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VIA ELECTRONIC FILING

The Hon. Robert Lighthizer
United States Trade Representative
The Office of the United States Trade Representative
600 17th St. NW
Washington, D.C. 20006

Re: Potential Action: Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products)

On behalf of the R Street Institute, a pragmatic free-market think tank headquartered in Washington, D.C., I write to register our opposition to the relief suggested by the International Trade Commission (ITC) – tariffs up to 35 percent – in the above-captioned investigation. If imposed by President Trump, restrictions on imported solar cells would have disastrous consequences for the economy as well as the environment. Instead, the president should provide trade adjustment measures to the petitioners or narrowly tailor the remedy by exempting imports from countries with which we have free trade agreements (FTAs).

Adjustment Assistance Measures, Not Import Restrictions, Are Appropriate

Placing import restrictions – tariffs, tariff-rate quotas, price floors, etc. – would be inappropriate in the above-captioned case for a myriad of reasons. The better alternative is to provide adjustment assistance to the petitioners or exempt imports from countries with which we have FTAs from any final remedy.

R Street believes the president should implement trade adjustment assistance (TAA) measures rather than burdening the broader solar industry with tariffs. TAA can provide displaced workers with grants to receive training for new careers, career counseling and direct financial assistance. Potential tariffs, on the other hand, will destroy far more American jobs than would be saved at the two petitioners' companies.

Another potential adjustment measure for the president to consider is to provide direct technical expertise. The president has the power to direct the U.S. Commerce Department to provide technical assistance to the petitioners so they have the capability to compete in the fast-growing utility segment of the solar market. As has been documented in the case, the petitioners did not compete in the largest 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. Providing the petitioners with technical expertise to help them compete in this segment would be much wiser than imposing restrictions on the entire industry, including competitors who did recognize a shift in the market and met demand.

If President Trump favors enacting trade restrictions, he should exempt imports from countries with which we have free trade agreements (FTAs). Under the relevant statute, the president is not required to 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 (WTO) 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's initial injury determination evaluated whether imports from various countries with which the United States has FTAs contributed to the surge of imports harming the domestic solar industry. But 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 economic discord with valuable allies. Mexico and South Korea would likely immediately retaliate against American exports, as they are permitted to under the terms of the North American Free Trade Agreement (NAFTA) and the United States-Korea Free Trade Agreement (KORUS), respectively.[1] This could have devastating consequences for the broader economy and drag non-solar sectors into this dispute.

Given the president's wide latitude to exempt from the proposed remedy the application of trade-restrictive measures to our FTA partners, he should do so in this case if import restrictions are ultimately imposed.

The Short- and Long- Term Effects of the ITC's Recommended Course of Action

If the ITC's import restrictions go into effect, there would several negative consequences, including a challenge at the World Trade Organization (WTO), damage to a growing domestic industry and harm to the environment from a slowdown in clean energy deployment.

First, the United States will face a challenge at the WTO and likely lose. Notably, the United States has not prevailed in any challenge to its safeguard measures since the creation of the WTO in 1994. This is partially explained by an inconsistency between domestic statutes and our international obligations. To find injury to a domestic industry under our safeguard statute, the ITC is required only to consider the factors codified in the Trade Act of 1974. However, our international obligations impose an additional requirement beyond the baseline established domestically.

Article XIX of the General Agreement on Tariffs and Trade (GATT) sets forth the requirements for when a country may apply safeguard measures. One such requirement states that an increase in imports must have resulted from "unforeseen circumstances." GATT's Article XIX was incorporated into the WTO's Agreement on Safeguards. Though not explicitly mentioned in the Agreement on Safeguards, the WTO's Appellate Body has interpreted the Agreement to include GATT's "unforeseen circumstances"

[1] Unlike Article 8.3 of the WTO's Agreement on Safeguards, which requires countries to wait three years before imposing retaliation, our commitments under NAFTA and KORUS do not include a waiting period.

requirement, most recently in the U.S. steel case in 2002.[2] In that case, the WTO found the Bush administration's steel tariffs to violate international law. The tariffs were eventually withdrawn, but not before Americans lost an estimated 200,000 jobs and nearly $4 billion wages.[3] In light of this additional requirement, it is highly unlikely a safeguard measure restricting solar imports will withstand WTO scrutiny.

The increase in solar imports was not unforeseen. As demand for solar increased, so did capacity and production, leading to an increase in imports. This outcome was fully anticipated as a result of technological innovations. In fact, it is a natural consequence of market economics. Likewise, the largest segment of the solar market is in large-scale utility projects. As mentioned, the two petitioners in this case do not provide solar products for utility projects and thus domestic companies who do had to turn elsewhere to meet demand. This was entirely predictable and the petitioners should not benefit from their own inability to meet demand.

Second, import restrictions on solar products will significantly damage a growing industry. Today's U.S. solar industry is booming, albeit with too many government subsidies. Its electricity generation has seen a twentyfold increase since 2010 and the industry added more than 50,000 jobs in 2016. Solar has also experienced a sharp cost decline, with photovoltaic costs falling more than 50 percent since 2011. Moreover, policymakers have already predicated the negotiated phase-down of domestic subsidies on continued declines. Artificially upending the solar industry at this stage would create calls to ramp up domestic subsidies, further entrenching a subsidy regime that this administration should instead be trying to unwind.

Finally, import restrictions on solar would also be a disaster for clean energy deployment. An abrupt increase in costs would shock the investment community, rendering some planned projects economically inefficient overnight. Costs would escalate rapidly as the domestic supply chain readjusts. After it does, the shift would stunt long-term solar deployment, as investment would shift to alternative technologies. Costs to consumers would escalate substantially, especially in states with solar procurement requirements. In fact, it was recently reported that a $100 million solar farm in Fort Stockton, Texas, which does not even have procurement requirements, has been put on hold pending the outcome of this case.[4]

Notwithstanding such short-term pain, solar tariffs or other import restrictions would undermine the long-term vision of a low-cost, subsidy-free clean energy future. This vision requires a predictable and stable investment climate to drive innovation. Tariffs and other import restrictions have a history of stifling innovation, and applying them in this context would disrupt the solar industry during a critical phase of economic and policy development.

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[2] Panel Report, *US – Steel Safeguard*, WTO Doc. WT/DS248/R ¶ 10.140 (adopted July 11, 2003).
[3] Dr. Joseph Francois & Laura M. Baughman, Trade P'ship Worldwide, LLC, The Unintended Consequences of U.S. Steel Import Tariffs: A Quantification of the Impact During 2002, 15 (Feb. 7, 2003), http://www.tradepartnership.com/pdf_files/2002jobstudy.pdf/.
[4] Jeff Mosier, *$100 Million Solar Project on Hold as Trump Administration Threatens Tariffs*, Dallas News, Nov. 9, 2017, https://www.dallasnews.com/business/energy/2017/11/09/100-million-texas-solar-project-hold-trump-administration-threatens-tariff/.

Conclusion

For the foregoing reasons, R Street respectfully urges USTR and President Trump to avoid import restrictions in this case. Policymakers have adequate remedies at their disposal that could redress the petitioners' injuries without drastically upending a growing market, curbing clean energy deployment, and inviting litigation and potential retaliation against American exports.

Respectfully submitted,

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R Street Institute