



*Inv. No. TA-201-3218 (pending institution)*

**PUBLIC DOCUMENT**

May 18, 2017

Honorable Lisa R. Barton Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Rm. 112A  
Washington, DC 20436

**Re: Section 201 Petition on Crystalline Silicon Photovoltaic Cells and Modules –  
Petitioner's Lack of Representativeness**

Dear Secretary Barton:

On behalf of the Solar Energy Industries Association ("SEIA"), this letter is provided as additional support for SEIA's view, expressed in a letter to the Commission dated May 12, 2017, that the Commission should not institute a safeguard proceeding under Section 201 of the Trade Act of 1974, as amended, based on Suniva's petition dated April 26, 2017, because Suniva is not "representative" of the domestic industry.

We note at the outset that Suniva just yesterday submitted a letter to the Commission that revises the petition's definition of the "articles of concern." The central concept in the revised language is imports of CSPV cells – not CSPV cells, and modules, laminates, and panels consisting of CSPV cells (as in the original petition) – but the revised language nevertheless covers imported CSPV cells that come into the United States assembled, partially or fully, into modules, laminates, and panels. Suniva may well be attempting to exclude module assembly from the domestic industry in order to increase its share of domestic production and, therefore, make Suniva look more representative of the domestic industry. Of course, in past solar cases, the Commission has not excluded module assembly from the domestic industry.

We do not opine here on how the Commission should define the domestic industry, but wish to bring to the Commission's attention various additional shortcomings in the analysis set forth in the calculations Suniva has presented to support its purported representativeness of the domestic industry.

**First, Suniva significantly understates domestic output of CSPV cells.** The best data available on U.S. production of CSPV cells is produced by SPV Market Research (a firm run by longtime solar market analyst Paula Mints).<sup>1</sup> SPV's research is proprietary, but we can report SPV's bottom-line results publicly. While Suniva used a total domestic cell production figure of 257 megawatts (MW), SPV estimates that figure at 499MW -- nearly double Suniva's cell production figure. Using Suniva's own reported cell output of 114MW as the numerator in the calculation of its share of domestic production, and dividing it by SPV's 499MW total production figure, Suniva accounted for only **22.8 percent** of domestic cell output.

**Second, Suniva significantly understates domestic module assembly.** Suniva used a total domestic module assembly figure of 473MW, while the SPV figure is 767MW. Using Suniva's figure for its own module output as the numerator, and 767MW as the denominator, Suniva accounted for only roughly **5 percent** of domestic module assembly.

**Third, if the Commission chooses to analyze whether Suniva is representative of the combined cell- and module-producing sector in the United States, the Commission should disregard Suniva's combined calculations.** Suniva's contrived cell-module combined calculations do not recognize, or adjust for, double-counting when a producer assembles its own cells into modules. By merely adding together the MWs of the cells and modules, Suniva implies that such a producer adds a MW in the assembly process for each MW of cells it assembles, which simply does not happen. This contrived calculation is akin to adding the production quantities of raw and refined sugar in a case that covers both products and presenting that sum as a meaningful market figure even though one product was made from the other. One way to eliminate this problem is to use value rather than MWs, and measure the value added in each stage of the production process. This is easily done. It is clear that Suniva's calculation as presented to the Commission overstates total combined production and, in turn, overstates its own share of combined production.

---

<sup>1</sup> <http://www.spvmarketresearch.com/services.html>.

Honorable Lisa R. Barton

May 18, 2017

Page 3

By any measure, Suniva's percentage of domestic production – whether limited to its new scope definition or not – is much lower than Suniva suggests. Suniva was not representative of the industry on May 12, 2017, when SEIA first commented on this issue, and is even less so based on the analysis set forth above.

\* \* \*

SEIA appreciates this opportunity to note its stance and concerns in writing. Because no investigation has been instituted, this letter is not being served, but we invite you to make it part of the record of whatever formal disposition ultimately takes place. Please contact the undersigned with any questions on this submission.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'TKimbis', with a long horizontal flourish extending to the right.

Thomas P. Kimbis  
Executive Vice President &  
General Counsel