exceeds the volume in the import database by approximately 13 per cent. Therefore, the Commission does not consider that any data has been omitted when calculating the export price.

(iv) cost difference to be calculated over the investigation period

The Commission considers that it is reasonable to calculate the normal value of mono-crystalline PV modules by adding the quarterly CTMS difference between poly-crystalline and mono-crystalline PV modules (USD per watt) during the investigation period because there are fluctuations in the unit costs of mono-crystalline PV modules or panels in different quarters during the investigation period. The unit costs for the mono-crystalline PV modules were significantly lower towards the end of the investigation period than compared to the beginning of the investigation period.

(v) Amount of profit used to calculate normal value

Regulation 181A(2) states that "... the Minister must, if reasonably possible, work out the amount [of profit] by using data relating to the production and sale of <u>like goods</u> [emphasis added] by the exporter or producer of the goods in the ordinary course of trade."

As discussed in this report, poly-crystalline PV modules or panels are like goods to mono-crystalline PV modules or panels. The Commission therefore determined the profit using the profit on all sales of like goods (polycrystalline and monocrystalline) in the ordinary course of trade in the domestic market during the investigation period.

6.5.3 Renesola

Renesola Jiangsu is wholly owned by ReneSola Zhejiang. ReneSola Jiangsu manufactures the PV modules or panels which are sold on the domestic and export

markets by ReneSola Jiangsu and ReneSola Zhejiang. ReneSola Zhejiang and ReneSola Jiangsu are together referred to as Renesola for the purpose of this SEF.

The Commission combined the data for both the related entities together for the purpose of analysis and the calculation of a dumping margin.

Export price

The Commission considers that, in respect of export sales to Australia by Renesola during the investigation period:

- the PV modules or panels have been exported to Australia otherwise than by the importer;
- the PV modules or panels have been purchased by the importer from the exporter; and
- the purchases of the PV modules or panels by the importer were arms length transactions.

The export price has been established in accordance with subsection 269TAB(1)(a) of the Act, as the price paid by the importer less transport and other costs arising after exportation.

Normal value

Poly-crystalline PV Modules

The Commission found sufficient volumes of sales of poly-crystalline PV modules or panels sold in the domestic market were in the OCOT and were arms length transactions. Therefore the normal value for poly-crystalline PV modules or panels was established under subsection 269TAC(1) of the Act.

The Commission deducted the domestic inland freight costs, credit cost and added a weighted average cost for export handling and a weighted average bank charge for export sales. These adjustments were made in accordance with subsection 269TAC(8) of the Act to ensure comparability of normal values with export prices.

Mono-crystalline PV Modules

The Commission found insufficient volume of mono-crystalline PV modules or panels sold in the domestic market were in the OCOT. Therefore, for the purpose of the visit report the normal values of mono-crystalline PV modules were established in accordance with subsection 269TAC(2)(c) of the Act using Renesola's quarterly weighted average cost to make and sell data for mono-crystalline PV modules and an amount for Renesola's OCOT profit. The dumping margin established in the visit report was -0.3 per cent.

Revised Methodology

Following the publication of the verification visit report, the Commission re-considered the methodology used by the visit team to calculate normal value for mono-crystalline PV modules or panels.

The Commission considers mono-crystalline PV modules to be 'like goods' to the polycrystalline PV modules. Therefore, the normal value of mono-crystalline PV modules was re-calculated by adjusting the selling price of poly-crystalline PV modules or panels using the quarterly CTMS difference, as a percentage, between poly-crystalline and monocrystalline PV modules.

Dumping margin

The dumping margin for Renesola was established in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Renesola is 2.1 per cent.

6.5.4 Australian Industry's submission

In a submission²³ to the Commission following the publication of Renesola's verification visit report²⁴ the Australian industry claims that:

- (i) the Commission has erred in its calculation of the dumping margin by not taking into account the intercompany relationships of Renesola's business structure and possible manipulation of inter-company prices for inputs; and
- (ii) in its recent findings, the US Department of Commerce found 'errors' in the calculation by Renesola of 'labour hours' used in the production of PV modules or panels and as such the US did not use Renesola's reported 'labour factor of production' in its calculations.

In relation to the inter-company transactions between members of the Renesola group, the Commission is satisfied that it has appropriately tested and accounted for relevant transactions. While the detail of Renesola's costs is confidential, the Commission is satisfied based on its verification that there has been no manipulation of the cost of inputs to the manufacture of PV modules or panels by Renesola.

The visit report sets out the Commission's verification of Renesola's labour costs as reported in its Exporter Questionnaire response. The Commission is satisfied that the labour costs are a complete and accurate reflection of the labour costs recorded in Renesola's financial records, which have been audited.

In its submission Australian Industry also referred to the dumping margins found by other administrations. The Commission considers that the dumping margins found by the US and the European Commission, and the preliminary findings by Canada, cannot be directly compared with the Commission's findings. This is due to significant differences between those administrations' and Australia's approach to assessing dumping margins for exports from China.

²³ Public Record version of Tindo's submission dated 23 March 2015

²⁴ Renesola's verification visit report was published on the Commission's website on 11 February 2015

6.5.5 ET Solar

ET Solar Industry Limited (TT) is the manufacturer of the goods and sells the goods in the domestic market through a related trading entity ET Energy Co., Limited (NY). All exports to Australia were through another related entity ET Solar Energy Limited (EN). TT, NY and EN are together referred to as ET Solar for the purpose of this SEF.

The Commission combined the data for all the related entities together for the purpose of analysis and the calculation of a dumping margin.

Export price

The Commission considers that, in respect of export sales to Australia during the investigation period:

- the PV modules or panels have been exported to Australia otherwise than by the importer; and
- the goods have not been purchased by the importer from the exporter.

The export price has been established in accordance with subsection 269TAB(1)(c) of the Act, being the price that the Minister determines having regard to all the circumstances of the exportation. The Commission used the invoice price at which the goods were sold by EN to unrelated customers less prescribed deductions.

Normal value

The Commission found that the domestic sales data provided by ET Solar was not reliable and could not be used for the purpose of determining normal value in accordance with subsection 269TAC(1) of the Act. The Commission considered using the weighted average domestic selling price (per watt) of the other three selected exporters cooperating in this investigation. In comparing this weighted average price with ET Solar's weighted average domestic selling price as presented in its questionnaire response, the Commission found that, except in respect of quarter two of 2013 for poly-crystalline PV modules, the weighted average domestic selling prices.

The Commission used the domestic selling data provided by ET Solar in its questionnaire response for determining normal value because the data, although considered unreliable, did not offer any advantage to ET Solar when compared with the alternative method available under the Act to establish normal values.

Poly-crystalline PV Modules

The Commission found sufficient volumes of sales of poly-crystalline PV modules or panels sold in the domestic market were in the OCOT and were arms length transactions. Therefore the normal value for poly-crystalline PV modules or panels was established under subsection 269TAC(1) of the Act.

The Commission noted that for Quarters 3 and 4 of 2012 and Quarter 1 of 2013 there were no sales in the domestic market of poly-crystalline PV modules. The visit team used

the actual CTMS as a basis for normal value and made no further adjustments as the selling price of those modules was lower than the CTMS in other quarters.

Revised Methodology

Following the publication of the verification visit report, the Commission re-considered the methodology used by the visit team and re-calculated the normal values for those quarters where there were no domestic sales by indexing the prices for actual domestic sales based on movements in the CTMS.

The Commission made appropriate adjustments to selling, general and administrative expenses and inland freight in accordance with subsection 269TAC(8) of the Act to ensure comparability of normal values with export prices.

Mono-crystalline PV Modules

The Commission found an insufficient volume of mono-crystalline PV modules or panels sold in the domestic market were in the OCOT.

While mono-crystalline PV modules or panels are considered to 'like goods' to the polycrystalline PV modules or panels in accordance with subsection 269TAC(1) of the Act, the Commission found it unsuitable to establish the normal value for mono-crystalline PV modules or panels under subsection 269TAC(1) of the Act by adjusting the selling price of poly-crystalline PV modules. This is due to the following reasons:

- while approximately 90 per cent of the PV modules or panels exported to Australia were manufactured by ET Solar, the remaining 10 per cent were Original Equipment Models²⁵ (OEM) models. No cost information regarding those sales was provided; and
- the cost differential between poly-crystalline and mono-crystalline PV modules does not appear to have any direct correlation to the price for the models that were manufactured and sold in the domestic market (and exported to Australia) by ET Solar during the investigation period.

Therefore normal values of mono-crystalline PV modules or panels were established in accordance with subsection 269TAC(2)(c) of the Act using ET Solar's quarterly weighted average cost to make and sell data for mono-crystalline PV modules and an amount for ET Solar's OCOT profit.

The constructed normal value was made comparable to an export price by making any appropriate adjustments in accordance with subsection 269TAC(9), for differences in SG&A costs between domestic and export sales and inland freight.

Dumping margin

The dumping margin for ET Solar was established in accordance with section 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the

²⁵ OEM models are manufactured by other manufacturers under the specifications provided by ET Solar

whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for ET Solar is 3.0 per cent.

6.5.6 ET Solar's submission

In a submission²⁶ to the Commission following publication of its verification visit report²⁷ ET Solar claims that:

- SG&A data provided to the Commission at the time of the visit for TT and NY included inland transportation and VAT, therefore SG&A adjustments made by the Commission need to be revised using the revised data provided with the submission;
- (ii) the normal value calculated for TT should not include EN's SG&A expenses;
- (iii) ocean freight and inland transport costs listed in the Australian sales data provided to the Commission during the visit includes VAT, therefore the Commission's export price needs to be revised using the revised data (excluding VAT) provided with the submission; and
- (iv) for the normal value calculation for poly-crystalline PV modules or panels, the CTMS should deduct the weighted average inland freight (per watt, excluding VAT) of the domestic sales on delivered terms first, and then add inland delivery (excluding VAT) to the FOB Point.

The Commission has considered the issues raised by ET Solar in its submission as discussed below.

In relation to items (i) and (iii) above, ET Solar did not provide any evidence to support its claims for these amendments. The Commission has therefore not considered these claims.

In relation to items (ii) and (iv) above:

- *Item (ii)*: EN's SG&A's expenses have not been included in the calculation of normal value for TT. A small adjustment was made to make TT's domestic sales comparable to export sales given that all exports were through a related entity, EN; and
- *Item (iv)*: as discussed above, the methodology used to calculate the normal value for the poly-crystalline PV modules or panels as set out in the visit report, has been revised by the case management team. In addition, no further evidence was provided that the inland fright included VAT therefore no further adjustment has been made.

²⁶ Public Record version of the ET Solar's submission dated 10 March 2015

²⁷ ET Solar's verification visit report was published on the Commission's website on 3 March 2015

6.5.7 Wuxi Suntech Power Co., Ltd (Wuxi Suntech Ltd)

Export price

The Commission considers that;

- (i) in respect of export sales to Australia during the investigation period to unrelated Australian customers:
 - the goods have been exported to Australia otherwise than by the importer;
 - the goods have been purchased by the importer from the exporter; and
 - purchases of the goods by the importer were arms length transactions.

The export price for these sales has been established in accordance with subsection 269TAB(1)(a) of the Act, as the price paid by the importer less transport and other costs arising after exportation; and

- (ii) in respect of export sales to Australia during the investigation period to Suntech Australia:
 - the goods have been exported to Australia otherwise than by the importer;
 - the goods have been purchased by the importer from the exporter; and
 - purchases of the goods by the importer were not arms length transactions; and
 - the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not an associate of the importer.

The export price for those sales has been established in accordance with subsection 269TAB(1)(b) of the Act, being the price at which the goods were sold by the importer less the prescribed deductions.

Normal value

Mono-crystalline and Poly-crystalline PV Modules

The Commission found sufficient volumes of mono-crystalline and poly-crystalline PV modules or panels that were sold in the domestic Chinese market in the OCOT and that were arms length transactions. Therefore, normal values for mono-crystalline and poly-crystalline PV modules were established in accordance with subsection 269TAC(1) of the Act.

The Commission made adjustments to export inland freight, in accordance with subsection 269TAC(8), to ensure a fair comparison of normal values with export prices.

Dumping margin

The dumping margin for Suntech was established in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the

whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Suntech is 8.7 per cent.

6.5.8 Wuxi Suntech's submission

In a submission²⁸ to the Commission following publication of its verification visit report²⁹ Wuxi Suntech claims that:

- (i) The normal value for the mono-crystalline PV modules or panels should be constructed;
- (ii) Suntech Australia was not an importer and did not bear any importation cost during the investigation period, therefore when calculating the deductive export price no importation cost should be deducted;
- (iii) the deduction of average SG&A amount is incorrect; and
- (iv) since Suntech Australia was not an importer during the investigation period, no profit should be deducted.

The Commission has considered the issues raised by Wuxi Suntech in its submission as discussed below:

(i) normal value for the mono-crystalline PV modules or panels

Wuxi Suntech claims that the normal value for the mono-crystalline PV modules or panels should be established in accordance with TAC(2)(c) of the Act for the following reasons:

- the majority of the mono-crystalline PV modules or panels were sold at a loss and were not in the OCOT;
- the normal value for mono-crytalline PV modules or panels was based on the remaining (very small proportion) sales that were not representative of the domestic sales or the domestic market prices. These sales also had very high profits; and
- the Act does not prescribe when the Commission might disregard domestic sales and construct normal value if the volume of sales in OCOT exceeds the 5 per cent sufficiency threshold. However, the Dumping and Subsidy Manual provides an example of a situation where it is acceptable to calculate normal value using constructed costs even when there is a sufficient volume of sales in the OCOT.

²⁸ Public Record version of the Wuxi Suntech's submission was published on the Commission's website on 26 March 2015.

²⁹ Wuxi Suntech's verification visit report was published on the Commission's website on 4 March 2015

For Wuxi Suntech, the Commission found that there was a sufficient volume of mono-crystalline PV modules or panels sold in the ordinary course of trade in the Chinese domestic market. Therefore, the Commission established normal value of mono-crystalline PV modules or panels in accordance with subsection 269TAC(1) of the Act as discussed in section 6.5.6 of this report.

The Commission considers that the reason provided by Wuxi Suntech does not warrant the normal value of the mono-crystalline to be established under a different methodology.

(ii) Other issues

The other issues in the submission are related to Suntech Australia being regarded as an importer during the investigation period. The Commission considered the additional confidential information provided by Wuxi Suntech and Suntech Australia.

Based on its assessment of that information, the Commission considers that Suntech Australia is the importer of the goods during the investigation period and that the export sales between Wuxi Suntech and Suntech Australia are not arms length.

The Commission calculated the export price from the sales made by Suntech Australia to unrelated customers under subsection 269TAB(1)(b) (deducting an amount of importation cost, SG&A and profit). For export sales made directly to unrelated customers by Wuxi Suntech, the Commission considered those sales to be arm's length and calculated the export price under subsection 269TAB(1)(a).

Importation costs

From the selected documents examined by the Commission, importation costs were paid by Suntech Australia for some of the imports, while for others, Suntech Australia claims that importation costs were paid by its customers. However no evidence was provided. Therefore, based on the evidence provided, importation costs are assume to have been paid by Suntech Australia and were deducted when calculating the export price under subsection 269TAB(1)(a).

SG&A expenses

Wuxi Suntech and Suntech Australia suggest that SG&A expenses should be calculated using Suntech Australia's financial report for the FY2013 for the sales of PV modules or panels and using the quantity (watts) exported by Wuxi Suntech.

The Commission considers that it is not reasonable to use the total export volume (watts) of Wuxi Suntech in order to calculate the SG&A expense associated with Suntech Australia's sales of PV modules or panels in the Australian market. The revenue derived by Suntech Australia from its activities that relate to other export sales of Wuxi Suntech has been included in the denominator used by the Commission to calculate the SG&A ratio. The Commission considers that the SG&A has therefore been appropriately apportioned over all Suntech Australia's

revenue-generating activities, including those not associated with its own sales in Australia.

Profit

Since the Commission considers Suntech Australia to be the importer of the goods, a profit (using the average profit of three importers that are unrelated to their supplier) was deducted to calculate the export price in accordance with subsection 269TAB(1)(b) of the Act.

6.6 Determination of dumping margins for residual exporters

Export price

The export price for the residual exporters has been established in accordance with section 269TAB(3) of the Act, being the price that the Minister determines having regard to all relevant information. The Commission used the weighted average export price of the four selected exporters³⁰.

Normal value

Mono-crystalline and Poly-crystalline PV Modules

The normal values for mono-crystalline and poly-crystalline PV modules were established in accordance with subsection 269TAC(6) of the Act, being the normal value that the Minister determines having regard to all relevant information. The Commission used weighted average normal value of the four selected exporters³¹.

Dumping margin

The dumping margin for residual exporters has been determined as a comparison between the weighted average of export prices with the corresponding weighted average normal values in accordance with subsection 269TACB(2)(a).

The dumping margin for residual exporters is 3.9 per cent.

6.7 Volume of dumped exports

Pursuant to subsection 269TDA(3) of the Act, the Commissioner must terminate the investigation, in so far as it relates to the country, if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period.

As outlined in earlier in this report, the Commission estimated the size of the Australian market.

³⁰ In accordance with subsection 269TACAB(2)(c)

³¹ In accordance with subsection 269TACAB(2)(d)

Based on this information, the Commission is satisfied that, when expressed as a percentage of the total imported volume of the goods, the volume of dumped goods from China was greater than three per cent of the total import volume and is therefore not negligible.

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Findings

Having regard to the information contained in the application and verified during the Commission's verification visit with Tindo, the Commission considers that the Australian industry has experienced injury in the form of:

- lost sales volume (to the wholesale market only);
- price depression;
- price suppression; and
- reduced profit and profitability.

7.2 Approach to injury analysis

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

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

7.2.1 Cost data

As discussed in Section 6.5 of the Australian industry's visit report, the Commission found that Tindo's cost to make and sell data was a reasonably complete, relevant and accurate reflection of the actual costs to manufacture and sell PV modules or panels during the period 1 July 2012 to 31 December 2013. Although Tindo's sales commenced from July 2012, it incurred the majority of its establishment costs in periods prior to this. The Commission is satisfied that the cost to make and sell data for the investigation period is not adversely affected by the inclusion of start-up costs.

Accordingly the Commission found that Tindo's costs to make and sell data was suitable for analysing the economic performance of its PV modules or panels operations from 1 July 2012 to 31 December 2013.

7.2.2 Sales data

The Commission considered that Tindo's sales data, as provided as part of its application and verified by the Commission, was a reasonably complete, relevant and accurate reflection of the sales of PV modules or panels during the period 1 July 2012 to 31 December 2013.

Accordingly, the Commission found that Tindo's sales data was suitable for analysing the economic performance of its PV modules or panels operations from 1 July 2012 to 31 December 2013.

7.3 Legislative framework

Under section 269TG of the Act, one of the matters that the Minister must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury to an Australian industry has been, or is being, caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered.

7.4 Commencement of injury, and analysis period

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

Tindo submitted that the sale of like goods produced by the Australian industry has remained unprofitable since its establishment. Furthermore Tindo submitted that it sold the goods below the cost of production to enter the market that was predominantly supplied by China.

As specified in CON 239, the Commission has set the investigation period as 1 July 2012 to 31 December 2013, and the period for assessing the condition of the Australian industry from 1 January 2010 to 31 December 2013.

7.5 Volume trends

7.5.1 Sales Volume

Tindo has not claimed injury from loss of sales volume. The data provided shows that its overall sales have grown since its establishment in July 2012. However, Tindo stated that its sales to wholesalers have declined in the investigation period. As a result of this decline Tindo submits that it was forced to change its business strategy to start marketing and supplying directly to residential and commercial customers. During the investigation period around 20 per cent of Tindo's total sales of PV modules or panels (by volume) were to wholesalers.

Tindo provided sales data for its top 20 wholesale customers during the investigation period as shown in Figure 5 below.



Figure 5 – Tindo's wholesale sales of PV modules or panels

From Figure 5 above, Tindo's sales volume of PV modules or panels to wholesalers has considerably declined in the investigation period.

7.5.2 Market Share

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



Figure 6 – Australian market share

Figure 6 illustrates that imports from China dominate the PV modules or panels market in Australia. Tindo's market share remains low (less than 1 per cent) compared to the imported goods during the investigation period.

7.5.3 Conclusion – volume effects

Based on information collated for the investigation period, the Commission finds that Tindo has not lost sales volume overall but has lost sales to the wholesale sector.

7.6 Price effects

7.6.1 Price depression and price suppression

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

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Based on the data submitted by Tindo and verified by the Commission, total revenue was below total costs, and unit revenue below unit cost, for the entire 18 month period ending 31 December 2013, as illustrated in Figures 7 and 8 below.



Figure 7 – Tindo's Total Sales v Total CTMS of PV modules



Figure 8 – Tindo's unit sale v unit CTMS of PV modules

On a quarterly basis, Figure 7 shows that while total costs remained higher than the total revenue for the entire 18 months to 31 December 2013, in the last quarter (quarter 4 of 2013) Tindo almost broke even with total costs only slightly higher than revenue.

Figure 8 demonstrates that Tindo was not able to increase its unit prices above the unit CTMS in the 18 month period ending 31 December 2013. In relation to some commercial projects, Tindo provided evidence from bids that it was successful in winning that it revised its original quotations downwards by up to 25 per cent in order to compete with exported PV modules or panels from China at allegedly dumped prices.

7.6.2 Conclusion – price effects

The Commission finds that Tindo has suffered from price depression and suppression during the investigation period, although its situation was improving toward the end of the investigation period.

7.7 Profit and profitability effects

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

Tindo incurred a loss and had negative profitbility for the entire 18 month period. This is reflected in losses and negative profitablity in each quarter ending 31 December 2013 as shown in Figure 9 below.



Figure 9 – Tindo's Profit and profitability

While Tindo incurred a loss and had negative profitbility for the entire 18 month period, Tindo's sales for the last quarter of the investigation period were marginally profitable.

7.7.1 Conclusion – profit and profitability effects

Tindo has suffered injury in the form of losses and negative profitability; however a new company can generally be expected to incur losses in the first few years of its operation due to start-up costs and the establishment of a customer base.

7.8 Other economic factors

Given that Tindo has only been in operation since 1 July 2012, there is no trend that can be meaningfully examined from the other economic factors in Appendix A7. However from the quarterly data submitted, the following observations were made:

<u>Revenue</u>

Revenue from the sale of PV modules or panels increased overall since Tindo's establishment in July 2012.

Capacity utilisation

Tindo's capacity utilisation was below its full capacity at the end of the investigation period.

Employment

Employment numbers increased by approximately 70 per cent during the investigation period.

Stocks

Stock levels at the end of each quarter have increased.

7.9 Conclusion

Based on the verified and unverified information collated during the course of the investigation the Commission considers that the Australian industry has experienced injury in the form of:

- lost sales volume (in the wholesale market only);
- price depression;
- price suppression; and
- reduced profit and profitability.

8 HAS DUMPING CAUSED MATERIAL INJURY OR HINDRANCE TO THE ESTABLISHMENT OF AN INDUSTRY?

8.1 Findings

Based on the information available at the time of making the SEF, the Commissioner has made an assessment that the injury, if any, to Tindo, or the hindrance, if any, to establishment of an Australian industry, caused by the dumping of goods exported from China is negligible.

The Commission considers Tindo's performance has been affected by:

- it entering the PV modules or panels market at a time when the market had reached its peak and was in decline;
- the availability of exports from China at prices significantly below Tindo's cost of production, even without dumping; and
- Tindo's decision to primarily focus on a particular model of PV module or panel that is at the premium end of the market.

8.2 Background

Section 269TAE of the Act outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been or is being caused or is threatened, or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export.

Tindo commenced manufacturing in mid-2012. The investigation period for this investigation is 1 July 2012 to 31 December 2013, representing the first 18 months of Tindo's operation. In assessing the impact of dumped exports on Tindo's business the Commission considers it appropriate to examine not only whether dumped exports have caused material injury, but also whether the establishment of an Australian industry has been materially hindered by the export of dumped goods.

8.3 Size of the dumping margins

Subsection 269TAE(1)(aa) of the Act states that in determining whether material injury has been caused by dumping the Parliamentary Secretary may have regard to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped.

The dumping margins outlined in Chapter 6 of this report range between 2.1 and 8.7 per cent. The weighted average dumping margin found is 3.9 per cent. In the context of the price undercutting analysis undertaken by the Commission (refer to section 8.4.2), the Commission considers that this level of dumping has not materially impacted Tindo's volumes or selling price. The average undercutting margin found was around 45 per cent. The size of the dumping margins is such that if the export prices were equivalent to the normal values established for the investigation period, the importers' selling prices, at a

level of trade comparable with Tindo, would still undercut Tindo's selling price by a significant degree.

8.4 Price effects

Subsection 269TAE(1)(e) of the Act states that the Parliamentary Secretary may have regard to the difference between:

- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia.

8.4.1 Tindo's claims

During the verification visit, Tindo submitted that substantial price injury, in the form of price depression and suppression, has been suffered due to consistent price undercutting of its prices and downwards price pressure exerted by imported Chinese PV modules or panels.

Tindo submitted that it constantly monitors the price offerings and issued price lists of its competitors supplying imported PV modules or panels from China and responds to those prices by reducing its own price offers to compete with those Chinese suppliers.

Tindo provided evidence of particular commercial sales that it had obtained by reducing its initial quoted price in order to compete with import price offers.

8.4.2 Price undercutting

The Commission has undertaken an analysis of the price undercutting claims by Tindo. The analysis is based on verified sales data from importers and from Tindo.

The Commission encountered the following limitations when conducting the price undercutting analysis:

- Tindo predominantly sells poly-crystalline AC PV modules or panels. For the purpose of the price undercutting analysis, all sales of imported DC PV modules or panels were used. DC PV modules or panels represents a small proportion (4.7 per cent) of Tindo's overall sales volume in the investigation period; and
- some selected importers whose data was verified by the Commission sell PV modules or panels as a 'package price' including installation costs, therefore for those importers the Commission used Tindo's installed prices to compare the price difference.

<u>Methodology</u>

The Commission compared quarterly weighted average selling prices (AUD per watt) of the imported poly-crystalline DC PV modules or panels, to Tindo's net selling price (AUD per watt), at a comparable level of trade. To conduct this analysis, the Commission used verified domestic sales data of Tindo's manufactured goods during the investigation

period and the verified sales data of the five major importers. The analysis was conducted for different levels of trade and models comparisons as discussed below.

• Distributors (including retailers) – DC PV modules or panels

One of the five major importers did not sell poly-crystalline DC PV modules to distributors and/or retailers therefore that importer's data was eliminated from this analysis. The other four importers collectively accounted for approximately 16 per cent of the total imports of poly-crystalline DC PV modules exported from China during the investigation period. Prices of those imports undercut Tindo's price between 26 per cent and 56 per cent.

The weighted average price undercutting by those four importers during the investigation period is around 45 per cent. As noted above, only a small proportion of Tindo's overall sales volume was of DC PV modules or panels.

<u>DC PV modules (with inverters) compared with AC PV Modules</u>

Tindo predominantly sells AC PV modules or panels to the Australian market, whereas imports from China are predominantly DC PV modules or panels. To test the impact of dumping, if any, on the likelihood of purchasers switching from one model to another the Commission compared the price of the imported DC PV modules or panels inclusive of an inverter with Tindo's price for AC PV modules or panels. The Commission considers that this analysis provides for comparability of prices between two different models of PV module that are both ready to convert energy from sunlight to AC power.

This comparison showed that the price of DC PV modules, with an inverter, is still significantly below Tindo's AC PV modules or panels price (by around 40 per cent).

• Installed PV modules or panels – sales to end-users

The Commission used Tindo's installation costs to calculate the weighted average net installed price (AUD per watt) of poly-crystalline DC PV modules and added that cost to the selling price of the imported PV modules or panels.

Two of the five major importers sell poly-crystalline DC PV modules to end-users inclusive of installation. Those two importers collectively accounted for approximately 5 per cent of imports of poly-crystalline DC PV modules exported from China during the investigation period. Prices of those imports undercut Tindo's installed price by between 11 per cent and 28 per cent.

The weighted average price undercutting by those two importers during the investigation period is around 20 per cent.

8.4.3 Comparison with business plan

During the investigation Tindo provided the Commission with a copy of its business plan, developed for the establishment of the business. A comparison of the forecast price per watt for the PV modules or panels with the actual price achieved shows that actual prices

were significantly below the forecast. The business plan shows that Tindo projected that its selling price would reduce over time, in line with cost reductions, however the actual price reduction over the investigation period was of a greater magnitude than the forecast.

The business plan shows Tindo's estimate of the price being offered for imported panels at the time of preparing the business plan. Based on these estimates, the forecast selling price at the commencement of operation was not too dissimilar to the price of imported models. However, based on evidence gathered during the investigation it is apparent that the estimates of the import selling prices were greatly overstated. The Commission is not aware of the basis for the import price estimates however the discrepancy could be due to Tindo not accurately predicting the significant reduction in the cost to manufacture PV modules or panels, which led to reductions in price that were occurring during the investigation period.

A comparison of Tindo's forecast price per watt at the commencement of operation with known prices for imports from China during the investigation period shows that Tindo's starting selling price was more than double that of the imported models.

8.4.4 Conclusion

As a result of its investigation the Commission considers that pricing is highly transparent in the PV modules or panels industry. In its investigations with importers, the Commission has observed that price is acknowledged as a key determinant in the purchasing decision of the end-users of PV modules or panels. During the investigation the Commission observed a number of public advertisements for PV modules or panels by a number of suppliers where price was prominently displayed, making price comparison easy for consumers.

As outlined in Chapter 8, while the Commission has found sufficient grounds to establish that Tindo has experienced some price depression during the investigation period, as well as declines in profit and profitability, Tindo predominantly sells AC PV modules or panels that are significantly more expensive than DC PV modules or panels exported from China.

Although Tindo can produce and sell DC PV modules or panels, Tindo's marketing and business plan are clearly directed towards AC PV modules or panels. Tindo automatically quotes a price for AC PV modules or panels unless specifically requested to quote for DC PV modules or panels.

Noting the size of the price undercutting and dumping margins found, the Commission is not satisfied that, in the absence of dumping, Tindo would be able to reduce its selling prices of AC PV modules to the extent required to ensure Tindo's prices are competitive with DC PV modules exported from China, even after allowing for the premium that would be expected for an AC model over a DC model.

Even in the absence of dumping the price offers of the imported goods from China would provide a significant competitive advantage to importers. If the export prices during the investigation period were equivalent to the normal values found, that is there was no dumping, Tindo would still have been required to reduce its initial prices to match those lower import offers and attract custom. The Commission is therefore satisfied that any price injury suffered by Tindo that was caused by the dumping was negligible. For the

same reason the Commission is also satisfied that any hindrance to Tindo's establishment caused by the dumping was negligible.

8.5 Volume effects

Subsection 269TAE(1)(g) of the Act states that in determining whether injury has been caused by dumping the Parliamentary Secretary may have regard to any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry. Subsection 269TAE(3) states that one of those economic factors is the quantity of goods of that kind, or like goods, produced or manufactured in the industry.

8.5.1 Tindo's claims

Tindo has not claimed injury from overall loss of sales volume. The data provided by Tindo and verified by the Commission shows that its overall sales volume has grown since its establishment in July 2012. However, as noted in section 8.1 of this report, the Commission has assessed Tindo's claims on the basis of establishing whether dumped exports have materially hindered the establishment of an Australian industry. This is appropriate in the context of Tindo's position in the life cycle of a business.

Tindo's sales of PV modules or panels to wholesale customers have declined during the investigation period. Tindo submits that as a result of this decline it was forced to change its business strategy to market and supply directly to residential and commercial customers instead of supplying to the distributors and retailers.

8.5.2 Market size and trends

The information collated by the Commission during the course of the investigation, including the information provided by importers and exporters, and submissions received from interested parties suggests that there has been a shift in the PV modules or panels market in Australia (and globally) during the injury analysis period as discussed below.

Global Market

- As discussed in Section 3 of this report, there are two types of cells, being polycrystalline cells and mono-crystalline cells, used to manufacture PV modules or panels. Towards the end of the investigation period there was a clear shift in exporters moving away from mono-crystalline cells (as they are more expensive) to poly-crystalline cells; and
- due to improved technology, reduction in input costs, global competition and economies of scale, the price of imported PV modules or panels has significantly reduced.

Australian Market

Figure 13 below analyses the Australian market for PV modules or panels during the injury analysis period (January 2010 to December 2013).



Figure 13 – PV Modules Market, FIT & Cost in Australia³²

Figure 13 demonstrates that:

- the FITs offered by various States and Territories have been consistently decreasing since 2010, from an average of 60 cents per kilowatt hour (kWh) in 2010 down to less than 8 cents per kWh in 2012. The FIT rates in New South Wales, Western Australia and the Australian Capital Territory were abolished in 2012. In 2013 South Australia also abolished its FIT incentives;
- the price of PV modules and panels has been consistently decreasing during the injury analysis period, from an average of \$6 per watt in 2010 to less than \$2 per watt in 2013;
- despite the FIT being withdrawn by the States and Territories, the aggressive marketing strategies and intense competition among the players in the PV modules or panels industry, coupled with a reduction in input costs, kept the prices of PV modules or panels down, which led to an upward trend in the volume of PV modules or panels installed from 2010 to 2012; and
- after reaching its peak in 2012, the Australian market for PV modules or panels started to decline.

8.5.3 Comparison with business plan

A comparison of the forecast volume in the business plan with actual volumes achieved confirms that Tindo's actual performance was well below forecast. Based on the market volume calculated for the purpose of this investigation, Tindo forecast that it would achieve around 1 per cent of the market share by the end of calendar year 2013. Its actual market share was less than one per cent.

³² Information was sourced from the Clean Energy Regulator; State government websites; ACBPS import database, the Australian industry and submissions from interested parties

The Commission considers that this difference is a function of the comparative selling price of Tindo's product with imported product being inaccurate (refer to section 8.4.3 above), resulting in less breakthrough in the market than had been anticipated. It is possible this is due to Tindo preparing the forecast when the market appeared to be at an all-time high and growing, however it had already started to decline when Tindo commenced operation.

8.5.4 Commission's assessment

The Commission considers that reducing the rate of FIT incentives provided by the States and Territories (including the abolition of FIT incentives by NSW, WA and ACT in 2012) had a direct impact on the PV modules or panels industry (including Tindo).

The Commission considers that the PV modules or panels is highly competitive due to decline in the demand in the residential sector and the existence of a large number of suppliers. Tindo's competitors, who are supplying the Australian market with DC PV modules or panels that are predominantly imported from China, use aggressive marketing strategies such as public advertisements in newspapers, radio stations, television channels, newsletters and websites.

The Commission is satisfied that the evidence provided demonstrates that:

- Tindo's business plan and strategies were prepared in 2010 when the market was growing and Tindo was expected to commence operating in 2011. However, Tindo commenced operating in 2012, when the market had started to decline, therefore some of the assumptions and forecasts in Tindo's original business plan were not accurate at the time of its entry;
- Tindo's focus has been on AC PV modules or panels which are more expensive and are attractive to a more limited group of customers (i.e. to those people who are willing to spend more for the benefits said to be provided by AC modules or panels); and
- Tindo was able to grow its overall sales volume over its first 18 months of operation, albeit not in line with its forecasts. However, it cannot be reasonably concluded that Tindo's volume of sales was inconsistent with overall market trends.

Noting the significant difference in selling price between AC PV modules and DC PV modules, the Commission is not satisfied that Tindo's loss of volume to distributors and its inability to grow volume in line with its business projections is due to the dumping of PV modules or panels from China.

As discussed in Section 8.3, the size of the dumping margins found are considered to be relatively small compared to the extent of the price undercutting by the imported goods. The Commission considers that the imposition of a dumping duty at the levels found is not likely to influence consumers to switch to Tindo's AC modules or panels.

The Commission therefore concludes that dumping has not caused volume injury, in terms of loss of sales volumes, to the Australian industry and nor did it hinder Tindo's ability to achieve higher sales volumes than it did during the investigation period.

8.6 Injury caused by factors other than dumping

Subsection 269TAE(2A) of the Act states that the Parliamentary Secretary 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 and any such injury or hindrance must not be attributed to the exportation of those goods.

The Commission has considered all factors outlined in subsection 269TAE(2A) and also examined other potential causes of injury to Tindo, other than dumped goods exported from China.

8.6.1 Volume and prices of like goods that are not dumped - subsection 269TAE(2A)(a)

In its application, Tindo identified China as a major source of supply of imported PV modules or panels. The Commission's assessment of ACBPS' import database, as well as discussions with major importers and publicly available information, confirms that China is the major source of supply of PV modules or panels to Australia. During the injury analysis period (from 1 January 2010 to 31 December 2013), imports of PV modules or panels from China comprised around per cent of the total volume of imports. Other countries that made up the majority of the remaining imports were Germany, Singapore, South Korea and Japan.

As Chinese goods are clearly the dominant source of import supply to the Australian market the Commission considers the volume and prices of imports from non-subject countries are unlikely to have had a material impact on Tindo.

8.6.2 Contractions in demand or changes in patterns of consumption – subsection 269TAE(2A)(c)

As discussed in Section 8.4.2, due to the reduction of the FIT rates offered by various States and Territories from 2010, the PV modules or panels market started to slow down after 2012. The FIT rates offered by New South Wales, Western Australia and Australian Capital Territory were abolished in 2012 and by South Australia in 2013.

The PV modules or panels market peaked in 2012 and started to decline. Tindo entered the PV modules and panels market in mid-2012 when the demand for the PV modules or panels was declining.

While not necessarily a 'change' in the pattern of consumption, the Commission has outlined that DC PV modules or panels have a significant price advantage over AC PV modules or panels. Significant marketing effort is required to influence consumers to choose the higher-end AC models over DC models based on the perceived value assigned to the benefits they are said to provide. It is apparent that this shift in perception has not yet gained sufficient momentum to drive consumers to pay significantly more for the AC model.

It is therefore considered that contractions in demand or changes in patterns of consumption have significantly contributed to the injury experienced by Tindo during the injury analysis period.

8.6.3 Developments in technology - subsection 269TAE(2A)(e)

The Commission has received representations from interested parties that due to technological advancements, such as improved efficiency of poly-crystalline cells over mono-crystalline cells (which were more expensive) has led to the reduction in cost of PV modules or panels over the investigation analysis period due to a combination of replacing mono-crystalline cells with poly-crystalline cells and the underlying price of mono-crystalline cells reducing significantly.

During the investigation period Tindo only used poly-crystalline cells to manufacture PV modules or panels. Tindo predominantly imports all major raw materials.

During its verification visit to Tindo, the Commission observed Tindo's manufacturing process and noted that Tindo uses technology (automated machines for assembling cells and testing PV modules) to manufacture PV modules or panels, while the Chinese exporters visited by the Commission generally manufacture (assembly of cells) PV modules or panels manually.

The Commission is therefore satisfied that Tindo is utilising technology in its manufacturing process and hence failure to adopt this technology is not considered to be at issue in this case.

8.6.4 Other matters

Insufficient production capacity of the Australian industry

The Commission received various submissions (Public Record versions of those submissions are on the Commission's website) from interested parties that the Australian industry has insufficient production capacity to supply PV modules or panels to the Australian market.

The Commission also received submissions that among other issues (such as Tindo's bankability, credit history and accreditation by the Clean Energy Regulator) Tindo does not have capacity and is not 'certified' to produce PV modules or panels that produce electricity 300 watts and above per module. This type of module is predominately used in large-scale ground-mounted solar farms.

There is no requirement for the Australian industry to have the capacity to meet the entire Australian market for their manufactured products in order to be able to seek relief from dumping under the Act.

Available evidence (including that submitted by Tindo in its application and verified by the Commission's verification visit to Tindo) indicates that the size of the Australian market is significantly larger than the full production capacity of Tindo throughout the investigation period.

The Commission is aware that Tindo predominantly produces and sells PV modules or panels with power output of 240 watts and 250 watts. During the investigation period Tindo was not certified to produce PV modules or panels that produce power output of 300 watts and above. This may have limited Tindo's ability to participate in tenders for utility projects that require large quantities of PV modules with power output of 300 watts

and above to be mounted on the ground. The Commission is aware that while no utility projects have been established during the injury analysis period, some tendering and negotiations have occurred with the Chinese suppliers by solar farm projects that require large quantities of PV modules with power output of 300 watts and above.

According to the ACBPS import database only a minor volume (less than 1 per cent of total imports) of PV modules or panels with power output of 300 watts and above were imported during the investigation period. The Commission did not find that the four selected exporters supplied PV modules or panels with power output of 300 watts and above during the investigation period.

Business and marketing strategies

The Commission notes that at the commencement of its business, Tindo's marketing strategies were initially targeted towards the residential sector through distributors (wholesalers). In mid-2013 Tindo started to sell its products directly to the end users in the residential and commercial sectors.

Tindo predominantly manufactures and sells AC PV modules or panels, which are considered as 'premium' product by the PV modules or panels industry. As discussed in this report, AC PV modules are significantly more expensive than DC PV modules or panels.

Based on the data provided to the Commission, Tindo's primary market during the investigation period was South Australia. As set out previously the South Australian government reduced the FIT rate to zero in September 2013, therefore this market was likely to be more difficult to obtain increased volumes from in any case. From the Commission's discussions with the major importers, and based on observations of public advertisements for PV modules or panels, Tindo does not appear to aggressively market its product as compared to its competitors, which not only sell significantly cheaper DC PV modules or panels but are fiercely competing with each other in the same market. This gives the end-user a variety of choices and pushes the price of DC PV modules or panels even lower. The Commission considers this likely to have been the case even in the absence of the low dumping margins found.

The Commission therefore considers that Tindo's business and marketing strategies, together with the timing of Tindo entering the Australian market with a premium product, are likely to have hindered Tindo's establishment during the investigation period and are likely to have an ongoing impact on Tindo's operation.

9 NON-INJURIOUS PRICE

As discussed is Section 8 of this report, the Commission found that dumping of PV modules or panels from China has caused negligible injury to the Australian industry, therefore the Commission has not calculated a NIP under section 269TACA of the Act for the purpose of this SEF.

10 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Export prices, normal values and dumping margin calculations	
Confidential Appendix 2	Feed-in-Tariff, cost and number of installations	