



4 May 2015

The Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

INVESTIGATION INTO CERTAIN CRYSTALLINE SILICON PHOTOVOLTAIC MODULES EXPORTED FROM CHINA

This submission is made in response to the Anti-Dumping Commission Statement of Essential Facts (SEF) No. 239 with regard to the alleged dumping of certain crystalline silicon photovoltaic (PV) modules or panels exported from the People's Republic of China.

Tindo is extremely dissatisfied at the unreasonably low level of dumping margins assessed by the Commission and its consequent finding that the injury to the Australian industry or hindrance to the establishment of an Australian industry that has been, or may be caused by the PV modules exported from China at these dumped prices is negligible.

Tindo requests the Commission to review its findings, in particular its assessment of the dumping margins, material injury and causal link.

Dumping investigation

Tindo supports the Commission's finding that PV modules or panels exported to Australia from China during the investigation period were dumped and that the volume of dumped goods and the dumping margins were not negligible. However, Tindo strongly disagrees with the margins that were determined by the Commission.

Tindo contends that the dumping margins assessed by the Commission are grossly understated by the Commission firstly, not making a finding of market situation in China and secondly, not taking into consideration all relevant costs.

Chinese Domestic Market

Tindo requests the Commission to investigate that a "particular market situation" does exist for the PV solar industry in China. Tindo is of the belief that Chinese domestic sales are not suitable to be used in the investigation as the Government of China (GOC) policies exert an influence on domestic selling prices for PV modules as well as the costs for components used to manufacture a PV module.

Tindo disagrees with the position the Commission has taken in relation to finding no evidence that the GOC's involvement in the Chinese domestic PV modules has materially distorted competitive conditions in China.



This finding is contrary to other investigations that have been undertaken. Tindo would like to draw the Commission's attention to the Canada Border Services Agency (CBSA), Statement of Reasons concerning the preliminary determinations with respect to the dumping and the subsidizing of certain photovoltaic modules and laminates originating in or exported from the People's Republic of China, dated 20 March 2015.

Following are a number of paragraph extracts found in the Statement of Reasons report specifically found in the Preliminary Result of the Section 20 Inquiry.

Policies to Influence the Production of PV Modules and Laminates

[61] *In the opinion of the CBSA, the following policies serve to control or guide the development of the solar industry in China*

| Government of China Policies |
|---|
| 12th Five Year Plan (2011-2015) |
| • 12th Five year Plan for the Solar Photovoltaic Industry |
| • Standard Conditions for Photovoltaic Manufacturing Industry |
| • Other Industrial Policies: |
| ○ Renewable Energy Law of the People's Republic of China |
| ○ 12th Five-year Plan on Solar Power Development |
| ○ 12th Five-Year Development Plan for National Strategic New Industries |
| ○ 12th Five-Year Plan for Energy Development |
| ○ 12th Five-Year Plan for National Economic and Social Development |

[67] *The goals and objectives identified (above) outline the GOC's intention to guide the development of the domestic photovoltaic module industry in China. These directives identify specific target prices for photovoltaic modules and demonstrate the GOC's attempt to directly control the domestic selling prices for these products.*

[74] *The cumulative effect of the directives included in the 12th Five Year Plan for the Solar Photovoltaic Industry, as well as other supporting documents provided by the complaints. Cooperative exporters and the GOC, demonstrate a significant level of government influence on all aspects of the domestic solar industry in China, including domestic pricing.*

The CBSA also found evidence of GOC influence on the price of inputs.

[75] *The CBSA also found that the 12th Five Year Plan for the Solar Photovoltaic Industry included measures and directives which demonstrate significant government involvement in the industries that provide key inputs for photovoltaic modules.*

The following sections outline a summary of the CBSA findings:

[85] *The scope of the GOC's macro-economic policies and measures provide a compelling factual basis that the GOC is influencing the Chinese solar sector. The use of such policies and measures can dramatically change the demand and supply balance in the domestic market and could materially alter the domestic prices of photovoltaic module inputs and therefore the domestic prices of photovoltaic modules.*



[87] The CBSA also concluded that the GOC influences the domestic price of photovoltaic modules through a combination of measures which impact the demand for photovoltaic modules and solar generated electricity.

The CBSA also conducted Domestic Price Analysis into the prices of PV modules and laminates in China.

[94] The CBSA conducted a price analysis on domestic prices of photovoltaic modules and laminates in China and agreed that domestic prices are not substantially the same as they would be if determined in a competitive market.

Tindo would like to highlight point [96] in the CBSA report questioning the integrity of the Chinese domestic selling price. Information in Bloomberg New Energy Finance reports showed that the cost of the goods to make a module was higher, on average, than the average domestic selling price of the goods.

Similarly in point [99] it was found that the price of modules in China varied widely from other countries where competitive conditions are present.

The report then provides a summary of the Preliminary results of the Section 20 Inquiry which Tindo contends provides evidence that the Commission used compromised Chinese domestic prices in its investigation:

[106] The wide range and material nature of the GOC measures have resulted in significant influence on the solar sector in China, which includes photovoltaic modules and laminates. Based on the preceding, the President is of the opinion that;

- *Domestic prices are substantially determined by the GOC; and*
- *There is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.*

China Domestic Selling Prices

Tindo is of the belief that domestic selling prices are not suitable to be used in this investigation.

Tindo contends that there is sufficient compelling evidence for the Commission to find that that the market for solar panels in China is distorted by the involvement of the Government of China (GOC). Tindo requests the Commission to find that the prices of inputs and modules or panels are unsuitable as they are non-competitive prices and should not be relied on for normal value purposes.

We note that the Commission, in the aluminium road wheels investigation (No. 181), found that domestic selling prices were not suitable due to the influence of the GOC on the aluminium industry.

Tindo supports the Commission finding in its investigation into the alleged dumping and subsidisation of silicon metal exported to Australia from China (Investigation No. 237) and 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. While Tindo acknowledges that the goods the subject of Investigation No. 237 is a different grade to the silicon used for PV products, Tindo contends that the 12th Five Year Plan that was considered by the Commission in the silicon investigation is relevant to current investigation (Investigation No. 239).



Tindo notes that the GOC did not fully cooperate with the Commission's government questionnaire that sought information about the silicon metal market in China and conditions relating to certain inputs to its manufacture (Investigation No. 237). Tindo notes that in this case (Investigation No. 239) the Commission did not send a questionnaire to the GOC requesting information in relation to the PV modules or panels market in China.

Extracts from Financial Statements filed with US SEC

The following extracts from the United States Securities and Exchange Commission (SEC) Form 20-F filed for Trina Solar Ltd support Tindo's claim that the Government of China (GOC) has policies that influence the production of modules.

These are included here to show evidence that Chinese Listed PV module manufacturers are aware that they operate in an environment that is influenced by the GOC.

- **Risks Related to Doing Business in China**

The Chinese economy differs from the economies of most developed countries in many respects:

- *including the amount of government involvement*
- *the level of development;*
- *the growth rate;*
- *the control of foreign exchange; and*
- *the allocation of resources.*

While the Chinese economy has grown significantly in the past 30 years, the growth has been uneven, both geographically and among various sectors of the economy. The PRC government has implemented various measures to encourage economic growth and guide the allocation of resources. Some of these measures benefit the overall Chinese economy, but may also have a negative effect on us. For example, our financial condition and results of operations may be adversely affected by government control over capital investments or changes in tax regulations that are applicable to us.

The Chinese economy has been transitioning from a planned economy to a more market-oriented economy. Although in recent years the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of the productive assets in China is still owned by the PRC government. The continued control of these assets and other aspects of the national economy by the PRC government could materially and adversely affect our business. The PRC government also exercises significant control over Chinese economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Efforts by the PRC government to control the pace of growth of the Chinese economy could result in decreased capital expenditure by solar energy users, which in turn could reduce demand for our products.

- **Regulation**

This section sets forth a summary of the most significant regulations or requirements that affect our business activities in China or our shareholders' right to receive dividends and other distributions from us.

Renewable Energy Law and Other Government Directives

In February 2005, China enacted its Renewable Energy Law, which became effective on January 1, 2006 and was amended on December 26, 2009. The Renewable Energy Law sets forth policies to encourage the development and use of solar energy and other non-fossil energy. The law sets forth the national policy to encourage and support the use of solar and other renewable energy and the use of on-grid generation. It also authorizes the relevant pricing authorities to set favourable prices for the purchase of electricity generated by solar and other renewable power generation systems.

The law also sets forth the national policy to encourage the installation and use of solar energy water-heating systems, solar energy heating and cooling systems, solar PV systems and other solar energy utilization systems. It also provides financial incentives, such as national funding, preferential loans



and tax preferences for the development of renewable energy projects. In January 2006, China's National Development and Reform Commission, or NDRC, promulgated two implementation directives of the Renewable Energy Law. These directives set forth specific measures in setting prices for electricity generated by solar and other renewal power generation systems and in sharing additional expenses occurred. The directives further allocate the administrative and supervisory authorities among different government agencies at the national and provincial levels and stipulate responsibilities of electricity grid companies and power generation companies with respect to the implementation of the Renewable Energy Law.

China's Ministry of Construction also issued a directive in June 2005 that seeks to expand the use of solar energy in residential and commercial buildings, and encourages the increased application of solar energy in different townships. In addition, China's State Council promulgated a directive in July 2005 that sets forth specific measures to conserve energy resources.

On September 4, 2006, China's Ministry of Finance and Ministry of Construction jointly promulgated the Interim Measures for Administration of Special Funds for Application of Renewable Energy in Building Construction, which provides that the Ministry of Finance will arrange special funds to support the application of renewable energy in building construction in order to enhance building energy efficiency, protect the ecological environment and reduce the consumption of fossil energy. These special funds provide significant support for the application of solar energy in hot water supply, refrigeration and heating, PV technology and lighting integrated into building construction materials.

In August 2007, the NDRC issued the Medium and Long-term Development Plan for Renewable Energy which describes the national government's financial incentives for the renewable energy industry for the multi-year period ending 2020, with an estimated required investment amount of approximately \$300 billion. The plan also calls for increasing the overall installation capacity for solar energy to 300 MW by 2010 and 1.8 GW by 2020. Recent policy statements have indicated that these targets may rise to 400 MW to 500 MW by 2010 and 2 GW by 2020.

On April 1, 2008, the PRC Energy Conservation Law came into effect. Among other objectives, this law encourages the utilization and installation of solar power facilities in buildings for energy-efficiency purposes.

In March 2009, China's Ministry of Finance promulgated the Interim Measures for Administration of Government Subsidy Funds for Application of Solar Photovoltaic Technology in Building Construction, or the Interim Measures, to support the demonstration and the promotion of solar PV applications in China. Local governments are encouraged to issue and implement supporting policies for the development of solar PV technology. These Interim Measures, set forth subsidy funds set at RMB20 per watt for 2009 to cover solar PV systems integrated into building construction that have a minimum capacity of 50 kilowatt peak.

In April 2009, the Ministry of Finance and the Ministry of Housing and Urban-Rural Development jointly issued the "Guidelines for Declaration of Demonstration Project of Solar Photovoltaic Building Applications." These guidelines created a subsidy of up to RMB20 per watt for BIPV projects using solar-integrated building materials and components and up to RMB15 per watt for BIPV projects using solar-integrated materials for rooftops or walls.

In July 2010, the Ministry of Housing and Urban-Rural Development issued the "City Illumination Administration Provisions" or the Illumination Provision. The Illumination Provisions encourage the installation and use of renewable energy system such as PV systems in the process of construction and re-construction of city illumination projects.

On July 24, 2011, NDRC released the "Notice Regarding the Pricing Policy of the Feed-in Tariffs" (NDRC Pricing [2011] No. 1594), or the Notice. According to the Notice, all solar energy projects that were approved before July 1, 2011 and completed construction and commenced manufacturing before December 31, 2011 shall price their feed-in tariff at RMB1.15 per kilowatt-hour, or kwhr, (tax included), if such price had not been set by NDRC before the date of the Notice. All other solar energy projects, except for the solar energy projects in Tibet which shall still price their feed-in tariff at RMB1.15/kwhr (tax included), shall price at RMB 1/kwhr (tax included). The solar power projects granted through special auction procedures shall follow the auction price, which shall not exceed the relevant prices set forth in the Notice. In addition, according to the Notice, the solar power projects receiving governmental subsidies shall follow certain local feed-in tariff guidance.

On March 1, 2013, China's State Council issued the "**Twelfth Five Year Plan** [emphasis_added]." The plan supports the promotion and development of renewable energy, including the solar energy. The plan also encourages the development of solar PV power stations in the areas with abundant solar power resource.

In July 2013, China's State Council issued the "Several Opinions on Promoting the Healthy Development of the PV Industry." The opinions stress the importance of promoting the healthy development of the PV industry and set the goal that the total installed capacity reaches thirty-five



million kwhr by 2015. The opinions also indicate the State Council's intention to accelerate the adjustment of the PV industry's structure and the advancement of PV technology.

In September 2013, the Ministry of Finance and the SAT jointly issued the "Notice on the Value-added Tax Policy for PV Power Generation." This notice announces a new policy regarding value-added tax, effective from October 1, 2013 to December 31, 2015. Under the new policy, 50% of the value-added tax paid by taxpayers in connection with sales of self-produced electrical products generated by solar energy will be immediately refunded to the taxpayers when the value-add tax is collected.

On November 26, 2013, the National Energy Administration promulgated the "Interim Measures for the Administration of PV Power Generation." The interim measures clarify that the state department in charge of energy and its local counterparts are responsible for the supervision of PV projects. The interim measures are valid for three years starting from the date of promulgation.

In February 2014, the Certification and Accreditation Administration and the National Energy Administration jointly issued the "Implementation Opinions on Strengthening the Testing and Certification of PV Products." The implementation opinions provide that only certified PV products may be connected to the public grid or receive government subsidies. The institutions that certify PV products must be approved by the Certification and Accreditation Administration. According to the implementation opinions, PV products that are subject to certification include PV battery parts, inverters, control devices, confluence devices, energy storage devices and independent PV system.

The above extracts from the Trina Solar Ltd Form 20-F/Annual Report are referenced in the Exporter Questionnaire Responses (EQR) for TCZ and TST. Tindo notes that there are similar statements in the Form 20-F filed for Wuxi Suntech Ltd and ReneSola Ltd. For these exporters there were no references in the EQRs to the filed Form 20-F despite them being publicly available at www.sec.gov

Impact of the Government of China policies on the global PV market

The impact of the GOC policies on the solar sector has extended beyond the Chinese domestic market. A direct consequence of the GOC policies has been dumped Chinese solar panels all over the world in an attempt to dominate the global PV market. Traditionally, the Japanese and German manufacturers used to lead the volume of PV manufacturing globally. However, as the GOC implemented policies focused on the solar sector, Chinese PV manufacturers set on an aggressive campaign towards world solar domination.

Since 2010 the China Development Bank¹, China's only policy-oriented bank with ministry status that fosters economic development of China through direct and indirect financing of key projects and initiatives in the Government's national economic development plan and industry policies, provided loan guarantees worth US 32.5 billion² to 10 domestic solar manufacturers.

¹ <http://www.cdb.com.cn/english/NewsInfo.asp?NewsId=335>

² <http://www.prosun.org/en/fair-competition/trade-distortions/subsidies.html>



Loans and Credit Agreements Involving Chinese Banks to Chinese Solar Companies since Jan 2010*

| Company | Amount (\$M) | Banks |
|---------------------|---------------|---------------------------------|
| China Sunergy | 160 | China Development Bank |
| Daqo New Energy | 154 | Bank of China |
| Hanwa SolarOne | 1,000 | Bank of China |
| Hanwa SolarOne | 885 | Bank of Shanghai |
| JA Solar | 4,400 | China Development Bank |
| JinkoSolar | 7,600 | Bank of China |
| LDK Solar | 8,900 | China Development Bank |
| Suntech | 7,330 | China Development Bank |
| Trina Solar | 4,400 | China Development Bank |
| Yingli Green Energy | 179 | China Citic Bank, Bank of China |
| Yingli Green Energy | 5,300 | China Development Bank |
| Yingli Green Energy | 144 | Bank of Communications |
| Yingli Green Energy | 257 | Bank of Communications |
| Total | 40,709 | |

Source: Mercom Capital Group, LLC

All amounts in millions of dollars.

*As of Sept. 28, 2011

Co-incidentally, Chinese solar companies went from profit-making businesses in 2010 to loss-making businesses in 2011.

For example, the table below shows the 2011 and 2012 profit/loss for Suntech, Trina and ReneSola.

| Company | 2011 Loss | 2012 Loss |
|------------------------|-----------|--------------|
| Suntech Power Holdings | -\$1,018m | N/A Bankrupt |
| Trina | -\$37m | -\$226m |
| ReneSola | \$0m | -\$203m |

Source: Annual Reports



As the Chinese solar manufacturers dominated the global market European and North American companies folded including Q.Cells the largest global cell manufacturer. The following table lists the 2012 casualties³ of world leading solar PV manufacturers.

| Name | Status | Based |
|---------|----------------------------------|---------------|
| BP | Exits | United States |
| Q.Cells | Acquired by South Korea's Hanwha | Germany |
| Schott | Exits | Germany |
| Schuco | Shut down | Germany |
| Solon | Acquired by UAE Microsol | Germany |

Cost to make and Sell (CTMS)

Tindo requests the Commission to review the dumping margins to ensure that the CTMS is a fully absorbed CTMS.

Tindo contends that in assessing all relevant costs the Commission should be reviewing the SGA, R&D, depreciation and capital costs of the consolidated group comprising the parent company and all subsidiaries to determine all relevant costs.

Tindo notes that the Trina Solar Ltd Form 20-F lists 46 significant subsidiaries. Changshou Trina Solar Energy Co Ltd, Trina Solar (Changzhou) Science and Technology Co Ltd, Trina Solar Energy (Shanghai) Co. Ltd and Trina Solar Energy Development PTE Ltd that were mentioned in the Commission visit report are four of the nine Chinese subsidiaries. Trina Solar (Australia) Pty Ltd is one of the two Australian subsidiaries. Significantly, the Trina Solar Form Ltd 20-F states that

the Company operates in a single reportable business segment

as does the Form 20-F for Suntech Power Holdings Co., Ltd.

Tindo notes that the organisational structure for Suntech Power Holdings Co., Ltd includes 40 subsidiaries. Wuxi Suntech Power Co., Ltd (investigated by the Commission) is one of 14 Chinese subsidiaries and Suntech Power Australia Pty Ltd is one of four Australian subsidiaries.

With regard to ReneSola Ltd, of which ReneSolar Zhejiang Limited and ReneSolar Jiangsu Limited are two of the 10 subsidiaries operating inside China and ReneSolar Australia Pty Ltd is one of 18 subsidiaries operating outside China, the Form 20-F states that

the business is grouped into two reportable segments: 1. Wafer sales segment, which involves the manufacture and sales of monocrystalline and multi-crystalline solar wafers; and 2. Module sales segment, which involves the manufacture and sales of solar cells and modules. The two segments are evaluated regularly by our chief executive officer to decide how to allocate resources and to assess performance. We do not allocate operating expenses by segment.

ET Solar Ltd has more than 20 subsidiaries⁴.

³ <http://www.greentechmedia.com/articles/read/Rest-in-Peace-The-List-of-Deceased-Solar-Companies>

⁴ <http://www.etsolar.com/>



The above statements make it clear that the particular subsidiaries investigated by the Commission are part of a consolidated grouping of companies/"legal entities" controlled by a board and executives sitting outside the specific subsidiaries/"legal entities" investigated by the Commission.

Tindo notes that each of the exporters visited by the Commission is a subsidiary within a group of companies that are vertically integrated manufacturers and suppliers of modules or panels. As far as Tindo is aware these consolidated group of companies do not produce any other product. Tindo requests that the Commission examine the costings of the consolidated group, parent plus all subsidiary companies to determine all relevant costings (SG&A, R&D, depreciation, capital) have been included in the costings for determining the dumping margin.

Tindo does not dispute that the entities investigated by the Commission are legal entities what Tindo does contend is that by the Commission limiting its CTMS analysis to specific legal entities within a consolidated group of legal entities the Commission may not have incorporated the costs of say, the Chairman and board of directors, Executive Board and Executive Management at the global level as well as R&D, depreciation and capital costs that are relevant to the CTMS of the goods under investigation but are accounted for in the accounts of other entities within the group of companies.

In 2011, 2012 and 2013 Trina Solar had losses of USD 37.8 million (1.8% net sales), USD 266.6 million (20.6% net sales) and USD 72.2 million (4.1% net sales), respectively. In 2011 Wuxi Suntech Ltd had a loss of USD 952.4 million (30.0% revenue) prior to going into receivership. In 2012 and 2013 ReneSola Ltd had losses of USD 243 million (25% revenue) and US 259 million (17% revenue), respectively.

It is unclear from the visit reports if the losses at the group level have been considered and where relevant, absorbed into the CTMS for determining the dumping margin. Tindo appreciates that a particular exporter, in conformity with its own accounting standards, or its own management accounting practices, would not include in its costs, depreciation or interest on loans sitting in the accounts of another entity within the group.

Tindo requests that the Commission review its dumping margins cognisant of the fact that the exporters under investigation are subsidiaries within a consolidated group of companies, in the business of manufacturing and selling the goods under consideration, that were making significant losses during the investigation period.

Transparency

Tindo is concerned that publicly available information is being redacted or submitted as confidential attachments. Company structure and shareholding is an obvious to identify with regard to Trina Solar Ltd, Suntech Power Holdings Co., Ltd and ReneSolar Ltd. As mentioned above, the Form 20-Fs for these companies are publicly available and contain detailed information on the company structure and shareholding however this publicly available data was either redacted or submitted as confidential attachments in the EQR and Visit Reports.

Tindo notes that according to the ET Solar website, Wang Xinghua, founder and Chairman of ET Solar Group (49% ownership) is a member of the standing committee of the Jiangsu Provincial People's Congress however this has not been disclosed in the EQR.



Tindo is extremely concerned that relevant information is not being provided to the Commission to assess dumping margins.

Australian market for solar panels

In the 1980s and 1990s BP Solar dominated the Australian market with modules manufactured in its Sydney plant. BP Solar ceased production in March 2009 and in 2010 SilexSolar commenced production of solar panels in the former BP Solar plant. In 2012 SilexSolar announced the closure of its solar module assembly plant in Sydney. The company was unable to compete with the pricing of panels imported from China.

Confidential Attachment 1 shows that in 2010, around 70% of the Australian market was made up of Japanese and German panels. By 2012, less than 10% of the Australian market was made up of Japanese and German solar panels.

Injury

Tindo agrees with the Commission finding that the Australian industry has suffered material injury in the form of:

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

In the October 2011 Ernst & Young (EY) Tindo Business Plan, a copy of which was provided to the Commission, budgeted production for the investigation period was [REDACTED] however actual production was only [REDACTED]. Tindo's sales volume loss was [REDACTED] and is a direct result of competing in a market dominated by dumped Chinese PV modules.

Lost sales volume

Around the time Tindo commenced operations in May 2012 Chinese PV prices declined significantly and at a far greater rate than the drop in price of cells. Chinese manufacturers cumulatively started reporting billion dollar losses. At that time Tindo had two options:

- increase its volume by reducing its price, sell at a loss and then definitely bankrupt within months; or
- change its business model and start selling downstream to the end user of the solar system



Appendix A of the Tindo Business Plan listed the following pricing sourced at that time from [REDACTED]:

| Brand | Watt | AUD |
|------------|------|------------|
| [REDACTED] | 1520 | [REDACTED] |
| [REDACTED] | 1520 | [REDACTED] |
| [REDACTED] | 1520 | [REDACTED] |
| [REDACTED] | 1520 | [REDACTED] |

These prices represent a ready to install PV system. The Business Plan assumption had Tindo selling its ready to install PV AC kit (AC kit utilizes a micro inverter on each panel) for [REDACTED]. Tindo expected to offer a very compelling value proposition to the solar market due to its unique value features at a competitive price to those of the Chinese DC kits from [REDACTED] and [REDACTED].

At the time of writing the Tindo Business Plan in October 2011, the cost difference between the Tindo AC and the Chinese DC solar systems was very small and a Tindo DC solar system (utilizing a string inverter instead of micro inverters) was [REDACTED] than a Chinese DC solar system.

Unexpectedly, the reduction in Chinese prices in from mid-2011 through to 2012 was sudden and deep.

To illustrate the decline in Chinese prices Tindo has scrutinized the financials of [REDACTED] [REDACTED] as, like Tindo, its revenue and costs are module related. The following table shows an analysis of [REDACTED] Gross margin percentage, Net Income Loss and the decline in the Average selling price (ASP).

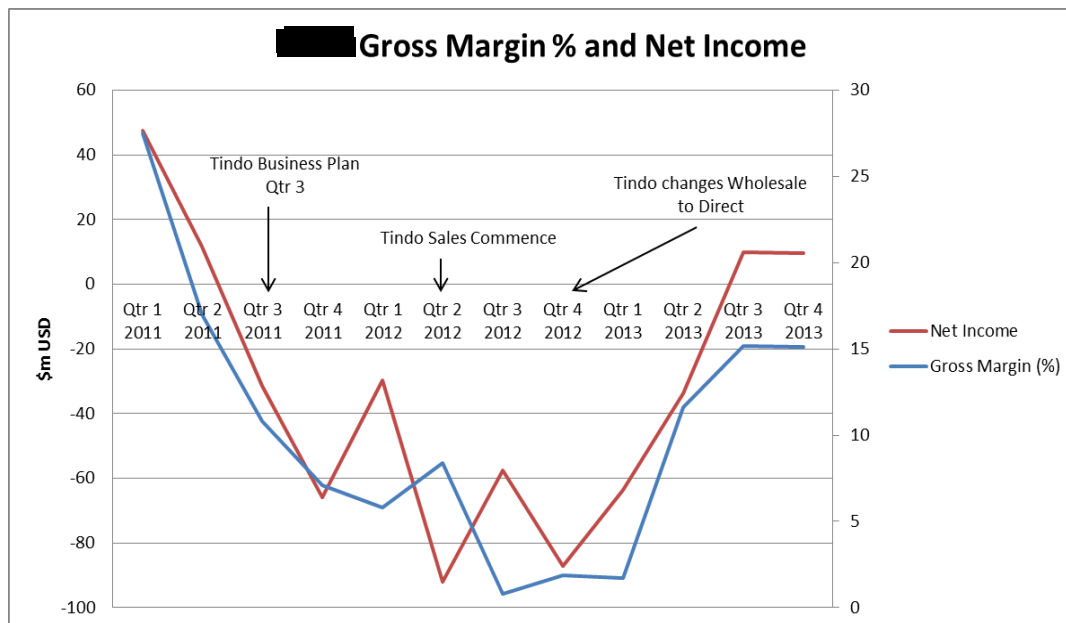
| | Tindo Business Plan | | | | Sales Commence | | | | Tindo changes from Wholesale to Tindo Direct | | | |
|------------|---------------------|------------|------------|------------|----------------|------------|------------|------------|--|------------|------------|------------|
| | 2011 | | | | 2012 | | | | 2013 | | | |
| | Qtr 1 2011 | Qtr 2 2011 | Qtr 3 2011 | Qtr 4 2011 | Qtr 1 2012 | Qtr 2 2012 | Qtr 3 2012 | Qtr 4 2012 | Qtr 1 2013 | Qtr 2 2013 | Qtr 3 2013 | Qtr 4 2013 |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

Source: [REDACTED] Financial Statements

From this we can see that the ASP declined by 36.9% ([REDACTED] down to [REDACTED]) from October 2011 to June 2012.

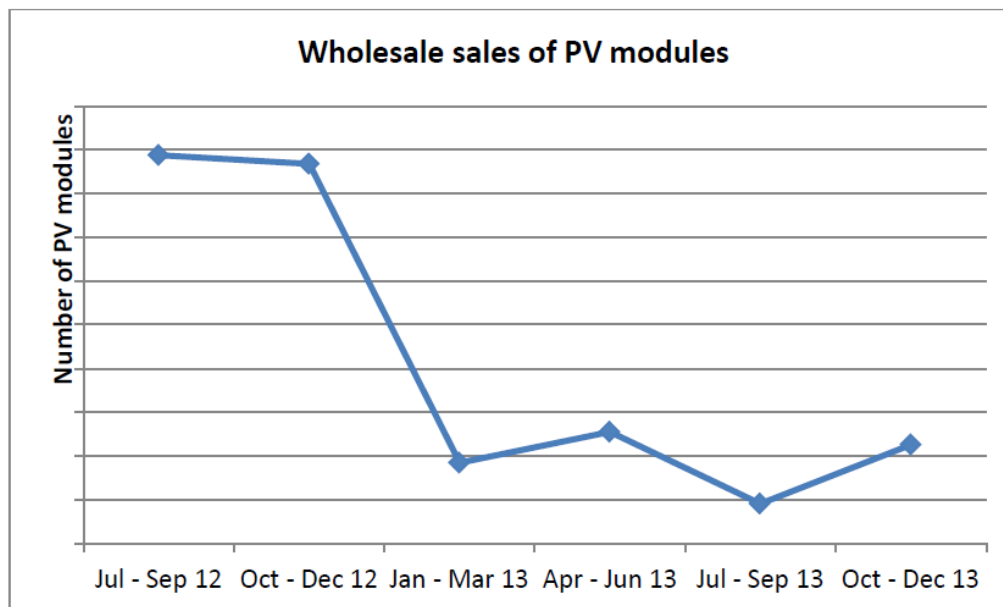
Gross Margin declined from [REDACTED] in Qtr 2 2011, the time that the Tindo Business Plan was complete to [REDACTED] at the beginning of the investigation period.

The following chart shows the data in the table above with a timeline of key Tindo milestones.



Another important point Tindo would like the Commission to verify is, over what period in the investigation they found sufficient volume of domestic profitable sales for the selected Chinese exporters. In the table above there were only two periods where the respondent was profitable, all other periods were unprofitable.

Tindo contends that it lost market volume as a result of the reduction in prices driven by GOC policies. The following chart⁵ indicates the reduction in wholesale sales volume over the investigation period.



⁵ SEF, page 48



Price depression and price suppression

Tindo commenced making panels in May 2012 around six months later than planned. However, even taking into account the loss of six months of production, the sales volume loss compared to the October 2011 Tindo Business Plan budgeted volume was [REDACTED].

Tindo contends that the loss of volume to its distributors was due to the sudden price drop of Chinese solar panels.

The predatory competition forced Tindo to change its business model from sales to wholesalers and go downstream to end users. The alternative was face bankruptcy.

Causal Link

Tindo strongly disagrees with the Commission's finding that the injury, if any, or the hindrance, if any, to establishment of an Australian industry, caused by the dumping of goods exported from China is negligible.

Tindo notes that the Commission attached significant weight to:

- the size of the dumping margins found, relative to the quantum of the price undercutting by the dumped imports
- Tindo's product offering, and
- changes in the market during the investigation period.

Tindo contends that dumping **is** the cause of its injury but that the minimal dumping margins calculated by the Commission are leading it to conclude erroneously that Tindo's injury has not been caused by the dumping. Tindo requests that the Commission recalculate the dumping margins taking into account the market situation, where Chinese domestic selling prices have been found to be influenced by GOC policies and to include all relevant costs in the calculation of CTMS.

Changes to market conditions

The 2011 Tindo Business Plan correctly estimated the Australian market. What the Business Plan did not forecast was that in 2012 Trina Solar Ltd would be making losses of 20%, Wuxi Suntech Ltd losses of 30% and ReneSola Ltd losses of 25%. Tindo contends that if these vertically integrated companies that are in the business of manufacturing and selling modules were profitable, that is their sales revenue exceeded their expenses; Tindo would also be making a profit. Tindo contends that the non-market competitive situation in China and the predatory nature of these manufacturers to grab market share in export markets has driven these losses.



Entering the PV modules or panels market at a time when the market had reached its peak and was in decline⁶

In the October 2011 Business Plan the founders of Tindo predicted and planned for the following:

- continued reduction in the price of solar panels over the three year forecast
- sales to the wholesale market, only; and
- phasing out of Government rebates and feed in tariffs

Price

The Tindo Business Plan showed a linear and steady decline in the price of solar panels over the three year forecast. This was based on the assumption that input prices would reduce.

Throughout the investigation period Tindo was able to take advantage of the price reduction in the cost of silicon and other components that make up PV module. As Tindo does not operate a cell plant it has the flexibility to ramp up and down production as demand changes.

When the currency or the spot price of polysilicon or solar cells move, then Tindo's costs moves with the market as its biggest cost of goods, the solar cell, is sourced overseas in USD.

In the SEF (page 56), the Commission noted the following.

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.

Tindo does not dispute that the ASP at the time of the commencement of the investigation period reduced from the date of the development of the Business Plan.

To argue that Tindo did not accurately predict the significant reduction in the cost to manufacture is false. Tindo did not need to accurately predict the reduction in the cost of material input costs.

Tindo was also able to benefit from the reduction in costs for module components. The major cost of material to make a module, being cells, fell during the investigation period and Tindo benefited from this reduction as it purchased its cell based on spot prices and did not have any cell forward contracts.

⁶ SEF239, page 53



For the Commission to assume that the costs of PV modules were driven down due to productivity gains does not stack up. Tindo argues that the reduction in the PV module ASP was a result of the reduction in Gross Margin for the Chinese manufacturers not due to efficiency gains from the production process.

As noted previously the CBSA found evidence in the Section 20 Inquiry that the selling price of Chinese modules were less than the sum of the spot prices for the components as published by Bloomberg New Energy Finance.

There is no doubt that the Chinese module manufacturers were selling their goods below cost. Their financials indicate this over the investigation period.

Where the Commission has failed in this case is that they have formed the opinion that they have found profitable sales in the Chinese domestic market and benchmarked these selling prices against the selling prices into Australia.

Tindo also would argue that the value for the imported price the Commission is using to benchmark this statement is an underestimated dumped price. For simplicity consider the following example:

The ASP for Quarter 3 2012 Tindo calculates for [REDACTED] at [REDACTED] per watt.

Questions we have for the Commission would be:

1. Where there any Chinese domestic sales that were profitable in the period Quarter 3 2012 at this price?
2. Investigate the selling prices against a proxy cost to make using a spot index similar to the Bloomberg New Energy Finance index?
3. Where the true CTMS reflected in the analysis? Taking into account that [REDACTED] for the Quarter 3 2012 had a Net Loss of [REDACTED] million on modules shipments of [REDACTED] MW. The ASP for [REDACTED] based on dividing revenue [REDACTED] million by module shipments [REDACTED] MW gives an ASP of [REDACTED] US.

If we were to add the net loss back to revenue to give a breakeven situation then the ASP would be [REDACTED] per watt.

This number of [REDACTED] per watt is [REDACTED] higher than potentially the number used to make this statement.

In the [REDACTED] wholesale price list July 2012 at Confidential Attachment 2 the price of a [REDACTED] Poly Module is [REDACTED] or [REDACTED] per watt.

The Tindo price list dated 1 September 2012 at Confidential Attachment 3 has a DC 240W panel priced at [REDACTED] or [REDACTED] per watt.

This is a difference of [REDACTED]. However, if [REDACTED] were to sell their panels at breakeven then the price that [REDACTED] would be selling them would be at least [REDACTED] more thus reducing the gap.



Size

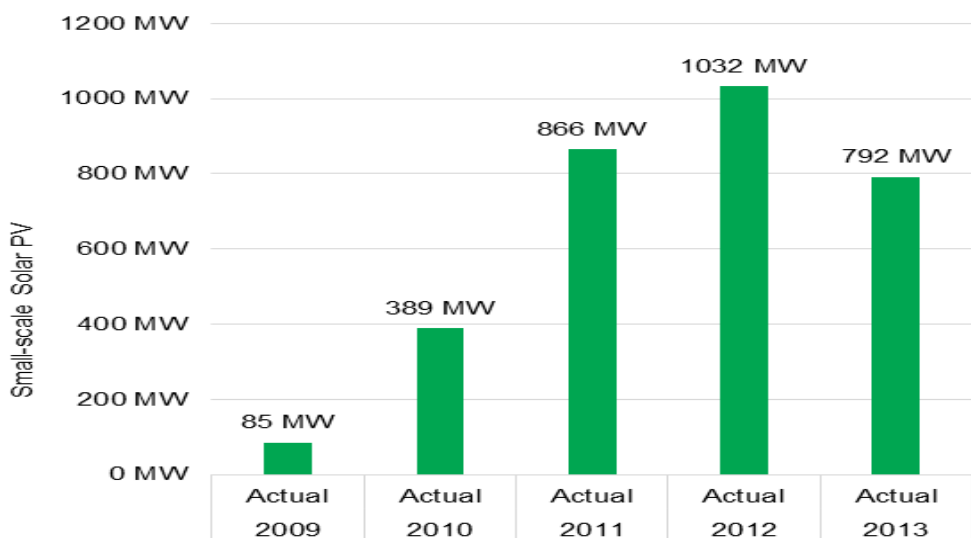
The October 2011 Business Plan considered the phasing out of FITs and Government rebates around the country and the forecast production numbers proved to be conservative.

Tindo disagrees with the following statement in SEF with regard to market size:

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.

Firstly, the Tindo Business Plan was dated October 2011 not 2010. Admittedly Tindo expected to commence operations in November 2011 and this was delayed to May 2012 however the Tindo Business Plan had a base-case of [REDACTED] MW/annum for 2011 and predicted demand of [REDACTED] MW/annum for 2012. In 2012, the actual installed capacity in the Australian market was [REDACTED] the forecast at 1,032MW and in 2013 the Australian market was [REDACTED] of [REDACTED] MW at 792MW.

The following chart shows the Australian solar installed based on creation of Small trading certificates created via the Clean Energy regulator under the Renewable Energy Target scheme.



The market did decline in 2013 versus 2012 but for the Commission to draw the conclusion that Tindo's assumptions in its Business Plan had not taken into account a market decline are completely false and indicate the Commission did not thoroughly review the material provided.

When Tindo commenced operations in 2012, the majority of its market was outside of South Australia. The chart at [Confidential Attachment 4](#) shows the weighted distribution for the first three months of trade.



As the prices of the Chinese goods rapidly fell Tindo was forced to change its sales model as outlined in its Business Plan from a wholesaler to a retailer. With the predatory competition of the Chinese goods Tindo could no longer cover costs as a wholesaler. Tindo then focused on South Australia as a retail installation business which requires a physical presence to be cost effective.

Rebates

South Australia has been a strong performer in the PV industry. It was the first state to announce and implement a state legislated Feed-in-Tariff (FIT) of 44c/kWh in July 2008.

The FIT did reduce in South Australia in early 2013 however the volume of the market in 2012 and 2013 was much larger than the market forecast in the 2011 Business Plan.

What Tindo did not predict was the scale of dumping that would then take place by the Chinese exporters and the speed of the price reductions. What played out is that the gap between the cost of a solar cell and a solar module drastically contracted to such a degree that module manufacturers all over the world started losing billions of dollars.

Availability of exports from China at prices significantly below Tindo's cost of production, even without dumping⁷

This statement assumes that the Commission came up with the correct dumping margin. Tindo contends that the Commission has ignored the billions of dollars of losses incurred by the Chinese industry and as such as concocted a ridiculously low margin of 4%.

If the Commission had identified that the GOC influences the domestic selling price for PV modules and therefore the domestic selling price is not suitable for establishing normal values as per the Canadians, US and European Union then their findings on negligible injury to Tindo would be incorrect.

As mentioned previously, the [REDACTED] wholesale price list July 2012 Confidential Attachment 2 the price of a [REDACTED] Poly Module is [REDACTED] or [REDACTED] per watt.

The Tindo price list dated 1 September 2012 see Confidential Attachment 3 has a DC 240W panel priced at [REDACTED] or [REDACTED] per watt.

This is a difference [REDACTED] However, if [REDACTED] were to sell their panels at breakeven then the price that [REDACTED] would be selling them would be at least [REDACTED] more thus reducing the gap.

⁷ SEF 239, page 53



Tindo's decision to primarily focus on a particular model of PV model or panel that is at the premium end of the market⁸

Tindo manufactures and markets both AC and DC solar panels. Both panels are identical except for the AC module having a third party micro inverter bolted onto the back of it.

In the Business Plan, Tindo was able to market an AC solar system at a competitive price. Tindo's DC system pricing was able to be priced even lower than a [REDACTED] or [REDACTED] DC kit.

Given that Tindo was able to sell its DC solar panel kit for less than a Chinese solar panel kit, the founders of Tindo were right to feel confident that they were establishing a business that would one day be a significant contributor to the Australian and global solar PV market. What the founders did not anticipate was the Chinese solar PV manufacturers losing many of billions of dollars and dumping their solar panels all over the globe.

On page 55 of the SEF the Commission noted that

To test the impact of dumping... 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.

The July 2012 [REDACTED] price list (see Confidential Attachment 2) has a DC inverter [REDACTED] at [REDACTED] or [REDACTED] per watt. The Tindo September 2012 price list has an [REDACTED] micro inverter priced at [REDACTED] or [REDACTED] per watt a price difference of [REDACTED]

A more reasonable method would be to compare prices of the imported DC models with the prices of Tindo DC modules.

Tindo did offer and does continue to offer both DC and AC solar panels. It was up to the customer to choose which product they preferred to go with. Tindo has been effective in communicating the benefits of AC solar panels, which is why the majority of its customers chose to go with AC instead of DC. If Tindo was not effective at selling the benefits of AC solar panels, then most of its sales would have been DC solar panels.

Injury caused by factors other than dumping

Tindo does not understand, nor does it see the relevance, to the Commission comments about Tindo not aggressively marketing its product. Tindo undertakes TV, radio, print, home show and trade show advertising. It employed a full time public relations person and it does everything it can to win a job - except lose money. Many Chinese companies chose to go down the path of losing money however given Tindo was in startup phase it has managed its cash very effectively.

⁸ SEF 239, page 53



In Tindo's opinion this case is not about which company has the largest marketing budget and this conclusion distracts from the position that dumped panels were sold into Australia.

Imposition of duties

An interim dumping margin of 4% (even though this number is flawed) applied to Chinese manufacturers would have a beneficial impact on the Tindo business. Tindo requests the Commission to impose anti-dumping measures as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to be "A. Ferraretto", with a small dot at the end.

Adrian Ferraretto
Managing Director



Confidential Attachment 1



Confidential Attachment 2



Confidential Attachment 3



Confidential Attachment 4