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NON-CONFIDENTIAL

Ms Joanne Reid
Director
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 2600

Dear Ms Reid,

STATEMENT OF ESSENTIAL FACTS NO. 239 – PV MODULES FROM CHINA

This submission, on behalf of Changzhou Trina Solar Energy Co Ltd ("TCZ") and Trina Solar (Changzhou) Science and Technology Co Ltd ("TST"), is in response to Statement of Essential Facts No. 239 ("the SEF").

While we agree with the Commission's proposal to terminate this investigation on grounds that the injury experienced by the Australian industry producing PV modules because of dumped exports from China is negligible, we disagree with the Commission's determination of a 4.0% dumping margin in respect of TCZ's and TST's exports of the subject merchandise. Our reasons for this disagreement follow.

Export price

Arm's length transactions

Section s269TAA(1) of the Customs Act ("the Act") provides that –

For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

a) there is any consideration payable for or in respect of the goods other than their price; or
b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

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The "reasons" discussed in section 4.7 of the Visit Report for the Commission's finding that the sales between TCZ/TST and Trina Solar Energy Development Pte Ltd ("TED") and Trina Solar (Australia) Pty Ltd are as follows:

1. Payment of certain invoices between these related parties were made after the invoices' stated credit terms and no charges were made for late payments;
2. The Commission's verification team was not able to reconcile payments for all transactions selected for verification (63 transactions selected);
3. No interest was paid to [redacted] [Financial arrangements between parties]
4. TCZ reimbursed TAU's selling and administration expenses. (The investigation found that the only TCZ payment to TAU in relation to selling expenses was just USD [redacted] and this occurred prior to the investigation period ("IP")).
5. There were [redacted] [financial arrangements] between TCZ, TST, TED and TAU; and
6. TAU's income statements for FY2013 and for the 6 months to 31 December 2012 indicated that Australian sales of the subject merchandise by TED and TAU were not profitable.

The above "reasons" certainly do not demonstrate that –

- there is any consideration payable for or in respect of the goods imported by TED/TAU other than their price;
- the price of the goods imported by TED/TAU appears to be influenced by a commercial relationship between TCZ/TST and TED/TAU; or
- TED/TAU, or an associate, will be reimbursed, compensated or otherwise receive a benefit in respect of the price of the imported goods.

Section 269TAA(2) of the Act provides that –

Where:

a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and

b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a befit for, in respect of, the whole or a part of the price.

The Commission's conclusion that sales between TCZ/TST and TED/TAU are not arm's length transactions relies solely upon its consideration that the sale of the subject merchandise imported from TCZ/TAU by TED/TAU during the IP were at a loss.

The Commission's consideration that the said sales were at loss is solely based on its statement in the TAU Importer Visit Report that –

"from the income statement for the FY2013 and for the 6 months to 31 December 2012 indicated that the PV modules or panels imported and sold by TAU Australia and by TED in the Australian market during the investigation period were not profitable".[1]

It cannot be assumed from the TAU income statements cited by the Commission in the Visit Report that TED/TAU sales of the subject merchandise during the IP were at loss, because sales and purchase amounts of the subject merchandise cannot be linked to these income statements.

It is paramount that on 24 November 2014 the Commission was provided with evidence of the profitability of TED/TAU's sales of the subject merchandise during the IP. This evidence was in the form of the Part C – Sales TAU and TED spreadsheet provided to the Commission by TAU in response to the Importer Questionnaire with the addition of purchase details, including quantity, value and price, for each of the sales transactions reported in the Part C spreadsheet. This spreadsheet provided on 24 November enabled verification of the gross profit achieved by TED/TAU in the sales reported in their Part C spreadsheet.

In section 6.5.2(i) of the SEF the Commission states that –

a) Trina Solar did not provide any source documents in relation to the purchase data provided in the spreadsheet submitted on 24 November, such as invoices or proof of payments; and
b) This profitability spreadsheet did not include any SG&A expenses in relation to the reported sales.

Our comments in response to these statements follow:

a) It is normal practice for the Commission to request supporting evidence required in respect of submitted sales/cost data, eg sales and cost data submitted in response to exporter questionnaires. The Commission received the profitability evidence on 24 November 2014, ie more than 4 months prior to publication of the SEF, and at no time did it request any supporting evidence of the submitted data. Furthermore, included in the purchase details in the spreadsheet submitted on 24 November were links between purchase details and the export sales data provided to the Commission by TCZ/TST in response to its exporter questionnaires; and
b) Prior to receipt of the profitability spreadsheet on 24 November, the Commission had determined SG&A expenses for TED and TAU ([redacted]% and [redacted]% respectively). These SG&A expenses are those used by the Commission in its deductive export price calculations per appendix 6 to the Visit Report. Consequently the inclusion of SG&A expenses in the profitability data submitted on 24 November was not necessary. The Commission did not request any further SG&A expense evidence following its receipt of the profitability spreadsheet.

It is demonstrated by the foregoing that there are no sustainable grounds for the Commission's consideration that TED/TAU's sales of the subject merchandise were at a loss and consequently **s269TAA(2) cannot be used to consider that TED/TAU will be**

[1] TCZ/TST Exporter Visit Report, section 4.7

reimbursed, compensated or otherwise receive a benefit in respect of the price paid for the imported goods for the purpose of s269TAA(1).

In conclusion, it is demonstrated above that **this investigation has found no evidence to satisfy the requirements of s269TAA(1) and therefore sales between TCZ/TST and TED/TAU are to be treated as arm's length transactions.**

A final comment on this matter. It is quite remarkable that, given the importance of the profit/loss status of TED/TAU's sales of the subject merchandise imported from TCZ/TST to the arm's length consideration, the Commission did not follow up on the evidence of their positive profitability provided to them on 24 November 2014.

Rate of profit used in deductive export price calculations

In its deductive export price calculations in respect of imports by TED/TAU, which it incorrectly considered non-arm's length transactions, the Commission included a grossly inflated net profit margin.

The [redacted]% net profit margin used by the Commission is grossly inflated as it is the average net profit margin of Solar Juice Pty Ltd, Solargain Pty Ltd, and True Value Pty Ltd who are at a very different level of trade to TED/TAU.

TED/TAU are import traders who sell the imported subject merchandise to wholesaler customers such as Solar Juice, Solargain and True Value, who sell value added products such as solar panels and solar systems to retailers and installers. In fact Solar Juice and Solargain [redacted][Commercial arrangements] It naturally follows that the profit taken by sellers of value added products is higher than that of the supplier of their components.

The [redacted]% net profit margin achieved by TED/TAU during the IP is a reasonable net profit margin for an import trader and is unaffected by their relationship with TCZ/TST.

The Commission does not appear to have considered the impact of the level of trade and nature of goods sold on companies' profitability in its finding that the average profit achieved by Solar Juice, Solargain and True Value "adequately and appropriately reflects a profit that could be derived in transactions between parties at arm's length."

Error in the calculation of export price

The Commission's calculation of the weighted average product unit export price for the IP used in its dumping margin calculation (USD [redacted]/w FOB) does not include the unit export price of TED's export sales of a substantial quantity of TST product to unrelated Australian importer customers ([redacted]/w @ USD [redacted]/w FOB).

Contrary to the Commission's statement in the SEF[2], inclusion of the said export sales omitted by the Commission in its weighted average unit export price calculation does not cause the volume of exports used in the correct unit export price calculation to exceed the import database.

[2] SEF No. 239, section 6.5.2(iii)

It is disappointing that when brought to its attention several weeks before publication of the SEF, the Commission did not adequately follow up on this identified error prior to publication of the SEF.

Normal Value

The normal value ("NV") used by the Commission for monocrystalline ("mono") modules in its product NV determination for the subject merchandise over the IP is an abnormal value. It is abnormal because the s269TAC(8) ("TAC(8)") upward adjustment to the polycrystalline ("poly") module s269TAC(1) ("TAC(1)") NV made by the Commission is far in excess of the price effect of the difference between mono and poly modules.

All Trina Solar's exports of mono modules to Australia were made by TCZ and the Chinese domestic price of mono modules sold by TCZ to its unrelated customers during the IP was just **USD [redacted]/w ([redacted]%)** higher than that of poly modules sold to its unrelated customers during the IP. (Domestic sales of TST mono modules to unrelated customers were [redacted] [Pricing details] Notwithstanding this small difference between TCZ's domestic selling prices of mono and poly modules during the IP, the Commission used a TAC(8) calculation methodology which resulted in an upward adjustment of **USD [redacted]/w ([redacted]%)** to the TAC(1) NV of poly modules.

The methodology used by the Commission to assess this highly inflated TAC(8) adjustment is based on the cost to make and sell (CTMS) difference between the two module types, with the addition of a [redacted]% net profit amount (discussed hereunder). The Commission used this methodology when it was fully aware that the Chinese market (and global market) situation during the IP was such that TCZ could certainly not have achieved a domestic selling price for mono modules that was higher than that of poly modules in the amount of the CTMS difference between the two module types. The Commission was also certainly aware that the market situation in Australia during the IP was such that there was little difference between the selling price of mono and poly modules.

It is the objective of TAC(8) to adjust the TAC(1) NV of like goods which are not identical to the goods exported so that the differences between the export goods and the like goods sold in the domestic market do not affect a fair comparison between the prices of each in the dumping margin calculation. The Commission is aware that because of the market situations in China and Australia (and globally) an upward adjustment of **USD 0.[redacted]/w ([redacted]%)** to the TAC(1) NV of poly modules does not provide for a fair comparison between the export price of mono modules and their TAC(8) adjusted NV.

In the above circumstances, it would be reasonable to use the IP average **USD [redacted]/w ([redacted]%)** difference between TCZ's domestic selling prices of mono and poly modules for the TAC(8) adjustment. If, without consideration of the effect of the Chinese market condition on the comparison of mono and poly module prices, the Commission maintains its position that the CTMS difference between mono and poly modules should provide the basis for the TAC(8) adjustment, that adjustment should be TCZ's weighted average CTMS difference over the IP, ie **USD [redacted]/w**. It is of note that the weighted average quarterly CTMS difference established by the Commission for its TAC(8) adjustment is **USD [redacted]/w** (Q.1 – [redacted], Q.2 – [redacted]; Q.3 – [redacted]; Q.4 – [redacted]; Q.5 – [redacted]; Q.6 – [redacted]), yet it used a **USD [redacted]/w** adjustment for the IP in its product NV and DM calculation.

Concerning the [redacted]% profit margin added to the quarterly CTMS differences in the Commission's TAC(8) adjustment, there are no grounds for using this profit margin when the average profit margin achieved by TCZ in its sale of poly modules in the domestic market during the IP was [redacted]%. The translation of a cost difference between TCZ's mono and poly module to a domestic price effect should therefore include a [redacted] profit addition.

Regulation 181A(2)'s provision of the basis for the determination of profit for the purpose of NV assessments vide ss269TAC(2)(c)(ii) or 4(c)(ii) has absolutely no relevance to the determination of profit for the purpose of TAC(8).

It is demonstrated by this submission that there are several errors in the Commission's calculation of a 4.0% dumping margin for TCZ/TST exports. The dumping margin correctly calculated is negligible and we therefore request that the Commission revises its incorrect dumping martin and includes a negligible margin in its termination report or final report to the Parliamentary Secretary.

Yours sincerely,

Roger Simpson