

May 16, 2022



To: Conference Committee for H.R. 4521, the *America COMPETES Act of 2022*

Re: Urgent Need to Require Public Interest Finding in AD/CVD Anti-Circumvention Statute

Dear Conferees:

As you work to reconcile the differences between the House and Senate versions of H.R. 4521, the *America COMPETES Act of 2022*, **we ask that you modify Section 102201 from the House-passed measure in the final bill to explicitly require a public interest finding.** In its current form, Section 102201 would codify recent U.S. Department of Commerce (Commerce) regulations that, as applied by Commerce, improperly discard the Secretary's discretion to reject an anti-circumvention petition where action would not be appropriate, see 19 U.S.C. § 1677j(a)(2). As the U.S. solar industry is experiencing firsthand, Commerce's narrow interpretation of the anti-circumvention statute will lead to abuse of U.S. trade laws and a devastating impact on affected industries. It is essential that provisions affording due process to impacted stakeholders and consideration of the public interest be included in the anti-circumvention statute.

This is a particularly sensitive and timely issue for the U.S. solar industry. On August 16, 2021, an anonymous group of companies filed anti-circumvention petitions incorrectly alleging that crystalline silicon photovoltaic (CSPV) solar cells and panels imported from Malaysia, Vietnam, and Thailand were circumventing existing AD/CVD orders. While Commerce properly rejected these petitions, the mere threat of an investigation had a significant adverse impact on the U.S. solar industry and resulted in a double-digit decline in near-term U.S. solar deployment forecasts. On February 8, 2022, a single company, Auxin Solar, filed copycat anti-circumvention petitions expanded to include Cambodia. In response, Commerce initiated an investigation on April 1, 2022, resulting in immediate and severe harm to the U.S. solar industry.

To succeed, Auxin Solar must establish that solar cell manufacturing is merely "minor or insignificant processing." This is an absurd notion, however, for anyone with even a basic knowledge of solar cell manufacturing, which represents substantial, complex, and sophisticated production that greatly exceeds any reasonable interpretation of the statutory factors for minor or insignificant processing. Indeed, Auxin itself certified before another federal agency, the U.S. International Trade Commission ("USITC"), that [m]anufacturing CSPV products [i.e., cells and modules] is capital intensive and technologically

sophisticated.”¹ And yet now, Auxin claims that solar cell manufacturing is merely “minor or insignificant processing.”

In addition, Commerce itself has consistently determined for more than a decade that solar cell manufacturing is the most important step of the solar module value chain and the critical step in enabling a solar panel to generate electricity. In deciding whether to initiate an investigation, however, Commerce refused to consider either Auxin’s contradictory statements to the USITC or the agency’s own precedent before initiation, concluding that such information could only be considered after an investigation was initiated. In effect, Commerce concluded that it was required to proceed with an investigation even when a petition is based on frivolous claims. This is a dangerous and short-sighted application of U.S. law.

No one disputes that Commerce should have the authority to address the circumvention of AD/CVD orders. But the U.S. solar industry’s recent experience demonstrates how anti-circumvention laws can be improperly manipulated with perverse consequences. In this case, Commerce is allowing a baseless claim to freeze the U.S. solar market.

As a result of this investigation, solar installation forecasts for 2022 and 2023 are being cut by 46%. This investigation will also result in a loss of 24 gigawatts of planned solar capacity over the next two years, which is more solar than the industry installed in all of 2021. This lost solar deployment will lead to an additional 364 million metric tons of carbon by 2035, missing the opportunity to take the equivalent of 78 million internal combustion-engine vehicles off the road.

In addition, based on a [recent SEIA industry survey](#), including responses from more than 730 American solar companies, a total of 318 projects accounting for 51 GW of solar capacity and 6 GWh of attached battery storage are being cancelled or delayed. Fully \$52 billion of private sector investment is at risk.

More than 80% of survey respondents expect severe or devastating impacts from this investigation. SEIA also estimates that imposition of anti-circumvention tariffs will result in the loss of 100,000 American solar jobs, with more than 16,000 of these jobs in manufacturing.

The U.S. solar industry’s current experience makes it explicitly clear that codifying Commerce’s anti-circumvention regulations as recently interpreted would (i) improperly confer unfair advantage to petitioners as provided for in

¹ Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products), USITC Inv. No. TA-201-075, Posthearing Brief on Behalf of Auxin Solar Inc. (Nov. 12, 2021) at I-24 (emphases added).

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Section 102201 of the House version of H.R. 4521, and (ii) invite abuse of anti-circumvention proceedings. At a minimum, Section 102201 should be modified to explicitly require a public interest finding.

In addition, to avoid the severe and immediate business uncertainty resulting from initiation of an anti-circumvention investigation, Commerce should not be allowed to retroactively apply anti-circumvention duties to merchandise that entered the United States or was removed from a warehouse before a preliminary determination is issued. Section 102201 should be further modified to make clear that anti-circumvention duties may only be applied after the date that notice of an affirmative preliminary determination is published in the Federal Register.

The U.S. solar industry's experience over the past decade has made clear that tariffs are not effective at growing manufacturing. What we need are long-term federal investments such as the Solar Energy Manufacturing for America Act. There are many reasons why strengthening U.S. solar manufacturing is important, including climate goals, supply chain resiliency, and national security. But if we hope to seize the promise of American solar manufacturing, we must invest in the future with clean energy tax incentives—not damage the American solar industry with a meritless tariff investigation.

Thank you in advance for your consideration of this issue of vital importance to the U.S. solar industry.

Regards,

A handwritten signature in black ink, appearing to read "Abigail Ross Hopper", is written in a cursive style.

Abigail Ross Hopper
President and CEO