EXAMPLES OF SUBSIDIES GRANTED TO CHINESE SOLAR INDUSTRY
-SHORT EXCERPT OF THE ANTI-SUBSIDY COMPLAINT-

(…)

EVIDENCE OF COUNTERVAILABLE SUBSIDIES IN CHINA

The Complainants have collected evidence of countervailable subsidies granted to CSPM, CSPC and/or CSPW producers in China which was reasonably available to them. However, the Complainants request that the Commission fully investigate not only each of the mentioned subsidy programmes, but any other countervailable subsidy programmes from which Chinese exporting producers may be obtaining benefits.

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Policy Loans

The government of China directly subsidizes its solar PV industry through preferential loans and directed credit. In fact, "State-owned banks are flooding the [solar] industry with loans at considerably lower interest rates than available in Europe or the United States."

These subsidies are granted pursuant to China´s numerous government policies intended to develop China´s clean energy industries, particularly the solar PV industry. Government-directed credit and financing play a major role in enabling Chinese producers to manufacture panels and their key components in huge quantities, and to sell their products at prices far below what they would be selling absent significant government support.

The provision of preferential financing is possible because Chinas banking system is dominated by state policy banks and state-owned commercial banks. Traditionally, these banks have made loans based on political directives from the central or provincial governments, in particular the 5-Year Plan, rather than creditworthiness or other market-based factors. These "policy loans" have generally gone to SOEs and to industries favored by the government, which include the solar industry, on preferential, non-commercial terms.

A very recent example at the provincial level is the issuance by the government of Jiangsu Province, where some of the largest producers of the product concerned are located, of a *Position Statement regarding the Promotion of New Technologies and Products, Suzhengfa [2012] No. 96*. That policy statement expressly speaks of the strengthening of financial support for "new technologies and products" which includes the product concerned :

The government agencies shall convene banks and enterprises periodically at different levels and via different forms. Agencies shall direct financial institutions to increase credit and lending to enterprises for promoting new technologies and products. Agencies shall encourage insurance companies to develop new products to insure enterprises in promoting new technologies and products. Agencies shall also develop policies for subsidizing premiums for technology insurance. Agencies shall further encourage new enterprises that own self developed IP rights or self developed new technologies and products to diversify market risk through insurance.

The Chinese government is subsidising its producers of the product concerned through the provision of preferential loans and directed credit at massive and unprecedented levels. In 2010 and 2011, according to one market analyst, loans and credit provided by state-owned Chinese banks to Chinese producers of the product concerned totaled nearly USD 41 billion. The list of these Chinese producers that have received preferential loans and credit from the Chinese government in recent years is long. Jinko Solar received a massive loan of USD 7.6 billion from the Bank of China. Trina Solar and JA Solar each received a USD 4.4 billion loan from China Development Bank. Hanwa SolarOne received USD 1 billion from the Bank of China, and another USD 885 million from the Bank of Shanghai. China Sunergy received USD 160 million from the China Development Bank, and Daqo New Energy received USD 154 million from the Bank of China.

In 2009, the China Development Bank granted a five-year credit line to LDK Solar for an astounding USD 9.1 billion. Additionally, in April 2011, Suntech signed an agreement with China Development Bank that gives the company access to up to USD 7.33 billion per year. Chinese producer Yingli Green Energy Holding Co. ("Yingli") received a USD 5.6 billion line of credit from the state-owned China Development Bank. In fact, about 20 percent of the money that Yingli is borrowing for a capacity expansion at its solar manufacturing plants is being provided by the China Development Bank.

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Export Credit Subsidy Programmes

Chinese export credit financing and insurance is channeled through three organizations: the China Development Bank, China´s Eximbank and Sinosure. To further support the export of products listed in the *Catalogue of Chinese High-Tech Products for Export*, which includes products in the solar energy sector, the Export-Import Bank of China provides export-contingent loans at preferential rates. In 2010 alone, the new medium-and long-term official export credits from China amounted to USD 45 billion.

While Complainants do not have access to detailed information regarding the terms upon which the China Export-Import Bank provides financing, many recent reports indicate that these loans are highly concessional. A study of 12 infrastructure projects supported by China´s Export-Import Bank found interest rates between 2 and 4 percent, with terms ranging from 10 to 20 years, and grace periods from 3 to 7 years.
Japan´s Bank for International Cooperation found that Chinese exports for infrastructure projects received non-interest loans from the Export-Import Bank of China, with repayments terms between 20 and 30 years, and grace period of 10 to 15 years.
A 2010 Washington Post investigation confirmed that such loans continue to be available with interest rates of less than one percent and terms beyond 20 years. Further, in 2010, the U.S. Export-Import Bank concluded that "[m]ost of the terms and conditions of [the China Export-Import Bank´s] financing did and do not fit within the OECD guidelines."

China´s Export-Import Bank provides assistance to exporters through a variety of mechanisms, including an export seller´s credit. Capital for the export seller´s credit "comes from fiscal allocation of the Chinese government," and its purpose is to lend "strong government support in line with relevant national, industrial, foreign trade, financial, and fiscal policies." The Export-Import Bank of China´s website provides that the credit is meant to "support the export of Chinese products and improve their competitiveness in the international market." In addition, it describes the export seller´s credit as “a loan with large amount, long maturity, and preferential interest rate.”

The export seller´s credit is available to products listed in the *Catalogue of Chinese High-Tech Products for Export*, the *Export List of High- and New-Tech Products* and/or on the *List of High and New-Tech Products*. As mentioned above, each of these lists includes products in the solar energy sector. To qualify for this credit, an exporter must have achieved USD 3 million in annual exports of listed products. The majority of credit provided is in the form of direct loans disbursed to exporters, with newly signed credit agreements totaling RMB 224 billion in 2009. Loans for new- and high-tech products accounted for nearly a third of all loans disbursed to exporters that year. In 2010, the Chinese Export-Import Bank provided RMB 47.291 billion in export seller´s credits to new-and high-tech products, which again accounted for over 30 percent of the bank´s total export seller ´s credit disbursements.

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Subsidies for Development of “Famous Brands” and “China World Top Brands”

<u>Central Government</u>

The *Famous Brands* and *China World Top Brands* programmes provide “grants, loans, and other incentives to enterprises in China, apparently in part to implement an industrial policy of promoting the development of global Chinese brand names, and to increase sales of Chinese-branded and other Chinese merchandise around the world.”

The USDOC found that famous brand awards provide countervailable subsidies in *China Citric Acid* and in *China Aluminum Extrusions*.

Publicly available information indicates that Chinese producers of the product concerned have received benefits under this programme. For example, products of Suntech and LDK Solar have “famous brand names.” Similarly, Hengdian Group DMEGC Magnetics produces merchandise that has been designated as “Chinese Famous Product” by the government‟s General Administration of Quality Supervision, Inspection and Quarantine.

This programme provides a direct financial contribution, as moneys disbursed under this programme are direct transfers of funds. It confers a benefit to recipients since the grants and other funds provided by the GOC pursuant to these programmes allow Chinese producers of the product concerned to increase exports and lower their costs of producing and selling the subject merchandise. It provides a benefit equal to the amount of the grant. The programme is specific because the grants provided under these programmes are contingent on export activity, as stated also by the USDOC in *China Aluminum Extrusions*.

<u>Provincial and local governments</u>

In addition to the central government, a number of “sub-central” (i.e., provincial and local) governments in China have promulgated various policies to implement the goals of the *Famous Export Brands* and *Top Brands* programmes.

These sub-central programmes provide additional financial support to companies with products designated as famous brands. Several Chinese provinces have their own famous brand programmes under which Chinese producers of the product concerned likely received benefits. For example, Jiangxi Province has a government programme to support *Famous Export Brands*. In April 2007, Jiangxi Province implemented a measure entitled the *Support and Cultivation of Famous Export Brands in Jiangxi Province, Special Commissioner's Office* in Shanghai (19 April 2007). Both Suntech and LDK Solar, Chinese producers of the product concerned with products designated as “famous brands,” are located in Jiangxi Province. Jiangsu Province is yet another province that has it own programme to support Famous Export Brands,130 implementing its *Notice Regarding Selection of 2007-2008 ―Jiangsu Province Export Brands for Focused Cultivation and Development,‖ Suwaijingmaomao* [2007] No. 122 in 2007. Several Chinese CSPM producers are located in Jiangsu Province, including Suntech Power, Trina Solar, and Jiasheng Photovoltaic Tech. Accordingly, to the extent these companies are also designated as producing famous brands, they likely received benefits under this programme. Funds disbursed under this programme constitute financial contributions, as they are direct transfers of funds.

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Income Tax Reduction for Export-Oriented FIEs

According to China´s 2006 WTO subsidies notification, an FIE may continue to pay half of its applicable income tax rate following the expiration of the “Two Free/Three Half Programme” if exports constitute 70 percent of the company‟s sales.

Moreover, export-oriented enterprises in specially designated zones already eligible to pay half the standard income tax rate may receive a further rate reduction through this programme.

As noted above, a number of Chinese producers of the product concerned qualify as FIEs. Accordingly, to the extent that these FIEs satisfy the requisite export levels, they likely benefitted from this programme. Many if not most Chinese producers of the product concerned are heavily export-oriented by virtue of the simple fact that domestic production is around 10 times the level of domestic consumption.

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Preferential Tax Programmes for FIEs Recognized as High or New Technology Enterprises

The GOC also provides preferential tax benefits to enterprises with foreign investment that are recognized as “high” or “new” technology enterprises or are established in “high” or “new” technology industrial development zones. China has identified new-energy and efficient energy-saving technology as falling within the scope of high and new technologies. Under this programme, such FIEs are entitled to a reduced income tax rate of 15 percent in comparison with the nationwide corporate income tax of 25%. Additionally, high or new technology enterprises are eligible for additional tax preferences administered by the governments of the development zones themselves. This programme has been in effect since 1991, with the aim of encouraging “high and new technology industrial development and enhance the technology progress.”

A number of producers of the product concerned have been designated as having high or new technology and likely received benefits pursuant to this subsidy programme during the period of investigation, notwithstanding changes to China´s tax regime. For example, according to LDK Solar´s 2010 Annual Report, Jiangxi LDK Solar was recognized as a “High and New Technology Enterprise” and benefited from a reduced income tax rate of 15 percent.

Trina Solar Ltd.'s 2011 Annual Report states that in September 2008, its Chinese subsidiary, Trina China, obtained the High and New Technology Enterprise Certificate with a valid term of three years, entitling it to a preferential income tax rate of 15 percent in 2008, 2009 and 2010 Eoplly New Energy Technology Co., Ltd. is also identified as a high and new technology enterprise, which enables the company to benefit from a preferential tax rate. Suntech´s Chinese subsidiaries, Wuxi Suntech and Luoyang Suntech Power Co., Ltd., are “qualified as a „high and new technology enterprise‟ under the definition stipulation in the *Administrative Measures for the Determination of High and New Technology Enterprises* effective as of January 1, 2008,” thereby entitling them to a 15 percent preferential income tax rate. Moreover, China Sunergy is similarly qualified as a high and new technology enterprise.

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Value Added Tax (“VAT”) Exemptions for Use of Imported Equipment

The GOC administers a programme that offers VAT and import tariff rebates on imported equipment, that confers a countervailable subsidy on Chinese producers of the product concerned. This programme is available to certain FIEs and domestic enterprises, and its purpose is to encourage foreign investment and introduce foreign advanced technology equipment and industry technology upgrades.

The GOC´s *Catalogue for the Guidance of Industrial Structure Adjustment*, which replaced the *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*, identifies solar power as an encouraged industry. Information reasonably available to the Complainants indicates that a number of producers of the product concerned have purchased imported equipment and thus would qualify for benefits under this programme. For example, LDK Solar‟s 2010 Annual Report states explicitly that it relies on imported equipment. Aiko Solar advertises that “key equipment [for its] production line is imported from Japan.” Given that many Chinese producers of the product concerned likely use imported equipment in their production, they have likely received benefits under this programme. This programme constitutes a financial contribution because it is revenue forgone by the GOC. The programme is *de facto* specific because the actual recipients of the subsidy are limited in number. Indeed, to qualify for the programme domestic enterprises must have government-approved projects which are in line with the current “*Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State*”, and must be approved by the State Council, NDRC, or another agency to which authority has been delegated.

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