

Executive Summary of A-SMACC's Response to the Department of Commerce Regarding Unfair Circumvention of Trade Remedies on Chinese Solar Cells and Modules

October 13, 2021 – Today, the American Solar Manufacturers Against Chinese Circumvention (“A-SMACC”) filed a response with the Department of Commerce regarding illegal and unfair circumvention of trade remedies on Chinese solar cells and modules. Commerce requested additional information from the group on September 29, 2021. The petitions were filed by A-SMACC on August 16, 2021.

A-SMACC's petitions requested that the Department of Commerce investigate unfairly traded imports of solar cells and modules from certain Chinese companies that are unlawfully circumventing U.S. antidumping and countervailing duties.

Key points:

A-SMACC's response confirms that it has legal standing and reinforces its position that China's near-monopoly control over supply chain choke points, and its far-reaching influence in the global solar market, pose extraordinary risks to A-SMACC's individual members. A-SMACC's response establishes that **revealing the identities of A-SMACC's members to the public would create significant risks of potentially crippling retaliation by the Chinese government**, which has used predatory trade practices to achieve a stranglehold on solar supply chains. Specifically:

- It is well-established that **the Chinese government uses tactics of economic coercion against countries and companies alike to advance its economic, strategic, and geopolitical objectives**. According to experts at the Center for Strategic and International Studies, “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.”
- **The U.S. solar industry and supply chain have been victims of the Chinese government's coercive tactics on multiple occasions**, simply for pursuing their legal right to trade remedies under U.S. law. Following its 2011 pursuit of remedies to redress massive industrial subsidization and unfair dumping by the Chinese solar industry, U.S. company SolarWorld was the victim of a coordinated hacking campaign by members of the Chinese military. The hackers stole troves of data, including attorney-client communications and confidential documents prepared for the trade case.
- **The Chinese government also attacked the U.S. solar industry supply chain**. In July 2012, China imposed arbitrary antidumping duties on U.S.-made polysilicon, which led to the closure of multiple U.S. polysilicon facilities and the loss of hundreds if not thousands of jobs.

- Numerous U.S. agencies, including the **Department of Commerce and USTR**, have **already** determined that the Chinese government's threat of retaliation serves to discourage petitioners in trade remedy cases. Affording confidential treatment to the members of A-SMACC is the only way these U.S. companies can protect their vital business interests while seeking their **statutory right** to request protection from unfair trade practices.
- In light of China's willingness to resort to economic coercion, the U.S. Congressional Research Service recently concluded that it can be "difficult to discern to what extent a U.S. company's representation of its economic and business interests may also be shaped by undisclosed Chinese government pressures, demands, or threats, issued directly or through Chinese companies and business partners."
- Those most opposed to A-SMACC's position in this case, in particular the Solar Energy Industries Association ("SEIA") and the American Clean Power Association ("ACP"), count the U.S. subsidiaries of China's major solar companies among their members and even board members. SEIA's members include the U.S. subsidiaries of JinkoSolar, Trina Solar, Canadian Solar, and LONGi Solar, with a JinkoSolar representative sitting on the Board At-Large. LONGi Solar likewise sits on the board of ACP.
- SEIA has even cooperated with the solar energy branch of the Chinese industry association China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("CCCME") to present legal opposition to U.S. trade remedies under Section 201.
- The opponents of this trade action have sought to characterize this case not as an action against Chinese companies, but instead as an action against the countries of Malaysia, Vietnam, and Thailand. They have also sought to characterize these companies' factories in Southeast Asia as substantial investments. Both points are obfuscatory. These investments are minor relative to investments in China, which is where the great majority of R&D, material, equipment, and capital originate. Further, these factories were nearly all built after imposition of duties on China in 2012, and the products made in them are used to supply the U.S. market. As the companies themselves have admitted, the factories exist only as means to circumvent the duties.
- Chinese Communist Party ("CCP") Chairman Xi Jinping has imposed a sweeping vision of "national security" on China's already statist economic model and has moved to strengthen his country's ability to weaponize economic interdependence. **China has recently issued several measures to authorize sanctions or other economic retaliation against foreign entities seen to be acting contrary to**

Chinese interests. Recent measures have also drawn even China's nominally private sector deeper under the CCP's control, including its "united front" efforts, which "work to co-opt and neutralize sources of potential opposition to the policies and authority of {the CCP}" both at home and abroad.

- **This case implicates the strategic economic priorities articulated at the highest levels of the Chinese government and is therefore likely to trigger retaliation.** Chinese companies are circumventing U.S. antidumping and countervailing duty orders largely through third-country investments under China's signature Belt and Road Initiative ("BRI"). A Commerce Department precedent that China may not seek to preserve and expand U.S. market access for unfairly traded products simply by shifting portions of the value chain to third countries would have serious implications for the "international capacity cooperation" policies under the BRI.
- **Chinese retaliation in the face of threats to its key economic strategies is likely, and it could devastate what remains of the U.S. solar industry.** China now dominates critical choke points in the upstream solar industry supply chain. China now controls as much as 80% of global polysilicon production and nearly 100% of global ingot and wafer production. With its ability to control both state-owned and nominally private firms, China could cut off supply of these critical inputs to any company that opposes it and put them out of business for good. Indeed, the China Photovoltaic Industry Association has "solemnly warn{ed}" U.S. companies and industry groups that value and supply chains would be "destroyed" if they act in support of U.S. efforts to prevent the use of forced labor.
- This would be a perverse and catastrophic outcome. China's dominance over polysilicon production is part and parcel of its program of unprecedented industrial subsidization in the solar industry. More recently, China's polysilicon producers, many of whom are located in the Xinjiang Uyghur Autonomous Region, have resorted to utilizing Uyghur forced labor. A study by experts at Sheffield University in England describes "an environment of unprecedented coercion, undergirded by the constant threat of re-education and internment" that is "tantamount to forcible transfer of populations and enslavement." Major Chinese solar companies, including JinkoSolar, LONGi Solar, Trina Solar, and JA Solar, all of whom are affiliated with respondents in this action, were implicated in the report's findings. Chinese companies could retaliate by refusing cooperation in any supply chain audits that U.S. companies need to conduct.
- Breaking China's stranglehold on the upstream solar supply chain depends on ending its unfairly obtained dominance of the market for solar equipment, including cells and modules. U.S. Trade Representative Katherine Tai recently noted, "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.”

- **This case is a vital part of a U.S. response to reverse those trends and rebuild the solar supply chain in America.** As the United States emphasized at a recent meeting of the World Trade Organization’s Dispute Settlement Body, we cannot “stand idly by while China continues to undermine” U.S. trade actions “and continue{s} harming U.S. solar producers and . . . market-oriented solar producers worldwide.”

Background: Wiley, a preeminent Washington, DC law firm, filed a response to the U.S. Department of Commerce request for additional information related to petitions the firm filed on behalf of American Solar Manufacturers Against Chinese Circumvention (“A-SMACC) to combat illegal and unfair circumvention of trade remedies on Chinese solar cells and modules. The Department of Commerce requested additional information from the group on September 29, 2021. The petitions were filed by A-SMACC on August 16, 2021.

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Wiley International Trade partners Tim Brightbill and Laura El-Sabaawi are advising American Solar Manufacturers Against Chinese Circumvention.