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To	Director, Operations 2 - Australian Anti-Dumping Commission
From	Vivian Wang, Andrew Korbel
Date	22 September 2016
Subject	**Resumed Anti-Dumping Investigation – PV Modules or Panels from China**

1 Introduction

1.1 We make this submission on behalf of the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (**CCCME**).

1.2 On 2 September 2016, the Commission published Statement of Essential Facts 239A (**2nd SEF**) in order to formally resume, pursuant to section 269ZZT(2) of the *Customs Act 1901* (**Act**) its investigation, following the decision of the Anti-Dumping Review Panel (**Panel**) on 8 January 2016 revoking the Commissioner's termination of the investigation in Case 239.

1.3 In the 2nd SEF, the Commissioner has made a preliminary finding that any injury that has been, or may be, caused to the Australian industry, by dumped exports of PV panels from China during the investigation period, is negligible. The Commissioner proposes to terminate the resumed investigation.

1.4 In the respectful submission of CCCME, on the information that was available to the Commissioner prior to the initial SEF, and the information that has been published since (and which is summarised in the 2nd SEF), the Commissioner's preliminary finding must be correct, and the Commissioner ought to terminate the resumed investigation without any further delay.

2 Correct conclusion of negligible injury caused by dumping

2.1 As we noted in our submission dated 26 February 2016, the Panel apparently revoked the Commissioner's previous decision to terminate the investigation primarily because section 269TDA(13) of the Act "*requires a positive state of satisfaction that the injury caused by dumping is negligible*" (see paragraph 63 of the Panel's Report dated 22 December 2015), and the Panel considered that the analysis undertaken by the Commission did not support such "*positive satisfaction*".

2.2 The Panel appeared to be concerned that the Commission's reported analysis did not provide sufficient support for the Commission's decision in the mind of the Panel, and in particular that the Commission did not overtly consider the fact that Tindo apparently made some sales despite its price being undercut by Chinese exporters. Most of the other concerns expressed by the Panel were directly or

indirectly related to that issue, and the question of whether the imposition of anti-dumping measures might materially assist Tindo.

2.3 The Commission has now thoroughly and transparently considered those issues in the 2nd SEF, including by reference to the report of Colmar Brunton, which forms Attachment 1 to the 2nd SEF.

2.4 As we have previously noted, in the Australian market for solar panels the core product is the same and the most significant distinguishing factor for the vast majority of customers is of course the price of the panels. Figure 10 of the Commission's Termination Report no. 239 demonstrated that if the prices of Chinese exporters' goods had been increased to what the Commission found was their undumped price, the exporters' prices would still have been very significantly lower than Tindo's prices (even for its DC modules).

2.5 The natural conclusion from that analysis was that Tindo would have gained either no additional sales or only a very small number of additional sales. We previously noted that it was open to the Commission to conclude that potential customers of Tindo who were unconcerned about price had already purchased from Tindo – and that those who were concerned about price would not have made a different purchasing decision had the exporters' prices been at an undumped level.

2.6 That conclusion has now been bolstered by the results of Colmar Brunton's research, and by the analysis of the Commission in the 2nd SEF. That material clearly establishes that:

(a) consumers in the Australian market for PV modules are generally price sensitive, and those attracted to the less expensive Chinese modules would not purchase Tindo's significantly more expensive product even if the gap between that product and the Chinese modules was narrowed by the imposition of a dumping margin;

(b) if any of those consumers were to switch products as a result of the imposition of dumping measures, it would be to the next cheapest offering, which might be another Chinese producer, or an exporter from a third country (apparently most often Taiwan), but would not be Tindo;

(c) for most of the investigation period, there was no correlation between import volumes from Chinese exporters and Tindo's sales, nor between the prices of modules imported from those exporters and Tindo's sales volumes;

(d) that analysis holds true whether it is conducted at the level of the goods under consideration, or by reference to the installed product; and

(e) there would, therefore, be little or no increase in demand for Tindo's products as a result of the imposition of dumping measures, and as a result Tindo would neither increase its sales volumes as a result of the measures, nor be able to apply a (further) price premium to its products.

2.7 We note Colmar Brunton's finding that where installed Chinese PV panels increased in price by 6%, the demand for Tindo's panels might increase by 2%. In our submission the Commission is right to be cautious about relying on that

finding given that it is within the margins of error for the quantitative results of Colmar Brunton's survey. Even if it was not, we would submit that the Commission would be right to conclude that a finding, in effect, that volumes might have been (in a best case scenario) depressed by about 2% is consistent with a finding that the injury caused to Tindo is negligible – and that the Parliamentary Secretary should not be tempted to impose measures which might have the effect of increasing Tindo's market share by less than 0.02%.

2.8 In addition, we note that article 3.1 of the WTO Anti-Dumping Agreement requires findings of injury to be based on positive evidence, and that article 3.7 requires that findings of threat of material injury be based on facts and not mere allegation, conjecture or remote possibility. Positive evidence is evidence that is of an affirmative, objective and verifiable character, and that is credible: *US – Hot Rolled Steel* (Appellate Body; DS184; 24 July 2001); see also: *Mexico Anti-Dumping Duties on Rice* (Appellate Body; DS295; 29 November 2005) and (*Thailand – H-Beams* (Appellate Body; DS122; 12 March 2001). In our submission, the Commission should find that Colmar Brunton's finding referred to in paragraph 2.7 above does not meet those requirements.

3 Public Interest

3.1 Finally, for the sake of caution we submit that even if the Commission was to conclude (which we think it should not) that injury caused to Tindo by dumping of Chinese exports is not negligible, and that there is some limited benefit to Tindo in imposing anti-dumping measures (which again we would dispute), the overall detriment that would be caused to the wider Australian solar industry, installers, builders and ultimately consumers by the imposition of anti-dumping measures should cause the Commission to recommend against their imposition, regardless of whether the Commissioner terminates the investigation.

3.2 In this regard, we refer the Commission to the Australian Government's policy document "*Streamlining Australia's anti-dumping system*" (June 2011) which responded to recommendations made by the Productivity Commission. That document stated at section 6.1 that the Minister has an unfettered discretion to take into account the public interest in anti-dumping investigations and, further (at section 6.2) that the investigating authority would:

> "*….now include an assessment of the expected effect that any measure might have on the Australian market for the goods subject to those measures; like goods manufactured in Australia, and in particular any potential significant impacts to this market*".

3.3 If the Commissioner does not terminate the investigation, then we urge the Commission to undertake such an assessment, and, in particular, to consider whether the detriment to the market is offset by the benefit to the market, if any.

4 Conclusion

4.1 The Commissioner's preliminary finding, that the injury suffered by Tindo was negligible, and, therefore, that the resumed investigation should be terminated, is clearly correct.

4.2 We note that there was a lengthy delay, after the publication of the first SEF before the Commissioner terminated the investigation. The delay was the result of the Commission permitting Tindo to raise additional issues after the time for responses to the SEF had expired.

4.3 Tindo has, since this investigation was commenced in May 2014, taken advantage of the ample opportunity that it has had to put all relevant matters before the Commission. In the interests of fairness and certainty for the industry as a whole (including exporters, importers, end-users and those who support each of them) the Commission should not allow Tindo to delay the completion of the investigation by belatedly raising any new issues (in respect of an investigation period which is long behind us).

4.4 Instead, the resumed investigation should be brought to an end as quickly as possible – and so the Commissioner should terminate the investigation as soon as appropriate after taking account of any submissions filed, by the statutory deadline, in response to the 2nd SEF.

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