

September 19, 2017

**PUBLIC DOCUMENT**  
**Inv. No. TA-201-075**

**VIA ELECTRONIC FILING (EDIS)**

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

Re: *Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products), Inv. No. TA-201-075; Comments on Petitioners' Failure to Submit Adjustment Plans*

Dear Secretary Barton:

On behalf of the Solar Energy Industries Association ("SEIA"), we write to alert the Commission to an important development in the above-referenced investigation.

As the Commission is no doubt aware, Section 202(a)(4) of the Trade Act of 1974 establishes the procedure for petitioners to submit an adjustment plan to the Commission in Section 201 investigations, as follows:

**Section 202(a)(4)** A Petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this part referred to as the "Trade Representative"), either with the petition, ***or at any time within 120 days after the date of filing of the petition***, a plan to facilitate positive adjustment to import competition.

While the language of the provision is permissive rather than mandatory, the idea behind the petitioners' submission of an adjustment plan is that upon seeking protection from

presumptively fair trade, petitioners should provide the authorities with an explanation of how they expect to take advantage of import relief, in the event the Commission votes in the affirmative on the issue of injury. In fact, the legislative history shows that the Senate bill had originally *required* petitioners to submit adjustment plans (and make them public and available for comment), but this requirement was replaced by the current permissive language as part of the conference agreement.<sup>1</sup> That being said, the legislative history of that replacement language shows how important the conferees still considered the industry's plans for adjusting to import competition:

While the conferees decided to make the submission of an adjustment plan optional, rather than to require its submission, the conferees encourage petitioners for action under this section to submit adjustment plans. The conferees believe that it is important for firms and workers in the petitioning industry to demonstrate to the ITC and the President what steps they will be taking to make a positive adjustment to import competition.<sup>2</sup>

The practice of submitting such plans has become so ingrained that petitioners have submitted them in every Section 201 investigation for the last 30 years (since 1986), except one. The only exception may be the 2000 investigation of *Extruded Rubber Thread*, in which the Commission issued a negative injury determination despite a finding of increased imports and serious injury.<sup>3</sup>

---

<sup>1</sup> *Omnibus Trade and Competitive Act of 1988*, Conference Report to Accompany H.R. 3, H. Rept. 100-576 (Apr. 20, 1988), at 663.

<sup>2</sup> *Id.*

<sup>3</sup> *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-1 (Dec. 2000) (making a negative injury determination). Whereas we were able to identify the submission of adjustment plans by the domestic industry (as the petitioner under Section 202(a)(4) or as a non-petitioning stakeholder under Section 202(a)(6)) in all prior 201 cases going back to 1986, no such submission was found in the docket of the *Extruded Rubber Thread*. We note that the domestic extruded rubber thread industry might have filed an adjustment plan, possibly not as a public document, given North American Rubber Thread ("North American")'s statement in its answers to the Commission's written questions following the injury hearing (Sep. 18, 2000): "In the remedy phase, North American will present a *plan* and proposed remedy which North American believes will demonstrate that North American can be fully competitive with Malaysia" (emphasis added).

In the instant investigation, despite SolarWorld's announcement that it intended to submit an adjustment plan within the timeframe contemplated by section 202(a)(4),<sup>4</sup> no such adjustment plan was submitted by either SolarWorld or Suniva by September 14, 2017, which was the 120th day following the official filing date of the petition.

As the Commissioners prepare to cast their votes on the question of injury later this week, there is good cause for the Commission to accept this letter because the failure of petitioners to submit an adjustment plan after repeated commitments to do so evidences both a lack of respect for the process contemplated by the statute and an apparent inability to devise a genuine plan for the industry's adjustment to import competition.<sup>5</sup> By failing to explain, within the timeframe established by statute, how they "plan to facilitate positive adjustment to import competition," the petitioners have deprived the Commission of a key document that has – in all but perhaps one of the prior Section 201 cases over the last 30 years – helped frame the Commission's analysis.

We note that the statute contemplates that these plans will be filed on the same day as the injury vote, as both are normally set to occur on the 120th day after submission of the petition.<sup>6</sup> In this investigation, the Commission extended the deadline for its injury vote because of the complicated nature of the case.<sup>7</sup> The extension of the injury vote, however, did not also extend the deadline for adjustment plans. As a result, no plans were submitted within the

---

<sup>4</sup> SolarWorld's Prehearing Injury Brief at 103 ("SolarWorld intends to submit a plan to facilitate positive adjustment to import competition, as referenced in 19 U.S.C. § 2252(a)(4), within 120 days of the date the petition for this investigation was filed."); Injury Hearing Tr. at 151 (Testimony of Mr. Brightbill) ("We'll also put forward an adjustment plan and consult with USTR on it."), 210 (Testimony of Mr. Brightbill) ("Again I think we're going to put forward an adjustment plan").

<sup>5</sup> *Crystalline Silicon Photovoltaic Cells' (Whether or Not Partially or Fully Assembled Into Other Products); Institution and Scheduling of Safeguard Investigation and Determination That the Investigation Is Extraordinarily Complicated*, 82 Fed. Reg. 25331, 25333 (Jun. 1. 2017) (requiring that good cause be shown for acceptance of additional written submissions to the Commission).

<sup>6</sup> 19 U.S.C. § 2252(a)(4) (setting the deadline to file adjustment plans 120 days after the date of filing the petition); 19 U.S.C. § 2252(b)(2)(A) (requiring the Commission to make its determination within 120 days after the petition is filed unless extended in investigations that the Commission finds extraordinarily complicated).

<sup>7</sup> See *Notice of Institution and Scheduling*, 82 Fed. Reg. at 25331.

The Honorable Lisa R. Barton

September 19, 2017

Page 4

statutory timeframe, and this should be considered as the Commission decides whether to send this case to the President, which is the effect of the injury vote scheduled for later this week.

Should the Commission have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

/s/ Matthew R. Nicely

Matthew R. Nicely

Julia K. Eppard

Susie Park

**Hughes Hubbard & Reed, LLP**

1775 I Street, N.W. Suite 600

Washington, DC 20006

[matthew.nicely@hugheshubbard.com](mailto:matthew.nicely@hugheshubbard.com)

*Counsel to SEIA*

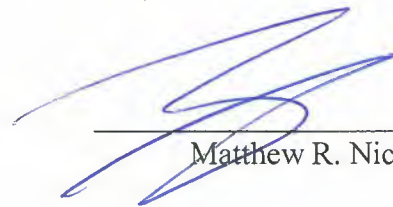
**COUNSEL CERTIFICATION**

***Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products)***

Inv. No. TA-201-75


In accordance with section 207.3(a) of the Commission's rules (19 C.F.R. § 207.3(a)), I, Matthew R. Nicely, of Hughes Hubbard & Reed LLP, counsel to Solar Energy Industries Association ("SEIA"), certify that under penalty of perjury under the laws of the United States of America and pursuant to the Commission's regulations:

- (1) I have read the foregoing submission in the above referenced case;
- (2) to the best of my knowledge and belief, the information contained therein is accurate and complete;



Matthew R. Nicely

DISTRICT OF COLUMBIA: SS  
Sworn and subscribed to before me  
this September 19, 2017.

  
\_\_\_\_\_  
Notary Public

My Commission expires: June 30 2019



**PUBLIC CERTIFICATE OF SERVICE**  
***Crystalline Silicon Photovoltaic Cells***  
**Investigation 201-TA-075**

I, Matthew R. Nicely, hereby certify that a copy of the foregoing submission has been served this day, September 19, 2017, by electronic mail or air mail\*, upon the following persons:

Matthew J. McConkey, Esq.  
On behalf of Suniva, Inc.  
**Mayer Brown LLP**  
1999 K Street, NW  
Washington, DC 20006  
[mmconkey@mayerbrown.com](mailto:mmconkey@mayerbrown.com)

Bernd G. Janzen, Esq.  
On behalf of AES Distributed Energy, Inc., et al.  
**Akin Gump Strauss Hauer & Feld LLP**  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036-1564  
[bjanzen@akingump.com](mailto:bjanzen@akingump.com)

H. Deen Kaplan, Esq.  
On behalf of NextEra Energy, and  
Canadian Solar, et al.  
**Hogan Lovells US LLP**  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
[Deen.kaplan@hoganlovells.com](mailto:Deen.kaplan@hoganlovells.com)

Kenneth G. Weigel, Esq.  
On behalf of Tesla Inc. and SolarCity  
Corporation  
**Alston Bird LLP**  
950 F Street, NW  
Washington, DC 20004  
[Ken.weigel@alston.com](mailto:Ken.weigel@alston.com)

Timothy C. Brightbill, Esq.  
On behalf of SolarWorld Americas, Inc.  
**Wiley Rein LLP**  
1776 K Street, N.W.  
Washington, D.C. 20006  
[tbrightbill@wileyrein.com](mailto:tbrightbill@wileyrein.com)

Kristin H. Mowry, Esq.  
On behalf of JA Solar International Co.,  
Ltd., et al.  
**Mowry & Grimson, PLLC**  
5335 Wisconsin Avenue, NW  
Suite 810  
Washington, DC 20015  
[trade@mowrygrimson.com](mailto:trade@mowrygrimson.com)

Diana Dimitriuc-Quaia, Esq.  
On behalf of Goal Zero, LLC and  
Hanwha Q Cells  
**Arent Fox LLP**  
1717 K Street, NW  
Washington, DC 20006  
[Diana.dimitriuc-quaia@arentfox.com](mailto:Diana.dimitriuc-quaia@arentfox.com)

Kristen Smith, Esq.  
On behalf of Sunforce Products Inc.  
**Sandler, Travis & Rosenberg, P.A.**  
1300 Pennsylvania Avenue, NW Suite 400  
Washington, DC 20004  
[Ksmith@strtrade.com](mailto:Ksmith@strtrade.com)

Kelly A. Slater, Esq.  
On behalf of REC Solar Pte. Ltd., et al.  
**Appleton Luff Pte. Ltd.**  
1025 Connecticut Ave., NW  
Suite 1000  
Washington, DC 20036  
[slater@appletonluff.com](mailto:slater@appletonluff.com)

Neil R. Ellis, Esq.  
On behalf of Mission Solar Energy LLC, et al.  
**Sidley Austin LLP**  
1501 K Street, NW  
Washington, DC 20005  
[nellis@sidley.com](mailto:nellis@sidley.com)

Robert G. Gosselink, Esq.  
On behalf of Changzhou Trina Solar  
Energy Co., Ltd., et al.  
**Trade Pacific PLLC**  
660 Pennsylvania Ave, SE, Suite 401  
Washington, DC 20030  
[rgosselink@tradepacificlaw.com](mailto:rgosselink@tradepacificlaw.com)

Daniel Porter, Esq.  
On behalf of Korea Photovoltaic Industry  
Association, Government of Canada, et al.  
**Curtis, Mallet-Prevost, Colt & Mosle LLP**  
1717 Pennsylvania, NW  
Washington, DC 20006  
[dporter@curtis.com](mailto:dporter@curtis.com)

Daniel J. Gerkin, Esq.  
On behalf of SunPower Corporation, et al.  
**Vinson & Elkins LLP**  
2200 Pennsylvania Avenue, N.W.  
Suite 500 West  
Washington, DC 20037  
[dgerkin@velaw.com](mailto:dgerkin@velaw.com)

John P. Smirnow Esq.  
On behalf of 8minutenergy Renewables  
**Smirnow Law**  
1717 K Street, NW  
Suite 1120  
Washington, DC 20006  
[john@smirnowlaw.com](mailto:john@smirnowlaw.com)

Stephen J. Orava, Esq.  
On behalf of Hemlock Semiconductor  
Operations LLC  
**King & Spalding**  
1700 Pennsylvania Avenue, N.W.  
Washington, DC 20006-4706  
[tradeservice@kslaw.com](mailto:tradeservice@kslaw.com)  
[sorava@kslaw.com](mailto:sorava@kslaw.com)

Kevin M. O'Brien, Esq.  
On behalf of Depcom Power Inc.  
**Baker & McKenzie LLP**  
815 Connecticut Ave., N.W.  
Washington, DC 20006  
[Kevin.obrien@bakermckenzie.com](mailto:Kevin.obrien@bakermckenzie.com)

William J. Clinton, Esq.  
On behalf of Boviet Solar Technology Co., Ltd.,  
and Boviet Solar USA, Ltd., et al.  
**White & Case LLP**  
701 Thirteenth Street NW  
Washington, DC 20005-3805  
[wclinton@whitecase.com](mailto:wclinton@whitecase.com)  
[apotrade@whitecase.com](mailto:apotrade@whitecase.com)

Lindsay B. Meyer, Esq.  
On behalf of The Solaria Corporation  
**Venable LLP**  
600 Massachusetts Ave., NW  
Washington, DC 20001  
[lbmeyer@venable.com](mailto:lbmeyer@venable.com)

Fang Liu, First Secretary  
On behalf of the Government of the People's  
Republic of China  
**Embassy of the People's Republic of China**  
2133 Wisconsin Avenue, NW  
Washington, DC 20001  
[liufang@mofcom.gov.cn](mailto:liufang@mofcom.gov.cn)

Ratheesh Malottu  
On behalf of Vikram Solar  
**M.S. Pothal & Associates**  
F-12/4, 1st Floor  
Malviya Nagar, New Delhi 110017  
India  
[msp@pothal.in](mailto:msp@pothal.in); [rm@pothal.in](mailto:rm@pothal.in)

Jin Won Choi, Counsellor  
On behalf of the Government of the  
Republic of Korea  
**Embassy of the Republic of Korea**  
2450 Massachusetts Avenue, NW  
Washington, DC 20008  
[Jwchoi95@mofa.go.kr](mailto:Jwchoi95@mofa.go.kr)

Deep Patel  
On behalf of GigaWatt Inc.  
**Giga Watt, Inc.**  
310 E. Orangethorpe Avenue, Suite D  
Placentia, CA 92870  
[dpatel@gigawattinc.com](mailto:dpatel@gigawattinc.com)

Donald B. Cameron, Esq.  
On behalf of Renewable Energy Systems  
Americas Inc., Red Sun Energy JSC  
**Morris, Manning & Martin, LLP**  
1401 Eye Street, NW Suite 600  
Washington, DC 20005  
[tradeservice@mmmlaw.com](mailto:tradeservice@mmmlaw.com)

Aristeo López, Esq.\*  
On behalf of Ministry of the Economy of Mexico  
**Embassy of Mexico**  
1611 Pennsylvania Avenue, NW  
Washington, DC 20006  
202.264.4904 – fax

Colin Bird, Minister Counsellor  
On behalf of the Government of Canada  
**Minister Counsellor Embassy of Canada**  
501 Pennsylvania Avenue, NW  
Washington, DC 20001  
[Colin.Bird@international.gc.ca](mailto:Colin.Bird@international.gc.ca)

Mohd Zahid Bin Abdullah, Director  
On behalf of the Ministry of International Trade  
and Industry of Malaysia  
**Ministry of International Trade and Industry**  
Menara Perdagangan Antarabangsa dan Industri  
No. 7, Jalan Sultan Haji Ahmad Shah  
50480 Kuala Lumpur  
Malaysia  
[sitizahara@miti.gov.my](mailto:sitizahara@miti.gov.my)  
[alltps@miti.gov.my](mailto:alltps@miti.gov.my)

Prayoth Benyasut  
On behalf of the Royal Thai Government  
**Office of Commercial Affairs**  
**Royal Thai Embassy**  
1024 Wisconsin Avenue, NW  
Suite 202  
Washington, DC 20007  
[inquiries@commercethaiusa.org](mailto:inquiries@commercethaiusa.org)

Nguyen Phuong Nam\*  
On behalf of the Vietnam Competition Authority  
Deputy Director General  
**Vietnam Competition Authority**  
Ministry of Industry and Trade  
No. 25, Ngo Quyen Street  
Hoan Kiem District  
Ha Noi, Vietnam  
+844 22205003 – fax

Dr. Sibylle Zitko, Esq.  
On behalf of the European Commission  
**The European Commission**  
2175 K Street, NW  
Washington, DC 20037  
[Sibylle.Zitko@eeas.europa.eu](mailto:Sibylle.Zitko@eeas.europa.eu)

Reza Pehlevi Chairul  
On behalf of the Republic of Indonesia  
**Embassy of Indonesia**  
2020 Massachusetts Ave., NW  
Washington, DC 20036  
[Reza.pahlevi@embassyofindonesia.org](mailto:Reza.pahlevi@embassyofindonesia.org)

Jeannie Kao  
On behalf of Solartech Energy Corp.  
**Solartech Energy Corp.**  
8F., No. 760, Sec. 4, Bade Rd., Songshan Dist.,  
Taipei 105, Taiwan  
[jeanniekao@solartech-energy.com](mailto:jeanniekao@solartech-energy.com)

Hsiao-Chun Lu  
On behalf of LOF Solar Corp.  
**LOF Solar Corp.**  
2F, No. 6, Prosperity Road 2  
Hsinchu Science Park  
Hsinchu 30078, Taiwan, R.O.C.  
[contact@lofsolar.com](mailto:contact@lofsolar.com)



Mardjoko, Act. Director of Trade Defense\*  
On behalf Government of Indonesia  
**The Government of Indonesia**  
Jalan M.1 Ridwan Rais NO.5  
Jakarta 10110  
021-3863937 – fax

Chien Chi Chao, Economic Officer  
On behalf of the Government of Taiwan, et al.  
**Taipei Economic and Cultural Representative  
Office in the United States**  
4301 Connecticut Avenue, NW  
Washington, DC 20008  
[ccchao@moea.gov.tw](mailto:ccchao@moea.gov.tw)

Brian L. Eftink, Esq.  
On behalf of Wacker Polysilicon North America  
LLC and Wacker Chemie AG  
**Wacker Polysilicon North America LLC**  
553 Wacker Boulevard, NW  
Charleston, TN 37310  
[Brian.Eftink@wacker.com](mailto:Brian.Eftink@wacker.com)

Chien Chi Chao  
On behalf of the Government of Taiwan  
**Taipei Economic and Cultural Representative  
Office in the United States**  
4301 Connecticut Avenue, NW  
Washington, DC 20008  
[ccchao@moea.gov.tw](mailto:ccchao@moea.gov.tw)

H. R. Gupta, Managing Director  
On behalf of Indo Solar Ltd.  
**M.S. Pothal & Associates**  
F-12/4, 1st Floor  
Malviya Nagar, New Delhi 110017  
India  
[msh@pothal.in](mailto:msh@pothal.in); [rm@pothal.in](mailto:rm@pothal.in)

Aluisio Gomien de Lima Campos  
On behalf of Embassy of Brazil  
**Embassy of Brazil**  
3006 Massachusetts Ave., NW  
Washington, DC 20008  
[Aluisio.campos@itamaraty.gov.br](mailto:Aluisio.campos@itamaraty.gov.br)  
[Estagio.polcom@gmail.com](mailto:Estagio.polcom@gmail.com)

Thomas M. Beline, Esq.  
On behalf of Auxin Solar Inc.  
**Cassidy Levy Kent (USA) LLP**  
2000 Pennsylvania Avenue, NW  
Suite 3000  
Washington, DC 20006  
[tbeline@cassidylevy.com](mailto:tbeline@cassidylevy.com)

/s/ Matthew R. Nicely  
Matthew R. Nicely