

Congress of the United States

Washington, DC 20510

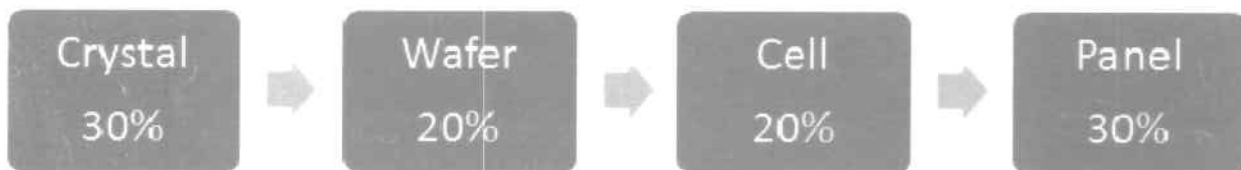
September 27, 2012

The Honorable Rebecca Blank
Acting Secretary,
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Blank:

We commend your leadership in taking action against predatory Chinese trade policies, especially as they relate to America's clean energy sector. We write to call your attention to a critical issue in a pending antidumping and countervailing duty investigation, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, which appears to have systemic implications. Specifically, the Department of Commerce has preliminarily defined the scope of the investigation in such a way that, we fear, could undermine trade remedy laws if applied in this and other cases.

We understand that there are, in essence, four stages in the production of a solar panel. The following chart describes the process, with the amount of value added at each stage.



The Department's preliminary determination would, from the outset, exclude from the scope of the investigation Chinese panels that are produced from non-Chinese cells, notwithstanding that China is alleged to subsidize the manufacture of these panels, and Chinese producers are alleged to be dumping these panels, in a manner that is causing injury to U.S. manufacturers.

Not only would the Department's preliminary scope determination shield these panels from any scrutiny, but it would also lead to absurd results. For example: (1) crystals manufactured in China that are then (2) manufactured into wafers in China that are then (3) manufactured into cells in a third country and then (4) manufactured into panels in China would not be subject to an antidumping or countervailing duty order on solar panels from China – notwithstanding that 80 percent of the value of the final product was added in China and that the final product was shipped from China.

This would appear to undermine the intent of the petition that was filed by the U.S. industry, and invite circumvention of the antidumping and countervailing duty orders. Indeed, the record in this investigation indicates that Chinese manufacturers already are developing such circumvention plans. According to the President of a solar panel importer, "Chinese manufacturers wanted to keep wafer production in China, but were making plans to ship wafers to Taiwan or South Korea for conversion into

solar cells, as one way to potentially avoid any new tariffs the United States Department of Commerce might decide to impose.”

Congress intended to have the antidumping and countervailing duty laws provide effective relief to U.S. industries that are materially injured by unfairly traded imports. That purpose will be thwarted if foreign producers can simply outsource a small part of their production in third countries to avoid duties intended to level the playing field.

Finally, on a broader note, we have heard disturbing reports that China has sought to prevent progress on this case, and on a parallel proceeding in the European Union, through threats of retaliation. Such actions are clearly inconsistent with China’s obligations as a member of the World Trade Organization, as well as its responsibilities as a major stakeholder in the world trading system. We believe such irresponsible actions have no place in a trading system based on rule of law. China cannot seek to impede the exercise of the right under the WTO Agreement to conduct investigations of alleged unfair trading practices.

Thank you for your consideration of these issues.

Sincerely,













