

INVESTIGATION INTO CERTAIN CRYSTALLINE SILICON PHOTOVOLTAIC MODULES OR PANELS (PV PANELS) EXPORTED FROM CHINA

This submission is made in response to the Anti-Dumping Commission's (the Commission) Statement of Essential Facts No. 239A (SEF239A) with regard to the alleged dumping of certain crystalline silicon photovoltaic (PV) modules or panels exported from the People's Republic of China.

Tindo is extremely dissatisfied at the Commission finding that 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.

Tindo requests the Commission to review its findings, in particular its assessment of the dumping margins, material injury and causal link.

1. DUMPING INVESTIGATION

Tindo restates its support for the Commission's finding that PV modules or panels exported to Australia from China during the investigation period were dumped and that the volume of dumped goods and the dumping margins were not negligible.

Tindo disagrees with the margins that were determined by the Commission. As addressed in previous submissions Tindo submits that the dumping margins assessed by the Commission are understated by not including all relevant costs.

1.1. Not reasonably competitive market costs - loans at rates not reasonably representative of market costs

As the Commission is aware, Regulation 43 of the *Customs (International Obligations) Regulations 2015* (the Regulations) provides that, in determining the cost to make and sell goods by an exporter, the costs as recorded are to be used if they reflect reasonably competitive market costs.

Tindo is not satisfied that the Commission has adequately addressed the issue of loans and credit facilities by Chinese banks (state owned or otherwise) to Chinese solar PV cell and modules manufacturers at less than market interest rates in determining the cost to make and sell Chinese PV panels when constructing normal values.

Tindo has raised concerns over the cost of loans incurred by Chinese PV panels exporters as far back as its application and in multiple submissions since. The Commission appears to have considered these very briefly (though arguably not in any great detail, including with the Government of China) in considering whether a market situation exists for the purposes of s.269TAC(2)(a)(ii), but still fails to determine whether these loan costs represent reasonably

competitive market costs when determining cost to make and sell for the exporters (for regulation 43).

Tindo notes the Commission's assessment in SEF239A that:

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.

Firstly, Tindo notes that the Commission's statement that it 'addressed market situation found by using benchmark prices for PV cells' is incorrect. The Commission has addressed its finding of a market situation simply by determining that domestic selling prices cannot be used for normal values and using constructed normal values instead. The Commission has remedied a finding that PV cell costs do not represent reasonably competitive market costs in line with the Regulation 43.

While the Commission has relied on the same analysis (of Chinese government distortions) to find that a market situation exists and PV cell costs are not reasonable, these are nonetheless separate findings. Consequently, to state that the Commission remedied 'market situation' by using a benchmark for PV cells is incorrect.

Secondly, Tindo accepts that:

- whether loan costs incurred by Chinese PV panels exporters contribute to a market situation existing in the Chinese PV panels market is a moot point at this stage, as the Commission has already found that a market situation exists due to other factors so loans would merely add to this finding but have the same outcome (constructed normal values should be used); and
- replacing the cost of PV cells incurred by Chinese exporters of PV panels will remedy the unreasonably low rate of loans obtained by the manufacturers of the cells themselves (which, had they been incurred at reasonable rates, would have raised the cost to make those sells and then the selling costs of the cells to the PV panels exporters).

However, replacing the cost of PV cells in PV panels exporters' costs does not remedy the reduced interest costs incurred by the PV panels exporters themselves when taking out loans in running their own PV panels manufacturing operations.

Tindo has provided information to demonstrate that loans are provided at a cost to exporters that are not reasonably representative of competitive market costs for the purposes of Regulation 43 and should be replaced by reasonable benchmarks. These costs are significant

and Tindo has presented calculations to show that remedying this will have a significant upwards impact on normal values.

Tindo notes that the Commission appears to have dismissed its claims on Chinese bank loans in some part due to the fact that evidence provided by Tindo relates to the findings of a previous countervailing case. The Commission appears to state that this evidence is irrelevant as the current investigation is focused on dumping and not finding countervailable subsidies. While Tindo is not, at this stage, requesting the Commission examine these possible subsidies for the purpose of imposing countervailing duties, Tindo submits that the fact that loans are potentially provided at subsidized rates surely can be considered in the context of whether it has resulted in the costs of loans in exporters' accounts not being reasonably competitive market costs for the purposes of Regulation 43.

Tindo requests the Commission examine this as a matter of urgency.

1.2. Corporate costs

Tindo has previously provided the Commission with information (that is publicly available) regarding the company structures for the exporters to assist the Commission with this investigation. Tindo has submitted that significant costs incurred by other companies in the corporate groups of exporters of the goods, and these need to be reasonably allocated to the goods to ensure an accurate cost to make and sell is determined.

Tindo notes that SEF239A has not provided any further details to indicate that these costs have been examined and incorporated in the constructed normal values.

Tindo requests that the Commission address the allocation of depreciation, capital expenditure and other development costs from the parent and relevant subsidiary accounts **for the consolidated groups of companies comprising the parent company and all subsidiaries** to determine all relevant costs.

1.3. Profit used in the normal value calculations

In TER239, the Commission observes that it has calculated normal values for each Chinese exporter of PV panels by including an amount of profit based on sales in the ordinary course of trade.

However, it is not clear to Tindo whether the CTMS used to conduct these ordinary course of trade tests and determine a profit margin was the CTMS as recorded by the exporters, or the CTMS following the inclusion of a benchmark for PV cells.

If it is the latter, Tindo submits that the rate of profit is understated, as it compares selling prices of goods as incurred with a CTMS that in fact was not (and likely higher) than was actually incurred. It is logical and reasonable to find that, if Chinese exporters' domestic CTMS PV panels was actually at the level determined by the Commission post-benchmark, the selling

prices would accordingly alter to retain a similar level of profit to that achieved on sales if the benchmark was not used.

Tindo submits that the rate of profit used in constructing normal values should thus be the profit achieved on sales in the ordinary course of trade using CTMS before the PV cells benchmark has been applied.

Tindo requests the Commission examine this matter.

1.4. End user dumping margin

The Commission asserts that a 21.1 per cent dumping margin will result in a difference of 6 per cent at the end user level of trade.

SEF239A (Section 8.4.2) was not explicit or clear that the weighted average price undercutting to the end user level of trade of 20 per cent was only on the solar panel portion of the price.

Tindo did ask for copies on how the end user average price undercutting was calculated but this information was not provided to Tindo.

The Commission has now clarified in SEF239A that the 20 per cent was only attributable to the solar panel portion of the end user level of trade.

The 6 per cent end user dumping impact calculation is new information and Tindo questions how the Commission came up with the number of 6 per cent. Did the Commission use factory gate pricing without installer markup on all of the components? Or only on the solar panels. If it is only on the solar panels, then the panels have been disproportionately effected and the real price difference at the end user of trade would be more like 11 per cent. The following prices are taken from the Solar Juice July 2012 Price List:

		Dumped	Un-Dumped
Solar Panel	Trina 255W Black Frame Module	95 c/W	115 c/W
Inverter	SMA SB-5000 Inverter	47 c/W	47 c/W
Racking	Solar Juice	10 c/W	10 c/W
Installation	Installer	20 c/W	20 c/W
		172 c/W	192 c/W

Extra Cost for Undumped	20 c/W
Extra Cost for Undumped	11.6%

An installation company would generally markup the cost to buy and install using a single number and hence this can be extrapolated that an un-dumped Chinese panel would add 11.6 per cent to the end user.

Tindo asserts that the extra cost to end users for an un-dumped solar panel system is an additional 11.6 per cent – not 6 per cent.

2. MATERIAL INJURY AND CAUSAL LINK

2.1. Causation factors

Subsection 269TAE(1) of the Act provides that, in determining whether material injury to an industry has been caused by dumped goods, the Minister may have regard to:

- the size of the dumping margins established (paragraph (aa)); and
- the quantity of the goods that have or are likely to be exported to Australia (paragraph (a)).

Further the *Ministerial Direction on Material Injury* states that:

- injury caused by other factors must not be attributed to dumping; and
- dumping need not be the sole cause of the injury.

SIZE OF DUMPING MARGINS

For the four exporters that Commission investigated the Commission found dumping margins ranging between 16.1 and 38.8 per cent for PV panels exported from China. The residual exporter rate was assessed at 21.1 per cent.

Tindo submits that, notwithstanding its comments above that the SEF239A dumping margins are understated, the SEF239A margins are not insignificant, and logically have given Chinese PV panels a significant price advantage in the Australian market.

VOLUME OF DUMPED GOODS

Tindo notes that during the investigation period the market share of exports from China has increased steadily from about 80 per cent in 2010 to about 89 per cent in 2013¹.

PRICE EFFECT OF DUMPED GOODS

Tindo submits that PV panels are not a homogenous product. The pricing of AC is different to the pricing of DC, and wholesale pricing is different to end-user (home-owner) pricing.

¹ TER239, Page 54

During the investigation period about █ per cent of Tindo’s sales were AC. By the end of the investigation period █ per cent² of sales were to end-users.

Tindo estimates that during the investigation period about 12.5 per cent of installations Australia-wide were AC³ panels (i.e. fitted with an on-board micro-inverter). Further, Tindo conservatively estimates that about █ per cent of these AC installations were manufactured by the Australian industry. It is this sector of the PV market, in particular, that Tindo competes with imported DC panels that are fitted with micro-inverters (in Australia) and installed as an AC system.

The following chart illustrates Tindo’s understanding of the source of imports installed as AC PV panels. Significantly, **Tindo’s main competition is dumped DC PV panels exported from China, fitted with micro-inverters in Australia and installed as AC panels.**

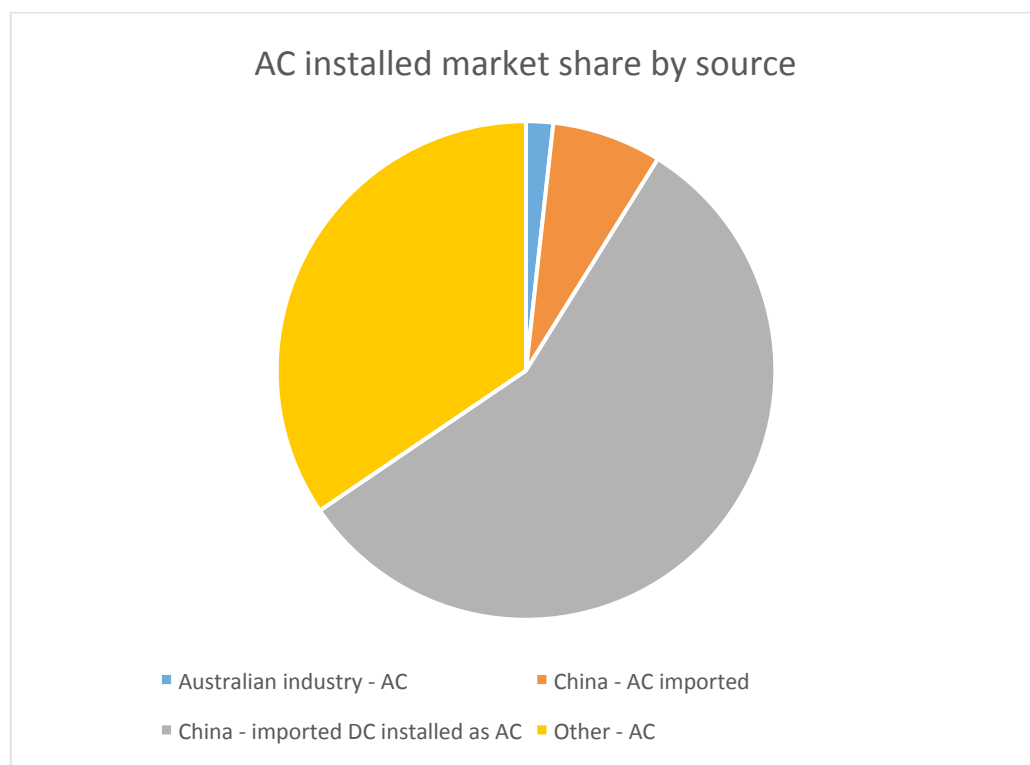


Chart 1: AC installed market share by source

It is not clear from SEF239A if the Commission has

- measured the specific price advantage of the dumped DC PV panels exported from China, fitted with micro-inverters in Australia and installed as AC panels when compared to selling prices of the Australian industry, **at the end-user level of trade**; or

² Submission 163, page 4

³ Based on estimates used in submission 164

- addressed the contribution of the dumping to the prices of the dumped DC PV panels exported from China, fitted with micro-inverters in Australia and installed as AC panels when compared to selling prices of the Australian industry **at the end-user level of trade**.

Tindo contends that a sound and reasonable analysis of the price advantage of the goods from China versus the pricing of the **Australian industry** would necessarily incorporate a comparison of the pricing of like with like.

- At the end-user level
 - Australian industry AC compared with imported AC from China
 - Australian industry AC compared with the imported DC from China that were converted and installed as AC in Australia
 - Australian industry DC compared with imported DC from China
- At the wholesale level
 - Australian industry AC compared with imported AC from China
 - Australian industry AC compared with imported DC from China that were converted and installed as AC in Australia (Adrian is this relevant)
 - Australian industry DC compared with imported DC

As was noted in the ADRP Report the issue at point is:

*whether, as Tindo alleged, the price advantage was from dumping or, as the Commission found, **the contribution of dumping to this price advantage negligible**⁴[emphasis added].*

Tindo submits that TER239A does not indicate that the Commission has calculated the price advantage at the end-user level and wholesale level, during the investigation period for

- Australian industry AC compared with imported AC from China
- Australian industry AC compared with the imported DC from China that were converted and installed as AC in Australia
- Australian industry DC compared with imported DC from China

Tindo further submits that establishing the level of price advantage for imported panels from China installed as AC is a fundamental step to working out the contribution of dumping to the price advantage.

Tindo therefore submits that, without this analysis, it is not reasonable for the Commission to come to a conclusion that the contribution of dumping to the price advantage of imported PV panels is negligible.

2.2. Assessing causal link

⁴ ADRP Report page 47

VOLUME INJURY

Tindo disagrees with the Commission's methodology and subsequent findings that Tindo has not suffered volume injury caused by dumping.

There has been material volume injury.

In SEF239 the Commission's finding with regard to injury is that overall Tindo's sales volume increased over the 18 month investigation period, except for the wholesale market.

Tindo was a startup in July 2012 and July 2012 was its first month of production. It should come as no surprise to the Commission that Tindo's volume increased when compared to a baseline of its first month of production. There are so many inconsistencies in claims of correlation, that the claims of no injury should be dismissed. There are issues such as:

1. Tindo was a startup and its sales increased as the base line used by the Commission to justify its case was Tindo's first month of production which was low volume.
2. Tindo was mainly operating in South Australia during the investigation period. The South Australian market was affected by other factors such as local regulations and the Commission has attempted to compare this with national import figures.
3. Tindo did receive a spike in demand in Q4-2012 however the Commission has erroneously interpreted that due to the spike in demand, that Tindo was not injured in the period. This is a desperate and puzzling conclusion by the Commission and has nothing to do with whether or not Tindo would have been able to sell more panels and at a higher price during that same period.
4. The spike in Q4-2012 was due to the end of a national solar rebate which was a significant national event and hence felt by the entire market.
5. Another reason for the Tindo spike in Q4-2012 is that this coincided with Tindo's decision to sell directly to the end user which resulted in immediate sales.
6. The spike in Q4-2013 was due to the end of a feed-in-tariff in South Australia (Tindo's home state) and hence Tindo was effected as the majority of Tindo's business at that time was in South Australia.
7. The correlation between import prices versus Tindo prices is that when the price of the Chinese panels collapsed in Q3-2012, Tindo was forced to immediately respond and change its business model to a system installer as it did in Q4-2012.
8. Tindo increased its price in Q4-2012 as it changed business model from a wholesale to an installer of solar panels. Tindo had to build marketing, sales and installation teams. This costs money and required a larger gross margin compared to a wholesale business. So basically, Tindo could not reduce its panel price as it needed the margin to cover the

considerable extra costs of running a system installation business along with its manufacturing business.

9. Where is a correlation assessment of Tindo's wholesale business compared to Chinese volume? This is a staggering example showing how the Chinese price collapse in early 2012 resulted in the death of the Tindo wholesale business. Tindo had to react or close down. Tindo's decision to start selling to end-users was a survival strategy and it has served Tindo very well.



In terms of showing a correlation between Tindo's injury and imports from China any such findings would be statistically irrelevant given that Tindo's sales volume (AC and DC) is insignificant when market compared with Chinese imports at of the market. The Oct 2012 and Feb 2013 spikes in pricing further demonstrates the irrelevance of the attempt of drawing conclusions from correlation. Other factors are at play here.

In support of its claim that Tindo lost sales volume to dumped Chinese imports, during its first 18 months of operation, Tindo provided the Commission with evidence in its application linking actual Tindo lost sales to imports from China. SEF239A appears to be completely silent on this strong evidence of causal link between material injury (lost sales volume – particularly important to a start-up SME with small volumes already) and dumping (price advantage provided to Chinese goods). This is clear evidence of a 'counterfactual' that links dumping to lost sales volumes that appears to have been disregarded by the Commission.

Relevance and reasonableness of a 'coincidence' analysis

Tindo notes in SEF239A the Commission undertook a 'coincidence' analysis of Tindo's sales volumes and imported volumes with the objective of assessing whether dumped imports were causing volume injury to the Australian industry. In its report the Commission stated that it

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.⁵

Tindo contends given that given

- the Australian industry commenced operations at the commencement of the investigation period,
- the sales volumes of the Australian industry are minuscule compared to those of the exports from China, and
- the Australian industry changed its business model in Q4-2012,

there would not necessarily be a negative graphical month by month correlation between import volumes and domestic volumes. Consequently, Tindo considers that, due to the unique circumstances of its case, that such a coincidence analysis may not necessarily be a reasonable or preferable approach to determining causal link.

In support of Tindo's claims that the dumped imports that entered the Australian market displaced Australian volumes Tindo included in its application the results of its customer survey conducted in February 2013 as well as case study examples of lost sales, price depression and suppression (discussed above). Tindo further submits that the evidence it has provided is:

- **relevant** to the time period of the investigation; and
- what was **reasonably available** for a SME to collect from and regarding its 'lost' customers during the start-up phase of its operations.

In addition Tindo makes the following observations regarding the Commission's graphical analysis of volume causal link in SEF239A.

Firstly, Tindo submits that the SEF239A graph of Tindo sales volumes⁶ against import volumes is grossly misleading. Although noted, the scales **are** different. The graphical representation of Tindo's sales volumes not to the same scale as the import volumes provides a representation that is significantly distorted in terms of Tindo's sales volumes with the imported volumes.

⁵ SEF239A, Section 5.3.1, Page 37

⁶ SEF239A, Figure 1 – Sales volumes Tindo and imported volumes – graphed against differently scaled axes

Secondly, Tindo is not surprised that there is no clear relationship between Tindo’s sales volumes and the imported volumes⁷ and Tindo’s sales volumes and import prices for the four exporters (investigated by the Commission) given that Tindo is a young SME that commenced operating at the start of the investigation period.

Comparison of Tindo’s sales volumes and imported volumes

To illustrate the significance of Tindo’s market share compared with other players in the market Tindo has prepared the following chart. The chart clearly shows that the Australian industry’s volumes are so small (insignificant) when compared to total imports (all China imports plus other countries) that Tindo’s volumes are not illustrated.

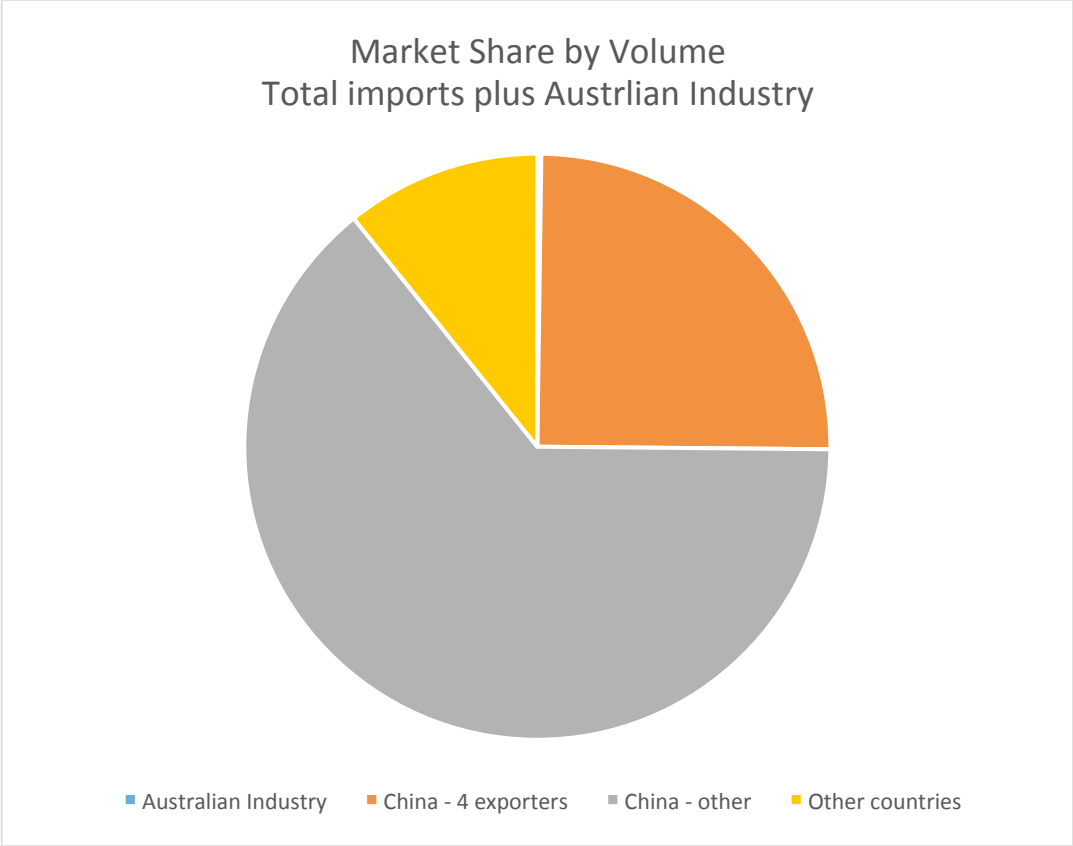


Chart 2: Market share during the investigation period

With regard to the Commission’s coincidence analysis Tindo also notes that the graphed import volumes related to the four selected exporters investigated from China which only equates to about 28 per cent of total import volume from China. Furthermore it is unclear from SEF239A if the month to month movements of the four selected exporters is even representative of month to month movements for the total volume of imports from China.

⁷ SEF239A, Figure 2 – Import prices and Tindo sales

The following chart gives some perspective regarding the scale of Tindo's sales volumes compared with the import volumes analysed by the Commission.

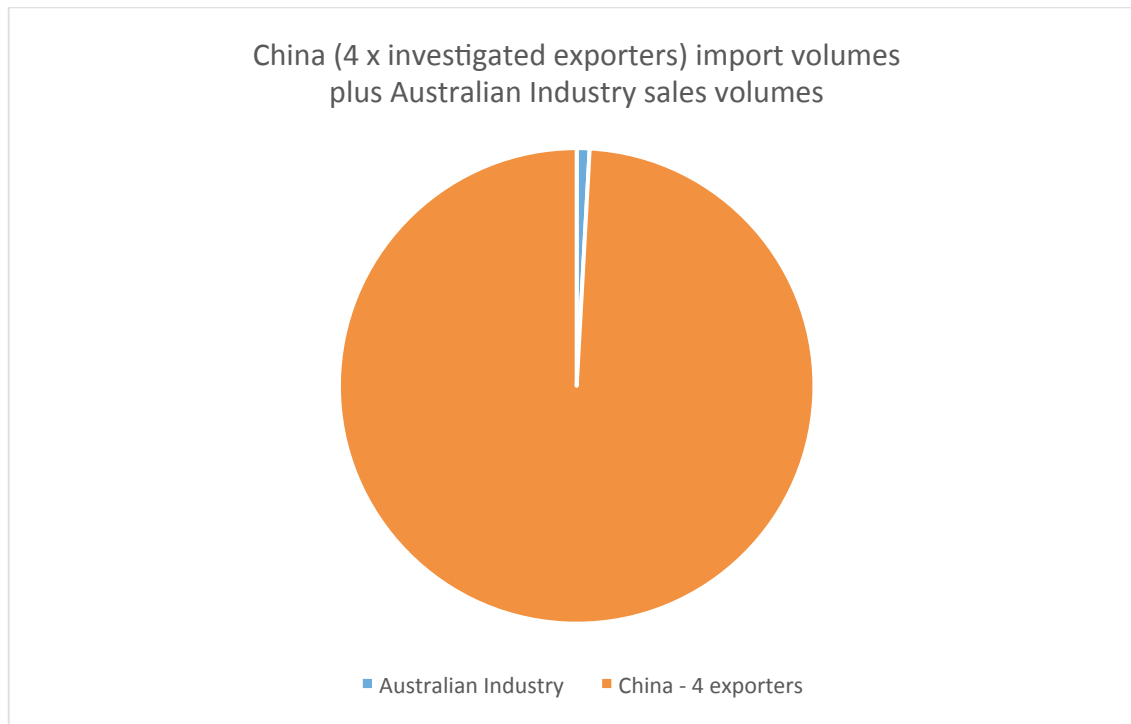


Chart 3: Import volumes of 4 selected exporters plus Australian industry sales volumes

Tindo submits that given Tindo was a start-up SME with less than 1 per cent market share and the Chinese imports represent around 89 per cent market share it is unreasonable and unrealistic to expect Tindo's sales volumes month by month to be impacting import volumes for that same month for the sum of the four exporters investigated by the Commission⁸.

Comparison of Tindo sales volume with import prices

In terms of the comparison of Tindo sales volume with import prices and the Commission's observation 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

Tindo's response is that the Commission has not taken into consideration that Tindo is an SME that commenced its business to manufacture and sell PV panels **during the investigation period**. It was always Tindo's intention to grow its sales volume, as noted in its business plan, and the Commission graph⁹ that shows Tindo, with less than 1 per cent market share, making sales and growing its business between the months of July 2012 and December 2013 is not evidence that dumped imports are not causing Tindo material injury.

⁸ Tindo notes that the lead-up between ordering, shipping, customs clearance.

⁹ SEF 239A – Figure 2 – Import prices and Tindo sales

Tindo notes that the Industry Economics branch, in the Department of Industry, Innovation and Science, due to data limitations were unable to undertake an econometric analysis to help the Commission

... 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

Significantly the Industry Economics branch noted

- *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** [emphasis added] 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.** [emphasis added]*
- *In relative terms, the applicant's market share remained **very small** [emphasis added] as defined by domestic production plus imports. This makes an assessment of material injury and causation more difficult.*

Tindo submits that given Tindo is a young SME with less than 1 per cent market share compared to the Chinese imports of around 89 per cent a more appropriate methodology for assessing whether dumped Chinese imports displaced Tindo sales is to examine the lost sales case studies and Customer Survey Tindo provided to the Commission in its application.

PRICE INJURY

Tindo disagrees with the Commission's methodology and subsequent findings that Tindo has not suffered price injury caused by dumping.

SEF239 clearly identifies that Tindo has suffered substantial price injury during the investigation period, experiencing price depression and suppression. This in turn has contributed to the injury of negative profitability and overall losses during the investigation period.

However, in SEF239A, the Commission has found that, following its correlation analysis that material injury has not been caused by dumping.

As part of its causation analysis the Commission undertook coincidence analysis where it graphed¹⁰

- dumped imported prices for the four exporters it investigated
- Tindo AC prices
- Tindo DC prices.

¹⁰ Figure 3 – Import prices (without dumping duties), Tindo AC and DC prices

In light of this, Tindo is concerned that the SEF239A pricing analysis is not based on a fair comparison. The coincidence analysis appears to be based on comparisons of Tindo's AC and DC prices (which are a mix of wholesale and end-user prices but predominantly end-user prices) with an average of the four investigated exporters prices which are predominantly DC prices to wholesalers.

Given that for most of the investigation period Tindo's sales were AC and at the end-user level Tindo contends that before the Commission can determine that injury to the Australian industry has been, or may be caused by exports of PV panels exported to China at dumped prices is negligible there should be a specific examination of Tindo's AC pricing at the end-user level of trade compared with the pricing of the imported AC panels as well as the DC panels installed as AC systems at the same level of trade.

In summary, quite early in the period of investigation the Australian industry sales model changed from wholesale to end user and a fair price comparison would be comparing like with like.

In addition, as with volume injury, Tindo notes that it has, on multiple occasions, provided detailed evidence in the form of outcomes of sales negotiations against Chinese PV panels, to show that Tindo has regularly been required to reduce its prices (and hence profit and profitability) to attempt to win sales. These reductions were required to compete with projects using heavily dumped Chinese PV panels, giving Tindo's competition significant price advantages.

2.3. But for causation assessment and importance of contract evidence

Tindo submits that during the course of the investigation it has provided genuine and substantial evidence¹¹ of the relationship between sales lost and the dumped goods.

As **part** of the application Tindo provided the Commission with a copy of its business plan. This plan was prepared for the purpose of starting up our business. It is a plan and it is based on forecasts. The business plan is not Tindo's one and only counter-factual to the 'but for' dumping argument. Tindo submits that its customer survey conducted in February 2013 as well as case study examples of lost sales and price depression and suppression show a direct link to Tindo's material injury and dumped exports from China.

As discussed previously, the importance of these hard evidence examples cannot and should not be miscounted by the Commission.

Tindo notes that the Commission's *Dumping and Subsidy Manual*¹² (the Manual) itself identifies where these examples can establish a direct link to material injury.

¹¹ Customer Survey and examples of lost sales, during the investigation period, submitted in application

However, the Commission appears to have changed the requirements of this evidence in SEF239A by apparently misquoting the Manual such that it misrepresents the Commission's publicly published position on such evidence. A snapshot of the current section of the Manual relevant to this type of evidence is included below (accessed on 23/9/16).

In some cases evidence may show that imported goods at dumped or subsidised prices won contracts because of their price advantages. This evidence may establish a direct link to the injury experienced by the Australian industry that had also contested those same contracts.

However, SEF239A states the Commission's position on this type of evidence is as follows (note that this text is placed in the context of significant other text apparently quoted verbatim from the Manual):

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.

As is evidence from the red underlined text above, SEF239A appears to insert additional requirements on this evidence such that it must be shown that, if evidence demonstrates contracts have been won on price advantage, this must be wholly attributed to dumping. This clearly changes the meaning of the text of the Manual, and is inconsistent with the Commission's established policy and practice.

Tindo again submits that this evidence of lost contracts and contracts won at depressed prices, is a clear causal link between dumping and material injury. In fact, they represent a 'smoking gun' of causal link, as the strongest possible evidence of this link (which has been accepted by the Commission time and again as evidence of causation).

Tindo has provided evidence in the form of six case studies that show:

- imported goods at dumped prices won contracts because of their price advantage.
- Tindo was forced to discount its price to bring it closer in price to a dumped solar system

This is a direct link between dumping and material injury.

If a dumping margin of 6 – 12 per cent is applied to the Chinese system pricing, then the Chinese do not have a significant price advantage with the six case studies.

The Commission has not proven that this injury was negligible using real case studies.

¹² Available at <http://www.adcommission.gov.au/accessadsystem/Documents/Dumping%20and%20Subsidy%20Manual%20-%20November%202015%20-%20Nov%202015%20-%20final%20on%20website.pdf>

The Commission cannot continue to ignore and dismiss the real hard data case studies.

Job Name	Original Quote	Chinese Quote	Won/Lost by Tindo	Sold Price	Injury
█	█	█	█	█	█
█	█	█	█	█	█
█	█	█	█	█	█
█	█	█	█	█	█
█	█	█	█	█	█
█	█	█	█	█	█
TOTAL					█

Examples of Tindo lost sales to Chinese

This information shows that if Chinese solar systems were 5 per cent or 10 per cent more expensive at the end user level of trade, then Tindo would not have had to discount as far to win these jobs, or Tindo may not have lost these jobs.

This is injury to Tindo and material.

Tindo has hundreds of examples of needing to discount to win jobs, and also having lost jobs on price.

It’s really hard to compete against a solar panel that is dumped at 20 per cent.

Tindo knows that even an un-dumped Chinese panel would still likely be cheaper once installed on a roof, however, the gap is smaller and given the trust and higher quality of Tindo, more customers would choose Tindo.

2.4. Survey of end users by Colmar Brunton

Tindo has serious concerns with the Colmar Brunton finding and strongly believes it is unreliable and should not be considered as evidence.

The survey results are an interesting read but they cannot be relied upon. Besides the fact that the Colmar Brunton survey was conducted **outside the investigation period** and the Commission stated quite clearly in SEF 239A that *dumping and its effect on the Australian industry must be assessed during the investigation period*¹³, it is essentially a behavioural survey and people do not always act as they say.

¹³ SEF239A – Page 29

This is clearly what has happened with the Colmar Brunton survey where 41 per cent of the respondents claimed to be experts but yet 31 per cent believe that they have purchased PV panels made in Australia which is clearly not correct. “It is clear there is some confusion”.¹⁴ The unreliability and confusion around the respondents again reinforces that the survey results cannot be relied upon.

Other concerns with the survey are as follows:

1. The survey asked participants if they would buy German made Q-Cells solar panels. There is no such thing as German Q-Cells solar panels in the market today. Q-Cells went bankrupt years ago blaming Chinese solar panels into Europe being dumped. Q-Cells is now a Korean company that makes its panels in China. Q-Cells would be subject to a dumping margin if and when it is introduced into Australia. So the respondents think they already have Australian panels and then are further confused by being told that a Chinese made solar panel is actually made in Germany. This survey should be dismissed.
2. In various simulations in the survey, the price of the Chinese panels was increased, the price of the Taiwanese and Korean panels remain fixed. The survey then showed that if the price of Taiwanese and Korean panels remained the same, then the market would buy those panels instead of Australia. In reality, when the volume leader reduces its price, the competition is dragged down along and vice versa, when the volume leader increases its price competitors are able to charge more. This is basic knowledge transferable across many industries and another reason the survey findings cannot be relied upon and are irrelevant and should be dismissed.
3. Scenario 2 can be interpreted as when the price of Chinese, Korean and Taiwanese get closer to Australian pricing, the market share to the Australian product increases. This scenario and its simulations do not reflect market conditions whatsoever. The confused respondents would not expect a Chinese solar panel to cost the same or more than an Australian made quality system nor would they expect Taiwanese and Chinese panels to cost more. This scenario is nowhere near real world conditions and its findings are irrelevant and should be dismissed.
4. Using guarantees as a measure of quality is totally misleading as the guarantees of Chinese and Australian solar panels during the investigation period were exactly the same at 25 years. Using guarantee as a quality lever is misleading, unhelpful, confusing and yet another reason why the survey cannot be relied upon and should be dismissed.
5. Scenario 1 has never been proven in the real market with Tindo, Silex, ASM or BP (after the Chinese entered the Australian market). Silex shut down manufacturing citing dumped Chinese panels. Same goes for ASM. They were suffering injury due to dumping. This is further proof that the “confused” survey cannot be relied on. The baseline established is flawed and the entire survey should be dismissed.

¹⁴ Colmar Brunton Survey – Page 31

Tindo is also unclear how the 6 per cent price increase was calculated and the process for translating the results of the survey. From what Tindo understand, the Commission has calculated this 6 per cent price figure based on limited information from past tenders in the investigation period (which is not available to Tindo to access) and relied heavily on this in the survey to ask householders whether the impact of this figure would change their purchasing decisions. This seems extraordinary to Tindo to place such a heavy reliance on a vague figure.

Further, the results of the survey and the prices used to survey the householders does not take into account the increased dumping margins that in fact should have been found, had the Commission addressed the issues discussed previously (loans, corporate costs, etc).

PV solar purchasing is a complicated choice and the only data that can be relied on are the real case studies or other information obtained during the investigation period.

2.5. Tindo's new end user survey

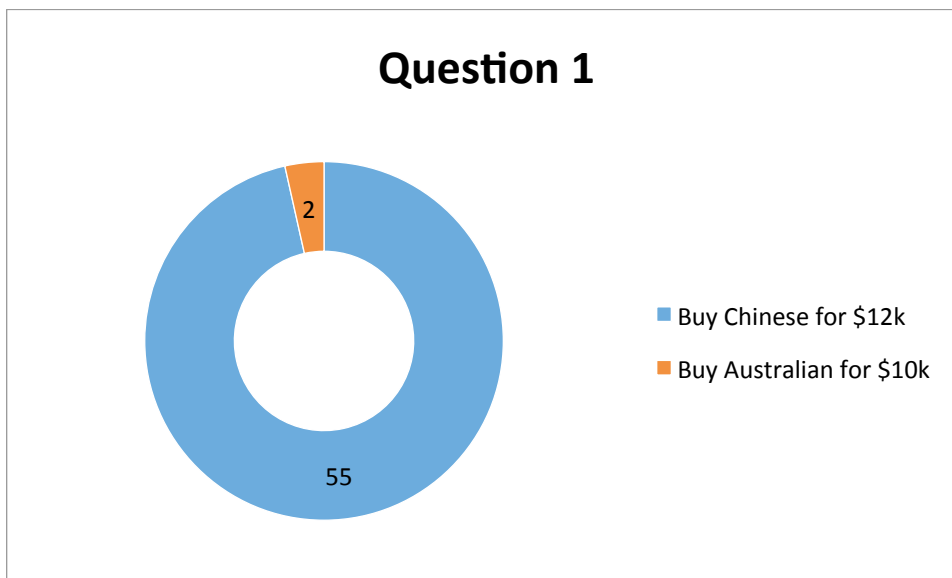
Tindo has engaged Kevche Pty Ltd to conduct an end user survey.

57 people – 28 male and 29 female respondents completed the survey.

45 respondents were homeowners and 12 were renting.

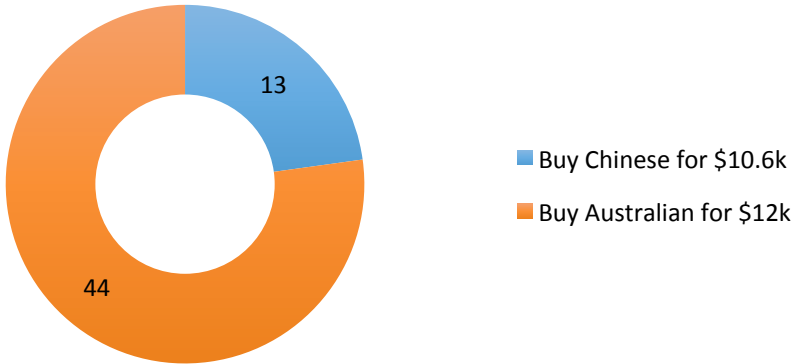
52 homes did not have solar and 5 did already have solar.

When customers were asked if they would pay 20% for an Australian solar system they answered:



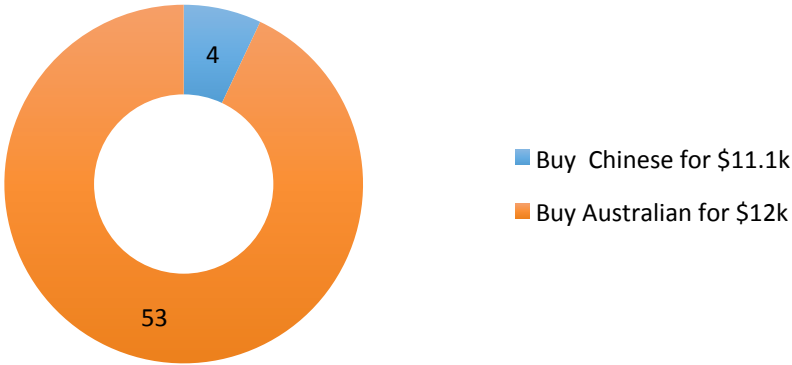
When respondents were asked if they would buy Chinese or Australian if the price was increased by 6%, they answered:

Question 2

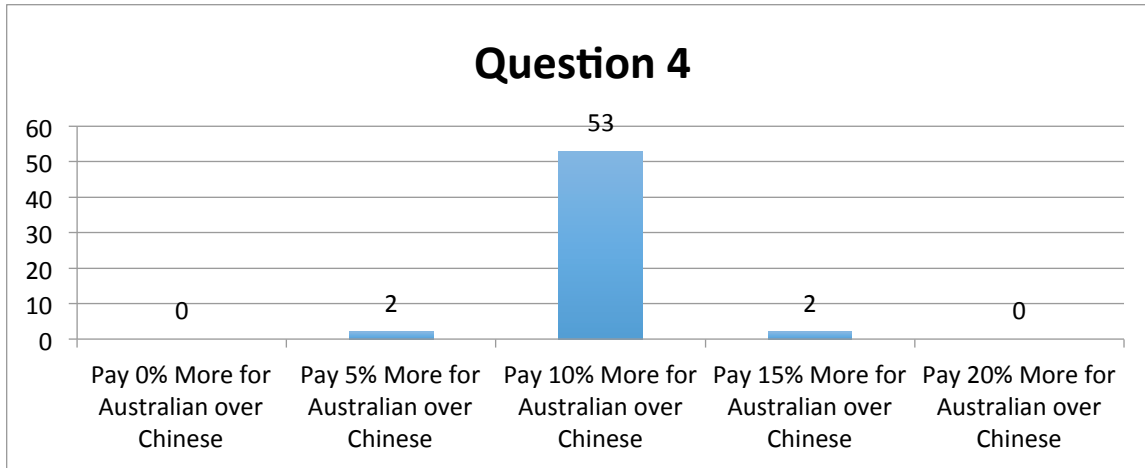


When respondents were asked if they would buy Chinese or Australian if the price was increased by 11%, the answered:

Question 3



The respondents were then asked their tolerance for how much extra they would pay for Australian, and the results were as follows:



It can be concluded that if the cost of a Chinese solar system went up 6% or 11%, then Tindo would certainly get more business.

Tindo is sustaining injury on a daily basis as Chinese manufacturers continue to dump panels into Australia.

3. OTHER CONCERNS

3.1. Evidentiary standard of Tindo's business plan

At Page 45 of SEF239A, the Commission states that, because of the confidentiality claimed over Tindo's business plan, the Commission 'may accord less weight' to it as evidence than it otherwise would have. Tindo submits that this approach by the Commission is not consistent with the provisions of s.269ZJ, or established policy and practice.

As required by s.269ZJ, where information is provided to the Commission that is confidential, a reasonable non-confidential summary of that information is required to be placed on the public record unless the Commissioner is satisfied that there is no way such a summary can be provided. Established policy and practice of the Commission is that confidential business documents such as business plans, annual reports, etc fit into the category of not being able to provide a reasonable summary, and are allowed to be provided as fully confidential documents and had equal regard to. The Commission's statement that Tindo's failure to make this document public thereby reduces its evidentiary value is inconsistent with this.

Further, s.269ZJ provides that, where the Commissioner indicates to a party that he disagrees with their claims that a document is confidential, the Commissioner may disregard the information unless the information is correct. Tindo has not received any indication from the Commissioner that he disagrees with its confidentiality claims over its business plan to date.

Finally, it is illogical for the Commission to expect that a company's business plan, containing highly sensitive information about the business model and planned progress, should be considered to be non-confidential.

3.2. Relevance of the Ernst & Young Business Plan

The ADC claims the Ernst & Young Business Plan to be "found wanting" as it did not predict Chinese dumping.

Tindo finds the ADC's view on this to be ridiculous. How can 20% dumping possibly be predicted six months in advance?

The Tindo Business Plan referred to by ADC was not updated when the panels started being dumped but may be used in the future as a valuable reference if Tindo is successful with establishing a dumping tariff against the Chinese.

It is ridiculous for the ADC to cite the boiler plate disclaimer used by Ernst & Young in the business plan as a reason to question its reliability. It is standard business practice to have a disclaimer on such a document. A disclaimer does not make the document "unreliable".

It is staggering that the ADC doesn't seem to understand that when a business owner takes tens of thousands of dollars from his own pocket to pay a tier 1 accounting firm to write a business plan, that the business owner prefers to keep the document confidential and not to give it away to his competitors for free – not to mention all the other sensitive information contained in the business plan.

3.3. Qualitative features

Tindo was surprised to read that the ADC found the qualitative features of the Tindo panel to be new information. Tindo conducted numerous tours to ADC staff through 2014 and 2015 and talked in great length about quality.

3.4. Product differentiation

The ADC correctly observes that Tindo manufactures a high quality product and Tindo's strategy of high quality, price, trust and service combined with the end user business model, is important for the viability of Tindo.

However, if not for dumping, Tindo would have remained a wholesale business, manufacturing solar panels in vastly larger volumes and be able to charge a higher price.

3.5. Why did the Commission take so long?

The ADRP revoked the Commissioner's termination decision on 22 December 2015 and it has taken the ADC 255 days to write their SEF report. Yet Tindo has only had 21 days to respond to the SEF.

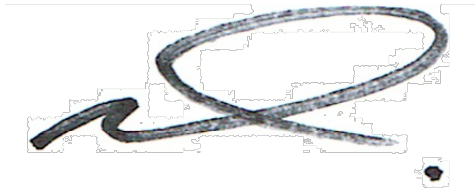
Tindo first lodged its application on 4-February-2104 – 941 days ago - and the dumping investigation period started 1-July-2012 – 1,524 days ago.

Tindo continues to suffer injury.

The ADC has dragged this investigation on for way too long already and should immediately apply a PAD.

CONCLUSION

It is not necessary to impose dumping measures that all the injury be removed by such measures. Dumping does not have to be the **sole cause of injury** to the Australian industry.



Adrian Ferraretto

Founder – Tindo Solar

Appendix A – Copy of Survey

Gender

Male

Female

Age

<30

30-50

50-70

>70

Postcode

Homeowner or Renter

Home owner

Renter

Does your house already have a solar system?

Yes

No

Which system would you buy?

5kW Chinese Made Trina for **\$10,000**

5kW Australian Made Tindo for **\$12,000**

Which system would you buy?

5kW Chinese Made Trina for **\$10,600**

5kW Australian Made Tindo for **\$12,000**

Which system would you buy?

5kW Chinese Made Trina for **\$11,100**

5kW Australian Made Tindo for **\$12,000**

How much more are you willing to pay for Australian over Chinese

0%

5% - 10%

10%-15%

15% - 20%

20% +

Appendix B – Solar Juice July-2012 Price List (confidential)