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Anti-Circumvention Inquiry (from Malaysia)
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A-SMACC's Business Proprietary Information Removed from Pages: 3-5, 17-27, Client Certifications, Exhibit List, and Exhibits 1-3
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The Honorable Gina M. Raimondo
Secretary of Commerce
International Trade Administration
Attn: Enforcement & Compliance
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: ***Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China***: Response to Request for Additional Information

Dear Secretary Raimondo:

On behalf of the American Solar Manufacturers Against Chinese Circumvention ("A-SMACC"), we hereby submit the following response to the U.S. Department of Commerce's (the "Department") September 29, 2021 request for additional information.[1] The new factual information accompanying this response is being submitted pursuant to 19 C.F.R. § 351.301(c)(1) in response to the Department's questionnaire and is timely filed in accordance with the Department's October 5, 2021 letter.[2]

[1] Letter from Abdelali Elouaradia, Director, Off. IV, AD/CVD Operations, to the American Solar Manufacturers Against Chinese Circumvention, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Requests for Anti-Circumvention Rulings and Request for Additional Information* (Sept. 29, 2021).

[2] Letter from Lana Nigro, Program Manager, AD/CVD Operations, Off. VII, to the American Solar Manufacturers Against Chinese Circumvention, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not*

For the reasons discussed in A-SMACC's circumvention ruling requests and its prior submissions,[3] A-SMACC urges the Department to initiate these anti-circumvention inquiries. Addressing Chinese producers' circumvention of the existing antidumping and countervailing duty orders on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China* ("AD/CVD orders") will promote the Biden Administration's goals of rapidly addressing climate change while rebuilding the solar supply chain and solar manufacturing here in the United States. American solar manufacturing is in the midst of a resurgence thanks to U.S. responses to unfair trade practices, especially by China. New investments in the industry are threatened unless the unfair trade practices of Chinese producers are addressed.

Relief from the dumped and subsidized Chinese solar cells/modules that are surging into the U.S. market through circumvention and continuing to injure the U.S. industry will enable further domestic innovation and increase domestic supply, which will allow solar prices to decrease while bolstering the resilience of the U.S. solar supply chain and reducing our dependence on manufacturing controlled by China. An affirmative determination in these cases will promote solar deployment and solar manufacturing jobs in the United States. Therefore, we urge the Department to proceed to initiate these inquiries and provide the domestic industry with the full extent of the trade relief that it was awarded with the imposition of the AD/CVD orders.

Assembled into Modules from the People's Republic of China: Extension Request for Response to Request for Additional Information (Oct. 5, 2021) (establishing a deadline of October 13, 2021 for A-SMACC's response).

[3] Letter from Wiley Rein LLP to Sec'y Commerce, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930* (Aug. 16, 2021) ("Request for Circumvention Ruling"); Letter from Wiley Rein LLP to Sec'y Commerce, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Response to NextEra's Request to Reject Anti-Circumvention Ruling Requests and to Decline Initiation* (Sept. 22, 2021); Letter from Wiley Rein LLP to Sec'y Commerce, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Response to Additional Submissions* (Sept. 29, 2021).

The responses to the Department's questions follow below:

1. **Section 771(9)(F) of the Tariff Act of 1930, as amended (the Act) defines an "interested party" to include "an association, *a majority of whose members* is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product" (emphasis added). It is not clear that A-SMACC meets this requirement since A-SMACC did not state in its circumvention allegation that the named companies constituted the entire membership of A-SMACC. Please:**

   a. **Demonstrate how A-SMACC is an interested party under section 771(9)(F) of the Act.**

Both A-SMACC and its individual members are interested parties within the meaning of section 771(9) of the Act. A-SMACC is an interested party under section 771(9)(F) of the Act because a majority of its members is composed of interested parties as defined in section 771(9)(C). A-SMACC describes the operations of its individual members below in response to question 1.c and [

]. [

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   b. **Identify the full name and address of each member of A-SMACC.**

The full name and address of each member of A-SMACC are as follows:

[

]

c. Describe the operations of each member of A-SMACC.

[

].

[4] **[**], attached as **Exhibit 1**.

2. **Provide evidence that a majority of the A-SMACC members listed in the requests for an anticircumvention inquiry qualify as interested parties within the meaning of either section 771(9)(C), (D), or (E) of the Act.**

[

].

As such, A-SMACC is "an association, a majority of whose members is composed of interested parties described in subparagraph (C)" and thus an interested party under section 771(9)(F) of the Act. Moreover, [

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3. **In your submission of August 27, 2021, you claimed that "{g}iven Chinese manufacturers current dominance of the solar supply chain from polysilicon to ingot to wafer as well as the vast majority of other raw material inputs, and the pervasive influence of the Government of China, A-SMACC members reasonably believe that they will face retaliation and other forms of harm as a result of their status as members of A-SMACC in requesting a circumvention ruling, and thus that their competitive positions may be harmed, were their identities to be revealed." A-SMACC claimed that this amounts to "substantial harm to the competitive position" of its members within the meaning of 19 CFR 351.105(c)(11).**

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[5] [

], attached as **Exhibit 3**.

To evaluate your claim of "substantial harm," we require additional information regarding the members of A-SMACC. Please respond to the following requests.

a. Please explain in more detail why you believe each member of A-SMACC will face retaliation and other forms of harm as a result of its status as a member of A-SMACC. Please provide any reasonably available evidence supporting your claim of potential retaliation with respect to each member of A-SMACC. This can include information and evidence pertaining to each member's current or potential future business relationships, sourcing patterns, customers, etc.

It is well established that the Chinese government uses economic coercion in various forms to pursue its strategic objectives, one of which is to dominate global markets for renewable energy technologies like solar energy equipment. The Chinese government deploys tactics of economic coercion at both the macro and micro levels to pressure countries and companies alike. It relies on both formal state authority and its ability to spur Chinese enterprises (both state-owned and nominally private) into action to advance the state's strategic interests.

The U.S. solar industry specifically has been a victim of Chinese retaliation. For example, in 2012, the Government of China hacked into the computer systems of SolarWorld Americas ("SolarWorld"), the largest solar panel manufacturer in the United States at the time, and stole sensitive, proprietary information. The Government of China's retaliation was a response to SolarWorld's filing of trade cases in 2011. As explained by the New York Times:

> SolarWorld Americas . . . originally brought its trade case in 2011 as a flood of cheap solar panels from China was pushing several domestic manufacturers to the edge of bankruptcy and beyond. After the Commerce Department found that the Chinese companies had benefited from unfair subsidies from their government and were selling equipment below the cost of manufacture, it began imposing stiff tariffs on Chinese imports in May 2012.
>
> According to the Justice Department, that is when a Chinese soldier sometimes known online as WinXYHappy and at least one co-conspirator began a series of break-ins into SolarWorld's computers to steal emails and attachments. Those included cash-flow records indicating SolarWorld's ability to survive financial

> strain, detailed information on proprietary technology and production costs and methods, as well as strategic discussions about the trade case with its lawyers.[6]

More specifically, **the Chinese "spies allegedly stole communications between SolarWorld and the attorneys representing the company in its trade dispute, including question-and-answer documents submitted to the Commerce Department that the Chinese competitors weren't legally allowed to see."**[7] According to the Federal Bureau of Investigation, "SolarWorld had been infiltrated by hackers working for China's People's Liberation Army, who were stealing private documents that would be valuable to Chinese state-backed solar companies – the same ones undercutting SolarWorld's business."[8]

The Justice Department indicted five Chinese hackers who were members of the People's Liberation Army for breaking into SolarWorld's computers – the first time the United States had ever indicted individual foreign agents for cyber intrusion.[9] However, the move "by the Justice Department was almost certainly symbolic since there is virtually no chance that the Chinese would turn over the five People's Liberation Army members named in the indictment."[10] In other words, **Chinese government hacking of solar companies in response to the filing of trade cases**, including breaches of Administrative Protective Orders as discussed above, has largely unfolded without consequences and is thus likely to recur.

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6 Diane Cardwell, *Solar Company Seeks Stiff U.S. Tariffs to Deter Chinese Spying*, New York Times (Sept. 1, 2014), attached as **Exhibit 4**.

7 Shane Harris, *Inside the FBI's Fight Against Chinese Cyber-Espionage*, Foreign Policy (May 27, 2014), attached as **Exhibit 5** (emphasis added).

8 *Id.*

9 *Id.*

10 Michael S. Schmidt & David E. Sanger, *5 in China Army Face U.S. Charges of Cyberattacks*, New York Times (May 19, 2014), attached as **Exhibit 6**.

For at least the past decade, the Chinese government has leveraged the size of China's consumer markets and the centrality of Chinese production to global supply chains to retaliate against foreign governments that are even tangentially related to actions that run counter to China's objectives. According to one recent study, "Beijing has used the threat and imposition of trade-restrictive measures to punish over a dozen countries for pursuing policies deemed harmful to Chinese interests."[11] Examples of the Chinese government's economic retaliation include:

- Cutting off exports of rare earth minerals to Japan after a confrontation between a Japanese coast guard vessel and a Chinese fishing boat in disputed waters around the Senkaku/Diaoyu islands;
- Using customs inspection measures to slow imports of Norwegian salmon after the Nobel Prize Committee awarded the Nobel Peace Prize to dissident Liu Xiaobo;
- Restricting imports of bananas from the Philippines in response to Philippine legal action against Chinese territorial claims in the South China Sea;
- Cutting off group tourism to Taiwan after the election of pro-independence presidential candidate Tsai Ing-wen in 2016;
- Limiting exports of mining products from Mongolia and ending bilateral negotiations regarding lending assistance after Mongolia hosted the Dalai Lama for a visit in November 2016;
- Warning Chinese students against studying in Australia after the Australian government revealed evidence of Chinese intervention in Australian politics; and
- Applying arbitrary antidumping and countervailing duties as high as 218% on imports of Australian wine after Australia called for an investigation into the origins of the COVID-19 pandemic.[12]

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[11] Bonnie S. Glaser, *Time for Collective Pushback Against China's Economic Coercion*, Center for Strategic and International Studies (Jan. 13, 2021), attached as **Exhibit 7**.

[12] Peter Harrell, *et al.*, *China's Use of Coercive Economic Measures*, Center for a New American Security (June 2018) at 9-10, attached as **Exhibit 8**; *Australia Takes Wine Dispute with China to WTO*, BBC (June 19, 2021), attached as **Exhibit 9**.

While these examples illustrate retaliation against foreign government actions or positions, the Chinese government's willingness and ability to retaliate against private companies that advocate or support actions seen as adverse to China are also well recognized. The Department, for example, has noted that foreign companies operating in China are reluctant to invoke their legal rights against the Chinese government due to "the potential for retaliation from Chinese government approval authorities that have considerable power to affect their business prospects in China."[13] In its Section 232 investigation of imports of steel, the Department also noted that **threats of retaliation discourage potential petitioners in U.S. trade remedy proceedings**.[14] In its report in the Section 301 investigation of *China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, the U.S. Trade Representative noted longstanding fears of retaliation on the part of U.S. companies seeking action against Chinese violations of trade rules:

> **As U.S. companies have stated for more than a decade, they fear that they will face retaliation or the loss of business opportunities if they come forward to complain about China's unfair trade practices. Concerns about Chinese retaliation arose in this investigation as well.** Multiple submissions noted the great reluctance of U.S. companies to share information on China's technology transfer regime, given the importance of the China market to their businesses and the fact that Chinese government officials are "not shy about retaliating against critics."[15]

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[13] Memorandum from Leah Wils-Owens, Off. of Policy, Enf't and Compliance, through P. Lee Smith, Deputy Assistant Sec'y for Policy and Negotiations, *et al.*, to Gary Taverman, Deputy Assistant Sec'y for AD/CVD Operations re: *China's Status as a Non-Market Economy* (Oct. 26, 2017) at 47, excerpts attached as **Exhibit 10**.

[14] Off. of Tech. Evaluation, Bureau of Indus. and Sec., U.S. Dep't Commerce, *The Effect of Imports of Steel on the National Security* (Jan. 11, 2018) at 29, excerpts attached as **Exhibit 11**.

[15] Off. of the U.S. Trade Representative, Exec. Off. of the President, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974* (Mar. 22, 2018) at 9, attached as **Exhibit 12** (emphasis added) (footnote omitted).

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More recently, the Congressional Research Service ("CRS") explained that "many U.S. firms have strong interests in open trade and investment channels with China," but "China's behind-the-scenes pressure can sometimes make it difficult to discern to what extent a U.S. company's representation of its economic and business interests in China also may be shaped by undisclosed Chinese government pressures, demands, or threats, issued directly or through Chinese companies and business partners."[16] The same could be said of major opponents of A-SMACC's petition, including the Solar Energy Industries Association ("SEIA"), which counts the U.S. subsidiaries of many of the Chinese solar companies at issue among its members and board members.[17] It even appears to have cooperated directly with the Chinese solar industry in its legal opposition to the U.S. International Trade Commission's Section 201 investigation in 2017.[18] Chinese solar manufacturer LONGi serves on the board of the American Clean Power Association,[19] which has taken the same position as SEIA regarding A-SMACC's petition. The CRS cites several examples of Chinese economic retaliation against individual businesses or associations, including:

- Destruction, confiscation, or rejection of shipments by H&M, Gap, and Nike as potential health hazards after those companies issued public statements related to forced labor in Xinjiang;

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[16] Karen M. Sutter, *China's Recent Trade Measures and Countermeasures: Issues for Congress*, Congressional Research Service (Sept. 20, 2021) at 20, attached as **Exhibit 13**.

[17] SEIA Directory, excerpts attached as **Exhibit 14**; SEIA Executive Committee and Board of Directors, attached as **Exhibit 15**.

[18] *See also* Letter from Akin Gump Strauss Hauer & Feld LLP to Sec'y of Int'l Trade Comm'n, re: *Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products): Prehearing Brief of China Chamber of Commerce for Import and Export of Machinery and Electronic Products, Solar Energy and Photovoltaic Products Branch* (Aug. 8, 2017) at 1, excerpts attached as **Exhibit 16** . This brief on behalf of the Chinese industry association "adopts and incorporates by reference the arguments contained in the Pre-Hearing Brief also filed today by {SEIA}," which would not have been possible without prior coordination. *Id.*

[19] Overview, American Clean Power Association (last accessed Oct. 11, 2021), attached as **Exhibit 17**.

- Suspension of cooperation agreements with the National Basketball Association after Houston Rockets GM Daryl Morey tweeted in support of Hong Kong's pro-democracy movement; and

- Threats to take action against U.S. airlines and hotel chains if they did not revise their corporate websites to clarify that Taiwan, Hong Kong, and Macau are regions of the People's Republic of China.[20]

The hacking and theft of confidential information discussed above were not the Chinese government's only retaliation against the U.S. solar industry. After the United States issued the *Solar I* AD/CVD orders in December 2012,[21] the Chinese government responded on July 20, 2012 by initiating antidumping and countervailing duty investigations on solar-grade polysilicon from the United States and South Korea.[22] In January 2014, China imposed provisional antidumping duties on U.S. and Korean polysilicon up to 57% and provisional countervailing duties of 2.1%.[23] The final antidumping duties on imports from the United States were of 53.3% to 57.0% and of 2.4% to 48.7% on imports from Korea.[24] The countervailing duties on U.S. exporters were 2.1%, except for REC Solar Grade Silicon LLC, REC Advanced Silicon Materials LLC, and MEMC Pasadena, Inc., for which the calculated countervailing duty rate was *de minimis* or zero.[25] However, the effect of the combined antidumping and countervailing duty rates was to block U.S. polysilicon manufacturers from the largest global market for their

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[20] Karen M. Sutter, *China's Recent Trade Measures and Countermeasures: Issues for Congress*, Congressional Research Service (Sept. 20, 2021) at 53-55, attached as **Exhibit 13**.

[21] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 77 Fed. Reg. 73,018 (Dep't Commerce Dec. 7, 2012) (amended final deter. of sales at less than fair value, and antidumping duty order); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 77 Fed. Reg. 73,017 (Dep't Commerce Dec. 7, 2012) (countervailing duty order).

[22] *See Crystalline Silicon Photovoltaic Cells and Modules from China*, Inv. Nos. 701-TA-481 and 731-TA-1190, USITC Pub. 4874 (Mar. 2019) (Review) at IV-20.

[23] *Id.*

[24] *Id.*

[25] *Id.*

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product, which had adverse consequences on their operations and on the U.S. solar supply chain. U.S. production of polysilicon shrank 55% between 2014 and 2018,[26] followed by further declines and the closures of several domestic polysilicon facilities, including REC Silicon's $1.7 billion polysilicon plant in Moses Lake, Washington, and a SunEdison polysilicon plant in Pasadena, Texas, which closed in 2015 and was purchased by a Chinese company.[27] Being locked out of the global market for polysilicon for the last several years has cost the U.S. producers hundreds if not thousands of jobs and multiple production facilities accounting for billions of dollars in investments.[28] Moreover, as stated in A-SMACC's circumvention request, China now controls as much as 80% of global polysilicon production, thanks in large part to these retaliatory trade actions against U.S. solar suppliers.[29]

Since these events, Chinese policy has increasingly emphasized utilizing China's centrality in global supply chains to coerce favorable policy outcomes abroad. In a 2020 speech regarding China's mid- to long-term economic strategy, for example, Xi Jinping emphasized that **China "must sustain and enhance our superiority across the entire production chain in sectors {including new energy}; and we must tighten international production chains' dependence on China" to form "a powerful countermeasure and deterrent capability against foreigners who would artificially cut off supply** . . . ."[30]

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[26] *See* David Feldman & Robert Margolis, *Q4 2018/Q1 2019 Solar Industry Update*, National Renewable Energy Laboratory (May 2019) at 57, excerpts attached as **Exhibit 18**.

[27] *See Manufacturers of U.S.-Made Polysilicon Praise Purchase Commitments in Phase 1 of U.S.-China Trade Deal*, Hemlock Semiconductor (Jan. 15, 2020), attached as **Exhibit 19**.

[28] *Id.*

[29] Request for Circumvention Ruling at Exhibit 1, p. 3.

[30] Xi Jinping, *Certain Major Issues for Our National Medium- to Long-Term Economic Social Development Strategy*, Seeking Truth (Nov. 1, 2020) (unofficial translation by the Center for Strategic and Emerging Technology), attached as **Exhibit 20** (emphasis added).

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This articulation of a strategy to effectively weaponize international supply chain reliance on China has been accompanied by the creation of legal regimes that would formalize and facilitate economic retaliation against parties deemed to be acting contrary to Chinese interests. In September 2020, the Ministry of Commerce of the People's Republic of China ("MOFCOM") issued the *Provisions on the Unreliable Entity List*, which permit certain types of sanctions against "foreign entit{ies} in international economic, trade and other relevant activities," in response to actions that "endanger{} {the} national sovereignty, security or development interests of China," cause "damage to the legitimate rights and interests of {} enterprise{s}," or are viewed as contrary to "internationally accepted economic and trade rules."[31] Possible penalties include restricting or prohibiting import and export related transactions with the foreign entity.[32]

In January 2021, MOFCOM issued the *Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures*, permitting retaliation when extraterritorial application of foreign law "unjustifiably prohibits or restricts the citizens, legal persons or other organizations of China from engaging in normal economic, trade and related activities with a third state (or region) or its citizens, legal persons or other organizations."[33] The rules broadly permit "necessary counter-measures based on actual circumstances and needs," and even provide for a private right of action that would allow private companies to sue for

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[31] *MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List*, Ministry of Commerce of the People's Republic of China (Sept. 19, 2020), attached as **Exhibit 21**.

[32] *Id.*

[33] *MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures*, Ministry of Commerce of the People's Republic of China (Jan. 9, 2021), attached as **Exhibit 22**.

retaliation if they believe that they have been affected by adverse foreign actions.[34] The National People's Congress subsequently codified a similar framework in Chinese statute.[35] Echoing language in these new legal provisions, the China Photovoltaic Industry Association issued a statement threatening action against U.S. companies that cooperate in any response to concerns about forced labor in Xinjiang:

> We also solemnly warn the U.S. associations and enterprises that, if they wish to use this as an excuse to restrict or suppress the relevant Chinese concerns and enterprises, or to interfere in normal business cooperation or competition in pursuit of individual gain, it would not only violate the rules of international trade and market economy principles, it would also destroy global value and supply chains and damage the interests of companies and consumers, including in the United States, and would ultimately backfire against those participating in the lie.[36]

These new legal regimes clarify and formalize the threat of retaliation for pursuing remedies against Chinese interests, but they did not create it. Whether or not these new provisions are invoked, the Chinese government retains an array of formal and informal means to intervene and force even nominally private Chinese enterprises to act in the state's strategic interest. At the firm level, these include direct or indirect ownership stakes by state-owned enterprises ("SOEs"), joint venture agreements with SOEs or government entities, and direct Chinese Communist Party ("CCP") oversight of corporate governance and decision making.[37] Chinese government policy documents governing private sector enterprises have also emphasized the role of industry associations in acting as a conduit between the state and firms,

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34 *Id.*

35 *Law of the PRC on Countering Foreign Sanctions*, Standing Comm. of the Nat'l People's Cong. (June 10, 2021) (unofficial translation by China Law Translate), attached as **Exhibit 23**.

36 *Statement on Individual US Agencies, Associations and Companies Slandering China's Xinjiang Photovoltaic Supply Chain Involving "Forced Labor"*, China Photovoltaic Industry Association (Jan. 20, 2021), attached as **Exhibit 24**.

37 *See, e.g.*, *Chinese State Capitalism: Diagnosis and Prognosis*, Center for Strategic and International Studies (Oct. 2021) at 15-28, excerpts attached as **Exhibit 25**.

and have established frameworks for utilizing private firms to further China's "united front" efforts.[38] These efforts "work to co-opt and neutralize sources of potential opposition to the policies and authority of {the CCP}," both in China and internationally, and "are playing an increasingly important role in China's broader foreign policy . . . ."[39] Beginning early in China's drive to dominate the solar industry, its "solar companies {encouraged} their United States executives to join industry trade groups to tamp down anti-Chinese sentiment before it takes root."[40] Recent activity in the Chinese solar industry demonstrates both that (i) the government can and does control the supply of inputs, and (ii) that Chinese solar enterprises act in concert when faced with challenges to their international commercial interests.[41]

China, in other words, has continued to expand its notions of national security to cover even broader swathes of economic activity,[42] and it intends to leverage its centrality to critical global supply chains to enforce its strategic interests. It is both willing and able to do so through formal legal channels and ad hoc interventions in the operations of SOEs and private firms alike.

To be clear, this case is about more than dumped and subsidized imports of CSPV cells and modules. It implicates China's strategic economic interests and is likely to generate a

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38 *See, e.g.*, *The Central Committee of the Communist Party of China and the State Council on Creating a Better Development Environment: Opinions on Supporting the Reform and Development of Private Enterprises*, State Council (Dec. 4, 2019), attached as **Exhibit 26**; *The General Office of the Central Committee of the Communist Party of China issued the "Opinions on Strengthening the United Front Work of the Private Economy in the New Era"*, State Council (Sept. 15, 2020), attached as **Exhibit 27**.

39 Alexander Bowe, *China's Overseas United Front Work: Background and Implications for the United States*, U.S.-China Economic and Security Review Comm'n (Aug. 24, 2018) at 3, attached as **Exhibit 28**.

40 Keith Bradsher, *China Racing Ahead of U.S. in the Drive to Go Solar*, New York Times (Aug. 24, 2009), attached as **Exhibit 29**.

41 *See, e.g.*, Liam Stoker, *Solar Manufacturing Majors Call on Customers to Delay Projects Amidst Supply 'Crisis'*, PV Tech (Sept. 30, 2021), attached as **Exhibit 30**; Corrine Lin, *Silicon Metal Shortage to Intensify as Yunnan Cut Production*, InfoLink (Sept. 14, 2021), attached as **Exhibit 31**.

42 *See, e.g.*, Helena Legarda, *China's New International Paradigm: Security First*, Mercator Institute for China Studies (June 15, 2021), attached as **Exhibit 32** ("From trade ties with other countries to China's global image and reputation – everything has become a matter of national security.").

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response that targets A-SMACC's members if their identities are made public. The overseas investments through which Chinese solar companies have circumvented the AD/CVD orders are not simply independent commercial transactions by private enterprises seeking to maximize their own competitiveness in international markets.[43] They are the outcome of industrial policy and strategic economic priorities at the highest levels of the Chinese government.

As A-SMACC explained in its Request for Circumvention Ruling, the companies at issue in this proceeding publicly tout their roles in implementing China's Belt and Road Initiative ("BRI").[44] In part to implement the BRI, the Chinese government has promoted a policy of "international capacity cooperation," which encourages the development of industrial facilities in third countries by Chinese enterprises in certain industries, including solar.[45] "Deepening international capacity cooperation" was incorporated as an objective into the recently issued 14th Five-Year Plan.[46] Reports link Chinese solar manufacturing investments in each of the countries under consideration here to the Chinese government's international capacity cooperation and BRI policies.[47] This case would not only compromise the viability of these specific BRI investments. By establishing a clear precedent for other industries operating under the auspices

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[43] They would be circumventing the AD/CVD orders even if they were, but their relationship to the Chinese government's geopolitical objectives makes them a matter of China's national security concept and thus eligible for protection through retaliatory actions against A-SMACC's members as a matter of Chinese law.

[44] *See, e.g.*, Request for Circumvention Ruling (Vietnam Volume) at 24; Request for Circumvention Ruling (Malaysia Volume) at 37.

[45] *See, e.g.*, *Guiding Opinions of the State Council on Promoting International Cooperation in Production Capacity and Equipment Manufacturing*, State Council (May 13, 2015), attached as **Exhibit 33**.

[46] *Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035*, Xinhua News Agency (Mar. 12, 2021) (unofficial translation by the Center for Strategic and Emerging Technology) at 102, excerpts attached as **Exhibit 34**.

[47] *See, e.g.*, *China's "Sunshine" on the "One Belt One Road" – Sino-Thai New Energy Cooperation Radiates Southeast Asia*, Xinhua News Agency (July 1, 2016), attached as **Exhibit 35**; *Photovoltaic Industry Has Become a New Highlight of China-Vietnam Capacity Cooperation*, People's Daily (Feb. 13, 2017), attached as **Exhibit 36**; *"One Belt One Road" Photovoltaic Case Sharing | Malaysia Penang Solar Cell and Solar Module Production Line Project*, Northstar (Sept. 26, 2019), attached as **Exhibit 37**.

of the BRI and "international capacity cooperation" policies, it could undermine one of the Chinese government's key assumptions and motivations – the ability to expand access to global markets by relocating certain types of production capacity to third countries.

A-SMACC members thus reasonably fear retaliation in response to these anti-circumvention petitions. China's history of resorting to economic coercion in response to unfavorable foreign policy developments, its previous attacks on individual firms pursuing trade remedies **in this industry**, its recent expansions of legal and extra-legal means to retaliate, and the importance of the industrial policy strategies that gave rise to this case all suggest that retaliation is likely if not inevitable if A-SMACC's members are publicly identified.

Such retaliation could put A-SMACC's members and the U.S. solar industry out of business for good. China currently controls as much as 80% of global polysilicon production capacity and nearly 100% of global ingot and wafer manufacturing capacity.[48] While A-SMACC's members [

]. If the identities of A-SMACC's members were revealed, the Chinese government or [

]. Given China's influence within U.S. industry associations [

], retaliation could result in lost sales in the U.S. market as well as disruptions to the supply of key inputs.

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[48] *See* Request for Circumvention Ruling at Exhibit 1, p. 3 (estimating Chinese control of 80% of global polysilicon production); Jeff Ferry, *Reclaiming the U.S. Solar Supply Chain from China*, Coalition for a Prosperous America (Mar. 2021) at 9-10, attached as **Exhibit 38** (estimating Chinese control of around two-thirds of Chinese polysilicon production).

This would be a perverse and catastrophic outcome given the manner in which China achieved dominance over the upstream supply chain in this industry. As one recent study explains:

> The upstream businesses, making polysilicon, ingots, and wafers, lend themselves to China's form of government-managed industrial subsidy-driven mass production. These processes are energy-intensive so China's subsidized electricity enables the government to give Chinese companies a hidden cost advantage. Equally important is the use of forced labor in China's Xinjiang province. China has 64% of the world's production capacity of polysilicon. About half of that production occurs in Xinjiang. China has ample supplies of coal-fired power plants in Xinjiang producing low-cost energy. The irony of using highly polluting power plants to produce solar equipment should not be lost on us . . . .[49]

The forced labor aspect of China's supply chain dominance should be particularly concerning to U.S. authorities. A recent report focusing on forced labor in the solar supply chain cites "significant evidence . . . that labour transfers are deployed in the Uyghur Region within an environment of unprecedented coercion, undergirded by the constant threat of re-education and internment," to an extent that is "tantamount to forcible transfer of populations and enslavement."[50] The report implicates major Chinese solar manufacturers at issue in this proceeding, including Jinko Solar, LONGi Green Energy, Trina Solar, and JA Solar.[51] Industrial subsidization on an unprecedented scale was apparently insufficient insurance of global control over the solar energy industry and its supply chains.

A-SMACC and its members have great concern that Chinese companies could use the forced labor verification process [

]. Moreover, A-SMACC and its members recognize that, [

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[49] *Id.* at 10.

[50] Laura T. Murphy & Nyrola Elima, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, Helena Kennedy Centre for International Justice (May 2021) at 7, attached as **Exhibit 39**.

[51] *Id.* at 38-42.

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].[52] But this is largely a consequence of the Chinese government's willingness and ability to secure dominance of strategic industries by any means necessary, up to and including violations of basic human rights. In a statement only weeks ago before the World Trade Organization's Dispute Settlement Body, the United States cited **"global excess solar cell and module capacity," driven by "China's non-market practices," that "pushed our industry to the brink of extinction."**[53] The U.S. statement highlighted continuing efforts **"to undercut U.S. antidumping and countervailing measures on imports from China . . . by shifting operations to other countries."**[54] Just last week, U.S. Trade Representative Katherine Tai highlighted the U.S. solar industry as an example of how "China's government continues to pour billions of dollars into targeted industries and continues to shape its economy to the will of the state, hurting the interests of workers here in the U.S. and around the world."[55] As Ambassador Tai explained:

> The United States was once a global leader in what was then an emerging industry, but as China built out its own industry, our companies were forced to close their doors. Today China represents 80 percent of global production, and large parts of the solar supply chain don't even exist in the United States.[56]

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[52] Neither A-SMACC nor its members [
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[53] *Statements by the United States at the Meeting of the WTO Dispute Settlement Body* (Sept. 27, 2021), excerpts attached as **Exhibit 40** (emphasis added).

[54] *Id.* (emphasis added).

[55] Transcript, *A Conversation with Ambassador Katherine Tai, U.S. Trade Representative*, Center for Strategic and International Studies (Oct. 4, 2021), excerpts attached as **Exhibit 41**.

[56] *Id.*

A-SMACC and its members [

]. The only way to break China's stranglehold on the upstream supply chain is to break its stranglehold on the market for cells and modules. This will not happen unless the United States continues to "not stand idly by while China continues trying to undermine the solar safeguard measure and to continue harming U.S. solar producers and . . . market-oriented solar producers worldwide."[57]

This case is a vital part of the U.S. response. Given the likelihood of Chinese retaliation, however, its benefits will be significantly blunted if the Department does not allow the identities of A-SMACC's members to remain confidential.

b. Since the filing of A-SMACC's circumvention allegation, please identify whether A-SMACC is aware of any attempts by Chinese entities to determine the identities of the members of A-SMACC, or to determine which U.S. companies are not members of A-SMACC.

[

[57] *Statements by the United States at the Meeting of the WTO Dispute Settlement Body* (Sept. 27, 2021), excerpts attached as **Exhibit 40**.

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This points to a systematic, high-pressure campaign to unmask the petitioners by an organization, SEIA, that not only counts Chinese solar manufacturers as its members, but also has a long and well-documented history of lobbying for Chinese solar manufacturers to have unfettered access to the U.S. solar market to the detriment of domestic manufacturing and U.S. national interests. SEIA directly represents the interests of a number of Chinese entities, including those with subsidiaries targeted by the petitions (*e.g.*, LONGi, Jinko Solar, Canadian Solar, and JA Solar, all of whom are SEIA members). A Jinko Solar executive, Nigel Cockroft, is a member of SEIA's Board of Directors in an unelected role. In undertaking its tactics, including a legal, political, and PR strategy to counter the petitions, SEIA is effectively functioning as a Washington, DC-based enforcer for Chinese solar interests, making it unnecessary for Chinese entities to directly determine the identities of the members of A-SMACC.

c. Since the filing of A-SMACC's circumvention allegation, please identify whether A-SMACC is aware of any attempts at retaliation against A-SMACC members.

As of the date of this filing, A-SMACC is unaware of any specific attempts to retaliate against its members since the Request for Circumvention Ruling was filed. A-SMACC strongly believes, however, that this is only because the identities of its members have not been publicly disclosed. As discussed above, A-SMACC's members are aware of persistent and targeted attempts to identify them and reveal their identities to the public. A-SMACC and its members are also greatly concerned about the threat of lost business [

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For example, [

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Given the Chinese government's strategy of economic coercion, its ability to harness collective action by its industries and enterprises (including nominally private enterprises) to pursue strategic objectives, and the influence of Chinese solar companies within SEIA, there is no question that retaliation would occur if the efforts to identify A-SMACC's members were to succeed.

d. Please provide any other evidence of substantial harm beyond retaliation relevant to a showing consistent with 19 CFR 351.105(c)(11).

The primary threat of substantial harm to A-SMACC's members arises from the

likelihood of retaliation. A-SMACC respectfully submits that the likelihood of retaliation is sufficient to establish substantial harm under 19 C.F.R. § 351.105(c). [

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e. So that we can further assess your claim that "substantial harm" will result if the names of the A-SMACC members become public, please identify any foreign ownership in any of the A-SMACC members.

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f. Further, please identify the country(ies) where the solar cells that are used in the solar modules that A-SMACC members manufacture in the United States were produced.

[

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g. Please identify whether any member of A-SMACC or any of its members' affiliates have any sales and/or production operations involving solar cells or solar modules that are located in Malaysia, Thailand, or Vietnam.

i. If they do, please report the names of the companies in Malaysia, Thailand, or Vietnam, and describe the nature of their operations.

ii. Please identify whether any Chinese persons (individuals or entities) own a portion of any of the companies identified in response to item a above.

iii. If they do, please identify the company in which a Chinese person holds an ownership interest, identify the Chinese persons (both individuals and entities (as applicable)) that hold the ownership interest, and identify the percentage owned.

[

]

h. Please identify whether any of the companies identified in response to item g(i) above purchase polysilicon materials (ingots, wafers, *etc.*) or other raw material inputs used to produce solar cells or solar modules from Chinese companies.

i. If they do, please identify the items that they purchase.

As noted above, [

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j. Please identify whether any member of A-SMACC or any of its members' affiliates located in the United States purchase polysilicon materials (ingot, wafer, *etc.*) or other raw material inputs used to produce solar cells or solar modules from Chinese companies.

i. If they do, please identify the items that they purchase.

[

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* * *

REQUEST FOR PROPRIETARY TREATMENT

Pursuant to 19 C.F.R. § 351.304(a)(1)(i) of the Department's regulations, we request business proprietary treatment for the bracketed information in the narrative of this submission and exhibits as detailed below, including information for which business proprietary treatment was previously requested. Disclosure of this information, which is not otherwise publicly available, would cause substantial harm to the competitive position of the submitter and would impair the ability of the Department to obtain information in the future necessary to fulfill its statutory functions. In particular, A-SMACC requests business proprietary treatment for the identities of the companies that are part of A-SMACC, as disclosure of this information could lead to retribution against these companies and cause substantial harm. This submission demonstrates the substantial harm to A-SMACC's members that would likely occur if their identities were to be publicly revealed. In fact, as discussed in this submission, A-SMACC's members are aware of persistent and targeted attempts to identify them and reveal their identities to the public.

Pursuant to 19 C.F.R. § 351.304(b)(1) of the Department's regulations, A-SMACC agrees in principle to permit disclosure of business proprietary information contained in this submission pursuant to the administrative protective order ("APO") in the above-referenced proceedings. A-SMACC respectfully reserves the right, however, to comment on all APO applications prior to disclosure. A public version of this submission has been prepared and is

being filed pursuant to the Department's regulations at 19 C.F.R. § 351.304(c)(1).

(1) **Pages 4, 17-20, 22, 24-27**: *Business or trade secrets concerning the nature of a product or production process* (19 C.F.R. § 351.105(c)(1)).

(2) **Pages 4, 22, 24, and Exhibit 1**: *Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers)* (19 C.F.R. § 351.105(c)(5)) and/or *Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name)* (19 C.F.R. § 351.105(c)(6)).

(3) **Pages 3-5, 19-27, Exhibit List, Client Certifications, and Exhibits 1-3**: *The names of particular persons from whom business proprietary information was obtained* (19 C.F.R. § 351.105(c)(9)).

(4) **Pages 3-5, 17-27, Exhibit List, Client Certifications, and Exhibits 1-3**: *Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter* (19 C.F.R. § 351.105(c)(11)).

If you have any questions regarding this submission, please do not hesitate to contact us.

Respectfully submitted,

/s/ Timothy C. Brightbill
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Laura El-Sabaawi, Esq.
Adam M. Teslik, Esq.
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