

August 18, 2022

**VIA WWW.REGINFO.GOV/PUBLIC/DO/PRAMAIN**

Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

**Re: Comments on Agency Information Collection Activities:**

***Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Procedures for Importation of Supplies for Use in Emergency Relief Work, 87 Fed. Reg. 43,240 (July 20, 2022)***

**OMB Control Number 0625-0256**

Dear Sir or Madam:

On behalf of Auxin Solar Inc. (“Auxin Solar”), a minority- and woman-owned, U.S. headquartered, and U.S. operated manufacturer of crystalline silicon photovoltaic (“CSPV”) modules that has been injured by unfairly traded CSPV imports, we write to comment on the information collection activities of the U.S. Department of Commerce (“Commerce”) pursuant to 19 CFR Part 358 (“Part 358 Regulations”), which establishes procedures to request Commerce to permit the importation of supplies, such as food, clothing, medical, surgical, and other supplies, for use in emergency relief work free of antidumping and countervailing duties whenever the President declares an emergency under Section 318(a) of the Tariff Act of 1930, as amended (“the Tariff Act”). These comments are timely filed in response to the request for comments entitled, *Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Procedures for Importation of Supplies for Use in Emergency Relief Work, 87 Fed. Reg. 43,240 (July 20, 2022)*.

Auxin Solar supports the information collection activities of Commerce taken pursuant to the Part 358 Regulations. The rulemaking that created the Part 358 Regulations was Commerce's first formal engagement with Section 318(a) of the Tariff Act after responsibility for its administration with respect to antidumping and countervailing duties was transferred from the Department of the Treasury to Commerce in 1979.<sup>1</sup> The Part 358 Regulations and their associated information collection activities establish an orderly, predictable process that would allow emergency relief supplies to reach their intended destinations in the United States free of antidumping and countervailing duties when so authorized by the President, while also preserving the integrity and administrability of the country's trade remedies regime under Title VII of the Tariff Act.

The Part 358 Regulations ensure that any temporary exemptions from antidumping and countervailing duties in times of emergency are narrowly tailored and properly documented. Striking this balance makes good policy sense. In terms of their scope, the Part 358 Regulations are limited by their express terms to "supplies for use in emergency relief work."<sup>2</sup> Importantly, any waiver of antidumping and countervailing duties is not automatic. Commerce requires a waiver request from each importer or exporter seeking duty-free treatment.<sup>3</sup> The waiver request must include detailed information related to intended uses of the product, as well as price,

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<sup>1</sup> See Reorg. Plan No. 3 of 1979, § 5(a)(1)(E).

<sup>2</sup> 19 CFR § 358.101.

<sup>3</sup> See 19 CFR § 358.103(a).

quantity, proposed date of entry, mode of transport, destination, and additional information.<sup>4</sup>

The Part 358 Regulations further specify the process by which parties will be notified of duty waivers and include an enforcement mechanism to address abuses and violations of Section 318(a) that could include seizures and other penalties.<sup>5</sup>

In promulgating the Part 358 Regulations, Commerce unambiguously stated that it was doing so “to prescribe the process by which the Department will exercise its authority under section 318(a) of the Tariff Act.”<sup>6</sup> Additionally, when it took regulatory action in 2006, Commerce purposefully reiterated its commitment “to strong enforcement of U.S. trade laws” and pledged to “do everything within the parameters prescribed by Congress to ensure that domestic industries obtain effective relief from dumped and subsidized imports.”<sup>7</sup> In other words, Commerce was cognizant at the time that Section 318(a) of the Tariff Act was not intended to be a mechanism that could exempt broad categories of products from the discipline of trade remedies under the guise of being designated supplies for use in unspecified emergency relief work. Any such duty waivers need to be properly documented so that they can be tailored narrowly to the nature of the emergency at hand and actual relief efforts being undertaken in response thereto. A standardized approval process arising out of Commerce’s rulemaking

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<sup>4</sup> See 19 CFR § 358.103(a)(2).

<sup>5</sup> See 19 CFR §§ 358.103(b), (d).

<sup>6</sup> *Procedures for Importation of Supplies for Use in Emergency Relief Work*, 71 Fed. Reg. 63,230, 63,231 (Dep’t Commerce Oct. 30, 2006) (final rule).

<sup>7</sup> *Id.* at 63,230.

authority ensures that any actions taken under the color of Section 318(a) are limited and circumscribed in their application and comports with previous agency practice.<sup>8</sup>

According to U.S. Customs and Border Protection’s Trade and Travel Report for Fiscal Year 2021, imports subject to antidumping and countervailing duties represented \$30.2 billion, or approximately one percent, of the total \$2.8 trillion in import value, and duties deposited pursuant to antidumping and countervailing duty orders accounted for \$2.4 billion, or approximately 2.5 percent, of the \$93.8 billion in total duties collected during the last fiscal year.<sup>9</sup> However small as a share of total trade, the imposition of antidumping and countervailing duties is existential for certain industries and companies affected by the unfair trade practices of their foreign competitors. This is because antidumping and countervailing duties are intended to level the playing field between low-priced dumped and subsidized imports that have materially injured or threaten material injury to U.S. producers of the same or similar products.<sup>10</sup> Such antidumping and countervailing duties ensure that the United States maintains a manufacturing and agricultural base with good paying jobs. Any elimination of antidumping and countervailing

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<sup>8</sup> See, e.g., T.D. 50449, *Certain Forage for Livestock to Be Admitted Free of Duty Under a Proclamation of the President, Made Pursuant to Section 318 of the Tariff Act of 1930*, 6 Fed. Reg. 4,071, 7,071-72 (Dep’t Treasury Aug. 15, 1941).

<sup>9</sup> U.S. Customs and Border Protection, *CBP Trade and Travel Report: Fiscal Year 2021* (April 2022 at 12-14), available at [https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021\\_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf) (last accessed August 4, 2022).

<sup>10</sup> See International Trade Administration, U.S. Department of Commerce, *About Us*, available at <https://www.trade.gov/about-us> (last accessed August 4, 2022).

duty protection thus allows unfairly traded imports to have a competitive advantage against injured or vulnerable U.S. producers.

Auxin Solar’s only negative comment concerning Commerce’s information collection activities with regard to the Part 358 Regulations is that Commerce regrettably appears disinclined to use the Part 358 Regulations even when their use is legally required. In June 2022, the President relied on Section 318(a) of the Tariff Act to declare an emergency “with respect to threats to the availability of sufficient electricity generation capacity to meet expected consumer demand.”<sup>11</sup> Under that emergency authority, the President called on Commerce to “consider taking appropriate action... to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as {Commerce} may prescribe, the importation, free of the collection of duties and estimated duties” of certain CSPV cells and modules exported from Cambodia, Malaysia, Thailand, and Vietnam.<sup>12</sup> Rather than rely upon the Part 358 Regulations, which were established for the precise purpose of a Section 318(a) emergency, Commerce unnecessarily promulgated a new, but redundant, proposed rule to address the current emergency.<sup>13</sup> In so

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<sup>11</sup> *Proclamation No. 10414, Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia*, 87 Fed. Reg. 35,067, 35,068 (June 9, 2022).

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

<sup>13</sup> *See Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414*, 87 Fed. Reg. 39,426 (Dep’t Commerce July 1, 2022) (proposed rule).

doing, Commerce relied upon dubious legal and factual pretexts not to apply the Part 358 Regulations.<sup>14</sup>

As a domestic producer of CSPV cells and modules that sought relief from Commerce under the U.S. trade remedy laws,<sup>15</sup> Auxin Solar is detrimentally affected by Commerce's refusal to apply the Part 358 Regulations in the current emergency. Unlike the Part 358 Regulations, Commerce's proposed rule is not narrowly tailored to the emergency at hand and requires no information collection activities on the part of Commerce to ensure that duty-free treatment is afforded only to imports of "supplies for use in emergency relief work," as that term is used in Section 318(a) of the Tariff Act. As a result, the proposed rule threatens to create a gaping loophole in Commerce's administration of the antidumping and countervailing duty laws that the Part 358 Regulations and their corresponding information collection activities were designed to prevent. As part of its review of Commerce's information collection activities under the Part 358 Regulations, the Office of Management and Budget should inquire as to Commerce's reluctance to use those regulations for their intended purpose.

Thank you for your consideration of these comments. If you have any questions regarding this submission, please contact the undersigned.

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<sup>14</sup> See *id.* at 39,429.

<sup>15</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 Fed. Reg. 19,071 (Dep't Commerce Apr. 1, 2022) (initiation notice).

Respectfully submitted,

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