

United States Senate

WASHINGTON, DC 20510

March 2, 2023

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

We write to voice our support for the imposition of duties on Chinese companies found to be circumventing anti-dumping and countervailing duties (AD/CVD) by moving solar cells and modules through Malaysia, Vietnam, Thailand, and Cambodia. In a thorough, data-driven investigation conducted by the Department of Commerce, companies in all four of the aforementioned countries were found to be subverting U.S. trade laws. This circumvention comes at the expense of American workers and industry. U.S. trade laws are designed to protect our domestic market from unfair trade practices and, now that Department of Commerce has established preliminary evidence of circumvention, we urge their strong enforcement.

The Tariff Act of 1930 charges the U.S. government with providing relief to U.S. industries and workers that are “materially injured” or “threatened with material injury” due to imports of products sold in the U.S. market at less than fair value or subsidized by a foreign government or public entity. These trade remedies are intended to level the playing field for U.S. companies that play by the rules while others cheat their way into U.S. markets. The Chinese Communist Party and Chinese companies have made no secret about their strategy to break the rules wherever it benefits them. Cheap coal, human rights violations, and heavy government subsidies have allowed Chinese solar panel manufacturers to produce and dump solar cells and modules into the US at artificially low prices.^{1, 2, 3, 4} China’s reprehensible use of forced labor is rampant, and we have many examples of the practice permeating our supply chains.⁵ That China is the greatest perpetrator of unfair trade practices is made evident by the fact that it outpaces any other country

¹ Dan, Zhang. “News analysis: ‘forced labor’ lies won’t beat down Xinjiang Solar Firms.” Global Times, May 6, 2021, <https://www.globaltimes.cn/page/202105/1223611.shtml>.

² Murphy, Laura and Elimä, Nyrola. “In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains.” Sheffield, UK: Sheffield Hallam University Helena Kennedy Centre for International Justice, 2020, <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/pdfs/evidence-base/in-broad-daylight.pdf>.

³ Swanson, Ana, and Chris Buckley. “Chinese Solar Companies Tied to Use of Forced Labor.” The New York Times, The New York Times, January 8, 2021, <https://www.nytimes.com/2021/01/08/business/economy/china-solar-companies-forced-labor-xinjiang.html>.

⁴ Hart, David. “The Impact of China’s Production Surge on Innovation in the Global Solar Photovoltaics Industry.” Information Technology and Innovation Foundation, Center for Clean Energy Innovation, October 5, 2020, <https://itif.org/publications/2020/10/05/impact-chinas-production-surge-innovation-global-solar-photovoltaics/>.

⁵ “CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang.” U.S. Customs and Border Protection, January 13, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave>.

in the number of AD/CVD orders to which it is subject.⁶ This kind of trade cheating comes at the expense of American workers, consumers, small businesses, and more. China's trade cheating has driven many innovative manufacturers out of business because they cannot compete with the predatory prices offered by government-subsidized Chinese competitors.⁷

We applaud your Administration for the ambitious steps it has taken to recognize and combat unfair trade practices that harm the American economy. Under your Administration, the United States Trade Representative (USTR) has committed to confronting China's unfair trade practices through a comprehensive strategy, stating that "China's coercive and unfair trade practices harm American workers, threaten our technological edge, weaken our supply chain resiliency, and undermine our national interests. Addressing the China challenge will require a comprehensive strategy and more systematic approach than the piecemeal approach of the recent past."⁸ Furthermore, Secretary of Commerce Gina Raimondo has underscored that China is committed to "using non-market trade and investment practices in ways that are forcing us to defend our businesses and workers."⁹

The United States was once a leader in the global production of photovoltaic solar cells, but the American industry has suffered as a result of the rapid rise of the Chinese solar industry.¹⁰ Chinese companies now maintain an outsized control over the global solar panel market, producing 97 percent of the global supply of silicon wafers and 79 percent of photovoltaic cells.¹¹ The Chinese government's strategy to extend their control of the global solar market is clear, with its share of global polysilicon production rising from 50 percent in 2017 to nearly 75 percent only three years later.¹² Today, the United States depends on foreign supply chains to meet at least 80 percent of U.S. solar demand.¹³ Demand for solar panels and solar panel components is only growing as solar deployment far outpaces other energy sources. This dependence is unsustainable and could pose future supply chain security issues.

Forced labor concerns, widespread lockdowns, and high polysilicon prices are all a result of our overreliance on the Chinese market. If we continue to allow imports that are being subsidized

⁶ "ADCVD Proceedings." International Trade Administration, U.S. Department of Commerce, <https://www.trade.gov/data-visualization/adcvd-proceedings>.

⁷ Hart, David. "The Impact of China's Production Surge on Innovation in the Global Solar Photovoltaics Industry." Information Technology and Innovation Foundation, Center for Clean Energy Innovation, October 5, 2020, <https://itif.org/publications/2020/10/05/impact-chinas-production-surge-innovation-global-solar-photovoltaics/>.

⁸ "2021 Trade Policy Agenda and 2020 Annual Report: OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAM." United States Trade Representative, Executive Office of the President of the United States, 2021, <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>

⁹ "Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge." U.S. Department of Commerce, November 30, 2022, <https://www.commerce.gov/news/speeches/2022/11/remarks-us-secretary-commerce-gina-raimondo-us-competitiveness-and-china>.

¹⁰ "A Conversation with Ambassador Katherine Tai, U.S. Trade Representative." Center for Strategic and International Studies, October 4, 2021, <https://www.csis.org/analysis/conversation-ambassador-katherine-tai-us-trade-representative>.

¹¹ Bernreuter, Johannes. "The Polysilicon Market Outlook 2024." Bernreuter Research, December 10, 2020, <https://www.bernreuter.com/newsroom/press-releases/polysilicon-market-on-the-brink-of-dynamic-growth/>.

¹² Ibid.

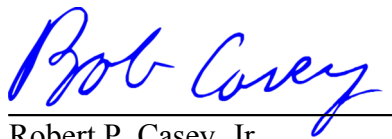
¹³ "Special Report on Solar PV Global Supply Chains." International Energy Agency, July 2022, <https://www.iea.org/reports/solar-pv-global-supply-chains/executive-summary>.

and/or dumped by foreign competitors to enter the U.S. market unchecked, we leave our climate ambitions subject to the will of foreign nations, including the Chinese Communist Party which has not hesitated in the past to use economic coercion and market access as a weapon against our partners and allies. Robust trade enforcement must be a key piece of our strategy to support our climate goals, just as strong domestic investment in clean energy is.

The preliminary findings of the Department of Commerce are clear: circumvention of U.S. trade law is indisputably happening, and it is harming American workers and industry. American manufacturers will not have the room to grow unless they are adequately protected from unfair trade practices. In order to build our domestic solar panel and solar panel component manufacturing capacity, the U.S. government must stand strong in its commitment to protect and promote domestic workers and industry. To that end, we urge the Administration to fully enforce U.S. trade remedies and to terminate the suspension of tariffs where the Department of Commerce finds evidence of circumvention.

Thank you for your attention to this important matter. We look forward to working with you to meet our climate goals while protecting and supporting American workers and industry.

Sincerely,



Robert P. Casey, Jr.
United States Senator



Sherrod Brown
United States Senator

CC: The Honorable Gina Raimondo, Secretary, Department of Commerce
CC: The Honorable Ambassador Katherine Tai, United States Trade Representative