

Not confidential

To Director, Operations 2 - Australian Anti-Dumping Commission
From Vivian Wang, Andrew Korbel, Andrew Percival
Date 29 May 2015
Subject **Anti-Dumping Investigation - PV Solar Panels from China**

As you know, we act for the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (**CCCME**).

We are instructed to make the following submissions to the Commission in the context of the submission made by Tindo Manufacturing Pty Limited (**Tindo**) on 4 May 2015, and the extension of time granted to the Commission and announced on 19 May 2015.

1. Lateness of Tindo's submission

The Commissioner is not obliged to have regard to any submission received more than 20 days after the publication of the Statement of Essential Facts (**SEF**) where to do so would prevent the timely preparation of a report to the Minister under section 269TEA of the *Customs Act 1901*.

Given that the SEF was published on 7 April 2015, submissions in response were due on or before 27 April 2015. Tindo's submission was not lodged until 4 May 2015, well after the due date for submissions.

We note that:

- in contrast to the baseline investigation period of 155 days, this investigation has now been going on for over 12 months, with the Commission previously having sought and been granted 3 extensions of time to issue the SEF;
- the investigation period in which dumping is alleged to have occurred ended almost 18 months ago;
- the Commission has taken a strict approach when granting extensions of time to exporters to respond to the highly detailed exporter questionnaire. In this investigation, extensions were limited to 7 days, and the Commission advised exporters that it expected the responses when submitted to be "complete in all respects" (see for instance Electronic Public Record (EPR) documents 040 and 042);
- Tindo has had ample opportunity during the course of the lengthy period of this investigation to make submissions concerning the matters which it has now raised in its submission dated 4 May 2015; and
- as at 4 May 2015, it was clearly not possible for the Commissioner to consider the detail raised in Tindo's submission without delaying the termination of the investigation, or a report to the Minister. That has of course led to the

Commissioner seeking and being granted a 60 day extension to report to the Minister (or terminate the investigation).

In our respectful submission, given all of the matters raised above, the appropriate action for the Commissioner to have taken was not to take into account Tindo's late submission, and to terminate the investigation in accordance with the conclusions reached in the SEF.

The gathering and analysis of further information by the Commission in response to Tindo's submission, reporting on that analysis to other interested parties, and considering the response of those interested parties seems very likely to extend beyond the additional 60 day period that has been afforded to the Commission.

While the Commissioner has a discretion to consider a late submission, it is highly undesirable, including by reason of the impact on the local downstream industry and on exporters, to commence new lines of investigation, 6 weeks after the SEF was issued, 12 months after the investigation commenced, and 16 months after Tindo's application was lodged. As further extensions of time for the investigation will be inevitable and undesirable, we respectfully submit that the Commission should, notwithstanding the extension it has been granted, now bring the investigation to an end by terminating it in accordance with the conclusions reached in the SEF.

2. New information

The information contained in Tindo's submission of 4 May 2015 which has apparently caused the Commission to extend the period for the investigation, and to commence making additional enquiries, is primarily a series of allegations about the distortion of market prices in the Chinese domestic market for PV modules.

As the Commission has noted, Tindo made similar allegations in its application in February 2014, which the Commission declined (in May 2014) to investigate in any detail because of, among other matters, the inadequate supporting information provided by Tindo. It seems extraordinary that the Commission would now, 16 months after the application was filed, and 12 months after it declined to investigate the same issues, permit Tindo to supplement its application, and commence an investigation of those issues.

To the extent that the existence of a "particular market situation" forms part of the matters being investigated, the investigation should be confined to the issues raised in the application submitted by Tindo and accepted for investigation by the Commission in its Consideration Report. A response to the SEF should not be able to be used to submit new information about an issue which the Commission had indicated 12 months earlier it would not be pursuing.

Should Tindo consider a "particular market situation" exists in China in relation to PV modules or panels or inputs to manufacture used to produce such modules and panels, then it is open to it to file another application that identifies how policies or laws of the Government of China influence and lower the price of such products and to what extent and how this has caused it injury.

3. Particular market situation

In its application, Tindo made various claims regarding so-call "policy loans" and "credit facilities to Chinese manufacturers through state-owned commercial banks". Those allegations were considered and rightly rejected by the Commission in its Consideration

Report. The Commission should not now reinvestigate those matters when they were not the subject of any submissions from Tindo in the 12 months following the publication of the Consideration Report.

In so far as Tindo's recent submission is concerned, we have reviewed the extracts provided from the Canadian and US investigations, as well as reports of those two investigations. It is safe to note, first, that neither country treats China as a having a market economy and, consequently, it is unsurprising that they find that the Government of China influences prices.

Secondly, the extracts in Tindo's submission do not actually provide any evidence that Government of China has actually influenced prices and, if so, to what extent. At best, the findings that the Government of China has influenced prices are merely speculative. To find a "particular market situation" there must be a finding based on objective evidence that the Government of China has actually influenced prices and to what extent.

Further, it must also be found, based on objective evidence, that a manufacturer/exporter has been the recipient of such reduced prices. There is no evidence of this. This is another reason why the Commission ought to reject Tindo's invitation to conduct a belated investigation into its claims.

4. Australian Government support to solar industry

We note that at section 5.6 of the SEF the Commission set out the various forms of government support to the solar industry in Australia.

It found that the Federal and State Governments provided policies and incentives for the development of clean energy sources generated by PV modules and panels.

These included:

- feed-in-tariffs, which were a form of payment for electricity that is put back into the electricity grid, with the rate of payment varying between the States and Territories;
- a renewable energy target, which has as its aim by the Federal Government to increase renewable energy by 2% or about 41,000 gigawatt (GW) hours of electricity. This scheme has two components, small-scale renewable energy, such as domestic roof-top panels and large-scale renewable energy, such as for power stations, but in both cases the schemes are to provide financial incentives;
- small-scale technology certificates, which are tradable commodities attached to eligible installations of renewable energy, both domestic and commercial installations;
- rebates, the Federal Government provides up to \$8,000 contributions for the installation of PV modules or panels on homes and community buildings;
- in addition schools are eligible to apply for up to \$50,000 for the installation 2kW solar panels; and
- in 2009 subsidy funding, in the form of the 'Solar Flagship program' was established pursuant to which \$1.6 billion was set aside for the construction of large scale grid-connected solar power stations in Australia.

Having regard to these government programs it is evident that domestic selling prices of solar panels in Australia have been influenced over time by government programs and subsidies and may not reflect competitive market prices uninfluenced by government.

In addition, it is public knowledge that Tindo itself has received at least the following direct government support:

- debt financing from the Federal Government's Clean Energy Finance Corporation; and
- two grants from the South Australian Government's Innovation Voucher Program.

If the Commission is to pursue an examination of government influence in the domestic market in China, then when forming a view about whether Chinese domestic sales are unsuitable for use as a normal value the Commission should take into account comparable activity by government in the Australian market.

5. Corporate structures

In its submission of 4 May 2015, Tindo has argued that the Commission has not properly assessed the costs to make and sell of the sampled exporters, because the Commission has not understood the workings of the corporate groups of which the sampled exporters are a part.

The Commission regularly deals with the corporate structures of sophisticated multinational entities, including those based in China. It is evident from the published visit reports that the Commission has, in this investigation, considered the costs and relationships within those structures in some detail. Accordingly, Tindo's submission should be rejected, and the investigation should not be delayed to allow any further examination of that issue to take place.

6. Tindo pricing and business plan

In section 8.1 of the SEF, the Commission made the following 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.*

None of the information submitted by Tindo could or should change any of those findings.

The Commission found in the SEF that dumping margins ranged between 2.1% to 8.7% with a weighted average dumping margin of 3.9%. However the Commission also found that the level of price undercutting by Chinese imports was around 45%. Consequently,

29 May 2015

Australian Anti-Dumping Commission

Anti-Dumping Investigation - PV Solar Panels from China

even if export prices equalled normal values, Chinese imports would continue to significantly undercut the Australian industry's prices.

In other words, the imposition of anti-dumping measures would have no discernible remedial effect on the Australian industry.

Furthermore, the Commission has already correctly noted in the SEF that the size of the Australian market is significantly larger than the full production capacity of Tindo.

If any anti-dumping measures are imposed, there will be only one company - Tindo – which can benefit, while the downstream industries across Australia will suffer.

Given that the imposition of any anti-dumping measures would be inconsistent with the interests of Australian industry more broadly, and that further investigation is most unlikely to result in a conclusion that dumping has occurred which has caused material injury to Tindo, we urge the Commission to terminate the investigation without any further delay.

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