



May 18, 2017

Inv. No. TA-201-3218 (pending institution)

PUBLIC DOCUMENT

VIA ELECTRONIC SUBMISSION (EDIS)

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

Re: Sections 201-202 Petition on Crystalline Silicon Photovoltaic Cells and Modules

Dear Secretary Barton,

Swinerton Renewable Energy (“Swinerton”) writes to express its very strong opposition to the petition filed by Suniva, Inc. (“Suniva”) under Sections 201-202 of the Trade Act of 1974 (the “Act”) on crystalline silicon photovoltaic cells and modules. Swinerton respectfully urges the United States International Trade Commission (the “Commission”) not to institute this proceeding because Suniva lacks standing. Even more importantly, Suniva’s unilateral action threatens more than 260,000 American jobs in the solar industry.

Background on Swinerton

Swinerton Renewable Energy is part of Swinerton Inc, a 130 year old, employee owned, contractor and is one of the nation’s leading engineering, procurement, and construction contractors. Since 2008, Swinerton has worked in commercial installations of renewable energy products and has grown into a utility-scale solar company, generating over 2,000 MW of energy. We employ a workforce of over 1,000 skilled workers throughout the United States. We touch the full project cycle – from engineering through construction, operations, and performance monitoring. We have broad-based expertise in solar installations from having completed over 100 renewable energy projects small and large, including for schools, hospitals, and businesses looking to offset their energy cost with efficient and tailored solar solutions. We seek to offer superior service, provide good local, long-term jobs in the United States, and to be a leader as the solar industry continues to grow.

Suniva Represents a Small Fraction of the Domestic Industry and is Not “Representative”

Suniva’s petition suggests that the company accounted for less than 15% of domestic production over the 5-year proposed period of review from 2012-2016.¹ In fact, Suniva does not even contend that its annual production share has been more than 21%.

Suniva thus plainly represents only a small fraction of the total domestic production of solar cells and modules. The Commission’s legal standard in this proceeding requires that the entities filing the petition are “representative of an industry.”² Based on our preliminary review of the 73 safeguard cases previously instituted, virtually every petition has been supported by greater than 50% of the domestic industry, and no petition has been instituted at the very low level of production claimed by Suniva. Simply put, the Commission’s institution based on the assertions of a single company representing only a small fraction of the domestic industry would be unprecedented.

Accordingly, Swinerton appreciates and supports the Commission’s demands that Suniva provide more support for its erroneous position on representativeness. We view Suniva’s response to Question 3 in the Commission’s Deficiency Questionnaire to be inadequate and, as explained in further detail below, share the Commission’s concerns about the origins and motivations of the petition.³

Suniva’s Requested Relief would Decimate the U.S. Solar Industry

Equally important to Swinerton, Suniva’s petition places countless U.S. jobs in the broader U.S. solar industry at risk. The Solar Energy Industries Association (“SEIA”) explained to the Commission, in its May 12, 2017 letter, that adopting Suniva’s request for four (4) years of import relief – seeking an initial import duty of \$0.40 per watt and an initial floor price on solar modules of \$0.78 per watt – would more than triple the cost of large solar projects. As a consequence, the proposed “remedy” would cause most planned U.S. solar development projects to become uneconomical and would place approximately 260,000 U.S. installation jobs and our employees’ jobs at direct risk. These outcomes are directly at odds with the purpose of a safeguard action—to save U.S. jobs, not destroy them.

¹ Petition at Exhibit 5, Attachment C.

² Section 202(a)(1) of the Trade Act of 1974.

³ Suniva Responses to Deficiency Questionnaire (May 12, 2017) at 11.

Suniva Lacks Public Support

SEIA, a leading voice for the U.S. solar industry, has conveyed to the Commission the broader solar industry's unified disapproval of Suniva's petition. No other U.S. solar cell or panel manufacturer, assembler, or installer has publicly endorsed the petition. Silence by the rest of the domestic industry illustrates that Suniva is not representative and has not garnered sufficient domestic support for this legal action.

Additionally, Suniva's majority shareholder is a Chinese company, Shunfeng International Clean Energy Ltd. ("Shunfeng").⁴ On May 16, 2017, in the context of Suniva's Chapter 11 bankruptcy proceedings, Shunfeng publicly stated:

*Shunfeng believes **it is not in the best interests of the global solar industry for the Chief Restructuring Officer of Suniva, Inc. to file the Section 201 petition for global safeguard relief**, nor does it represent the correct path to a viable solution for all stakeholders to the earlier petition for relief under Chapter 11. The global trade cooperation is vital to the sound and prosperous growth of the solar energy industry and the US solar market would not thrive if the fundamental principles of free market economy were not abided by.*⁵

Swinerton's view is that the absence of support for Suniva's petition is another ground for its rejection by the Commission.

Suniva's Motives for Filing this Petition Appear to be Connected to Its Bankruptcy and Debt Rather than True Concern for Remediating Serious Injury

Suniva's bankruptcy proceeding sheds light on the underlying motivations for Suniva's petition. SQN Capital Management ("SQN"), a group of U.S. and UK "independent asset managers," is the "debtor-in-possession" controlling Suniva's activities. SQN's website explains its purpose as follows:

⁴ Shunfeng Upholds Global Free Trade Principle on Suniva's Section 201 Petition, News Release of Shunfeng International Clean Energy Limited (May 6, 2017), *available at* <http://www.prnewswire.com/news-releases/shunfeng-upholds-global-free-trade-principle-on-sunivas-section-201-petition-300458230.html>.

⁵ *Id.*

SQL Capital Management, LLC (“SQL US”) and its UK subsidiary SQL Capital Management (UK) Limited (“SQL UK”) are together the independent asset managers to institutional investors. Headquartered in New York City and specializing in alternative asset management, SQL US is a registered investment advisor and provides investment advisory and portfolio management services to four private offerings, two public direct participation programs, one exchange-listed fund and separately-managed accounts. SQL’s investment strategy is focused on business-essential, revenue-producing or cost-saving assets.⁶

SQL recently wrote the following to China Chamber of Commerce for Import & Export of Machinery & Electronic Products (Exhibit A):

SQL Capital Management (“SQL”) has provided financing to Suniva secured by a first lien on MonoPerc Cell Production lines for 250 MW Annual Capacity and Module equipment with 150-200 MW Annual Capacity. SQL’s total outstanding debt with Suniva is between USD\$51 million and US\$52 million. Some of the equipment was newly installed as late as the fourth quarter of 2016. SQL believes that the equipment is worth at least USD\$55 million. Through the bankruptcy court, SQL is interested in arranging a sale of that equipment so that SQL can be repaid the full amount of money that it is owed.

SQL has agreed to provide financing to Suniva to file a petition under Section 201 of the Trade Act of 1974 in order to restore value to the equipment and the industry thereby creating a market in the U.S. in which SQL can recover its investment. In order for Suniva to put forth the case, the company must remain in existence. The only way Suniva could survive while the Trade Case is being pursued was to file Chapter 11 Bankruptcy which provides protection from creditors. The cost of filing Chapter 11 and pursuing the Trade is approximately USD\$4 million which SQL is funding through a Debtor in Possession Order.

If SQL were to arrange a sale of the equipment that secures its investment, SQL would have no interest in providing additional funding to Suniva and the company would have to convert to a Chapter 7 Bankruptcy where the assets are liquidated and the company ceases to exist...⁷

⁶ SQL Capital Management at <http://sqncapital.com/> (emphasis added).

⁷ Letter from SQL Capital Management to China Chamber of Commerce for Import & Export of Machinery & Electronic Products, p. 1 (May 2, 2017)(emphases added).

In short, Suniva's petition appears to be less of an effort to protect a U.S. industry and jobs⁸ than a desire by speculators to recoup their failed investment. The plainly stated priority of SQN and its financial backers is to recover \$52 million from the Chinese Chamber, and they are fully prepared to shut Suniva as soon as they have their money. In Swinerton's view, this represents an abuse of Sections 201-202 and of the Commission's investigative processes.

Ordinarily the financial machinations of US and Chinese investors and speculators would be of limited interest to the Commission. But, in this instance, Swinerton is deeply concerned that these maneuvers represent a direct threat to 10,000 U.S. manufacturing jobs in the assembly of solar displays and over 200,000 U.S. jobs in the installation of solar displays in U.S. households and utilities, sales and distribution, in project development, research and development, and finance.

* * *

Swinerton respectfully submits that it would be wholly inappropriate for the Commission to allow its processes to be misused as Suniva requested. We urge, in the interest of the 260,000 American workers in the U.S. solar industry, that Suniva's request be rejected and this matter be terminated. We ask that this letter be placed on the public record prior to any decision by the Commission on institution. Please let us know if we can be of further assistance to the Commission.

Sincerely,



George W. Hershman
SVP, General Manager, Swinerton Renewable Energy

⁸ 19 U.S.C. 2251(a)

Exhibit A



SQN Capital Management

May 3, 2017

Legal Service Department
China Chamber of Commerce for Import & Export of Machinery & Electronic Products

Dear Members, Representatives, and Associates of CCCME,

This letter and the proposal made herein is subject to legal review and documentation as well as the approval of the bankruptcy court.

First, thank you for your time on the telephone last evening and your consideration of the matters facing Suniva.

SQN Capital Management (“SQN”) has provided financing to Suniva secured by a first lien on Mono Perc Cell Production lines for 250 MW Annual Capacity and Module equipment with 150-200 MW Annual Capacity. SQN’s total outstanding debt with Suniva is between USD\$51 million and US\$52 million. Some of the equipment was newly installed as late as the fourth quarter of 2016. SQN believes that the equipment is worth at least USD\$55 million. Through the bankruptcy court, SQN is interested in arranging a sale of that equipment so that SQN can be repaid the full amount of money that it is owed.

SQN has agreed to provide financing to Suniva to file a petition under Section 201 of the Trade Act of 1974 in order to restore value to the equipment and the industry thereby creating a market in the U.S. in which SQN can recover its investment. In order for Suniva to put forth the case, the company must remain in existence. The only way Suniva could survive while the Trade Case is being pursued was to file Chapter 11 Bankruptcy which provides protection from creditors. The cost of filing Chapter 11 and pursuing the Trade is approximately USD\$4 million which SQN is funding through a Debtor in Possession Order.

If SQN were to arrange a sale of the equipment that secures its investment, SQN would have no interest in providing additional funding to Suniva and the company would have to convert to a Chapter 7 Bankruptcy where the assets are liquidated and the company ceases to exist.

If Suniva were not to receive funding from SQN, the Trade Case would have to be withdrawn for three reasons.

1. Suniva would no longer be an industry participant as it was wound down and would be disqualified from being a petitioner.
2. There would be no one to pay the substantial lawyer’s fees necessary to put the case forward.
3. The US Trade Representative could not put forth the case on its own without meaningful industry representation and Solar World is focused on a different trade case and is not interested in incurring the cost of the 201 Case.

Wanxiang-America is the only other secured creditor to Suniva. Wanxiang-America has provided USD\$15 million of financing secured by a first lien on all assets excluding the SQN assets, mainly Mono Cell Production lines which are more than 5 years old for 125-150 Annual Capacity. Wanxiang-America has expressed that it has no interest in supporting a 201 Trade Case and believes that they are covered by the inventory and value of the equipment secured by their liens. They were offered an opportunity to participate in SQN’s funding of Suniva through the bankruptcy and they declined.



SQN Capital Management

Below is a list of the other creditors of Suniva, none of which have an interest or the financial capability to fund the 201 Trade Case. This information is publicly available in Suniva's bankruptcy filings.

Unsecured Creditors: (All amounts in US dollars)

Wacker Chemie	5,775,000
Woongjin Energy	4,970,352
Silfab Solar	4,141,376
Suntech	3,537,692
Posco Daewoo America	2,737,376
Sunedison	1,501,827
Lerri Solar	899,977
Press Metal	769,569
Guangzhou Ruxing	766,634
Heraeus Precious Metals	714,761
Veritiv	716,138
Jiangxi Haoan Energy	545,548
ASIA UNION ELECTRONIC CHEMICAL CORP	365,828
CALIFORNIA STATE BOARD OF EQUALIZATION	431,836
DEPARTMENT OF ENERGY	428,515
CNIEC SHAANXI CORPORATION	391,360
Centrotherm	489,287
SKC, INC.	371,816
ZHEJIANG JIAFU GLASS CO., LTD.	358,997
E I DU PONT DE NEMOURS & CO	351,811
APPLIED MATERIALS, INC.	344,557
Meyer Burger	315,481
FEDERAL PRISON INDUSTRIES	255,614
GEORGIA TECH RESEARCH CORPORATION	255,000
Wanxiang Import/Export Co	229,685
ASYS	215,845
Kinetic Systems	206,457
Subtotal	<u>32,088,338</u>
Other Smaller unsecured creditors	<u>3,915,352</u>
Total Estimated Unsecured Creditors	<u>36,003,690</u>
Total Estimated Creditors	<u>106,003,690</u>

As you can see, the largest creditor, aside for SQN, are foreign-owned companies that could potentially be hurt by the 201 Trade Case. Further, you will note that it cost at least USD\$4 million to



SQN Capital Management

pursue the Trade Case which would not make economic sense for any of the creditors to pursue given the size of the amounts due to them.

If SQN were able to arrange a sale of the equipment that secures its investment in Suniva, the following steps would take place.

- 1) A proposal would be put forth to the bankruptcy court under an emergency motion. This would have to happen on Monday, May 8th.
- 2) Funds would have to be deposited into an escrow account with a third-party law firm while an auction for the equipment is announced and conducted. Funds in the escrow account would only be released as part of a liquidation of Suniva which would include a conversion to Chapter 7 which would have the effect of terminating the Trade Case. The deposit has to be made as soon as the emergency motion is approved.
- 3) Upon receipt of the funds into escrow, the Trade Case would be withdrawn as SQN would no longer be providing funding under the bankruptcy. If these events did not occur, the amounts in escrow would be refunded to the entity that provided them.
- 4) Following the conversion of the bankruptcy to Chapter 7, the assets of Suniva would be liquidated and the company would cease to exist any longer.

The USD\$55 million, when distributed, will be used first to pay the amounts due to SQN. The balance of USD\$3 million to USD\$4 million will be used to pay the legal fees, the expenses related to the bankruptcy, and to make a distribution to unsecured creditors.

We are prepared to work around the clock to document a transaction, if you are interested in purchasing the equipment from Suniva which serves as security for SQN's investment.

We look forward to speaking to you shortly.

Most Respectfully,

A handwritten signature in blue ink, appearing to read "Jeremiah Silkowski".

Jeremiah Silkowski
President