Submission on loans and financial costs not reflecting competitive market rates.

This submission by Tindo is further support of its previous submissions that interest and financial costs in the exporters accounts do not reflect competitive market costs.

European Union Report PV panels and modules

EU PV report Inv period

The following extracts are from the EU Report "COUNCIL IMPLEMENTING REGULATION (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China". (Attached)

The investigation period was July 2011 to June 2012, whilst this period is before the investigation period for the current investigation the findings are relevant in that the assessment is still current, and the references to the 12th Five Year Plan are for the period 2011-2015. Emphasis has been added.

The sampled exporting producers included exporters in the current investigation.

> 29) Exporters Changzhou Trina Solar Energy Co. Ltd China Wuxi Suntech Power Co. Ltd PRC Power Co. Ltd Renesola Jiangsu Ltd, China.
>
> 184) According to recent findings some big commercial banks in the PRC were granted access to state foreign exchange reserves. This significantly decreases their cost of capital and this 'cheap money' is used for USD and EUR loans for selected companies and projects in line with the 'going out' policy. <u>Thus, they are able to offer conditions which normal commercial banks cannot match.</u>
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> 185) Another major distortion in the financing of the photo-voltaic industry is the <u>special privileged position of the China Development Bank ('CDB') which is the major lender to this industry</u> and provided big bulk of loans and credit lines to the sampled exporting producers. The CDB is financed almost completely by bond sales rather than by deposits and it is, after the Ministry of Finance, the second biggest bond issuer in the country. Through this special mechanism the CDB is able to finance itself cheaply and subsequently is able to offer loans at preferential conditions to selected industries.
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> 187) The following legal provisions provide for preferential ending in China: Law of the PRC on Commercial Banks, General Rules on Loans (implemented by the People's Bank of China), Decision No 40 of the of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment.
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> 190) A benefit within the meaning of Articles 3(2) and 6(b) of the basic Regulation exists to the extent that the government loans, or loans from private bodies entrusted or directed by the government, are granted <u>on terms more favourable than the recipient could actually</u>

obtain on the market. Non-government loans in the PRC do not provide an appropriate market benchmark, since it has been established that privately-owned banks are entrusted and directed by the GOC and therefore be presumed to follow the lending practices of the state-owned banks. Therefore, benchmarks have been constructed using the method described in recitals (198) — (200) below. Use of this benchmark demonstrates that loans are granted to the PV sector at below-market terms and conditions.

198) When constructing an appropriate benchmark for RMB denominated loans, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary not to take the creditworthiness of the Chinese exporters at face value, but to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.

199) The same situation applies for the loans denominated in foreign currencies. The BB rated corporate bonds with relevant denominations issued during the IP were used as a benchmark.

202) The complainant had alleged that the Chinese banks extended disproportionate credit lines to the Chinese exporters of product concerned. The investigation confirmed that indeed all investigated companies received huge credit lines from Chinese banks which were in most cases provided free of charge or subject to very small fees. In normal market circumstances such credit lines are subject to substantial commitment and administration fees which allow the banks to compensate for the costs and risks.

The above supports Tindo's submissions that the finance and loans costs do not represent competitive market costs and should be adjusted to so reflect competitive market costs. Tindo has provided in its submissions information on suitable benchmarks to use and how the costs should be adjusted.

The EU report also supports Tindo's previous submissions that comparing loans from state owned banks and privately owned banks as Non-government loans in the PRC do not provide an appropriate market benchmark, since it has been established that privately-owned banks are entrusted and directed by the GOC and therefore be presumed to follow the lending practices of the state-owned banks.

TRINA Annual Report 2013

The following information from the Trina annual report demonstrates that Trina is receiving loans and other finance benefits from banks that are state owned. Emphasis added.

China enacted its Renewable Energy Law, which became effective on January 1, 2006 and was amended on December 26, 2009. The Renewable Energy Law sets forth policies to encourage the development and use of solar energy and other non-fossil energy. The law sets forth the national policy to encourage and support the use of solar and other renewable energy and the use of on-grid generation. It also authorizes the relevant pricing authorities

> to set favorable prices for the purchase of electricity generated by solar and other renewable power generation systems. It also provides financial incentives, such as national funding, preferential loans and tax preferences for the development of renewable energy projects. P.37
>
> The Facility contains financial covenants which require that specified debt to total assets ratio, net profit ratio and income to interest ratio be maintained. As of December 31, 2011, Trina China violated the net profit ratio and income to interest ratio covenants. Trina China obtained a waiver letter from the Agriculture Bank of China, the leading bank in the syndicated loan, on February 8, 2012 to waive the past violation of the financial covenants and to further remove all of the financial covenants for the duration of the Facility.
>
> On May 17, 2011, Trina China entered into a three year credit facility with the Export-Import Bank of China,
>
> On June 29, 2011, Trina China entered into a three-year credit facility with China Development Bank, or the TCZ CDB Facility, of $180.0 million, which is designated for the working capital. As of December 31, 2012 and 2013, we had fully drawn down the TCZ CDB Facility. P.62
>
> The TCZ CDB Facility contains certain financial covenants which require that specified current ratio, quick ratio, debt to asset ratio, debt repayment coverage ratio, interest coverage ratio, contingent liability ratio, current assets turnover and accounts receivable turnover be maintained. As Trina China was not in compliance with the required threshold of the covenants for debt to asset ratio, current assets turnover and accounts receivable turnover as of December 31, 2011, Trina China obtained a written letter from China Development Bank stating that the bank waives Trina China's covenants breach by revising those covenants. As of December 31, 2013, Trina China was in compliance with the revised covenants.p.63

The waiver of financial covenants is not what would be expected in a normal market and confirms what the EU found in 202) above. The banks mentioned are all state owned banks and are also mentioned in the EU report.

OneSteel Attachment 004 to Investigation 322 Program 46

Tindo refers to the above recently initiated investigation and specifically Program 46. Emphasis added.

> The GOC is a major shareholder in many of the major banks established in China and therefore, as in the case of the SIEs producing steel billet, it has access to banks' Articles of Association where the information on shareholder membership should be described in detail. In this respect it is also noted that according to Article 61 of the Law on Commercial Banks [2003] the banks "shall report the balance sheets, statements of profits, and other financial statement and statistical reports and documents to the banking regulatory organ of the State Council and People's Bank of China".

According to the 2006 Deutsche Bank Research on China's banking sector, the state-owned banks' share may amount to more than two-thirds of the Chinese market. For the same matter the WTO Trade Policy Review of China noted that “[t]he high degree of state ownership is another notable feature of the financial sector in China", and "there has been little change in the market structure of China's banking sector, which is dominated by state-owned banks". It is observed that the five largest state-owned commercial banks (Agricultural Bank, Bank of China, Construction Bank of China, Bank of Communications and Industrial and Commercial Bank) appear to represent more than half of the Chinese banking sector.

Another sign of GOC involvement in Chinese financial market is the role played by the People’s Bank of China (PBOC) in setting the specific limits on the way interest rates are set and fluctuate. Indeed, EC found in European Community – Countervailing measures on organic steel from China the investigation established that the PBOC has specific rules regulating the way interest rates float in China. According to the information available, those rules were set out in the PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans68. Financial institutions are requested to provide loan rates within a certain range of the benchmark loan interest rate of the PBOC. For commercial bank loans and policy bank loans managed commercially there is no upper limit range but only a lower limit range. For urban credit cooperatives and rural credit cooperatives there are both upper and lower limit ranges. For preferential loans and loans for which the State Council has specific regulations the interest rates do not float upwards. Accordingly, in European Community – Countervailing measures on organic steel from China the European Commission found that the GOC had a policy to provide preferential lending to the steel sector, because public bodies (state-owned commercial banks) were (a) engaged in such provision, and (b)hold a predominant place in the market, which enabled them to offer below-market interest rates.

Specifically, the Commercial banking law [2003] applies in the same way to state-owned commercial banks and privately owned commercial banks. For example, Article 38 instructs all Commercial banks (i.e. also those which are privately owned) to: “determine the loan rate in accordance with the upper and lower limit of the loan rate set by the PBOC”.

Conclusion

The findings by the EU, Trina’s annual report and the OneSteel information on program 46 support Tindos’s contention that loan and finance costs for PV producers do not reflect compettitve market costs.

Tindo requests that the cost be adjusted using the suitable benchmarks proposed in its previous submissions.

Tindo also restates from its previous submissions that the cumulative nature of the distorted costs should be taken into account as the distortion in the market has been evident since at least 2003. That is the debt shown in exporters accounts for the investigation period is less than the debt that would be shown if the exporters loans and finance costs reflected competitive market costs from the years previous to the investigation period.