

August 2, 2021

**VIA ELECTRONIC FILING**

Lisa R. Barton, Secretary  
U.S. International Trade Commission  
Room 112A  
500 E Street, SW  
Washington, DC 20436

USITC Inv. No. TA-201-75  
(Safeguard)

Confidential Treatment Requested  
for Business Confidential  
Information Removed from Brackets  
on Pages 17-21, 25, 26, 29, 31, 38,  
39 and Attachment 1.

**NONCONFIDENTIAL VERSION**

**Re: Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products): Petition Requesting Extension of Safeguard Relief Pursuant to Section 204 of the Trade Act of 1974**

Dear Secretary Barton:

On behalf of Auxin Solar Inc. (“Auxin Solar”) and Suniva, Inc. (“Suniva”), we hereby submit to the U.S. International Trade Commission the enclosed petition requesting an extension of safeguard relief on imports of crystalline silicon photovoltaic (“CSPV”) cells and modules. This is a petition under section 204 of the Trade Act of 1974 and Subpart F of part 206 of the rules of practice and procedure of the United States International Trade Commission (“Commission”).

Auxin Solar and Suniva have standing to file this petition, pursuant to 19 U.S.C. § 2254(c)(1) and 19 C.F.R. § 206.54(b), as members of the domestic CSPV cell and module industry concerned in the Commission’s investigation which resulted in the imposition by the President of the import relief action.

Pursuant to 19 U.S.C. § 1677f(b)(1), 19 C.F.R. § 206.7, and 19 C.F.R. § 201.6, Auxin Solar and Suniva request confidential treatment be granted for the confidential business information designated as such by brackets (“[ ]”) in the enclosed petition. This bracketed information constitutes the type of information normally treated as business confidential pursuant to 19 C.F.R. § 206.7(a) and 19 C.F.R. § 201.6(a), is not available to the public, and would cause substantial harm to the competitive positions of Auxin Solar and Suniva if it were released to the public.

Auxin Solar and Suniva are also filing a public version of this petition today under separate cover. The information for which Auxin Solar and Suniva are requesting confidential treatment cannot be adequately summarized in a public version because it is so specific that any attempt to provide a nonconfidential summary of the information would effectively result in its disclosure to the public, as contemplated by 19 C.F.R. § 206.7(b).

Attached to this cover letter are counsel certifications regarding the completeness and accuracy of the information contained in the petition, as required by 19 C.F.R. § 206.8. This submission also is filed pursuant to the Commission’s notice concerning the temporary change to its filing procedures.<sup>1</sup>

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<sup>1</sup> See *Temporary Change to Filing Procedures*, 85 Fed. Reg. 15,797 (Mar. 19, 2020).

Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,



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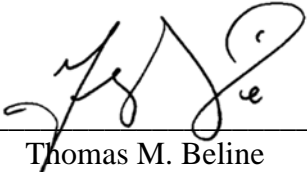
In accordance with section 206.8 of the Commission's rules, I, Thomas M. Beline, counsel to Auxin Solar Inc., certify that (1) I have read the enclosed submission dated August 2, 2021, and (2) based on the information made available to me by Auxin Solar Inc. I have no reason to believe that this submission contains any material misrepresentation or omission of fact, and (3) the information contained in this submission is accurate and complete to the best of my knowledge.

In accordance with section 201.6(b)(3)(iii) of the Commission's rules, I also hereby certify that, to the best of my knowledge, information substantially identical to that for which confidential business treatment has been requested is not available to the general public.

I certify pursuant to 28 U.S.C. § 1746 that the foregoing statements are true and accurate.

I am aware that the information contained above may be subject to verification or corroboration (as appropriate) by the U.S. International Trade Commission. I am also aware that U.S. law (including, but not limited to 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government.

Dated: August 2, 2021

  
\_\_\_\_\_  
Thomas M. Beline

Attorney Certification

District of Columbia: SS

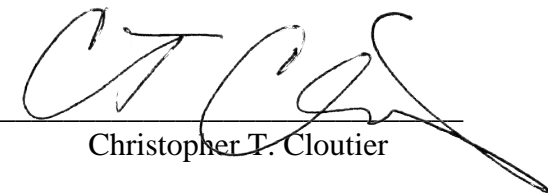
In accordance with section 206.8 of the Commission's rules, I, Christopher T. Cloutier, counsel to Suniva, Inc., certify that (1) I have read the enclosed submission dated August 2, 2021, and (2) based on the information made available to me by Suniva, Inc. I have no reason to believe that this submission contains any material misrepresentation or omission of fact, and (3) the information contained in this submission is accurate and complete to the best of my knowledge.

In accordance with section 201.6(b)(3)(iii) of the Commission's rules, I also hereby certify that, to the best of my knowledge, information substantially identical to that for which confidential business treatment has been requested is not available to the general public.

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Dated: August 2, 2021

  
\_\_\_\_\_  
Christopher T. Cloutier

**BEFORE THE  
UNITED STATES INTERNATIONAL TRADE COMMISSION**

USITC Inv. No. TA-201-75  
Total Pages: 225

Confidential Business Information  
Removed from Pages 17-21, 25, 26,  
29, 31, 38, 39 and Attachment 1.

**NONCONFIDENTIAL VERSION**

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**CRYSTALLINE SILICON PHOTOVOLTAIC CELLS  
(WHETHER OR NOT PARTIALLY OR FULLY ASSEMBLED INTO OTHER  
PRODUCTS)**

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**PETITION REQUESTING EXTENSION OF SAFEGUARD RELIEF  
PURSUANT TO SECTION 204 OF THE TRADE ACT OF 1974  
ON BEHALF OF  
AUXIN SOLAR INC. AND SUNIVA, INC.**

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August 2, 2021

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<b>Attachment</b>	<b>Description</b>	<b>CBI/Public</b>
1	Information Concerning Domestic Production	CBI
2	Import Data	Public
3	CBP Year End Commodity Reports	Public
4	California Stay at Home Order, 2020	Public
5	China's Use of Cambodia As A New Export Platform	Public



In the original safeguard investigation covering crystalline silicon photovoltaic (“CSPV”) cells and modules, the affirmative determination of the U.S. International Trade Commission (“Commission”) reflected a recognition that shoring up America’s solar industry — and the thousands of green manufacturing jobs that it supports — was necessary to address the serious injury caused by surging imports. In recommending a remedy to the President, the Commission sought to address two objectives — (1) protecting CSPV module producers from injurious imports, *and* (2) helping domestic CSPV cell manufacturers to ramp up production for the merchant market. Recognizing that domestic module producers had been relying on cell imports because of a general unavailability of domestically produced cells, the Commission sought to strike the right balance in recommending a remedy that would provide the needed relief for CSPV cell and module producers (the domestic industry). The approach that garnered the most support among Commissioners was (1) an *ad valorem* tariff on modules, and (2) a tariff-rate quota (“TRQ”) on cells, where the in-quota volume had a 0 percent tariff.

As the Commission observed in its mid-term review, the safeguard has had some beneficial effect on the volumes and prices of module imports, thus creating a more favorable environment for investment in U.S. module manufacturing, including increased U.S. module production capacity. In this context, the domestic solar industry is making some positive adjustment to import competition. However, the remedy that the domestic industry received has fallen well short of its promise.

While President Trump implemented the Commission’s recommendation to adopt a tariff on modules and a TRQ on cells, he imposed a larger (2.5 GW) and less effective in-quota volume for cells than the Commission recommended. In fact, the cell TRQ has been so large that it has yet to be reached in the four-year duration of the TRQ, effectively resulting in no remedy for the

cell segment of the CSPV industry for the duration of the safeguard remedy. Furthermore, as part of the post-remedy exclusion process, President Trump initially excluded bifacial modules from the remedy for the first 34 months, until he himself recognized that it was undermining the effectiveness of the safeguard. Other factors that limited the effectiveness of the safeguard included import stockpiling in the lead-up to the remedy and disruptions caused by the COVID-19 pandemic.<sup>1</sup>

Founded in the United States in 2007, Suniva, Inc. (“Suniva”) is a Georgia-based company that was the original petitioner for safeguard relief and participated in the Commission’s mid-term monitoring review. Founded in the United States in 2008, Auxin Solar Inc. (“Auxin Solar”) is a California-based producer that participated in the original safeguard investigation and the mid-term monitoring review. Suniva and Auxin Solar (collectively, “Legacy Producers”) are requesting extension of the safeguard remedy because continuing the safeguard remains necessary to prevent or remedy serious injury to the domestic CSPV industry.<sup>2</sup>

The Legacy Producers are not alone in the domestic industry. Since the safeguard took effect, several new entrants have engaged in domestic production of CSPV modules and companies that tried to produce CSPV cells have exited the market altogether. While we understand that these CSPV module producers strongly support extension of the safeguard remedy, they continue to focus on the importation of CSPV cells. The Legacy Producers, by

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry*, Inv. No. TA-201-075 (Monitoring), USITC Pub. 5021 (Feb. 2020) at 7 (“*CSPV Monitoring Report*”).

<sup>2</sup> Although Suniva is not currently producing, its productive assets still exist at the same facility in Norcross, Georgia and Suniva’s investment plans will allow it to quickly resume production if the economic headwinds that have stifled these investment plans subside. Auxin Solar has been in a continuously productive state since its founding.

contrast, are committed to realizing the full promise of the safeguard remedy, including the expansion of America's CSPV supply chain to include not only domestic production of CSPV modules, but also cells and ultimately wafers. With new domestic polysilicon production, onshoring of cell and wafer production will create a fully integrated domestic solar supply chain.

Due to the challenges noted above, the Legacy Producers have not yet been able to complete their plans to positively adjust to import competition. We are therefore filing this petition, pursuant to section 204(c) of the Trade Act of 1974 (the "Trade Act"), 19 U.S.C. § 2254(c)(1), seeking an extension of the current safeguard and requesting a determination by the Commission that (1) there is evidence that the domestic industry is making a positive adjustment to import competition, and (2) action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury to the domestic CSPV industry.

As the United States recovers from the COVID-19 pandemic and President Biden and Congress continue working on initiatives to build a modern, sustainable infrastructure and an equitable clean energy future, the need for continuing the safeguard — and fulfilling its original promise — could not be more apparent. The need for extending the safeguard and allowing these new green energy policies and initiatives to take hold is necessary to secure America's solar energy independence, since far too much of the value of the production of solar cells and modules is accounted for by imports. The only way for the United States to reclaim its lead in solar energy R&D and production is with sensible policies, including an effective safeguard that remedies the serious injury to U.S. producers and workers caused by CSPV imports.

Under the Trade Act and the Commission's regulations, a petition seeking extension of a safeguard action must be filed on a date that is not earlier than nine months, and not later than six

months, before the safeguard action is scheduled to terminate.<sup>3</sup> This petition is timely because it is being filed on August 2, 2021, which is within the window of time between six and nine months from the scheduled termination of the safeguard at 11:59 pm ET on February 6, 2022.<sup>4</sup>

The Legacy Producers are eligible to file this petition because they are representative of the industry producing the domestic article concerned. The Legacy Producers believe that extension of the safeguard remedy may also be supported by domestic module manufactures Hanwha Q-Cells, LG Electronics, and Mission Solar, who may be making their position known to the Commission after this filing.<sup>5</sup> This petition is supported by the information required under 19 U.S.C. § 2254(c) and 19 C.F.R. § 206.54(d), to the extent such information is publicly available from governmental or other sources, or it is based upon best estimates and the basis therefor, if such information is not available.<sup>6</sup>

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<sup>3</sup> See 19 U.S.C. § 2254(c)(1); 19 C.F.R. § 206.54(c).

<sup>4</sup> See *Proclamation No. 9693, To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes*, 83 Fed. Reg. 3,541 (Jan. 25, 2018) (“*Proclamation*”) at Annex I.

<sup>5</sup> See generally Transcript of Hearing, dated Dec. 5, 2019, Inv. No. TA-201-75 (Monitoring).

<sup>6</sup> See 19 C.F.R. § 206.54(d). Each of the major headings of this Petition correspond to the elements required in the Commission’s regulations.

## I. BACKGROUND

The Commission recommended — and the President imposed — safeguard relief covering imports of CSPV products on February 7, 2018.<sup>7</sup> This action was necessary because a wave of CSPV cell and module imports made it nearly impossible for a once cutting-edge industry to survive in the United States.<sup>8</sup> Manufacturing CSPV products is capital intensive and technologically sophisticated; the industry must be able to continuously invest to improve technology, increase manufacturing efficiencies, and lower costs.<sup>9</sup> The United States had been a leader in the solar energy industry. The solar cell was in fact invented in the United States at Bell Labs. Now there is zero solar cell production in the United States. Legacy Producers are committed to changing that with effective safeguard relief in place. Prior to its successful reorganization in 2019, Suniva had indefinitely suspended its operations in such a way as to facilitate the rapid restart of its CSPV cell and module production. Auxin Solar is prepared to re-shore wafer production and to eventually re-shore cell production.

Demand for solar power soared in the early 2000s in concert with growing environmental concerns. The U.S. industry saw hundreds of companies raise billions of dollars to enter the solar

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<sup>7</sup> See Proclamation No. 10101, *To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)*, 85 Fed. Reg. 65,639 (Oct. 16, 2020) (“*Modification Proclamation*”); *Proclamation*, 83 Fed. Reg. at 3,541.

<sup>8</sup> See *Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products)*, Inv. No. TA-201-075, USITC Pub. 4739 (Nov. 2017) at 1 (“the Commission determined pursuant to section 202(b) of the Trade Act of 1974 that crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products) (‘CSPV products’) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.”) (“*CSPV Safeguard*”).

<sup>9</sup> See *Certain Crystalline Silicon Photovoltaic Products from China and Taiwan*, Inv. Nos. 701-TA-511 and 731-TA-1246-1247 (Final), USITC Pub. 4519 (Feb. 2015) at 46 (“*CSPV II*”).

power market. It was not long before China took notice and began targeting solar power as a key strategic growth industry in 2005. By 2011 China had taken over 60 percent share of the U.S. market,<sup>10</sup> and the U.S. industry turned to the U.S. trade remedy laws for relief.<sup>11</sup>

In 2012, the Commission found the domestic CSPV industry to be materially injured by reason of imports of CSPV cells and modules from China (“*CSPV I*”).<sup>12</sup> Because of the highly substitutable nature of the domestic like product and subject merchandise, “competition in the U.S. CSPV market primarily depends on price.”<sup>13</sup> Subject imports were edging out domestic producers from the U.S. market by pervasively underselling the domestic like product at sizable margins.<sup>14</sup> Domestic producers were forced to shutter CSPV production facilities and/or declare bankruptcy.<sup>15</sup> In light of the “significant and growing volume of low-priced subject imports from China . . . causing domestic producers to lose revenue and market share and leading to significant depression and suppression of the domestic industry’s prices” the Commission concluded that imported cells and modules from China materially injured the domestic industry.<sup>16</sup> On December

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<sup>10</sup> See *Crystalline Silicon Photovoltaic Cells and Modules from China*, Inv. Nos. 701-TA-481 and 731-TA-1190 (Final), USITC Pub. 4360 (Nov. 12) at I-3 (“*CSPV I*”) (“Responding U.S. producers’ U.S. shipments of CSPV modules totaled 453,378 kilowatts valued at \$790 million in 2011, and accounted for 23.1 percent of apparent U.S. consumption by quantity (26.2 percent by value). U.S. shipments of imports of CSPV modules from China totaled 1.2 million kilowatts valued at \$1.7 billion in 2011, and accounted for 62.2 percent of apparent U.S. consumption by quantity (57.4 percent by value).”).

<sup>11</sup> See *CSPV I*, USITC Pub. 4360 at 3 (“On October 19, 2011, domestic producer SolarWorld Industries America, Inc. (‘SolarWorld’) filed antidumping and countervailing duty petitions covering CSPV cells and modules from China.”).

<sup>12</sup> *Id.*

<sup>13</sup> *CSPV I*, USITC Pub. 4360 at 30.

<sup>14</sup> See *id.* at 31.

<sup>15</sup> See *id.* at 26.

<sup>16</sup> See *id.* at 35.

7, 2012, Commerce imposed antidumping and countervailing duty orders on CSPV cells made in China and CSPV modules from CSPV cells made in China.<sup>17</sup>

The relief intended by the Orders was stymied because “before those imports (subject to *CSPV I*) began to recede from the U.S. market, imports from Taiwan and China . . . increased their presence in the U.S. market.”<sup>18</sup> To avoid the pricing discipline of the *Orders*, producers in China and Taiwan made minor changes to their production methods to exploit loopholes in the scope of the orders and continued to ship dumped and subsidized product to the United States.<sup>19</sup> Subject imports managed to increase their market penetration at the expense of the domestic industry,<sup>20</sup> and they pervasively undersold the domestic like product at significant margins.<sup>21</sup> Faced with this aggressive import competition, domestic producers continued to shutter operations.<sup>22</sup> And despite strong demand and available capacity,<sup>23</sup> the domestic industry was

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<sup>17</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 Fed. Reg. 73,018 (Dec. 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Countervailing Duty Order*, 77 Fed. Reg. 73,017 (Dec. 7, 2012).

<sup>18</sup> *CSPV II*, USITC Pub. 4519 at 34.

<sup>19</sup> See *id.* at 4 n.6 (e.g., Chinese firms assembled modules from cells manufactured in Taiwan or shipped wafers to Taiwan to be processed into cells and returned for assembly into modules in China).

<sup>20</sup> See *CSPV II*, USITC Pub. 4519 at 39 (“This increase in market penetration at the expense of the domestic industry is particularly noteworthy in light of our prior findings that the subject imports were highly substitutable for the domestic like product and competed in the same geographic markets and same U.S. market segments as the domestic industry.”).

<sup>21</sup> See *id.* at 42 & 44.

<sup>22</sup> See *id.* at 34.

<sup>23</sup> See *id.* at 39.

unable to operate at a reasonable profit.<sup>24</sup> Because of the “significant adverse impact on the domestic industry”<sup>25</sup> the Commission once again found the domestic CSPV industry materially injured (“*CSPV II*”).<sup>26</sup> On February 18, 2015, just three years after the *CSPV I Orders*, Commerce imposed antidumping and countervailing duty orders on CSPV products from China<sup>27</sup> and an antidumping duty order on CSPV products from Taiwan.<sup>28</sup>

The antidumping and countervailing duties were again insufficient to curb low-priced imports from inundating the U.S. market. Imports increased 492.4 percent after the first CSPV Orders were imposed on China.<sup>29</sup> Imports nearly doubled after the second set of Orders were imposed on CSPV products from China and Taiwan, climbing from 4,582,898 kW in 2014 to 8,430,393 kW in 2015.<sup>30</sup> Meanwhile, domestic solar manufacturing capacity substantially contracted<sup>31</sup> Those that did survive recorded worsening operating losses.<sup>32</sup> It was unsustainable. The safeguard investigation ensued.

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<sup>24</sup> *See id.* at 45. The poor financial condition of the domestic industry limited its ability to devote resources to the capital expenditures and R&D necessary to manufacture CSPV products. *See id.* at 46.

<sup>25</sup> *Id.* at 44.

<sup>26</sup> *Id.* at 1.

<sup>27</sup> *See Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 Fed. Reg. 8,592 (Feb. 18, 2015).

<sup>28</sup> *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 Fed. Reg. 8,596 (Feb. 18, 2015).

<sup>29</sup> *See CSPV Safeguard*, USITC Pub. 4739 at 21.

<sup>30</sup> *See id.* at Appendix C, Table C-1a.

<sup>31</sup> *See id.* at 31.

<sup>32</sup> *See id.* at 35.



At the conclusion of its safeguard investigation, the Commission determined that CSPV cells and modules were being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article.<sup>33</sup> The onslaught of imports had reduced the domestic industry to near extinction, causing 20 domestic production facilities to shutter operations by the end of 2016, and “of the additional 16 facilities that opened during the POI, five closed.”<sup>34</sup> While the remaining U.S. producers increased their capacity and production of both CSPV cells and modules, they could not match the imports in securing the benefit of rising demand. Rather, “imports captured most of the growth in demand” and the domestic industry’s capacity utilization declined further.<sup>35</sup> The majority of U.S. producers reported operating and net losses throughout the period of investigation (“POI”) collectively amounting to hundreds of millions of dollars, and “the domestic industry’s dismal and declining overall financial performance is further illustrated by the closures and bankruptcies . . . .”<sup>36</sup> By the end of the safeguard POI, U.S. producers recorded negative gross margins and further deterioration in operating and net losses.<sup>37</sup> The Commission concluded that absent safeguard relief, “the domestic industry, including both CSPV cell and module producers, would likely cease to exist in the short term,” and that “the loss of the domestic

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<sup>33</sup> *See id.* at 1. *See also id.* at 43 (“The domestic industry’s performance indicators particularly declined between 2015 and 2016 and continued to deteriorate into 2017 despite explosive demand growth. Based on this evidence and the status of the U.S. market as a focal point for exports, we find a significant overall impairment in the domestic industry’s position. Consequently, we find that the domestic industry is seriously injured.”).

<sup>34</sup> *Id.* at 31.

<sup>35</sup> *See id.* at 32-33.

<sup>36</sup> *CSPV Safeguard*, USITC Pub. 4739 at 35.

<sup>37</sup> *See id.* at 38.

industry . . . could have significant long-term consequences for U.S. economic and national security interests.”<sup>38</sup> The Commission recommended a remedy intended to protect domestic CSPV cell producers while allowing domestic CSPV module producers to continue producing modules.

Following receipt of the Commission’s affirmative serious injury determination and remedy recommendation, on January 25, 2018, the President determined to impose a TRQ on imports of CSPV cells and a tariff on CSPV modules for a period of four years, effective February 7, 2018, as summarized in **Table 1**.<sup>39</sup> Notably, the in-quota volume of 2.5 gigawatts for CSPV cells far exceeded the in-quota volume recommended by Commissioners.<sup>40</sup>

	CSPV Cells			CSPV Modules
	In-Quota Volume	In-Quota Tariff	Over-Quota Tariff	Tariff
<b>Year 1</b>	2.5 gigawatts	Free	30%	30%
<b>Year 2</b>	2.5 gigawatts	Free	25%	25%
<b>Year 3</b>	2.5 gigawatts	Free	20%	20%
<b>Year 4</b>	2.5 gigawatts	Free	15%	15%

The President determined that this measure would “facilitate efforts by the domestic industry to make a positive adjustment to import competition.”<sup>41</sup>

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<sup>38</sup> *Id.* at 86-87.

<sup>39</sup> *See Proclamation*, 83 Fed. Reg. at 3,545 (excluding imports from WTO Member developing countries).

<sup>40</sup> *See CSPV Safeguard*, USITC Pub. 4739 at 2 (Chairman Schmidlein recommending CSPV cells in-quota volume level of 0.5 GW in Year 1, rising to 0.8 GW in Year 4); *id.* at 89 (Vice Chairman Johanson and Commissioner Williamson recommending CSPV cells in-quota volume of 1.0 GW in Year 1 rising to 1.6 GW in Year 4).

<sup>41</sup> *Proclamation*, 83 Fed. Reg. at 3,542.

On August 1, 2019, the Commission instituted a mid-term review of developments with the safeguard in place, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.<sup>42</sup> During that review, the Commission collected questionnaire data from U.S. producers, importers, foreign producers, and purchasers covering calendar years 2016-2018 and the first six months of 2018 and 2019 (“interim 2018” and “interim 2019”); held a hearing; and received briefs from U.S. producers and importers, Canadian producers, and a Korean producer.<sup>43</sup> The evidence from that proceeding demonstrated that imports of CSPV cells increased from 2017 to 2018 and were higher in interim 2019 than in interim 2018, and imports of CSPV modules declined from 2017 to 2018 but were higher in interim 2019 than in interim 2018.<sup>44</sup> The Commission found that prices for both CSPV cells and modules continued to decline, but that imports would have driven prices down further were it not for the safeguard measure.<sup>45</sup> While domestic producers of both cells and modules remained unprofitable, “U.S. module producers’ operating losses declined” throughout the

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<sup>42</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry Institution and Scheduling Notice for the Subject Investigation*, 84 Fed. Reg. 37,674 (Aug. 1, 2019).

<sup>43</sup> See *CSPV Monitoring Report* at 2-3 (“The Commission received briefs from the following U.S. producers: Auxin Solar (‘Auxin’); Hanwha Q CELLS USA, Inc. (‘Hanwha Q-Cells’); Heliene USA Inc. (‘Heliene USA’); LG Electronics USA, Inc. (‘LG USA’); Mission Solar Energy (‘Mission’); Silfab Solar WA Inc. (‘Silfab WA’); SolarTech Universal, Suniva, Inc. (‘Suniva’); and SunPower Manufacturing Oregon LLC (‘SunPower’). In addition, briefs or written submissions were submitted by Canadian producers Heliene Inc. (‘Heliene Canada’), Silfab Solar Inc. (‘Silfab Canada’), and Canadian Solar Solutions Inc. (together with U.S. producers Heliene USA and Silfab WA); Korean producer LG Electronics, Inc. (‘LG Korea’) (together with U.S. producer LG USA).”).

<sup>44</sup> See *CSPV Monitoring Report*, USITC Pub. 5021 at 4.

<sup>45</sup> See *id.* at 5-6.

period.<sup>46</sup> Further evidence of the positive impact of the safeguard action can be seen in domestic CSPV module producers' market share gains and increasing investments in expanded capacity and product innovations.<sup>47</sup> U.S. CSPV cell producers, however, lost market share, closed two production facilities, and decreased production.<sup>48</sup> The Commission concluded that, despite setbacks, "the safeguard measure resulted in positive industry adjustments, particularly for U.S. CSPV module producers."<sup>49</sup>

At the same time, the mid-term review confirmed that the domestic industry did not fully realize the promise of the safeguard remedy due to a number of unanticipated events.<sup>50</sup> For example, imports increased during interim 2019 "result{ing} in an increase in importers' June 2019 inventories," and imports gained market share throughout the period.<sup>51</sup> The majority of imports originated from Malaysia, Korea, Thailand, and Vietnam, which, combined, replaced imports from China and Taiwan following the imposition of AD and CVD orders on CSPV products in 2012 and 2015, respectively.<sup>52</sup> The Commission's report identified several factors that hindered domestic module producers' adjustment efforts and limited the impact of the safeguard measure, including: (1) stockpiling of imports prior to implementing the safeguard; (2) the stepdown of tax credit incentives in 2019; (3) tariff cost absorption by exporters;

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<sup>46</sup> *Id.* at 5.

<sup>47</sup> *See id.* at 4, 6-7.

<sup>48</sup> *See id.* at 4-5.

<sup>49</sup> *Id.* at 6.

<sup>50</sup> *See generally id.*

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *See CSPV Monitoring Report*, USITC Pub. 5021 at 4.

(4) increased input and transportation costs; (5) the exclusion of bifacial CSPV modules; and (6) tariffs on imported components.<sup>53</sup>

Last year, the President modified the safeguard measure by revoking the exclusion for bifacial panels and adjusting the fourth-year duty rate from 15 to 18 percent, beginning on October 25, 2020.<sup>54</sup> Although the President recognized that the domestic industry had “begun to make positive adjustment to import competition, shown by the increases in domestic module production capacity, production, and market share” he reasoned that “the exclusion of bifacial panels from application of the safeguard tariff has impaired and is likely to continue to impair the effectiveness of the action” for domestic CSPV module producers.<sup>55</sup>

After more than three years of safeguard relief, the domestic industry has experienced progress as well as unanticipated challenges. Likely adverse market conditions during the scheduled remainder of the safeguard mean that the remedy will not effectuate its intended purpose within the current four-year timeframe, as discussed in **Section VI-B** *infra*. Hindered by pre-safeguard stockpiling and the bifacial loophole, Legacy Producers such as Auxin Solar did not begin to receive certain key intended benefits of the remedy until Q4-2020, when the industry was weathering the COVID-19 crisis. Because of the large cell TRQ, Legacy Producers of CSPV cells, such as Suniva, never received any of the intended benefits of the safeguard remedy. Without extension of the safeguard, the domestic industry will not have the breathing room necessary to complete its adjustment to import competition. Accordingly, Legacy Producers

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<sup>53</sup> *See id.* at 7.

<sup>54</sup> *See Modification Proclamation*, 85 Fed. Reg. at 65,640, 65,642 (“the benefits to domestic CSPV module producers from an increase in the TRQ would likely be limited if the bifacial module exclusion remained in place.”).

<sup>55</sup> *Id.*

request that the Commission initiate an investigation, conduct a hearing, and transmit a report to the President of its determination that the safeguard continues to be necessary to prevent or remedy serious injury.<sup>56</sup>

## II. IDENTIFICATION OF REQUESTED RELIEF ACTION

Legacy Producers respectfully request, pursuant to section 204(c) of the Trade Act (19 U.S.C. § 2254(c)) and 19 C.F.R. § 206.54(d), that the Commission determine that the domestic industry is making a positive adjustment to import competition and that the action taken under section 203 of the Trade Act on CSPV cells and modules continues to be necessary to prevent or remedy serious injury. Based on its findings, the Commission should recommend that the President continue the safeguard action for CSPV cells and modules for up to four additional years, or until February 6, 2026, with only minimal liberalization of the tariff rates applicable to out-of-quota CSPV cells and CSPV modules and maintenance of the in-quota volume for CSPV cells at the current level.

## III. THE DOMESTIC INDUSTRY

As required by section 206.54(d)(2) of the Commission's regulations, we provide the names and production locations for petitioners and all other known domestic CSPV manufacturers, including companies that have produced CSPV cells and/or modules.<sup>57</sup> As discussed below, we believe the Legacy Producers are representative of the domestic CSPV industry.

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<sup>56</sup> See 19 U.S.C. §§ 2254(c)(1), (3).

<sup>57</sup> In the original safeguard investigation, the Commission determined that there was "a single domestic product corresponding to the imported products with the scope of the investigation that includes CSPV cells and CSPV modules." *CSPV Safeguard*, USITC Pub. 4739 at 16.

**A. Petitioners' Name and Address, and Production Location**

Auxin Solar is based and manufactures CSPV products in San Jose, California:

**Headquarters and  
Manufacturing:** 6835 Via Del Oro  
San Jose, CA 95119  
Phone: (408) 225-4380  
mamun@auxinsolar.com  
<http://auxinsolar.com>

Suniva is based in Norcross, Georgia where it manufactured CSPV cells from 2012 – 2016:<sup>58</sup>

**Headquarters:** 5765 Peachtree Industrial Boulevard  
Norcross, GA 30092  
Phone: (404) 477-2700  
mcard@suniva.com  
<http://www.suniva.com>

The Norcross, GA facility/factory remains intact, and following Suniva's emergence from bankruptcy under the safeguard, investments are being made to resume cell production under an extended safeguard remedy.

**B. Names and Addresses of All Other Producers of the Domestic Article**

As required under 19 C.F.R. § 206.54(d)(2), the Legacy Producers provide the names and locations of all other known producers of the domestic article, all of which produced the domestic article during the period or were otherwise identified in the Commission's 2020 Monitoring Report:<sup>59</sup>

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<sup>58</sup> Suniva also previously had a factory in Saginaw, MI for assembling modules.

<sup>59</sup> See *CSPV Monitoring Report*, USITC Pub. 5021 at I-45-46, Tables I-11 & I-12. In its safeguard determination, the Commission defined the like or directly competitive product as comprising all domestically produced CSPV cells and CSPV modules. See *CSPV Safeguard*, USITC Pub. 4739 at 13-16.

**Companies That Currently Produce CSPV Modules in the United States:**

**Hanwha Q-Cells**

Address: 300 Nexus Drive, Dalton, GA 30721

Phone: (706) 671-3077

Email: [HQC-Inquiry@qcells.com](mailto:HQC-Inquiry@qcells.com)

Website: <https://www.q-cells.com/en/main.html>

**Heliene**

Address: 8787 Silicon Way, Mountain Iron, MN 55768

Phone: (218) 288-1990; (705) 575-6556

Email: [generalinfo@heliene.com](mailto:generalinfo@heliene.com)

Website: <https://heliene.com/>

**Jinko Solar**

Address: 4660 POW MIA Memorial Pkwy, Ste 200, Jacksonville, FL 32221

Phone: (904) 516-7288

Email: Not available

Website: <https://jinkosolar.us/>

**LG**

Address: 201 James Record Rd SW, Huntsville, AL 35824-1513

Phone: (256) 772-8860

Email: [brian.lynch@lge.com](mailto:brian.lynch@lge.com)

Website: <https://www.lg.com/us/solar>

**Mission Solar**

Address: 8303 S. New Braunfels Ave., San Antonio, TX 78235

Phone: (210) 531-8600

Email: [info@missionsolar.com](mailto:info@missionsolar.com)

Website: <https://missionsolar.com/>

**Silfab Solar**

Address: 800 Cornwall Ave, Bellingham, WA 98225

Phone: +1 (360) 569-4733

Email: [info@silfab.ca](mailto:info@silfab.ca)

Website: <https://silfabsolar.com/>

**Solaria**

Address: 45700 Northport Loop East, Fremont, CA 94538

Phone: (510) 270-2507

Email: [sdevico@solaria.com](mailto:sdevico@solaria.com) (Media Contact)

Website: <https://www.solaria.com/>

**Solartech Universal**

Address: 1800 President Barack Obama Highway, Riviera Beach, FL 33404

Phone: (561) 440-8000

Email: [Hello@SolarTechUniversal.com](mailto>Hello@SolarTechUniversal.com)

Website: <https://www.solartechuniversal.com/>



**Wanxiang New Energy**

Address: 5985 Logistics Parkway, Rockford, IL 61109

Phone: (815) 226-0884

Email: [dli@wanxiang.com](mailto:dli@wanxiang.com)

Website: <https://wanxiang-energy.com/>

**Companies That Abandoned CSPV Cell Production in the United States:**

**Panasonic/Tesla<sup>60</sup>**

Address: 1339 South Park Ave, Buffalo NY 14220

Phone: (716) 463-7661

**SunPower<sup>61</sup>**

Address: 4530 NE Dawson Creek Dr, Hillsboro, OR 97124

Phone: (503) 961-9303

**Companies Identified in the Monitoring Report, But That Do Not Manufacture CSPV Products in the United States:**

**CBS Solar<sup>62</sup>**

Address: 16880 Front Street, PO Box 67, Copernish, MI

Phone: (231) 378-2936

Website: <https://www.cbssolar.com/>

**CertainTeed Solar<sup>63</sup>**

Address: Unknown

Phone: (610) 893-6200

Website: <https://www.certainteed.com/solar/>

**Merlin Solar<sup>64</sup>**

Address: 5891 Rue Ferrari, San Jose, CA 95138

Phone: (844) 637-5461; (408) 321-8258

Email: [info@merlinsolar.com](mailto:info@merlinsolar.com)

Website: <https://merlinsolar.com/>

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<sup>60</sup> Panasonic shuttered domestic cell production in September 2020. *See Attachment 1.*

<sup>61</sup> SunPower's Oregon production has ceased and all of its equipment has been sold. *See Attachment 1.*

<sup>62</sup> CBS Solar, [ *See Attachment 1.* ]

<sup>63</sup> CertainTeed [ *See Attachment 1.* ]

<sup>64</sup> Merlin Solar [ *See Attachment 1.* ]

**PowerFilm**<sup>65</sup>

Address: 1287 XE Place, Ames, IA 50014

Phone: (515) 292-7606

Email: Not available (<https://www.powerfilmsolar.com/explore/contact-us>)Website: <https://www.powerfilmsolar.com/>**Prism Solar**<sup>66</sup>

Address: 520 Broad Street, Newark, NJ 07102

Phone: (845-883-4200)

Email: [info@prismsolar.com](mailto:info@prismsolar.com)Website: <https://www.prismsolar.com/>**SBM Solar**<sup>67</sup>

Address: 8000 Poplar Tent Rd, Suite C, Concord, NC 28027

Phone: (704) 788-2881

Email: Not available (<https://sbmsolar.com/contact-us/>)Website: <https://sbmsolar.com/>**Seraphim**<sup>68</sup>

Address: Shichuan Rd, Jinzhai Economic Development Zone, Lu'an City, Anhui Province

Phone: (+86) 564-7736177

Email: [info@seraphim-energy.com](mailto:info@seraphim-energy.com)Website: <https://www.seraphim-energy.com/>**SolarTec Energia**<sup>69</sup>

Address: Ruta Provincial No. 5 KM, 3.5 Parque Industrial (5300) La Rioja, Argentina

Phone: (011) 5365-9908

Website: <http://www.solartec.com.ar/>


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<sup>65</sup> PowerFilm produces out-of-scope thin film. *See Attachment 1.*

<sup>66</sup> Based on Auxin Solar's competitive intelligence, [ *See Attachment 1.* ]

<sup>67</sup> SBM Solar produces small folding solar panels and solar solutions for military application. *See Attachment 1.*

<sup>68</sup> Seraphim only has production operations in China. *See Attachment 1.*

<sup>69</sup> SolarTec Energia, a Mexican company, has closed. [ *See Attachment 1.* ]

**Sunergy California**<sup>70</sup>

Address: 4801 Urbani Ave, McClellan Park, CA

Phone: (916) 550-5370

Email: None available

Website: None available

**SunSpark Technology**<sup>71</sup>Address: 3080 12<sup>th</sup> Street, Riverside, CA 92507

Phone: (951) 342-3050

Email: [sales@SunSparkUSA.com](mailto:sales@SunSparkUSA.com)Website: <https://sunsparkusa.com/>**Yingli Green Energy Americas**<sup>72</sup>

Cira Center 2929 Arch Street, Suite 1175, Philadelphia, PA 19104

Email: [info@yingliamericas.com](mailto:info@yingliamericas.com)**C. The Legacy Producers Are Representative of the Domestic Industry**

Suniva is a 100 percent U.S.-owned, -operated, and -headquartered CSPV cell manufacturer in the United States. Although its operations are currently suspended,<sup>73</sup> Suniva represents the only at-scale CSPV cell manufacturing capacity in the United States today. At the time of this filing, Suniva has successfully emerged from bankruptcy with the safeguard in place and its investors have dedicated [ ] to upgrading, expanding, and restarting its

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<sup>70</sup> Sunergy California filed for bankruptcy in early 2021. *See Attachment 1.*

<sup>71</sup> SunSpark Technology's U.S. production facilities [

]. *See Attachment 1.*

<sup>72</sup> Yingli Solar's manufacturing facilities are located in China. *See Attachment 1.*

<sup>73</sup> Suniva was founded in 2007 as a producer of CSPV cells based on the work of the Georgia Institute of Technology's University Center of Excellence in Photovoltaics. In 2008, Suniva began producing CSPV cells at its facility in Norcross, Georgia. Suniva quickly expanded its capacity, adding a 64 MW line in 2009 and a third line in 2010, bringing its total capacity to 170 MW. Suniva expanded into CSPV module production in 2011 with an initial capacity of 25-30 MW in its Georgia facility. By 2014, Suniva was producing 240 MW and opened a second facility in Saginaw, Michigan, to assemble modules. Suniva continued to capitalize on the domestic demand for CSPV products, producing up to 450 MW in its Georgia plant by 2016. Despite its ability to supply the U.S. market, Suniva could no longer compete with the flood of aggressively priced CSPV imports, declared bankruptcy in 2017, and suspended indefinitely operations.

CSPV cell manufacturing facility. Certainty of extension will significantly reduce headwinds to the company's restart, and serve as a strong signal to the markets, that the current administration and the United States government is unequivocally committed to rebuilding CSPV cell manufacturing in the United States.

Auxin Solar is a 100 percent U.S.-owned, -operated, and -headquartered CSPV manufacturer in the United States. Founded in 2008, Auxin Solar has been producing CSPV modules in the United States for the past 13 years, withstanding persistent competitive challenges. Its operations include producing own-branded CSPV modules and serving as an OEM for other branded products. Auxin Solar participated in the original safeguard investigation and the mid-term monitoring proceeding. Over the last three years that the safeguard has been in place, Auxin Solar has produced over [ ] individual solar panel units accounting for [ ] kW. Remarkably, Auxin Solar operated at only [ ] percent capacity utilization during this period, resulting in depressed commercial shipment volumes. Having continuously operated as a CSPV module producer since 2008, Auxin Solar is possibly the only domestic module producer that has endured the injurious imports that were examined in the antidumping/countervailing duty cases and the safeguard, and is still in business with the same ownership and management structure. At the time of this filing, Auxin Solar is actively working with its partners to (1) invest in new module production equipment, and (2) on-shore ingot/wafer manufacturing for CSPV cells, which would lead to a fully integrated domestic CSPV supply chain.

The experience of the Legacy Producers supporting this petition is representative of the domestic industry as a whole within the meaning of section 206.54(b), and this petition is filed "on behalf of the domestic industry concerned" pursuant to section 204(c)(1) of the Trade Act. Consistent with the findings of the Commission in its 2020 Monitoring Report, the Legacy

Producers were involved in expanding their production and capacity (in the case of Auxin) and/or taking positive steps toward the resumption and expansion of cell production (in the case of both Suniva and Auxin).<sup>74</sup>

Information regarding CSPV production in the United States and domestic commercial shipments is generally not publicly available. Moreover, due to plant closures, idling, or expansion, the composition of the domestic industry continues to evolve. While the Legacy Producers are qualitatively representative of the domestic industry — because they were seriously injured by CSPV imports and are working diligently to make a positive adjustment to import competition under the safeguard — Suniva’s CSPV operations are currently suspended and Auxin Solar’s production activities account for less than half of all of the production of the domestic industry in the most recently completed calendar year (*i.e.*, 2020).

Importantly, Legacy Producers understand that other domestic producers — namely, Hanwha Q-Cells, LG Electronics, and Mission Solar — also support extension of the safeguard through public statements made to the Commission previously. Taken together with these companies, the Commission can readily determine that domestic producers supporting extension of the safeguard account for the vast majority of domestic industry production in 2020, as explained below:

- For the numerator, the Commission can readily discern the production — measured in MW — for each of the supporting domestic producers with active CSPV production (*i.e.*, Auxin Solar, Hanwha Q-Cells, LG Electronics, and Mission Solar) in 2020;<sup>75</sup>
- The denominator needs to consist of both (1) the actual 2020 production of the supporting domestic producers, and (2) the *estimated* production of the other domestic producers operating in 2020.

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<sup>74</sup> See *CSPV Monitoring Report*, USITC Pub. 5021 at 6-7.

<sup>75</sup> In 2020, Auxin Solar’s production totaled [      ] MW.

- In order to estimate the 2020 production of the other domestic producers, the Commission should first calculate the % capacity utilization for each of the supporting domestic producers, using the actual 2020 production figures discussed above and the publicly available capacity figures shown in **Attachment 1**.
- The Commission can then calculate the weighted-average % capacity utilization of the supporting domestic producers on a combined basis. This combined capacity utilization rate should serve as a reasonable estimate of capacity utilization for the remainder of the domestic industry, considering that the supporting domestic producers account for the vast majority of active domestic industry production capacity, and are therefore representative of the industry as a whole.
- Finally, in order to estimate the 2020 production level of the remaining domestic producers, the Commission should multiply the combined capacity utilization rate for the supporting domestic producers with the combined capacity of the remaining domestic producers.

While the foregoing calculations may not be necessary under the statute or regulations to support institution, the Legacy Producers have compiled data on the available capacity of domestic producers in **Attachment 1**. In the event that actual 2020 production data for additional companies become available, a more precise calculation for domestic industry production in support of the extension would of course become possible. In any event, the Legacy Producers are confident that they are representative of the domestic industry, and that their request for extension of the safeguard finds support with the clear majority of domestic production in the most recently completed calendar year (2020).

#### **IV. IMPORT DATA**

In accordance with 19 C.F.R. § 206.54(d)(3), Legacy Producers provide in **Table 2** below CSPV import data for the three calendar years when the safeguard has been in effect, as well as import data covering year-to-date (“YTD”) 2021. As this table illustrates, imports of both cells and modules have been increasing year-over-year under the safeguard.

<b>Table 2</b>				
<b>CSPV Imports: 2018-2020; Interim 2021</b>				
<i>(Number of Units<sup>76</sup>)</i>				
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>YTD-2021</b>
<b>Cells</b>	82,661,713	252,186,882	430,851,248	181,576,463
<b>Modules</b>	31,802,970	64,015,362	81,480,685	48,191,999
<b>Total</b>	114,464,683	316,202,244	512,331,933	229,768,462
<i>Source: Attachment 2</i>				

Notably, solar cells, which are imported tariff free under quota, have never reached the 2.5 gigawatt quota in any of the 12-month safeguard periods,<sup>77</sup> reflecting the limitations of the TRQ in creating conditions conducive to reestablishing and growing U.S. cell manufacturing. Even in 2020 when solar cell unit imports surged, only 72.62 percent of the quota was filled.<sup>78</sup> Despite falling short of the 2.5 gigawatt quota,<sup>79</sup> imports of CSPV products nevertheless flooded the U.S. market throughout the term of the safeguard, as evident from import data on a wattage basis.<sup>80</sup>

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<sup>76</sup> Note, the Commission's official import statistics are reported on a unit basis whereas the quota is administered on a wattage basis consistent with industry practice. Wattage was added as a second unit of quantity reporting field in 2018, full year 2018 data is not available on a wattage basis.

<sup>77</sup> See CBP Year End Commodity Reports CBP, 2020 Year-End Commodity Status Report, Posted Feb. 23, 2021 (reporting the solar quota as 72.62 percent filled) (included at **Attachment 3**); CBP Year End Commodity Reports CBP, 2019 Year-End Commodity Status Report, Posted Feb. 6, 2020 (reporting the solar quota as 82.30 percent filled) (included at **Attachment 3**); CBP Year End Commodity Reports CBP, 2018 Year-End Commodity Status Report, Posted Feb. 2, 2019 (reporting the solar quota as 28.28 percent filled) (included at **Attachment 3**).

<sup>78</sup> See *id.*

<sup>79</sup> No Commissioner recommended a remedy of a tariff-rate quota with in-quota volume as large as 2.5 gigawatts. See *CSPV Safeguard*, USITC Pub. 4739 at 2.

<sup>80</sup> Import data began to be reported on a wattage basis as a secondary unit in 2018.

Figure 1



Source: Dataweb, aggregated HTS numbers 8541.40.6045, 8541.40.6035, 8541.40.6020, 8541.40.6015, 8541.40.6030, 8541.40.6025 (See **Attachment 2**)

While U.S. module producers rely on imported cells for their production, significant increases in low-priced module imports not only limited the demand for cells but also the effectiveness of the remedy as to modules. To be sure, the Legacy Producers would have liked to have seen the TRQ spur cell manufacturing in the United States, which would have benefitted the domestic CSPV industry and resulted in a more reliable supply of CSPV cells for U.S. module manufacturing. As discussed elsewhere in this petition, the economic headwinds have been just too substantial to justify more robust levels of cell and module manufacturing in the United States, as reflected most notably in 2019 when increasing volumes of aggressively lower-priced imported modules secured more market share than U.S. module manufacturers had anticipated. Indeed, imports of finished CSPV modules consistently remained significant in the U.S. market and this significance is depressing industry production. The persistent and substantial market share represented by low-priced imports comes at the direct expense of the domestic industry and prevents domestic CSPV module producers from needed output and production utilization levels



and selling their modules at prices that achieve the profitability that would facilitate investments in on-shoring the upstream solar supply chain.

## V. DOMESTIC PRODUCTION DATA

As discussed *supra*, data concerning U.S. production of CSPV products are highly confidential and imprecise given the number of closures, idling, and opening of production facilities. That said, based on reasonably available public information and Auxin Solar's market intelligence, Legacy Producers have compiled data on the available capacity of domestic producers known to currently be producing CSPV modules.<sup>81</sup> In the absence of more precise data, Legacy Producers respectfully submit that the calculation outlined at **Section III-C** *supra*, is a reasonable methodology for estimating current domestic production.

In accordance with 19 C.F.R. § 206.54(d)(4), Legacy Producers provide their production data:

<b>Table 3</b>				
<b>Legacy Producers' Production: 2018-2021</b>				
<i>kW</i>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Jan. - June 2021</b>
Auxin Solar	[ ]	[ ]	[ ] <sup>82</sup>	[ ]

Auxin Solar was poised to increase its production of modules year-over-year due in large part because of the safeguard relief, forecasted demand increases, and the favorable policy environment created by the tax credit. Indeed, Auxin Solar's investment plans contemplated

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<sup>81</sup> See **Attachment 1**. There is currently no domestic CSPV cell production. The Commission's Monitoring Report identified Panasonic as the only domestic producer of CSPV cells operating in early 2019. *CSPV Monitoring Report*, USITC Pub. 5021 at I-38, Table I-9 (The Commission's Monitoring Report also noted that producer, Solaria did not appear to produce the entire CSPV cell internally). Panasonic shuttered its domestic cell production operations in 2020. See **Attachment 1**.

<sup>82</sup> In 2020, Auxin Solar [

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ramping up module production and beginning to onshore wafer production. In 2018, the year the safeguard remedy was imposed, Auxin Solar produced [ ] MW or [ ] kW of modules. The following year (*i.e.*, the first full year of safeguard relief) Auxin Solar [ ] its production of modules [ ], to [ ] MW or [ ] kW of modules. 2020 was projected to be a banner year at Auxin Solar. In just the first half of the year Auxin Solar produced [ ] percent of total solar panels it produced in 2019 — [ ] MW or [ ] kW of modules. Unfortunately, Auxin Solar, like so many other businesses in the United States, came to a screeching halt due to COVID-19, local lockdown procedures, and the resulting shock to the economy. Auxin Solar's production capacity far exceeds Auxin Solar's actual production during this period. And in 2021, as the country and economy has begun to recover, Auxin Solar's production has also slowly started to come back online, producing [ ] MW of CSPV products through the first half of 2021.

As previously detailed, after suspension of production in March 2017, Suniva has [ ]. During that same period, however, Suniva's owners have invested approximately [ ], as it continues to work towards the expansion and restart of cell production with an expected total cumulative investment of [ ]. Suniva retains control of its Norcross, Georgia facility and the production equipment housed therein to allow for a rapid restart if economic conditions allow.

Major impediments to ramping up production during the imposition of the safeguard included persistent imports of cells and modules and the headwinds caused by the COVID-19 pandemic. In addition, during the pandemic, Chinese wafer producers changed the form factor (*i.e.*, size) of the cell, causing CSPV module producers to have to upgrade equipment to

accommodate the new form factor. Just as domestic producers are re-opening after the pandemic and bringing new equipment online, the form factor may soon change again. Importantly, this does not reflect new technology, but rather is a continuous and coordinated strategy by Chinese firms to render existing U.S. module manufacturing capability obsolete and maintain China's dominance in wafer production. Meanwhile, Chinese CSPV producers have identified opportunities in excluded countries such as Cambodia to ship CSPV products duty-free and without restriction. These new developments have the potential to stifle domestic production further in 2021, increasing the necessity for continued safeguard relief.

**VI. ALTHOUGH THE INDUSTRY HAS MADE EFFORTS TO ADJUST, SAFEGUARD RELIEF CONTINUES TO BE NECESSARY**

In accordance with 19 C.F.R. § 206.54(d)(5), the Legacy Producers provide a discussion and evidence to establish that the domestic industry is making a positive adjustment to import competition since the safeguard was implemented, as well as information that demonstrates that the safeguard continues to be necessary to prevent or remedy serious injury.

**A. The Domestic Industry is Making a Positive Adjustment to Import Competition**

At the time of the original investigation, the Commission observed that a “significant number of firms were unable to carry out domestic production operations at a reasonable level of profit, and a significant number of domestic producers were unable to generate adequate capital to finance the modernization of their domestic plants and equipment or to maintain existing levels of expenditures for research and development.”<sup>83</sup> Capacity utilization dropped commensurately with

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<sup>83</sup> *CSPV Safeguard*, USITC Pub. 4739 at 43.

the increase of imports<sup>84</sup> and a substantial number of domestic CSPV cell and CSPV module facilities closed.<sup>85</sup>

The Commission noted numerous significant domestic industry developments following the imposition of the safeguard in its 2020 monitoring report. With the benefit of the remedy, the domestic CSPV module industry expanded. Foreign firms were motivated to launch new U.S.-based CSPV module operations while others, including Auxin Solar, expanded or increased capacity at existing U.S. CSPV module facilities.<sup>86</sup> U.S. firms introduced new and innovative products. However, two of the three CSPV module firms referenced by the Commission have since shuttered production activity (*i.e.*, SunPower and Panasonic/Tesla).<sup>87</sup> So too SunPower has ceased CSPV cell production in Hillsboro, Oregon. While significant challenges persist, positive adjustment to import competition continues to be evident, as discussed below.

### **1. Expanding Module Capacity**

As Chair Kearns noted in the monitoring report, “there has been a fairly robust industry response to the safeguard measures with respect to new and expanded domestic module capacity and production.”<sup>88</sup> The Commission’s report confirms, “there was significant expansion and investment in domestic CSPV module manufacturing . . . at least two additional firms (Auxin and

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<sup>84</sup> *See id.* at 47.

<sup>85</sup> *See id.* at 47-48. *See also id.* at 48-49 (“Although many U.S. producers entered the U.S. market seeking to take advantage of this demand growth, the consistent inability of the domestic industry to compete with low-priced imports forced many of these firms, as well as others, to shut down their facilities.”).

<sup>86</sup> *See CSPV Monitoring Report*, USITC Pub. 5021 at 6-7.

<sup>87</sup> *See id.* at 7.

<sup>88</sup> *Id.* at Additional Comments of Commissioner Jason E. Kearns, 4.

Heliene) expanded or increased capacity at existing U.S. CSPV module operations.”<sup>89</sup> The safeguard allowed Legacy Producers and new CSPV module producers to begin expanding CSPV module capacity to meet growing demand. Auxin Solar, specifically, made investments to increase its CSPV module capacity from [ ]. It also started to identify export markets for U.S.-made CSPV modules. In addition, Auxin Solar began adding [ ] to its CSPV module equipment, whereas prior to the safeguard it could [ ].<sup>90</sup> However, with continued low-priced competition in 2019 due to significant import volumes<sup>91</sup> and the obvious challenges in 2020 due to the COVID-19 pandemic, Auxin Solar’s plans to modernize even further [ ] products have been significantly delayed.

## 2. Investments in Solar Supply Chain

Onshoring the full solar supply chain is critical to the long-term survival of the domestic solar industry as well as to U.S. energy independence and national security. As Chair Kearns observed in the Commission’s monitoring report, China “essentially fully supplies its large domestic market and, at the same time, exports massive quantities of CSPV products abroad. For China, addressing climate change means jobs. One has to wonder whether there would be greater support for efforts to address climate change in the United States if the U.S. had as many CSPV

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<sup>89</sup> *Id.* at 7.

<sup>90</sup> CSPV wafers are referred to in nomenclature related to their size (*e.g.*, M2, M6, M10, *etc.*). *See CSPV Safeguard*, USITC Pub. 4739 at I-11 n.50.

<sup>91</sup> The Commission has found imported CSPV modules and the domestic like product to be highly substitutable and primary compete on the basis of price. *See generally CSPV I*, USITC Pub. 4360 at 30.

factories and jobs as China does.”<sup>92</sup> Due to nearly a decade of massive low-priced imports, today there is no real domestic production of upstream solar products, from ingots and wafers to CSPV cells.<sup>93</sup> Domestic producers must rely on imported polysilicon ingots, wafers, and CSPV cells to produce CSPV modules. Legacy Producers recognize the precarious situation of the United States and have taken steps to onshore the solar supply chain.

Economic headwinds and foreign government policies have created a situation in which the United States is dependent in large-part on foreign supply for a major percentage of the CSPV module bill of materials. Auxin Solar and Suniva are actively making significant investments to produce and incentivize the production of the upstream solar supply chain domestically. In short, there is no guarantee to a steady supply of components such as ingots, wafers, EVA, glass, and junction boxes if foreign producers deem a company insufficiently loyal.<sup>94</sup> Combine this with the simple fact that lead time for ingots or wafer equipment can be 6-7 months, U.S. module producers can easily be placed in a precarious position by foreign competitors. In an industry that is rapidly evolving and developing, the uncertainty and long lead times place domestic producers in a vulnerable position.

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<sup>92</sup> *CSPV Monitoring Report*, USITC Pub. 5021 at Additional Comments of Commissioner Jason E. Kearns, 4.

<sup>93</sup> At the time of its monitoring report, the Commission expected Suniva to restart its CSPV cell manufacturing operations in Norcross, Georgia under new ownership. *See id.* at 6. Unfortunately, this plan has not come to fruition. Additionally, the SunPower Hillsboro facility has been permanently idled. It is estimated that the Hillsboro Plant closure will impact approximately 170 employees. *See Attachment 1.*

<sup>94</sup> *See* The National Law Review, “China Foreign Sanctions Law” (June 17, 2021) (available at <https://www.natlawreview.com/article/china-s-anti-foreign-sanctions-law>) (last accessed June 23, 2021).

Auxin Solar is ready and willing to invest \$[ ] million to onshore ingot furnaces and the additional \$[ ] million for wafer-slicing equipment. Once it establishes domestic ingot and wafer production, Auxin Solar intends to expand into cell production by manufacturing [ ] of cells requiring an investment of \$[ ] million to become a fully integrated domestic CSPV producer. In the first phase of cell production, [ ].

In response to the continuing evolution of technology, Suniva is preparing to [ ]]. Importantly, Suniva had conducted an orderly shutdown to its Norcross facility to allow for quick restart should the economic circumstances support it. Suniva has not abandoned CSPV cell production.

Auxin Solar's and Suniva's plans require continuation of the safeguard, which should dovetail with the renewable energy policies that are a centerpiece of President Biden's "Build Back Better" agenda. With the continuation of the safeguard and the time for President Biden's agenda to come to fruition, this should once again create a sustainable environment for the United States to supply CSPV cells to a growing base of domestic module manufacturers. If these plans materialize, hundreds of direct manufacturing jobs will be created and there will be hope that domestic production of other aspects of the solar supply chain, including framing material, solar glass, backing material, and silver paste, will return.

**B. An Extension Is Necessary to Prevent or Remedy Serious Injury**

An extension is necessary to prevent or remedy the serious injury the Commission found imports caused to domestic producers of cells and modules. But several unanticipated events have inhibited the domestic industry's adjustment to import competition. As such, the Commission's observation that the domestic industry might "cease to exist in the short-term" is very much still a risk.<sup>95</sup> The Commission's remedy was intended to prevent further erosion of the domestic CSPV industry, which is critical to long-term "U.S. economic and national security interests."<sup>96</sup> The United States currently has the capacity to produce both cells and modules, and we can only achieve integrated production if relief is extended on both. To the extent that the Commission's economic model did not account for the headwinds faced by the domestic CSPV industry including the unanticipated COVID-19 pandemic, the safeguard will not serve its intended purpose before its scheduled termination in February 2022.

The Legacy Producers should be given the chance to overcome the difficult and unanticipated circumstances of the last several years to attempt to reclaim their prominence as a leader in solar technology, research, and development. This too will allow President Biden's agenda to have a real chance of success in securing the United States' green energy independence and safeguarding our national security interests. As discussed below, factors justifying an extension of the safeguard include: the exclusion in June 2019 of bifacial CSPV modules from the safeguard measure, stockpiling of imports prior to the implementation of the safeguard measure and again before the stepdown of tax credit incentives at year-end 2019, continued

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<sup>95</sup> See *CSPV Safeguard*, USITC Pub. 4739 at 86-87. At the time of the original safeguard investigation, there was CSPV cell production in the United States. At present, there is no domestic production of CSPV cells.

<sup>96</sup> *Id.*



underselling by imports, COVID 19, and Chinese producers relocating to Cambodia to ship to the United States unencumbered by the safeguard on cells and modules.

**1. Exclusion of Bifacial CSPV Modules Impeded the Effectiveness of the Remedy**

Auxin Solar had been a market leader in solar technology. It was on the cutting edge of bifacial panel production as early as 2016, before bifacial panels were being produced in commercial volumes in the United States. Even its standard monofacial panels were the highest powered in the market until it could no longer keep pace with the equipment demands imposed by imported components. From June 13, 2019<sup>97</sup> to October 25, 2020,<sup>98</sup> the safeguard carved out an exclusion for bifacial panels based on a false premise that bifacial panels or substitute products were not available domestically. This exclusion created a loophole in the remedy that left the domestic industry vulnerable to the “rapidly increase{ing}” imports of bifacial modules.<sup>99</sup>

Bifacial modules are projected to account for one-third of global module production by 2022.<sup>100</sup> In considering the significance of bifacial modules, USTR soon acknowledged that the exclusion would likely “undermine the objectives of the safeguard measure”<sup>101</sup> but was enjoined from withdrawing the exclusion immediately by the U.S. Court of International Trade.<sup>102</sup> Taking

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<sup>97</sup> *Exclusion of Particular Products from the Solar Products Safeguard Measure*, 84 Fed. Reg. 27,684 (June 13, 2019).

<sup>98</sup> *Modification Proclamation*, 85 Fed. Reg. at 65,639.

<sup>99</sup> *See CSPV Monitoring Report*, USITC Pub. 5021 at I-75.

<sup>100</sup> *See id.* at I-76.

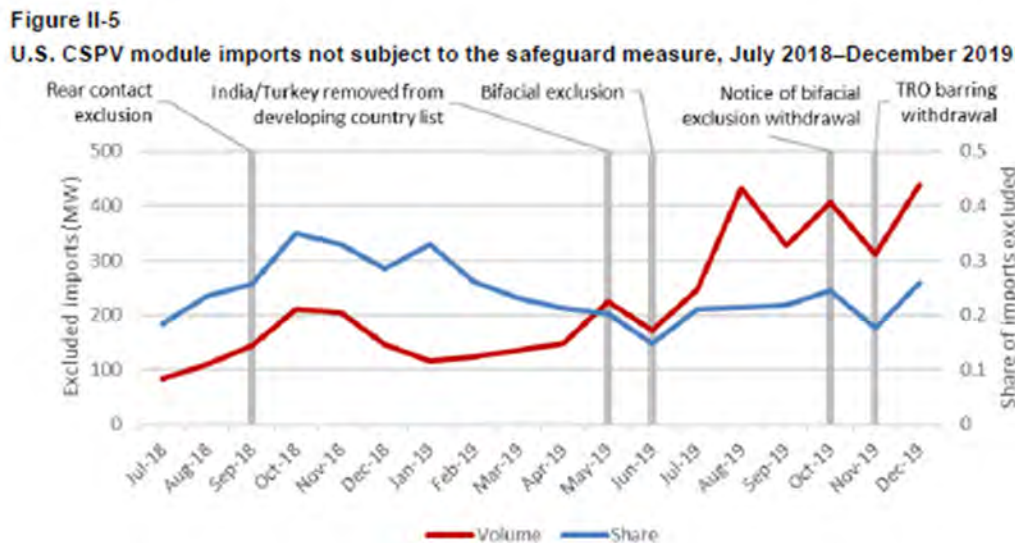
<sup>101</sup> *Withdrawal of Bifacial Solar Panels Exclusion to the Solar Products Safeguard Measure*, 84 Fed. Reg. 54,244 (Oct. 9, 2019).

<sup>102</sup> *See Invenegy Renewables LLC v. United States*, Ct. No. 19-00192 (Nov. 7, 2019) (ECF No. 68). On December 5, 2019, the CIT issued an order preliminarily enjoining USTR and Customs from withdrawing the exclusion until entry of final judgment in the case. Court Order, *Invenegy* (footnote continued on next page)

note of the deleterious impact of the exclusion on an industry already found to be seriously injured, the President proclaimed:

that the exclusion of bifacial panels from application of the safeguard tariff has impaired and is likely to continue to impair the effectiveness of the action I proclaimed in Proclamation 9693 in light of the increased imports of competing products such exclusion entails, and that it is necessary to revoke that exclusion and to apply the safeguard tariff to bifacial panels.<sup>103</sup>

However, this modification came over a year after the exclusion was initially announced, on the tail of market distorting import spikes.<sup>104</sup>



Source: *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure*, Inv. No. TA-201-075 (Modification), USITC Pub. 5032 (March 2020) at II-10, Figure II-5.

As seen in Figure II-5 of the Commission’s Modification Report, reproduced above, there is a direct correlation between the bifacial exclusion and spikes in import volume.

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*Renewables LLC v. United States*, Ct. No. 19-00192 (Dec. 5, 2019) (ECF No. 114). The litigation is ongoing.

<sup>103</sup> *Modification Proclamation*, 85 Fed. Reg. at 65,639.

<sup>104</sup> See *infra* Section VI-B-2.

Unfortunately, after two years of unchecked bifacial panel imports, the damage was done. Despite being one of the first to produce bifacial panels in meaningful volumes in the U.S., Auxin Solar's bifacial business has been decimated by imports, and the environment soured for any other domestic producers to establish production of bifacial panels. Rather than providing the domestic industry the opportunity to adjust to imports, the bifacial panel exclusion allowed imports to take market share in a segment of the market American companies — Auxin Solar in particular — created. The bifacial module exclusion impact reached beyond Auxin Solar's bifacial business, with lower priced bifacial module imports putting downward price pressure on domestically produced monofacial modules.

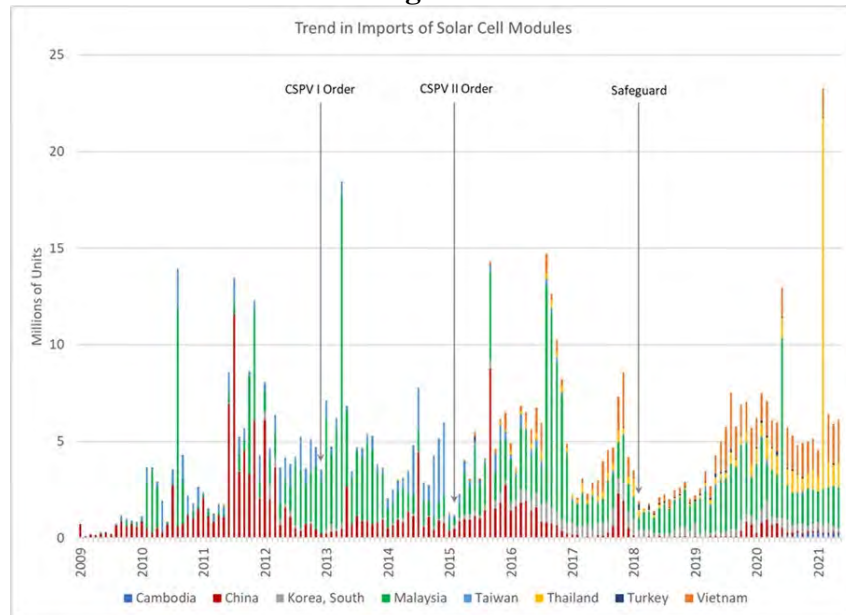
## **2. Stockpiling Undermined the Remedy At Its Inception and Again During the Midpoint of the Remedy**

Prior to the safeguard action taking effect on February 7, 2018, foreign producers ramped up imports of CSPV products. More CSPV products were imported in January 2018 (*i.e.*, 41,494,349 units total), coincidentally just prior to the imposition of the safeguard, than in any other month of the year.<sup>105</sup> The same trend holds true for CSPV module imports — 4,419,886 units in January 2018 — and CSPV cell imports — 37,074,463 units in January 2018 — individually. This surge of imports just prior to the imposition of the safeguard remedy occurred after the 2016 close of the data collection period for the safeguard investigation and thus was not accounted for in the data used as a baseline for the safeguard modeling by the Commission and the President.<sup>106</sup>

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<sup>105</sup> See **Attachment 2**.

<sup>106</sup> See *CSPV Safeguard*, USITC Pub. 4739 at II-2 to II-5, Table II-1.

**Figure 2**

Source: Attachment 2

Also apparent in the import data, once the safeguard took effect and after already stockpiling large volumes of CSPV products in advance of the safeguard remedy, foreign producers rushed to import CSPV products in advance of the stepdown of tax credit incentives at year-end 2019.<sup>107</sup> As the Commission’s monitoring report recognized, “almost all responding firms highlighted the investment tax credit and impending stepdown on December 31, 2019 as the predominant federal incentive in influencing demand for CSPV products.”<sup>108</sup> Imports increased 513 percent in the second half of 2019 compared with the first half of 2019. Rising from 5,340,399 units of CSPV products imported in January 2019, imports peaked in November at

<sup>107</sup> The Internal Revenue Service (“IRS”) grants income tax credits of a certain percentage to residential, commercial, and utility-scale solar project owners. At its height, the IRS offered an income tax credit of 30 percent. The IRS has scheduled gradual reductions of this income tax credit from 2020-2022. *See CSPV Monitoring Report*, USITC Pub. 5021 at II-13 n.30.

<sup>108</sup> *Id.* at II-27.

67,192,559 units. Wishing to benefit from the full 30 percent income tax credit, imports flooded into the market in 2019.

The pre-safeguard stockpiling prior to February 7, 2018 — and the market distortion caused by an import spike in H2-2019 — diluted the remedial effect of the safeguard in 2018 and 2019. Meanwhile, imports have not slowed. In fact, imports have continued to rise at the direct expense of the domestic industry. Imports grew from 114,464,683 units in 2018, to 316,202,244 units in 2019, reaching 512,331,933 units in 2020.<sup>109</sup> Despite rising demand, U.S. producers have been losing market share to imports.

### **3. Persistent Underselling Continues to Depress Domestic Producer Prices and Curtail Investment**

Foreign producers show no sign of curbing their practice of pervasive underselling despite the 30 percent tariff on over-quota CSPV cell imports and CSPV module imports in 2018, with incremental annual phase downs. In *CSPV I*, the Commission considered the 2009 to 2011 and interim 2012 periods and found subject imports to be underselling the domestic like product 76 percent of the time.<sup>110</sup> The Commission continued to find underselling by subject imports 60.6 percent of the time at margins as high as 39.6 percent in *CSPV II* just a few years later.<sup>111</sup> And during the safeguard investigation, the Commission found imported CSPV products were priced lower than U.S.-manufactured products in 33 of 52 instances, or 63.5 percent of the time.<sup>112</sup>

The safeguard action did not afford relief from low-priced imports as intended, with pre-safeguard stockpiling as a major contributor to continued weak pricing. Suniva reorganized under

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<sup>109</sup> See **Attachment 2**.

<sup>110</sup> See *CSPV I*, USITC Pub. 4360 at 31.

<sup>111</sup> See *CSPV II*, USITC Pub. 4519 at 42.

<sup>112</sup> See *CSPV Safeguard*, USITC Pub. 4739 at 42.

bankruptcy and has continued suspension of its manufacturing operations. As of this filing, there are no at-scale CSPV cell manufacturing plants in the United States (or North America), and Suniva continues to represent the most economically advantaged and expeditious option to restart CSPV cell manufacturing domestically. As such, markets view the Suniva restart as a leading indicator of CSPV cell manufacturing viability in the United States.

Auxin Solar has been unable to meet the low prices of imported CSPV modules and thus imports have prevented Auxin Solar from expanding its market share, particularly disappointing given demand increases following the safeguard action. Other U.S. module producers were forced to chase import pricing down in order to acquire or preserve their market share. The initial stockpiling of CSPV imports discussed *supra* resulted in a noticeable reduction in import prices. Auxin Solar had hoped the safeguard action would enable it to pursue sales opportunities with better pricing that would allow it to be sufficiently profitable on its sales to begin investing in new production equipment, but that never materialized. Auxin Solar's specific experience is confirmed by the Commission's monitoring report.<sup>113</sup>

Even with the safeguard in place, CSPV module imports undersold domestic producers in 32 of 43 instances, or 74.4 percent of the time.<sup>114</sup> The underselling of CSPV module imports is particularly striking because these imports were subject to a tariff remedy. In response to the tariff, foreign producers dropped the price of U.S. imports, choosing to absorb the duty through valuation of their imports rather than pass on price increases into the U.S. market. Auxin Solar was losing sales to imports priced [ ] of what Auxin Solar could offer. Had the remedy worked as intended, domestic module producers would have been able to sell modules

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<sup>113</sup> See *CSPV Monitoring Report*, USITC Pub. 5021 at VI-25 to VI-28.

<sup>114</sup> *Id.* at VI-28.

at profitable prices and reinvest those profits into new production equipment and on-shoring of the upstream supply chain. But competing against low-priced imports coupled with domestic wage increases and costs associated with COVID-19 mitigation measures, any profitability on Auxin Solar's module sales quickly eroded. Continued underselling continues to be a problem.

#### **4. The Effects of the COVID-19 Pandemic and Other Raw Material Cost Increases**

Even with the setbacks described *supra* in **Sections VI-B-1-3**, the positive impact of the safeguard action is reflected in Auxin Solar's performance in the first half of 2020. Auxin Solar [ ] CSPV modules in H1-2020 than in all of 2018. In May of 2020, Auxin Solar was [ ] its 2019 production volume when the bottom fell out of the U.S. economy because of the impact of COVID-19, an event that the U.S. government has already acknowledged had a negative impact on the solar market and provided specific relief with regard to qualifying for the tax credits as a result.<sup>115</sup> On March 2, 2020, California declared a state of emergency. The Governor issued a stay-at-home order on March 19, 2020, effectively shuttering all non-essential businesses.<sup>116</sup> Because renewable energy was one of the sixteen critical infrastructure sectors identified by the Cybersecurity & Infrastructure Security Agency, Auxin Solar continued in a productive state but undertook various sanitizing and mitigation measures to keep its employees safe. Despite these measures, Auxin Solar periodically needed to close production completely because of a positive COVID-19 test or a close encounter between

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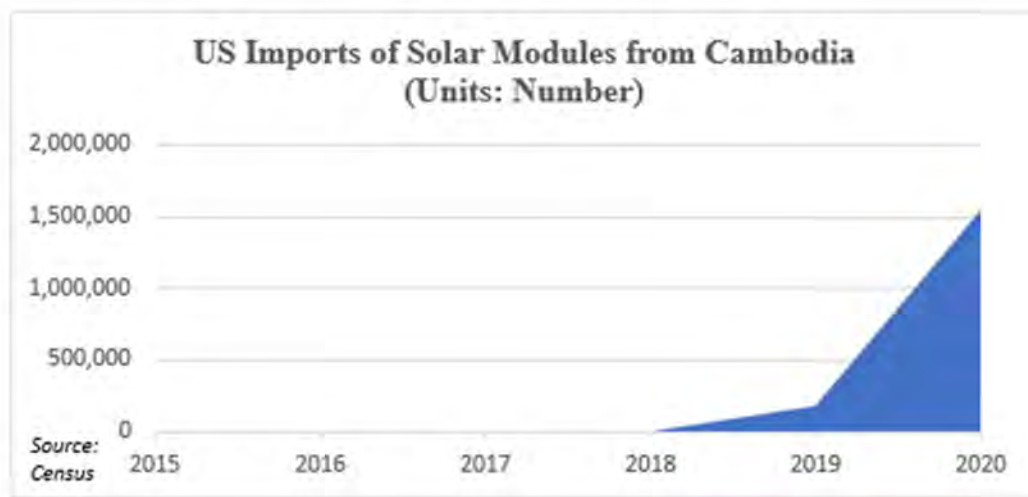
<sup>115</sup> See Mayer Brown, "IRS Grants Beginning of Construction Relief for Offshore Renewable Projects and Renewable Projects on Federal Land" (Jan. 4, 2021), (available at <https://www.mayerbrown.com/en/perspectives-events/publications/2021/01/irs-grants-beginning-of-construction-relief-for-offshore-renewable-projects-and-renewable-projects-on-federal-land>) (last accessed July 29, 2021).

<sup>116</sup> See **Attachment 4**.

employees and an individual that received a positive COVID-19 test. At the same time orders ceased because projects were put on hold indefinitely. At times, production stopped completely. Auxin Solar was only operating one shift throughout the second half of 2020. Auxin Solar, like other domestic CSPV module producers, prioritized precautionary measures to protect its employees over its adjustment plans. Auxin Solar reallocated its resources to institute tracing measures, safe distance protocols, masks, hand sanitizer stations, and plastic dividers in all work stations. Auxin Solar was not able to meaningfully resume operations until 2021.

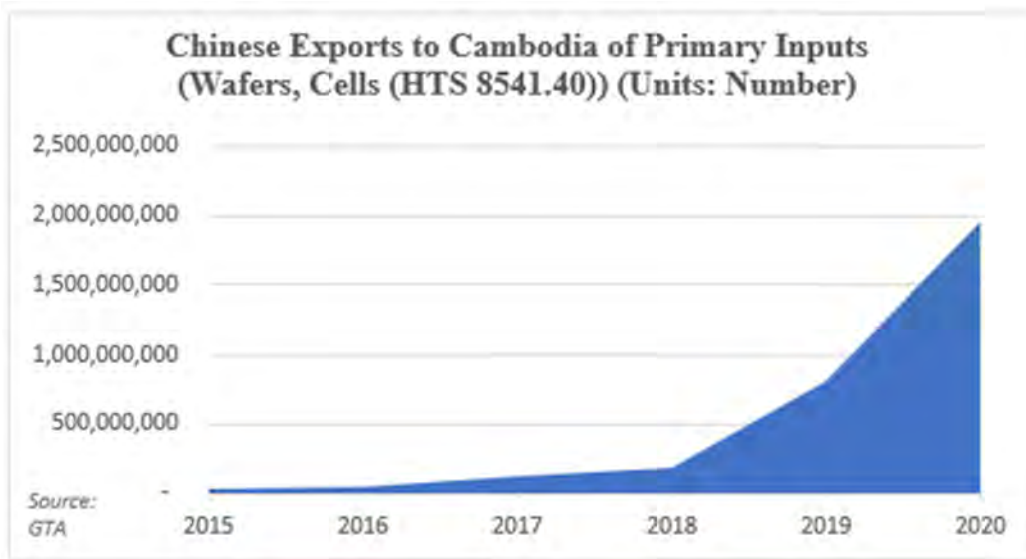
### 5. Circumvention of the Safeguard Remedy

Imports from certain developing countries that are WTO members and are excluded from the safeguard measures under Proclamation 9693 have also increased during the remedy period. For example, imports from Cambodia, which were zero in 2018, increased substantially in the period January-May 2021, although at present remain less than 3 percent of total imports.

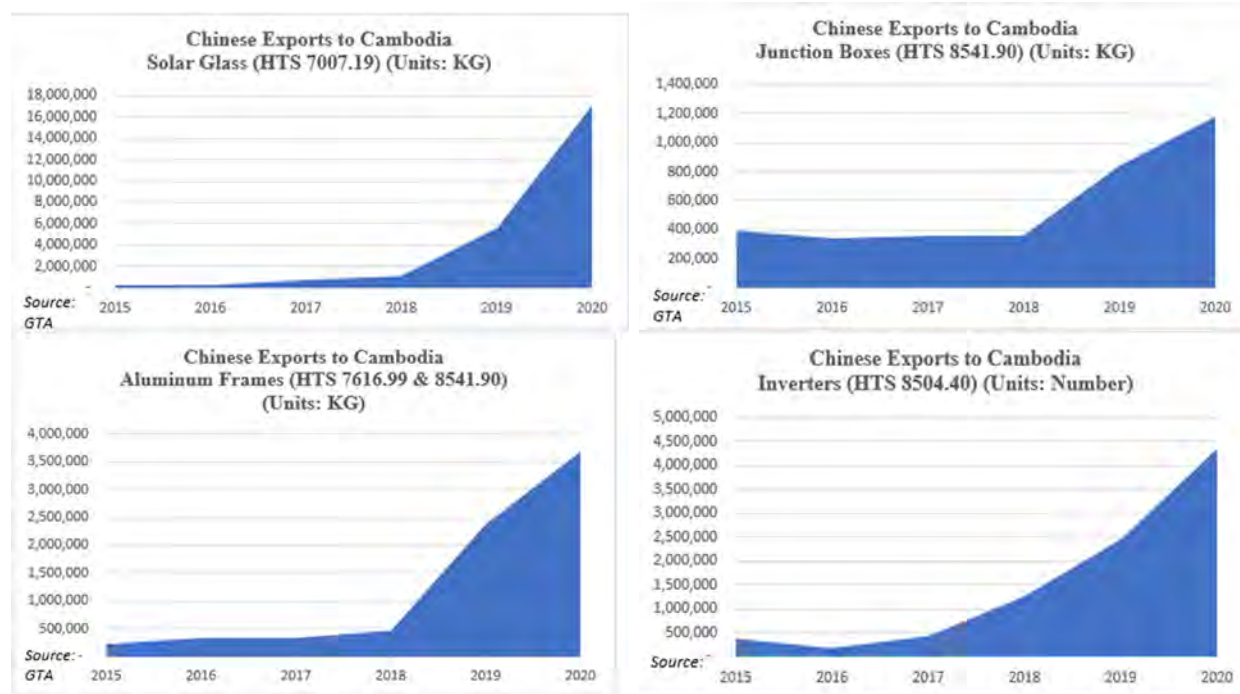


But this rise is entirely attributable to Chinese firms taking advantage of Cambodia's status as a developing country under the safeguard law. China significantly increased exports of the primary inputs used to manufacture CSPV cells and modules to Cambodia:





Chinese shipments of key components of the CSPV module bill of material (glass, junction boxes, frames, inverters) also appear to have increased over the same period:



Since entering into a Comprehensive Strategic Partnership with China in 2010, Cambodia has become captive to the Government of China and the Chinese Communist Party. The GOC's year-over-year investments in Cambodia have skyrocketed, and as of 2019, account for forty-

three percent of all foreign direct investment (“FDI”) in Cambodia.<sup>117</sup> In exchange, Cambodia has allowed for extensive Chinese development, including that of Cambodia’s infrastructure and special economic zones (“SEZs”), which provide unfettered Chinese access to Cambodia’s economy. Though ostensibly located in Cambodia, these SEZs are filled with Chinese laborers, Chinese capital equipment, CCP direction, and Chinese raw materials.

As a result of the Belt and Road Initiative (“BRI”), China has become Cambodia’s “largest economic influencer, being the largest foreign investor, largest bilateral donor, largest trading partner, largest buyer of Cambodian rice, and the largest source of foreign tourists in the country.”<sup>118</sup> Cambodian Commerce Minister Sorasek recently remarked that “the BRI is vital for Cambodia’s economy which relies on the inflows of foreign direct investments that are conditional to the capability of sufficient physical infrastructures.” The U.S. embassy in Cambodia has asked the Cambodian government to halt circumvention schemes using the SEZs.<sup>119</sup>

With respect to solar, China’s influence in Cambodia could not be more pronounced and influential. Solar power “capacity has been on a sharp ascent in Cambodia recently, increasing at a 10% annual rate.”<sup>120</sup> According to Cambodian Minister of Mines and Energy Suy Sem, “China has played a major role in the development of Cambodia’s energy sector through investing in

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<sup>117</sup> See D. Touch, “What Does Chinese Investment Mean for Cambodia?,” *The Diplomat* (Feb. 2, 2018) (included at **Attachment 5**).

<sup>118</sup> S. Kha, “The Belt and Road in Cambodia: Successes and Challenges,” *The Diplomat* (Apr. 30, 2019) (included at **Attachment 5**).

<sup>119</sup> See South China Morning Post, “US urges Cambodia to help stop firms using special economic zone to evade China tariffs” (June 2019) (included at **Attachment 5**).

<sup>120</sup> “Cambodia Solar Energy Profile,” *Solar Mag.* (Oct. 21, 2019) (included at **Attachment 5**).

energy generation and distribution grid as well as providing capacity building.”<sup>121</sup> In March 2021, a 39 MW solar power plant in Cambodia’s Banteay Meanchey province was brought online with “all photovoltaic (PV) modules for the project” supplied by “Shenzhen-listed solar development company JA Solar Technology Co., Ltd.”<sup>122</sup> The “solar farm was contracted by Shanxi Electric Power Engineering Co., Ltd. (SEPEC), an affiliate of China Energy Engineering Group.”<sup>123</sup> In 2020, “Chinese-based Risen Energy inked a long-term debt financing agreement worth \$45 million to back a 60 MW solar energy project in Battambang province.”<sup>124</sup> An 80-megawatt solar farm that came online: in 2019 in Kampon Speu province. “SchneiTec, the project’s developer, is a joint Chinese-Cambodian venture and JinkoSolar, a China-based company that is the largest solar panel manufacturer in the world, supplied the site’s panels.”<sup>125</sup>

Based on publicly available information, Cambodian CSPV producers are affiliated with Chinese producers of CSPV products and upstream inputs. For example, New East Solar Cambodia (“NE Solar”) is a “Cambodian solar cell and solar module manufacturer” “headquartered in Phnom Penh, Cambodia, with manufacturing in Cambodia and China.”<sup>126</sup> EnAlex Cambodia is a Cambodian solar company founded in 2018 that operates in the Phnom

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<sup>121</sup> Mao Pengfei, Nguon Sovan, “Interview: China Plays Key Role in Cambodia’s Energy Development, Says Minister,” XINHUA (June 27, 2018) (included at **Attachment 5**).

<sup>122</sup> “Cambodia: Banteay Meanchey Solar Farm Adds 39 MW to National Grid” THE STAR (Mar. 14, 2021) (included at **Attachment 5**).

<sup>123</sup> “Cambodia: Banteay Meanchey Solar Farm Adds 39 MW to National Grid” THE STAR (Mar. 14, 2021) (included at **Attachment 5**).

<sup>124</sup> Thou Vireak, “China Firm Backs Battambang Solar Farm,” THE PHNOM PENH POST (Dec. 23, 2020) (included at **Attachment 5**).

<sup>125</sup> Lili Pike, “In Cambodia, Solar Power Surges,” China Dialogue (Dec. 3, 2019) (included at **Attachment 5**).

<sup>126</sup> **Attachment 5** (NE Solar Webpage).

Penh SEZ which, as noted above, is dominated by Chinese investment, labor, and affiliated companies.<sup>127</sup> Shenglong PV-Tech (Cambodia) Co., Ltd. is a Cambodian solar company that is affiliated with Suzhou Shenglong PV-Tech Co., Ltd, a Chinese photovoltaic module manufacturer.<sup>128</sup> Finally, Chinese solar manufacturer ET Solar has reported that it will add 300 MW of cell capacity to be produced in Cambodia, where it will also assemble modules.<sup>129</sup>

Although imports from a developing country that is a WTO member are excluded from the safeguard remedy as long as such country's share of total imports of the product, based on imports during a recent representative period, do not exceed 3 percent, given publicly known information on Cambodian producers, Chinese investment and other support in developing Cambodia's solar industry appears to be a concerted effort to circumvent the safeguard remedy.

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The safeguard has helped to support the domestic industry's adjustment to import competition, but unanticipated market developments have unfortunately hindered such adjustment in the four-year timeline originally contemplated by the Commission. Accordingly, the safeguard relief needs to be continued in order to prevent or remedy serious injury to the domestic industry.

## VII. CONCLUSION AND REQUEST FOR EXTENDED RELIEF

The Legacy Producers respectfully request that the Commission initiate an investigation under section 204(c) of the Trade Act and issue a report to the President determining that, while the domestic industry is making a positive adjustment to import competition, the continuation of

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<sup>127</sup> See **Attachment 5** (EnAlex Cambodia Webpage).

<sup>128</sup> See **Attachment 5** (Global Sources Profile for Suzhou Shenglong PV-Tech Co., Ltd.).

<sup>129</sup> "ET Solar: Switching Directions With New Manufacturing Strategy," PV MAGAZINE (July 30, 2019) (included at **Attachment 5**).

safeguard relief is necessary to prevent or remedy serious injury. The Legacy Producers supporting this petition continue to believe in American ingenuity and knowhow and with the right policies in place — the cornerstone being this safeguard remedy — the United States can once again be a leader in CSPV production and innovation.

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