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Committee on Safeguards

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**NOTIFICATION UNDER ARTICLE 12.1(A) OF THE AGREEMENT
ON SAFEGUARDS ON INITIATION OF AN INVESTIGATION
AND THE REASONS FOR IT**

UNITED STATES

*(Crystalline Silicon Photovoltaic Cells
(Whether or Not Partially or Fully Assembled into Other Products))*

The following communication, dated 25 May 2017, is being circulated at the request of the delegation of the United States.

Pursuant to Article 12.1(a) of the WTO Agreement on Safeguards (Safeguards Agreement), the United States notifies that a safeguard investigation has been initiated as follows:

1. Specify the date when the investigation was initiated

The U.S. International Trade Commission (Commission) initiated the investigation on 17 May 2017.

A copy of the notice of institution of the investigation, which includes the scheduling of public hearings and the applicable rules of procedure, is attached.¹

The Commission will make its serious injury determination within 128 days after the petition was filed, or by 22 September 2017. If affirmative, the Commission will submit to the President its report within 180 days after the date on which the petition was filed, or by 13 November 2017.

2. Specify the product subject to the investigation

The products covered by this investigation are crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building-integrated materials. The investigation covers CSPV cells of a thickness equal or greater than 20 micrometers, having a p/n junction (or variant thereof) formed by any means, whether or not the cell has undergone other processing, including, but not limited to cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Included in the scope of the investigation are photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact (PERC) cells, heterojunction with intrinsic thin-layer (HIT) cells, and other so-called "hybrid" cells.

¹ A copy of the notice of institution has been submitted electronically. To consult this document please contact Ms. Budd (Hilary.Budd@wto.org) or Ms. Richards (Anne.Richards@wto.org) of the Rules Division.

Products under consideration also may be described at the time of importation as components for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, and building-integrated materials.

Excluded from the investigation are CSPV cells, whether or not partially or fully assembled into other products, if the CSPV cells were manufactured in the United States.

Also excluded from the investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the investigation are CSPV cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated CSPV cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

The CSPV cells covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8541.40.60. Within that 8-digit subheading, CSPV cells that are assembled into modules or panels are imported under HTSUS statistical reporting number 8541.40.6020, while CSPV cells that are not assembled into modules and are presented separately are imported under statistical reporting number 8541.40.6030. Inverters or batteries with CSPV cells attached can be imported under HTSUS subheadings 8501.61.00 and 8507.20.80, respectively. In addition, CSPV cells covered by the investigation may also be classifiable as DC generators of subheading 8501.31.80, when such generators are imported with CSPV cells attached. While HTSUS provisions are provided for convenience, the written description of the scope is dispositive.

3. Provide the reasons for the initiation of the investigation

(i) Was the investigation initiated pursuant to a petition from the domestic industry?

Yes, the investigation was initiated pursuant to a petition filed by Suniva, Inc., a producer of CSPV cells and CSPV modules in the United States. The Commission deemed the petition, as amended, to have been properly filed on 17 May 2017.

(ii) Evidence on the basis of which the investigation was initiated.

Increased Import Quantities

The petition alleges that, in absolute terms, the quantity and value of imports of CSPV cells and modules have increased over the last five years. The quantity of imports rose from 111,053,315 units in 2012 to 168,330.149 units in 2016, an increase of 51.6%. The value of imports rose from \$5.1 billion in 2012 to \$8.3 billion in 2016, an increase of 62.8%. In addition, imports rose from 2015 to 2016, with the quantity of imports rising by 68% and the value of imports rising by 4%.

Serious Injury or Threat of Serious Injury to the Domestic Industry

The petition² alleges that increasing imports have taken market share from domestic producers and have led to bankruptcies, plant shutdowns, layoffs, and a severe deterioration of the financial performance of the domestic industry. Petitioner Suniva, Inc. filed for Chapter 11 bankruptcy on 17 April 2017.

In addition, according to the petition, capacity utilization for CSPV cell operations fell from 81.7% in 2014 to 28.9% in 2016. CSPV module production utilization fell from 66.7% in 2013 to 32.9% in 2016. Also, domestic production of CSPV cells fell 37.6% from 2015 to 2016, while domestic production of CSPV modules fell by 10.5 percent. Prices for CSPV cells and modules also declined from 2012-16 as imports increased.

² Because Suniva, Inc. is the sole petitioner in this investigation, much of the serious injury data is confidential business information. However, the United States has included relevant data regarding serious injury or threat of serious injury where possible.

The petition also states that Suniva, Inc. and SolarWorld AG, two large domestic producers in the United States, reported operating losses from 2012-16. Data in the petition also indicates that domestic market share fell from 21.0% in 2012 to 11.0% in 2016, despite a \$4 billion growth of the U.S. market over the same period.

The petition alleges that 1,200 manufacturing jobs in the United States have been lost and wages have fallen by 27% from 2012-16.

The petition cites this same information as evidence of threat of serious injury to the domestic industry. It also asserts that independent industry analysis shows that market share is projected to continue to decline. Also, the petition asserts inventories have increased from 27.6% in 2012-13 to 28.3% in 2015-16.

The petition asserts that due to the factors mentioned above, the domestic industry is vulnerable to threat of serious injury as well.

As imports have increased from 2012-16 and prices have been declining, the petition proffers that, coupled with the significant decline of several key economic indicators, imports have prohibited the domestic industry from benefitting from the growth in U.S. demand and are a substantial cause of the serious injury that the domestic industry has experienced.

Unforeseen Developments

According to the petition, the following are developments that were unforeseen by the domestic industry:

- recent increase in imports and the impact on the domestic industry; and
- foreign producers, in response to the various antidumping and countervailing duty orders that were imposed on imports from China and Chinese Taipei, have opened new production facilities in third countries.

More detailed information regarding any of the above is contained in the petition, which can be found at <https://edis.usitc.gov>.

(iii) Evidence, if any, of critical circumstances where delay would could damage which it would be difficult to repair.

The petitioner did not allege critical circumstances in the petition.

4. Provide a point of contact for the investigation and identify the preferred means for corresponding

The point of contact for the investigation is:

Mary Messer
Office of Investigations
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
Tel: (202-205-3193)

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

5. Provide the deadlines and procedures for importers, exporters and other interested parties to present evidence and their views, including (i) deadlines and procedures for Members and exporters to identify themselves as interested parties, if so required, to participate in the investigation, and (ii) the date of an intended public hearing as provided for in Article 3.1

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission not later than 21 days after publication of the notice of institution in the Federal Register. The Secretary will prepare a service list containing the names and

addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

The Secretary will make confidential business information gathered in this investigation available to authorized applicants representing interested parties under the administrative protective order issued in the investigation, provided that the application is made not later than 21 days after the publication of the notice of institution in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive confidential business information under the administrative protective order.

Each party who is an interested party may submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on serious injury is 8 August 2017; that for filing prehearing briefs on remedy is 27 September 2017.

The Commission has scheduled separate hearings in connection with the serious injury and remedy phases of this investigation. The hearing on serious injury will be held on 15 August 2017, at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC.

In the event that the Commission makes an affirmative serious injury determination or is equally divided on the question of serious injury in this investigation, a hearing on the question of remedy will be held on 3 October 2017.

Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before 9 August 2017 for the serious injury hearing, and 27 September 2017 for the remedy hearing.

All parties and nonparties desiring to appear at the hearings and make oral presentations should participate in prehearing conferences to be held on 11 August 2017 for the serious injury hearing and 28 September 2017 for the remedy hearing, if deemed necessary.

Parties may file written testimony in connection with their presentation at the hearing. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearings. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the respective hearings.

The deadline for filing posthearing briefs for the serious injury phase of the investigation is 22 August 2017; the deadline for filing posthearing briefs for the remedy phase of the investigation, if any, is 10 October 2017.

In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of serious injury on or before 22 August 2017, and pertinent to the consideration of remedy on or before 10 October 2017.

The attached notice of institution provides further information regarding deadlines and procedures applicable to this investigation.

The Commission's Handbook on E-Filing, available on the Commission's website at https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's rules with respect to electronic filing.
