

May 26, 2017

Investigation No. TA-201-75

**PUBLIC DOCUMENT**

The Honorable Lisa R. Barton  
Secretary to the Commission  
Room 112-A  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

RE: ***Comments on Draft Questionnaires***  
***Crystalline Silicon Photovoltaic Cells, Whether or Not Partially Or Fully Assembled***  
***into Other Products, USITC Investigation No. TA-201-75***

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Dear Secretary Barton:

The Government Canada hereby submits the following comments on the Commission's draft questionnaires in the above-referenced proceeding. We hope the Commission will take these comments into account when finalizing the questionnaires. Our comments follow:

A NAFTA Party taking any global safeguard action is required to adhere to the obligations in Article 802 of NAFTA. The contents of this provision must therefore be considered by the Commission in this proceeding, including in collecting relevant data through the Commission's questionnaires.

According to Article 802:1, a Party taking an emergency safeguard action is required to exclude imports from each other Party unless:

- (a) imports from a Party, considered individually, account for a substantial share of total imports; and
- (b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

The specific meaning of these provisions is elaborated upon in Article 802:2. Specifically, under Paragraph 802:2(a), imports from a Party are not considered to account for a substantial share of total imports if the Party is not among the top five suppliers of the good

subject to the proceeding. Under Paragraph 802:2(b), in determining whether imports from a Party could contribute importantly to the serious injury, a Party must consider evidence related to the change in import share, and the level and change in the level of imports of the other Parties.

It is essential that the evidence collected by the Commission allow for a proper evaluation of these criteria. In that respect, the evidence must also properly reflect the rules of origin under NAFTA.

In the U.S. Importer's Questionnaire, the questions in Part II contain the following statement (for example, in question II-7 in relation to imports from Canada):

Report your firm's U.S. imports of CSPV cells (whether or not partially or fully assembled into other products) that were imported from Canada during the specified periods, by specified form. **For products such as laminates, panels, and modules that are partially or fully assembled from CSPV cells, the location where the CSPV cells were manufactured determines the country of origin.**

The questions related to imports from other countries found in questions II-5 through II-36 contain a statement identical to the sentence in bold above.

However, under NAFTA rules of origin, any CSPV cells imported into Canada and manufactured into products such as CSPV laminates, panels and modules would be considered of Canadian origin.<sup>1</sup> This is acknowledged in the petition, where the petitioner stated:

[U]nder the NAFTA rules of origin for HTS subheading 8541, substantial transformation can occur without a tariff shift, meaning that Chinese cells can be assembled into modules in Canada and the resulting modules will receive duty-free entry into the United States under NAFTA.<sup>2</sup>

Canada asks that the questions in the U.S. Importer's Questionnaire be amended in response to these considerations. The Commission's questionnaire should collect data on imports of CSPV laminates, panels and modules, from Canada, irrespective of the source of the cells used to make these laminates, panels and modules. We also note that in order to make a proper evaluation under Article 802:2(a) of the rank of Canada's imports, the Commission's questionnaire should collect import data on CSPV laminates, panels, and modules, with respect

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<sup>1</sup> See NAFTA Article 401(b) in conjunction with Annex 401 under subheading 8541.

<sup>2</sup> *Petition for Global Safeguard Relief Pursuant to Sections 201-202 of the Trade Act of 1974 – Crystalline Silicon Photovoltaic Cells and Modules*, April 26, 2017, USITC Doc ID 609780, p. 19 at fn. 61.


to each country that exports these products. These data should be collected separately from any import data pertaining to CSPV cells.

In this way, the Commission will be able to properly evaluate the criteria for the exclusion of imports from a NAFTA Party and thereby respect the United States' obligations for global safeguard proceedings under Article 802 of NAFTA.

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If the Commission has any questions regarding the comments presented above, please do not hesitate to contact the undersigned.

Respectfully,

A handwritten signature in dark ink, appearing to read "Colin Bird". The signature is fluid and cursive, with the first name "Colin" and last name "Bird" clearly distinguishable.

Colin Bird  
Minister Counsellor  
Embassy of Canada

