



Clean Energy Council

Submission to the second Statement of Essential Facts for Case 239: Dumping investigation into photovoltaic panels exported from China

Executive Summary

Clean Energy Council (CEC) welcomes the opportunity to provide a submission on issues relevant to the publication of the new Statement of Essential Facts (SEF) for Case 239: Dumping investigation into photovoltaic (PV) modules or panels exported from China.

CEC supported the recommendation made by the Anti-Dumping Commissioner in October 2015 to terminate the investigation.

Many issues that were brought to the attention of the Anti-Dumping Commission in its 2014-15 investigation were not addressed in the first SEF. We seek assurance from the Anti-Dumping Commission that these issues will be addressed prior to publication of the second SEF. CEC would be happy to assist the Anti-Dumping Commission with engagement with Australian solar companies and other CEC members as the investigation continues.

Many, if not most, of the issues raised by the Anti-Dumping Review Panel (ADRP) are affected by the alleged dumping margin. The alleged dumping margins for companies under investigation were in dispute at the time that the first SEF was published. We are therefore reluctant to comment on specific details of dumping margins until the disputes over the calculation of the dumping margins are resolved. We note that exporters under investigation have made a number of submissions disputing the weighted average dumping margin that was determined by the Commission and taken into account by the ADRP in its decision to revoke the termination. The Commission should correct the weighted average dumping margin in its second SEF and assess whether that should negate the ADRP's decision to revoke the Commission's termination.

1. Issues not addressed in the first SEF

There were a number of issues raised by CEC that were not addressed in the first SEF, published in April 2015. At the time we were assured that it was unnecessary to address the issues raised because the SEF would be recommending termination of the investigation. We seek assurance that the issues raised by CEC during the course of the 2014-15 investigation will be addressed prior to the publication of the second SEF.

We will provide a more detailed summary of unaddressed issues if the Anti-Dumping Commission indicates it will address them in its second SEF. Briefly, some of the key issues include:

- Figures that have been disputed by exporters under investigation;
- 'Like goods' considerations in relation to physical differences;
- 'Like goods' considerations in relation to commercial considerations, including bankability and insurance;
- 'Like goods' considerations in relation to the limitations on use of Tindo panel for utility-scale solar PV facilities;
- 'Like goods' considerations in relation to the applications such as ground-mounted systems and certification to standards, including ISO9001, ISO 14002 and OHSAS18001.

Recommendation 1

The Anti-Dumping Commission should provide assurance that it will address in its second SEF the issues raised by CEC and its members during the course of the 2014-15 investigation that were not addressed in the first SEF.

Recommendation 2

The second SEF should address issues that were raised during the course of the 2014-15 investigation and then overlooked by the first SEF because of the recommendation to terminate. These issues include 'like goods' considerations and data and methodologies that were disputed by CEC members under investigation.

2. Responses to issues raised by the ADRP

Many, if not most, of the issues raised by the ADRP relate to the alleged dumping margin, the impact that a reduced price advantage for imported Chinese product might have had on Tindo's sales and the finding that the injury caused by dumping was negligible.

The Commission considered that the imposition of a dumping duty at the levels found would not be likely to influence consumers to switch to Tindo's panels. The ADRP disputed this finding. For example, in response to the suggestion that, other than dumping, there is no reasonable explanation from the Commission as to why Tindo's wholesale business suffered, the response of the ADRP was,

"I am not able to understand how the ADC was able to rule out the possibility that removal of the dumping margin would not have reduced injury to the Australian industry. There is no regard had to the possibility that an increase in the price of imported Chinese products to the extent of the dumping margins may have allowed increase in the price of Tindo's products or an increase in sales. While given the price advantage the imported Chinese products had, this may still have meant that Tindo suffered injury. The extent of that injury however may have been reduced and this reduction may not have been negligible."

In response to the accusation that the Commission's approach to the differential pricing between Tindo and dumped imports did not take into account the price premium Tindo was able to obtain or that without dumping Tindo's value for money proposition would have improved, the response of the ADRP was,

"I do not understand how the possibility could be ruled out that, if the price gap between the imported Chinese product and Tindo's was reduced, there could be an increase in the number of customers prepared to buy Tindo's product or that it may have been able to raise its price."

In response to the claim that Tindo did, contrary to the finding by the Anti-Dumping Commission, suffer volume injury the ADRP concluded,

"If there was a reduced price advantage for imported Chinese product, it is possible Tindo could have obtained more sales. This would have been an advantage in terms of increased revenue and reduced losses. Without an analysis which explained why the ADC could so conclusively rule out this possibility, I do not understand how the ADC could have been satisfied that the injury caused by dumping was negligible."

It is extremely difficult for CEC to make an evidence-based judgement of the reasoning of the ADRP in relation to differential pricing. Firstly, we do not have access to the numbers upon which the conclusions of the Commission and the ADRP were based. Secondly, the numbers were in dispute when the decision to terminate the 2014-15 investigation was made. PV

panel exporters challenged the Commissioner's preliminary findings in regard to dumping margins on the basis of errors in calculations, inaccurate and excessive assumptions regarding rates of profit and inappropriate assumptions as to whether transactions were conducted at arm's length

Recommendation 3

For the industry to be able to make an informed judgement of the ADRP's decision to revoke the Anti-Dumping Commissioner's decision to terminate the investigation the ADRP (or the Commission) should make available the pricing data upon which the ADRP's decision was based. However, prior to releasing any pricing data the disputes between the Commission and the companies under investigation regarding the pricing data should be resolved.

3. Clarification and additional analysis required for the SEF

The scope of the resumed investigation is unclear and requires clarification. We understand that initially the investigation related to pricing by the four PV panel exporters who had the largest market share in Australia during the investigation period. In February 2015 the Commission advised that there was insufficient evidence to support the claim that one cause of "artificially low pricing" in the Chinese solar PV module market is that state-owned Chinese banks provide loans and credit facilities to Chinese solar PV cell and module manufacturers at less than market interest rates, and on preferential terms. The first SEF published 7 April 2015 concluded:

- The weighted average dumping margin for PV panels from China was about 4%;
- Even without the alleged dumping margin of 4%, Chinese importers would still substantially undercut Tindo's selling price; and
- A 4% dumping duty would be unlikely to influence consumers to switch to Tindo.

In May 2015 Tindo raised new allegations about the role of the Government of China. On 19 May 2015 the Commission announced it would extend the investigation to consider the new information provided by Tindo Solar alleging that, "the Government of China has influenced the costs and prices of PV modules or panels in the Chinese domestic market, making domestic selling prices unsuitable for determining normal values". The Government of China subsequently raised concerns regarding the decision to re-open the investigation which it claimed contravenes the World Trade Organization (WTO) procedures for conducting an anti-dumping investigation.

It is unclear whether the resumed investigation will focus on pricing by four PV panel exporters in 2012-13 or prices and competition in the installed end-user market that existed in Australia in 2012-13 or both. In response to the allegation that the comparison made by

the Commission between Tindo's selling prices and Chinese exports was flawed as it was done at the wholesale level when Tindo's sales were predominantly to end users, the ADRP recommended that,

"A reliable analysis of the installed end-user market is required to be satisfied that the injury to the Australian industry was negligible."

In response to the claim made by Tindo that it experienced material injury from dumping that was not negligible, the ADRP states that,

"The conclusion based on the pricing analysis simply assumes that because there would still be a price advantage with dumped exports, any injury from those exports must have been negligible. I am not satisfied there can be such a conclusion, at least without more analysis. Such analysis should include further examination of competition in the end-user market and an examination of the possibility that a reduction in the price gap between imported Chinese products and Tindo's products may have reduced the extent of injury suffered."

The ADRP does not suggest how the Commission would undertake the analysis of pricing and competition in the installed end-user market for the period 1 July 2012 to 31 December 2013 (the investigation period). Will the Commission gather data on the 2012-13 cost of solar PV systems (including the cost of inverters, balance of system, installation etc) to inform its investigation? It is unclear how this analysis would be undertaken given the variety and rapid evolution of business models used by companies targeting the installed end-user market.

It would be inappropriate to compare import prices of modules with Tindo's prices at the installed end-user level. Exporters who sell to distributors and retailers have no control over the additional costs involved in installed end-user sales. Sales at the end-user level will include the costs of inverters, mounting, cables, installation etc. Comparison of prices at the end-user level would include the cost of products that are not 'like goods' to the imports under investigation and prices for them are not under the control of the importers.

Recommendation 4

The Anti-Dumping Commission should reject the proposal that its investigation should be extended to the "installed end user market".

Recommendation 5

If it does not reject the proposal that its investigation should be extended to the "installed end user market" the Anti-Dumping Commission should explain clearly how it proposes to undertake that analysis.

4. Impact of the anti-dumping investigation on the Australian solar industry

We understand that the Anti-Dumping Commission works within legislative constraints and is unable to consider the public interest in its deliberations. Nevertheless, we would like to note for the record that the continuation of the anti-dumping investigation is having and will continue to have a significant negative impact on the Australian solar industry. For example, in January 2016 the Australian Renewable Energy Agency (ARENA) announced the short-list of 22 projects invited to progress to the next stage of its \$100 million large-scale solar PV competitive round. The projects represent a total of \$1.68 billion potential investment. The continuation of the anti-dumping investigation adds a new risk and additional costs to those projects. Developers do not know if the cost of anti-dumping duties should be factored into their plans and how to best deal with that risk. This adds unnecessary costs to large-scale projects. It is all the more frustrating given that CEC made a submission in June 2014 regarding the 'Like goods' considerations in relation to the limitations on use of Tindo panel for utility-scale solar PV facilities. The points made in that submission were not addressed in the first SEF and still have not been addressed.

We are also concerned about the potential impact the imposition of dumping duties would have on employment in the Australian solar industry. There are many thousands of people employed in retail, installation and logistics in the solar industry. A large proportion of the jobs are in regional and rural areas of Australia. Dumping duties would increase the price of solar systems, which would lead to a reduction in sales and employment. We are concerned that the imposition of dumping duties would lead to a large net loss of jobs in the Australian solar industry.

It is also worth noting that the Anti-Dumping Agreement of the WTO requires that, "Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation".

Recommendation 6

Note that the continuation of the anti-dumping investigation is an unwelcome development that will add new risks and costs to the Australian solar industry and that the imposition of dumping duties would lead to a reduction in sales and a potentially significant net loss of jobs in the Australian solar industry.

Recommendation 7

The Anti-Dumping Commission should clarify whether it intends to conduct the resumed investigation in accordance with the World Trade Organization (WTO) procedures for conducting an anti-dumping investigation.

5. Recommendations

The Anti-Dumping Commission should provide assurance that it will address in its second SEF the issues raised by CEC and its members during the course of the 2014-15 investigation that were not addressed in the first SEF.

The second SEF should address issues that were raised during the course of the 2014-15 investigation and then overlooked by the first SEF because of the recommendation to terminate. These issues include 'like goods' considerations and data and methodologies that were disputed by CEC members under investigation.

For the industry to be able to make an informed judgement of the ADRP's decision to revoke the Anti-Dumping Commissioner's decision to terminate the investigation the Anti-Dumping Commission should make available the pricing data upon which the ADRP's decision was based. However, prior to releasing any pricing data the disputes between the Anti-Dumping Commission and the companies under investigation regarding the dumping margins should be resolved.

The Anti-Dumping Commission should reject the proposal that its investigation should be extended to the "installed end user market".

If it does not reject the proposal that its investigation should be extended to the "installed end user market" the Anti-Dumping Commission should explain clearly how it proposes to undertake that analysis.

The Anti-Dumping Commission should clarify whether it intends to conduct the resumed investigation in accordance with the World Trade Organization (WTO) procedures for conducting an anti-dumping investigation.

Note that the continuation of the anti-dumping investigation is an unwelcome development that will add new risks and costs to the Australian solar industry and that the imposition of dumping duties would lead to a reduction in sales and a potentially significant net loss of jobs in the Australian solar industry.