

31-August-2015

This submission is made to the Anti-Dumping Commission with regard to the alleged dumping of certain crystalline silicon photovoltaic (PV) modules or panels exported from the People's Republic of China (China).

Tindo requests as a matter of urgency that the Commissioner make a preliminary determination and require securities are taken whilst the investigation continues.

As presented in its previous submissions Tindo submits that the Commission:

- find a market situation exists in China for PV modules and panels and calculate normal values based on information submitted by Tindo;
- imposes measures based on a combination of fixed and variable duty method;
- does not have regard to a non-injurious price as provided for in the legislation; and
- does not exclude from the investigation PV modules or panels greater than or equal to 300 watts and PV modules less than or equal to 200 watts

Dumping Investigation

Tindo restates its support for 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.

Tindo strongly disagrees with the margins that were determined by the Commission. As addressed in previous submissions 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.

Tindo notes that the Government of China (GOC) advised that it would not provide a response to the Government Questionnaire. Tindo requests that the Commission adopt the approach that it took in Report No 237 in determining that a market situation existed in China for silicon metal, and rely on evidence relied on by the Canadian Border Services Agency (CBSA).

The CBSA concluded after a detailed study of the GOC's policies and plans in relation to PV modules and laminates that domestic prices are not the same as they would be if they were determined in a competitive market.

The CBSA findings of GOC influence on the cost of inputs to the PV modules and laminates provide evidence that certain costs do not reasonably reflect competitive market costs.

Tindo further requests that the Commission also rely on information submitted by Tindo to determine that finance and loan costs are not representative of competitive market costs.

Injury Investigation

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

- lost sales volume;
- price depression;
- price suppression; and
- reduced profit and profitability.

Causal link Investigation

Tindo restates that it strongly disagrees with the Commission's finding in the SEF 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 requests that the Commission in making its recommendation to the Parliamentary Secretary with regard to injury caused by dumping, conduct an examination of all relevant evidence and in doing so quantify the injury to the Australian industry caused by the goods exported from China.

The Commission's SEF outlined its considerations on causal link as follows:

Noting the size of the price undercutting and dumping margins found, the Commission is not satisfied that, in the absence of dumping, Tindo would be able to reduce its selling prices of AC PV modules to the extent required to ensure Tindo's prices are competitive with DC PV modules exported from China, even after allowing for the premium that would be expected for an AC model over a DC model. [SEF page 56]

The Commission therefore considers that Tindo's business and marketing strategies together with the timing of Tindo entering the Australian market with a premium product are likely to have hindered Tindo's establishment during the investigation period and are likely to have an ongoing impact on Tindo's operation. [SEF page 62]

In its submission of 4 May 2015 Tindo refuted with evidence each of the Commission's hypothesis about the cause of injury to the Australian industry.

Tindo is of the view that the SEF provided no assessment of how the injury caused by dumping is negligible. The Commission's finding that the dumping was not the cause of the material injury did not address the co-incident that the price of the dumped imports during the investigation period had a significant downward effect on prices and that this downward price pressure reduced profits and profitability.

Tindo contends that the material injury it suffered during the investigation period was greater than that likely to occur in the normal ebb and flow of the establishment of a business. Tindo notes that there is a strong correlation between the price of the dumped imports and injury to the domestic industry.

The weighted average undercutting margin found by the Commission was up to 45%. In its submission of 4 May 2015, Tindo explained that at around the time it commenced operations in May 2012 Chinese PV prices declined significantly and at a far greater rate than the drop in the price of cells and at the same time Chinese manufacturers cumulatively started reported billion dollar losses. To illustrate this dramatic decline in average selling prices (ASP) Tindo scrutinized the financials of [REDACTED] and showed a decline in the ASP by 36.9% from October 2011 to June 2012.

Tindo's submits that the Commission's finding in the SEF on causal link was based on the significant gap between the size of the price undercutting and the dumping margins. Tindo restates that the dumping has caused 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 dumping.

In its application Tindo provided evidence (confidential attachments A-9.5.18 and A-9.5.19) that demonstrated that the prices offered to particular customers by Chinese suppliers undercut Tindo's price to those same customers by between 50% and 57%. At the industry visit (Visit Report, Chapter 8.1 refers) the Commission was provided with further extensive evidence of prices of goods from China to particular customers being priced substantially lower than Tindo's price to the same customer for a similar model of PV panel.

The fact that in the 21 months since the investigation period of July 2012 to December 2013, the Australian industry has continued to win sales against dumped imports contradicts the Commission assessment in the SEF that

the Commission is not satisfied that, in the absence of dumping, Tindo would be able to reduce its selling prices of AC PV modules to the extent required to ensure Tindo's prices

are competitive with DC PV modules exported from China, even after allowing for the premium that would be expected for an AC model over a DC model. [SEF page 56]

The Commission also found in the SEF that:

In relation to some commercial projects, Tindo provided evidence from bids that it was successful in winning that it revised its original quotations downwards by up to 25 per cent in order to compete with exported PV modules or panels from China at allegedly dumped prices. [SEF p50]

This finding additionally demonstrates that Tindo could compete in the market during the investigation period and that size of the average undercutting is not an indicator of Tindo's competitiveness in the market.

Tindo restates its disagreement with SEF finding that the imposition of a dumping duty even at the erroneously low levels found in the SEF is not likely to influence consumers to switch to Tindo's AC modules or panels. Tindo submits that the fact that there could be some improvement in profitability by reducing the incidence of price undercutting is relevant to demonstrating a link between the **dumping** of PV modules or panels from China and the **material** injury suffered by the Australian industry.

Assuming the erroneous dumping margin of 3.9% was applied to the goods from China, that is the goods were "not dumped" as per the Commission's SEF, Tindo conservatively estimates that this would have increased Tindo's sales revenue at the very least by 3%. Tindo further estimates a reduction in the price advantage of the Chinese imports would have increased Tindo's sales volumes such that Tindo's sales revenue would have increased by a minimum of 4%, which is not negligible and is material.

Tindo contends that by not remedying the dumping margin on the goods imported from China the Chinese imports are being afforded a comparative advantage on price compared to the Australian industry and this price advantage to the Chinese imports has resulted in the Australian industry experiencing material injury in the form of lost sales volumes, price suppression and depression and lost profitability and profits

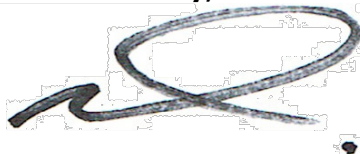
PRELIMINARY AFFIRMATIVE DETERMINATION

Tindo requests as a matter of urgency that the Commissioner make a PAD under section 269TD and impose securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

Tindo requests that the Commission make a PAD and take securities based on the margins found to date whilst the Commission is recalculating margins based on a market situation existing for prices and that certain costs do not reasonably reflect competitive market costs.

Tindo further requests that after the Commission has considered the available information and recalculated the dumping margins that the level of securities be adjusted upwards as required. It is 16 months since the investigation was initiated and Tindo continues to experience ongoing material injury from the dumped exports of PV modules and panels from China in the form of lost sales volumes, price suppression and depression and lost profitability and profits. This continued presence of imports of PV modules and panels from China at dumped prices is causing Tindo ongoing material injury.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adrian Ferraretto', with a blue circular stamp or mark below it.

Adrian Ferraretto
Managing Director