

Industry reacts to US ITC “injury” ruling

In a landmark decision, the US ITC said last week that cheap foreign-made panels were harming US manufacturers. Recommendations will be made next month, but the outcome now depends largely on President Trump, writes Ros Davidson

NORTH AMERICA

WHAT:

The ITC ruled that US manufacturers like Suniva have been harmed by imported, lower-cost equipment.

WHY:

Massive expansion and Chinese government support have driven prices down.

WHAT NEXT:

Recommendations will be made in October, but the final decision rests with US President Trump, who is likely to use the case to bolster his agenda of US protectionism and encouraging domestic manufacturing.

ON September 22, the US International Trade Commission (ITC) recently delivered the first step in what could become a potentially devastating body blow to the domestic solar industry. In a decision that was expected, the federal trade agency has unanimously ruled that the US solar panel sector is being harmed by cheaper products, sourced mostly from China or Chinese-owned plants elsewhere in Asia.

The most interesting part of the dispute is yet to come. Much depends upon the politics and personality of President Donald Trump, whose decision on the remedies may not be made until January.

The rare Section 201 ruling could lead to high import tariffs or other remedies, and the majority of the US solar industry says that such measures could bring much development to a screeching halt. That in turn would entice Chinese firms to set up manufacturing in the US.

The case is a microcosm of the US solar industry, which has been pummeled by cheap Asian competition. Global prices of solar panels have sunk by about 50% in five years, and the trend has been dividing America's US\$23 billion solar industry, the employer of about 260,000 workers, most of whom work in panel installation.

The petitioners in this case were Suniva, majority-owned by Shunfeng of China, and the US division of Germany's SolarWorld, in which the largest investor is Qatar Solar Technologies. Suniva is a manufacturer of high-efficiency crystalline silicon photovoltaic (PV) solar cells and high-power solar modules. SolarWorld Americas has a plant for making high-efficiency P-type monocrystalline PERC (Passivated Emitter Rear Cell) technology in Hillsboro, Oregon.

A common theme unites the two plaintiffs. Suniva sought bankruptcy protection with the US courts just nine days before filing the plea, in May, while the Berlin-based parent of SolarWorld is already insolvent. Industry critics of the suit have already levelled charges that the two are simply attempting to mitigate losses from businesses that failed to compete.

Injury time

At this point, the outcome of the ruling remains speculative. The ITC – with members voting in this case – has yet to decide upon remedies in the case. It will hear testimony at an October 3 hearing in Washington DC. At the hearing, commissioners' questioning of each party might give insight into their likely recommendations. Following this, the agency must publish its recommendations by 13 November.

The Washington DC-based commission is not considered especially expert on solar cases, said Morten Lund, a partner with the law firm Stoel Rives, and chair of the firm's the solar energy initiative. The commissioners will likely make their recommendations on the basis of the persuasiveness of each side's testimony at the October hearing, he said. Stoel Rives represents SolarWorld on matters not related to the ITC case.

Out of the rare Section 201 cases prior to 2017 – a total of 73 have occurred – the ITC found injury and made remedy recommendations on 34 occasions (or 47% of the time), and the President only implemented remedies in 19 cases, said Bloomberg New Energy Finance (BNEF) solar analyst Hugh Bromley. Section 201 is part of the of the 1974 Trade Act.

“It's too early to speculate what remedies the ITC will recommend, but it could specify some combination of duty levels, minimum pricing, quotas, effective dates and countries that should be exempted from the controls because they are party to a free trade agreement [FTA] with the US. The proposed tariff plus floor price is far from certain in both magnitude and form,” Bromley told NewsBase Intelligence (NBI).

The petition sought an import tariff of US\$0.40 per watt and a minimum import price of US\$0.78 per watt (including the tariff), phasing down over four years. Panels can cost as much as US\$0.45 per watt in the US.

Protect and serve

Once the ITC has made recommendations, President Trump can accept or change the size of any tariffs, quotas, price floors or other actions by

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*Hugh Bromley
Solar Analyst
BNEF*

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► mid-January 2018. He can also act unilaterally, regardless of what the ITC recommends. Given his personality and political leanings, he may well rule in favour of tariffs and floor prices – and he may even increase them beyond what the ITC is recommending, said Lund, who spoke with NBI by phone. Trump could even impose tariffs and then change his mind and dismantle them.

The President has often talked at political rallies of protecting US jobs and industry. He has also often talked of China's unfair trade practices, and he has had a war of words with Mexico's leader and famously dislikes the North American Free Trade Agreement (NAFTA) with Mexico and Canada. (Some solar cells are made in Mexico).

The President is not a politician who follows tradition; in past Section 201 cases, such as the last one in 2001, presidents have typically affirmed the ITC's recommendation. "Trump is a man who likes to win – and he would love to announce tariffs and stick it to Mexico and China," Lund affirmed. Indeed, this Section 201 case was given legs by the current political mood in America – protectionist and angry. Were that not the case, Lund speculated, it would otherwise not have been filed.

Watt effects?

Predictions as to the impact of the suit range from job losses in the US solar installations and development sector to a trade war with China. A note on Friday's ruling by Bloomberg New Energy Finance (BNEF), by analyst Nathan Serota, was entitled "US Solar Developers Lose Trade Battle, Prep for War."

In terms of installers and developers, those most affected will be in states without robust mandates or renewable portfolio standards (RPS), such as Texas, as opposed to the renewables-friendly California or New York.

Meanwhile, panel-makers are already seeking a work-around by setting up US-based manufacturing units, a measure which would mean price rises in solar cell and modules will not be that great. Import tariffs were imposed on imported solar equipment from China and Taiwan in 2012 and 2014, and this has laid the groundwork for the US industry to cope with any more barriers

that Trump may impose in January – by building manufacturing plants in the US.

"It won't be overnight, but it will be much faster than you'd expect for big infrastructure to happen," added Lund. If there were a 40-cent tariff, he said that a factory in Arizona could become "very profitable, very quickly." He says he has been talking with Chinese manufacturers since 2012-14, and many have drafted manufacturing plans or joint ventures for US-based plants.

The ITC also found no serious injury had been dealt to the US industry by imports from South Korea-based firms, giving a leg up – for now – to companies like Seoul-based Hanwha.

BNEF agrees that some Asian cell manufacturers will set up in the US, although could not speculate as to which ones. Bromley said the group was "not aware of any manufacturers who have publicly disclosed their intentions."

Installers and developers have been stockpiling panels since the case was filed, so much that there is a healthy secondary market for panel contracts, Bloomberg has reported. Although developers say prices have swelled by about 40% since then, making some projects uneconomical to build.

Actual price increases may be more muted, according to BNEF's projections. "We estimate that it will cost around 3 cents per watt extra to produce a cell in the US and have it assembled offshore, as compared to purchasing a module manufactured entirely in Asia that would be subject to any import tariff," said BNEF's Bromley.

Whatever the outcome of the case, it is clear is that the uncertainty of the next few months will be damaging to the industry. The tariffs that the petitioners are seeking could "double the price of solar panels and stop solar growth dead in its tracks," and lead to the loss of 88,000 jobs, according to the Solar Energy Industries Association (SEIA), a trade group that must seek to protect its members (but which may be exaggerating the likely impact).

The real consequences may be less sweeping, but they will do little good for an industry that has seen consistent reductions in the cost of solar energy. The US solar may be preparing for the coming war, but most in the industry would agree it never needed to be fought. ❖

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