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VIA ELECTRONIC FILING (EDIS) AND HAND DELIVERY

The Hon. Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Re: Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products), Inv. No. TA-201-75 (Safeguard) Injury Phase

Dear Secretary Barton:

On behalf of the R Street Institute—a pragmatic free-market think tank headquartered in Washington, D.C.—I write to register our opinion about the remedy phase of the International Trade Commission's (ITC) investigation in the above-captioned case.

While we respectfully disagree with the ITC's initial injury determination, we believe the relief requested by the petitioners, Suniva Inc. (Suniva) and SolarWorld AG (SolarWorld), would have devastating consequences on domestic employment and clean-energy deployment. Accordingly, we urge the ITC to tailor its proposed remedies narrowly.

LEGAL REQUIREMENTS OF SECTION 201 PROPOSED SAFEGUARD REMEDIES

Now that the ITC has determined that increased imports of crystalline silicon photovoltaic (CSPV) cells are causing injury or threat of injury to the domestic industry, it has relatively narrow options in proposing remedies. Specifically, the ITC can recommend either trade restrictions in the form of tariffs, quotas, tariff-rate quotas, among other options, or it can recommend adjustment measures. In fashioning its proposal, the ITC must consider the potential adverse consequences of its proposed remedy.[1] In light of the two remedies the ITC can recommend to President Donald Trump, we urge the commission adopt adjustment measures and avoid trade restrictions.

[1] 19 U.S.C. § 2252(f)(2)(G)

ECONOMIC CONSEQUENCES OF TRADE RESTRICTIONS

The domestic solar industry is growing considerably. Solar production is up twentyfold from 2010 to today and the broader domestic industry added more than 50,000 jobs in 2016. In recent years, demand for solar cells and modules has grown considerably.[2] [3] Likewise, despite being down slightly from 2016, the 2017-2022 projections for future solar deployment and the overall trend for the domestic solar industry is overwhelmingly positive.[4]

After the ITC's initial injury determination, SolarWorld announced it would hire back up to 200 former employees. However, it's important to note that this is a tiny fraction of the more than 260,000 Americans employed in the solar industry at large. Many of these jobs would be in jeopardy if the ITC imposes severe trade restrictions.

If the ITC's proposed remedy accepts the petitioners' suggested tariffs and minimum price floors, it is projected that the price of solar products in the United States would double, which would cause a significant contraction in domestic solar deployment and undo much of this recent success.

PROVIDE ADJUSTMENT ASSISTANCE, NOT TRADE RESTRICTIONS

Given the extreme consequences for the broader solar market if significant trade restrictions are imposed, the ITC should look to possible adjustment-assistance options. First, the ITC could propose trade adjustment assistance (TAA). TAA can provide displaced workers with grants to receive training for new careers, career counseling and direct financial assistance.

Likewise, as has been documented in the case, the petitioners did not compete in the fastest-growing segment of the solar market – the large-scale utility market. As a consequence, utilities had to search abroad for the solar products they needed to meet demand. The ITC has the power to recommend that the U.S. Commerce Department provide technical assistance to the petitioners so they have the capability of competing in the fast-growing utility segment of the solar market. Providing the petitioners with technical expertise to help them compete in this segment would be much wiser than imposing restrictions on those competitors who did recognize a shift in the market and met demand.

EXEMPT FROM PROPOSED REMEDY IMPORTS FROM COUNTRIES WITH WHICH U.S. HAS FREE TRADE AGREEMENTS

As required by statute, the ITC's initial injury determination evaluated whether imports from various countries with which the United States has free trade agreements (FTAs) contributed to the surge of imports harming the domestic industry. Under the relevant statute, the ITC is not required to

[2] U.S. Solar Market Insight Q2 2017, at 58-59.
[3] Department of Energy, SunShot Solar Industry Update, p. 77
[4] U.S. Solar Market Insight Q2 2017, at 59.

recommend the remedy be applied to all countries covered by an affirmative injury finding. Indeed, the domestic safeguard statute and our commitments under the World Trade Organization's Agreement on Safeguards permit the ITC to recommend exempting from its final proposed remedy imports from countries with which the United States has FTAs. The ITC should utilize this authority in this case.

In this case, the ITC found that imports from Mexico "account for a substantial share of total imports and contribute importantly to the serious injury caused by imports," but did not find the same for Canada, our other North American Free Trade Agreement (NAFTA) partner. Likewise, the ITC found that imports from South Korea, with which we have an FTA (KORUS), are causing injury to the domestic industry.

An underlying purpose of our FTAs and their implementing legislation is to treat products from the partner countries as equivalent to our own products. Imposing tariffs or other forms of trade import restrictions on our FTA partner countries undermines the very basis of the FTAs. Likewise, punishing imported products from countries with which we have FTAs would cause unnecessary international economic discord with valuable allies. Not only would trade-restrictive measures harm the solar industry at large, Mexico and South Korea would likely immediately retaliate against American exports, as they are permitted to under the terms of NAFTA and KORUS, respectively. Our commitments in NAFTA and KORUS are unlike Article 8.3 of the WTO's Agreement on Safeguards, which requires countries to wait three years before imposing retaliation. This could have devastating consequences for the broader economy and drag nonsolar sectors into this dispute.

Given the ITC's wide latitude to exempt from the proposed remedy the application of trade-restrictive measures to our FTA partners, it should do so in this case.

CONCLUSION

For the aforementioned reasons, R Street urges the ITC to recommend trade adjustment measures and avoid trade restrictions, particularly with respect to imported solar products from countries with which the United States has FTAs.

Respectfully submitted,

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