



20 September 2016

**NON - CONFIDENTIAL**

Mr David Peters  
Operations 2  
Anti-Dumping Commission  
Level 35  
55 Collins Street  
Melbourne VIC 3001

Dear Mr Peters,

**RESUMED DUMPING INVESTIGATION - PV MODULES OR PANELS FROM  
CHINA**

This submission, on behalf of Trina Solar, is in response to Statement of Essential Facts No. 239A (SEF 239A).

We consider that the Commission has very thoroughly followed up on the Anti-Dumping Review Panel's reasons for revoking the Commissioner's decision to terminate investigation 239 in this resumed investigation and we absolutely agree with its preliminary finding per SEF 239A that the injury caused to the Australian industry by exports of PV modules or panels from China during the investigation period is negligible. It follows that the Commissioner must terminate this resumed investigation as proposed in SEF 239A.

While we continue to disagree with the Commission's calculation of Trina Solar's dumping margin per SEF 239 for reasons put to the Commission in various submissions to this resumed investigation and investigation 239, we do not intend to make further issues concerning this matter at this time as we believe that this resumed investigation will be terminated.

However, if for some reason the termination of this resumed investigation does not proceed or is ultimately revoked by the ADRP and the investigation is further resumed, we will proceed with our contest of the Commission's erroneous dumping margin calculation based on its incorrect -

- consideration that Trina's production cost records do not reasonably reflect actual costs of production of PV modules; and
- use of the benchmark for purchased PV cells as surrogate costs for Trina's self-produced cells.

---

**Head Office:** Level 1, 2 Mercantile Dock, Port Adelaide S.A. 5015 Australia

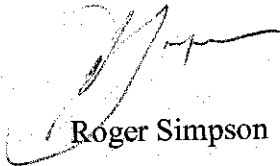
**Postal:** P.O. Box 2112, Business Centre, Port Adelaide S.A. 5015 Australia

**Tel:** 61 8 8447 3699; **Fax:** 61 8 8447 2661

**Email:** [roger@panpac.biz](mailto:roger@panpac.biz)

We note that SEF 239A does not take into account our submission of 30 May 2016 (copy attached), bringing to the Commission's attention the findings of the WTO DSB Panel in *European Union – Anti-Dumping Measures on Biodiesel from Argentina* (WT/DS473/R) to the effect that a finding that domestic prices are lower than international prices because of government policy *does not constitute a legally sufficient basis under Article 2.2.1.1 for concluding that the producers' records do not reasonably reflect the costs associated with the production and sale of (the goods)*<sup>1</sup>.

Yours sincerely,



Roger Simpson

---

<sup>1</sup> Panel Report WT/DS473/R, para 7.248.



30 May 2016

**NON-CONFIDENTIAL**

Mr Justin Wickes  
Director  
Anti-Dumping Commission  
Level 35  
55 Collins Street  
Melbourne VIC 3000

Dear Mr Wickes,

**PV MODULES OR PANELS FROM CHINA – PARTICULAR MARKET SITUATION**

Following its finding of a particular market situation (“PMS”) in China in relation to PV modules or panels, the Commission found that the Government of China’s influence on raw material input prices for PV cells would distort the cost of manufacturing PV modules or panels recorded in the accounts of domestic manufacturers in China and therefore considered it appropriate to adjust the recorded manufacturing costs of cooperating exporters with external benchmarks for PV cells.<sup>1</sup>

It is made very clear by the findings of the WTO DSB Panel in *European Union – Anti-Dumping Measures on Biodiesel from Argentina* (WT/DS473/R) that the Commission’s adjustment of cooperating exporters’ recorded manufacturing costs of PV modules or panels with external benchmarks for PV cells because of its consideration that input prices of PV cells were distorted by Government of China policies, is inconsistent with Article 2.2.1.1 of the Anti-Dumping Agreement.

Attached is an extract from the said Panel Report leading to the conclusion that –

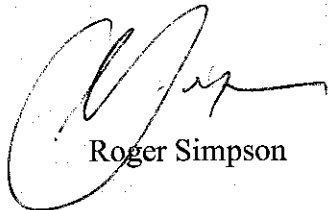
*The investigating authority determined not to use the costs of the main raw material, soybeans, in the production of biodiesel because “the domestic prices of the main raw material used by biodiesel producers in Argentina were found to be artificially lower than the international prices due to the distortion created by the Argentine export tax system”. In our view, this does not constitute a legally sufficient basis under Article 2.2.1.1 for concluding that the producers’ records do not reasonably reflect the costs associated with the production and sale of biodiesel.<sup>2</sup>; and*

<sup>1</sup> Termination Report No. 239, section 6.3.5.

<sup>2</sup> Panel Report WT/DS473/R, para 7.248.

*Therefore, we find that the European Union acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers.<sup>3</sup>*

Yours sincerely,



Roger Simpson

---

<sup>3</sup> Panel Report WT/DS473/R, para 7.249.