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October 1, 2012

The Honorable Rebecca Blank
Acting Secretary of Commerce
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Madame Acting Secretary and Ambassador Kirk:

I write to strongly encourage the Department of Commerce to reexamine its preliminary decisions regarding product coverage (or “scope”) in the antidumping (AD) and countervailing duty (CVD) investigations on crystalline silicon photovoltaic cells and panels from China. If the Department does not amend the scope of these cases in its final determinations, due on October 9, 2012, Chinese producers will continue to undermine our ongoing efforts to remedy Chinese trade violations that have already cost thousands of jobs in Wisconsin and across the United States.

Wisconsin plays a significant role in the American solar industry. Along with California and Texas, Wisconsin is the only state with at least two cities—Milwaukee and Madison—in the national Solar America Cities program. Wisconsin also has more certified solar installers per capita than nearly every state in the country. The solar industry provides employment in a variety of sectors in our state, and manufacturers, distributors, installers, and contractors all benefit from industry growth.

Despite the successful foundation and great potential of the solar industry in Wisconsin and across the nation, U.S. solar manufacturing is at a disadvantage because China continues to pursue national policies that violate international trade law. American companies are forced to rely on CVD and AD duties to combat China’s illegal subsidies and help keep their doors open. The purpose of these duties, namely on solar panel products imported from China, is to remedy the injury to American employers including Wisconsin companies like Helios (Milwaukee), Access Solar (Waukesha), and Cardinal Glass (Menominee), caused by unfair Chinese competition.

However, as you know, the Department made preliminary determinations in March and May, 2012 not to include solar panels assembled in China that include “third-country” solar cells within the scope of product coverage in the solar AD and CVD cases. The Department’s

preliminary decision has allowed state-sponsored Chinese solar producers to openly and actively evade the trade remedies. With the scope as currently defined, Chinese producers are able to “toll produce” solar cells and evade AD/CVD duties. Toll producing is a business arrangement where the product never effectively leaves Chinese control, as title to the product is held throughout by the Chinese producer. By using a “toll producer” in a third-country, such as Taiwan, to perform just one step of the solar panel manufacturing process, Chinese solar companies can legally avoid U.S. tariffs by claiming the toll producer’s country as the panel’s country of origin.

Because U.S.-imposed tariffs can be avoided legally and inexpensively under the preliminary scope of the investigations, the Department’s proposed remedies will not accomplish their intended goal: to remedy illegal Chinese trade practices that are severely injuring the U.S. solar industry. Nor will the imposed tariffs serve as a deterrent to continued, widespread cheating by Chinese solar panel manufacturers.

The Department should ensure that it is addressing the unfair trade practices of China as broadly as possible. If both Chinese solar cells and modules are dumped and subsidized, both should be covered by the order, regardless of any components or minor processing in third countries. Absent action by the Department to amend its preliminary scope ruling to include all Chinese solar panels, Chinese evasion of the duties in the solar case will effectively prevent fair competition in the U.S. market. Meanwhile, the harm to our domestic industry continues, and unless sensible action is taken, domestic solar manufacturers will continue to suffer.

I urge the Department of Commerce to carefully reconsider the scope of these cases and the impact of duty evasion issues to ensure that illegal imports of Chinese solar products are addressed to the fullest extent possible under the law. American companies that are playing by the rules cannot compete with unfair Chinese practices. Please join me in making sure solar companies in Wisconsin and across the U.S. can compete on a level playing field.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Baldwin". The signature is written in a cursive, flowing style.

Tammy Baldwin
Member of Congress