



13 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**

This submission, made on behalf of Trina Solar, is in response to Tindo Manufacturing Pty Ltd's ("Tindo") undated submission posted onto the EPR on 3 July 2015 as it relates to the alleged particular market situation ("PMS") in China re PV modules or panels.

Tindo's allegation that there is a PMS in China in relation to PV modules or panels is heavily reliant upon the Canada Border Service Agency's ("CBSA") "Results of the Section 20 Inquiry" published in its Statement of Reasons concerning the final determinations with respect to the dumping and subsidising of certain PV modules and laminates from China of 18 June 2015 ("Statement of Reasons").

It is paramount that the CBSA's findings in its "Section 20 Inquiry" are not necessarily relevant to the question of whether there is a PMS in China in relation to PV modules or panels. While the CBSA's findings in its "Section 20 Inquiry" may satisfy the requirements of Canada's Special Import Measures Act ("SIMA") section 20(1)(a), they do not necessarily satisfy the requirements of section 269TAC(2)(a)(ii) of Australia's Customs Act ("the Act") for the following reasons:

- Section 20(1)(a) of the SIMA requires the CBSA to be of the opinion that **domestic prices are substantially determined by the government** of a prescribed country of export (in this case China), whereas section 269TAC(2)(a)(ii) of the Act requires the Commission to be satisfied that a PMS in the country of export is such that **sales in that country are not suitable for use in determining a domestic price for normal value ("NV") purpose**; and
- The Act has no requirement that there is sufficient reason to believe that domestic prices in the country of export are **not substantially the same as they would be if**

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**they were determined in a competitive market**, as is required by section 20(1)(a) of the SIMA.

Further to the s269TAC(2)(a)(ii) provision concerning non-suitability of domestic sales for s269TAC(1) NV purpose by reason of a PMS in the country of export, Article 2.2 of the WTO Anti-Dumping Agreement (“ADA”) makes it clear that domestic sales of like goods are not suitable for this purpose if the PMS is such that it does not permit a proper comparison of prices in domestic sales of like goods with prices of exports.

The CBSA’s analysis of factors leading to its conclusion that the conditions described in section 20(1)(a) of the SIMA apply to the solar sector in China<sup>1</sup> have been put forward by Tindo as the principal factors that should lead to a conclusion by the Commission that a PMS exists in China in relation to PV modules or panels. These factors cannot be relied upon to reach such conclusion as they do not demonstrate that GOC policies create a situation in the domestic market of China which is such that it does not permit a proper comparison of prices of domestic sales of like goods with prices of exports to Australia. They do not demonstrate that GOC policies impact on the Chinese solar industry or market in such a way that selling prices of PV modules or panels in the domestic market are differently modified than selling prices of export sales of PV modules or panels to Australia. That is, they do not provide evidence that GOC policies create a situation such that sales of like goods in the domestic market of China are not suitable for use in determining a NV for exports of PV modules or panels to Australia vide s269TAC(1) of the Act.

Hereunder are our comments on the particular factors leading to the CBSA’s conclusion that the SIMA section 20(1)(a) conditions exist in China’s solar sector as addressed in paras 68-117 of the Statement of Reasons.

### **Industrial Policies Influencing the Production of Photovoltaic Modules and Laminates (paras 68-82)**

The CBSA is of the opinion that the following GOC industrial policies serve to *control or guide the development of the solar industry in China*:

- 12<sup>th</sup> Five Year Plan for the Solar Photovoltaic Industry and related measures;
- Standard Conditions for Photovoltaic Manufacturing Industry; and
- Other Industrial Policies.

There is no evidence that any of these policies result in a situation in the market of China that makes sales in that market not suitable for use in determining NV, ie a situation that does not permit a proper comparison between the price of exports and the price of domestic sales of like goods.

With regard to the 12<sup>th</sup> Five Year Plan for the Solar Photovoltaic Industry, there is no evidence that any of CBSA stated policy directives in this plan have an influence on the industry’s costs or prices which creates a situation such that it does not permit proper comparison of the price of domestic sales of like goods with the price of exports to Australia. As stated by the CBSA in para 73 of the Statement of Reasons –

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<sup>1</sup> Statement of Reasons, paras 68-117.

*These policy directives demonstrate the GOC's intention to influence the composition and structure of the domestic solar sector by concentrating efforts on supporting leading enterprises and promoting resource integration and mergers. The evidence also supports the conclusion that the GOC has influenced the production capacity of photovoltaic modules in the domestic market and limited the number of domestic producers.*

Any cost/price effect of such directives will be on both domestic and export sales of goods produced. There is nothing in the policy directives in this 12<sup>th</sup> Five Year Plan for the Solar Photovoltaic Industry discussed by the CBSA which can lead to a conclusion that the plan has a different impact on the cost/price of PV modules or panels sold in the domestic market to the cost/price of PV modules or panels sold in export markets. The plan is all about development of the photovoltaic industry in various ways, none of which are about controlling pricing of PV modules or panels sold in the domestic market.

Concerning *Standard Conditions for Photovoltaic Manufacturing Industry*, as stated in para 76 of the Statement of Reasons, the purpose of this document is –

*To further strengthen the administration of photovoltaic manufacturing industry, standardize the order of industry development, improve the industry development, and accelerate and promote the transformation and upgrading of photovoltaic industry.*

It is said to include measures to restrict new entrants and capacity expansion, to set minimum R&D expenditure, list minimum production requirements and identify specific technological and efficiency requirements.

It cannot be concluded that this policy document creates a situation that could differently affect domestic and export selling prices and is such that domestic prices are not suitable for the purpose of s269TAC(1) NV purpose.

There is also nothing in the CBSA's analysis of *Other Industrial Policies Influencing the Production of Photovoltaic Modules* which evidences that GOC policies have created a situation such that domestic prices are not suitable for s269TAC(1) NV purpose.

#### **Government Influence on the Price of Inputs (paras 83-93)**

Even if it were to be concluded that GOC policies influence the price of PV module or panel inputs such as PV cells, polysilicon and aluminium extrusions, because the same inputs are used in the production of PV modules or panels for export and domestic sale, such policies do not create a situation such that domestic prices are not suitable for s269TAC(1) NV purpose. The production costs of PV modules or panels produced for export and domestic sale will be equally affected by any GOC policies found to influence the price of inputs.

#### **Government Influence of the Purchase of Photovoltaic Modules (paras 94-102)**

There is no evidence that the GOC's policies which influence the price of solar generated electricity impact on the price of PV modules as concluded by the CBSA. Therefore there is no evidence that such GOC policies create a situation such that domestic prices are not suitable for s269TAC(1) NV purpose.

## Domestic Price Analysis – Photovoltaic Modules and Laminates in China (paras 103-117)

That domestic prices of photovoltaic modules in China are not substantially the same as they would be if determined in a competitive market has no relevance to the question of whether the situation in China is such that domestic prices are not suitable for s269TAC(1) NV purpose. It has relevance to the CBSA's Section 20 Inquiry but no relevance to the Commission's PMS inquiry.

In addition to referral to the CBSA's findings in its Section 20 Inquiry per the Statement of Reasons as discussed above to support its PMS allegation, Tindo's submission also addresses Chinese *Finance and Loan Costs*. Tindo submits that –

*The finance and loan costs of the solar companies are not representative of competitive market costs.*

We make the following comments on Tindo's allegation that "solar companies" have lower finance and loan costs than other companies because of GOC policies:

1. Tindo made this allegation in its Application and it was investigated by the Commission which found no evidence supporting it;<sup>2</sup>
2. This submission by Tindo does not provide any additional evidence that GOC policies provide for lower finance and loan costs for "solar companies";
3. Even if it were found that GOC policies do provide for lower finance and loan costs for "solar companies" than other companies (of which there is no evidence) and that such policies affect selling prices of "solar companies", it is prices of export and domestic sales that would be so affected, ie it would not create a situation such that domestic sales are not suitable for s269TAC(1) NV purpose; and
4. This is a matter relevant to an anti-subsidy (countervailing) investigation, not to a PMS inquiry in an anti-dumping investigation.

Concerning Tindo's submission re *Consolidated group costs*, we cannot comment on the Commission's investigation of other exporters, but in the case of Trina Solar the Commission thoroughly investigated the costs to make and sell the subject merchandise and found that after having verified them up to audited financial accounts and down to source documents, they were satisfied that they are "*complete, relevant and accurate*".<sup>3</sup>

In summary, the findings of the CBSA in its Section 20 Inquiry as reported in the Statement of Reasons may satisfy them that the requirements of section 20(1)(a) of Canada's SIMA are met, but they do not provide grounds for a Commission conclusion that there is a PMS as defined in section 269TAC(2)(a)(ii) of the Act and Article 2.2 of the ADA. There is nothing in the CBSA's findings in its Section 20 Inquiry per the Statement of Reasons which proves that prices of domestic sales of like goods are themselves affected by a market situation which makes them unsuitable for comparison with prices of export sales to Australia and

<sup>2</sup> SEF No. 239, section 6.4.2.

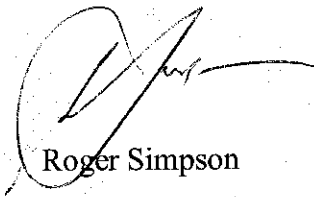
<sup>3</sup> Trina Solar Visit Report, section 5.7.

therefore unsuitable for s269TAC(1) NV purpose. And no further evidence has been provided by Tindo to cause the Commission to overturn its findings per SEF No. 239 that it *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.*

It is of important note that GOC policies which may similarly affect both domestic and export prices have relevance to an anti-subsidy (countervailing) investigation, but not to a PMS inquiry in an anti-dumping investigation.

Consequent upon the foregoing, the Commission should proceed with its proposal per SEF No.239 to terminate this investigation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roger Simpson', is written over a circular stamp or seal.

Roger Simpson