

## EXHIBIT A

### **The Department of Commerce and the International Trade Commission Issued Findings That Defendants Dumped Solar Panels in the United States Market At Prices Below Fair Value That Injured American Producers.**

#### **Background of the Petition**

1) In the fall of 2011, the ITC and Commerce initiated investigations (collectively, the “U.S. Government Action”) into allegations that Chinese manufacturers, including Defendants, received illegal subsidies and illegally dumped solar panels on the United States market, which injured United States manufacturers, including ECD.<sup>1</sup>

2) The ITC and Commerce employ standardized procedures when investigating these types of claims. For example, the ITC forms a team of experts to advise the ITC Commissioners. In the U.S. Government Action, these experts included a senior investigator, a supervisory investigator, an industry analyst, two economists, an accountant, attorney, and statistician.

3) These experts drafted questionnaires seeking information from foreign producers, such as Defendants, on subjects ranging from general questions about the company’s operations in its home market and in the United States to detail regarding the company’s capacity, production, shipments within the home market, exports to the United States and other foreign markets, and inventory. Other questionnaires seek similar information from domestic producers, importers, and purchasers of the subject merchandise. Commerce similarly relies upon questionnaires seeking information such as the corporate structure and business practices of the respondents and the quantity and volume of sales in the United States and foreign markets.

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<sup>1</sup> Under the statutory framework and relevant case law, the ITC determines whether there was injury to United States industry and Commerce determines whether dumping or subsidies have occurred. Commerce is also charged with imposing the antidumping or countervailing duty orders.

4) Both Commerce and the ITC hold hearings on the subject petition. The ITC hears live argument and witness testimony in what is described by the ITC as “a forum for fact finding.” At these hearings, the Commissioners can ask questions of the ITC’s experts and the witnesses, and it is not unusual for these questions and answers to account for a majority of the hearing.

5) In the U.S. Government Action, there were two such hearings; one on November 8, 2011, when senior executives from all three companies testified. All three Defendants were represented by counsel. The Defendants also submitted briefs and provided oral argument at the hearing in defense of their business practices. There was a second hearing on October 3, 2012, again attended by Defendants’ top executives and counsel.

6) Each Defendant voluntarily thrust itself into the U.S. Government Action by requesting to be considered a voluntary respondent, although the proceeding went forward focused on the two largest producers/exports (by aggregate value), Suntech and Trina.<sup>2</sup>

**Commerce Issues Ruling that Defendants Illegally Dumped Products on the United States Market.**

7) Based on its investigation, Commerce found that Defendants and other Chinese manufacturers of solar panels dumped product in the United States market at less than fair value. Commerce assigned to each of Suntech, Trina, and Yingli a weighted average dumping margin of up to 31%. Commerce initially made a preliminary determination of these findings on May 25, 2012. After five additional months of study and analysis, this determination was affirmed and made final on October 10, 2012.

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<sup>2</sup> Yingli requested to be considered as a voluntary respondent, responded to questionnaires, was represented by counsel, and provided live testimony, just like Suntech and Trina.

8) “On January 27, 2012, the Department [of Commerce] determined that *critical circumstances* exist with respect to imports of solar cells from the PRC for [Defendants], finding that there have been *massive imports* of subject merchandise over a relatively short period of time by these entities.” In other words, Commerce determined that knowing an adverse ruling was forthcoming, Defendants intentionally doubled down on their scheme and further flooded the United States market before the tariffs were to take effect.

Commerce entered an adverse decision against Defendants, finding that: (i) Defendants sold their solar panels in the United States for less than a fair price; and (ii) the United States industry was materially injured as a result.

9) Commerce also determined a “dumping margin”—which is the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

10) Commerce imposed weighted average dumping margins to Suntech, Trina, and Yingli of 31.73%, 18.32%, and 25.96% respectively. Critically, this means that Defendants would have sold their panels in their home market of China (if China were a market economy) for up to 31% *more* than the price at which they dumped those panels in the United States market. While these are significant dumping margins, because the China government “withheld information and impeded the investigation,” the real injury is undoubtedly even more acute.

11) The trans-Pacific shipping costs of these large and weighty solar panels were not included in Commerce’s calculation, making this finding even more profound.

12) Commerce also determined that massive countervailing subsidies are being illegally provided to Defendants. Specifically, Commerce found that Defendants’ costs were being “subsidized” and that the United States market was materially injured as a result thereof.

In its final determination, issued October 10, 2012, Commerce determined that illegal subsidies accounted for 14.78%, 15.97%, and 15.24% of Suntech, Trina, and Yingli's respective prices.

13) Based on the parties' submissions, Commerce determined, among other things, that Defendants had obtained: (i) polysilicon at less than adequate remuneration, (ii) preferential loans at below-market rates, (iii) land for less than adequate remuneration, and (iv) other countervailing subsidies.

14) The illegal provision of these subsidies has distorted Defendants' financial statements. As one leading analyst explained, Defendants' reported margins are buoyed by subsidized equipment, raw materials, and free loans.

15) When these illegal subsidies are accounted for, as they must be, Defendants' 2011 and 2012 losses are even more dramatic.

16) Finally, the preferential loans received by Defendants were not available to American solar companies. Thus, while the United States has various initiatives for encouraging the solar industry, those programs are available to both domestic and foreign solar manufacturers, including Defendants.<sup>3</sup> Ironically, United States taxpayer dollars that go towards funding solar energy initiatives have been used by Defendants to drive ECD and other American companies out of business.

**The ITC finds that United States industry has been harmed by Defendants' dumping.**

17) In addition to the Commerce findings, on December 16, 2011, the ITC also determined that the solar manufacturing industry in the United States has been materially injured

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<sup>3</sup> As an example, Suntech received millions of dollars from the United States government.

by reason of the subsidized Chinese solar panels that are sold at less than fair value in the United States.

18) After examination of the record, the ITC found that Defendants' products were sold at lower prices than the comparable domestic product in 18 of 19 quarterly comparisons.<sup>4</sup>

19) The ITC also noted several instances "where the domestic industry lost sales to low-priced imports." Additionally, the ITC reported that fifteen of the sixteen domestic producers "have reduced their prices of [solar] cells and panels in order to compete with prices of [Chinese] imports since January 2008."

20) The ITC's decision specifically found that the "*pervasive underselling*" by Defendants allowed them "to gain market share at the expense of the domestic industry."

21) Ultimately, the ITC rejected Defendants' arguments that the decline in prices was attributable to the decline in polysilicon prices.<sup>5</sup> Instead, the ITC found that the total cost of raw materials increased, and Defendants' irrationally low prices were the result of unlawful dumping.

22) In addition, the ITC found that the value of imported solar panels from China rose 411.7% from 2008 to 2010, far outpacing the increase in American consumption for that same period.

23) Because of the sales lost to Defendants' predation and the subsequent loss of market share, the ITC found that "there is a reasonable indication that an industry in the United

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<sup>4</sup> The exact data has been redacted in the publicly available versions of these decisions.

<sup>5</sup> The plunging prices charged by Defendants in the United States market are not attributable to discrepancies in labor costs, either. The National Renewable Energy Laboratory estimates that Chinese producers have an inherent cost advantage of no greater than 1% compared to United States producers. This is more than offset by their cost disadvantage of 5% when shipping costs are included. THE NEW YORK TIMES reported that the chief executive of Nature Elements Capital, a Chinese clean energy investment company based in Beijing, attributes the low cost of Chinese products not to inexpensive labor in China, but rather to free or subsidized land from local governments, extensive tax breaks, and other state assistance.

States is materially injured by reason of allegedly dumped and subsidized imports of [solar] cells and panels from China.”

24) On November 30, 2012, the ITC Commissioners, at the conclusion of their thirteen month investigation, transmitted their final determination to Commerce. These Commissioners have over 110 combined years of experience in international trade law, ranging from drafting trade legislation to prosecuting and defending these cases in private and government legal practice to advising Commerce and the ITC on such trade disputes. All six Commissioners voted against Defendants.

25) As described by the ITC:

The United States International Trade Commission (USITC) today determined that a U.S. industry is materially injured by reason of imports of crystalline silicon photovoltaic cells and modules from China that the U.S. Department of Commerce (Commerce) has determined are subsidized and sold in the United States at less than fair value. All six Commissioners voted in the affirmative.

26) In a recent decision by the European Commission it concluded just the same: “The simple question we have been asked to examine is whether Chinese companies are dumping solar panels which end up being sold at lower price than it costs to produce them in the first place. The answer is simple: Yes . . . .”