N A R U C
National Association of Regulatory Utility Commissioners

November 17, 2017

The Honorable Robert E. Lighthizer
United States Trade Representative (USTR)
Winder Building
600 17th Street, NW
Washington, DC 20508

RE: **USTR-2017-0020-0001**
Comments of the National Association of Regulatory Utility Commissioners
In the Matter of the Administration's Actions Following a Determination of Import Injury with Regard to Certain Crystalline Silicon Photovoltaic Cells
Submitted via www.regulations.gov

Dear Trade Representative Lighthizer:

On Wednesday, November 15, 2017, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution expressing its concern that actions resulting from these proceedings may harm utility ratepayers and impede the ability of States to meet their critical policy goals. A copy of that resolution is attached.

NARUC is a bipartisan trade association that represents the interests of State public utility commissions in all U.S. States and territories charged with assuring the provision of, among other things, electricity service at just and reasonable rates.

Solar energy is being developed in many States to provide fuel diversity and support State policy goals, including meeting Renewable Portfolio Standards, reducing greenhouse gas emissions, and providing resiliency to state and regional electric grids. Indeed, in 2016, solar was the single largest source of new electric generating capacity in the nation and 15 Gigawatts were deployed nationally in 2016, a 100% increase over 2015.[1]

President Trump has until January 12th to decide how to protect U.S. manufacturers and could do so via various actions, including tariffs and quotas of indeterminate size, scope and duration. NARUC does not dispute the U.S. International Trade Commission's finding of injury, but NARUC is concerned that at least some of the requested trade protections could significantly increase the price of solar panels and therefore the cost of solar electricity generation. Where

1 SEIA/GTM Research "Solar Market Insight Report 2016 Year In Review," available at https://www.seia.org/research-resources/solar-market-insight-report-2016-year-review.

1101 Vermont Ave., NW, Suite 200, Washington, DC 20005 – Tel: 202-898-2200 – Fax: 202-898-2213 – www.naruc.org

regulated utilities continue to construct or contract for, or interconnect solar projects to meet State policy and regulatory requirements, any higher costs will likely be borne by customers. Those higher costs may also hinder progress towards valid State policy goals.

NARUC urges you, in your consideration of potential action, to carefully weigh the harm to energy customers that could result from increasing the costs of solar inputs across the country, and the potential challenges to achieving State renewable energy and greenhouse gas goals that may ensue from higher solar energy prices.

Sincerely,

James Bradford Ramsay
General Counsel

CC: Jamieson Greer, USTR Chief of Staff
Edward Gresser, Chair, USTR Trade Policy Staff Committee
Victor Mroczka, USTR Office of WTO and Multilateral Affairs
Dax Terrill, USTR Office of the General Counsel

Resolution Regarding the Sec 201 Trade Case

Whereas the U.S. Trade Representative ("USTR") is considering the imposition of import duties or non-tariff barriers on solar cells and panels in a trade case ("Trade Case") brought under Section 201 of the Trade Act of 1974 (P.L. 93-618) which permits the President to grant import restrictions on goods entering the United States that injure or threaten to injure domestic industries producing like goods;

Whereas Suniva, Inc. on May 17, 2017, filed a petition with the U.S. International Trade Commission ("ITC") asking to impose tariffs and quotas on imported solar cells and modules, as well as a price floor on solar modules. On May 25 2017, SolarWorld Americas announced it had joined as co-petitioner;[2]

Whereas on June 1, 2017, the U.S. International Trade Commission initiated investigation No. TA-201-75 under Section 202 of the Trade Act (19 U.S.C. § 2252) to determine whether crystalline silicon photovoltaic ("CSPV") cells (whether or not partially or fully assembled into other products) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles;[3]

Whereas on September 22, 2017, the ITC determined that the increased importation of CSPV cells is a substantial cause of serious injury, or threat thereof to the domestic CSPV industry. The ITC advanced the case to a remedy phase.[4] The ITC's remedy recommendations will be forwarded to the USTR on November 13, 2017;[5]

Whereas on October 31, 2017, the ITC Commissioners announced their respective remedy recommendations regarding imports of CSVP. Commissioners' recommendations included tariffs on solar modules, tariffs on solar cells, quantity restrictions on imported cells and modules, international negotiations to address the underlying cause of the increase in imports, and appropriate funding mechanisms that may facilitate a positive adjustment to import competition. The ITC will forward its report, which will contain its injury determination, remedy recommendations, certain additional findings, and the basis for them, to the President by November 13, 2017; [6]

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[2] USITC, "Crystalline Silicon Photovoltaic Cells (whether or not partially or fully assembled into other products)." Staff report. September 22, 2017. Investigation No. TA-201-75. https://www.lawofrenewableenergy.com/wp-content/uploads/sites/370/2017/09/CSPV-201-ITC-Final-Injury-Staff-Report-9.22.2017-1230109-623629.pdf

[3] *Ibid.*

[4] USITC, News Release 17-133, Inv. No. TA-201-075. September 22, 2017, https://www.usitc.gov/press_room/news_release/2017/er0922ll832.htm

[5] *Ibid.*

[6] USITC, "Crystalline Silicon Photovoltaic Cells (whether or not partially or fully assembled into other products)" Commissioner comments. October 31, 2017. Link found at: USITC, News Release, 17-159, Inv. No.TA-201-075. October 31, 2017.

Whereas Section 201 of the Trade Act (19 U.S.C. § 2251) authorizes the President, in the event of an affirmative determination by the ITC, to take all appropriate and feasible action within his power that he determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs;

Whereas Section 203 of the Trade Act (19 U.S.C. § 2253) describes what the President shall consider in determining possible actions in response to an injury finding. Such factors include the ITC recommendations, the extent to which the domestic industry will benefit from adjustment assistance, the efforts of the domestic industry to make positive adjustments, short and long term economic and social costs and benefits of possible actions, and other factors related to the national economic interest including the effect of the implementation of actions on consumers;

Whereas the potential action the President may take in response to an injury finding includes: imposition, or increase, or a duty on the imported articles in question; use of a tariff-rate quota; modification or imposition or any quantitative restriction on the importation of articles into the United States; a proposal to negotiate and carry out an agreement with foreign countries to limit the exportation from foreign countries and importation into the United States; procedures for the granting of import licenses; other negotiations to identify the underlying cause of the increased imports to alleviate the injury; legislative proposals, and any combination of these actions;[7]

Whereas the USTR, on behalf of the Trade Policy Staff Committee, has requested comment on the appropriateness of potential actions and how such action would be in the public interest; the short- and long-term effects the potential action is likely to have on the domestic CSPV industry, other domestic industries, and downstream consumers; and the effects that not taking potential action is likely to have on the domestic CSPV industry and other domestic industries and consumers;[8]

Whereas solar energy is being developed in many states to provide fuel diversity and support state policy goals, including Renewable Portfolio Standards, reduce greenhouse gas emissions, and provide resiliency to state and regional electric grids;

Whereas in 2016, solar was the single largest source of new electric generating capacity in the nation and 15 Gigawatts ("GW") were deployed nationally in 2016, a 100% increase over 2015;[9]

Whereas cumulatively, solar capacity in the United States now totals 44.7 GW, and is expected to increase to 50 GW by the end of 2017;[10]

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[7] Office of the US Trade Representative, "Request for Comments and Public Hearing About the Administration's Action Following a Determination of Import Injury With Regard to Certain Crystalline Silicon Photovoltaic Cells." Docket No. USTR-2017-0020. Federal Register / Vol. 82, No. 205, Wednesday October 25, 2017.

[8] *Ibid*.

[9] SEIA/GTM Research "Solar Market Insight Report 2016 Year In Review," available at https://www.seia.org/research-resources/solar-market-insight-report-2016-year-review.

[10] SEIA/GTM Research "Solar Market Insight Report," (September 11, 2017) available at, https://www.seia.org/us-solar-market-insight.

Whereas the future growth in solar investments, installations, and solar energy produced could be stifled if possible actions taken in response to the injury finding causes solar panel prices to spike significantly;

Whereas NARUC does not dispute the ITC's finding of injury, but NARUC is concerned that at least some of the requested trade protections could significantly increase the price of solar panels and therefore the cost of solar electricity generation;

Whereas GTM Research estimates that a significant price increase resulting from the proposed tariffs would cut the demand for solar projects approximately in half over the next four years;[11]

Whereas in cases where regulated utilities continue to construct or contract for, or interconnect solar projects to meet state policy and regulatory requirements, higher costs will likely be borne by customers and achievement of policy goals may be impeded;

Whereas the USTR, on behalf of the Trade Policy Staff Committee, has requested comments by November 20, 2017, and responses to those comments by November 29, 2017, on the appropriateness of potential actions and how such action would be in the public interest, including the potential effects of any actions on consumers. This request for comment provides an opportunity for NARUC to express its interest in the USTR considering the interaction of potential actions with state policy goals and consumer costs; *now therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, convened at its 2017 Annual Meeting and Education Conference in Baltimore, Maryland, as regulators working to protect the public interest and to ensure safe, reliable and affordable sources of electricity, urges the USTR, in its consideration of potential action, to carefully weigh the harm that could result to energy customers from increasing the costs of solar inputs across the country, and the potential challenges to achieving state renewable energy and greenhouse gas goals that may result from higher solar energy prices.

Sponsored by the Committee on Energy Resources and the Environment
Recommended by the NARUC Board of Directors November 14, 2017
Adopted by the NARUC Committee of the Whole November 15, 2017

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11 The Potential Impact of Solar Tariffs in 12 Charts (October 17, 2017), https://www.greentechmedia.com/articles/read/the-potential-impact-of-solar-tariffs-in-12-charts#gs.vDo9rtA.