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May 5, 2022

Secretary Gina M. Raimondo
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders (87 FR 19071-19072)*

Dear Secretary Raimondo,

On behalf of the American Council on Renewable Energy (ACORE), I am writing to describe our concerns with the Department of Commerce (Commerce) decision to initiate country-wide circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on solar cells and modules from China, as published in the above-cited Federal Register notice.

ACORE is a 501(c)(3) national nonprofit organization that unites finance, policy and technology to accelerate the transition to a renewable energy economy. ACORE member companies hold more than \$25 trillion in assets and, in 2021, more than 90 percent of the booming utility-scale U.S. renewable growth was financed, developed, owned or contracted for by ACORE members. These businesses have already been dramatically and negatively impacted by Commerce's tariff circumvention inquiry, as explained in these comments.

As noted in a recent letter from 22 Senators,¹ Commerce's circumvention inquiry is causing massive disruption within the renewable sector, including significant project delays, cancellations and layoffs that will inevitably lead to increased electricity costs for American families at a time when the cost of living is already sky high. A setback of this magnitude also undermines the Biden administration's own clean energy goals, making it all but impossible to achieve the emission reductions scientists say are necessary to avoid the worst impacts of climate change.

Despite these significant adverse impacts, Commerce's decision to initiate this inquiry relies only on the complaint of one company – Auxin Solar Inc. (Auxin), a U.S.

¹ See <https://acore.org/letter-from-20-senators-urging-president-biden-make-an-expedited-preliminary-determination-in-commerce-inquiry/>

manufacturer of solar modules. A recent investigation of Auxin by Canary Media,² demonstrates how insignificant a role this company plays within a large industry. This company, Auxin, is reported to have 35 employees, annual revenues of \$9.7 million and 150 megawatts of annual manufacturing capacity. It is located in a rundown industrial area with limited evidence of daily manufacturing activity and, according to a recent reporter who visited the site, a loading dock overgrown with weeds. By contrast, domestic solar development is a \$10 billion, 20-gigawatt industry.

As explained in this letter, Commerce has provided inadequate substantiation of the initiation of this inquiry. Below I describe the specific the flaws in Commerce's reasoning in its decision to initiate this inquiry. First, I want to provide several examples of the overwhelming evidence of the harms already being inflicted on the deployment of solar energy essential for meeting the Biden Administration's stated decarbonization goals.

As a result of the immense cost uncertainty unleashed by this decision, we are already seeing a dramatic and immediate decrease in the investment in and development of solar energy in the United States. Businesses are unable to make financial decisions concerning investment in new solar projects when the costs are unknowable -- and could more than double without notice. The decision also has an immediate impact on the availability of new solar modules in the U.S., with global suppliers predictably choosing to ship their solar products to other nations where there is not the same risk of punitive tariffs. In a recent survey of over 700 companies, the Solar Energy Industries Association (SEIA)³ found that over 80 percent of companies that purchase or use photovoltaic modules have been told expected shipments were cancelled or delayed. Similarly, more than two-thirds of the ACORE survey respondents report that 80 percent or more of their solar installations are at risk. Over 80 percent of domestic manufacturers, the group the Commerce Department action was supposedly intended to benefit, expect severe or devastating impacts as they lose access to key solar components. Half of the companies responding to the SEIA survey report that 70 percent or more of their workforce is now at risk.

Justification for the Initiation of the Inquiry

To find that imports completed in a third country fall within the scope of an AD/CVD order, Commerce must show the imports meet all five criteria in 19 U.S.C. § 1677j(b)(1). For the initiation of an inquiry, the determination concerns whether the Auxin petition meets all five legal criteria. It is however clear that the case falls short on two key counts: 1) whether the process of assembly or completion in the third country is "minor" or "insignificant", and 2) whether the petition passes the "appropriateness" test for expanding an existing AD/CVD order.

These comments focus on the discussion of these two criteria in the March 25, 2022 Memorandum from James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations (Initiation Memorandum).

² Eric Westoff, *Will the Biden administration let one company kill U.S. solar?*, Canary Media (April 26, 2022), available at: <https://www.canarymedia.com/articles/solar/will-the-biden-administration-let-one-company-kill-us-solar>

³ Solar Energy Industries Association, *Impact of the Auxin Solar Tariff Petition* (April 26, 2022), available at: https://www.seia.org/sites/default/files/2022-04/FINAL%20Auxin%20Impact%20Analysis%202022-04-26_0.pdf.

Minor and Insignificant Criterion

Regarding the question of whether the process of assembly or completion in the third country is minor or insignificant, Commerce relies entirely on data provided by Auxin. Auxin submitted a BloombergNEF Report with the statement that “70% of the actual value of that equipment {i.e., solar modules imported into the United States from Southeast Asia} accrues to China where key, pre-assembly steps in the making of the equipment take place, including production of solar-grade silicon, ingots, wafers and cells.”⁴ If in fact, 70 percent of the value of this equipment accrues to China, then 30 percent of the value of that equipment accrues to these four countries. Nearly one-third of the value hardly seems to meet any reasonable definition of minor and insignificant. On the issue of minor or insignificant, Auxin itself has argued in prior trade cases that the processing of wafers into cells and modules is technologically significant and resource intensive. They are on public record stating the production in question requires major manufacturing capabilities.⁵ Further, it has been settled through precedent at the Department of Commerce, U.S. Customs and Border Protection, the U.S. International Trade Commission, and the federal courts that development of the parts in question are essential to the imported cells and modules. Moreover, Commerce does not verify Auxin’s data or evaluate other sources. Instead, Commerce acknowledges that “Auxin does not have access to the confidential data of companies that produce/process solar cells and modules in the third countries at issue. Consequently, we determined that the information provided by Auxin regarding third-country processing provides a basis for initiation.”⁶

Appropriateness Criterion

Auxin did not argue or address this point in their petition, but the “appropriateness” criterion must be met, and there is directly relevant precedent. To be clear, as stated earlier, Auxin has previously argued before Commerce that CSPV cell production is significant and states in this petition that “the wafers are converted to CSPV cells in the third country.”⁷ In 2012, Commerce also determined that the cell production process was significant.⁸ Essentially, Commerce has already decided such a request under the same fact pattern being presented by Auxin failed the appropriateness test. A different decision in this inquiry would directly counter precedent.

If the minor and insignificant test cannot be met, the appropriateness test fails.

Harms to the US Solar Industry and Achievement of Decarbonization Goals

The devastation of the US solar industry has been well documented but worth reiterating here. Over 230,000 Americans work in solar at more than 10,000 companies in every U.S. state. Because solar is

⁴ Initiation Memorandum at 10.

⁵ See for example, the testimony of Auxin Solar during the Commerce hearing held on November 3, 2021 regarding the extension of Section 201 tariffs on CSPV cells and modules.

⁶ *Id.* At 9.

⁷ Auxin Solar, Inc. Petition Requesting Country-wide Circumvention Inquiries (February 8, 2022) at 27.

⁸ International Trade Administration, US Department of Commerce, *Scope Clarification: Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China* (March 9, 2012)

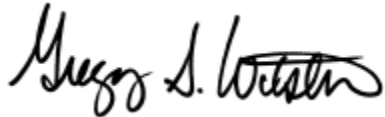
often paired with storage, the storage industry is also likely to suffer. Almost one third of solar and storage companies surveyed by SEIA report that their entire workforce is at risk.⁹

Not only is there significant harm to economy, but through this investigation, the Administration is directly impeding its own decarbonization goals. The Department of Energy found that rapid solar growth will be necessary to achieve a decarbonized grid by 2035.¹⁰ More specifically, DOE concludes that solar capacity will need to increase from about 92 GW at the end of 2021¹¹ to 550 GW by 2030 and 1,000 GW by 2035. But SEIA projects that these new tariffs would decrease solar deployment by 34 GW over the next four years, including a 48 percent decline in 2022 alone. Similarly, the American Clean Power Association expects that 24 GW of solar projects will be delayed or cancelled over the next two years.¹²

An example of the increased carbon emissions that will directly result from this inquiry is provided in yesterday's announcement by Northern Indiana Public Service Company that this investigation will likely delay some of its solar projects by six to 18 months, resulting in a likely delay in the retirement date of its final two coal-fired units by two years.¹³

It is disappointing that Commerce relied on such a tenuous basis and considered only the views of a single small company in launching an inquiry with such devastating impacts. Given the absence of a clear justification, the paralyzing impacts on a sector of the economy that had previously been an important national economic driver, and the threat to achievement of decarbonization goals, we urge Commerce to conclude the inquiry promptly with a final, not preliminary, negative determination.

Sincerely,



Gregory Wetstone
President & CEO

CC: Lisa W. Wang, Assistant Secretary for Enforcement and Compliance
James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

⁹ SEIA, 2022.

¹⁰ Solar Technologies Office, US Department of Energy, *Solar Futures Study* (September 2021), available at: <https://www.energy.gov/eere/solar/solar-futures-study>

¹¹ Energy Information Administration, US Department of Energy, *Table 6.1.A. - Estimated Net Summer Solar Photovoltaic Capacity from Utility and Small-Scale Facilities*, available at: https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=table_6_01_a

¹² American Clean Power Association, *New Data Confirms Department of Commerce Inquiry Severely Disrupts U.S. Utility-Scale Solar Market*, (April 19, 2022), available at: <https://cleanpower.org/blog/new-data-confirms-department-of-commerce-inquiry-severely-disrupts-u-s-utility-scale-solar-market/>

¹³ Catherine Morehouse, *Indiana utility delays coal plant closure due to solar trade probe*, PoliticoPro (May 4, 2022)