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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL FACTS
NO. 239A**

**ALLEGED DUMPING OF CERTAIN CRYSTALLINE SILICON
PHOTOVOLTAIC MODULES OR PANELS**

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

2 September 2016

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ABBREVIATIONS

\$ or AUD	Australian dollars
AC	Alternating current
Act	the <i>Customs Act 1901</i>
ADA	World Trade Organization Anti-Dumping Agreement
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ADRP Report	ADRP Report No. 29
CCCME	Chinese Chamber of Commerce for Import and Export of Machinery and Electronic Products
China	The People's Republic of China
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make & sell
DC	Direct current
EN	ET Solar Energy Limited
EPR	The electronic public record for Investigation 239 at the Commission's website, adcommission.gov.au
ET Solar	TT, EN and NY
ET Solar Australia	ET Solar Australia Pty Ltd
GOC	Government of China
Investigation period	1 July 2012 to 31 December 2013
NY	ET Energy Co. Limited
PAD	Preliminary Affirmative Determination
Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
PV panels	Crystalline silicon photovoltaic modules or panels
ReneSola Australia	ReneSola Australia Pty Ltd
ReneSola Jiangsu	ReneSola Jiangsu Limited
Renesola Ltd	ReneSola Australia, ReneSola Jiangsu, ReneSola Zhejiang
ReneSola Zhejiang	ReneSola Zhejiang Limited
SEF	Statement of Essential Facts
SEF 239	The Statement of Essential Facts No 239 published on 7 April 2015
SEF 239A	This Statement of Essential Facts No 239A published following revocation of the Commissioner's decision to terminate Investigation 239
SG&A	Selling, general and administrative expenses
Suntech	Wuxi Suntech Power Co. Ltd
Suntech Australia	Suntech Power Australia Pty Ltd

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TAU	Trina Solar (Australia) Pty Ltd
TCZ	Changzhou Trina Solar Energy Co.,Ltd
TED	Trina Solar Energy Development PTE Ltd
TER 239	Termination Report No 239 dated 6 October 2015
the applicant or Tindo	Tindo Manufacturing Pty Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC), in this case, certain crystalline photovoltaic modules or panels
Tindo's application for review	Tindo's application to the ADRP dated 5 November 2015 for review of the Commissioner's decision to terminate Investigation 239
Trina	TCZ, TST, TED, TSH and TAU
TSH	Trina Solar Energy (Shanghai) Co., Ltd
TST	Trina Solar (Changzhou) Science and Technology Co., Ltd
TT	ET Solar Industry Limited
W	Watts

1 SUMMARY AND RECOMMENDATIONS

This Statement of Essential Facts No. 239A (SEF 239A) sets out the facts for the resumption of investigation number 239 (Investigation 239) into the alleged dumping of certain crystalline silicon photovoltaic modules or panels (PV panels) exported to Australia from the People's Republic of China (China). SEF 239A sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to terminate the investigation or base a recommendation to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)¹ in relation to the original investigation.

The Anti-Dumping Commission (the Commission) is publishing this statement of essential facts (SEF) in response to a decision by the Anti-Dumping Review Panel (ADRP) on 22 December 2015 to revoke the Commissioner's decision of 6 October 2015 to terminate Investigation 239. The investigation formally resumes after publication of this SEF (see subsection 269ZZT(2) of the *Customs Act 1901* (the Act)).²

The Commissioner terminated Investigation 239 on 6 October 2015 because the Commissioner was satisfied at that time that the injury to the Australian industry caused by dumped PV panels was negligible. If the Commissioner is satisfied in an investigation of goods exported from a particular country that the injury to an Australian industry from those exports is negligible then the Commissioner must terminate the investigation so far as it relates to that country (subsection 269TDA(13)).

The ADRP considered that the Commissioner's decision to terminate Investigation 239 was not the correct or preferable decision and on 22 December 2015 the ADRP revoked the Commissioner's decision under subsection 269ZZT(1)(b) of the Act. The ADRP's reasons for revoking the Commissioner's decision to terminate Investigation 239 are summarised in section 3 of this SEF.³

1.1 Preliminary finding

In this SEF, the Commissioner makes the following preliminary finding in relation to the resumed investigation:

- the injury to the Australian industry that has been, or may be, caused by exports of PV panels exported from China during the period 1 July 2012 to 31 December 2013 (the investigation period) exported at dumped prices is negligible.

Based on this preliminary finding, and subject to any submissions received in response to this SEF and any further investigations, the Commissioner proposes to terminate the resumed investigation under subsection 269TDA(13) of the Act.

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

² All legislative references in this report are references to the *Customs Act 1901* unless otherwise stated.

³ The full reasons for the ADRP's decision can be found on the ADRP's website, www.adreviewpanel.gov.au

The Commissioner seeks comments from interested parties on the Commissioner's finding.

1.2 Authority to make decision

If the ADRP revokes a termination decision by the Commissioner under paragraph 269ZZT(1)(b) of the Act, subsection 269ZZT(2) provides that the Commissioner must, as soon as practicable after the revocation, publish a SEF under section 269TDAA in relation to the application for a dumping duty notice that is related to the review and after that publication, the investigation of the application resumes under Part XVB of the Act.

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

Following the publication of this SEF, the Commissioner either must make a recommendation to the Parliamentary Secretary concerning whether a notice should be published in respect of the goods or, if satisfied of any of the reasons for termination in subsection 269TDA, must terminate the investigation. In making this decision the Commissioner will have regard to all relevant information including submissions received in response to this SEF.

2 BACKGROUND TO THE RESUMED INVESTIGATION

2.1 Initiation – Investigation 239

On 4 February 2014, Tindo Manufacturing Pty Ltd (Tindo) lodged an application for dumping duties in respect of PV panels exported to Australia from China. Tindo alleged that dumped PV panels exported to Australia from China had caused material injury to the Australian industry producing like goods.

Following consideration of the application, the Commissioner decided not to reject the application and the Commissioner initiated Investigation 239 by public notice in *The Australian* newspaper on 14 May 2014. Anti-Dumping Notice (ADN) No. 2014/38 provides further details of Investigation 239 and is available on the Commission's website at www.adcommission.gov.au.

The following periods are relevant to Investigation 239:

- the investigation period for the purpose of assessing dumping is 1 July 2012 to 31 December 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2010.

The same periods are relevant to the resumed investigation.

2.2 SEF 239

The SEF for Investigation 239 (SEF 239) was placed on the public record on 7 April 2015.

The Commission received submissions from the following interested parties in response to SEF 239:

- ET Solar Energy Limited; ET Solar Industry Limited; and ET Energy Co. Limited (collectively referred to as ET Solar);
- Changzhou Trina Solar Energy Co. Ltd; Trina Solar (Changzhou) Science and Technology Co. Ltd; Trina Solar Energy Development PTE Ltd; Trina Solar Energy (Shanghai) Co. Ltd; and Trina Solar (Australia) Pty Ltd (collectively referred to as Trina);
- ReneSola Australia Pty Ltd; ReneSola Jiangsu Ltd; and ReneSola Zhejiang Limited (collectively referred to as Renesola);
- the Clean Energy Council of Australia (CEC);
- Tindo;
- the State Government of South Australia; and
- the China Chamber of Commerce of Import and Export of Machinery and Electronic Products (CCCME).

Public record versions of these submissions can be found on the Commission's website at www.adcommission.gov.au.

2.3 Termination Report 239

The Commissioner published Termination Report No. 239 (TER 239) on 6 October 2015 setting out its findings and conclusions into the alleged dumping of PV panels exported to Australia from China and the Commissioner's reasons for terminating Investigation 239.

In TER 239, the Commissioner was satisfied that:

- PV modules or panels exported to Australia from China during the investigation period were exported at dumped prices; but
- the injury to the Australian industry that has been, or may be, caused by those exports was negligible.

As a result of these findings, the Commissioner was obliged to terminate the investigation in accordance with subsection 269TDA(13) of the Act.

A notice regarding the termination of this investigation was published in *The Australian* newspaper on 6 October 2015. ADN No. 2015/118 also advises of the termination.

2.4 Review of TER 239 by the ADRP and revocation of the termination

On 5 November 2015, Tindo applied to the ADRP for a review of the Commissioner's termination decision. The ADRP accepted the application and conducted a review.

On 22 December 2015 the ADRP revoked the Commissioner's decision to terminate Investigation 239. The report outlining the ADRP's reasons for the revocation is available on the ADRP's website at www.adreviewpanel.gov.au. The ADRP's reasons for the revocation are summarised at section 3 of this SEF.

The Commission published ADN No. 2016/1 on 8 January 2016 advising interested parties of the ADRP's revocation and inviting submissions relevant to the resumed investigation.

The effect of the ADRP's revocation is that the Commissioner must, as soon as practicable after the ADRP's revocation, publish a further SEF (this SEF 239A), in accordance with subsection 269ZZT(2). The investigation formally resumes following publication of this SEF.

2.5 Responding to SEF 239A

This SEF informs interested parties of the facts established by the Commission and the Commissioner's preliminary findings and allows interested parties to make submissions in response.

It is important to note that this SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to this SEF, and the Commissioner will consider these responses in making a final assessment. Responses should be received by the Commission no later than **22 September 2016**.

Under subsection 269TEA(4) of the Act, if it is determined that a final report should be prepared for the Parliamentary Secretary, the Commissioner is not obliged to have regard to any submission made in response to this SEF received after **22 September 2016** if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report.

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Submissions in response to this SEF should be emailed to operations2@adcommission.gov.au. Alternatively they may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 2
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3000
AUSTRALIA

Submissions containing confidential information must be clearly marked accordingly and a non-confidential version of any such submission must also be provided for inclusion on the electronic public record (EPR) for Investigation 239.

The EPR contains non-confidential submissions by interested parties, non-confidential versions of the Commission's visit reports and other publicly available documents. It is available on the Commission's website: www.adcommission.gov.au. A guide for making submissions is also available on the Commission's website.

This SEF should be read in conjunction with documents on the EPR, in particular documents that are expressly referred to in this SEF.

3 ADRP'S FINDINGS IN RESPECT OF TER 239 AND THE COMMISSION'S APPROACH TO THIS SEF

3.1 ADRP's findings

The following table summarises the ADRP's findings and reasons for the grounds of review for which the ADRP found in favour of Tindo, as set out in ADRP Report No. 29 (ADRP Report).

Ground of review	ADRP's finding and reasons
Level of trade	<p>The ADRP found for the applicant for the following reasons:</p> <ul style="list-style-type: none"> • Some material indicated that the price advantage that the Chinese PV panels have at the wholesale level is not as great at the installed end-user level, which includes the price of an inverter. The Commission discounted this material in TER 239 (ADRP Report at [37]). <ul style="list-style-type: none"> ○ TER 239 did not adequately explain why an analysis at the end-user level of trade could not be done (ADRP Report at [34]). ○ A reliable analysis of the installed end-user market is required to be satisfied that the injury to the Australian industry was negligible (ADRP Report at [38]).
Market's preference for low-priced direct current (DC) Chinese product	<p>The ADRP found for the applicant, though only in part, for the following reasons:</p> <ul style="list-style-type: none"> • The ADRP could not have regard to material put before it by the applicant that was not before the Commission. • The ADRP did not accept the applicant's claim that the Commission wrongly proceeded on the basis that the applicant did not substantially offer DC solar panel systems to the market. • The ADRP concluded nonetheless that the issue was whether, as Tindo alleged, the price advantage was from dumping or, as the Commission found, the contribution of dumping to this price advantage was negligible (ADRP Report at [47]).
Volume injury	<p>The ADRP found for the applicant for the following reasons:</p> <ul style="list-style-type: none"> • The Commission's conclusion of no volume injury does not appear to take into account the extent to which a reduced price advantage for the Chinese imports may have influenced some customers to switch to Tindo's DC or alternating current (AC) product (ADRP Report at [55]). <ul style="list-style-type: none"> ○ The conclusion does not have regard to any price premium or other advantage an Australian product may have over its imported product. • The fact that the industry would still have suffered injury as a result of competition from the cheaper imported product does not mean that the injury would have been to the same extent as was suffered with dumping (ADRP Report at [56]). <ul style="list-style-type: none"> ○ If there was a reduced price advantage for the imported Chinese product, Tindo could have obtained more sales than it did during the investigation period. This would have been an advantage to it in terms of increased revenue and reduced losses (ADRP Report at [57]). ○ Without an analysis which explained why the Commission could so conclusively rule out this possibility, the Commission could not have been satisfied that the injury caused by the dumping was negligible (ADRP Report at [57]).
Tindo's business plan	<p>The ADRP found for the applicant for the following reasons:</p> <ul style="list-style-type: none"> • The Commission's conclusion seems to ignore the possibility that an increase in the price of the dumped imports sufficient to remove the dumping margin may have

Ground of review	ADRP's finding and reasons
	<p>provided some amelioration of the injury being suffered by the Australian industry (ADRP Report[64]).</p> <ul style="list-style-type: none"> ○ The Commission had no regard to the possibility that an increase in the price of the imported Chinese products to the extent of the dumping margins may have allowed some increase in the price of Tindo's products or an increase in sales (ADRP Report at [65]).
Qualitative features	<p>The ADRP found for the applicant for the following reasons:</p> <ul style="list-style-type: none"> • TER 239 does not show 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, given that some customers were prepared to pay a premium (ADRP Report at [70]).
Causal link	<p>The ADRP found for the applicant for the following reasons:</p> <ul style="list-style-type: none"> • The Commission did not carry out the non-attribution exercise (namely, not attributing injury to competition in the market, absent dumping) in a way that allows a finding to be made that the injury caused by the dumped exports was negligible (ADRP Report at [74]-[75]). • The Commission's conclusion based on the pricing analysis simply assumed that because there would still be a price advantage with the dumped exports, any injury from those exports must have been negligible (ADRP Report at [75]). • Further analysis by the Commission should at least include further examination of the competition in the end-user market and an examination of the possibility that a reduction in the price gap between the imported Chinese products and Tindo's products may have reduced the extent of the injury being suffered (ADRP Report at [75]).

3.2 Approach to the resumed investigation

In light of the ADRP's decision, the Commission has reviewed the submissions, conducted further analysis and examined the findings and determinations made during Investigation 239. These matters are discussed throughout this SEF.

The Commission received submissions from interested parties following revocation of the Commissioner's termination decision (ADN 2016/01 refers). The submissions generally address the issues that the ADRP identified as warranting further consideration. A complete listing of the submissions considered in preparation of this SEF can be found in chapter 4 of this SEF.

The Commission has approached the issues raised by the ADRP and considered them in this resumed investigation as outlined below.

3.2.1 Level of Trade

The Commission has reviewed Tindo's claims that the removal of a 21.1 per cent dumping margin would make Tindo's offering to end users competitive. In doing so, the Commission found a mathematical error in Tindo's submission to the ADRP. The Commission has corrected for that mathematical error in making its preliminary findings in this SEF. Details of the mathematical error and the Commission's corrections are contained in section 5.2.

In addition, the Commission commissioned Colmar Brunton to undertake a survey and analysis of the installed end-user market for PV panels. The Colmar Brunton analysis has found that

end users are price sensitive and an increase in the price of installed Chinese PV panels of the magnitude likely to arise from imposing dumping duties would have little impact on the volumes of Australian PV panels. This finding is notwithstanding that many end users prefer Australian PV panels. The work by Colmar Brunton is further described in section 5.4 and Colmar Brunton's report is contained at non-confidential Attachment 1.

3.2.2 Market's preference for low priced DC Chinese product

The Commission has investigated whether, as Tindo alleges, the significant price advantage held by Chinese PV panels was from dumping or, as the Commission originally found, the contribution of dumping to this price advantage was negligible.

In making this investigation the Commission has corrected for the mathematical error made by Tindo before the ADRP in claiming that the significant price advantage held by Chinese PV panels was from dumping. Details of the Commission's findings in this respect are contained at section 5.2.

The Colmar Brunton survey and analysis assessed the preferences of end users in the market in terms of price and other product characteristics. The results of the Colmar Brunton analysis are described in section 5.4.

3.2.3 Volume injury

The Commission has taken into account the extent to which a reduced price advantage for Chinese imports may have influenced some customers to switch to Tindo's products.

The Commission asked Colmar Brunton to assess whether, if there was a reduced price advantage for imported Chinese PV panels, Tindo could have obtained more sales than it did during the investigation period. The results of the Colmar Brunton analysis are described in section 5.4.

The Commission also assessed whether any volume injury was caused to Tindo by means of month-by-month coincidence analyses. The results of these analyses are described in section 5.3.1.

3.2.4 Tindo's business plan

The Commission asked Colmar Brunton to assess the extent to which an increase in the price of dumped PV panels, sufficient to remove the dumping margin, would provide some amelioration of any injury suffered by the Australian industry. Colmar Brunton found that an increase in the price of dumped PV panels, sufficient to remove the dumping margin, would have little or no effect on the Australian industry. Further details of the results of the Colmar Brunton analysis are described in section 5.4.

The Commission also assessed Tindo's business plan as a basis for demonstrating that, but for imports of Chinese PV panels, Tindo's business would be materially better off. The Commission's assessment of Tindo's business plan is at section 5.8.

3.2.5 Qualitative features

The Commission asked Colmar Brunton to assess the extent to which, if the price gap between Chinese PV panels and Tindo's was reduced, there would be an increase in the number of customers prepared to buy Tindo's product. Such an increase in demand may have enabled Tindo to raise its prices, given that some customers seem prepared to pay a premium. Colmar Brunton found that there would be little or no increase in demand for Tindo's product in response to an increase in the price of Chinese PV panels arising from the imposition of

dumping duties. While Tindo's customers may be prepared to pay a premium, Colmar Brunton found that purchasers of Chinese PV panels would tend to switch to the next cheapest offering (rather than Australian PV panels) in the event that Chinese PV panels increased in price. Further details of the results of the Colmar Brunton analysis are described in section 5.4.

The Commission also assessed information concerning qualitative features of Tindo's PV panels that have the effect of significantly differentiating Tindo's PV panels from other PV panels in the market. The Commission's assessment is at section 5.7.

3.2.6 Causal link

The Commission has undertaken a further examination of competition in the end-user PV panels market and an examination of the extent to which a reduction in the price gap between Chinese PV panels and Tindo's PV panels may have reduced the extent of the injury being suffered. The work by Colmar Brunton modelled the extent to which a reduction in the price gap between Chinese PV panels and Tindo's PV panels may have reduced the extent of the injury being suffered by Tindo.

The Commission considers that the Colmar Brunton work expressly modelled the extent to which the effect of the price difference should, and should not, be attributed to dumping. In particular, Colmar Brunton modelled the scenario in which Chinese PV panels increased in price to some extent (as would happen if dumping duties were imposed) but that Chinese PV panels remained significantly cheaper than Tindo's PV panels. This non-attribution exercise is directed to assessing the extent of the injury caused by dumped PV panels.

The Commission's examination of competition in the PV panels market and the assessment of any causal link between injury and dumped PV panels has not proceeded merely on the basis that because there would still be a price advantage with the dumped exports, any injury from those exports must necessarily have been negligible.

Relevant details of the results of the Colmar Brunton analysis are described in section 5.4.

3.2.7 Other matters

The Commission will also address other matters raised in submissions by interested parties.

For matters that the ADRP has not identified for reconsideration or for which the Commission found no evidence to change the findings made or approaches taken in TER 239, the Commission has taken such findings or approaches as remaining valid for this SEF.

Specifically, the following sections of TER 239 should be read in conjunction with this report and none of the findings in these chapters have changed as a result of the resumed investigation:

- Section 3 (The goods under consideration);
- Section 4 (The Australian industry);
- Section 5 (The Australian market);
- Section 6 (Dumping investigation);
- Section 7 (Economic condition of the industry).

4 SUBMISSIONS IN RESPONSE TO ADRP'S REVOCATION

Following the ADRP's revocation of the Commissioner's termination decision, the Commission sought submissions from interested parties regarding the ADRP's report.

The Commission received submissions from the following interested parties:

Tindo

- Submission received on 12 February 2016, EPR document 162 refers (Submission 162).
- Submission received on 12 February 2016, EPR document 163 refers (Submission 163).
- Submission received on 12 February 2016, EPR document 164 refers (Submission 164).
- Submission received on 1 March 2016, EPR document 170 refers (Submission 170).
- Submission received on 8 March 2016, EPR document 171 refers (Submission 171).
- Submission received on 8 March 2016, EPR document 172 refers (Submission 172).
- Submission received on 2 June 2016, EPR document 174 refers (Submission 174).

Trina

- Submission received on 20 January 2016, EPR document 159 refers (Submission 159).
- Submission received on 5 February 2016, EPR document 160 refers (Submission 160).
- Submission received on 5 February 2016, EPR document 161 refers (Submission 161).
- Submission received on 24 February 2016, EPR document 165 refers (Submission 165).
- Submission received on 25 February 2016, EPR document 166 refers (Submission 166).

ReneSola

- Submission received on 8 March 2016, EPR document 169 refers (Submission 169).

CEC

- Submission received on 26 February 2016, EPR document 168 refers (Submission 168).

CCCME

- Submission received on 26 February 2016, EPR document 167 refers (Submission 167).

Public record versions of these submissions can be found on the EPR.

4.1 Submissions on matters raised by the ADRP

4.1.1 Level of trade

4.1.1.1 Tindo

In Submission 163 Tindo made the following claims concerning the level of trade:

- The ADRP was correct that an analysis of the end-user level of trade is required because by the end of the investigation period the majority of Tindo's sales were to end users.
- The level of trade used by the Commission in TER 239 to analyse sales of imported Chinese PV panels at the wholesale level is not the same as almost all sales by Tindo. Dumping has been "deeply injurious" because in the absence of dumping, Tindo's price to end users would be the same or less than the price of a Chinese PV panel.

4.1.1.2 Trina

In Submission 160 Trina submitted that it is not appropriate to make comparisons at the end-user level. It is not appropriate because installed end-user level PV panels include components that are not PV panels such as inverters, mountings, interconnect cables and installation costs. Trina and other exporters have no control over the cost of these components. Trina submitted that it would be more reasonable to take Tindo costs and construct a wholesale price. Trina observed that comparing prices at end-user level is not a comparison of products that are like to the goods under investigation.

Trina reiterated these same points in Submission 166.

4.1.1.3 Clean Energy Council

In Submission 168 the CEC submitted that the Commission should reject the ADRP's recommendation that extended analysis should be conducted on the installed end-user market. The CEC stated that it would be inappropriate to compare prices of imported PV panels with Tindo's prices at the installed end-user level because:

- 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 include the costs of inverters, mounting, cables and installation.
- 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 those products are not generally under the control of the importers.

The CEC considered it unclear how an analysis of the end-user market relevant to the case might be undertaken given the variety and rapid evolution of business models targeting the end-user market.

4.1.1.4 The Commission's assessment

As described below at section 5.2, there is a flaw in the basis for Tindo's claim that in the absence of dumping, Tindo's price at the end-user level of trade would be the same or less than the price for Chinese PV panels. The flaw is that the percentages compared by Tindo are percentages of different numbers and it would be a mathematical error to compare them without first correcting for that. After correcting for that mathematical error, Chinese PV panels

at the end-user level of trade would remain at a significant price advantage to Tindo's PV panels.

Notwithstanding that finding, in accordance with guidance from the ADRP in its reasons for revoking the termination, the Commission has further considered the end-user level of trade for PV panels. This has included commissioning an end-user survey conducted by Colmar Brunton, which found, among other things, that Australian PV panels would be highly unresponsive to changes in price of Chinese PV panels and a small increase in the installed price of Chinese PV panels would not induce significant switching to Australian PV panels. The key findings from the Colmar Brunton report are set out in section 5.4 below.

4.1.2 Market preference for low-priced DC Chinese product

4.1.2.1 Tindo

In Submission 163 Tindo claimed that the reason why the market chose Chinese PV panels is because they are cheap and that they are cheap because they are dumped. The Commission needs to consider whether dumping is assisting the sale of Chinese PV panels in the Australian market and Tindo considers that it could compete against undumped Chinese imports. Tindo claimed that it bid against imported PV panels and lost, and its analysis showed it would have won that bid if not for dumping.

4.1.2.2 Trina

In Submission 160 Trina observed that, in its experience, the market for PV panels is price sensitive. Trina submitted that the Commission's finding that the amount by which Tindo's prices of comparable products significantly exceeded the dumping margins calculated must lead to a conclusion that factors other than dumping provided a significant price advantage to imports. Therefore if imported PV panels were not dumped they would still have been considerably lower priced than Tindo's comparable products and preferred by the price sensitive market.

Trina considers that the main factor why Chinese PV panels have a significant price advantage is because of cost advantages arising from economies of scale.

4.1.2.3 The Commission's assessment

The contribution of dumping to the price difference at the end-user level is significantly less than claimed by Tindo. Tindo's view that it could compete against undumped Chinese imports on the basis of Tindo losing its bid against imported PV panels cannot be relied upon. Tindo's analysis showing it would have won that bid if not for dumping is flawed by Tindo's failure to adjust the dumping margin and price undercutting to the same level of trade. This failure is described in detail in section 5.2 below.

Trina's view is that Chinese PV panels have a significant price advantage because of cost advantages from economies of scale. The existence of economies of scale in production of PV panels appears to have support from Tindo. Tindo states at paragraph 15 of Submission 163 that it has the ability to continue to reduce its prices with increasing volumes.

4.1.3 Volume injury

4.1.3.1 Tindo

In Submission 163 Tindo claimed, as evidence of a causal link to volume injury, that the market size during the investigation period was big enough to absorb all of Tindo's planned production.

Tindo noted the significant difference between its planned production and actual production.

4.1.3.2 Trina

In Submission 160 Trina made the following claims:

- Tindo did not suffer volume injury and the Commission found that Tindo's sales volume actually increased during the investigation period. It was factors other than dumping which prevented Tindo from achieving its forecast sales volume of PV panels during the investigation period. These factors included:
 - Market decline in the demand for PV panels (not forecasted by Tindo) following Tindo's entry into the market.
 - Global reduction in production costs of PV panels causing significant price reductions of PV panels during the investigation period.
 - Even in the absence of dumping (ie, exports at undumped prices) PV panels from China would still have significantly undercut Tindo's selling prices.
 - Tindo could not compete without losing sales to suppliers who had a genuine cost advantage even at undumped prices.

4.1.3.3 The Commission's assessment

Tindo claims that the market size during the investigation period was big enough to absorb all of Tindo's planned production, however the connection of this to Tindo's claims concerning causal link to volume injury is unclear.

The Commission's coincidence analysis at section 5.3 shows that the effect of imported volumes of Chinese PV panels is inconsistent with, or does not support, claims concerning injury to Tindo's volumes. Instead, Tindo's claim to volume injury appears to rely on a but-for argument, using its business plan as a counterfactual. However the Commission does not consider that Tindo's business plan provides a sound basis for that argument. Tindo's but for argument is assessed in further detail below in section 5.8.

4.1.4 Tindo's business plan

4.1.4.1 Tindo

In Submission 163 Tindo claims that it had to reduce prices to a greater degree than was planned for in its business plan. Tindo nonetheless noted its ability to decrease its prices with increasing volumes.

Tindo claims that its price at end-user level was stated in the SEF to be similar to the level of dumping in TER 239 so, even not accounting for Tindo's premium for quality, Tindo would easily have sold its planned production.

4.1.4.2 Trina

In Submission 160 Trina reasserted its view that the Australian market is price sensitive and even in the absence of dumping Tindo would have to sell at a loss to compete on price with Chinese imports. If prices of imports were increased to remove the dumping margin they would still enter the price sensitive market at prices well below Tindo's prices, such that Tindo would still have to sell at injurious prices to compete.

4.1.4.3 CCCME

In Submission 167 the CCCME claimed that Tindo's business plan was a primary cause of Tindo's injury. The business plan:

- focussed on selling AC PV panels (which turned out to be less popular than DC);
- failed to forecast the decline in the market due to phasing out of feed-in tariffs; and
- underestimated the ability of Chinese exporters to reduce prices (even absent dumping) as the market became more competitive.

4.1.4.4 The Commission's assessment

The Commission considers that Tindo's business plan was found wanting in a number of respects, in particular for failing to foresee a downturn that resulted shortly after Tindo entered the market.

Tindo seeks to rely on its business plan as a counterfactual, however the Commission considers the business plan to be unreliable for this purpose. Tindo's business plan and the 'but for' approach to injury that Tindo relies on is addressed below in section 5.8.

4.1.5 Qualitative features

4.1.5.1 Tindo

In Submission 163 Tindo claims that the market is prepared to pay more for a Tindo PV panel than a Chinese PV panel, and for higher quality Chinese PV panels. Tindo claims that its product is a premium product. Tindo detailed a number of aspects in which its product is superior to imported Chinese PV panels. Tindo stated that it could reduce the cost and hence price of its product (by decreasing quality) to get closer to the cost and price of imports, but is not prepared to do so.

In Submission 174 Tindo stated that both Tindo's DC and AC products are 'premium' products. Tindo uses high quality components and processes to produce both its AC and DC products, including:

- laminating solar panels for 19 minutes to maximise the gel content of the ethylene-vinyl acetate (EVA) film;
- the use of Bridgestone EVA film (rather than a cheaper Chinese EVA film);
- the use of silicone (rather than a double-sided tape to frame the module);
- the use of Dow Corning PV-804 Neutral Sealant (rather than a Chinese equivalent edge seal and silicone);
- the use of DuPont Tedlar brand polyvinyl fluoride film (rather than a polyethylene terephthalate (PET) backing sheet from a Chinese company);
- 100% electroluminescence testing of panels; and
- a German aluminium junction box (rather than a Chinese plastic junction box).

Tindo's experience is that the Australian consumer will pay for its higher priced AC product. Tindo stated that there are three tiers of suppliers in the Australian market with higher prices being obtained by Tier 1 suppliers such as Tindo and some Chinese suppliers.

4.1.5.2 Trina

In Submission 160 Trina claimed that the issue is not that Tindo's price premium is too high, but that the Australian market is highly price sensitive.

4.1.5.3 The Commission's assessment

The Commission notes the significant amount of new information provided to it by Tindo concerning the high quality of its products. The Commission's view is that Tindo's product may be of such quality that, while still regarded as a like good to Chinese PV panels, it is differentiated to a significant degree. This significant degree of differentiation has likely insulated Tindo from direct and injurious competition from Chinese PV panels. The effect of this product differentiation is discussed in further detail in section 5.7 below.

The effect of this product differentiation would be in addition to the very limited responsiveness of Australian PV panels to the price of Chinese PV panels that was found by Colmar Brunton. Findings from the Colmar Brunton report, which addresses how Australian and imported products are regarded in the market in terms of quality, are set out in section 5.4 below.

4.1.6 Causal link

4.1.6.1 Tindo

In Submission 163 Tindo claims that contractions in general demand were not a factor because of Tindo's size in comparison to the rest of the market.

In Submission 164 Tindo revised its analysis of what it claimed was material injury that was causally linked to dumping. The revised analysis was based on dumping margins found in TER 239. Tindo sought to calculate the quantum of injury to Tindo from six tender transactions where it competed with tenders from installers of Chinese PV panels. Tindo then sought to extrapolate the results from this analysis more broadly to apply to respondents to a Tindo consumer survey. Tindo claims that these analyses support its claims of material injury to it from dumping.

In Submission 174 Tindo pointed to an unexpected steep decline in Chinese prices from mid-2011 to 2012. Tindo presented a graph that it claimed shows correlation between declining spot prices for PV cells and Tindo's PV panel prices.

However, Tindo also stated that any correlations would be 'statistically irrelevant' because of the difference in market shares between Tindo and Chinese imports.

4.1.6.2 Trina

In Submission 160 Trina argued that it is reasonable to conclude that, absent dumping, Chinese PV panels would have had such a price advantage that Tindo would still have suffered material injury. It follows that material injury suffered by Tindo was due to factors other than dumping and the injury caused by dumping was negligible.

Trina also argued that correcting Trina's 'highly inflated' dumping margin would reinforce a finding that injury was due to other factors.

4.1.6.3 CCCME

In Submission 167 the CCCME argued that if, as the Commission found in TER 239, the prices of Chinese PV panels including a dumping duty remained significantly below Tindo's prices then the natural conclusion is that Tindo would have gained no or only a very small number of additional sales from dumping duties being imposed.

The CCCME noted that subsection 269TDA(13) requires the Commissioner to be positively satisfied that dumped imports are causing only 'negligible injury' for the investigation to be terminated. But anti-dumping measures may be imposed only if the Minister is positively satisfied that imports at dumped prices are causing 'material injury' (see subsections 269TG(1) and 269TG(2)). The CCCME claims that even if the Commissioner does not have the requisite positive satisfaction concerning a lack of injury to terminate the investigation, there will be insufficient basis for the Minister to be positively satisfied that imports at dumped prices are causing material injury. The CCCME submitted that on the basis of the facts found by the Commission, it is very difficult to see how the Commission could conclude that any injury caused to Tindo by dumped exports from China was 'material'.

4.1.6.4 The Commission's assessment

Response to Submission 163

In response to Tindo's Submission 163, the Commission considers that general contractions in demand are likely to affect all suppliers to some extent. It is clear from the Commission's coincidence analysis in section 5.3 below that, early in the investigation period, sales volumes for Tindo and Chinese imports were positively correlated, suggesting they were responding to general movements in demand (a negative correlation would be expected if there was injury being caused to Tindo by imported volumes of PV panels).

Response to Submission 164

The Commission found significant errors in Tindo's Submission 164 that call the reliability of Tindo's analysis into question.

Firstly, Tindo's calculation of prices of undumped Chinese PV panels adds different units (dollars and watts).

Secondly, and more fundamentally, Tindo proceeds on the erroneous basis that dumping duties would be applied to end-user prices of an installed solar panel system when dumping duties would only apply to one component of an installed system and not others. This is discussed further at section 5.2 concerning Tindo's end-user analysis.

The second part of Tindo's analysis depends on the first (flawed) analysis⁴ and so conclusions drawn from the second part of Tindo's analysis will also be unreliable. Tindo appears to rely primarily on this analysis in Submission 164 for its causation argument.⁵

Response to Submission 174

The correlation claimed by Tindo in its Submission 174 is unclear. Chinese prices for PV cells started declining at least as early as early 2011 (which was well before Tindo started in business) and reached their nadir not long after Tindo commenced operations. In any event PV cells are not the goods under consideration and accordingly it is not clear how the prices for Chinese PV cells are relevant.

⁴ See Submission 164, page 5.

⁵ See Submission 174, page 19.

If any correlations are “statistically irrelevant”, as claimed by Tindo, then it is unclear how Tindo proposes that causation might be demonstrated to convince the Commissioner of causation, other than through its but-for argument.

Response to Submission 167

The Commission notes the CCCME’s view that there may be insufficient grounds for the Parliamentary Secretary to be positively satisfied that dumped prices are causing material injury to Tindo, particularly in light of Tindo’s increasing sales in 2013, 2014 and 2015.

4.2 Other matters raised in submissions

4.2.1 Export prices, normal values and dumping margins

4.2.1.1 Tindo

In Submission 171 Tindo disagreed with the Commission’s approach to corporate costs in the constructed normal values used in TER 239. Tindo expressed concern that if the Commission limits its cost allocations to certain legal entities within a conglomerate without investigating the relevant costs within other entities of the conglomerate, the Commission would be omitting from its analysis relevant depreciation or interest on loans sitting in the accounts of another entity within the group. Allocations of depreciation, capital expenditure and other development costs from the parent and relevant subsidiary accounts should be included in the construction of normal value for the selected exporters.

4.2.1.2 Trina

In Submission 159 Trina claimed that the Commission had made errors in determining Trina’s normal value and its export price.

Trina considers that there are two major issues with the Commission’s approach to determining Trina’s normal value:

- consideration that Trina’s costs don’t reasonably reflect competitive market costs; and
- the use of domestically purchased PV cells as surrogate costs for Trina’s self-produced PV cells.

Trina submitted that the Commission should have determined constructed normal values using the proportion of Trina’s PV cells that were self-produced and manufactured using imported polysilicon (which would reflect a competitive market cost).

Trina claims that in calculating the export price for Trina, the Commission used quarterly weighted average export prices rather than the weighted average export prices it calculated under subsection 269T(5A) of the Act. Using quarterly weighted average export prices increased PV panel export sales and inflated Trina’s dumping margin.

Trina recalculated its dumping margin using the normal value and export price that corrected the errors claimed by Trina.

In Submission 160 Trina claimed that errors in the Commission’s calculation of Trina’s dumping margin had resulted in an inflated weighted average dumping margin for Chinese exports generally. On that basis the Commission’s correction of the weighted average dumping margin should negate the ADRP’s decision to revoke the Commission’s termination.

4.2.1.3 Renesola

In Submission 169 Renesola claims there are errors in the Commission's revised dumping margin calculation methodology. The claimed errors are that the Commission double counted PV cells used [REDACTED] and that the Commission did not account for Renesola's use of [REDACTED] method for different grades of PV cells. Accounting for these errors would reduce Renesola's dumping margin.

Double counting on the [REDACTED] cells

In calculating Renesola's cost to make and sell (CTMS), the cost for PV cells includes PV cells that were used by Renesola for [REDACTED]. Many of these PV cells are [REDACTED].

Renesola claims that in substituting a benchmark price for PV cell costs into Renesola's CTMS, the Commission did not [REDACTED] and hence double-counted the cost of those cells.

Renesola corrected the Commission's dumping margin calculation to account for cells previously used in [REDACTED].

Commission did not account for Renesola's treatment of different grades

Renesola claims that it uses an [REDACTED] method for PV cells with different grades. The Commission, in its revised dumping margin calculations, substituted the benchmark price of PV cells regardless of the grade. Renesola claims this is incorrect and adjusted the Commission's dumping margin calculation using its [REDACTED] methodology for PV cells of different grades.

4.2.1.4 CEC

The CEC made some general comments noting that some PV panel exporters had disputed the Commission's assessment of their dumping margins.

4.2.1.5 The Commission's assessment

Trina's dumping margin

To the extent that Trina is arguing against the use of domestically purchased PV cells as surrogate costs for Trina's self-produced PV cells, Trina is incorrect. The Commission did not use domestically purchased PV cells as surrogate costs for Trina's self-produced PV cells, but rather used an external benchmark as described in detail in Appendix 3 of TER 239.

To the extent that Trina argues that provision should be made for the costs of inputs to PV cells that are bought on world markets (and therefore reasonably reflect competitive market costs) the Commission refers to its practice in Report No. 300 (REP 300) (and elsewhere).⁶ In REP 300 the Commission found that government influences in the relevant industry were wide-

⁶ See also the Commission's Dumping and Subsidy Manual at page 44.

ranging and not limited to the most significant raw inputs. In that circumstance the Commission will use an external benchmark.⁷ For PV panels the Commission found that there was significant Government of China (GOC) intervention at all levels of the PV industry.⁸ In addition, Trina's suggested approach would require an assessment of all other inputs in circumstances where the Commission found that data provided by Trina was unreliable and unverified.⁹ Similar informational issues were identified in REP 300.¹⁰

The Commission considers that Trina's claim concerning calculation of the export price is incorrect. The Commission calculated Trina's dumping margin in accordance with subsection 269TACB(2)(a) by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. For each transaction used in that comparison:

- Export prices were calculated under subsections 269TAB(2) and 269TAB(3) for each quarter.¹¹
- Normal values were constructed under subsection 269TAC(2)(c) for each quarter.¹²

Renesola's dumping margin

The Commission found Renesola's submission was incomplete in a number of respects including:

- Renesola did not fully reference its claims to specific information and data that had been verified by the Commission.
- Renesola did not explain the meaning of the [REDACTED] when referring to the method for valuing PV cells with different grades.
- There were reference errors in the spreadsheet provided to the Commission by Renesola and it is not clear whether Renesola's claimed revised dumping margin was affected by those reference errors.
- Renesola did not state or show how the cost of [REDACTED] [REDACTED]. In any event it appears that Renesola did not incorporate benchmark PV cell costs used by the Commission into the cost of [REDACTED], as it should have.

Corporate costs

The Commission notes Tindo's comments concerning corporate costs, however the issue has been raised previously and addressed by the Commission (see TER 239 at section 9.1). The Commission is satisfied that it appropriately tested and accounted for all relevant transactions

⁷ REP 300, pages 17 and 24.

⁸ TER 239, pages 97 and 112.

⁹ TER 239, page 95.

¹⁰ REP 300, page 17.

¹¹ TER 239, pages 34-35.

¹² TER 239, page 35.

in relation to inter-company transactions between subsidiaries and parent companies of the four verified exporters. The detail of the costs and verified information are confidential, however the Commission remains satisfied that there was no manipulation of the cost of inputs to the manufacture of PV panels by the four selected exporters.

Tindo has not provided further information or evidence that would cause the Commission to revisit its previous finding on corporate costs.

4.2.2 Market situation

4.2.2.1 CCCME

In Submission 167 the CCCME claims that the Commission has not compared the benchmark prices used in the constructed normal value with the cost to make of Tindo's panels, or the raw materials used by Tindo in its production of panels. All of the raw materials used in the production of Tindo's solar panels were imported and so Tindo's cost to make should be adjusted using the benchmark costs of PV cells.

The Commission has identified the influence of the GOC on exporters' costs and domestic selling prices but it does not follow that Chinese domestic sales are not suitable for determining a normal value when the Australian industry may itself receive the benefit of GOC influenced prices.

4.2.2.2 The Commission's assessment

The Commission notes the comments of the CCCME but observes that the finding of market situation and resulting determination of normal values were not disturbed by the ADRP. The CCCME has not provided further information or evidence that would cause the Commission to revisit its finding on market situation.

4.2.3 Loans at less than market rates

4.2.3.1 Tindo

Tindo claims in Submission 162 that during the investigation period the interest rates for all banks in China were non-competitive market rates and the finance and loan costs of the solar companies were not representative of competitive market costs. Tindo claims that increasing finance costs by between 5.2% and 7.7 % would increase normal values by between 5% and 7%.

In Submission 172 Tindo claims that: a European Union countervailing investigation found PV modules and cell producers received cheap loans; Trina's 2013 Annual Report indicated that Trina received favourable treatment for its debt; and the Commission's countervailing Investigation 322 found that the GOC was involved in the Chinese banking and financial sectors.

4.2.3.2 Trina

In Submission 166 Trina argued that onsite investigation by the Commission found no evidence of GOC policy impacting Trina's interest rates.

4.2.3.3 The Commission's assessment

The Commission notes that Tindo points to passages in TER 239 concerning reduced interest rates from the GOC in the context of the market situation assessment. The Commission addressed the market situation found by using benchmark prices for PV cells. The Commission

considers that to the extent that an external benchmark price was used for PV cells in determining normal values, costs would reflect average finance costs outside of China.

In any case, Tindo used the difference in market rates and a bank guarantee given during a time of financial crisis in markets, ie the global financial crisis in 2008.¹³ The Commission considers that this would overstate the normal difference between market and guaranteed rates. The Commission has examined verified data and considers that the relevant verified data indicates that Tindo's calculations significantly overstate any effect of increased interest rates.

Tindo's Submission 172 calls in support countervailing investigations in the European Union and Australia, however the current investigation concerns alleged dumping only.

4.2.4 Like goods

4.2.4.1 CEC

In Submission 168 the CEC requested that issues regarding like goods be addressed in this SEF, namely like goods considerations in relation to:

- physical differences;
- commercial considerations, including bankability and insurance;
- the limitations on use of Tindo PV panels for utility-scale solar PV facilities;
- applications such as ground-mounted systems and certification to standards, including ISO 9001, ISO 14002 and OHSAS 18001.

4.2.4.2 The Commission's assessment

The Commission notes the comments of the CEC but observes that the Commission's findings concerning like goods were not disturbed by the ADRP. The CEC has not provided further information or evidence that would cause the Commission to revisit its findings on like goods.

4.2.5 Poorly timed entry into market

4.2.5.1 Trina

In Submission 160 Trina submitted that the significant decline in the PV panel market after Tindo entered the market caused material injury to Tindo, not dumping. The ADRP confirmed the Commission's finding that the general decline in the PV panel market was a factor other than dumping that caused injury to Tindo.

In Submission 166 Trina observed that Tindo's Submission 163 confirms that there was no actual volume injury to Tindo over the investigation period. Trina reiterated its view that significant market decline and price reductions (reflecting cost reductions) were the major contributors to Tindo not achieving its forecast sales volume.

4.2.5.2 Tindo

Tindo made the following claims concerning the timing of its entry to the Australian PV panel market (Submission 163 refers):

¹³ Submission 162, page 6.

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- The size of the Australian market for PV panels in 2013 was not a key reason for injury suffered by Tindo. Tindo asserts that if not for dumping, the 2012 and 2013 markets were still big enough to absorb all of Tindo's planned production.
- The level of market decline in 2013 was not injurious to Tindo and it grew its business in 2013. Tindo also grew its business (against market trends) in 2014 and 2015.
- The Australian market during the investigation period was large enough to absorb all of Tindo's planned production, however, dumped Chinese PV panels in the market applied pricing pressure to Tindo such that Tindo was not able to follow its planned production.
- The market slow down and the phase out of the South Australian feed-in-tariff (FIT) was not an issue in 2013 and the FIT was in place during the entire investigation period. The South Australian market grew from 2012 to 2013.

4.2.5.3 The Commission's assessment

The Commission notes that the ADRP accepted that the general decline in the PV panel market was a factor other than dumping that caused injury to Tindo (ADRP Report at [28] to [30]).

The Commission also notes Tindo's Submission 163 stating that Tindo grew and continues to grow. The claimed injury therefore is that but for the dumping, Tindo would have done better than it did. It is the Commission's practice (and as noted in section 5.1, WTO jurisprudence requires) that any method of assessing injury other than coincidence analysis requires a 'compelling explanation' as to why causation exists notwithstanding the absence of any coincidence. Tindo relies on the business plan it had produced as a counterfactual. Tindo's but-for argument is assessed in further detail in section 5.8 below.

Neither the ADRP nor the Commission has accepted Tindo's claim that dumping alone was injuring Tindo.

4.2.6 Other factors causing injury

4.2.6.1 Tindo

In Submission 163 Tindo made the following submissions concerning other factors that may be causing injury to the Australian industry:

- Contractions in demand: Tindo claims that contractions in demand after 2012 could not have contributed to Tindo's injury because of Tindo's relatively small market share.
- Tindo's marketing: Tindo considers that the Commission's findings in respect of Tindo's marketing was subjective and that importers' submissions on the subject of marketing would have been made to suit their own self interests.
- Preference for DC: Tindo reiterates that it offered and sold DC PV panels to the market during the investigation period and that prominence was given by Tindo to DC PV panels.

4.2.6.2 Trina

In Submission 166 Trina stated its view that it was a matter of fact that contractions in demand after Tindo entered the market were due to a market decline and an associated reduction in global prices.

Trina considers that it was reasonable to conclude that, even absent dumping, the price difference between Chinese PV panels and Tindo's PV panels was such that Tindo would suffer material injury.

Tindo claimed that the case that no material injury was caused to Tindo by dumping would be reinforced by correcting what Trina considered to be errors in its dumping margin.

4.2.6.3 The Commission's assessment

Contractions in demand: The Commission notes that Tindo did not succeed in its arguments before the ADRP around its timing of entry into the market. In any event the Commission sees no reason why a small market share would immunise a company from general shifts in demand as Tindo appears to claim.

Tindo's marketing: The Commission notes that Tindo did not succeed in its arguments before the ADRP concerning Tindo's marketing. Tindo has provided no new information or evidence that would cause the Commission to revisit its findings in respect of Tindo's marketing.

Preference for DC: The Commission notes that the ADRP found that the Commission understood Tindo's product offering and the ADRP was unable to discern any error in the Commission's approach in that respect.¹⁴ The ADRP stated that it was clear that the Commission understood that Tindo sold DC PV panels but that the Commission found that the price of Chinese DC PV panels was so far below the Tindo product that Tindo could not compete.

The Commission's further comments concerning other factors are contained at section 5.6.

4.2.7 PAD requested

4.2.7.1 Tindo

In Submission 164 Tindo requested that the Commissioner make a preliminary affirmative determination (PAD) under section 269TD in respect of dumped PV panels and impose securities on dumped PV panels under section 42. Tindo claimed that it was experiencing ongoing material injury from dumped PV panels.

4.2.7.2 Trina

In Submission 166 Trina stated that there are no grounds for making a PAD. A PAD can only be made if the Commissioner is satisfied that there are sufficient grounds for publication of a dumping duty notice. The Commission terminated its investigation because it found that injury to the Australian industry was negligible and accordingly a resumed investigation will not have sufficient evidence for the Commissioner to be satisfied that dumped PV panels will cause material injury to the Australian industry.

4.2.7.3 The Commission's assessment

The Commissioner is not satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice.¹⁵ In particular the Commissioner is not satisfied that there appears

¹⁴ ADRP Report at [20].

¹⁵ Subsection 269TD(1).

to be material injury to the Australian industry caused by dumped PV panels. Accordingly the Commissioner may not make a PAD in respect of dumped PV panels.

4.2.8 Investigation period

4.2.8.1 CCCME

In Submission 167 the CCCME submits that the Commission should seek to understand more about the operation of Tindo in the current market before making any recommendation to the Parliamentary Secretary. In particular the CCCME noted that Tindo may not sell solar panels to customers but provides them for free and Tindo presumably resells the electricity into the grid.

4.2.8.2 The Commission's assessment

The Commission notes the comments of the CCCME but observes that evidence before it shows that Tindo did sell PV panels to customers during the investigation period. If Tindo also conducts its pricing in the way claimed by CCCME then the CCCME does not elaborate on how this would affect the current inquiry.

4.2.9 Continuing dumping

4.2.9.1 Tindo

In Submission 170 Tindo claims that dumping is continuing. Tindo evidenced its claims by reference to the prices of PV cells shown on public websites.

4.2.9.2 The Commission's assessment

The Commission notes Tindo's comments, however in the current inquiry dumping and its effect on the Australian industry must be assessed during the investigation period.

4.2.10 Broader impact of measures

4.2.10.1 CEC

In Submission 168 the CEC pointed to the impact of the inquiry on the Australian solar industry more broadly, claiming that the resumed investigation will add new risks and costs to the Australian solar industry and imposing dumping duties would result in reduced sales and potentially significant net loss of jobs in the Australian solar industry.

4.2.10.2 The Commission's assessment

The Commission notes the CEC's comments concerning possible impacts on the Australian solar industry more broadly but agrees with the CEC that the Commission's legislative remit does not permit an assessment of the broader impact of imposing measures.

5 CAUSATION OF INJURY

5.1 The Commission's approach to causation of injury

Before any action can be taken against dumped goods it must be demonstrated that the Australian industry producing like goods has been injured, that injury has been caused by the dumping of the goods, and that the injury caused by dumping is material. Similarly, if the Commissioner is satisfied in an investigation that the injury that has been or may be caused by the dumping is negligible, then the Commissioner must terminate the investigation.

Australia's legislation in respect of injury and causation reflects Article 3 of the World Trade Organization Anti-Dumping Agreement (ADA).

The Commission will examine all available evidence in establishing whether a causal link between the dumped imports and the injury to the Australian industry exists. This includes the effect of the injury factors set out in section 269TAE of the Act. The *Ministerial Direction on Material Injury 2012* makes clear that, in assessing injury and causation, injury caused by other factors must not be attributed to dumping, however dumping need not be the sole cause of the injury.

Causation is generally examined by using a 'coincidence' analysis. Where no coincidence has been found, or a 'coincidence analysis' has not been possible, the Commission may accept an alternate analytical method such as comparing the industry to a point in time prior to the injury having commenced, or using a 'but for' analytical method.

In a coincidence analysis the volume and prices of the dumped goods and the other injury factors are examined to assess whether any linkage exists between these variables. To complete the causation analysis the Commission examines other factors that cannot be attributed to the dumped goods and excludes the effect of those factors when determining causation.

The weight given to the various causal factors is a matter for the Commissioner to decide having regard to all of the available information available to him in the investigation. Injury factors are examined over the injury period that was identified at the commencement of the investigation.

In understanding causation there will be a focus on injury indicators in the dumping investigation period. It is the Commission's view that subsection 269T(2AD) allows the examination of injury indicators before the investigation period, but it cannot support an inference or presumption that injury identified as occurring before the investigation period can be attributed to dumped imports.

A causal link between dumped imports and any injury may be established only where indicators of injury are present during an investigation period in which dumped goods are found to have been exported to Australia. There can be no presumption that goods exported to Australia before the commencement of the investigation period are dumped goods.

Consideration of injury data in periods prior to the investigation period may be useful in assessing whether publication of a dumping duty notice is justified. For example, it may reveal injury factors unrelated to the exportation of goods that have occurred before the investigation period but continue to impact on the industry's performance after the commencement of that period.

Consideration of the factors set out in subsection 269TAE(2A) (and any other factor having a bearing on the examination of injury and causation) is mandatory only to the extent that they are known and assessable.

Commission practice

Information obtained from participants in the Australian market, e.g. Australian industry, importers and end users, is used to evaluate the causal effect of the dumped imports on the Australian industry.

As injury caused by factors other than dumping cannot be attributed to dumped goods, the Commission considers the influence of other factors when assessing whether there is a causal link between the injury to the Australian industry and the presence of dumped goods in the market.

Such other factors may include, but are not limited to:

- the volume and prices of imports that are not dumped or subsidised;
- contraction in demand or changes in the patterns of consumption;
- trade restrictive practices of, and competition between, foreign and domestic producers;
- developments in technology;
- the export performance and productivity of the domestic industry.

In considering the effect of any undumped goods in the market, the Commission may have regard to:

- customer preference (i.e. factors other than price such as quality considerations);
- the market share of the goods;
- whether prices have been lowered to compete with the dumped goods;
- like goods sourced from a country with low costs/prices which the dumped source cannot match, but which compete on some other basis.

A determination of causation will be based on positive evidence and involve an objective examination of both:

- the volume of the dumped goods and the effect of those imports on prices in the domestic market for like goods; and
- the consequent impact of these imports on domestic producers of such goods.

The Commission will undertake a price undercutting analysis that focuses on data that covers transactions made during the investigation period. This analysis compares the price of the imported goods with the selling price of the locally produced goods, ensuring that the transactions are made under the same conditions (e.g. timing, volume, discounts, delivery and credit terms, and the customer's level of trade).

Where the Commissioner is satisfied that the goods the subject of the investigation have been dumped and the Australian industry has suffered material injury and where there are no other causes of injury that can be identified in the investigation the Commission will generally consider it reasonable to conclude that a causal link exists between dumping and the injury.

Causation methodology

Causation is typically assessed by examining the trends or movements in the volumes and prices of dumped imports over time and corresponding trends or movements in the relevant injury factors.

Where there is a coincidence in timing between the two this may mean there is a causal connection. For example, an increase in the volume of dumped goods may coincide with the decline in the industry's sales in Australia, or the prices of the dumped goods can be compared to the movements in the Australian industry's sales prices.

In examining causation, the effect of the dumped goods on the Australian industry's prices will be considered. The Commission assesses whether there has been any significant price undercutting by the dumped imports, or whether there has been price depression or price suppression.

Injury causation may be established through an examination of volume or price effects. In some circumstances there may be no increase in the volumes of the dumped goods but a positive causation finding may be possible where the requisite price effects exist.

In some cases dumped imports may be known to have commenced at a particular point in time. In this situation, when examining causation, the current state of the industry may be compared to the state the industry was in during a period immediately prior to the commencement of dumping.

In some cases evidence may show that imported goods at dumped prices won contracts because of their price advantages. If those price advantages are wholly attributable to dumping, then this evidence may establish a direct link to the injury experienced by the Australian industry that had also contested those same contracts.

The Commission may utilise 'soft' information when examining causation. For example, users of the imported and locally made goods may provide responses to user questionnaires on issues such as substitutability of the goods, conditions of competition and price responsiveness. In this SEF the Commission has commissioned a survey of PV panel end users to address the ADRP's concerns that the Commission should undertake an analysis of the end-user PV panel market.

Where no coincidence has been found, or a 'coincidence analysis' has not been possible, the Commission may accept an alternate analytical method (such as a 'but for' analysis) when examining causation. Any alternate method will be required to be evidence based. The Commission will conduct such investigations in accordance with the WTO jurisprudence that requires that any other method, other than the coincidence analysis described above, will require a 'compelling explanation' as to why causation exists notwithstanding the absence of any coincidence.¹⁶

Under a 'but for' analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping. Such analysis should isolate the likely effects of the dumping in circumstances where there have

¹⁶ Two relevant reports are US – *Certain Steel Products DS/248-259/R* 2003 (at 10.304); and US - *Hot Rolled Steel DS/184/AB/R* 2001 (at 229-230).

been other effects. A party submitting information to demonstrate injury based on 'but for' grounds must provide, and explain, the evidence on which this claim rests. For example, the party might explain how they estimated the effects of the dumping by using suitable accounting methods and counterfactual analysis. In any event it is not sufficient to simply assert such an effect as this will not meet the evidentiary requirement.

The coincidence in movements in dumped imports (import volumes, market share, and prices) and the movements in relevant injury factors may not, of itself, prove causation. The Commission will carefully examine all of the available evidence, including the effects of other factors, when reaching a conclusion on causation.

The methodology the Commission follows in seeking to meet the non-attribution requirement in subsection 269TAE(2A) will be based upon available evidence. The Commission will consider whether the particular factor in question:

- exhibited a trend that is inconsistent with causation of injury; or
- exhibited a trend that is consistent with causation of injury and there was a coincidence in time between those trends and the injury indicators.

Concerning the first factor in the illustrative list – the volume and prices of imported like goods that are not dumped – the Commission must consider the effects of imports from other countries that are not the subject of the investigation where this is known to be a factor impacting on injury.¹⁷ Such imports are taken to not be dumped.

In determining the volume of dumped imports the Commission will take care to ensure imports from any producers found to be not dumping are excluded.¹⁸

Concerning demand, competition, and technology factors in the illustrative list, the injury can be caused by a declining demand for a particular product driven by, for example: changes in consumer preference for a substitute product and new technologies; non price factors such as inferior quality, performance and service; or general economic conditions causing a decline in demand for the product in question. These will be taken into account where relevant.

In examining the effects of the other factors, the Commission considers that the purpose is to 'disentangle' their effects from the effects of dumping. A judgement must be made as to whether the subsection 269TAE(2A) factors have acted in such a way to 'break the causal link' that may otherwise seem apparent between the dumped goods and the material injury.

5.2 Tindo's end-user analysis before the ADRP

In Tindo's application for review, Tindo made an argument that the causation analysis used by the Commission in TER 239 significantly disadvantaged Tindo because the analysis was

¹⁷ Consistent with WTO Panels *Egypt – Rebar*, and *EC – Pipe Fittings*.

¹⁸ The WTO Appellate Body in *European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India - Recourse to Article 21.5* determined that injury caused by "volume and prices of imports not sold at dumping prices" must be separated and distinguished from injury caused by the "dumped imports". It also held that it is impermissible to presume that imports attributable to non-examined producers are in all circumstances dumped for purposes of injury analysis solely because they are subject to the imposition of anti-dumping duties under Article 9.4 of the ADA.

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conducted at the wrong level of trade. The majority of Tindo's sales during the investigation period were to end users and Tindo claims that the Commission did not adequately consider such sales in its analysis.¹⁹

The basis for Tindo's argument was:²⁰

- a finding by the Commission in SEF 239 that the weighted average price undercutting by two importers in sales to end users during the investigation period was around 20 per cent;²¹ and
- the Commission's assessment of the residual exporters' dumping margin of 21.1 per cent.²²

On that basis, according to the applicant's analysis, applying a dumping duty of 21.1 per cent would fully cure the 20 per cent price undercutting in sales to end users, rendering Tindo's installed prices close to, or even cheaper than, prices to end users of installed Chinese panels. Tindo claimed that:²³

Using the residual exporters determined dumping margin of 21.1%, Tindo Solar's sales to end users would be very close to, the same price, or even cheaper than un-dumped sales to end users of Chinese panels.

The Commission has failed to focus on the appropriate end-user level of trade in the following statement at 8.7 of the Termination Report:

Although the imported products were dumped, even in the absence of dumping (that is, if the imported goods had been sold at a price which was commensurate with the normal value plus importation costs) the gap between Tindo's price (regardless of AC or DC) and the price of imported DC models has meant that imports remain at a significant price advantage over the investigation period.

The above statement is misleading and not correct when analyzing sales of panels to endusers. The statement is based predominantly on an analysis of wholesale sales of solar panels which does not properly represent Tindo's level of sales.

Tindo re-asserts that in the absence of dumping, Tindo's price to the end user would have been the same or cheaper than a solar system using the dumped Chinese PV solar modules or panels.

The SEF's finding of 20 per cent undercutting combined with the Termination Report's finding of a 21.1% dumping margin suggests Tindo's offering to end users would be very similar to the same system using dumped Chinese PV solar modules or panels. [emphasis added]

¹⁹ See pages 12 and 13 of Tindo's application for review.

²⁰ See page 13 of Tindo's application for review.

²¹ See SEF 239 at page 55.

²² The dumping margin for residual exporters was determined as a comparison between the weighted average of export prices with the corresponding weighted average normal values in accordance with paragraph 269TACB(2)(a) of the Act. See TER 239 at page 50.

²³ See pages 13 and 14 of Tindo's application for review.

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Tindo has concerns with the following erroneous statement in Section 8.1 of the Termination Report No. 239 with regard to pricing differential:

...the application of a dumping duty would have little remedial effect on the specific forms of injury being suffered by Tindo.

Again, these comments reflect the wrong level of trade comparison. These comments are not based on sales made to the end user.

A dumping margin of 21.1% applied to the majority of Chinese exports would provide Tindo with a very competitive offering to end users and would be most beneficial in growing Tindo's manufacturing business.

Commission's findings relating to Tindo's end-user analysis

The Commission accepts that the percentages compared by Tindo have some superficial similarity in the sense that, in percentage terms, they are close. However the Commission observes that the percentages compared by Tindo are percentages of different numbers, namely:

- the 20 per cent price undercutting figure in SEF 239 is expressed as a percentage of the price of Tindo's installed PV panels;²⁴ and
- the 21.1 per cent dumping margin in TER 239 is expressed as a percentage of the price of Chinese PV panels at import (which does not include the cost of inverters or other components, or installation costs).²⁵

It would be a mathematical error to compare these percentages without first expressing them as percentages of the same number. Correcting for this error and expressing those percentages as percentages of the price of installed Chinese PV panels the Commission has found that:

- Dumping duties of 21.1 per cent on uninstalled Chinese PV panels would increase the price of installed Chinese PV panels by approximately 6 per cent;
- Price undercutting of 20 per cent by installed Chinese PV panels of Tindo's installed PV panels would be fully cured only by a 24 per cent increase in the price of installed Chinese PV panels.

Accordingly the Commission finds that installed Chinese PV panels would continue to have a significant price advantage over Tindo's installed PV panels. The dumping duty would reduce the price undercutting by only a quarter because the approximately 6 per cent increase in the price of installed Chinese PV panels resulting from dumping duties would be a quarter of the 24 per cent increase in the price of installed Chinese PV panels that would be required to cure

²⁴ As noted in SEF 239, two of the five major importers sold poly-crystalline DC PV modules to end-users inclusive of installation. Those two importers collectively accounted for approximately 5 per cent of imports of poly-crystalline DC PV modules exported from China during the investigation period. Prices of those imports undercut Tindo's installed price by between 11 per cent and 28 per cent. The weighted average price undercutting by those two importers during the investigation period was around 20 per cent. See SEF 239 at page 55.

²⁵ This is the dumping margin for residual exporters which was determined as a comparison between the weighted average of export prices with the corresponding weighted average normal values in accordance with paragraph 269TACB(2)(a) of the Act. See TER 239 at page 50.

the price undercutting. This finding is consistent with the finding in TER 329, namely that “even in the absence of dumping ... the gap between Tindo’s price (regardless of AC or DC) and the price of imported DC models has meant that imports remain at a significant price advantage over the investigation period”.²⁶

The remainder of this section describes how the Commission made the necessary calculations to express the dumping margin and price undercutting percentages as percentages of the price of installed Chinese PV panels.

Expressing the dumping margin as a percentage of the price of installed Chinese PV panels

The dumping margin of 21.1 per cent from TER 239 is calculated as a percentage of the export price of uninstalled Chinese PV panels. The export price of uninstalled Chinese PV panels comprises only one part of the cost of installed Chinese PV panels. The price of installed Chinese PV panels also reflects the cost of a number of other inputs such as inverters and Australian labour. Inputs other than PV panels would not attract dumping duties so the effect of imposing a 21.1 per cent dumping duty on uninstalled Chinese PV panels would be a smaller percentage increase in the price of installed Chinese PV panels (even assuming the full dumping duty was passed through to end users).

The Commission has estimated the effect on the price of installed Chinese PV panels of imposing a 21.1 per cent dumping duty on uninstalled Chinese PV panels. The estimate assumes that the full dumping duty is passed through to end users in the price of installed Chinese PV panels. The Commission estimates that imposing a 21.1 per cent dumping duty on uninstalled Chinese PV panels would cause an approximate 6 per cent increase in the price of installed Chinese PV panels. This estimate of the increase in the price of installed Chinese PV panels is based on information provided to the Commission by Tindo. Tindo provided this information concerning prices of installed Chinese PV panels obtained by Tindo during tenders.

The Commission considers that this estimate of a 6 per cent increase in the price of installed PV panels may be an upper limit because it assumes that the full dumping duty would be passed through to end users in the cost of installed PV panels.

Expressing the price undercutting as a percentage of the price of installed Chinese PV panels

The price undercutting of approximately 20 per cent from SEF 239 used in Tindo’s end-user analysis is expressed as a percentage of the price of installed Tindo PV panels. To properly compare the price undercutting to the Commission’s estimate of the increase in the price of installed Chinese PV panels, the price undercutting needs to be expressed as a percentage of the price of installed Chinese PV panels.

In general, price undercutting of 20 per cent of Good A by Good B (that percentage expressed as a percentage of Good A) will be cured by a 25 per cent increase in the price Good B (that percentage expressed as a percentage of Good B).²⁷ The price undercutting at the end-user level of approximately 20 per cent identified by Tindo in SEF 239 is in fact closer to 19.5 per

²⁶ TER 239 at page 69.

²⁷ For example, if Good A is priced at \$100 and Good B is priced at \$80 then:

- Good B is 20 per cent less than Good A (expressed as a percentage of Good A, ie as a fraction, 20/100); and
- Good A is 25 per cent greater than Good B (expressed as a age of Good B, ie as a fraction, 20/80).

cent and accordingly that percentage expressed as a percentage of the price of installed Chinese PV panels is approximately 24 per cent.

5.3 Coincidence analyses

As stated above in section 5.1, in a coincidence analysis the volume and prices of the dumped goods and any resulting impact on the Australian industry (including the relevant injury factors) are examined to assess whether any linkage exists between these variables.

A coincidence analysis will identify any correlation or relationship between import/domestic prices and import/domestic volumes. The existence of correlation is consistent with a causal relationship but it does not establish a causal relationship. For example, if two variables are correlated then one of those variables may be responding to the other or they may both be responding to a third variable. As stated in the Commission's Dumping and Subsidy Manual, the coincidence in movements in dumped imports (import volumes, market share, and prices) and the movements in relevant injury factors may not, of itself, prove causation.

However if there is no correlation evident in a coincidence analysis or the correlation runs counter to that expected from injury caused by dumping then, absent some compelling explanation, there is no evidence of causation.

In the current case coincidence analyses were undertaken using monthly data as the Commission considered that this would be more sensitive in showing any relationships between the variables examined.

5.3.1 Volume injury

Tindo did not claim volume injury in its original application (refer TER 239 at section 8.5.1) however, before the ADRP, Tindo claimed that it had suffered volume injury (refer Tindo's application for review at section 10.8).

Dumped imported and domestic volumes

The Commission considers it reasonable to expect that dumped imported volumes and domestic volumes of PV panels would show a negative correlation if imports had a deleterious effect on the performance of the Australian industry. In particular, dumped imports entering the Australian market and causing volume injury to the Australian industry would displace Australian volumes.

The Commission graphed total imports from the four selected Chinese exporters on the same graph as it graphed volumes sold by Tindo. The Commission sought to better show the correlation between these variables by graphing them on differently scaled vertical axes. The analysis is not intended to compare the levels of these variables, only to examine the extent to which there is coincidence of movement between them.

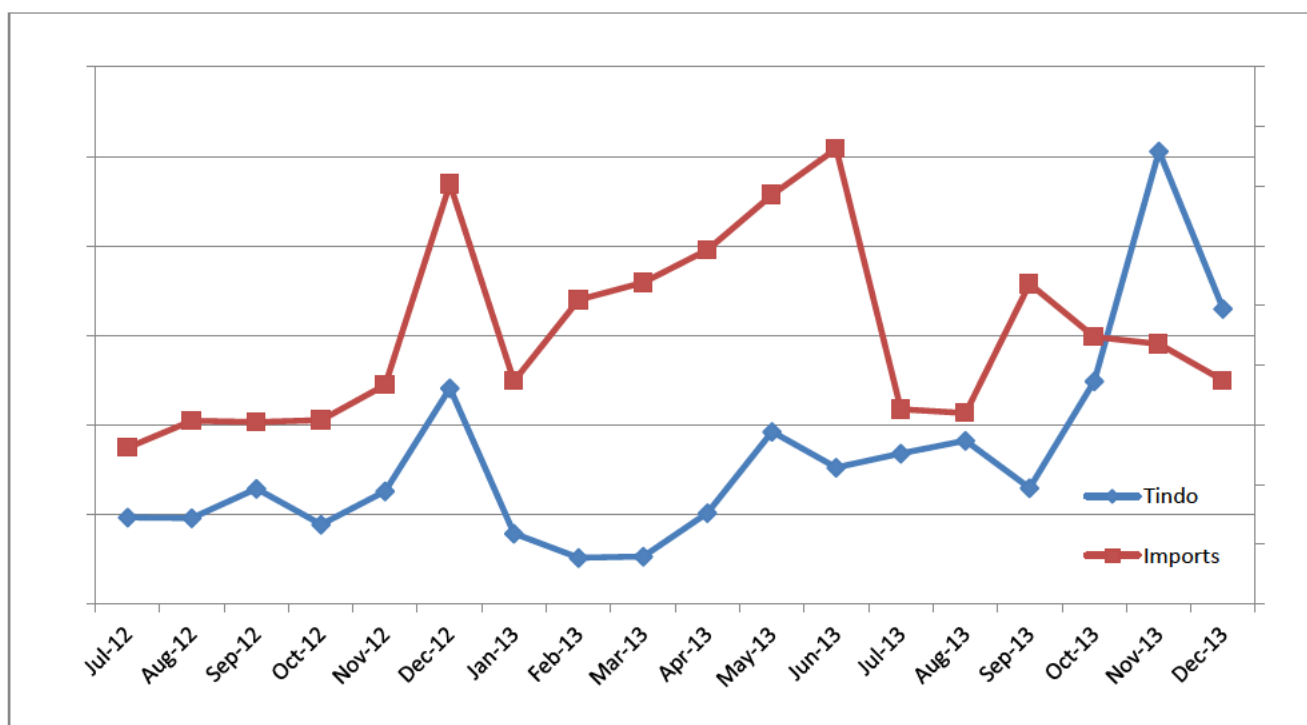


Figure 1 – Sales volumes Tindo and imported volumes – graphed against differently scaled axes

In the period from July 2012 until January 2013 there appears to be a strong positive correlation between Australian and Chinese volumes of PV panels. This positive correlation is inconsistent with Tindo’s claims that it was injured by dumping from September 2012 and onwards; when volumes of imports increased in December 2012, Tindo’s volumes also increased. It seems likely during this period that both imports and Tindo’s volumes were responding to some other common factor such as changes in consumer demand.

Following January 2013 there is no correlation evident between Tindo’s sales and imports. For example, a sharp and significant drop in imported volumes in July 2013 is against little corresponding change in Tindo’s volumes. Similarly, the significant upward trend of Tindo’s volumes toward the end of the investigation period is in contrast to slightly decreasing or flat imported volumes.

Import prices and domestic volumes

Similarly, the Commission considers it reasonable to expect that import prices and domestic volumes of PV panels would show a positive correlation if dumped imports were causing volume injury. Dumped imports entering the Australian market at low prices and causing volume injury to the Australian industry would reduce Australian volumes.

The Commission graphed the weighted average price of total imports from the four selected exporters on the same graph as it graphed volumes sold by Tindo.

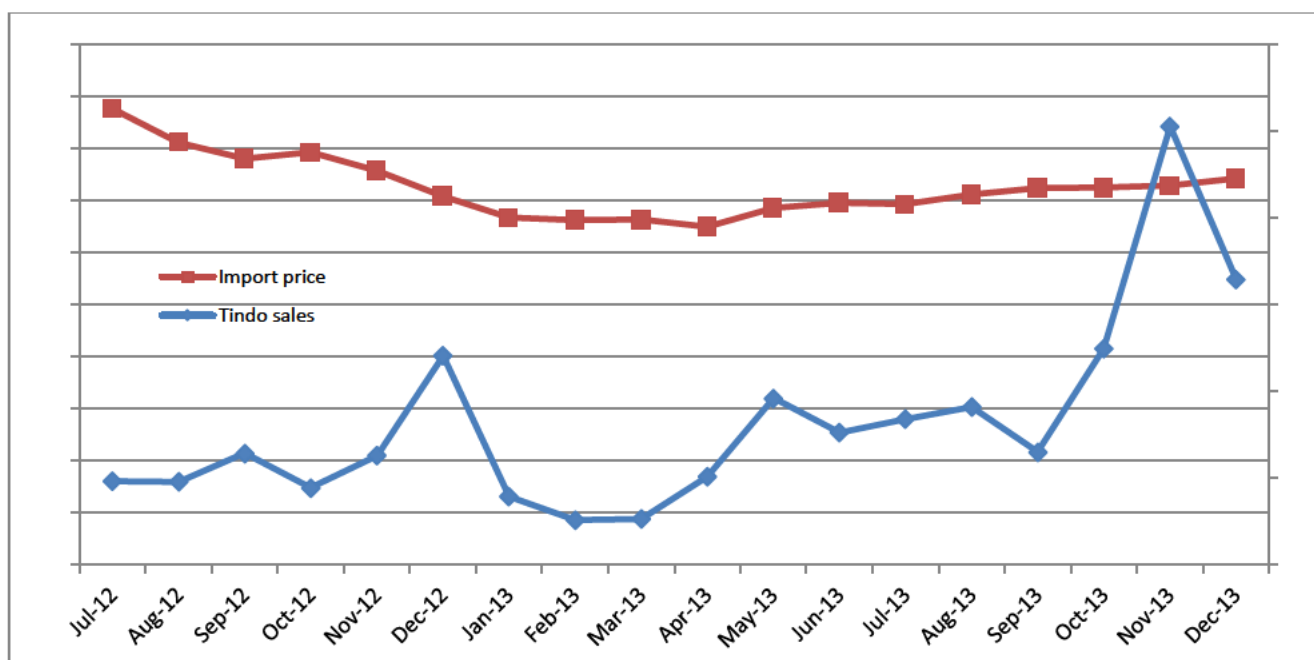


Figure 2 – Import prices and Tindo sales

The Commission notes that the graph for import prices is quite stable compared to Tindo's sales volumes indicating that Tindo's volumes are responding to other drivers. In particular the Commission notes that:

- Tindo sustained growth from October 2012 until December 2012 in the face of falling prices of Chinese PV panels;
- Tindo's volumes reached their nadir in February 2013 two months before prices of Chinese PV panels reached their nadir;
- The substantial increase in Tindo's sales volumes at the end of the investigation period appears not to be responding to the change in Chinese PV panels, the prices of which were steadily increasing from April 2013.

Accordingly the Commission is unable to identify any correlation or response between import prices and Tindo's sales volumes.

5.3.2 Price injury

Imported and domestic prices

The Commission has revisited aspects of its analysis in Figure 10 of TER 239 showing price levels of Chinese PV panels and Tindo's prices for AC and DC models. For purposes of this SEF, in order to better assess any correlation between these variables, the Commission has graphed the prices on a monthly basis throughout the investigation period.

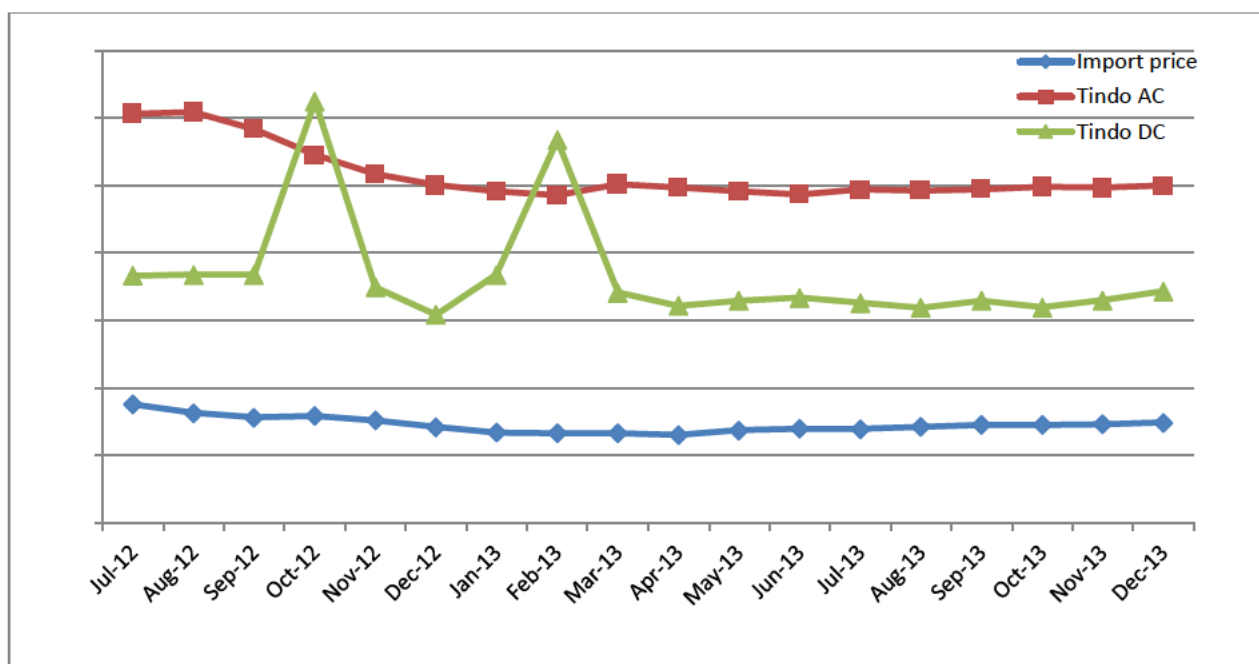


Figure 3 – Import prices (without dumping duties), Tindo AC and DC prices

Figure 3 illustrates that Chinese PV panels have a significant price advantage. As noted in TER 239 and elsewhere in this SEF, there is a significant price advantage held by Chinese PV panels even in the absence of dumping.

In terms of correlation between the variables, the Commission notes that there is not a significant amount of movement in these price levels except for two spikes in the price of Tindo's DC PV panels in October 2012 and in February 2013. The Commission would make two comments concerning these spikes:

- Firstly, the spikes are not in response to any change in price for Chinese PV panels. The price of Chinese PV panels during the first spike is falling steadily and during the second spike is static. There is not, as might be consistent with price injury being caused, an increase in the price of Chinese PV panels from dumped levels that would allow an injured Tindo to raise its DC prices.
- Secondly, these price spikes correspond with low volumes in Tindo's sales. The first price spike, in October 2012, corresponds with Tindo's lowest recorded volumes in 2012 (see Figure 2 above). The second price spike, in February 2013, corresponds with Tindo's lowest recorded volumes in 2013 and lowest over the entire investigation period (see Figure 2 above). It is not clear whether Tindo was experimenting with its pricing during these times or whether it misjudged the market, however it seems reasonably clear from this analysis that, at least for those periods, Tindo's own pricing policies were the likely cause of low sales volumes.

The Commission notes that the price for Tindo's DC PV panels (which compete most closely with Chinese PV panels in terms of price and features) has not fallen significantly over the investigation period (apart from the spikes).

5.4 Survey of end users by Colmar Brunton

The ADRP stated that the conclusions the Commission reached in TER 239 concerning causation of injury required further analysis and that such analysis should be of the end-user

market for PV panels (see the ADRP's reasons at paragraph 75 and elsewhere). In accordance with that guidance from the ADRP, the Commission sought proposals from companies with expertise in designing, undertaking and analysing consumer surveys.

The Commission's request for proposal

The Commission sought quotations and proposals for analyses from consumer survey companies that would allow the Commission to better understand consumers' purchasing decisions around installed PV panels. In particular the Commission sought to understand from a survey of consumers the extent to which a small price increase in imported PV panels would affect sales of Australian PV panels (even if the Australian PV panels remained significantly more expensive).

Proponents were asked to submit a proposal to prepare and conduct an online survey and report according to the following:

- Sample
 - Sample size of n=500.
 - Sample of respondents to be sourced from across Australia with broadly representative minimum numbers from each state and territory.
 - Respondents should be homeowners selected on the basis they either have PV panels installed or would seriously consider purchasing in the future.
- Survey design
 - The survey should take respondents an average of 10-12 minutes to complete.
 - Questionnaire and questions should be designed by service provider in collaboration with relevant Commission staff.
 - The survey should cover the key issues of consideration when making a decision to purchase PV panels. Service provider to develop a choice exercise for respondents and ask them to trade off PV panel installations with varying levels of cost and quality. Results should allow service provider to model the importance of price in the purchase decision hierarchy and the level of price or price difference that tips a buyer from imported to Australian assembled PV panels.

Colmar Brunton's proposal

The Commission issued three requests for quotation and proposal for the survey work and received two responses. Colmar Brunton was selected on the basis that it represented value for money and Colmar Brunton had experience and capability in the area of market research.

An important aspect of Colmar Brunton's proposal was the choice modelling that it proposed to do. From Colmar Brunton's proposal:

Choice modelling

Discrete choice modelling with paired comparisons gives consumers two competing choices. It provides a decomposition of attributes, but requires a complex adjustment process to give volumetric predictions. Choice modelling gives respondents scenarios which are as close to real life as possible, for example.

- Several 'choices' or product offers will be presented to the respondent in a grid format. Including elements of the decision to be agreed with ADC but are likely to include price, Australian assembly, and level of quality guarantee.

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- The respondent is asked to choose which offer they believe they would choose were they facing that choice in a real market situation.

This approach most represents the real market in that consumers are often faced with choosing from an array of product offers. This approach is the best design to use when the research is required to model a market simulation, thus understanding price sensitivity and source of new volume. In this research we are aiming to test how each pricing option for the PV panels would perform in the market and hence it is important a market simulation approach is adopted.

Outputs of the model are direct aggregations of consumers' choices. The model will provide a direct consumer driven prediction without any complex calibration of results. The predictions are broken down to options and levels, and can clearly show the source of new share and can easily be analysed for different target markets.

The questionnaire

Following discussions between Commission staff and Colmar Brunton analysts the questionnaire format focussed primarily on the questions that provided input to the choice modelling. The main question in the choice modelling section presented a grid of options of different PV panel suppliers to survey respondents. The parameters that varied in the grid of options were length of warranty (as a proxy for quality) and installed prices. The highest price in the range of installed prices was 25 per cent higher than the lowest price in the range.

Findings of the end-user survey

The key findings from the Colmar Brunton end-user survey work that was undertaken were:

- There would be very limited change in demand for Australian PV panels in response to a change in the price of Chinese PV panels. This finding was consistent across a number of scenarios with Australian PV panel volumes being the least responsive of all PV panels to changes in Chinese PV panel prices in most modelled cases.
- In the scenario where installed Chinese PV panels increased in price by 6 per cent, the modelled change in the demand for Australian PV panels was 2 per cent.
- End users are price sensitive and in scenarios where Chinese PV panel price increases were modelled, end users for the most part switched to the next cheapest alternative rather than Australian PV panels. Once a certain level of quality is guaranteed, price becomes the most relevant factor for end users.
- Price and quality were the most influential factors when end users were choosing PV panels, with more than 50 per cent of respondents choosing these as in the top two most influential factors. By the same measure, country of assembly was the third most influential factor although this was only ascribed as being in the top two most influential factors by 21 per cent of respondents.
- End users attributed the highest utility²⁸ to having Australian PV panels compared to PV panels from other countries, however this did not translate to a significant change in demand for Australian PV panels in response to increases in prices for Chinese PV panels.

²⁸ Utility is the strength of influence of an individual attribute. The greater the utility the greater the strength of an attribute in the decision.

- A significant proportion of end-users with PV panels installed did not know where their PV panels were made (31 per cent of respondents). A further 31 per cent of respondents believed that their PV panels were made in Australia; based on the data available to the Commission and the Commission's understanding of the market, this is clearly incorrect.

A copy of Colmar Brunton's report is contained at Attachment 1.

The Commission's assessment of the end-user survey

The Commission considers that the findings in the Colmar Brunton end-user survey support the view that dumped Chinese PV panels caused negligible injury to the Australian PV panel industry. It is clear from the Colmar Brunton analysis that there would be very little change in demand for Australian PV panels in response to a change in the price of Chinese PV panels – it follows that dumped Chinese PV panels caused negligible injury to the Australian PV panel industry.

The Commission notes in particular the finding by Colmar Brunton that, where installed Chinese PV panels increased in price by 6 per cent, the demand for Australian PV panels would increase by only 2 per cent. In any event the Commission notes that a change in demand of 2 per cent is well within the margin of error of the Colmar Brunton end-user survey and that a 2 per cent increase in Tindo's volumes would represent less than a 0.02 per cent change in shares of the overall Australian market during the investigation period.

The Commission notes the Colmar Brunton finding that quality and price are the primary drivers for purchase decisions, however it seems for most end users that, provided a certain level of quality is obtained, price becomes the dominant driver. This finding, and other findings in the Colmar Brunton report, support the view that end users of PV panels are generally price sensitive.

The Commission also notes the impact of the country of production on end users. End users clearly aspire to own Australian made PV panels however when end users consider this factor against other factors (notably price and quality) in practice, there is little or no price premium attached to Australian PV panels (by virtue only of the fact that PV panels are made in Australia – a small percentage of the market appear to be persuaded to pay more for the Tindo product by reason of Tindo's product differentiation, which is considered in section 5.7). The Commission also notes the significant proportion of end-users with PV panels installed who did not know where their PV panels were made. The Commission considers that these figures tend to reflect a lack of real concern with the country of production at the time a purchasing decision for PV panels is made by end users.

5.5 Econometric analysis

The Commission asked economists in the Department of Industry, Innovation and Science's Industry Economics branch to undertake an econometric analysis based on available data and advise on the economic relationship between dumped PV panels and PV panels produced by Australian industry. In particular the Commission sought to understand how demand for Australian PV panels would change in response to a change in prices of dumped PV panels and to establish whether there is non-negligible injury being caused to the Australian industry by dumped PV panels.

The Commission provided the Industry Economics branch with the following data:

- ABF import data:

- four years of data showing imports from all countries.
- Importer data:
 - 18 months of data;
 - Verified price and volume data from Australian sales by the top four importers of Chinese PV panels.
- Australian industry data:
 - 18 months of data;
 - Verified price and volume data from the Australian industry.

In this instance the Industry Economics branch was unable to assist the Commission due to data limitations. The report from the Industry Economics branch stated:

Industry Economics branch economists have assessed the available data, which was provided to the branch by the Commission. They noted the following:

- The available data does not lend itself to econometric analysis given the very short sample period.
- The domestic producer in this case is a young firm that has changed its business model from wholesale to direct customer during the relevant period. This change in business model means that sales data in the different time periods are not directly comparable.
- In relative terms, the applicant's market share remained very small as defined by domestic production plus imports. This makes an assessment of material injury and causation more difficult.

The Commission considers that the inability to complete an econometric analysis has not impacted its investigation. The Commission considers that information and analysis referred to elsewhere in this SEF is sufficient to support the Commission's conclusions.

5.6 Other factors

The Commission notes that the ADRP did not disturb the Commission's findings in TER 239 that other factors, including contractions in demand and Tindo's marketing contributed to injury to Tindo (see section 4.2.6 above). The Commission's assessment of other factors is contained at section 8.6 of TER 239.

As noted above, in examining the effects of the other factors, the Commission considers that the purpose is to 'disentangle' their effects from the effects of dumping. A judgement must be made as to whether the subsection 269TAE(2A) factors have acted in such a way to 'break the causal link' that may otherwise seem apparent between the dumped goods and any injury. In a case such as the present case, where there is no apparent causal link between the dumped goods and injury, the other factors play a less prominent role in the analysis. It is suffice to note that the other factors provide some explanation for any injury suffered by Tindo.

5.7 Attenuation of Tindo's injury by product differentiation

New information provided by Tindo following the ADRP's revocation indicates that another factor played a significant role in attenuating the injury that might have been caused to the Australian industry by dumped PV panels.

In a number of submissions, particularly Submission 174, Tindo identified substantial quality differences between its products and Chinese PV panels. It seems clear from the information provided by Tindo that Tindo uses high quality processes and components throughout its

production. Tindo also claims that Australian consumers can identify a premium product and are prepared to pay higher prices for premium products.

The Commission considers that Tindo has taken a commercial decision to vertically differentiate its product from those of its competitors by producing a high quality product. This would tend to limit Tindo's potential customers to those who have the ability to pay Tindo's higher prices but would also have the effect of lessening the impact of competition from lower quality PV panels, including many dumped PV panels. The Commission considers that this vertical product differentiation would attenuate injury from dumped PV panels that might otherwise occur. The Commission considers that this attenuation of injury would be in addition to, and would reinforce, the findings in the Colmar Brunton report that dumped Chinese PV panels caused negligible injury to the Australian PV panel industry.

5.8 Tindo's but-for causation argument

The Commission has found, for purposes of this SEF, that coincidence analyses indicate that no injury has been caused to the Australian industry. Tindo considers that such analyses would in any event be 'statistically irrelevant' in the current investigation.²⁹

Tindo appears instead to rely on a but-for causation argument, namely that but for dumped Chinese PV panels, Tindo's business would be materially better off than it currently is.³⁰

As noted elsewhere, an analysis other than a coincidence analysis requires a compelling explanation under WTO jurisprudence. In any event it is not sufficient to simply assert such an effect as this will not meet the evidentiary requirement. For a but-for argument to succeed, a compelling explanation may include reliable evidence of what the counterfactual would be (i.e. what would have happened to the Australian industry in the absence of dumping) and a clear difference (showing injury) between the state of the Australian industry in the factual and the state of the Australian industry in the counterfactual.

Tindo relies upon a business plan prepared for it by Ernst & Young in 2011 as a counterfactual.³¹ The resumed investigation has provided further opportunity for the Commission to assess the reliability and probative value of Tindo's business plan. On the basis of that assessment the Commission has formed a view that Tindo's business plan is not reliable evidence sufficient to found a counterfactual. The Commission has formed that view for the following reasons:

- The Commission found in TER 239 that the business plan was not up to date when Tindo started in business in 2012.³² Nonetheless Tindo relies on its business plan as a counterfactual for the entire investigation period, including for 2013.³³

²⁹ Refer Submission 174 at page 19.

³⁰ Refer Submission 163 at paragraphs 15 to 17.

³¹ Refer Submission 163 at paragraph 4.

³² Refer TER 238 at section 8.5.4.

³³ Refer Submission 163 at paragraph 4.

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- Tindo itself made an admission as to the reliability of the business plan. Tindo's application for review complained that it was unreasonable for the Commission to refer to its 'out of date business plan' in TER 239.³⁴
- The business plan contained factual errors concerning the size of the Australian PV panel market.³⁵
- The business plan was incorrect concerning its forecast of pricing in the Australian PV panel market, which only in part was due to dumping.
- The Commission notes that the business plan contains a number of important disclaimers concerning the inputs, commercial assumptions and forecasts contained in the business plan. The Commission considers that these disclaimers provide strong qualifications to any reliance that might be placed on the business plan for purposes of this investigation.
- Tindo has maintained confidentiality over its business plan notwithstanding that it continues to rely heavily on it in its submissions. Because of this confidentiality other interested parties have not had an opportunity to comment on the business plan. Allowing interested parties an opportunity to comment on evidence such as the business plan tests the probative value of that evidence. Where evidence cannot be tested in this way, the Commission may accord less weight to that evidence than it otherwise would.

In the absence of reliable evidence for Tindo's claimed counterfactual, the Commission considers that Tindo's claims that Chinese PV panels caused injury to the Australian industry lack an evidential basis. The Commission notes in any event that the finding by Colmar Brunton that end users would choose the next cheapest alternative if the price of Chinese PV panels were to rise would counter the conclusions reached by Tindo on the basis of its but-for argument.

5.9 Conclusion on causation

On the basis of the above findings, the Commission concludes that there was no or negligible injury to the Australian industry that was caused by dumped Chinese PV panels. In summary, these findings are:

- Correcting for the mathematical error in Tindo's end-user analysis, dumping duties would cause prices of installed Chinese PV panels to rise by no more than approximately 6 per cent and Chinese PV panels would continue to have a significant price advantage;
- Coincidence analyses identify no correlations that would indicate that Tindo's volumes or prices are being affected by Chinese PV panels;
- The survey of end users by Colmar Brunton finds, among other things, that: there would be very little change in demand for Australian PV panels in response to a change in the price of Chinese PV panels; and a 6 per cent increase in the price of

³⁴ Refer Tindo's application for review at page 20.

³⁵ Refer Submission 163 at paragraph 3.

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installed Chinese PV panels would cause a negligible increase in Tindo's volumes, if any;

- The significant product differentiation by Tindo of its PV panels attenuates injury to Tindo that might otherwise result from dumped Chinese PV panels;
- Tindo has not provided a reliable evidential basis for its argument that, but for the presence of dumped Chinese PV panels, Tindo's business would be materially better than it is.

6 PRELIMINARY FINDING

For the purpose of this SEF, on the basis of the evidence considered above, the Commissioner makes the following preliminary finding in relation to the resumed investigation:

- the injury to the Australian industry that has been, or may be, caused by the dumping of PV panels exported from China during the investigation period is negligible.

Based on this preliminary finding, and subject to any submissions received in response to this SEF and any further investigations, the Commissioner proposes to terminate this investigation in accordance with subsection 269TDA(13) of the Act.

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Attachment 1 – Colmar Brunton, PV Panel End User Survey