Public Complaint

The Dumping and Subsidization of Solar Modules and Laminates Originating in or Exported from the People’s Republic of China

October 1, 2014

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Public Complaint
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Originating in or Exported the People’s Republic of China

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PUBLIC COMPLAINT

The Dumping and Subsidization of Solar Modules and Laminates Originating in or Exported from the People’s Republic of China

I. Introduction

A. General

1. This Complaint is filed by Eclipsall Energy Corporation, Heliene Inc., Silfab Ontario, Inc., and Solgate Inc. (together, the “Complainants”) with the Canada Border Services Agency (“CBSA”) pursuant to section 31 of the Special Import Measures Act (“SIMA”) regarding the dumping and subsidization of certain photovoltaic modules or laminates (“solar modules”) originating in or exported from the People’s Republic of China (“China”).

2. It is submitted that the aforementioned dumped and subsidized goods have caused injury to domestic industry producing the like goods and are also threatening the domestic industry with injury. The Complainants therefore request that the President of CBSA initiate an investigation into the injurious impact of the dumping and subsidization of solar modules originating in or exported from China (the “Subject Country”).

B. The Complainants

3. The contact information for each Complainant is as follows:

**Eclipsall Energy Corporation**
5900 Finch Avenue East
Toronto, ON M1B 5X7

Attention: Mikael Niskanen
Vice President of Operations
T: 416-262-0208
E: mikael@eclipsall.com

**Heliene Inc.**
520 Allens Side Road
Sault Ste. Marie, ON P6A 6K4

Attention: Martin Pochtaruk
President
T: 705.575.6556 Ext. 151
E: mpochtaruk@heliene.ca
The Dumping and Subsidization of solar modules and laminates from China

PUBLIC COMPLAINT

Silfab Ontario Inc.
240 Courtney Park Drive East
Mississauga, ON L5T 2Y3

Attention: Paolo Maccario
General Manager and Chief Operating Officer
T: 905.255.2501 Ext. 721
E: p.maccario@silfab.ca

Solgate Inc.
172 Trowers, Unit 29
Woodbridge, ON L4L 8A7

Attention: Vadim Lyubchenko
President
T: 905.850-5540 Ext. 222
E: vadim@solgatesolar.com

4. All notices related to this Complaint should be sent to:

CONLIN BEDARD LLP
220 Laurier Ave West, Suite 700
Ottawa ON K1P 5Z9
Telephone: 613.782.5777
Facsimile: 613.249.7226

C. The Product

1. The Imported Goods

5. The goods that are the subject of this Complaint are defined as:

Photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China, excluding:

modules, laminates or thin film products with a power output not exceeding 100W; and also excluding modules, laminates or thin film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product. ("Subject Goods")

Submitted by Complainants
6. The final assembled product sold to end consumers is referred to as a solar module. A laminate refers to the consolidation of various raw materials, including strung-together solar cells, a cover glass and an encapsulant (such as EVA, or ethylene vinyl acetate) which are encapsulated (i.e. consolidated) into a more solid and durable product and most often made into a solar module by affixing to it additional solar module components such as a frame and/or a junction box. The Subject Goods include both modules and laminates, whether or not the laminate is attached to an electrical junction box or a protective frame or other components, or whether or not the laminate is packaged with any such products or components.

7. For further certainty, a laminate included in a package of goods or shipped alongside other products serving to create a module (e.g. aluminum extrusions for the frame, and/or an electrical junction box, and/or batteries for electrical storage) falls within the definition of Subject Goods.

8. Solar cells are not captured by the scope of the Subject Goods definition.

9. In addition, a package of goods or “kit” including a solar module and other items (including but not limited to batteries for electricity storage capacity) also falls within the definition of Subject Goods.

10. The term solar module is interchangeable with the term solar panel.

11. The production of Subject Goods is measured in Watts ("W") or Megawatts ("MW"). One Megawatt is equivalent to one million Watts. Canadian production is also measured in W or MW. Watts are synonymous with peak-Watts, which are defined as the Direct Courant ("DC") Watts output under specified laboratory settings.

12. The capital cost of Subject Goods is presented in dollars per Watt ("$/W"). The largest downstream producers of electricity (often solar power plant operators), on the other hand, generally present the cost of electricity generation in dollars per Kilowatt-hour.
("$/kWh") in order to compare the wholesale price of electricity with other sources of electricity generation (e.g. coal or nuclear). Remaining commercial and residential purchasers of solar modules will generally refer to their costs in $/W, in the same manner it is sold to them.

2. Exclusions in the Subject Goods Definition

13. As noted above, the definition of Subject Goods excludes both "modules, laminates or thin film products with a power output not exceeding 100W" and "modules, laminates or thin film products where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the photovoltaic product." These exclusions serve to exclude small portable modules as well as consumer products and small appliances which use solar modules. For example, items ranging from solar garden lights to calculators to parking meters, as well as or portable modules used as camping equipment, would be excluded from the product definition by virtue of power output, or by virtue of the fact that these goods consume the electricity generated by the product.

14. Other solar products are not caught by the definition, by virtue of not being of a "photovoltaic" nature (i.e., photovoltaic technologies are technologies that use the process of converting light to electricity). For example, solar thermal and concentrated solar power ("CSP") technologies differ significantly from solar modules in their electricity generation processes and technologies. Solar thermal and CSP do not use silicon, and indeed are not photovoltaic technologies:

a) Solar thermal, for one, is a non-photovoltaic technology because it transfers heat energy directly to water and must be connected to plumbing, and is often used as an alternative source for hot water or air.
b) CSP is also a non-photovoltaic technology that uses mirrors or lenses to concentrate sunlight onto a small area. The concentrated light typically is used as heat or a heat source for power plants and industrial processes.

15. These products are not viewed as interchangeable with solar modules and use different manufacturing facilities, production processes, and employees. As a result, the domestic like product excludes solar thermal and CSP technologies.

3. Production Process

16. Solar modules are produced from ultra-refined polysilicon or other conducting materials which capture sunlight. The term “solar module” may refer to mono-crystalline, multi-crystalline (often referred to as poly-crystalline) or a thin-film photovoltaic solar modules that can be used to generate electricity from the sun. The difference between these three forms of modules lies in the purity of the crystallized silicon (c-Si) used, with superior alignment of the silicon molecules generating higher conversion of solar energy into electricity.

17. A typical mono-crystalline or multi-crystalline module includes a rectangular matrix of either 60 or 72 solar cells (generally arranged in strings of 12 cells, although a module could have more or fewer cell strings depending on the intended power output of the module). Cells are produced from sliced polysilicon wafers. The lamination serves to assist in the transmission of solar energy to the cells and protects the cells from damage. Various types of conductive metallic pastes or inks are applied to either side of the cell surface to produce conductive fingers, grid lines, and bus bars, and surface coating. The frame provides a protective cover for the cells and strengthens the overall module. Electrical junction boxes are generally attached. Finally, electric inverters may be joined to the module in order to convert direct current electricity into alternating current.

18. Mono-crystalline modules are made by slicing silicon wafers into cells. Wafer production begins with pure polysilicon chunks. These chunks are characterized by ultra-high silicon
purity levels and are refined to an extremely high degree. The wafer, which is essentially a single continuous silicon crystal, is cut in such a manner to increase efficiency, often in an octagonal-like shape. By cutting a single wafer, the cells have a single crystal lattice, and thus a uniform look and colour. Mono-crystalline modules are generally more expensive as they generally yield the highest power output compared to other solar modules.

19. Multi-crystalline are very similar to mono-crystalline modules, except that rather than resulting from a single wafer, the silicon is melted and formed in a mold, which can then be cut into square wafers after the silicon has cooled and crystallized. Because the crystallization process is imperfect, multi-crystalline modules have a variable crystal lattice patterns, meaning there are resulting imperfections and various tones and variations of colour within the same module. Recent advances in solar module technologies have increased the efficiency of multi-crystalline modules and these now approach the efficiency of their “pure-looking” mono-crystalline counterpart.

20. An Appendix to the Statement of Evidence of Martin Pochtaruk includes photographs and additional details relating to the production process of crystalline modules.¹

21. Thin-film solar modules are built by applying a microscopic (thin-film) layer of semiconductor photovoltaic material, generally silicon, cadmium telluride, or copper indium gallium selenide, on glass or a sheet of metal. The thin-film production process therefore bypasses the use of silicon crystals, and for this reason is often known as “amorphous”. By using less photovoltaic product, thin-film modules have a lower cost of production and can be made into more flexible shapes, though their efficiency is generally lower than crystalline-based modules, as they use significantly less photovoltaic

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¹ Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
material. Like crystalline modules, thin-film modules are laminated, and framed using aluminum extrusions.

22. Solar modules are carefully packed and shipped after quality control and testing is performed at the production facility.

4. Product Use

23. Solar modules serve as solar power-generation systems, as they convert sunlight directly into electric current, by the photovoltaic process. Solar modules may be installed as stand-alone units, as free-field installations or can be installed on or above the roofs of residential and non-residential buildings. If the module does not contain an electric inverter, it can subsequently be connected to one in order to feed the alternating current electricity into the electricity grid or directly into a building or structure.

24. Thin-film photovoltaic modules have the same uses and end-users as solar modules, and also serve to transform solar energy into electricity. Thin-film products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS) are generally preferred in uses where physical space limitations are less of a concern, as both their efficiency (output of electrical power) and cost may be slightly lower than mono and multi-crystalline modules.

25. The resulting system of solar modules is often installed on or above the roofs of residential and non-residential buildings, as free field installations, or as stand-alone units forming part of a “solar farm”. Mono-crystalline, multi-crystalline and thin-film products are substitutable and interchangeable in all cases, and there are no situations in which only one type of product could be used.²

² Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario
5. **HS Tariff Classification**

26. The Subject Goods are imported into Canada under certain Harmonized System ("HS") product codes, including under tariff item 8541.40.00. The specific tariff provision is:

   - 8541.40.00 - Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
   - 22 - Solar cells assembled into modules or made into panels

27. However, these tariff items may also include non-subject goods, and Subject Goods may also fall under additional tariff classifications.

6. **Exporters**

28. Public Attachment 2 is compiled from publicly available sources and comprises the list of likely exporters of Subject Goods to Canada.³

7. **Importers**

29. Public Attachment 4 identifies potential importers in Canada of Subject Goods.⁴

30. Further information that may identify additional importers is available to CBSA from import documentation filed by importers of Subject Goods.

8. **Marketing and Distribution**

31. Solar modules are sold primarily to installers, solar system integrators, property developers and other value-added resellers, who incorporate solar modules into on-grid integrated solar systems with batteries, inverters, mounting structures and/or wiring systems.

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³ Attachment 2: List of Exporters.
⁴ Attachment 4: List of Potential Importers.
32. Solar modules are sold as a commodity-type product and are sold primarily on the basis of price. The Canadian market is highly competitive with multiple suppliers of solar modules. Domestic and imported solar modules can be used interchangeably in the same power-generation systems.

33. Both Canadian and Chinese suppliers produce solar modules that meet the specifications of Canadian consumers. As a result, competition among suppliers is fundamentally based on price, and relatively small differences in price can lead customers to switch suppliers. Information about prevailing prices is publicly available through industry publications such as the Bloomberg *New Energy Finance Solar Spot Survey*, which surveys suppliers and customers as to the current prevailing price. The effect the publication of price data in widely respected industry publications ensure that price changes are quickly communicated throughout the market.

34. In 2013, there was 1,210 MW of cumulative solar production capacity installed in Canada. Installed solar capacity increased by 444 MW (58%) in 2013 over 2012. Solar production installations in Canada experienced rapid growth rates in 2009, 2010, and 2011 as the country grew from 33 MW installed in 2008 to 558 MW in 2011. Growth slowed in 2012, mainly because of a hold on applications for the Ontario Feed-in Tariff ("FIT") Program. Originally created in 2009 through Ontario’s *Green Energy Act*, the FIT Program is the cornerstone of the province’s policy relating to solar production. In

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large part due to the FIT Program, Ontario has the most solar photovoltaic ("PV") capacity in Canada by a wide margin, accounting for approximately 99% of the solar PV projects installed in Canada.\(^7\) This production is expected to shift in the coming years, as Alberta is currently developing a renewable energy framework, which is set to be released later in 2014. British Columbia has also established long-term targets to reduce greenhouse gasses by 33% from 2007 levels by 2020 and for clean energy to account for 93% of total electricity generation, which should lead to further investments in solar energy production.\(^8\)

35. The FIT Program included domestic content requirements for solar manufacturing in Ontario. The province conducted the first two-year review of the project in 2011, and has committed to the program’s continued use. Since the beginning of the program in 2009, it has evolved to include two different project types: rooftop ground-mount and rates for three different project size tranches. Furthermore, FIT rates have decreased by approximately half since they were introduced in 2009, as the solar PV market in Ontario moves towards grid parity. While domestic content requirements have been removed following WTO rulings that the FIT Program’s domestic content requirements were incompatible with Canada’s WTO obligations,\(^9\) the program initially mandated that developers of solar PV projects source 60% of their project costs from Ontario goods and labour.\(^{10}\)


D. Canadian Industry

36. Eclipsall Energy Corporation operates in a state-of-the-art 165,000 sq. ft. manufacturing facility located in Toronto, Canada. Heliene Inc. is based in Sault Ste. Marie, Ontario, and has been manufacturing high-efficiency, maximum-yield photovoltaic solar modules since October of 2010. Silfab Ontario Inc. is headquartered in a 100,000 sq. ft. facility in Mississauga, Ontario. Its fully-automated solar module manufacturing plant started production in April 2011. Solgate Inc., Ontario’s first solar module manufacturer, is located in Woodbridge, Ontario, where it is housed in a modern 28,000 square feet facility.

37. Confidential financial statements for each of the four complainants are provided as Confidential Attachments 109 to 112.

38. In addition to the Complainants, this Complaint is also supported by another Canadian producer of solar modules, Enerdynamic Hybrid Technologies Inc. (the “Supporting Producer”).\textsuperscript{11}

39. A Chinese exporter has production facilities in Canada. Canadian Solar Inc., despite its name, was identified by the U.S. Department of Commerce and the U.S. International Trade Commission, as one of the leading Chinese exporting producers of the subject goods to the U.S. market. Canadian Solar Inc. filings with the U.S. Securities and Exchange Commission (“\textsc{sec}”) indicate that “substantially all of our manufacturing operations in China” and a “substantial number of the members of our management team are located in China, we may be considered as a PRC tax resident under the EIT Law [Chinese Enterprise Income Tax Law]”. Canadian Solar Inc. further states its “principal

\textsuperscript{11} Attachment 8: Letter of support from the Supporting Producer Enerdynamic Hybrid Technologies Inc.
place of business is located at No. 199 Lushan Road, Suzhou New District, Suzhou, Jiangsu 215129, People’s Republic of China.”

40. In addition, Canadian Solar Inc.’s filings with the SEC also confirm the Chinese ownership and control of Canadian Solar Inc. The filings state: “Our founder, Dr. Shawn Qu, has substantial influence over our company and his interests may not be aligned with the interests of our other shareholders. As of March 31, 2014, Dr. Shawn Qu, our founder, chairman, president and chief executive officer, beneficially owned 13,308,159 common shares, or 24.2% of our outstanding common shares. As a result, Dr. Shawn Qu has substantial influence over our business, including decisions regarding mergers and acquisition, consolidations and the sale of all or substantially all of our assets, the election of directors and other significant corporate actions... The business address of our directors and executive officers is 199 Lushan Road, Suzhou New District, Suzhou, Jiangsu 215129, People’s Republic of China.”

41. For this reason, Canadian Solar Inc. should not be included in the domestic industry, and its production has been excluded for the purposes of determining the combined production of the Complainants and the Supporting Producers.

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<table>
<thead>
<tr>
<th>Company</th>
<th>Canadian Like Goods Manufacturers</th>
<th>Maximum Production Capacity at year-end 2012 (MW)</th>
<th>Maximum Production Capacity at June 30, 2014 (MW)</th>
<th>Position</th>
</tr>
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<tr>
<td>Canadian Solar Inc.</td>
<td></td>
<td>220</td>
<td>330</td>
<td></td>
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<tr>
<td>Celestica</td>
<td></td>
<td>220</td>
<td>220</td>
<td>No position.</td>
</tr>
<tr>
<td>Flextronics</td>
<td></td>
<td>120</td>
<td>0</td>
<td>Announced closure and dismantling of operations in effect as of June 2014.</td>
</tr>
<tr>
<td>Photowatt / ATS</td>
<td></td>
<td>100</td>
<td>0</td>
<td>ATS’s solar division (Photowatt) has been closed and solar operations are dismantled</td>
</tr>
<tr>
<td>Silfab</td>
<td></td>
<td>90</td>
<td>180</td>
<td>Complainant</td>
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<td>Eclipsall</td>
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<td>70</td>
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<td>Complainant</td>
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<td>Heliene</td>
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<td>Complainant</td>
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<td>OSM Solarform / Enerdynamic Hybrid Technologies</td>
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<td>50</td>
<td>Supporting Producer</td>
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<td>Solgate</td>
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<td>Complainant</td>
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<tr>
<td>Lumin</td>
<td></td>
<td>20</td>
<td>0</td>
<td>Closed operations / no longer produces</td>
</tr>
<tr>
<td>Centennial</td>
<td></td>
<td>10</td>
<td>0</td>
<td>Bankrupt / Closed operations</td>
</tr>
<tr>
<td>Unconquered Sun</td>
<td></td>
<td>Closed in 2012</td>
<td>0</td>
<td>No longer producing modules, though produces consumer goods (including golf carts using Subject Goods. Company has sold solar equipment to Heliene)</td>
</tr>
<tr>
<td>Magnum Solar</td>
<td></td>
<td>Closed in 2012</td>
<td>0</td>
<td>Closed operations / no longer produces</td>
</tr>
<tr>
<td>Day4Energy</td>
<td></td>
<td>Closed in 2012</td>
<td>0</td>
<td>Closed operations / no longer produces</td>
</tr>
<tr>
<td>Siliken</td>
<td></td>
<td>Closed in 2012</td>
<td>0</td>
<td>Closed operations / no longer produces</td>
</tr>
</tbody>
</table>

15 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
<table>
<thead>
<tr>
<th>Company</th>
<th>Maximum Production Capacity at year-end 2012 (MW)</th>
<th>Maximum Production Capacity at June 30, 2014 (MW)</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>976 MW</td>
<td>925 MW</td>
<td>Note: excluding Canadian Solar Inc., these figures are respectively 756 and 595 MW.</td>
</tr>
</tbody>
</table>

42. [ ]

43. The combined production of the Complainants and the Supporting Producer accounts for 63% of the production of like goods in Canada (i.e. 375 of the 595 MW, which excludes Canadian Solar Inc.’s production). When accounting for [ ].

44. The above production capacity is for all categories of solar modules (mono-crystalline or multi-crystalline). Cansia does not publish interim 2014 data and as such the latest production capacity figures in the above table are for year-end 2013, except where reliable information has been provided by the Complainants to revise the data. As described below, there is currently no domestic production of thin-film solar modules.

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16 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
19 See for example: Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
E. Single Class of Goods

45. The Like Goods and Subject Goods are products that compete with one another in the Canadian market place, and are fully interchangeable. Both the domestic and Chinese producers can and do produce goods falling within the scope of the Subject Goods definition.

46. Solar modules falling under the thin-film solar module description are not currently produced in Canada, whether from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Canadian domestic producers of solar modules have all produced both mono-crystalline and multi-crystalline modules or have the capacity to do so. The Complainants do not currently have the capacity to produce thin-film products, though these products are interchangeable with crystalline products.

47. Specifically, mono-crystalline, multi-crystalline and thin-film solar modules compete with one another in the Canadian market and, as described above, share the same end-uses and are purchased by the same end-users.\textsuperscript{20} Mono-crystalline, multi-crystalline and thin-film solar modules are substitutable with each other. The cost per Watt and efficiency ratings are generally equivalent, with only minor variations depending on the adoption of the latest technology or various proprietary production processes.

F. Period of Investigation

48. The Complainants submit that the appropriate period of investigation for the dumping investigation is July 1, 2013 to June 30, 2014. The appropriate period of investigation for a subsidy investigation is July 1, 2012 to June 30, 2014. As demonstrated in the market

\textsuperscript{20} See also: Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
table in Confidential Attachment 11 the volume of imports from China exceeds the applicable negligibility thresholds.\textsuperscript{21}

II. Evidence of Dumping

A. Introduction

49. The Complainants submit that the Chinese producers do not operate under market economy conditions and therefore dumping margins should be calculated on the basis of section 20 of SIMA.

50. The Complainants submit that CBSA should initiate a section 20 investigation for China and apply the section 20 methodology for purposes of initiation of the investigation. However, for purposes of this Complaint, the Complainants also submit that using the section 19 methodology demonstrates that Chinese subject goods were dumped into Canada at significant margins.

51. To facilitate the explanation of the relevant calculations, the section 19 analysis and calculations are discussed below, followed by the section 20 analysis and calculations.

52. The Complainants have calculated a normal value for each of the slightly differing goods (i.e. mono-crystalline, multi-crystalline, and thin-film modules). As the vast majority of the imports into Canada from China are multi-crystalline modules, data for mono-crystalline and thin-film has been unavailable or less than reliable. For this reason, the Complainants submit that:

a) the cost of production for mono-crystalline modules is approximately $0.10 greater per watt than for multi-crystalline modules. This cost may be passed on to

\textsuperscript{21} Confidential Attachment 11: Apparent Canadian Market.
customers, though this is not always the case in respect of higher value-added modules,\textsuperscript{22} and

b) on the basis of the Complainants’ best estimates, the cost of production of thin-film modules is currently approximately $0.53 per watt, which is less than for crystalline modules, and it is expected that this is also reflected in the price of the thin-film modules sold to customers.\textsuperscript{23} As such, the calculated margin of dumping for thin-film modules would closely resemble that seen for multi-crystalline modules.

53. The Complainants do not expect a higher profit on one technology over another, except in rare circumstances where temporary fluctuations in the availability of a specific product makes it more valuable for a short period of time.\textsuperscript{24} While there is a price premium for mono-crystalline modules over the other two technologies, this premium is entirely as a result of the higher costs of production and inputs.\textsuperscript{25} The Complainants expect this to be equally true for producers located in China.

54. This Complaint provides separate normal values and export prices on a per watt basis for each slightly differing category of Subject Goods.

B. Section 19 Analysis

1. People’s Republic of China

55. The Complainants have not been able to obtain reliable domestic market sales information for Chinese producers upon which to estimate normal values. As is noted above, the Complainants submit that normal values for China should be calculated in

\textsuperscript{22} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
\textsuperscript{23} Attachment 116: Eric Wesoff, Solar Frontier Grabs Thin-Film Efficiency Conversion Record From First Solar, Greentech Solar, April 2, 2014, online source.
\textsuperscript{24} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
\textsuperscript{25} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
accordance with section 20 of SIMA. The following analysis applying section 19 of SIMA is provided for purposes of demonstrating that China is dumping subject goods.

56. While it is possible to find references to Chinese prices, the prices are identified as being FOB Chinese ocean ports, which supports the Complainants’ understanding that these are export prices, not domestic prices.26 Were Chinese domestic prices to be obtained, recent information indicates that Chinese producers are selling solar modules in their domestic market at prices below cost. For example, the January 2014 Bloomberg New Energy Finance report indicates that Chinese module prices build-up cost amounts to US [ ].27 The July 2014 indicates a Chinese build-up cost of USD [ ]. Other months of Bloomberg data show similar results. This is significantly higher than reports of Chinese domestic sale prices.28

57. As a result, normal values should be determined on the basis of section 19 of SIMA.

58. Section 19 of SIMA provides:

19. Subject to section 20, where the normal value of any goods cannot be determined under section 15 by reason that there was not, in the opinion of the President, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer, the normal value of the goods shall be determined, at the option of the President in any case or class of cases, as

(a) such price of like goods when sold by the exporter to importers in any country other than Canada during the period referred to in

26 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
28 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
paragraph 15(d) as, in the opinion of the President, fairly reflects the market value of the goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by the exporter to importers in the country other than Canada; or

(b) the aggregate of

(i) the cost of production of the goods,

(ii) a reasonable amount for administrative, selling and all other costs, and

(iii) a reasonable amount for profits.

59. Thus, subject to the applicability of section 20, normal values shall be calculated in accordance with the provisions of section 19 where there is insufficient reliable data regarding home market sales in the country of export to permit a proper comparison with the sale of the goods to the importer.

60. In accordance with paragraph 19(b) of SIMA, normal values may be calculated as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and other costs, and a reasonable amount for profit.

61. The publication Bloomberg *New Energy Finance* compiles and calculates detailed cost and profit information for solar polysilicon, solar wafers, solar cells and solar module producers. Processing costs are determined based on various Securities and Exchange Commission filings of quoted Chinese companies, along with publically available reports and analyst estimates. The following table copies the price build-up values found in the Bloomberg New Energy Finance January Solar Spot Index report.29

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Table 2

<table>
<thead>
<tr>
<th>Module Production Cost Analysis</th>
<th>Chinese Multicrystalline Silicon Module Price Build-up, January 2014 (all figures US)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Polysilicon (input for wafer)</td>
</tr>
<tr>
<td>Previous input in the manufacturing process</td>
<td>N/A (polysilicon is the first part of the production process)</td>
</tr>
<tr>
<td>Processing Cost per Watt</td>
<td></td>
</tr>
<tr>
<td>SG&amp;A and R&amp;D per W</td>
<td></td>
</tr>
<tr>
<td>Depreciation per W</td>
<td></td>
</tr>
<tr>
<td>Best-in-class margin per W</td>
<td></td>
</tr>
<tr>
<td>Sum of Build-up cost at stage of production (Ex Plant Op. Costs)</td>
<td></td>
</tr>
</tbody>
</table>

62. Very similar data is shown in each of the monthly Bloomberg reports.

63. This table represents the “build-up” cost for each of the inputs in crystalline solar modules (both mono and multi-crystalline modules follow the same calculation process, with slightly different results). The table demonstrates the full costs of producing each of the inputs and applying this to the next stage of manufacturing solar modules: polysilicon is the primary input for wafers, which in turn are the primary input for cells, which in turn are the primary input for solar modules.

64. All data in the above table is provided by Bloomberg New Energy Finance, and reproduced exactly for this Complaint.\(^\text{30}\)

65. As seen in the bottom row in the first data column, the average Chinese cost of manufacturing polycrystalline in January 2014 was US [______]. This value is reflected in the first line of the wafer cost column. The average cost of producing Chinese wafers was US [______] (including the polycrystalline), which is then used as the first line of the cell cost column. The cost of manufacturing the cells, in January 2014 was US [______]. From the table we see that the average cost of production for a Chinese solar module in January 2014, according to Bloomberg’s comprehensive weekly industry survey and data was [______], including the best-in-class Chinese profit margin, as determined by Bloomberg.

66. The Complainants submit that Bloomberg is the leading authority on solar energy markets and costing and that its calculation of Chinese costs is a reasonable basis upon which to estimate section 19 normal values.

67. In addition to the January 2014 costs, reproduced above, the Complainants have also calculated the average build-up costs for each of the last six months of the POI, namely from January to July 2014 to create a proper, conservative basis for analysis. Reports from prior months, save and except July 2013, were unavailable to the Complainants at the time of this Complaint, though the use of data from the latter months provides a more conservative estimate of Normal Values, as costs of production generally fall over time. The average of these months was used in the Complaint’s dumping calculations in order to remove any period-specific fluctuation.

68. The Chinese costs results in a section 19 normal value of $0.80 per Watt for multicrystalline solar modules.  

31 Confidential Attachment 13: Dumping and Subsidy Calculations.
69. For greater certainty, the Complainants also considered individual publicly filed financial reports of the largest Chinese manufacturers of solar modules. These are referenced throughout the present Complaint and closely mirror the operating costs detailed in the Bloomberg publication. For example, Trina’s 2013 year-end SEC financial report yields a normal value of $0.813 and Yingli’s year-end SEC report yields $0.86, further validating the calculations detailed herein.\textsuperscript{32}

70. \textbf{For mono-crystalline solar modules the Chinese costs result in a section 19 normal value of $0.92 per Watt.}\textsuperscript{33} The significant difference between a multi-crystalline and mono-crystalline module is the cell used, and because a mono-crystalline cell commands a price premium of approximately $0.10/W,\textsuperscript{34} this results in a variation of approximately $0.12 per Watt after factoring the percentage margin for profit on the increased cost.\textsuperscript{35}

71. Thin-film production in China is principally by the Hanergy Solar Group Limited ("Hanergy"), one of the largest producers of thin-film product in the world.\textsuperscript{36} Hanergy’s production costs are not publicly available, and as such the Complainants have proposed to use an available and published spot price report issued by PV Energy Trend. This report indicates that the average module sale price for thin-film in September 2014 was USD $0.708/W.\textsuperscript{37} As such, this methodology results in a \textbf{section 19 normal value for thin-film modules of $0.71 per Watt.}\textsuperscript{38}

72. The Complainants submit that these averages are a conservative estimate and are appropriate for purposes of initiation of this investigation.

\textsuperscript{32} Confidential Attachment 13: Dumping and Subsidy Calculations.
\textsuperscript{33} Confidential Attachment 13: Dumping and Subsidy Calculations.
\textsuperscript{34} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk
\textsuperscript{35} Confidential Attachment 13: Dumping and Subsidy Calculations.
\textsuperscript{36} Attachment 122: Hanergy Solar Group Limited, 2013 Annual Report
\textsuperscript{37} Confidential Attachment 121: PV Energy Trend, Spot Prices September 17, 2014, online source.
\textsuperscript{38} Confidential Attachment 13: Dumping and Subsidy Calculations.
C. Section 20 Analysis

73. Section 20 of SIMA is a provision that may be applied to determine the normal value of goods in an anti-dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. China is a prescribed country under the Special Import Measures Regulations.

1. Evidence and information required to initiate a section 20 inquiry

74. The CBSA has issued a policy guideline, “Information on the Application of Section 20 of the Special Import Measures Act (“Non-market economies”),” August 2007 (“Section 20 Policy”), which describes CBSA’s policy applicable to section 20 inquiries. With respect to the evidence necessary to initiate, the Section 20 Policy states:

The CBSA will initiate a section 20 inquiry if it has sufficient evidence indicating that the conditions of section 20 may exist in the sector under investigation. A section 20 inquiry will usually be conducted in parallel with an investigation or a re-investigation. A “section 20 inquiry” is not a term found in SIMA but is simply used here to refer to a process whereby information is collected from various sources in order to decide whether section 20 applies in a particular case.

When evaluating information which suggests that section 20 conditions may exist in a particular sector in new investigations and in re-investigations, the CBSA will rely on a two-part threshold test to determine whether to proceed with a section 20 inquiry.

The first part of the test requires that the evidence presented in support of an allegation be relevant and reasonably reliable. The second part asks whether this evidence, if later found to be accurate, would be capable of reasonably supporting a positive determination as to the applicability of section 20.

39 Special Import Measures Regulations, SOR 34/927, s. 17.1.
As the Section 20 Policy makes clear, the evidence on the record prior to the initiation of the investigation is not required to conclusively *demonstrate* that the section 20 conditions *exist*, but rather the evidence need only *suggest* that the section 20 conditions *may* exist, subject to CBSA’s two-part analysis described above. Indeed, the very purpose for the section 20 inquiry is to determine — after the fact-finding investigation — whether the section 20 conditions, in fact, exist.

75. The CBSA’s *SIMA Handbook* also underscores that the threshold for an initiation does not require dispositive proof that non-market economy conditions exist. Rather, a complainant is expected to provide reasonably reliable facts to support its allegation and CBSA staff may initiate a section 20 inquiry if the facts and evidence before them are capable of reasonably supporting the initiation:

4.4.4.1 General

References to a “Section 20 inquiry”

...A section 20 inquiry is characterized by official notification to the government of the country of export, exporters and domestic producers that the President has reason to believe that the conditions of section 20 *might* exist in the sector under investigation. ...

4.4.4.3 General Policy and Procedures

Initiation of New Anti-dumping Investigations

If a written dumping complaint is received in which the complainant has based the estimation of normal values on surrogate values because it is alleged that the goods are exported to Canada from a country in which the conditions of subsection 20(1) apply, the complainant is expected to outline the facts on which this allegation is made and provide such information that is available to support these facts.

4.4.4.4. Sufficiency of Evidence for Purposes of Initiating a Section 20 Inquiry

When evaluating information which suggests that subsection 20(1) conditions may exist in a particular sector, staff is to rely on the following test to determine whether to initiate an inquiry:

Is the evidence presented, either by the complainant or the CBSA, in support of an allegation regarding the applicability of section 20 relevant and reasonably reliable?

If so, would this evidence, if properly verified, be capable of reasonably supporting a positive determination as to the applicability of section 20?
The first part of the test addresses the admissibility of the evidence presented. Unless the evidence can be considered relevant and reasonably reliable, it is to be disregarded when addressing the second part of the test. Evidence is considered to be relevant where it has some tendency, as a matter of logic and personal experience, to make the proposition for which it is advanced more likely than that proposition would appear to be in the absence of that evidence. In other words, evidence is considered to be relevant if it tends to prove the subject at issue. As for the reliability criteria, it serves to eliminate information that may have been obtained through fraudulent, inaccurate, biased or uninformed sources.

The second part of the test addresses the strength or weight of the evidence by simply asking whether this evidence is reasonably capable of supporting the inferences necessary for making a positive determination. This helps to avoid situations where the President may not be in possession of sufficient information to form an opinion regarding the applicability of section 20.

(Emphasis added)

76. As noted in the SIMA Handbook, the test at this stage is not whether the evidence unequivocally demonstrates that the section 20 conditions exists, but rather whether the evidence is reasonably capable of supporting the inferences necessary for making a positive determination.

77. As the Section 20 Policy notes, there is nothing in the Act itself which defines or describes a “section 20 inquiry”. Rather, section 20 provides a methodology available to the CBSA when certain circumstances are met. In this regard, and on the issue of the evidence necessary to initiate a section 20 inquiry, it is instructive to consider the information necessary in order for the CBSA to initiate an anti-dumping investigation. Subsection 31(1) of SIMA provides that the President shall initiate an anti-dumping investigation if the President “is of the opinion that there is evidence (a) that the goods have been dumped…” and (b) that “discloses a reasonable indication” that the dumping has caused injury or is threatening to cause injury. In other words, the legal test to initiate an anti-dumping investigation is whether the President is of the opinion that there is evidence that the goods have been dumped and whether the evidence discloses a reasonable indication that the dumping has caused injury. The President need not be satisfied that there has been dumping, but only that there is evidence that the goods have
been dumped. The purpose of the investigation itself is to determine whether there has, in fact, been dumping. The Complainants submit that a similar approach is appropriate in order to determine whether to commence a section 20 inquiry.

78. The SIMA requirement that a complainant provide facts and evidence to support a request for the application of section 20 against a prescribed country, rather than conclusive or dispositive proof, reflects the potential challenges associated with obtaining conclusive evidence, much of which may not be publicly available. This challenge is also recognized in China’s *Protocol of Accession to the WTO* which is incorporated into Canadian law pursuant to section 20 of SIMA and section 17.1 of SIMR. Article 15(a)(i) of the Protocol permits the use of non-market economy dumping methodologies in cases involving China unless the Chinese exporters under investigation “...can clearly show that market economy conditions prevail in the industry producing the like product...”. The Protocol therefore establishes a reverse burden whereby a methodology like that found at section 20 may be used unless Chinese industry under investigation can establish they operate as a market economy. The threshold for initiating a section 20 inquiry should be interpreted and applied within this context.

2. The Section 20 conditions

79. As noted above, the conditions for the application of the section 20 methodology are that:

> ...domestic prices are *substantially* determined by the government of that country and there is sufficient reason to believe that they are not *substantially* the same as they would be if they were determined in a competitive market...

(Emphasis added)

80. The Federal Court of Appeal provided guidance on the scope of subsection 20(1), stating:

[9] In our view, the use of the expression “*substantially determined*” *necessarily implies something less than completely determined* and as such, Parliament did not intend the provision to be restricted to situations where a foreign government directly sets the prices. Indeed, the phrase
captures the various ways in which governments can exert a determinative influence on pricing, whether directly or indirectly.\textsuperscript{40}

\textit{(Emphasis added)}

81. Indeed, in every investigation in which the President has found that the conditions of section 20 apply, it has been the totality of government influence which has resulted in those findings, as opposed to a direct form of price-setting.

82. The Complainants submit that the evidence which follows is relevant and reliable. This evidence is capable of supporting a positive determination as to the applicability of section 20.

3. \textbf{Factors to be considered under Section 20}

83. The CBSA has previously recognized various factors that may be examined when assessing whether a government determines pricing, including:

a) Direct government involvement in price setting:
   i) Whether the GOC sets floor/ceiling prices;
   ii) Whether the GOC sets absolute pricing levels;
   iii) Whether the GOC sets recommended price and expects it to be followed;
   iv) Whether regulatory bodies set and enforce prices;

b) Indirect government involvement in price setting:
   i) Import/export controls (quotas, licences, etc.);
   ii) Subsidies and low priced inputs
   iii) Government purchases of subject goods in sufficient quantities;
   iv) Preferential treatment of an industry;
   v) Industry designation as a “pillar” or “strategic” industry;

\textsuperscript{40} Attachment 14: \textit{Tianjin Pipe (Group) Corporation v. Tenaris Algoma Tubes Inc.}, 2009 FCA 164, May 20, 2009.
c) Government ownership and/or control of enterprises involved in the production of the goods;
   i) Presence and influence of State-owned Enterprises ("SOEs");
   ii) Output controls;

d) Government influence and/or control over production, sourcing and other operational decisions:
   i) Government control of production output or the number of producers;
   ii) Market volatility that is inconsistent with competitive markets;
   iii) Existing section 20 findings with respect to inputs;
   iv) Inputs being sold at prices above that for subject goods;

e) Government policies or directives applicable to the industry under investigation:
   i) Industrial policies with the following objectives, tasks or measures:
      (1) structural adjustment of the industry;
      (2) consolidation or reorganization of producers, including horizontal and vertical unification;
      (3) regulation of technological upgrades;
      (4) reduction of environmental impacts and energy consumption;
      (5) government supervision of industry;
      (6) stabilization of the market, both domestic and export;
      (7) improvement of exports;
      (8) output control (minimum and maximum);
      (9) capacity control;
      (10) product mix (high end);
      (11) the relocation of producers;
      (12) the stabilization of imports used as inputs;
      (13) industry associations tasked with providing support to GOC policy proposals;
      (15) development of resources;
support, creation or promotion of SOEs;

setting specific profit levels;

improvement of the overall industry management system;

standardization in the industry;

improvement of industry information flow, capital flow and material flow;

improvement of industrial planning by regional authorities of industries;

restriction of investment in certain types of production methods;

regulation of minimum capital investment in new projects; and

access to raw materials;

ii) statements by Chinese producers supporting the existence or influence of GOC industrial policies;

iii) media reports supporting the existence or influence of GOC industrial policies;

iv) evidence of industry consolidation that is consistent with GOC policies;

v) The existence of measures to enforce GOC policy objectives and measures

f) Use of the tax system to influence pricing:

i) Taxation that regulates profits;

ii) Value Added Tax policies that manipulate exports and imports.\(^{41}\)

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84. As CBSA indicated in *Certain Seamless Casing*, a government may be substantially determining prices where only one of these factors is present. The CBSA’s Statement of Reasons for Initiation in *Seamless Casings* provides that governments can indirectly determine an industry’s domestic price by providing direct financial subsidies to producers and the existence of such subsidies is a factor that lends support to the initiation of a section 20 investigation. The Complainants submit that a consequence of the extensive actionable and prohibited subsidies made available to solar modules producers and exporters, and discussed further below, is that the GOC’s indirect determination of solar modules prices.

85. In previous preliminary and final determinations, the CBSA has determined that section 20 conditions exist, in part, because Government of China ("GOC") industrial policies regulate the domestic industry, including domestic prices. One manner in which these industrial policies regulate, guide and control an industry is through 5-year plans that regulate, *inter alia*, production capacity and technology requirements. Such influence over production is likely to also result in influence and control over domestic prices and also supports the initiation of a section 20 investigation.

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42. Attachment 17: *Certain Seamless Carbon or Alloy Steel Oil and Gas Well Casing Originating in or Exported from the People’s Republic of China* (AD/1371, CV/122), Preliminary Determination Statement of Reasons (Nov. 23, 2007) at para. 49.


4. Section 20 conditions are clearly applicable in this case and should be investigated

86. The Complainants submit that the price of Subject Goods sold in China is substantially determined by the GOC and is lower than it would be in a competitive market. Therefore, the CBSA’s dumping calculation for imports of solar modules from China should utilize the normal value calculation methodology set out at section 20 of SIMA.

87. The significance of influence of the GOC can be seen at every stage of the process, from the inputs used to produce solar modules to the customers purchasing the product. The Complainants therefore submit that there is more than sufficient evidence necessary for the initiation of a section 20 inquiry.

88. There is sufficient reason to believe that Chinese domestic prices are not substantially the same as they would be if they were determined in a competitive market. As noted above, Bloomberg reports the average Chinese ex works cost of production plus profit in January 2014 was US [ ]. At July 2014 with the average Chinese ex works cost of production plus profit for that month was [ ].\(^{46}\) The Complainants have not been able to obtain reliable Chinese domestic selling prices. As noted above, however, the information available about Chinese prices for solar modules strongly suggests that the product is being sold well below cost, as Chinese sale prices in North America and other jurisdictions are already below below operating costs, suggesting that these prices are even lower in the Chinese domestic market. This is strongly supportive of the conclusion that the domestic selling price is not that which it would be in a competitive market.

\(^{46}\) Confidential Attachment 113: Bloomberg New Energy Finance, July 2014 PV Spot Price Index.
5. Pricing is determined by the GOC as evidenced by the CBSA’s factors

89. The Complainants submit that the price of solar modules in China is determined by the GOC. Domestic prices in the Chinese solar modules industry are influenced by a combination of direct and indirect measures taken by various levels of government in China. Evidence supporting this assertion and meeting the factors to be considered includes:

a) There is also significant GOC influence at the customer level, thereby meeting a CBSA section 20 factor. The electricity-generation industry is a major consumer of solar modules. The evidence below demonstrates massive GOC influence on electricity rates in China through required installation of solar generation capacity. State ownership in the electricity sector, restrictions on new entrants to the electricity market, and restraints on the merger and acquisition of existing power generation companies all demonstrate that section 20 conditions are present in this industry.

b) The GOC has officially released a list of 81 “New Energy Demonstration Cities” and eight “industrial demonstration parks”. These cities and zones are required to achieve certain mandatory targets in terms of solar PV installations and the percentage of installed renewable energy power generation capacities by the end of 2015.47

c) Chinese solar modules producers have publicly acknowledged that market demand for solar power and solar power products continue to substantially depend on the availability of government incentives. This fact meets CBSA factor e) ii)

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noted above. For example, a Chinese solar modules producer received government grants totaling RMB117.2 million, RMB160.7 million and RMB70.9 million for 2011, 2012 and 2013, respectively, which included government grants for assets, expansion of production scale, technology upgrades, the development of export markets and the development of solar projects. In addition, solar power projects – the users/purchasers of solar modules – receive feed-in tariffs, which are another form of government subsidies.\(^{48}\)

d) There is at least one other existing section 20 finding with respect to inputs for solar modules, namely aluminum extrusions, thereby demonstrating GOC influence and control over production, sourcing and other operational decisions.

e) In previous anti-dumping proceedings covering solar modules by investigating authorities in the United States and the European Union have determined the Chinese solar modules industry to be operating under non-market economy conditions.

f) Most importantly, the GOC determines the price and actual market size for solar modules through a combination of laws, regulations and formal policies. Individually and cumulatively meet factors a) through f) above of the CBSA factors justifying a finding of section 20 conditions:

i) China’s Renewable Energy Law was enacted in 2005 and came into effect January 1, 2006 in order to “promote the exploitation of renewable energy”.\(^ {49}\) The Renewable Energy Law was revised in 2009 and sets forth a national policy to encourage the installation and use of solar energy


water heating systems, solar energy heating and cooling systems, PV systems and other systems that use solar energy. It provides financial incentives, such as national funding, preferential loans and tax preferential treatment for the development of renewable energy projects and authorizes the relevant pricing authorities to set favorable prices for electricity generated from solar and other renewable energy sources.\textsuperscript{50}

ii) On January 5, 2006, the GOC promulgated administrative provisions on renewable energy power generation which set forth specific measures for setting the price of electricity generated from renewable energy sources, including solar and for allocating the costs associated with renewable power generation. Electricity grid companies and power generation companies are responsible for implementing the \textit{Renewable Energy Law}. Since the amendment of the law in 2009, grid companies must purchase and dispatch all electricity generated by renewable energy producers within the coverage of their grids.\textsuperscript{51} In addition, the GOC issued a directive that requires grid companies to pay renewable energy developers full price for their electricity and provide consumers renewable-generated electricity at discounted rates.

iii) On September 26, 2009, the GOC approved and circulated the \textit{Opinions of National Development and Reform Commission and other Nine Governmental Authorities on Restraining the Production Capacity Surplus and Duplicate Construction in Certain Industries and Guiding the Industries for Healthy Development}. These opinions concluded that


polysilicon production capacity in China has exceeded demand and adopted a policy to impose more stringent requirements on the construction of new facilities for manufacturing polysilicon in China. These opinions also stated that the government should encourage polysilicon manufacturers to enhance cooperation and affiliation with downstream solar power product manufacturers to expand their product lines. This demonstrates active intervention and influence by the GOC in the solar modules industry.  

iv) On October 10, 2010, the GOC promulgated a decision to accelerate the development of seven strategic new industries. Pursuant to this decision, the GOC promotes the popularization and application of certain solar technologies by increasing tax and financial policy support, encouraging investment and providing other forms of beneficial support.  

v) In March 2011, the GOC approved China’s Outline of the Twelfth Five-Year Plan for National Economic and Social Development, which includes a national commitment to promote the development of renewable energy and to enhance the competitiveness of the renewable energy industry. Accordingly, in January 2012, the Ministry of Industry and Information Technology and the Ministry of Science and Technology respectively promulgated the Twelfth Five-Year Special Plans regarding the new

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materials industry and the high-tech industrialization to support the development of China's solar power industry.\textsuperscript{55}

vi) On March 8, 2011, the GOC promulgated the Notice on Further Application of Renewable Energy in Building Construction, which aims to raise the percentage of renewable energy used in buildings, including through building-integrated solar modules.\textsuperscript{56}

vii) In July 2011, the GOC launched the unified pricing mechanism for on-grid solar power plants in China. Pursuant to the unified pricing mechanism, the on-grid tariff (including value added tax) for on-grid solar power plants either approved after July 1, 2011 or completed after December 31, 2011 was RMB1.00 per kWh. For the on-grid solar power plants sponsored by central government subsidies, the desulphurized coal benchmark price shall apply.\textsuperscript{57}

viii) On February 24, 2012, the GOC released the 12th Five-Year Plan for the Solar Photovoltaic Industry. According to the industry plan, China will reduce the cost of solar power to 0.8 yuan (approximately $0.12 cents) per kilowatt-hour by 2015 and 0.6 yuan per kWh by 2020 and increase production of solar modules. Furthermore, the plan said the government


requires China’s leading polysilicon manufacturers to reach annual production capacity of 50,000 tons by 2015.\footnote{Attachment 23: JinkoSolar Holding Co., Ltd., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}

ix) On July 7, 2012, the GOC released the “12th Five-Year Plan on Solar Power Development. In the document, the GOC stated that by 2015, the total installed capacity of distributed PV generation will achieve 10GW in Eastern and Central China by focusing on the establishment of distributed PV generation systems in such areas, and the total installed capacity of 10GW of grid-connected PV power plants will be established to increase local electrical power supply in the regions with rich solar resources and uncultivated land resources, such as Qinghai, Xinjiang, Gansu and Inner Mongolia. The total estimated investment is RMB250 billion.\footnote{Attachment 23: JinkoSolar Holding Co., Ltd., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}

x) On July 9, 2012, the GOC released the “12th Five-Year” Development Plan for National Strategic New Industries. According to this document, by 2020, the total installed capacity of PV generation will achieve 50 million kW, and the research and manufacturing technology of PV equipment will reach advanced global levels. This document also set forth the major actions to be taken and policies to be promulgated for promoting the development of solar power industry.\footnote{Attachment 23: JinkoSolar Holding Co., Ltd., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}

xi) On January 1, 2013, the GOC issued the 12th Five-Year Plan for Energy Development, which demonstrated a commitment to solar energy. It proposed that by the end of 2015, there should be 21 GW of installed solar
power capacity, a 40% increase compared to 2012. In addition, the Plan also encouraged and promoted the merger and acquisition, restructuring and upgrading of the PV industry.\textsuperscript{61}

xii) In response to the increased pace of market development, the GOC, in a statement dated July 4, 2013, announced that installed capacity for solar electricity is expected to reach more than 35 GW by 2015 at a growth rate of about 10 GW a year between now and then, and to reach more than 100 GW by 2020. The GOC also described principles promoting the PV industry through (i) the exploration of the distributed PV power generation market, (ii) the improvement to the grid connection management and service, in particular for PV power generation, (iii) the improvement to pricing and subsidy policies and development of fund for renewable energy and (iv) support from the financial institutions to the PV industry, among other matters.\textsuperscript{62}

xiii) On August 30, 2013, the GOC released new subsidy details for solar projects in China. Transmission-grid-connected projects will receive a feed-in-tariff of RMB0.90 to RMB1.00 per kWh, whereas distribution-grid-connected projects will receive a premium of RMB0.42 per kWh in addition to the desulphurized coal benchmark price. Furthermore, from October 1, 2013 to December 31, 2015, taxpayers who are selling electricity products produced themselves using solar energy are entitled to a 50% immediate refund when they pay value added tax. We are aware that at least one large Chinese Solar Module producer has received the


refund for taxes paid related to the electricity produced by certain solar plant subsidiaries.\textsuperscript{63}

xiv) In September 2013, the GOC announced it will limit construction of new photovoltaic manufacturing plants to curb excess capacity, a move aimed to increase prices in the market. The GOC banned new solar plants that “purely” expand capacity. In addition, the GOC imposed minimum annual research and development and equipment expenditures by solar module producers companies. Minimum expenditures are at least 3 percent of revenue and must exceed RMB 10 million.\textsuperscript{64}

xv) On February 12, 2014, the GOC announced that the total target for the increase in PV power generation capacity for 2014 will be 14 GW, of which 8 GW will be reserved for distributed power generation and 6 GW will be reserved for power generation by solar power projects.\textsuperscript{65}

\textit{Conclusion on Section 20 Conditions and Factors}

90. The Complainants submit that these industrial policies, laws and regulations, \textbf{individually and cumulatively, meet all of the CBSA’s factors} and strongly demonstrate that Chinese domestic pricing for solar modules is substantially determined by the GOC. The Complainants submit they have demonstrated, at a minimum, that the GOC is involved in direct and indirect government involvement in price setting; has influence and control over production, sourcing and other operational decisions; has made policies and directives applicable to the solar modules industry (including through


\textsuperscript{64} Attachment 24: Bloomberg News Editors, China Limits Solar Manufacturing, May Drive Consolidation, Renewable Energy World, September 18, 2013.

stabilization of the market, structural adjustment, government supervision, capacity control, output controls, regulation of minimum capital investment in new projects).

91. It is worth reiterating that the GOC specifically addresses the solar modules industry in the current five year plan and has adopted a policy framework designed to influence the development of the solar modules industry.

92. In addition, other factors discussed in the subsidy section of this Complaint further support the finding of section 20 conditions. For example, statements by Chinese producers and media statements support the existence and influence of GOC industrial policies; and significant and overwhelming evidence of industry consolidation exists and is consistent with GOC policies. Finally, the U.S. and EU have previously investigated the Chinese solar modules industry and concluded that non-market economy conditions prevail in the industry, and the Chinese domestic price of solar modules is substantially below the market price for solar modules.

93. On the basis of the foregoing, CBSA should initiate a section 20 investigation.

6. Proposed surrogate methodology

94. With respect to the application of section 20 of the SIMA, it is important to note that in China’s WTO Accession Protocol, the GOC agreed that normal values could be calculated using:

methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.66

95. The Complainants submit that due to the existence of the conditions outlined in section 20, it is not appropriate to use domestic Chinese prices as the basis for normal values. Further, while the Chinese costs as described in Bloomberg reports are a reasonable basis to estimate normal values, the Complainants submit it would not be appropriate to rely on costs as submitted by individual Chinese producers, given the extent of GOC influence on the Chinese solar modules industry.

96. The Complainants submit that it is appropriate to use the amalgamated cost data of all international producers as a surrogate for the Chinese production costs. Using such a broad-based average provides a data point against which it is appropriate to compare the Chinese cost. Rather than picking certain international producers whose own data may be distorted or significantly influenced by Chinese cost structures, a broad average has the advantage of reliability while also properly reflecting the Chinese price: while the cost structure of certain more developed countries forming part of the index may bring the cost average up, less developed East Asian countries balance this equation towards a more reliable, market-based surrogate. On average, this data represents what the Chinese costs would be if China were to operate in a competitive market-based environment. The ex plant operating costs and profit for international non-Chinese producers in 2014 is US $0.76/W.\textsuperscript{67}

97. Using the same general methodology as used in the section 19 analysis, the Complainants calculate an average section 20 normal value of:

a) CDN $0.85/W for multi-crystalline modules; and

b) CDN $0.97/W for mono-crystalline modules.

\textsuperscript{67} Confidential Attachment 13: Dumping and Subsidy Calculations.
98. In conclusion, the Complainants submit there is sufficient information and positive evidence on the record that the wide range and material nature of the GOC’s measures, through government action or by proxy or through government influence, have significantly influenced the Chinese solar modules industry through other than market forces. There is sufficient information before the President to indicate that the price in China for solar modules is not substantially the same is would be in a competitive market and to initiate a section 20 inquiry.

99. The CBSA should, at the initiation of an anti-dumping investigation, send section 20 questionnaires to all known exporters and producers of subject goods solar modules in China as well as the GOC, requesting detailed information related to the Chinese industry producing solar modules to permit the CBSA to further its section 20 inquiry.

D. Export Price

100. Chinese export prices can be calculated based on actual price quotations and/or selling prices of Subject Goods. From such quotations/selling prices, certain deductions must be made for ocean freight, importer margins, inland freight and VAT.

101. An export price of $0.50 per watt was obtained for China in respect of multi-crystalline, $0.46 per watt was obtained for mono-crystalline, and $0.63 was obtained for thin-film. For thin-film modules, the Complainants have calculated the export price on the basis of the export price of multi-crystalline, to which they applied a ratio stemming from a difference in price of of $0.14/W which was obtained by comparing the difference between PV EnergyTrend's reported average quotes for thin-film and the reported quotes for multi-crystalline module, in same reporting period. These calculations are produced in Confidential Attachment 13.

68 Confidential Attachment 13: Dumping and Subsidy Calculations.
102. The deductions discussed above are further detailed as follows:

1. **Ocean Freight**

103. The Complainants have obtained a quote to ship solar modules FOB Shanghai, FOB Ningbo or FOB Dalian to Ontario. This quote amounted to US$4,260 for 40 foot container. As a 40 foot container from China typically holds 800 modules, or approximately 200KW, this amounts to US$0.0213/W.\(^\text{69}\)

2. **Importer Margin**

104. Certain Canadian customers also purchase from importer-distributors. In such instances, it is necessary to adjust the export price for the importer’s commission. The Complainants estimate that a 6.25% importer commission would be reasonable.\(^\text{70}\)

3. **Inland freight**

105. The Complainants estimate that the average costs for transport to port from the Chinese mills is US$300 for a 40 foot container, or US$0.0015/W.\(^\text{71}\)

4. **Chinese VAT**

106. Pursuant to the *Provisional Regulation of China on Value Added Tax* and its implementing rules, all entities and individuals that are engaged in the sale of goods, the provision of processing, repairs and replacement services and the importation of goods in China are generally required to pay value added tax ("VAT"), at a rate of 17.0% of the gross sales proceeds received, less any deductible VAT already paid or borne by the taxpayer. While certain exporters may apply to the GOC to have refunded a portion or all of the VAT that it has already paid or borne, the Complainants understand that the VAT rebate may not always be claimed, and that there is a lack of any evidence that Chinese

\(^{69}\) Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.

\(^{70}\) Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.

\(^{71}\) Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
producers receive the export rebate.\textsuperscript{72} This suggests that Chinese producers of Subject Goods may not be taking advantage of the export credit refund (to the extent that it is available, which is also unconfirmed), and that the price of the goods sold in Canada includes Chinese VAT, and that it is appropriate to subtract the Chinese VAT from the export price in order to calculate the Chinese factory-gate price.\textsuperscript{73}

E. Dumping Margins

107. Based on the analysis of the normal values and export prices above, Chinese Subject Goods are being dumped in Canada at the following estimated margins:

a) Multi-crystalline:
   i) 59\% with section 19; and
   ii) 66\% with section 20;\textsuperscript{74}

b) Mono-crystalline:
   i) 100\% with section 19; and
   ii) 111\% with section 20.\textsuperscript{75}

c) Thin-film:
   i) 23\% with section 19.\textsuperscript{76}

\textsuperscript{72} Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
\textsuperscript{73} Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
\textsuperscript{74} Confidential Attachment 13: Dumping and Subsidy Calculations, Section 19 Tab and Section 20 Tab
\textsuperscript{75} Confidential Attachment 13: Dumping and Subsidy Calculations, Section 19 Tab and Section 20 Tab
\textsuperscript{76} Confidential Attachment 13: Dumping and Subsidy Calculations. Dumping calculations for thin-film follow section 19 only.
108. As noted above, though the margins are calculated on the basis of data relating principally to multi-crystalline modules, the Complainants submit that there is some difference in margins or potential profit with the other products, as for example the higher cost of production for mono-crystalline is not completely transferred on to the end customer in the case of Chinese manufacturers.\textsuperscript{77}

109. For thin film the Bloomberg New Energy Finance sources were unavailable and a different source of data was used for calculations of export prices, thereby leading to a different margin being generated.\textsuperscript{78}

\section{Evidence of Subsidization}

\subsection{Introduction}

110. The Complainants submit that Subject Good producers located in China benefit from substantial subsidies conferred by federal and sub-federal levels of government. The information reasonably available to the Complainants makes clear that most of these subsidies are specifically provided to producers of Subject Goods and have provided countervailable benefits to solar modules production.

111. As detailed below, the subsidies conferred on Chinese producers of Subject Goods are not negligible or insignificant and exceed the applicable thresholds set forth in the SIMA and Article 27 of the \textit{WTO Agreement on Subsidies and Countervailing Measures} ("SCM Agreement").

112. The Complainants provide substantial, credible, and reasonably available information relating to the subsidization of solar modules by China. The following sources, among

\textsuperscript{77} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.

\textsuperscript{78} Confidential Attachment 13: Dumping and Subsidy Calculations; and Attachment 121: PV Energy Trend, Spot Prices September 17, 2014, online source.
others, are relied upon: past CBSA countervailing duty findings; U.S. Department of Commerce investigations and past countervailing duty findings; industry reports; government documents; WTO Trade Policy Review, and general news articles and publications.

113. In situations where information is reasonably available to the Complainants regarding the amount of subsidy, that information is provided below. In other circumstances, the Complainants have general information about subsidy programs that should be further investigated to ascertain the level of subsidization conferred on export of Subject Goods from China.

114. The Complainants submit, however, that the subsidy programs described in this section do not cover all actionable benefits conferred by the Chinese Government and requests that CBSA seek further information from the Government of China, including state and local governments, and from exporters to determine with greater precision the full extent of specific subsidies conferred on Chinese producers of Subject Goods.

B. Relevant provisions of SIMA

115. SIMA subsection 2(1) defines a subsidy as:

(a) a financial contribution by a government of a country other than Canada in any of the circumstances outlined in subsection (1.6) that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, but does not include the amount of any duty or internal tax imposed by the government of the country of origin or country of export on

(i) goods that, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of remission, refund or drawback,

(ii) energy, fuel, oil and catalysts that are used or consumed in the production of exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or

(iii) goods incorporated into exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or
(b) any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit;

116. SIMA subsection 2(1.6) prescribes what is a “financial contribution”:

For the purposes of paragraph (a) of the definition “subsidy” in subsection (1), there is a financial contribution by a government of a country other than Canada where

(a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

(b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

(c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

(d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

117. SIMA subsection 2(7.2) provides that a subsidy is specific where it is:

(a) limited, pursuant to an instrument or document referred to in paragraph (7.1)(b), to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or

(b) a prohibited subsidy.

118. SIMA subsection 2(7.3) provides that despite a subsidy not being limited in a manner set out in subsection 2(7.2) of SIMA, the President of the CBSA may, having regard to the following factors, determine that the subsidy is specific:

(a) there is exclusive use of the subsidy by a limited number of enterprises;

(b) there is predominant use of the subsidy by a particular enterprise;

(c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and

(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

119. In Canada — Measures Relating to the Feed-in Tariff Program, a WTO Panel reaffirmed that a financial contribution confers a benefit within the meaning of Article
1.1(b) of the SCM Agreement if it provides an advantage to its recipient.\textsuperscript{79} The panel also affirmed that the existence of an advantage is to be determined by comparison of the recipient with and without the financial contribution. Further, it noted that "the marketplace provides an appropriate basis for [making this] comparison".\textsuperscript{80}

120. The Complainants submit that in calculating the level of subsidization, a period of 8 years is suitable for determining the average useful life for production assets in the solar modules industry. The Complainants request that CBSA investigate any allocable, non-recurring subsidies or countervailable benefits granted during the subsidy POI, and any outstanding loans, recurring subsidies provided during the POI.

121. This Complaint lists programs identified in the Complainants as potentially conferring actionable or prohibited subsidies on Chinese producers and exporters of solar modules. These programs are discussed below under the following headings, where applicable:

1. Special Economic Zones (SEZ);
2. Special Export Designations;
3. Grants;
4. Preferential Loan Programs;
5. Preferential Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Goods/Services Provided by the Government at Less than Fair Market Value;
8. Reduction in Land Use Fees;


122. The Complainants request that the CBSA investigate whether these programs, as well as others which may be found to exist, confer countervailable subsidies or prohibited subsidies upon Chinese solar modules producers.

123. Public Attachment 29 lists Chinese programs identified by the United States as countervailable, but which are not included in China’s only subsidy notification pursuant to Article XVI:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 25.2 of the SCM Agreement. The Complainants request that the CBSA investigates these programs to the extent they are applicable to solar modules.

124. Below is a discussion of particular laws, regulations, policies and programs that the Complaints submit are countervailable.

C. Special Economic Zones (SEZ)

125. Various Chinese manufacturers of solar modules operate in special economic zones ("SEZ") and therefore may benefit from countervailable subsidies made available to producers and exporters located in these zones.

126. As can be seen from the List of Exporters, Chinese solar modules producers are known to operate in Anhui, a provincial SEZ; in Jiangxi, a provincial SEZ; in Xiamen, an SEZ in Fujian province; Hainan, a provincial Special Economic Zone; and Tianjin, a coastal development zone in Tianjin Province.

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81 Attachment 29: “Request from the United States to China Pursuant to Article 25.10 of the Agreement”, WTO Doc. G/SCM/Q2/CHN/42 (October 11, 2011).
82 Attachment 30: Expo Central China 2015, Preferential Policies for Foreign Investment in Anhui Province, Briefing Of Six Provinces In Central Region Of China, Online access May 16, 2014.
84 Attachment 32: Guide to Investment in Xiamen, "Preferential Policies (1)".
85 Attachment 33: Hainan, “Preferential Policies for Foreign Investment”; Attachment 34: Hainan Special Economic Zone, Foreign Investment Regulations, arts. 31-40.
127. Most importantly, as previously discussed, the GOC released on February 12, 2014 a list of 81 “New Energy Demonstration Cities” and eight “industrial demonstration parks”. These cities and zones are required to achieve their respective mandatory targets in terms of solar PV installations and the percentage of installed renewable energy power generation capacities by the end of 2015, or the end of the 12th Five-Year-Plan.\(^{87}\)

128. Countervailable programs are one means by which these cities and zones can achieve their mandatory targets. Countervailable programs available to enterprises operating in some of these zones are discussed below.

1. Anhui

129. The Anhui province is home to many exporters of solar modules. The province has numerous preferential policies that confer actionable and prohibited subsidies.\(^{88}\) A GOC website lists nine “Preferential Policies for Foreign Investment in Anhui Province”. This includes the following:

a) \textit{Reduced enterprise income tax rate}–Foreign-invested enterprises operating in Anhui are entitled to a reduced or exempted income tax rate. Income generated from investment in and business operations of the important public infrastructure projects supported by the state, and income generated from environmental or energy-related projects are reduced or exempted from taxation. These benefits are

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\(^{86}\) Attachment 35: “Preferential Policies For Investment In Tianjin New Coastal Area”, “State Taxation Bureau Preferential Policy For Hi-Tech Enterprises In The State Hi-Tech Development Zones (Tianjin New Coastal Area)”, “Favorable Tax Terms For Export oriented and Hi-Tech Enterprises (Tianjin New Coastal Area)”.


\(^{88}\) Attachment 30: Expo Central China 2015, Preferential Policies for Foreign Investment in Anhui Province, Briefing Of Six Provinces In Central Region Of China, Online access May 16, 2014.
actionable as they are specific to certain industries and only available to foreign-invested enterprises operating in the zone.  

b) *Import Duty Exemption*—Foreign-invested enterprises operating in the zone are entitled to duty free import of “production equipments and technology” and “Equipment and related technology, spare parts and accessories imported for technical innovation”. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient. This benefit is actionable as it is only available to those enterprises operating in the zone.

c) *VAT Tax Exemption*—Equipment purchased by foreign invested enterprises in encouraged industries is entitled to a full refund of the value-added tax. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient in the form of lower tax payments. This benefit is actionable as it is only available to those enterprises operating in the zone.

2. **Jiangxi**

130. In 2009 the GOC officially approved Poyang Lake Ecological & Economic Zone, which includes three cities and 38 counties, including Shangroa. The SEZ specifically targets the generation of “photoelectricity and new energy”.

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89 Attachment 30: Expo Central China 2015, Preferential Policies for Foreign Investment in Anhui Province, Briefing Of Six Provinces In Central Region Of China, Online access May 16, 2014 art 1, 2, 7, 8.
131. The Poyang Lake Ecological & Economic Zone includes the Shangrao Economic and Technological Development Zone, which was itself upgraded in November 2010 to a national-level development zone with the approval of the GOC. The zone is home to Jinko Solar Co. Ltd, one of the world’s largest photovoltaic cell and solar modules manufacturers.

132. Both the Poyang Lake Ecological & Economic Zone and the Shangrao special economic zone have numerous preferential policies that confer actionable and prohibited subsidies.\(^2\)

a) **Preferred tax treatment for export-orientation.** Foreign-invested enterprises operating in the zone are entitled to “financial subsidies, tax breaks and other incentives”. This preferential treatment confers a financial contribution; the resulting subsidy is prohibited as it is contingent on operating in the zone.

b) **Preferred loans**—Foreign-invested enterprises operating in the zone are entitled to “loan guarantees and interest subsidies”. Preferential loans confer a financial contribution equivalent to the difference in the cost of the preferential loan versus the cost of the loan at market rates and this difference provides a benefit to the recipient in the form of a lower cost of borrowing. This benefit is actionable as it is only available to those foreign-invested enterprises operating in the zone.

3. **Xiamen**

133. Preferential policies in Xiamen confer actionable subsidies and prohibited subsidies on enterprises operating in the zone.\(^3\)


\(^3\) Attachment 32: Guide to Investment in Xiamen, “Preferential Policies (1)”. 

Submitted by Complainants
a) **Corporate Income Tax Reductions and exemptions**—"Foreign funded enterprises" that are small or who are "low-profit" are entitled to a reduced income tax rate. "Hi-tech enterprises that demand key supports from the state" are entitled to further reduced corporate income tax rates. In addition, hi-tech enterprises are entitled to a two-year corporate tax exemption and three-year half-exemption on corporate income taxes. These reductions and exemptions are a financial contribution in the form of foregone revenue to the government and thereby confer a benefit on the recipient. These benefits are actionable as they are only available to those enterprises operating in a particular area.

b) Investment Credits and R&D Deductions—enterprises may also benefit from special tax deductions for investments in research and development and tax credits for investment in "preferentially supported and encourage" industries. The Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007) lists "multiple crystal silicon" as an encouraged foreign investment industry.\(^\text{94}\) Tax credits and special deductions are financial contributions in the form of foregone revenue to the government and thereby confer a benefit on the recipient in the form of greater net income. These benefits are actionable as they are only available to those enterprises operating in a particular area and who meet specified criteria.

\(^{94}\) Attachment 38: "Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007)", Decree of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China No. 57
4. Hainan

134. Hainan is a provincial special economic zone. The Hainan special economic has numerous preferential policies that confer actionable and prohibited subsidies on “foreign-invested enterprises”.  

a) **Reduced enterprise income tax rate; local income tax exemption**—Foreign-invested enterprises operating in the zone are entitled to a reduced enterprise income tax rate and an exemption from local income tax. In addition, foreign investors without an office in China are exempt from the withholding tax on dividends, rents, royalties and “other sources”. Tax reductions and exemptions are financial contributions in the form of foregone revenue to the government and thereby confer a benefit on the recipient. These benefits are actionable as they are only available to foreign-invested enterprises operating in the zone.

b) **Income Tax Refunds**—Foreign investors are entitled to a partial or full refund on enterprise taxes already paid if profits are re-invested in the zone. Given the variety of organizational structures available to an enterprise, this program may be used to subsidize the enterprise. Tax refunds are a financial contribution in the form of foregone revenue to the government or a direct transfer of money and thereby confer a benefit on the recipient. This benefit is actionable as it is only available to foreign invested enterprises operating in the zone who re-invest profits in the zone.

c) **VAT Tax Exemption**—Products sold by a foreign-invested enterprise within the zone are exempt from VAT. With the exemption, the principles of supply and demand dictate that this program should result in enterprises achieving more

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95 Attachment 33: Hainan, “Preferential Policies for Foreign Investment”; Attachment 34: Hainan Special Economic Zone, Foreign Investment Regulations, arts. 31-40.
revenue, either by selling more products at a lower price or by increasing their revenue. This higher revenue is fungible, meaning that it may subsidize the company’s production destined for export. This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient in the form of lower tax payments. This benefit is actionable as it is only available to those enterprises operating in the zone.

d) Preferential loans—Foreign-invested enterprises operating in the zone are entitled to “priority” access to loans. Preferential loans confer a financial contribution equivalent to the difference in the cost of the preferential loan versus the cost of the loan at market rates and this difference provides a benefit to the recipient in the form of a lower cost of borrowing. This benefit is actionable as it is only available to those foreign-invested enterprises operating in the zone.

e) Import Duty Exemption—Foreign-invested enterprises operating in the zone are entitled to duty free import of machinery, equipment, building materials, parts, office articles and “other goods and materials for their own use".\(^{96}\) This exemption is a financial contribution in the form of foregone revenue to the government and thereby confers a benefit on the recipient. This benefit is actionable as it is only available to those enterprises operating in the zone.

f) Import substitution—Production in the zone and sold in the domestic market are eligible for “treatment as import substitutes”.\(^{97}\) While the “treatment” is not specified, it appears to provide some kind of preferential benefit (i.e. advantage) as the provision is listed under the heading “preferential treatment”. Insofar as the import substitution treatment confers an advantageous financial contribution that

\(^{96}\) Attachment 34: Hainan Special Economic Zone, Foreign Investment Regulations, art. 22.
\(^{97}\) Attachment 34: Hainan Special Economic Zone, Foreign Investment Regulations, art. 39.
is contingent on the use of Chinese produced goods, the resulting subsidy is prohibited.\textsuperscript{98}

g) \textit{Preferential treatment for export-orientation.} The Foreign Investment Regulations for the Hainan Special Economic Zone provide that foreign business are “encouraged” to invest in and establish export-oriented enterprises and that those who are export-oriented “will be granted corresponding preferential treatment”.\textsuperscript{99} While the “treatment” is not specified, it appears to provide some kind of preferential benefit (i.e. advantageous) as the provision is listed under the heading “preferential treatment”. Insofar as advantageous treatment for export-orientation confers a financial contribution, the resulting subsidy is prohibited as it is contingent on export.

135. Yingli Green Energy admits that one of its Hainan-based subsidiaries, \textbf{Hainan Yingli New Energy Resources Co., Ltd.}, is exempt from income tax.\textsuperscript{100} This is evidence that this program is currently in effect and has provided benefits to Chinese companies.

5. Tianjin

136. The Tianjin Coastal Area has several preferential policies that confer actionable subsidies upon exporters. These include:

a) \textit{Income Tax Reductions}—Foreign invested enterprises in the Tianjin Coastal Development Area pay a reduced income tax rate.\textsuperscript{101} The reduction of tax payments otherwise due to a government is a financial contribution by that

\textsuperscript{98} SIMA, s. 2(1) “prohibited subsidy”.
\textsuperscript{99} Attachment 34: Hainan Special Economic Zone, Foreign Investment Regulations, art. 40.
\textsuperscript{101} Attachment 35: “Preferential Policies For Investment In Tianjin New Coastal Area”, “State Taxation Bureau Preferential Policy For Hi-Tech Enterprises In The State Hi-Tech Development Zones (Tianjin New Coastal Area)”, “Favorable Tax Terms For Export oriented and Hi-Tech Enterprises (Tianjin New Coastal Area)”.
confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises, namely foreign investment enterprises located within the area.

b) *Income Tax Refunds*—Foreign investors who re-invest their profits in the coastal area for a minimum period of time are entitled to partial or full refund of income tax. The refund of tax payments otherwise due to a government is a financial contribution by that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprise, namely foreign investment enterprises located within the zone.

c) *Reduced Real Estate Tax*—Enterprises operating in the coastal development area are entitled to preferential real estate taxes. The reduction of tax payments otherwise due to a government is a financial contribution by that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprise located within the area.

137. In addition, in *Oil Country Tubular Goods* ("OCTG"), the CBSA determined that an exporter in the Binhai New Area of Tianjin received a countervailable subsidy through a program that allowed the accelerated depreciation on fixed assets. Solar modules exporters in the Binhai and Coastal Areas of Tianjin, and producers and exporters located in regions other than SEZs, may also receive actionable benefits under this program.

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102 Attachment 35: "Tax Refund In Case Of Reinvestment (Tianjin New Coastal Area)".
103 Attachment 35: "Real Estate Tax (Tianjin New Coastal Area)".
6. Other Special Economic Zones and Preferential Policies

138. Additional special economic zones also exist within China. The Complainants request that the CBSA also investigate whether other solar modules producers or exports exist within these zones and whether those producers or exporters benefit from actionable or prohibited subsidies.

139. The Complainants also request that the CBSA investigate whether any Chinese solar modules producers or exporters receive actionable subsidies from three additional programs previously determined to provide countervailable subsidies to producers of other products. The first is the “Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones” program. In Aluminum Extrusions, the CBSA determined that program provided an actionable subsidy to several aluminum extrusion exporters. This program encourages Economic and Technical Development Zones by providing FIEs in specific zones with a reduced income tax rate of 24%.

140. The Second is “Preferential Tax Policies for Foreign Invested Export Enterprises” program. This program was also identified as countervailable by the CBSA in Aluminum Extrusions. Under this program export oriented producers, with foreign business investors and operators, may receive a 15 percent reduction in their income taxes if “their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year.”

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141. Third, "Local Income Tax Exemption and/or Reduction" program. The program provides foreign-investment enterprises involved in industries or projects encouraged by the government with local income tax reductions or exemptions.\textsuperscript{110} As discussed elsewhere, "multiple crystal silicon" is listed as an encouraged foreign investment industry.\textsuperscript{111}

D. Grants

142. The CBSA has previously recognized over 100 programs that potentially confer countervailable benefits in the form of grants upon Chinese enterprises. Although grant information is not public and the details only known to the GOC and recipients, information provided below demonstrates that the manufacturers and exporters of solar modules have benefited from one or more such grants, reductions, write-offs and other specific financial contributions by government, which are countervailable subsidies.

143. JinkoSolar Holding Co., Ltd., a Chinese producer of Subject Goods, reports "Subsidy Income" as a line in its Consolidated Statements of Operations. In 2012 alone, the company reported "Subsidy Income" of 40,902,600 RMB.\textsuperscript{112} This demonstrates significant revenue from grant programs. Other Chinese Solar Module producers acknowledge receipt of specific subsidies from the GOC.\textsuperscript{113}

144. In Aluminum Extrusions, the CBSA determined that one or more Chinese producers of aluminum extrusions benefited from countervailable grant programs, including: Research & Development Assistance Grants; Superstar Enterprise Grants; Matching funds for international market development for SMEs; One-time Awards to Enterprises Whose

\textsuperscript{110} Attachment 18: Aluminum Extrusions (FD), p. 66.
\textsuperscript{111} Attachment 38: "Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007)", Decree of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China No. 57.
Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”; Export Brand Development Fund; Patent Award of Guangdong Province; Training Program for Rural Surplus Labor Force Transfer Employment; and the Provincial Scientific Development Plan Fund. The Complainants request that the CBSA investigate whether these programs confer actionable benefits on solar modules producers.

145. In *Steel Grating*, the CBSA determined that producers received actionable benefits from an Export Assistance Grant Program. The program, established in the Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000, encourages SME participation in international markets. The purpose of the program is to provide funds to SMEs for: (i) holding or participating in overseas exhibitions, (ii) accreditation fees for quality management system, environment management system or for the product, (iii) promotion in the international market, (iv) exploring a new market, (v) holding training seminars and symposiums, and (vi) overseas bidding. The Complainants also request that the CBSA investigate these grants with respect to solar modules producers.

146. Some grant programs available to the Chinese solar modules industry are discussed below. The fact that a program previously identified by the CBSA is not discussed below does not mean it is not available to or utilized by the Chinese solar modules industry. In addition, several programs not previously recognized by CBSA are discussed below.

1. The Golden Sun Demonstration Program

147. In September 2010, the GOC implemented the Golden Sun Demonstration Program, offering government subsidies for photovoltaic applications, including to solar modules

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114 Attachment 18: *Aluminum Extrusions (FD)*, p. 61-64, 67, 68.
115 Attachment 41: *Steel Grating (FD)*, p. 20-21.
manufacturers. The goal of the program was to subsidize the installation of more than 500 megawatts of solar projects within three years.\(^{116}\) Under the announced program, the GOC subsidizes 50% of the cost of key equipment for on-grid PV projects and 70% of that for off-grid PV projects in remote regions. In addition, the government offers subsidies of RMB4 per watt for on-grid PV projects, RMB6 per watt for building-integrated PV projects and RMB10 per watt for off-grid PV projects in remote regions.\(^{117}\) The program was renewed in December 2012 for additional creation of solar project capacity in China. Numerous Chinese manufacturers of solar modules have publicly stated that they have received assistance under the Golden Sun program.\(^{118}\)

148. In the recent U.S. finding, the Department of Commerce determined that the Golden Sun Demonstration Program was a countervailable subsidy and that Trina Solar had benefited under this program, calculating a subsidy rate of 0.09 percent for the company.\(^{119}\)

2. China Famous Brand Product, Well-known Brand in China, National Free-inspection Product, provincial famous brand product, and well-known brand in the province

149. In *Certain Unitized Wall Modules*, the CBSA determined that Chinese exporters and/or producers received beneficial financial contributions from the China Famous Brand

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Product program and that this subsidy was actionable. The subsidies under this program provide grants, loans and other incentives to Chinese producers of solar modules in order to explicitly increase exports.

150. The Complainants note that this program was found to provide a countervailable subsidy by the United States Department of Commerce in the equivalent U.S. solar modules case. Public information supports the finding that Chinese manufacturers of solar modules have received benefits under this program. Specifically, Suntech and LDK Solar, two of the largest Solar Module producers, produce products with “famous brand names”. The DOC determined that Suntech received benefits under this program, calculating a subsidy rate of approximately 0.005 percent for the company.

151. In addition to grants from the GOC, various provincial and local governments of China have implemented similar programs and have provided additional financial incentives to Chinese producers designated as “Famous Brands”.

152. Numerous Chinese Solar Module producers are located in the province of Jiangsu, which is a province that has its own program supporting Famous Brands. Suntech Power, Trina Solar and Jiasheng Photovoltaic Tech are all located in Jiangsu Province.

153. The Complainants request that the CBSA further investigate whether Chinese solar modules producers and/or exporters also benefit from this program.

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120 Attachment 45: Unitized Wall Modules FD at 124.
122 Attachment 29: “Request from the United States to China Pursuant to Article 25.10 of the Agreement”, WTO Doc. G/SCM/Q2/CHN/42 (October 11, 2011).
3. Special Energy Fund

154. In 2007, the Shandong Province established a RMB 2.1 billion fund to support energy conversation and emission reductions. Through this fund, Shandong will "finance renewable energy developers, supporting activities ranging from manufacturing to technology developers." Several Chinese Solar Module producers are located in Shandong Province, including CNPV, General Solar Power, Himin Holdings, Linuo Photovoltaic and Sunvim Solar Technology.

155. Because this program provides grants to manufacturers in the renewable energy sector, which includes Solar Module producers, numerous producers located in Shandong Province have likely received benefits under this program. Benefits conferred under this program are countervailable as the recipients are specifically limited to companies involved in the renewable energy sector, including producers of solar modules.

4. Fund for Economic, Scientific, and Technology Development

156. The Government of Foshan City provides grants to firms in order to encourage technological and economic development. The Fund for Economic, Scientific, and Technology Development is administered by the Science and Technology Bureau of Foshan Municipality and the Finance Bureau of Foshan Municipality pursuant to the Circular on Printing and Distributing of the Measures on Administration of Foshan Sci-Tech Development Special Fund. Certain producers of solar modules, including Aiko Solar and Golden Partner Development are located in Foshan City and likely received benefits under this program. It is also likely that similar subsidies are available to enterprises located in other regions and areas.

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123 Attachment 46: *China s Shandong province aims for 4GW of renewables capacity by 2012*, ECF China Energy Intelligence and Communication (Dec. 27, 2009).
124 Attachment 47: *Certain Stainless Steel Sinks, Final Determination, Statement of Reasons* (May 9, 2012) at 22.
5. Grants for “International Top 500 Enterprises”

157. “International Top 500 Enterprises” that establish an office or regional headquarters in Yingkou are entitled to a subsidy of RMB100,000 to RMB500,000. This program confers a financial contribution on a recipient enterprise in the form of a grant which in turn provides the recipient with a benefit. The program is actionable because it is only available to certain enterprises that locate an office or headquarter in Yingkou. It is likely that similar subsidies are available to enterprises located in other regions and areas.

6. Foreign Trade Development Fund of Old Industrial Bases of Northeast China

158. The Policies for Liaoning (Yingkou) coastal industrial bases provide that “key support” will be provided to “export processing base enterprises established in Liaoning (Yingkou) Coastal Industrial Base” through the Foreign Trade Development Fund of Old Industrial Bases of Northeast China. Grants through this fund have also been identified as countervailable subsidies by the United States of America in submissions to the WTO and it is likely that enterprises outside Yingkou also benefit under the program. This program confers a financial contribution on a recipient enterprise in the form of a grant which in turn provides the recipient with a benefit. The subsidy is actionable because it is available to enterprises operating in Yingkou. It is likely that similar subsidies are available to enterprises located in other regions and areas.

7. R&D Grants

159. In Yingkou, subsidies ranging from RMB 30,000 to RMB 200,000 are available to enterprises that are promoted to various “enterprise technical R&D centre” levels.

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125 Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.
126 Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.
127 Attachment 49: “Request from the United States to China pursuant to Article 25.10 of the Agreement”, WTO Doc. G/SCM/Q2/CHN/42 (11 October 2011).
128 Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.

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Similar subsidies are likely available in other regions. For example, in *Certain Stainless Steel Sinks* the CBSA determined that certain Chinese producers of steel sinks benefited from R&D grants provided by the Foshan Shunde Finance Bureau. As previously noted, numerous Chinese Solar Module producers are located in Foshan.

160. This program confers a financial contribution on a recipient enterprise in the form of a grant which in turn provides the recipient with a benefit. The program is actionable because it is only available to enterprises that receive the R&D promotion. It is likely that similar subsidies are available to enterprises located in other regions and areas.

8. Funds for Outward Expansion of Industries in Guangdong Province

161. The United States Department of Commerce found that this program supports the development of international trade and economic cooperation through the establishment of different funds to provide payments to enterprises for international market exploration, export credit insurance assistance, the development of trade through science and technology, export product research and development, support for defense expenses in antidumping duty cases, loan interest grants for various export-related loans and development of outward-looking enterprises.

162. This subsidy program is specific as the benefits conferred are contingent upon export performance.

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129 Attachment 47: *Certain Stainless Steel Sinks, Final Determination, Statement of Reasons* (May 9, 2012) at 22 ("Stainless Steel Sinks FD").
9. New Product Award

163. Enterprises located in Yingkou that are awarded a “provincial excellent new product award” are entitled to a subsidy of up to RMB 30,000.\textsuperscript{131} It is likely that similar subsidies are available to enterprises located in other regions and areas. This program confers a financial contribution on a recipient enterprise in the form of a grant which in turn provides the recipient with a benefit. The program is actionable because it is only available to enterprises that are awarded a “provincial excellent new product award”.

10. Grants for Export Activities

164. In \textit{Certain Stainless Steel Sinks} the CBSA determined that an exporter had received a countervailable subsidy from the Foshan Shunde Finance Bureau in the form of a grant for foreign trade development.\textsuperscript{132} The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received similar grants from the same of similar authorities.

11. Capital increase award

165. Enterprises located in Yingkou that increase their capital by more than RMB100,000,000 are entitled to a grant of RMB 200,000.\textsuperscript{133} It is likely that similar subsidies are available to enterprises located in other regions and areas. This program confers a financial contribution on a recipient enterprise in the form of a grant which in turn provides the recipient with a benefit. The program is actionable because it is only available to enterprises that are awarded one of the designations.

\textsuperscript{131} Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.
\textsuperscript{132} Attachment 47: \textit{Stainless Steel Sinks FD} at 23.
\textsuperscript{133} Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.

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12. Special Fund for Fostering Stable Growth of Foreign Trade

166. In *Certain Stainless Steel Sinks*, the CBSA determined that Chinese exporters and/or producers received beneficial financial contributions from the Special Fund for Fostering Stable Growth of Foreign Trade and that this subsidy was actionable.\(^{134}\) The Complainants request that the CBSA investigate whether Chinese solar modules producers and/or exporters also benefit from this program.

13. Allowance to Pay Loan Interest

167. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received a countervailable subsidy in the form of an allowance to assist with interest payments on commercial bank loans.\(^{135}\) The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received similar grants.

14. Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-tech Product

168. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received a countervailable subsidy in the form of a grant through the Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-tech Product.\(^ {136}\) According to the CBSA’s statement of reasons, the program was established to support exporters who were adversely affected by the financial crises. The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received similar grants.

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\(^{134}\) Attachment 47: *Stainless Steel Sinks FD at 23.*

\(^{135}\) Attachment 47: *Stainless Steel Sinks FD at 24.*

\(^ {136}\) Attachment 47: *Stainless Steel Sinks FD at 24.*
15. International Market Fund for Export Companies

169. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received a countervailable subsidy in the form of a grant through the International Market Fund for Export Companies. In *OCTG*, the CBSA similarly determined that an exporter received an actionable subsidy under a program for market promotion and trade development. The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under these or similar programs.

16. International Market Fund for Small and Medium-sized Export Companies

170. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received a countervailable subsidy in the form of a grant through the International Market Fund for Small and Medium-sized Export Companies. The CBSA’s statement of reasons provides that the “funds are provided for developing international markets including overseas exhibitions, certification of enterprise management system, various product certifications, foreign patent applications, promotional activities in international markets, electronic business, foreign advertisement and trademark registration, international investigation, bids (negotiations) abroad, enterprise training, foreign technology and brand acquisition, etc.” The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under this program.

17. Business Development Overseas Fund

171. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received a countervailable subsidy through the Foshan Shunde Finance Bureau in the form of a grant

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137 Attachment 47: Stainless Steel Sinks FD at 24.
138 Attachment 21: OCTG FD at 46.
139 Attachment 47: Stainless Steel Sinks FD at 25.
140 Ibid.
through the Business Development Overseas Fund.\textsuperscript{141} The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under this program.

18. Refund from Government for Participating in Trade Fair

172. In \textit{Certain Stainless Steel Sinks} the CBSA determined that an exporter had received a countervailable subsidy through the Foshan Shunde Economic Promotion Bureau in the form of a refund from the government for participating in a trade fair.\textsuperscript{142} The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under this program.

19. Reimbursement of Foreign Affairs Services Expenses

173. In \textit{Certain Stainless Steel Sinks} the CBSA determined that an exporter had previously received a countervailable subsidy through the Foshan Shunde Treasury Payment Centre in the form of a reimbursement of foreign affairs services expenses.\textsuperscript{143} The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under this program.

20. Special Supporting Fund for Commercialization of Technological Innovation and Research Funds.

174. In \textit{Steel Piling Pipe} the CBSA determined that an exporter had received actionable benefits through the Special Supporting Fund for Commercialization of Technological Innovation and Research Funds.\textsuperscript{144} The Complainants submit that this program may still confer countervailable benefits and that solar modules producers may be entitled to

\textsuperscript{141} Attachment 47: \textit{Stainless Steel Sinks FD} at 25.
\textsuperscript{142} Attachment 47: \textit{Stainless Steel Sinks FD} at 26.
\textsuperscript{143} Attachment 47: \textit{Stainless Steel Sinks FD} at 26.
\textsuperscript{144} Attachment 19: \textit{Certain Steel Piling Pipe, Final Determination, Statement of Reasons} (November 15, 2012) at 33 ("Steel Piling Pipe FD").
access this benefit. The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules received grants under this program.

21. Technology and Energy Savings Awards

In OCTG the CBSA determined that one or more exporters received actionable subsidies through various awards and funds that focused on technology innovation, energy savings and improved disposal practices, including the Changzhou Qishuyan District Environmental Protection Fund, 2007 Technology Innovation Award, 2007 & 2008 Energy-saving Fund, Enterprise Innovation Award of Qishuyan District, Energy-saving Technique Special Fund, Changzhou Technology Plan, 2008 Water-saving Technique Assistance, and 2009 Energy-saving Fund, the Enterprise Technology Centers of Tianjin City & Jinnan District, Science and Technology Award, Environmental Protection Award, Emission Reduction and Energy-saving Award, Energy-saving Technology Renovation Fund, and Water Saving Enterprise. The Complainants submit that the same or similar programs may also confer actionable subsidies upon solar modules producers.

22. Over-Rebate of Value Added Taxes

Chinese solar module producers have likely benefited from over-rebated VAT and import tariffs. Specifically, there is reason to believe that Chinese solar producers may enjoy significant benefits from VAT rebates in excess of VAT payments, as China's VAT program is characterized by direct payments from the GOC to solar producers and exporters for certain products, and is not uniformly applied.

145 Attachment 21: OCTG FD at 40-46.
146 Attachment 51: WTO Committee on Subsidies and Countervailing Measures, Questions from the United States Regarding the New and Full Notification of China, G/SCM/Q2/CHN/19 at 3 (July 26, 2006).
177. As noted by the U.S. and EU trade authorities, the Chinese VAT program is not transparent and appears to be operated in a discriminatory manner. This seemingly arbitrary administration opens the door for over-rebates, which would be countervailable. As noted by the EU before the WTO:

China appears to be operating a complex system of VAT refunds on exports. This system is not transparent as refunds seem to be given in a discriminatory basis. Discriminatory refunds could make the system a subsidy instrument. It also appears that changes to the VAT rebates are implemented retroactively and apply to companies in free trade zones which should not be subject to VAT.\textsuperscript{147}

178. The benefit conferred under this program would be assessed based on the value of the over-rebate. The Complainants request that CBSA investigate the extent by which Chinese companies have benefited from this \textit{de facto} program.

179. In addition to providing a countervailable benefit, the discriminatory nature and lack of transparency in the VAT program further supports removing the value of the VAT in the calculation of the Chinese EXW price for purposes of calculating the export price.

E. Preferential Loan Programs

180. The GOC maintains several countervailable loan programs, several of which are discussed below.

1. Preferential Loans Issued by Banks Owned or Affiliated with GOC

181. A significant number of the largest Chinese Solar Module producers recently obtained preferential loans and credit from state-owned lending institutions. For example:

\textsuperscript{147} Attachment 51: WTO Committee on Subsidies and Countervailing Measures, \textit{Questions from the United States Regarding the New and Full Notification of China}, G/SCM/Q2/CHN/19 at 3 (July 26, 2006).
a) In April 2013, Yingli Energy (China) Company Limited, signed two loan agreements with China Development Bank for a total of US$165 million.\textsuperscript{148}

b) In April 2013, JinkoSolar received a China Development Loan valued at US$58 million for domestic photovoltaic projects.\textsuperscript{149}

c) In April 2013, JA Solar announced that it had received a credit facility of US$90 million from Bank of Communications, a state-owned bank. The loan was specifically for support to the Chinese solar industry.\textsuperscript{150}

d) In March 2013, ReneSolar, another heavily indebted solar company, received a US $51 million loan from China Development Bank.\textsuperscript{151}

e) In January 2013, LDK Solar announced that China Development Bank provided a loan of US $70 million to the company.\textsuperscript{152}

f) In Q4 2012, JinkoSolar secured a five-year financing deal from China Development Bank valued at $1 billion.\textsuperscript{153}

g) In Q4 2012 Trina entered into various loan agreements with the China Development Bank. Specifically, Trina obtained a $170 million credit facility and a three-year US $80 million credit facility. These loans were obtained despite Trina’s significant ongoing loss in the fourth quarter.\textsuperscript{154}


\textsuperscript{149} Attachment 53: Marc Roca, JinkoSolar Gets $58 Million Loan From China Development Bank, Bloomberg (Apr. 4, 2013).

\textsuperscript{150} Attachment 54: The sun shines again on China’s solar industry, China Economic Review (Aug. 12, 2013).

\textsuperscript{151} Attachment 55: ReneSola gets $50.9 million loan from China Development Bank, Reuters (Mar. 21, 2013).

\textsuperscript{152} Attachment 56: LDK Solar gets $50.9 million loan from China Development Bank, Reuters (Mar. 21, 2013).

\textsuperscript{153} Attachment 57: LDK Solar says China Development Bank approves $69.8 million loan, Reuters (Jan. 31, 2013).

\textsuperscript{154} Attachment 58: Mark Osborne, JinkoSolar secures US$1 billion, five-year finance deal from China Development Bank, PVTECH (Dec. 7, 2013).

\textsuperscript{154} Attachment 58: Becky Beetz, Trina continues to see net losses, PV magazine (Feb. 26, 2013).
h) In September 2012, Suntech Power Holdings received a $32 million loan organized, in part, by Wuxi, the city where it is located, to assist the company manage its almost $990 million in combined losses in 2012.\textsuperscript{155}

i) In August 2012, the Chinese producer Canadian Solar received a $94 million loan from the China Development Bank to be used, in part, to finance acquisitions of a majority interest in 16 solar projects representing approximately 200MW DC.\textsuperscript{156}

182. Numerous other loans have been provided by various state-owned lending institutions. The solar modules industry is relatively unique in that the GOC is a significant financier and plays a hands-on approach to enable Chinese solar modules producers to manufacture huge volumes of solar modules and sell these products at prices far below market prices. China’s banking system is dominated by SOEs and other financial institutions which make decisions to further political decisions rather than lend according to market factors.

183. Officials have confirmed that China’s banks are directly involved in “implementing national development strategy and providing strong support to strategic plans and social development of the nation”.\textsuperscript{157}

184. These preferential loans are administered on preferential, non-commercial terms, at rates often significantly below what would otherwise be available in a market-economy or through an equivalent commercial loan.

185. The above is indicative of the massive scale by which the GOC has provided preferential loans and lines of credit to support the Chinese Solar Module industry. In addition,

\textsuperscript{155} Attachment 59: *China's solar energy high-flyers defy financial gravity*. The Sydney Morning Herald (Nov. 13, 2012).


China's WTO Accession Protocol notes that loans from Chinese policy banks are by nature discretionary, and therefore specific.\textsuperscript{158}

186. The DOC determined that both Suntech and Trina received benefits under this program, calculating a subsidy rate of 1.95 percent and 0.89 percent for the companies, respectively.\textsuperscript{159}

2. Chinese Government Concessional Loan and Preferential Export Buyer's Credit

187. Pursuant to this program, China Exim Bank provides preferential loans to foreign governments so those foreign governments can purchase goods or services from a specific Chinese firm.\textsuperscript{160} A concessional loan to a foreign organization for the purchase of goods from a specific Chinese exporter provides a financial contribution to the Chinese exporter equivalent to the difference between what the exporter would have sold to the foreign organization without the availability of a concessional loan and what it was able to sell to the foreign organization with the concessional loan. In turn, the concessional loan to the foreign purchaser provides a benefit to the Chinese exporter in the form of greater exports. The benefit is actionable because it is only available to select customers who purchase from select Chinese exports and the loan is at the discretion of the GOC. In addition, the subsidy is prohibited because it is conditional on export performance.

\textsuperscript{158} Attachment 26: WTO Accession Protocol of China at art. 15b, (d).

\textsuperscript{159} Attachment 44: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 201 (October 17, 2012); Attachment 43: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

\textsuperscript{160} Attachment 61: “Chinese Government Concessional Loan and Preferential Export Buyer’s Credit”. 
3. Credit guarantee: Liaoning (Yingkou) coastal industrial bases

188. Eligible companies operating in Liaoning (Yingkou) coastal industrial bases are entitled to a credit guarantee from Liaoning Province.\(^{161}\) A loan guarantee provides a financial contribution equal to the difference between the cost of the loan if the enterprise acquired it in a free market and the cost of the loan subject to the guarantee. This guarantee provides the recipient with a benefit in the form of a lower cost loan. The benefit is actionable because it is only available to SMEs operating in a Liaoning (Yingkou) coastal industrial base. It is likely that similar credit guarantees are available to enterprises located in other regions and areas.

F. Preferential Tax Programs

189. Numerous preferential tax programs are available to solar modules manufactures and exporters.

1. Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise

190. Productive foreign-investment enterprises scheduled to operate for a period not less than 10 years in China are eligible for an exemption from local income tax in the first two years they make a profit, and a 50% reduction in the following three years. The legal basis for this program is found in Article 8 of the *Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*.\(^{162}\)

191. Also known as the “Two-Free-Three-Half” Program, the CBSA has found this reduced tax rate to be a countervailable subsidy in numerous recent cases.\(^{163}\)

\(^{161}\) Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.


\(^{163}\) Attachment 63: *Certain Laminate Flooring* (AD/1332, CVD/104), Final Determination — Statement of Reasons (June 1, 2005) at para 91 [“Laminate Flooring (FD)"].
192. The DOC determined that Suntech received benefits under this program, calculating a subsidy rate of 0.13 percent.\textsuperscript{164}

193. Moreover, China has specified this program as a subsidy in its Notification to the WTO.\textsuperscript{165}

194. Some of the largest Solar Module producers in China are foreign invested enterprises and would automatically qualify for this program. The following Chinese companies file securities documents with the U.S. Securities and Exchange Commission, demonstrating their status as foreign invested enterprises:

- Canadian Solar;
- Chaori Solar Energy;
- China Sunergy;
- CSG Holding Co. Ltd.;
- JA Solar Holdings Co., Ltd.
- Jiangsu Soudai PV-Tech Co., Ltd;
- Jiangxi LDK Solar;
- Jinko Solar;
- Soleos Solar;
- Suntech;

\textsuperscript{164} Attachment 44: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 201 (October 17, 2012); Attachment 43: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

• Trina Solar; and
• Yingli Green Energy

195. These companies’ securities filings are available online through the U.S. government’s web portal, thereby demonstrating their status and eligibility for this program.

196. Yingli Green Energy admits in its filings with the SEC that “Commencing January 1, 2007, one of our principal operating subsidiaries, Tianwei Yingli, began enjoying certain exemptions from income tax. From 2011, Hainan Yingli New Energy Resources Co., Ltd., or Yingli Hainan, began enjoying certain exemptions from income tax.”

2. Corporate Income Tax Reduction for New High-Technology Enterprises

197. In OCTG, the CBSA determined that at least one exporter benefited from an actionable subsidy through a program designed to promote technology upgrades through tax reductions. Pursuant to the Income Tax Law of the People’s Republic of China for Enterprises (effective January 1, 2008), new high-technology enterprises could apply to receive a reduced income tax rate of 15%. The Complainants submit that solar modules producers and exporters may benefit from this or a similar program.

3. Policies for Liaoning (Yingkou) coastal industrial bases

198. Enterprises operating in Liaoning coastal industrial bases are entitled to a variety of actionable preferential tax treatment. Solar modules producers operating in other jurisdictions may be entitled to similar benefits.

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167 Attachment 21: OCTG FD at 40.
168 Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.
a) **Tax Refunds, exemptions and reductions** — Enterprises operating at a Yingkou coastal industrial base are entitled to numerous preferential tax incentives, including: a refund of a portion of enterprise income tax; a refund of portion of the housing property tax paid by the enterprise; a refund on a portion of the stamp tax paid by the enterprise; and a period of tax exemption followed by a period of tax reduction. The refund or exemption of tax payments otherwise due to a government is a financial contribution by that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprise, namely foreign investment enterprises located within the industrial base.

b) **Income tax refunds for senior managers** — Senior managers of enterprises operating in the zone are entitled to a refund of a portion of their income tax. This refund allows an enterprise to pay its senior managers less without affecting the managers’ net income thereby allowing the enterprise to reduce its costs for wages. As such, the tax refund provides a financial contribution from the government to the enterprise and this contribution confers a benefit on the enterprise. This benefit is actionable because it is only available to specific enterprises, namely foreign investment enterprises located within the industrial base. Nonetheless, it is likely that similar subsidies are available to enterprises operating in other regions and areas.

c) **Exemption from administrative charges** — Enterprises operating in the Liaoning (Yingkou) Coastal Industrial Base are exempt from a variety of administrative fees. These exemptions confer a beneficial financial contribution on the

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169 Attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”. Specified administrative charges include: fee for possession and use of radio frequencies, mineral resource compensation fee, enterprise registration fee, import and export commodity inspection fee, customs charge, inspection and quarantine fee for livestock and its products, fishery resources value-added and protection fee, fishing ship inspection fee, highway transportation management fee, water resource fee, soil erosion prevention and compensation fee, online registration fee for anti-
enterprises in so far as the enterprise does not have to pay fees to the government that would otherwise be due. The benefit is actionable as it is specific to enterprises operating in a particular area. It is likely that similar subsidies are available to enterprises located in other regions and areas.

199. In addition, in OCTG the CBSA determined that at least one exporter benefited from the “Five Points” program in Liaoning province. Pursuant to this program enterprises operating in one of five industrial or economic zones were entitled to refunds of VAT and business tax, reductions or exemptions from income tax, an interest subsidy, and a fee exemption. The CBSA also determined that at least one exporter benefited from an actionably subsidy in the form of financial assistance program whereby financial support was provided to “enterprises of high-tech products or the equipment manufacturing industry in Liaoning province”. Solar modules producers and exporters in Liaoning province may continue to receive actionable benefits under these programs.

4. Heilongjiang Province

200. At least one Solar Module producer is known to operate in Heilongjiang Province. Solargiga Energy Holdings Limited, and others which may also be located in Heilongjiang Province, are most likely entitled to the following actionable tax incentives.

   a) **Reduced Income Tax Rate for foreign invested manufacture enterprises** - Pursuant to Article 1(1) of the Heilongjiang Province Tax Policy, “foreign invested
manufacture enterprises” that plan to operate for 10 years of more are subject to tax exemptions from the “enterprise income tax” in their first two years of operation and up to 50% tax reduction for the following eight years.\textsuperscript{173} In addition, manufacturing enterprises located in the “Economic and Technological Development Area and enterprises of new high technology in the Hi-tech Development Zone” are eligible for a reduced income tax rate of 15%.\textsuperscript{174} The reduction or exemption of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprise, namely “foreign invested manufacture enterprises” located within the province.

b) \textit{Reduced income tax tied to exports} - Pursuant to Article 1(2) of the Provincial Tax Policy, following the of tax reduction and exemption period, a “foreign invested export-oriented enterprise” that exports 70% of its annual output is entitled to an income tax rate reduction of 50%, but it shall not pay an income tax rate of less than 10%. As discussed above, the reduction of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises, namely a “foreign invested export-oriented enterprise” located within the province. In addition, because the income tax reduction is tied to export performance, it is a prohibited export subsidy.\textsuperscript{175}

c) \textit{Reduced income tax for technologically advanced enterprises} - Pursuant to Article 1(3) of the Provincial Tax Policy, following the expiry of the tax reduction and exemption provided by Article 1(1) of the Tax Policy, a “foreign-invested

\textsuperscript{175} Attachment 66: Fuzhou Provision, Art. 13; SIMA, s. 2(1).
technologically advanced enterprise” may have its tax rate reduced by 50 for an additional three years, but it shall not pay an income tax rate of less than 10%. As discussed above, the reduction of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet the undefined requirements of “foreign-invested technologically advanced enterprise” located within the province.

d) Reduced income tax for technologically advanced enterprises and export oriented enterprises operating in Economic and Technological Development Areas - Pursuant to Article 1(4) of the Tax Policy, technologically advanced enterprises and export oriented enterprises operating in an Economic and Technological Development Area (ETDA) are entitled to special preferential income tax rates. In most cases, they are entitled to an income tax rate of “10 percent with 50 percent of its payment refunded”. Technologically advanced enterprises and export oriented enterprises operating in an Economic and Technological Cooperation Zone (ETCZ) that is located in a “border area” pays an income tax rate of “24 percent with 80 percent of its payment refunded”. Other foreign-invested enterprises located in an ETCZ or ETDA are entitled to these preferential tax rates with the approval of the Heilongjiang Provincial People’s Government. As discussed above, the reduction of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet the undefined requirements of “foreign-invested technologically advanced enterprise” or “export-oriented enterprise” and are located within a provincial ETCZ or ETDA.

e) **Tax Refund for 5-year period** - Pursuant to Article 1(5) of the Tax Policy, following the expiry of a tax exemption period of two years of more, a foreign
invested enterprise with an operation term of more than 10 years shall be refunded its income tax for a five-year period it, “a) It has purchased or merged a local enterprise that had been closed down or was poorly operated and hired 60 percent of its employees from the purchased or merged enterprise, and its foreign investment accounts for more than 50 percent; b) It has a foreign investment of more than US$5 million and has renovated large and medium-sized key enterprises in the province using new and high technologies”. A tax refund is equivalent to a tax payment reduction. As discussed above, the reduction of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

f) **Local income tax exemption for foreign invested enterprises** - Pursuant to Article 1(7) of the Tax Policy, “foreign invested enterprises” with an operation of 10 years of more are exempt from “local income tax” for 10 years from their first profit making year. In certain cases, this exemption may be extended to other enterprises, including “any export-oriented enterprise (of which the export volume accounts for 50 percent or more of its total output value in a year) and any technologically advanced enterprise”. As discussed above, the reduction or exemption of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

g) **Exemption from local income tax** - Pursuant to Article 1(8) of the Tax Policy, a “foreign invested enterprise” that benefits from a “preferential policy of exemption or refunding of income tax granted by the state or the province” is also exempt from local income tax. As discussed above, the exemption of tax
payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

h) *Tax refunds for re-investing profits* - Pursuant to Article 1(11) of the Tax Policy, a foreign investor who reinvests his or her share of profits from a foreign-invested enterprise so as to increase his or her registered capital, or who invests the profits in “other foreign-funded enterprise with a duration of operation of no less than five years” is entitled to a refund of “40 percent of the already paid income tax for the amount of his reinvestment after an application is filed and approved by the taxation authorities”. If the reinvestment of profits pertains to the establishment or expansion of a technologically advanced enterprise or export-oriented enterprise, then the investor shall receive a refund for “the total income tax paid for the amount of the reinvestment”. As discussed above, the exemption or refund of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

i) *Exemption from income tax on foreign investor’s profits* - Pursuant to Article 1(12) of the Tax Policy, foreign investors are exempt from paying income tax on their share of profit earned from a foreign investment enterprise. As discussed above, the exemption of tax payments otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

j) *Urban property tax and licence taxes* - Pursuant to Article 3, foreign investment enterprises are exempt from paying urban property tax and licence taxes on
vehicles and ships for the first five years of the enterprise’s operation. In addition, “[a]ny foreign invested export-oriented enterprise, technologically advanced enterprise, and that engaged in the development of natural resources, energy saving, or the production of agriculture, forestry, animal husbandry and fishery shall be exempt from the urban property tax and the license tax for their vehicles and ships.” The exemption of tax payments or licencing fees otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available to specific enterprises that meet specific conditions and who are located within the province.

k) **Exemption from VAT and import duties** - Pursuant to Article 5 of the Tax Policy, “any equipment imported for an encouraged domestic project or a foreign-invested project shall, within the prescribed limit, be exempt from the tariff and the value-added tax for imported items.” The exemption of tax payments or import duties otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available with respect to specific goods that are imported by specific enterprises that are located within the province.

5. **Enterprises operating in New and High Technology Zones**

201. Pursuant to the Circular of the State Council Concerning the Approval of the National Development Zones for New and High Technology Industries and the Relevant Policies and Provisions, enterprises operating in National Development Zones for New and High Technology Industries are entitled to preferential tax treatment, including reduced income tax, income tax exemptions, tax incentives for exports, and an exemption from
construction tax. These policies provide a beneficial financial contribution to the recipient in the form of a reduced or exempt tax payments. The benefit is actionable because it is only available to qualifying enterprises. In addition, beneficial financial contributions contingent on exports are prohibited subsidies.

202. It is worth noting that Trina and Suntech were found to have received a countervailable subsidy by the DOC as their subsidiaries were high and new technology enterprises, and the DOC found that Trina had received a subsidy rate of 1.32 percent on this basis.  

6. Tax Preference Available to Companies that Operate at a Small Profit

203. In Certain Stainless Steel Sinks the CBSA determined that an exporter had previously received preferential income tax treatment under the Law of the People’s Republic of China on Enterprise Income Tax (2007) and that this treatment conferred an actionable subsidy upon the recipient. The Complainants request that the CBSA determine whether or not Chinese exporters of solar modules receive similar preferential tax treatment under this program or a similar program.

177 Attachment 44: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 201 (October 17, 2012); Attachment 43: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).
178 Attachment 47: Stainless Steel Sinks FD at 27.
7. Preferential Tax Policies for FIEs and Foreign Enterprises which have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment and Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose

204. In OCTG, the CBSA determined that at least one exporter received an actionable subsidy through a program created by the State Administration of Taxation to support technology innovation and attract foreign investment.\textsuperscript{179} The CBSA also determined that at least one exporter received benefits under a program created by the State Administration of Taxation to support domestic investment and encourage enterprises to upgrade their technology.\textsuperscript{180} The Complainants request that the CBSA determine whether or not Chinese producers and/or exporters of solar modules received similar preferential tax treatment under these two programs or similar programs.

8. Preferential Tax Policies for Enterprises operating in the Municipality of Chongqing

205. The Municipality of Chongqing, which contains several solar modules producers, including one of the largest Chinese producers Daqo New Energy Co., Ltd., has several preferential tax policies that confer actionable subsidies upon recipients.\textsuperscript{181} Other municipalities are likely to confer similar actionable subsidies on solar modules producers and exporters operating within their jurisdiction.

\textsuperscript{179} Attachment 21: OCTG FD at 37.
\textsuperscript{180} Attachment 21: OCTG FD at 38.
\textsuperscript{181} Attachment 68: Chongqing Municipal Government, “The Preferential Policies for Foreign Investment in Chongqing”.

Submitted by Complainants
9. Preferential Tax Policies for Enterprises operating in the City of Guangzhou

206. The City of Guangzhou has several preferential tax policies that confer actionable subsidies upon recipients.\textsuperscript{182}

a) \textit{Corporate income tax exemptions, reductions and credits}—Income derived from specific industrial activities is eligible for corporate income tax exemptions, income tax reductions and tax credits. Specifically, basic public infrastructure projects, energy and water conservation projects, and environmental protection activities are eligible for a tax holiday. High and new tech enterprises,\textsuperscript{183} agricultural, forestry, animal husbandry and fishery projects are all eligible for tax reductions. Income derived from manufacturing products that are in compliance with state industrial resource utilization policies is deductible for income tax purposes. A withholding tax exemption on funds provided to foreign governments and international financial organizations is also available. These benefits are actionable as they confer a beneficial financial contribution upon the recipient and are only available to specific industries operating within Guangzhou.

b) \textit{Export value added tax refunds}—Export VAT refunds are also available to “foreign invested productive enterprises” operating within the City of Guangzhou. Export VAT refunds are available to foreign invested productive enterprises that export products or goods produced using raw materials that would normally be subject to a VAT. This benefit is actionable as it confers a beneficial financial contribution upon the recipient and it is only available to foreign invested enterprises operating within the City of Guangzhou.

\textsuperscript{182} Attachment 69: Guangzhou International, “Main Items of Preferential Tax”.
\textsuperscript{183} The Complainants also note that in \textit{Aluminum Extrusions (US)}, the DOC made a preliminary determination that two producers of subject goods received benefits under a preferential tax program for FIEs recognized as high or new technology enterprises (Attachment 70: Aluminum Extrusions (US Preliminary), p. 54311-54312).
c) Urban real estate tax exemption—An exemption from urban real estate tax is available to foreign invested enterprises operating in Guangzhou. Urban real estate is exempted for 3 years from the date a building is completed or purchased by a foreign-invested enterprise. This benefit is actionable as is it confers a beneficial financial contribution upon the recipient and it is only available to foreign invested enterprises operating within the City of Guangzhou.

207. Other municipalities are likely to confer similar actionable subsidies on solar modules producers and exporters operating within their jurisdiction. Specifically, Guangzhou is located in Guangdong province, which is the site of numerous solar module manufacturers, including Aiko Solar, CSG PV Tech, Global Solar Energy Tech and Sunflower.

G. Relief from Duties and Taxes on Materials and Machinery

208. As discussed above, enterprises operating in numerous special economic zones, coastal development zones and other industrial areas are entitled to exemptions from import duties and taxes on equipment, machinery and other goods. As discussed below, enterprises operating in other regions of China may also be entitled to exemptions from import duties and taxes on equipment, machinery and other goods.

1. Duty free and tax free import of machinery and equipment imported into Yingkou coastal industrial bases

209. Pursuant to the “Policies for Liaoning (Yingkou) coastal industrial bases”, metallurgy enterprises operating in the Liaoning coastal industrial bases are entitled to a deduction of input taxes on the purchase of fixed assets. Domestic investment in machinery and equipment that uses foreign loans and that are “encouraged” are entitled to an exemption from import value-added tax and import duties. The Catalogue for the Guidance of

attachment 48: “Policies for Liaoning (Yingkou) coastal industrial bases”.
Foreign Investment Industries (Amended in 2007) lists both “multiple crystal silicon” and “manufacture of the equipment of New energy electricity-power: photovoltaic power” as an encouraged foreign investment industry.\(^{185}\)

210. The exemption of tax payments or import duties otherwise due to a government is a financial contribution that confers a benefit on the taxpayer. This benefit is actionable because it is only available with respect to specific goods that are imported by specific enterprises that are located within the coastal industrial bases. In addition, enterprises in other jurisdictions may receive similar subsidies.

2. Duty free import of machinery and equipment used in an “encouraged” industry.

211. It is reported that an enterprises operating in an industry that is listed as “encouraged” in the Foreign Investment Industrial Guidance Catalogue (2011) are exempt from paying customs duties on the import of equipment and technology, but that they must still pay the import VAT.\(^{186}\) An English version of the 2011 catalogue was not located. However, the Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007) lists “manufacture of the equipment of New energy electricity-power: photovoltaic power” as an encouraged foreign investment industry.\(^{187}\) To the best of the Complainants’ knowledge the status of “manufacture of the equipment of New energy electricity-power: photovoltaic power” as an encouraged industry has not changed and therefore all solar modules producers are entitled to the duty free import of technology and equipment. The exemption of customs confers a beneficial financial contribution on solar modules producers equal to the duty that would otherwise be imposed. The subsidy is actionable

\(^{185}\) Attachment 38: “Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007)”, Decree of the State Development and Reform Commission, the Ministry of Commerce of the People’s Republic of China No. 57.

\(^{186}\) Attachment 71: China Briefing, “China Announces Import Tax Treatment to ‘Encouraged’ Foreign-Invested Projects” (February 2, 2012).

because it is only available to those enterprises that operate in a specified “encouraged” industry.

212. In *Aluminum Extrusions*, the CBSA determined that qualifying enterprises benefited from an “Exemption of Tariff and Import VAT for Imported Technologies and Equipment” program and that this program conferred an actionable subsidy on the recipients. 188 Under the program, eligible enterprises may receive an exemption from VAT and tariffs on imported equipment and technologies. The DOC also made a preliminary determination that aluminum producers benefited from this program, and in the solar module investigation, Trina and Suntech were found to have received a countervailable benefit and were calculated a subsidy rate of 0.35 percent and 0.31 percent, respectively. 189

H. Goods/Services Provided by the Government at Less than Fair Market Value

213. There are different means by which the Chinese government likely provides material inputs (including polysilicon, aluminum, water, and power) to its cell producers for less than adequate remuneration.

1. Polysilicon at less than fair-market value

214. China’s polysilicon industry is state-owned. Polysilicon is the primary input for cell production, which in turn is a key input of solar modules. In addition, China currently maintains export restrictions on various grades of silicon, which ensures an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of

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188 Attachment 21: *OCTG FD* at 39.
polysilicon and providing raw material inputs to cell producers for less than adequate remuneration.\textsuperscript{190}

215. Specifically, in terms of export restrictions, the WTO Appellate Body recently found that China’s export quotas and taxes on silicon and silicon carbide are not permissible, and distort trade by lowering prices in China and increasing prices for the rest of the world.\textsuperscript{191} The WTO focused on four types of restraints imposed by China on the exportation of the raw materials, including (i) export duties; (ii) export quotas; (iii) export licensing; and (iv) minimum export price requirements. The Appellate Body confirmed that export duties and export quotas imposed by China on various raw materials, including silicon metal (a very pure form of which is used in the manufacture solar modules) are protectionist measures in breach of WTO rules and that China failed to justify them. The Appellate Body in particular upheld the finding that China has committed unconditionally in its Accession Protocol to the WTO not to levy export duties and that this commitment cannot be reduced by reverting to the general exceptions of the GATT.\textsuperscript{192}

216. China’s export restrictions artificially lower China’s domestic prices for the raw materials due to significant increases in domestic supply. This gives China’s domestic downstream industry significant competitive advantages and puts pressure on foreign producers to move their operations and technologies to China. While this specific WTO appeal now appears to have been resolved through China’s implementation of new tariffs and corrective measures, it is strongly indicative of the pervasiveness of China’s influence and restrictions on exports.

\textsuperscript{192}Attachment 73: China — Measures Related to the Exportation of Various Raw Materials, Summary of Key Findings, WT/DS394 (May 6, 2013), online source.
217. The DOC determined that Trina, among others, received benefits under this program, calculating a subsidy rate of approximately 1.14 percent for the company.\(^{193}\)

2. **Electricity for less than fair-market value**

218. The Complainants allege that Chinese solar modules producers benefit from preferential electricity rates. In 2010, preferential electricity rates for energy-intensive industries were cut.\(^{194}\) In 2012, they began to return. It is reported that in 2012 Yunnan province issued a preferential electricity rate for electricity-intense industries.\(^{195}\) It is also reported that the electricity rate in Yunnan is 32% below the rate in other regions of China, which strongly suggests that the rate is artificially low.\(^{196}\) In addition, there are other reports that various Chinese provinces have begun to subsidize electricity for the energy-intensive aluminum sector.\(^{197}\) Like aluminum, solar modules production is very energy-intensive and it is very possible that these provinces are also providing the solar modules industry with subsidized electricity. Lastly, as discussed above, several special economic areas provide preferential electricity rates.

219. Subsidized electricity provides a financial contribution to the recipient equal to the difference between the free-market electricity rate and the subsidized rate. This contribution provides the recipient with a benefit in that its production costs are lower than they would be in a free market. The subsidized rates are specific as they are only available to particular industries, enterprises in particular regions or both.


\(^{195}\) Attachment 75: China Scope Financial, “Yunnan introduces Preferential Electricity Tariff Policies” (September 24, 2012).

\(^{196}\) Attachment 76: Antaike, “Yunnan releases new electricity price”.

220. The DOC determined that Suntech and Trina received benefits under this program, calculating a subsidy rate of 0.52 and 0.50 percent for the company.\textsuperscript{198}

3. **Aluminum Extrusions for less than fair-market value**

221. The GOC operates a subsidy program to provide fabricated aluminum products, specifically aluminum extrusions, to downstream users for less than adequate remuneration.

222. In the CBSA’s Final Determination in *Aluminum Extrusions*, it held that Chinese aluminum sector is dominated by state-owned enterprises.\textsuperscript{199} The CBSA also determined that because of extensive state intervention in the Chinese aluminum industry, the GOC determined the price of aluminum extrusions and this price is not what it would be in a competitive market. 56 potential subsidy programs were investigated in 2008 and 15 of these subsidy programs were determined by the CBSA to have conferred benefits to the cooperative exporters. An additional six programs were identified at the initiation of the aluminum extrusions subsidy re-investigation in 2012.\textsuperscript{200}

223. Aluminum extrusions have therefore already been found to be provided at less than fair-market value and found to be subsidized by the GOC. The Complainants request that the CBSA investigate the scope of this input.

224. In addition, aluminum is used not only in module frame form (i.e., in extrusions form), but also as part of the photovoltaic metallization pastes used on the back sides of solar cells. Accordingly, the Complainants respectfully request that the CBSA explore the use

\textsuperscript{198} Attachment 44: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 201 (October 17, 2012); Attachment 43: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

\textsuperscript{199} Attachment 18: CBSA, Aluminum Extrusions (FD), Statement of Reasons (March 3, 2009) at 80-81.

\textsuperscript{200} Attachment 79: CBSA, Aluminum Extrusions (Expiry Review), Statement of Reasons (October 18, 2013) at 135.
and potential for the subsidization of aluminum in various forms, not only in extrusions form.

4. Solar Glass for less than fair-market value

225. Glass for use in solar modules is produced and sold by many state-owned enterprises ("SOEs") in China at subsidized rates.

226. Research and analysis demonstrate that glass used in the production of solar modules in China is produced by many SOEs, which receive extensive subsidies from the Chinese government.\textsuperscript{201} The majority of Solar Module producers in China purchase this input. As a direct result of the GOC’s policy to support glass producers, China's glass industry now "displays enormous excess capacity."\textsuperscript{202}

227. Chinese SOE producers of solar glass include: Luoyang Glass Company Limited, which is partly owned by China's State-Owned Assets Supervision and Administration Commission of the State Council; Beijing Glass Instrument Factory, and SOE; BOMEX (Yong Qing) Glass Co., Ltd., BOMEX Hua-Ke Glass Co., Ltd., BOMEX HuaGuang Glass Co., Ltd., BOMEX Hua-Xiang Glass Co., Ltd., and Kimble Bomex (Beijing) Glass Co., Ltd., all The BOMEX companies were founded by Beijing Glass Instrument Factory; China National Building Material Company Limited, an SOE; and Dongguan CSG Solar Glass Co., Ltd., indirectly owned by the GOC.

228. Subsidized glass provides a financial contribution to the recipient equal to the difference between the free-market costs rate and the subsidized costs. Chinese Solar Module

producers purchase the special glass from these producers for less than adequate remuneration and thereby receive a subsidy.

I. Reduction in land use fees

229. In *Aluminum Extrusions* the CBSA determined that the Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council provided at least one extruder with an exemption from land use fees and that this exemption conferred a countervailable benefit. The Complainants submit that this program may still confer actionable benefits and that solar modules producers may be entitled to access this benefit.

230. In *Certain Stainless Steel Sinks* the CBSA determined that an exporter had received actionable benefits through the preferential supply of land. The Complainants submit that this program may still confer actionable benefits and those solar modules producers may be entitled to access this benefit.

231. In *OCTG* the CBSA determined that an exporter had received actionable benefits through the refund of land transfer fees. The Complainants submit that this program may still confer actionable benefits and those solar modules producers may be entitled to access this benefit or similar benefits.

232. The DOC determined that Trina had received subsidies relating to the provision of land, calculating a subsidy rate of approximately 0.67 percent for the company.

204 Attachment 47: *Stainless Steel Sinks FD* at 28.
205 Attachment 21: *OCTG FD* at 47.
206 Attachment 44: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 201 (October 17, 2012); Attachment 43: Crystalline Silicon Photovoltaic Cells,
J. Sale of goods to State-Owned Enterprises – China’s Feed-In Tariff Program

233. In *Aluminum Extrusions (US)*, the US DOC determined that the sale of subject goods to the GOC for more than adequate remunerations constituted a financial contribution. To determine whether the sale of subject goods to state-owned firms conferred a benefit upon producers, the US DOC compared the prices producers’ charged to state-owned firms to the prices they charged to privately-owned firms for the same products (where such data was available).\(^{207}\) The US DOC determined that the sale of goods to state-owned enterprises for more than adequate remuneration would confer a benefit on producers.\(^{208}\)

234. Solar modules are used in the production of solar electricity. If China’s electricity industry operates under non-market conditions, and the major purchasers of solar modules destined for the electricity production industry are state-owned enterprises, then it is highly likely that solar modules producers are being subsidized through the sale of goods to state-owned enterprises at prices higher than what they would receive in the domestic market. As state-owned enterprises are paying a premium for solar modules, then solar modules producers receive a beneficial financial contribution equal to the premium.

235. Numerous Chinese Solar Producers admit that the vast majority of their sales depend on the GOC’s Feed-in Tariff (“**FIT**”) regime.\(^{209}\)

236. In July 2011, the GOC launched the unified pricing mechanism for on-grid solar power plants in China. Pursuant to this mechanism, the on-grid tariff for on-grid solar power plants either approved after July 1, 2011 or completed after December 31, 2011 was

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\(^{207}\) For companies that sold goods to government authorities but did not provide information on the sales, the DOC applied “Adverse Facts Available”.

\(^{208}\) Attachment 70: Aluminum Extrusions (US Determination)

RMB1.00 per kWh (excluding on-grid solar power plants located in Tibet which price their feed-in tariff at RMB1.15/kwhr (tax included)). For the on-grid solar power plants sponsored by central government subsidies, the desulphurized coal benchmark applies. On August 30, 2013, the GOC released new subsidy details for solar projects in China: transmission-grid-connected projects will receive a feed-in-tariff of RMB0.90 to RMB1.00 per kWh, whereas distribution-grid-connected projects will receive a premium of RMB0.42 per kWh in addition to the desulphurized coal benchmark price.\footnote{Attachment 25: Yingli Green Energy Holding Company Limited., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}

237. Furthermore, from October 1, 2013 to December 31, 2015, taxpayers which are selling electricity products produced themselves using solar energy are entitled to a 50% immediate refund.\footnote{Attachment 23: JinkoSolar Holding Co., Ltd., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}

238. Furthermore, under the GOC’s current regulatory framework, grid companies must purchase and dispatch all electricity generated by renewable energy producers within the coverage of their grids. Solar power stations with grid connection voltage of not more than 10 Kilovolts and installation capacity of not more than 6 MW are all allowed to apply for connection to the electricity grid, with the State Grid Corporation of China offering free connection service throughout the entire process. In case of PV power generation projects connected to public grids, grid companies are responsible for investment and construction of the connection projects and related modification of public grids, and for PV power generation projects connected to end users through the public grid, grid companies are responsible for investment and construction of public grids’ modification related to the connection.\footnote{Attachment 23: JinkoSolar Holding Co., Ltd., U.S. Securities and Exchange Commission Form 20-F, Registration of securities of foreign private issuers, December 31, 2013.}
239. JinkoSolar, one of the largest Chinese Solar Module producers, admits they benefit from this program. Canadian Solar, another of the largest Chinese Solar Module producers, states that “the release of the feed-in tariff in 2011 greatly stimulated the Chinese market”. As noted above, Canadian Solar does have production in Canada, though this production amounts to less than 15 percent of its overall global production.

K. Amount of subsidy - China

240. While information as to the value of subsidies received by producers of solar modules is not publicly available, the Complainants can show that the combination of direct and indirect subsidies in China result in an estimated subsidy rate of 39% (estimated as the amount by which export price of the subject goods is below their estimated cost of production), which is well over the de minimis requirement that exists for subsidies; in the case of China, over 2% of the export price.

<table>
<thead>
<tr>
<th></th>
<th>Chinese Average Cost (multi-crystalline) 215</th>
<th>Average Export Price (multi-crystalline) 216</th>
<th>Amount by which export price is below cost</th>
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<tr>
<td>Bloomberg Reports</td>
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<tr>
<td>(average of available monthly reports)</td>
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215 Confidential Attachment 13: Dumping and Subsidy Calculations.
216 Confidential Attachment 13: Dumping and Subsidy Calculations.
IV. Evidence of Injury and Threat of Injury

A. Background

241. The Canadian solar module industry is a relatively young industry that has persistently faced low-priced import competition from Chinese solar modules throughout its existence. While the Chinese import competition has been persistent, the nature of the competition has occurred against the backdrop of Ontario’s FIT program. The elimination of the domestic content requirements under Ontario’s FIT program in 2013 has fully exposed the Canadian industry to the effects of low-priced competition from China. As the remaining inventory of projects that include domestic content requirements winds down, the prospects for the Canadian industry in the face of low-priced competition from Subject Goods are dire.

242. The recent bankruptcy and closure of numerous domestic producers is a bellwether for the remaining Canadian producers. If unfair import competition from Subject Goods is not restrained, Canada will lose its solar module industry.

243. When the FIT program included domestic content requirements, competition between the Canadian industry and China occurred primarily outside Ontario FIT projects. In the non-FIT projects, Chinese modules dominated that market segment because of the very low prices Chinese exporters offered. Chinese exporters have been present in the Canadian market for several years and consistently offer pricing that is well below Canadian producer pricing, and generally below the cost of production. With the removal of the domestic content requirements, Chinese solar modules are now eligible for use in FIT 3.0 projects. As was the case with the non-FIT segment, Chinese solar modules are capturing a dominant market share at the expense of the Canadian industry.
244. The FIT Program was implemented by the Government of Ontario in 2009.\textsuperscript{217} It provides that entities producing electricity from renewable energy are paid a guaranteed price per kilowatt hour under long-term contracts. In exchange, electricity generation facilities utilizing wind power and solar power must comply with certain domestic content levels in the development and construction of facilities, with domestic content levels set to 50 percent. As a result, the FIT Program has been of significant benefit to Ontario-based solar module producers.

245. However, on August 16, 2013, the Ontario Minister of Energy directed the Ontario Power Authority to make changes to the FIT program, including to domestic content rules applicable to new contracts.\textsuperscript{218} The new directive aims to bring the FIT program toward compliance with the WTO Appellate Body ruling of May 6, 2013, which found that the FIT Program was inconsistent with Canada’s WTO obligations. Specifically, following the Ministerial direction, the minimum domestic content level was targeted for elimination.\textsuperscript{219} Further, in December 2013 the Government of Ontario introduced Bill 153, which eliminates the statutory requirement that Ontario’s FIT Program include domestic content. Bill 153 was subsequently incorporated into the provincial budget bill in the most recent session of Provincial Parliament and passed on July 24.

246. Accordingly, while the Canadian solar module industry was partially insulated from the effects of the dumped Subject Goods imports under the FIT Program, this program has been eliminated. This has resulted in a situation where the Canadian industry has been fully exposed to unfairly priced import competition from the enormous, state-sponsored Chinese solar module industry. There has already been a serious impact on the Canadian


domestic industry. The adverse consequences of dumped and subsidized price competition from China will only increase in the absence of the imposition of normal values. 220

247. Indeed, there are numerous examples of non-FIT Program opportunities where the Complainants have lost sales to Subject Goods during the POI. In addition, since the end of the domestic content requirements under the FIT Program, the Complainants have since lost significant sales and market share to the Subject Goods on FIT projects. 221

248. With the removal of the domestic content requirements, the domestic producers’ market share is expected to plummet in the face of competition with the Subject Goods. 222 The FIT Program’s domestic content requirements, in effect, provided the Complainants with some respite from the dumped and subsidized Subject Goods. Without it, the Complainants will be forced to compete with unfairly traded Subject Goods, with which they will be unable to compete, as is demonstrated by the recent closure of several former Canadian producers. 223

249. The import data actually masks and understates the significant influence that Chinese solar modules have had, and the even larger role Chinese solar modules will have going forward. Since the elimination of the domestic content requirements, Chinese solar modules have been dominating sales for the supply of solar modules for FIT 3.0 installations, as well as other solar module sales in Canada. These sales are not yet reflected in the import statistics because the orders have only been recently placed. There is a lag in time between the time solar modules are ordered and installed that can vary between six months to more than a year.

220 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
221 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario; Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk.
222 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
223 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
250. This situation is exacerbated by the fact that Chinese exporters are restricted from selling into the two largest export markets in the world, the European Union and United States. Chinese solar modules were found to have been dumped and subsidized in both of these markets and are presently subject to trade remedy restrictions in both of these large markets. These market restrictions increase the attractiveness of the Canadian market and make it a certainty that large volumes of low-priced Subject Goods will enter the Canadian market in the near term if a Canadian trade remedy is not imposed.

251. This situation is compounded by the fact that a major Chinese-owned manufacturer of solar modules has established a presence in Canada and has facilities in Canada to market and distribute Subject Goods. This company is Canadian Solar Inc., one of the world’s largest Chinese-owned and Chinese-based solar power companies (despite its name).

252. Certain Complainants have lost nearly [ ] of their sales in the residential (i.e. MicroFit) market since the lifting of the domestic content requirements. For example, [ ] estimates that its sales for the September to December 2012 period were [ ] in the residential market. These sales dropped to [ ] for the following period in 2013, after the domestic content requirement was lifted. [ ] also tracks its volume of quotes. From January to August 2013 [ ] quoted for [ ] worth of modules. In the subsequent months of September 2013 to June 2014 the value of quotes fell by more than [ ], to [ ], despite the spring months normally being the busiest for the company. These impacts are in respect of the MicroFIT only, and are expected to be compounded by the fact that the commercial and utility components of the FIT Program (i.e. FIT 3.1) have also seen the domestic content requirements disappear). 224

224 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
253. Cumulatively, the Complainants have shown evidence that they have already lost almost all their most important customers and millions of dollars of sales to Chinese exporters.\textsuperscript{225} This is especially significant in light of the fact that the domestic content requirements have only been lifted in the last few months, and only recently in respect of commercial and utility-scale installations. The effects of low-cost Chinese competition can also be reflected in the Complainants' Income Statements. Sales that Complainants are making are generally devoted to sales from Original Equipment Manufacturing (OEM) operations on behalf of foreign manufacturers that require domestic content. This is because the Complainants cannot compete with imported modules from China.\textsuperscript{226} While it would be much more profitable for the Complainants to produce and sell their own solar modules because the profit margins would be higher, this is not an option in an environment dominated by low-priced imports. This trend and practice has distorted to a certain extent the Complainant's costs of production by artificially showing lower costs.

254. For example, in 2013 the Complainants' sales revenue was $[ \quad ] for [ \quad ] MW of production, or $[ \quad ]/w.\textsuperscript{227} This resulted in a gross margin of $[ \quad ]$. In first half 2014, revenues were $[ \quad ]$ for [ \quad ] MW of production, or $[ \quad ]/w. There are two points to note here. First, although revenues [\quad ]. Second, the price per watt was [ \quad ]% lower in first half 2014 as compared to 2013. This is a dramatic decline, and it is worsening for second half 2014. At the gross margin level, the Complainant's gross margin was $[\quad]$ in first half 2014 a mere [\quad ]. If the first half 2014 gross margin were annualized, it

\textsuperscript{225} Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario; Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko; Confidential Attachment 114: Confidential Statement of Evidence of Mikael Niskanen; Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk

\textsuperscript{226} Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko

\textsuperscript{227} Confidential Attachment 84: Complainants' Income Statement, Costs and Production
would result in a gross margin of [ ], a decline of [ ]% as compared to 2013. To permit a reasonable amount of profit after GS&A and financial expenses this amount should have been significantly higher. Instead, the Complainants’ net income before taxes in first half 2014 was [ ].

255. Pricing of Chinese solar modules is below the domestic industry’s costs of production. The Complainants have submitted that Chinese solar modules are currently selling at approximately $0.64/W, landed in Canada. While the Complainants’ cost of production varies, $0.64/W is lower than their lowest possible cost of production: for example the Complainants have alleged that just to purchase raw materials to manufacture modules in Ontario costs approximately [ ], to which an additional [ ] needs to be added to the raw material cost to simply cover the labour and overhead.

256. According to Bloomberg industry publications, Chinese solar modules are in fact sold below even the Chinese manufacturers’ own costs of production (i.e. the build-up costs of production described above are higher than the prices obtained and presented by the Complainants).

257. As a result, since 2011 at least eight Canadian solar module producers have gone bankrupt or ceased operations. This includes Flextronics, Photowatt/ATS, Lumin, Centennial, Unconquered Sun, Magaum Solar, Day4Energy and Siliken.

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228 Confidential Attachment 84 Complainants’ Income Statement, Costs and Production
229 See for example: Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk; and Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko
230 Confidential Attachment 114: Confidential Statement of Evidence of Mikael Niskanen

Submitted by Complainants
B.  **Applicable Legal Standard—"Reasonable Indication"

Applicable standard for a preliminary injury inquiry - reasonable indication of injury

258. The President is required to cause an investigation to be initiated where the evidence in the Complaint discloses a "reasonable indication" of injury, retardation or threat of injury. Subsection 31(1) of SIMA provides that:

31. (1) The President shall cause an investigation to be initiated respecting the dumping or subsidizing of any goods and whether there is a reasonable indication that such dumping or subsidizing has caused injury or retardation or is threatening to cause injury, forthwith on the President’s own initiative or, subject to subsection (2), where the President receives a written complaint respecting the dumping or subsidizing of the goods, within thirty days after the date on which written notice is given by or on behalf of the President to the complainant that the complaint is properly documented, if the President is of the opinion that there is evidence

(a) that the goods have been dumped or subsidized; and

(b) that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury.

259. The "reasonable indication" standard is the same standard that the Canadian International Trade Tribunal (the "**Tribunal**" or "**CITT**") applies in the context of a preliminary injury under subsection 34(2) of SIMA:

The Tribunal shall, without delay after receipt by the Secretary under subparagraph (1)(a)(i) of a notice of an initiation of an investigation, make a preliminary inquiry (which need not include an oral hearing) into whether the evidence discloses a **reasonable indication** that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.\(^{232}\) [Emphasis added]

260. This legislative framework establishes two key points. First, the "reasonable indication" standard is a lower standard than is applied in a final injury inquiry. The reason for this is that prior to initiation of investigations by the CBSA and CITT, there is limited information available to complainants. Complainants do not have access to highly

\(^{232}\) *Special Import Measures Act*, R.S.C., 1985, c. S-15, s. 34(2) [SIMA].

Submitted by Complainants
relevant and important information regarding Chinese import competition for the obvious reason that much of this information is commercially confidential information that Chinese exporters and import competitors selling Chinese solar modules do not make publicly available. It is only in the context of dumping and subsidy investigations by CBSA and a final injury inquiry by the Tribunal that this information may be obtained in accordance with the powers conferred on CBSA and the Tribunal, and treated in accordance with the applicable confidentiality provisions.

261. Therefore, SIMA recognizes that at the complaint stage (and during a preliminary injury investigation by the Tribunal) that a reasonable indication of injury is all that is required, because the only information that can be included in a complaint is information that is reasonably available to the Complainants. All that is required is enough information to merit the conduct of a full investigation, where a much more detailed assessment of whether dumping, subsidization and injury are occurring.

262. Second, the information in a complaint must establish a reasonable indication of a) injury; b) threat of injury; or c) retardation. SIMA does not require that a complaint establish all three, any one of these three criteria meet the requirements for CBSA to initiate (and the CITT to commence a final injury inquiry). In this case, a Canadian solar module industry exists, so "retardation" is not a relevant factor, and the Complaint must demonstrate a reasonable indication of either injury or threat of injury.

263. In several recent preliminary injury inquiries, parties opposed have argued that the Tribunal has, through recent decisions, made the reasonable injury standard more onerous than was previously the case. The Complainants submit that this is not the case, and on a proper interpretation of the legislation and recent Tribunal jurisprudence, the reasonable indication standard has not changed, nor can it change without the SIMA being amended. This provision should also be interpreted in the context of the object and purpose of SIMA, which is to ensure that a remedy is available to Canadian industries that are injured by dumped or subsidized goods. Restricting access to full investigations by
adapting a more onerous interpretation of the “reasonable indication” test would be contrary to the object, purpose, and express text of SIMA.

264. In Certain Grain Corn, the Tribunal stated:

The preliminary injury evidentiary test of “reasonable indication” that the Tribunal is required to apply under the new legislation is the same test that the CCRA was required to apply under the former legislation. It is also the same test that the Tribunal applied whenever, under the former legislation, it was called upon from time to time by the CCRA, or one of the parties, to provide its “advice” on the question of injury at the preliminary stage of an investigation. Thus, although there has been a jurisdictional change, as well as certain procedural changes, the substantive evidentiary test to be applied in this preliminary injury inquiry remains that of a “reasonable indication”. Moreover, the threshold has always been interpreted by the Tribunal as implying a lower threshold than that required in arriving at a final determination of injury.233 [Emphasis added].

265. As discussed in Certain Grain Corn, the section 34 preliminary injury investigation evolved out of the preliminary injury reference system under the previous SIMA regime. Under the previous SIMA regime, the Tribunal did not conduct preliminary injury investigations; however, interested parties could refer to the Tribunal the question of whether or not the information before the Deputy Minister at the initiation stage “disclosed a reasonable indication that the dumping of the subject goods had caused, was causing or was likely to cause material injury to the production in Canada of like goods”.234 As set out in Certain Grain Corn, this “reasonable indication” test was continued under section 34 of the current SIMA. The Tribunal held that there is a reasonable indication that dumped and subsidized imports caused material injury where there was an “apparent correlation” between several of the injury indicators and the dumping or subsidization of subject goods.235 Further, the Tribunal qualified the causation element of the “reasonable indication” of injury standard by noting that “it is

233 Certain Grain Corn, PI-2000-001, Statement of Reasons (October 25, 2000) at 4-5.
234 Certain preformed fibreglass pipe insulation, RE-92-006 at 1.
235 Certain preformed fibreglass pipe insulation, RE-92-006 at 5; Bacteriological culture media, RE-95-003 at 5.
only through an inquiry that the Tribunal will be able to fully explore the causation element and satisfy itself that dumping of the subject imports is causing material injury”.

266. In the recent decision on preliminary injury in Certain Concrete Reinforcing Bar, the Tribunal expressed the view that “mere correlation” was not the appropriate test for causation, but rather that “the standard is whether there is a reasonable indication that the dumping and subsidizing of goods has, in and of itself, caused injury to a domestic industry”.

267. In the Complainants’ submission this standard nevertheless requires not that causation be established at this preliminary stage, but rather that there be a “reasonable indication” of causation. Put another way, actual causation and material injury need not be proved until a final inquiry. This approach, is also supported in the academic texts on Canadian trade remedy law.

268. In Trade Remedies in North America, the authors state “[…] the evidence should not be taken for granted, but should instead be probed to a certain extent to determine whether it tends to support the allegations of injury, retardation, or threat of injury, though not necessarily prove them” (emphasis added).

The authors point to the Tribunal’s statements under the old SIMA regime in Bacteriological culture media, and state further that it stands for the proposition that at a preliminary inquiry “the evidence need not be conclusive as it is only through a more thorough inquiry, with a public hearing, that it will be able to fully test the evidence”.

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236 Certain preformed fibreglass pipe insulation, RE-92-006 at 5; Bacteriological culture media, RE-95-003 at 5.
237 Certain Concrete Reinforcing Bar, PI-2014-001, Statement of Reasons (August 27, 2014) at para 95.
238 Attachment 123: Gregory W. Bowman, Nick Covelli, David A. Gantz, Ihm Ho Uhm, Trade Remedies in North America (Kluwer Law International: Netherlands, 2010) at 197.
239 Ibid.; Bacteriological culture media, RE-95-003 at 5.
269. Similarly, in *Canadian Trade Law: Practice and Procedure*, the author takes the view that the threshold for finding a reasonable indication of injury is low.\(^{240}\) The author notes that this is in part because the Tribunal’s preliminary inquiry decision is limited to untested evidence and allegations found in the Complaint, whereas its later finding is based on more detailed evidence gathered throughout the proceeding.\(^{241}\) Further, the evidence in the Complaint is necessarily limited to evidence that is available to the Complainants. The Complainants have no means of compelling exporters and importers to provide evidence that may also be supportive of a positive injury finding at this stage of the proceeding.

270. The Tribunal has recently re-confirmed in *Certain Hot-Rolled Plate* that the “reasonable indication” standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of SIMA.\(^{242}\) The evidence in question need not be “…conclusive, or probative on a balance of probabilities…”, although simple assertions are not sufficient and must be supported by relevant evidence.\(^{243}\)

271. In several recent preliminary injury decisions, the Tribunal has expressed the “reasonable indication” test as follows:

[The reasonable indication] test is passed where:

- the evidence is relevant, accurate and adequate; and
- in light of the evidence, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.\(^{244}\)

\(^{240}\) Attachment 124: Lawrence Herman, *Canadian Trade Law: Practice and Procedure*, at 2-1.

\(^{241}\) Ibid., at 2-1, 2-2

\(^{242}\) *Certain Hot-Rolled Plate*, PI-2013-003, Statement of Reasons (November 19, 2013) at para 21 [Plate VII PII].

\(^{243}\) Ibid.

272. The Complainants submit that the emphasis in the "reasonable indication" test should be as follows:

(1) the alleged injury or retardation or threat of injury is substantiated by evidence that is sufficient in the sense that it is relevant, accurate and adequate; and

(2) the evidence logically or rationally supports a reasonable inference that dumping has caused injury or retardation or is threatening to cause injury in the sense that the allegation stands up to a somewhat probing examination because of the evidence, even if the theory of the case might not seem convincing or compelling.

273. The sufficiency of evidence in a complaint should be assessed in the context of the requirements set out in the Special Import Measures Regulations, which, in the context of the assessment of injury or threat of injury, the information required is not all information that exists, but rather, the information that is reasonably available to the Complainants. Specifically, section 37 of the SIMR provides in relevant part:

37. For the purposes of subparagraph (b)(ii) of the definition "properly documented" in subsection 2(1) of the Act, the following information is prescribed:

... 

(f) such details as are reasonably available to the complainant regarding the evolution of the volume of imports of the allegedly dumped or subsidized goods; and

(g) such details as are reasonably available to the complainant regarding the effect of imports of the allegedly dumped or subsidized goods on the price of like goods in Canada.

274. The Complainants have spent a large amount of time and effort to collect and analyse all information that is reasonably available. This information more than adequately demonstrates that there is a reasonable indication of both past injury, as well as an imminent and clearly foreseeable threat of future injury.
C. **Solar Modules are a Commodity Product**

275. Solar modules are a commodity product sold primarily on the basis of price. The Canadian market is highly competitive with multiple suppliers of solar modules. Domestic and imported modules can be used interchangeably in the same applications.

276. Both Canadian and Chinese suppliers produce solar modules that meet the specifications of Canadian consumers. As a result, competition among suppliers is fundamentally based on price\(^{245}\) and relatively small differences in price can lead consumers to switch suppliers. Information about prevailing prices is publicly available through industry publications such as *Bloomberg New Energy Finance* and *Photon* which both survey suppliers and consumers as to the current prevailing price. Furthermore, consumers tend to be willing to reveal to suppliers the prices at which they are being offered material by competing suppliers. The combined effect of communications among buyers and sellers and the weekly publication of price data in periodicals ensure that price changes are quickly communicated throughout the market.

D. **Indicators of Injury**

1. **Volume of Dumped and Subsidized Goods**

277. Because of the lag in time between the time solar modules are sold and the time they are actually delivered to a customer, the import statistics do not provide the full picture of Canadian market dynamics in 2014. Further, there are certain challenges associated with the import and market data. Unlike the case for most other products, Statistics Canada does not record import data for solar modules on both a volume and value basis. Rather, the data is only collected on a value (i.e., dollar) basis. At a time when Subject Goods import pricing is declining, it is not possible to estimate the imports on a volume basis.

\(^{245}\) Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
The calculation of a market table for 2011 to 2013 was made possible by data collected by Cansia. However, such data is not yet available for 2014.

278. The import data shows that in 2011, Chinese exporters shipped 191 MW with a value of $270 million in 2011. These volumes were primarily destined for non-FIT related projects, as the FIT program was ramping up. In 2012 and 2013, Subject Goods imports decreased to 58 MW and 25 MW respectively, as the FIT program became established in the Canadian market. In first half 2014, Chinese imports remained lower than the otherwise would have been, as previously issued FIT contracts that still included domestic content requirements were being fulfilled.

279. On a new sales basis, the situation has changed drastically in 2014. With FIT 3.0 contracts being issued for which Chinese solar modules are eligible, Chinese exporters are dominating new sales in the Canadian market.

280. The import data shows that Chinese imports into the Canadian market are growing at a rapid rate since the elimination of domestic content requirements under Ontario’s FIT Program. For example, Chinese imports in the first half of 2014 have almost doubled when compared to the first half of 2013. Imports of Subject Goods went from 11 MW in first half 2013 to 21 MW in the first half of 2014.

281. In addition, because of the lag in time between order and delivery, the volumes of sales captured by Chinese exporters are not yet reflected in the import data. The actual sales of Subject Goods have not been imported and delivered to customs in Canada is much higher. The Statements of Evidence of Paolo Maccario, Martin Pochtaruk, Vadim Lyubchenko and Mikael Niskanen however demonstrate the drastic drop in sales by Canadian producers, sales which have been lost to Subject Goods.

282. Silfab’s statement of evidence provides examples of more than [ ] of lost sales volume since the elimination of the FIT domestic content requirements. For Heliene,
examples provided amount is [ ] of lost sales, which translates to approximately [ ]. Eclipsall has lost more than [ ] of lost sales and Solgate has experienced [ ] of lost sales.\textsuperscript{246} Collectively, the Complainants’ lost sales amount to [ ] MW. As can be evidenced in the Statements of Evidence, this amount does not include duplicate lost sales of the same bids or requests for proposals by multiple Complainants. Expressed in terms of the Complainants’ 2013 revenues, this lost business would represent [ ]\% of the Complainants entire 2013 sales of [ ] MW. It is also critical to note that the situation is worsening, as the earlier FIT contracts are being completed and the FIT 3.0 contracts, with no domestic content requirement, are being awarded.

283. The Complainants’ most important customers have specifically stated that they will be purchasing from Chinese competitors at much lower cost. These lost sales are therefore permanent going forward, unless the Subject Goods are required to be sold at fair prices. For example, as discussed below, Solgate lost its [ ] customer [ ].\textsuperscript{247} Heliene lost some of its most important customers, namely [ ], [ ], and [ ]. Silfab has lost its customer [ ]. Eclipsall has lost [ ] customers, namely [ ].

284. The Complainants have submitted significant examples of lost volumes to the Chinese producers. This lost volume has significantly hindered the Complainants’ ability to continue operations in a viable manner.

\textsuperscript{246} Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario; Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko; Confidential Attachment 114: Confidential Statement of Evidence of Mikael Niskanen; Confidential Attachment 1: Confidential Statement of Evidence of Martin Pohttaruk

\textsuperscript{247} Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko;
2. Lost sales and lost market share

285. The Complainants have lost significant sales in the Canadian market over the past 14 months.

286. As is noted above, the solar module industry is relatively new and still developing. As such, during the course of the proposed POI, the Complainants’ sales have risen in large part due to their recent establishment (all four companies are less than five years old) and the demand that was generated by FIT projects with domestic content requirements.

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<th>Sales in Canada (MW)</th>
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<tr>
<td></td>
<td>2011</td>
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<tr>
<td>Silfab</td>
<td>[</td>
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<tr>
<td>Heliene</td>
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<tr>
<td>Eclipsall</td>
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<td>Solgate</td>
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<tr>
<td>TOTAL</td>
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287. As can be seen, sales grew from 2011 to 2013, coinciding with the implementation of the Ontario government’s FIT Program and the domestic content requirements thereunder. Since the announcement that such domestic content rules will be eliminated, sales have begun to fall as the backlog of domestic content contracts works its way out of the system, and Subject Goods imports are expected to return to, and likely exceed, 2010 and 2011 levels, during which time Canadian sales volumes were significantly lower. While

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248 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
249 Attachment 82: Ontario Power Authority, Renewable Energy Ministerial Direction (June 12, 2013); Attachment 83: Ontario Power Authority, Renewable Energy Ministerial Direction (June 12, 2013)
there is still some quantity of solar modules under the FIT 2.0 issue (i.e. with domestic content) working its way through production, thereby keeping production in H1 2014 high, these sales and production will have been exhausted in second half of 2014.

288. Confidential Attachment 11 provides the apparent Canadian market. 250

289. As detailed above, the Complainants have lost numerous sales to Subject Goods. Specific examples of lost sales are described in the Confidential Statements of Evidence of Martin Pochtaruk, Paolo Maccario, Vadim Lyubchenko and Mikael Niskanen. 251 The examples provided in the statements of evidence combine to outline more than [ ] MW of lost sales by the Complainants in 2013 and 2014. At an estimated average value of $[ ]/W, 252 this amounts to a loss of income of $[ ] million.

290. For example, the Confidential Statement of Evidence of Martin Pochtaruk describes sales [

250 Confidential Attachment 11: Apparent Canadian market table.
251 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk; Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario; Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko; Confidential Attachment 114: Confidential Statement of Evidence of Mikael Niskanen.
252 See for example Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk, para 18 for use of $0.84/W as comparator.
291. This lost sale shows that the producers of Subject Goods are able to sell more than [ ] less than domestic producers, which is below cost and demonstrates that the Subject Goods have already entered the Canadian market since the elimination of the FIT Program’s domestic content requirement.\footnote{253}

292. The Confidential Statement of Evidence of Martin Pochtaruk also describes not just lost sales, but a total loss of a [ ]\footnote{254}

\footnote{253}{Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk}
\footnote{254}{Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk}
294. Additional evidence of lost sales to the Subject Goods is detailed in the Confidential Statement of Evidence of Martin Pochtaruk. For example, 

295. Even more recently, on September 16, 2014 Heliene received notice that it had lost an important sale to a Chinese competitor. The purchaser was [ ], which sought supply for a FIT 3.0 project (i.e. non domestic content. Heliene’s bid for the [ ] of 300W solar modules was [ ]. Heliene was informed that the competitor beat its price by [ ], by offering the same 300W modules at [ ]. This is an incredibly low bid and one that Heliene cannot match, as it is below its cost of production.  

296. The Confidential Statement of Evidence of Paolo Maccario provides numerous examples of lost sales to the Subject Goods and includes a Confidential Appendix which shows various email exchanges with [ ] In addition, Silfab has obtained information showing that it has [  

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255 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk  
256 Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk  
257 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario
297. As of January 1, 2014, Eclipsall has lost [ ] customers, [ ]. These customers were lost due to the removal of domestic content allowing the effects of low cost imported modules to be fully felt. These customers represented [ ] of revenue in 2013 for Eclipsall, or [ ] of business. These companies have ceased purchasing from Eclipsall because they are all purchasing Subject Goods at significantly reduced cost.259

298. Finally, Solgate has recently [ ]. Earlier this year, [ ], moved away from purchasing from the Solgate. Solgate previously had [ ]. Like other domestic producers, while Solgate was previously afforded protections from low-priced imports under Ontario’s FIT

258 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
259 Confidential Attachment 114 Confidential Statement of Evidence of Mikael Niskanen.
Program's domestic content requirement, since the removal of these requirements it is now competing directly with extremely low-priced imported modules.260

299. Solgate was informed by [ ] that Chinese modules are being offered at $0.64/W in the market, and that [ ], which they cannot do with Solgate's modules. Solgate currently is offering modules at approximately [ ]. As [ ], Solgate expects to [ ].261

3. Price Undercutting and Price Erosion

300. Subject Goods have captured sales volume and market share at the expense of the Canadian industry by aggressively undercutting the Canadian producer's pricing. Even with the expense of shipping Subject Goods long distances, solar modules imports from China are still priced substantially below the prices offered by the Canadian producer. What is particularly concerning is the fact that Chinese import pricing has continuously decreased over the past three years, and continues to fall despite the fact that Chinese prices are already below the cost of production.

301. According to the monthly Bloomberg New Energy Finance publications discussed above, the average cost of production for Chinese companies in 2014 has been consistently USD [ ], save and except some minor fluctuations due to the US dumping and countervailing duties and their effects on Chinese inventory levels of solar cells.262 This

260 Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko
261 Confidential Attachment 115: Confidential Statement of Evidence of Vadim Lyubchenko
so-called “solar module build-up price” accounts for the cost of all inputs, processing costs, selling, general & administrative expenses, depreciation and a reasonable amount for profit. It does not account for shipping and handling, or importer margins, nor does it account for Chinese VAT. As shown in this Complaint, the build-up price is consistent with Chinese solar module companies’ filings with the US SEC. When accounting for shipping and handling, importer margins and VAT, the Complainants estimate that the cost of the modules landed in Canada should be a minimum of USD $0.79-$0.82/W.\textsuperscript{263}

302. The Complainants have gathered a substantial volume of detailed commercial intelligence, including quotations from Chinese producers, demonstrating that the Subject Goods have been, and remain, by far the lowest priced product in the Canadian market and significantly below the cost of production of Chinese modules.

303. For example, on [\textsuperscript{265}]

However, these prices are well below the Complainants’ cost of production. In the first half of 2014 the Complainants collective average cost of goods sold was $[\_]\$/W. The Complainants total cost of production, including General, Selling and Administrative

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\textsuperscript{263} Confidential Attachment 13: Dumping and Subsidy Calculations.
\textsuperscript{264} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk
\textsuperscript{265} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk

Submitted by Complainants
expenses and Frinancial Expenses was $[ ]/W. It is simply not possible for the Canadian industry to compete with pricing that is over [ ] percent below this cost of production.

304. Mono-crystalline modules, which sell at a small premium to multi-crystalline modules, delivered and duty-paid at [ ] would very certainly be sold at either significant loss to the Chinese producer or would require the producer to receive very substantial subsidies simply to break-even.\textsuperscript{266}

305. The Confidential Statement of Evidence of Martin Pochtaruk provides additional evidence of price undercutting by the Subject Goods. For example, in [ Heliene had sales of [ ] in 2011, 2012, 2013 and 2014, respectively. This is, in fact, an example of lost sales, but also demonstrates the extent of the price undercutting by Chinese Subject Goods which is occurring in the Canadian market.

306.

\textsuperscript{266} Confidential Attachment 1: Confidential Statement of Evidence of Martin Pochtaruk
307. In addition, communications and feedback from and customers and potential customers demonstrate the extent to which the knowledge of low-priced foreign modules is known in the industry. For example, the Confidential Statement of Evidence of Paolo Maccario includes responses to Silfab’s quotes in which customers state that [267] For example, requests for a quote often specifically state that [268] Examples of such requests are included in a Confidential Appendix to the Confidential Statement of Evidence of Paolo Maccario.269 However, the Complainants have not imported any Subject Goods for resale [269]. To the extent that customers are [270], the Complainants believe that this is because the Complainants are known to [270].

308. The Confidential Statement of Evidence of Mikael Niskanen details allegations of price undercutting in which Eclipsall notes that it is unable to compete with companies that manufacture modules in the subject country. Eclipsall has obtained pricing for Chinese modules which shows that these modules are currently priced in the [270]. Just to purchase raw materials to manufacture modules in
Ontario costs Eclipsall [], to which an additional [] needs to be added to the raw material cost to simply cover the labour and overhead. Eclipsall []. That is, on the basis of price, Eclipsall has consistently found that there are no purchasers of solar modules which [] when measured against much less expensive imported modules from China.271

4. Financial Results

309. The injurious impact of dumped and subsidized Subject Goods is demonstrated in the Complainants’ financial results.

310. Confidential Attachment 84 is a complainant consolidated income statement for 2011 through first half 2014.272 As can be seen the Complainants generated yearly losses throughout the POI.

311. The Complainants’ net income before taxes in 2011, 2012 and 2013 was [], [], and [], respectively. The net income for each of the POI quarters was [] in Q3 2013, [] in Q4 2013, [] in Q1 2014 and [] in Q2 2014. Therefore, from a profitable Q4 2013 the Complainants have since incurred two significant quarterly losses in 2014, even as the remaining domestic content requirements are being finalized. Financial results are expected to deteriorate significantly in the next two quarters as new contracts have stagnated and customers have been lost to the Chinese manufacturers going forward.

312. Clearly the aggregate losses generated by the Canadian producers are not sustainable over the long-term.

271 Confidential Attachment 114: Confidential Statement of Evidence of Mikael Niskanen
272 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
313. In addition, the Complainants’ net sales volume has fallen in the last two quarters, from a high of [ ] MW in Q4 2013 as the domestic content goods were at their peak of production, down to [ ] MW in Q1 2014 to [ ] MW in Q2 2014, for a drop of [ ] percent over three quarters.

314. At the gross margin level, the Complainants’ realized a gross margin of $[ ] in second half 2013, as compared to $[ ] in first half 2014, a declined of [ ]%. These ‘above the line’ results demonstrate the changes that are occurring in the market, in which the Complainants’ prices are being forced down while their costs are being spread across lower sales volumes.

5. Reduced Production and Overcapacity

315. The Complainants have operated and continue to operate with [ ]. 273

316. Significant unused capacity is problematic and contributes to poor financial performance by increasing the cost of production per MW. The Complainants have been unable to fill this idle capacity because of the pervasive presence of dumped and subsidized imports from China.

317. In 2013, the Complainants had more than [ ]. 274

6. Employment

318. The continuous and increasing presence of dumped imports is threatening to have an impact on the Complainants’ employment. The continued results are not sustainable, and

273 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
274 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
will force the Complainants to reduce employment if unfairly trade imports continue to dominate the Canadian market.

319. With the large amount of Subject Goods imported in Canada, [ ] Complainants were forced to reduce the number of employees in the second half of 2013 from first half 2013 levels and again in Q1 2014. 275 Specifically, [ ] reduced total wages paid by [ ] percent, from [ ] in H1 2013 to [ ] in H1 2014. [ ] reduced total wages paid by [ ] percent, from [ ] in H1 2013 to [ ] in H1 2014. [ ] reduced total wages paid by [ ] percent, from [ ] in H1 2013 to [ ] in H1 2014.

320. In addition, during this timeframe, another domestic producer, Flextronic, closed its operations at the end of June 2014, eliminating 400 jobs. 276 [ ] did not reduce its employment during the POI, and [ ], though the Flextronic facility closure resulted in a significant net loss of employment to the domestic industry. 277

321. The Complainants submit that lay-offs will be necessary if low-priced imports continue.

322. The Complainants’ employment fluctuates significantly based on the number of large solar module projects which are obtained. The loss of a single large project could result in the lay-off of numerous employment crews. The employment figures provided by the Complainants refer to the number of employees that were employed at any point throughout the year, even if they were employed for a mere number of days. As such, a proper baseline comparison of full time equivalent individuals is obtained by dividing the number of hours worked by the number of working hours in the year (1960 hours). For

275 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
276 Attachment 88: Chris Simon, Flextronics eliminates local jobs, Company moving solar panel manufacturing to Mexico, York Region, April 29, 2014, online source.
277 Confidential Attachment 84: Complainants’ Income Statement, Costs and Production
example, Heliene has a core of some [ ] employees that have been with the company since 2010, while the remainder are [ ].

7. Numerous Recent Insolvencies and Closures of Canadian Solar Module Manufacturers

323. During the POI, numerous Canadian solar module manufacturers have shut down their operations due, in significant part, to competition from low-cost module producers. Centennial Global Technology Inc. closed operations in February 2014. Flextronic closed its operations recently, in June 2014.279

324. Since 2012 the following companies have also ceased operations/ declared bankruptcy: Photowatt (a division of ATS Automation), Lumin, Unconquered Sun, Magnum Solar, Day4Energy and Siliken.280

E. Threat of Injury

1. Introduction

325. The domestic industry is also threatened with material injury by reason of dumped and subsidized imports from China. The trends described in the previous section addressing past injury are not only likely to continue, but to increase to the point where Chinese solar modules dominate the Canadian market and drive the remaining Canadian producers out of business.

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279 Attachment 88: Chris Simon, Flextronics eliminates local jobs, Company moving solar panel manufacturing to Mexico, York Region, April 29, 2014, online source.
326. The trends described in the previous section addressing past injury demonstrate that an increasing volume of Subject Goods are likely to enter the Canadian market over the next 12 to 24 months. Furthermore, the pricing for the Subject Goods has been steadily decreasing over the past few years and has reached the point where it is below the cost of production of both Chinese and Canadian producers. Chinese exports to Canada are backed by substantial subsidies, massive capacity and excess capacity. Chinese producers face significant restrictions in major markets including the European Union and the United States. This is occurring against the backdrop of a Canadian industry that is in a fragile state and has already seen several producers cease production and go out of business. If these current trends continue, it is almost certain that the Canadian industry will see additional producers go bankrupt, and the likelihood that there is no Canadian industry in the foreseeable future.

327. The Complainants submit that the information in this Complaint very clearly demonstrates a threat of injury to the Canadian industry over the next 12 to 24 months.

328. For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the Special Import Measures Regulations prescribes the following factors at Rule 37.1(2):

(a) the nature of the subsidy in question and the effects it is likely to have on trade;

(b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods;

(c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase;

(d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
(e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods;

(f) inventories of the goods;

(g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;

(g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods;

(g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and

(h) any other factors that are relevant in the circumstances.

329. The Chinese solar module industry has enormous production capacity and excess capacity. China dominates the solar modules industry, producing more than 69 percent of all solar modules produced globally.281 As detailed below, China’s production capacity is 49.5 GW, more than 76 times Canada’s production capacity.

330. In addition, as at August 2014, Chinese producers of solar modules were cumulatively operating at 67 percent capacity. This means that China had excess capacity at that date of 16.355 GW. This excess capacity alone is more than 25 times the size of total Canadian capacity, and is 59 times greater than the total market consumption in Canada, estimated at 278 MW in 2013.282

331. Chinese exporters have a demonstrated interest in the Canadian market, and Subject Goods are already the low-priced leaders in the Canadian market. Chinese exporters have

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282 Confidential Attachment 11: Apparent Canadian Market.
existing relationships and distribution networks in Canada that will facilitate further expansion of market share at the expense of the Canadian industry.

332. Chinese exporters have a propensity to sell dumped and subsidized solar modules and are already subject to trade remedy restrictions in their two largest export markets in the world, the European Union and United States. The restrictions in these countries are such that Chinese producers will necessarily be attracted to the Canadian market, in increasing volumes. Given the massive capacity and excess capacity of the Chinese producers, coupled with import restrictions in the two largest export markets, the situation for the Canadian industry is dire.

333. Increasing imports at prices that substantially undersell domestic products will continue to depress or suppress domestic prices and to take market share from Canadian producer. The adverse volume and price effects of increasing dumped and subsidized imports will cause domestic industry to suffer further declines in production, capacity utilization, employment, market share, prices, operating income, return on investment, and other indicators of material injury.

2. **Subject Imports dominate the Canadian market**

334. Without SIMA duties in place, the Subject Goods will continue to take the majority of sales and market share in Canada at the expense of Canadian production, threatening to completely displace Canadian made solar modules, if dumped and subsidised imports continue.

335. Solar modules are sold as a commodity product primarily on the basis of price, and information about prevailing prices is publicly available through industry publications such as *Bloomberg New Energy Finance* and *Photon* which both survey suppliers and

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283 Confidential Attachment 27: Confidential Statement of Evidence of Paolo Maccario.
consumers as to the current prevailing price. On the basis of published information, Chinese solar modules are by far the low price leaders in the global market. *Bloomberg New Energy Finance* specifically provides its reports by supplying two categories of market information: Chinese prices and International prices, with Chinese prices being significantly below the International (i.e. rest-of-world) price.\(^{284}\) In essence, Chinese prices differ significantly from the norm in the other countries, including Canada. In addition, the statements of evidence submitted by the Complainants further demonstrate that the Chinese imports are priced significantly below domestic modules. For example, whereas Canadian producers are currently pricing solar modules between $0.84/W and $0.95/W (based on various module specifications) the information provided in this Complaint shows that Chinese modules are regularly sold in Canada at approximately $0.64/W, delivered.

336. As a result of the above, and in combination with the huge excess capacity in China, the Canadian market will continue to be increasingly dominated by the Subject Goods, and Canadian production is likely to be completely displaced in a matter of months.

3. **Nature of the Subsidies**

337. The GOC continues to provide significant grants and subsidies for specific companies. As detailed above, many of these subsidies are highly detailed in the Chinese producers' own filings with the United States Securities and Exchange Commission. The Government of China is integrally linked with the producers of solar modules and issues significant

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monetary grants to specific companies, so much so that solar producers report subsidies as a line item in their financial statements.\textsuperscript{285} For example JinkoSolar Holding Co., Ltd., a Chinese producer of Subject Goods, reports “Subsidy Income” as a line in its Consolidated Statements of Operations. In 2012 alone, the company reported “Subsidy Income” of 40,902,600 RMB.\textsuperscript{286} Other Chinese Solar Module producers acknowledge receipt of specific subsidies from the GOC.\textsuperscript{287}

338. The GOC provides preferential loans which are administered on preferential, non-commercial terms, at rates often significantly below what would otherwise be available in a market-economy or through an equivalent commercial loan. It provides multiple preferential tax programs including specific corporate income tax reductions and relief from duties and taxes. It also provides goods and inputs at less than fair market value, and formally mandates fixed generation quotas of electricity generated from solar modules, which is purchased by state-owned grids at significant premiums. In essence, the GOC determines the price and actual market size for solar modules through a combination of laws, regulations and formal policies. This includes the GOC’s released the 12th Five-Year Plan for the Solar Photovoltaic Industry and the 12th Five-Year Plan on Solar Power Development which requires that by 2015, the total installed capacity of distributed PV generation will achieve 10GW in Eastern and Central China by focusing on the establishment of distributed PV generation systems in such areas, and the total installed capacity of 10GW of grid-connected PV power plants. In January 1, 2013, the GOC issued the 12th Five-Year Plan for Energy Development, which demonstrated a commitment to solar energy. It provides that by the end of 2015, there should be 21 GW of installed solar power capacity.


339. The nature of the subsidies provided by the GOC in respect of solar modules are unsurpassed. These subsidies constitute significant support of the Chinese industry. These subsidies have had, and threaten to have, a significant impact on the trade of Chinese solar modules.

4. Significant Increase in the Rate of Subject Goods Imports

340. Imports from China have grown significantly in the last year. In the first six months of 2013, Chinese imports of solar modules amounted to $16.3 million. In the first half 2014, imports from China amounted to $30.8 million, an increase in Subject Goods of 89 percent year-over-year.288

341. In the first half of 2014, the Subject Goods accounted for 72 percent of all imports of solar modules. This is up from 42 percent in the first half of 2013. That is, as a proportion of all imports, the Subject Goods are increasing rapidly and Chinese solar modules are increasingly displacing competition from third countries.289 As is noted previously, because of the lag in time between order and delivery, the actual market penetration of Subject Goods in terms of sales that have not yet been imported is actually substantially higher. This has been reflected in the specific examples of lost sales and lost customers described in the Confidential Statements of Evidence of Martin Pochtaruk, Paolo Maccario, Vadim Lyubchenko and Mikael Niskanen.290 The examples provided in the statements of evidence combine to outline more than [ ] MW of lost sales by the Complainants in 2013 and 2014 and highlight the departure of numerous long-time customers and partners going forward, with these customers and partners moving to Chinese producers.

288 Confidential Attachment 11: Apparent Canadian Market.
289 Confidential Attachment 11: Apparent Canadian Market.
5. **Large and Rapidly Increasing Production Capacity in China**

342. Facilities in China have massive production capacity to produce the Subject Goods. China’s production capacity of solar modules as of March 2014 is 49.5 GW.\(^{291}\) This does not include planned capacity. By comparison, the entire annual Canadian production capacity of solar modules is 649 MW.

<table>
<thead>
<tr>
<th>Country</th>
<th>2014 Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada (^{292})</td>
<td>649</td>
</tr>
<tr>
<td>China</td>
<td>49,500</td>
</tr>
<tr>
<td>Chinese capacity as percentage of Canadian capacity</td>
<td>7,629 %</td>
</tr>
</tbody>
</table>

343. This table demonstrates the size of Chinese production capacity when compared to the size of the domestic Canadian market. As a result, a very small proportion of Chinese production can overwhelm the Canadian market, and indeed has already done so.

344. The following table provides production figures for the largest Chinese solar module producers, globally, for 2012 and 2013.\(^{293}\)

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\(^{291}\) Confidential Attachment 89: (SINGLE COPY): Bloomberg New Energy Finance Solar Spot Survey, 30 April 2014

\(^{292}\) Excluding production by Chinese-owned and operated company Canadian Solar Inc.

\(^{293}\) Confidential Attachment 96: (SINGLE COPY): Bloomberg New Energy Finance, PV Production 2013: An all-Asian Affair, Research Note, April 16, 2014
Table 6
Largest Chinese Manufacturers of Solar Modules

<table>
<thead>
<tr>
<th>Largest Chinese Manufacturers</th>
<th>2012 Shipments (MW)</th>
<th>2013 Shipments (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yingli Solar</td>
<td>2,297</td>
<td>3,200</td>
</tr>
<tr>
<td>Trina Solar</td>
<td>1,594</td>
<td>2,585</td>
</tr>
<tr>
<td>Canadian Solar</td>
<td>1,543</td>
<td>1,894</td>
</tr>
<tr>
<td>JA Solar</td>
<td>982</td>
<td>2,070</td>
</tr>
<tr>
<td>Jinko Solar</td>
<td>900</td>
<td>1,222</td>
</tr>
<tr>
<td>Hanwha Solar One</td>
<td>830</td>
<td>1,280</td>
</tr>
<tr>
<td><strong>Total shipments by largest Chinese manufacturers</strong></td>
<td><strong>8,146</strong></td>
<td><strong>12,251</strong></td>
</tr>
</tbody>
</table>

345. The above table illustrates that the largest Chinese manufacturers increased actual production by 4.105 GW, or 50.4 percent, between 2012 and 2013.

346. The above Chinese companies produce 15 times more solar modules than the entire Canadian domestic industry. More importantly, as the total market consumption in Canada was estimated at 278 MW in 2013, the above six Chinese companies effectively produce 44 times more solar modules than the entire apparent Canadian market.

347. The above table does not reflect the excess capacity at each of these manufacturers.

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294 Confidential Attachment 11: Apparent Canadian Market.
6. **Excess/Underutilized Production Capacity in China**

348. In addition, China has overwhelming underutilized solar module production capacity. For example, in August 2014 the average Chinese module capacity ratio was 67%.295 With 49.5 GW of total production capacity, this means that there is currently already 16.3 GW of excess capacity in China.

349. This excess capacity in Chinese production of solar modules is 25 times greater than the total Canadian market. This means that a mere four percent of China’s excess capacity could completely overtake and displace the entire domestic Canadian production.

<table>
<thead>
<tr>
<th>Country</th>
<th>2014 Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>China (total capacity)</td>
<td>49,500</td>
</tr>
<tr>
<td>China (underutilized capacity)</td>
<td>16,300</td>
</tr>
<tr>
<td>4 percent of China’s underutilized capacity</td>
<td>652</td>
</tr>
<tr>
<td>Total Canadian production capacity</td>
<td>649</td>
</tr>
</tbody>
</table>

**Table 7**

*Underutilized Chinese Capacity, 2014*

7. **High stocks of solar modules (Inventories)**

350. China has significant stocks of solar modules in inventory. At December 31, 2013, as disclosed in their respective U.S. Securities and Exchange Commission filings, Yingli Solar held approximately US$360 million in inventory, Trina Solar held US$245 million, Jinko Solar held US$118 million and Canadian Solar held US$231 million.296 While

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295 Confidential Attachment 117: (SINGLE COPY): Bloomberg New Energy Finance, August 2014 PV Shipment Index, A Tough Month for Asian Firms, August 29, 2014
these inventory levels are down significantly from the December 31, 2012 totals due to Chinese companies liquidating their inventories prior to the final implementation of trade remedies in Europe and the U.S., these stocks are nevertheless massive and could overwhelm the entire Canadian industry. In addition, the Complainants expect these inventories to expand in the coming months as the European and American markets become more prohibitive to Chinese imports due to the imposition/strengthening of trade remedies.

8. New Production Facilities and Imminent Increases in Production in China

351. Despite the significant overcapacity discussed above, the largest Chinese companies plan to increase their annual manufacturing capacity solar modules.

352. For example, Trina Solar Limited has disclosed its plans to increase its production of solar modules from 2,800 MW as of December 31, 2013 to 3,800 MW as of December 31, 2014. By itself, Trina Solar will therefore have added more production in one year than the entire Canadian industry currently produces.

353. Yingli Solar already completed an aggregate of 750 MW of capacity expansion projects in the third quarter of 2012, bringing its total annual production capacity to 2,450 MW. The company has now stated that its actual annual manufacturing capacity will reach approximately 4,000 MW for PV modules for 2014, representing an increase of 1,550 MW over 2013. In short, Yingli Solar alone will have added more than twice the entire domestic Canadian capacity in one year.

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354. Pursuant to the Conditions of Photovoltaic Production Industry, or the Photovoltaic Production Rule, promulgated by the GOC on September 16, 2013 and effective October 16, 2013, the minimum proportion of capital funds contributed by Chinese solar module producers for building, renovating and expanding PV production projects shall be 20%. The Photovoltaic Production Rule also provides, among other matters, requirements in relation to the production scale, cell efficiency, energy consumption and operational life span of various PV products. This strongly suggests that Chinese production capacity will continue to increase for the coming years, regardless of market saturation or overcapacity.

9. Market Conditions in China and Chinese producers’ dependence on export sales

355. Chinese producers of solar modules are dependent upon export sales for the vast majority of their sales. This information is publicly disclosed by the largest companies in their Form 20-F filings with the U.S. SEC. For example, JinkoSolar states in its most recent filing that “We sell the majority of our solar module sales in the overseas markets.” Hanwa SolarOne states that “Our export sales in 2011, 2012 and 2013 were RMB5,817.2 million, RMB3,295.9 million and RMB4,185.8 million (US$691.4 million), respectively, and accounted for 90.7%, 89.6% and 88.6% of our net revenues, respectively.” Yingli Solar states that “We have exported, and expect to continue to export, a substantial portion of our PV products outside of China.” Yingli’s demonstrates that it exports approximately 77% of its production of solar modules.

356. The above is highly indicative that Chinese producers export fully three quarters of their overall production.

357. China’s export dependence and current market conditions pose a significant threat to the Canadian solar module industry. Overcapacity and overproduction of solar modules was evident in 2011 and 2012, both in China and internationally, resulting in particularly low Chinese prices. From 2009 to 2012, prices fell by an average 40 percent per year; prices fell from more than $4 per watt in 2008 to about $1 per watt in January 2012, and to about $0.67 in 2013. 303

358. These low prices and demand have resulted in Chinese producers shutting down some production while the public authorities have begun introducing a variety of subsidies and preferential loans to encourage production. Canada is a very attractive market given that, as is discussed below, the US and EU markets are subject to trade remedy orders directed at Chinese solar module exports. In light of these circumstances, it is expected that Chinese producers will be looking to export markets with higher prices, such as Canada, as they weather the current global and domestic market conditions.

10. Foreign Trade Remedy Actions Threaten to Divert Exports to the Canadian Market

359. Solar module exports from China are subject to trade restrictions in the two largest developed markets. These restrictions increase the motivation for Chinese exporters to seek out other markets for their products, such as Canada. Equally, these findings demonstrate the propensity of Chinese producers to dump solar modules in their export markets.

TheDumpingandSubsidizationofsolarmodulesandlaminatesfromChina

TheUnitedStates

360. OnNovember8th,2011, theU.S. DepartmentofCommerce(“Commerce”)officiallylaunchedaninvestigationintoChineseSolarenergyproductsandsolarcells. Commercepublisheditsfinalanti-dumpingandcountervailingratesintheinvestigationsofcrystallinesiliconphotovoltaiccellsandmodulesfromChinaonOctober17,2012. Therear two major producers/exporters wereTrinaSolarEnergy, which received adumping margin of 18.32 percent and a countervailing rate of 15.97 percent, and the WuxiSuntechPowercompanies, which received adumping margin of 31.73 percent and a countervailing rate of 14.78 percent. Othere Chinese producers/exporters received an averaged dumping margin of 25.96 percent and an averaged countervailing rate of 15.24 percent. The “all others” rate was a final dumping rate of 249.96 percent. TheInternationalTradeCommission (“ITC”)confirmed that the dumping and countervailing constituted injury to the domestic industry.

361. However, a major issue before Commerce was whether cells produced in countries other thanChina, but which are assembled into modules inChina, were covered by the duties. Commerce determined that these “third-country” cells were not covered even when the cells were made from silicon wafers produced in China. Thus, the investigations had only limited impact, because Chinese producers simply outsourced the cell production, principally to Taiwan.

362. In order to prohibit Chinese solar module manufacturers from using solar cells made in Taiwan, a new complaint was brought before Commerce. On January 23, 2014 theU. S. DepartmentofCommerceannounced the initiation of additional antidumping duty investigations of imports of solar cells and solar modules from China and Taiwan, and a countervailing investigation of imports from China. This new investigation targets imported solar modules that contain solar cells manufactured in Taiwan and, in addition, seeks to expand the definition of subject goods to include Chinese or Taiwanese modules that are made from ingots, wafers or partially manufactured cells sourced from China or

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Taiwan. A preliminary determination on dumping duties against China and Taiwan were made on July 7, 2014, and preliminary determinations on countervailing duties against China were made June 3, 2014. Findings of injury could occur in late 2014 for countervailing duties and in early 2015 for anti-dumping duties.\(^{304}\)

**The European Union**

363. Pursuant to ECC Regulation No. 1238/2013, the EU council imposed definitive antidumping duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) from the People’s Republic of China on December 2, 2013. Countervailing duties were also imposed on the same day.\(^{305}\) Cooperative producers received an average level of duties of 47.7 percent. The “all others” rate was 64.9 percent.

364. The EU simultaneously confirmed a previously accepted undertaking with Chinese solar module exporters. The undertaking confirms that nearly 75 percent of Chinese solar module exports the EU are not subject to the anti-dumping or countervailing duties. The offer of a price and volume undertaking, submitted by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products on behalf of China’s solar module exporters came effect on August 6, 2013. The solar modules undertaking sets a

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305 Attachment 103: EU Regulation No 1239/2013 imposing a definitive countervailing duty on Crystalline Silicon Photovoltaic Modules and Key Components (i.e. Cells) originating in or consigned from the People’s Republic of China, 2 December 2013; Attachment 104: EU Regulation No 1238/2013 imposing a definitive anti-dumping duty on Crystalline Silicon Photovoltaic Modules and Key Components (i.e. Cells) originating in or consigned from the People’s Republic of China, 2 December 2013.
minimum price of EUR0.56/W of solar modules. The minimum price applies to the first 7 GW of capacity sold in the EU. Beyond that level, duties will be applicable. The undertaking is in place until the end of 2015. ³⁰⁶ Price adjustments are possible and as of April 2014 the minimum price was EUR0.53/W. ³⁰⁷

**Australia**

365. Earlier this year, Australia’s Anti-Dumping Commission initiated an investigation into crystalline silicon photovoltaic modules or panels. Similarly to this Complaint, the product definition excludes cells and wafers of the type used in PV modules or panels; as well as solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries; and PV products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s). ³⁰⁸

366. Despite the undertaking in place in the E.U., restrictions imposed by the U.S. and E.U. explain the heavy dependence that Chinese exports have on the Canadian market.

**India**

367. On May 23, 2014, India’s Directorate General of Anti-dumping and Allied Duties (“Directorate”) announced its recommendation that anti-dumping duties be imposed on “solar cells whether or not assembled partially or fully in modules or panels or on glass or some other suitable substrates, originating in or exported from Malaysia, China, Chinese

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³⁰⁶ Attachment 105: Commission Decision of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People’s Republic of China, 2013/423/EU (August 2, 2013).
Taipei and USA”.309 The Directorate recommended imposing duties ranging from US $0.11 per watt for U.S. goods, to $0.81 per watt for Chinese goods.310

368. These significant restrictions in four major export markets increase the likelihood that Chinese producers will be attracted to the Canadian market.

11. The Domestic Industry is Vulnerable to Unfairly Traded Imports

369. The weakened condition of the domestic industry makes it especially vulnerable to material injury from dumped and subsidized imports.

370. As previously noted, solar modules are a fungible commodity product that is sold largely on the basis of price. The prices of imported Chinese material has declined even further in 2013 and early 2014. The prospects for 2014 and 2015 for the Complainants are bleak.

371. There are significant Canadian needs for solar modules. The Complainants are efficient suppliers with a geographic advantage over their Chinese competitors, yet remain unable to obtain sales at a price above the cost of production. If Chinese producers were required to sell their product at fair prices, the Complainants submit that there is no question that they would be a competitive, viable and preferable alternative for Canadian customers.

372. Finally, the Subject Goods are entering the Canadian market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods. Indeed, the Complainants have

309 Attachment 107: Rakesh Kumar Kubde, Commerce Ministry proposes antidumping duty on solar cells from US, China, Indian Power Sector, May 23, 2014, online source.
submitted numerous examples of customers and long-term partners who have moved away from purchasing from the Complainants.

373. The Subject Goods are often sold in the Canadian market at prices below the Complainants' cost of production. As such, the Complainants are unable to compete with the Subject Goods and cannot further lower their prices nor raise them to more profitable operating margins. Because the Complainants are unable to further reduce their prices due to the significantly lower price of the Subject Goods, they submit that remaining clients and customers will likely be forced to follow suit and also purchase Subject Goods in order to compete with those installers and end-purchasers who have transitioned to purchasing from Chinese suppliers.

12. Conclusion

374. Based on the information presented in this Complaint, the Complainants submit that Subject Goods imported from China are being dumped and subsidized, and that such dumping and subsidization is causing and threatening to cause injury to the domestic industry producing Like Goods.

375. The Complainants therefore request that the President initiate investigations into the injurious impact of the dumping and subsidization of Subject Goods.
All of which is respectfully submitted,

October 1, 2014

[Signature]

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Counsel to Complainants
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EU Regulation No 1238/2013 imposing a definitive anti-dumping duty on Crystalline Silicon Photovoltaic Modules and Key Components (i.e. Cells) originating in or consigned from the People’s Republic of China, 2 December 2013

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