SEIA PREHEARING REMEDY BRIEF
-- Executive Summary --

Overview

SEIA's prehearing remedy brief carefully explains why imposing trade-restrictive relief ***would not*** help the domestic CSPV cell/module industry to become viable by the end of the four-year remedy period, but ***would*** cause vast harm to the rest of the solar industry. Traditional trade relief is a losing proposition for the entire American solar industry, its workers, and consumers, while stifling our ability to innovate and compete.

The "no benefit" conclusion flows from the detailed information now available about the obstacles faced by SolarWorld and Suniva. Formal analysis shows that even tariffs at the statutory maximum level of fifty-percent will not enable these producers to return to health. Although the ITC found imports to be the largest problem facing the CSPV cell/module industry, that doesn't mean that the myriad other problems they face aren't more potent when taken together.

Such issues include the fact that these companies made a strategic decision to focus on the market's residential and small commercial segments, thereby missing the opportunity to benefit from massive growth in the utility-scale segment. They have also made many missteps that have limited their success even in their preferred residential and small commercial segments. Lack of scale, poor technological bets, and problems with quality, timeliness, and adequacy of supply are on this list as well. ITC remedy recommendations must consider *all* of the factors that have hindered the performance of this industry.

Meanwhile, standard economic modeling and plain common sense shows the damage that would hit the greater solar industry from restrictive trade relief. Demand for CSPV-based energy in an incredibly competitive electricity market would cause electric providers and end users to look elsewhere for cheaper power. Job losses numbering in the tens of thousands would follow. This foreseeable and measurable harm is not limited to "downstream" or "service" segments of the industry such as installation. In fact, ***solar manufacturing employment*** (of which petitioners account for a tiny fraction) would ***fall dramatically.***

As a result, restrictive trade relief would fail two critical statutory requirements: that any ITC remedy (a) effectively assist the domestic industry in adjusting to import competition and (b) cause greater economic and social benefits than costs. The ITC can only accomplish these objectives by recommending non-trade-restrictive measures, including assistance that takes full advantage of the unique solar resources within the federal government.

Statutory Limitations on What the ITC May Recommend

Safeguard cases offer the ITC little flexibility in designing relief. By statute, the ITC can recommend:

- "trade relief" (tariffs, quotas, or tariff-rate quotas) and/or
- non-trade-restrictive "adjustment measures."

At the same time, the statute requires that any relief recommended or imposed: (1) add no more than a 50 percent tariff to any existing tariff levels (*in this case, the existing tariff level is zero)*; (2) be limited (narrowly tailored) to what is needed to the actual injury suffered by the domestic industry; (3) be designed to facilitate a positive adjustment to import competition; and (4) provide greater economic and social benefits than costs.

Item (2) is especially important. The ITC must recommend the least restrictive relief that will address imports' contribution to a struggling domestic industry's problems. As for item (3), ordinarily the ITC can respect this limitation by keying its remedy proposals to a domestic industry's adjustment plan, but no such plans have been submitted.

Meanwhile, item (1) limits any tariff recommendation to 50% on CSPV cells/modules. Suniva's suggested $0.40/watt duty on cells would be equivalent to **200% *ad valorem***, which is 4X the statutory maximum. Any tariff recommendation beyond $0.10/watt on cells or $0.21/watt on modules, based on recent pricing levels, would violate the statute. Beyond that, the ITC must ensure that its remedy recommendation does not impose costs that are disproportionate to the benefits.

Restrictions at the Statutory Maximum Level Would Not Benefit Petitioners

Data show that global trade restrictions will not enable petitioners to return to health and indeed are unlikely to help them at all. Import restrictions will result in fewer sales of CSPV cells and modules as purchasers switch to alternative forms of energy. If the government were unwise enough to impose import relief aimed at pushing CSPV prices higher, it would find that demand destruction and the domestic industry's capacity constraints make it impossible for the industry to become profitable.

Without significantly enhanced profit margins (which import relief cannot deliver), the CSPV cell/module industry cannot finance the overhaul it needs. The capital this industry needs to restructure will not be conjured into existence by trade relief.

Economic Consequences of New Global Trade Restrictions Would Be Severe

U.S. solar deployment would plummet.

Industry experts have concluded that Suniva's proposed trade restrictions would cause massive reductions in U.S. solar deployment.

- Global research firm IHS Markit estimates that if Suniva's proposed remedy (at levels exceeding legal limits) were theoretically adopted, solar installations would fall 5.4 GW in 2018 and 6.9 GW in 2019. If the maximum legal tariff of 50 percent were imposed, solar installations would fall by 3 GW in 2018 and 3.7 GW in 2019. Over the four-year period of 2018-2021, IHS Markit estimates a total reduction in solar deployment of 28.5 GW (45% reduction) under Suniva's proposal, and 15.1 GW (24% reduction) under the maximum legal 50 percent tariff remedy.

- GTM Research predicted (in June) an overall 55% decline in solar if the Suniva remedy request were adopted. The GTM Research predictions of demand destruction breakdown across 2018-2022 by market segment compared to forecasts as follows:
    - utility-scale, a **59%** reduction
    - residential, a **34%** reduction
    - nonresidential, a **39%** reduction.

Job losses would be severe across the solar value chain, including manufacturing.

The dramatic reduction of deployment would translate into large-scale job losses throughout the solar value chain. Solar employment in America, around 260,000 in 2016, is strongly correlated to the level of annual deployment.

Importantly, solar manufacturing employment will be negatively impacted. Suniva's remedy proposal, while increasing employment in cell- and module-making by about 1,100 in 2018 and 2,200 in 2019, would reduce employment in the racking sector by 2,774 in 2018 and 3,354 in 2019. Taken together, manufacturing employment falls in both years. In fact, manufacturing employment falls in every year under the Suniva proposal – over 1,600 lost manufacturing jobs in the first year alone.

Overall job losses are astronomical. Over 62,800 jobs will be lost in 2018 alone; over 80,000 jobs will be lost through 2021. With losses in both solar manufacturing jobs and overall solar jobs, it is hard to see ***any*** benefit from Suniva's proposal. Suniva's proposal will result in a loss of jobs in ***every state*** across the country, including the petitioners' home states of Georgia and Oregon, both of which would lose more than a thousand jobs a year. Even at the lower tariff rate of fifty percent – the maximum legal limit – job losses caused by lower tariff rates are massive. In 2018, 33,658 solar jobs would be lost.

Best Solution Is Direct Assistance to the Ailing Domestic Producers

ITC recommendations will be most valuable if they focus on ***helping*** the domestic industry address their structural and technical problems directly. This case therefore presents the scenario foreseen in Section 201's legislative history, where direct assistance is not just a proper focus but ***the*** proper focus. Options include:

- **Technical assistance**, managed by the Commerce Department, to certified firms and to the industry as a whole at a level of up to $10 million annually. The focus here should be (1) improvements to technical processes so that petitioners can achieve the necessary scale to compete in all segments of the market, and (2) obtaining adequate capital to make periodic technical improvements and hence move toward competitiveness. This assistance should leverage technical expertise residing in the DOE laboratory system, particularly the National Renewable Energy Laboratory ("NREL") with its technology licensing program and its successful program of providing technical services under strategic partnership agreements with private-sector companies. Successful leading PV firms such as First Solar and SunPower have benefited from NREL assistance.

- **Traditional adjustment assistance**, administered by the Labor Department, and featuring training, employment services, and financial assistance to adversely affected workers as well as assistance for communities in the form of grants of up to $1 million for training programs at community colleges. Using these programs, the government could promote training geared toward diverse occupations in the solar industry, helping to narrow a "gap between solar workforce supply and demand" that has been documented by The Solar Foundation. These would be important investments in the long-run success of the U.S. solar industry.

- **Other assistance:** With both companies in bankruptcy, Suniva and SolarWorld face significant difficulties in obtaining capital to address the injury found by the ITC. Compared to the trade remedies discussed above that result in no capital provided to the domestic industry, potentially available sources of money include AD/CVD duty deposits (available if a settlement of the related trade remedy cases can be achieved) or import license fees collected pursuant to Section 1102 of the Trade Act of 1979. As for the amount of funding needed, based on 2016 imports of roughly 12.8 GW of CSPV cells and modules, a fee equivalent to roughly $0.01/watt would generate (over a three-year remedy period) sufficient funds to cover the adjustment expenses reported ***by the domestic industry members themselves*** in questionnaire responses submitted to the ITC.

In this manner the ITC can fulfill its mandate to recommend action "likely to facilitate positive adjustment to import competition" without the damaging effects on the broader solar industry of a restrictive quota or tariff.