

August 26, 2021



The Honorable Gina M. Raimondo  
Secretary of Commerce  
14<sup>th</sup> Street & Constitution Avenue, NW  
Washington, D.C. 20230

Dear Secretary Raimondo,

The Solar Energy Industries Association (“SEIA”) and its members write to bring a critical issue to your attention regarding anti-circumvention petitions recently filed with the U.S. Department of Commerce (“Commerce”).

Under the guise of an anti-circumvention inquiry, an unnamed group of companies identifying themselves only as the American Solar Manufacturers Against Chinese Circumvention (“A-SMACC”) seeks to dramatically expand the scope of existing antidumping (“AD”) and countervailing duty (“CVD”) orders on crystalline silicon photovoltaic cells and modules from China (“the Orders”). Through this inquiry, A-SMACC asks Commerce to expand the scope of the Orders to include solar products completed and exported from three entirely different countries—Malaysia, Thailand, and Vietnam.

As an initial matter, SEIA emphasizes that this procedural gimmick employed by A-SMACC circumvents and evades the channels pursuant to which Commerce normally investigates supposedly unfairly priced and unfairly subsidized imports. SEIA fully recognizes Commerce’s authority and responsibility to strictly enforce U.S. AD and CVD laws. But A-SMACC’s efforts are a clear attempt to contort the intended purpose of the anti-circumvention laws, which are designed to prevent avoidance of AD/CVD liability through minor modifications to the production process. A-SMACC’s request would force Commerce to leapfrog the normal investigation process to impermissibly entangle exports from Malaysia, Thailand, and Vietnam into China-specific AD/CVD orders.

Although SEIA and its members will fully and strongly contest A-SMACC’s allegations, SEIA is particularly aggrieved by A-SMACC’s request to shield the identity of its members from public disclosure. As explained below, A-SMACC’s members have no legal basis to hide behind an *ad hoc* coalition created solely for the purpose of expanding trade restrictions on solar products. Accordingly, SEIA urges Commerce to order the public disclosure of A-SMACC’s members.

**I. SEIA and its Members Work Hand-in-Glove with the Administration on Climate Issues**

SEIA is the national trade association for the solar and solar-storage industries. SEIA’s 1,000-strong membership consists of manufacturers, contractors, installers, project developers, financiers, and other strategic partners. SEIA shares the Biden Administration’s commitment to sustainable climate policies and solar initiatives. SEIA is dedicated to creating the framework for solar to achieve 20 percent of U.S. electricity generation by 2030, leading America’s transformation to a clean energy economy, creating green energy jobs, spurring massive investment in the U.S. economy, and driving high-tech innovation across the nation. Without question, the anti-circumvention petitions filed by A-SMACC fly in the face of SEIA’s goals and the Administration’s commitment to clean energy.

**II. A-SMACC Has No Legal Basis to Withhold the Identity of its Members**

A-SMACC has asked Commerce to keep secret the identity of its members, but it has no legal basis to do so. A-SMACC seeks proprietary treatment for this information under 19 C.F.R. § 351.105(c)(11), the broadest and most vague “catch-all” provision in Commerce’s regulations, claiming that “disclosure of this information could lead to retribution against these {member} companies and cause substantial harm.” Not only does the cited regulation not apply to business names, A-SMACC does not provide a shred of evidence to support its assertion that its members face possible retribution. SEIA and its counsel can find no Commerce precedent for the whole-cloth withholding of the identity of each and every party making an anti-circumvention accusation. There are no circumstances unique to these proceedings that would entitle A-SMACC to do so

August 26, 2021



here. In the end, under A-SMACC's view of Commerce's regulations, the only limit on what A-SMACC might keep secret is its own imagination.

A-SMACC's failure to publicly disclose the identity of its members conflicts with Commerce's regulations in another way. Commerce requires that "all persons wishing to participate in a segment of a proceeding must file a letter of appearance," and "if the interested party is a coalition or association," "the letter of appearance *must* identify all of the members of the coalition or association." 19 C.F.R. § 351.103(d)(1) (emphasis added). Neither Commerce nor A-SMACC has license to depart from this unambiguous regulatory requirement.

For these reasons, Commerce must reject A-SMACC's attempt to shield the identity of its members from the public. A-SMACC's request conflicts with Commerce's regulations and otherwise rests on unsubstantiated and speculative claims regarding supposed substantial harm to its members. Unlawful and unsupported claims cannot outweigh the certain harm that undoubtedly will befall SEIA and its members if the identity of A-SMACC's members is withheld from the public. Thus, A-SMACC's gamesmanship is antithetical to well-settled notions of notice and due process, and it should not be allowed to disturb a playing field that Commerce has already leveled.

SEIA respectfully requests Commerce's prompt attention to this matter. Our members make decisions every day to commit tens of billions of dollars in investments – years in advance – to help American utilities, businesses, and residences transition to a clean energy economy. Commerce should not allow A-SMACC to derail the Administration's commitment to grow a clean energy economy, and SEIA's members must be given full opportunity to debunk A-SMACC's unsupported claims of circumvention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Abigail Ross Hopper".

Abigail Ross Hopper  
President & CEO  
Solar Energy Industries Association