



7 July 2015

NON – CONFIDENTIAL

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

Dear Ms Reid,

PV MODULES OR PANELS FROM CHINA

The Commission's initiation of new investigations into the new allegations of Tindo Solar Pty Ltd ("Tindo") that the Government of China ("GOC") has influenced the costs and prices of PV modules or panels in the Chinese market is highly questionable when –

- these new allegations were made by Tindo in a submission in response to Statement of Essential Facts ("SEF") No. 239 which was received by the Commission 27 days after SEF No. 239 was placed on the public record;
- s269TEA(4) provides that the Commissioner is not obliged to have regard to any submission made in response to a SEF that is received after the 20 day period provided in s269TEA(3)(iv) if to do so would *prevent the timely preparation of the report to the Minister*; and
- the Commission's regard to the said Tindo submission received by them on 4 May 2015 did prevent **timely** preparation of the final report which was to be made by 20 May 2015, causing the period for the final report to be extended by 60 days to 18 July 2015 and likely to be extended for a further unknown period.

It is difficult to understand how the Commission has responded as it has to this late submission by Tindo which relies on the preliminary findings of the Canada Border Services Agency (CBSA), when the Commission's own investigation found no evidence that the GOC's involvement in the Chinese domestic PV modules or panels industry has caused domestic selling prices of PV modules or panels to be not suitable for normal values¹. This is particularly so when its response has caused this investigation, which had already been

¹ SEF No. 239, section 6.4.2

extended from 155 days to 370 days at the time of publication of SEF No. 239, to be extended for another 60 days and likely to be extended for a further period.

It is of note that the CBSA's Statement of Reasons which Tindo relied upon for its "particular market situation" allegations of 4 May 2015, is dated 20 March 2015, ie well before publication of SEF No. 239 on 7 April 2015.

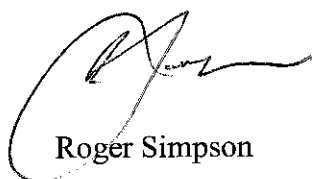
Furthermore, we would like to make clear to the Commission that to reach a conclusion that there is a particular market situation ("PMS") in China that prevents domestic sales of like goods to the PV modules or panels exported to Australia being used for s269TAC(1) normal values, it must have evidence proving that –

- the PMS in China is such that prices in domestic sales of PV modules or panels are **not suitable for use in determining normal values vide s269TAC(1)** as provided for in s269TAC(2)(a)(ii); because
- the PMS in China **does not permit a proper comparison of the prices of domestic sales of like goods with the prices of exports of PV modules or panels to Australia** as provided for in Article 2.2 of the WTO Anti-Dumping Agreement.

That is, it cannot be concluded that there is a PMS in China that prevents the use of domestic sales of like goods for s269TAC(1) normal value purpose because the GOC has policies which may relate to costs/prices of PV modules or panels unless it can be proved that such policies **do not permit a proper comparison of export prices to Australia and domestic prices of like goods.**

If there are GOC policies that may reduce costs and prices of PV modules produced by the Chinese industry and sold in domestic and export markets, eg industrial policies affecting industry efficiency/productivity, cost of inputs and financial policies, these policies may provide grounds for subsidy investigation but do not provide grounds for a PMS finding in a dumping investigation. This matter will be further addressed in a subsequent submission in response to Tindo's undated submission posted on the electronic record on 3 July 2015.

Yours sincerely,



Roger Simpson