



ITC Decision Could Cloud Outlook for Solar Project Developers

A recent decision by the U.S. International Trade Commission ("ITC") could have long-term consequences for the U.S. solar industry. On September 22, 2017, the ITC found, by a vote of 4-0, that rising imports have caused "serious injury" to domestic manufacturers of solar photovoltaic ("PV") panels, thus supporting trade barriers restricting solar panel imports. The ITC will now have until mid-November 2017 to recommend remedies to President Trump, who may exercise his sole discretion in determining which safeguards are to be implemented.

Suniva Inc., a U.S.-based PV panel producer, filed a petition with the ITC earlier this year pursuant to Section 201 of the 1974 Trade Act and was later joined by SolarWorld Americas Inc. Together, they argued that the large numbers of crystalline silicon cells and panels imported into the United States had harmed American PV manufacturing firms and requested that the ITC levy a 40-cent per watt tariff on solar PV cells brought into the country and implement a floor price of 78 cents per watt. According to Suniva and SolarWorld, protective measures would boost domestic manufacturing of PV panels and create more than 100,000 solar industry jobs.

Solar project developers and installation companies, which have benefitted from the rapid decline in solar PV panel prices, lined up in opposition to the case. They argued that increasing the price of panels would jeopardize the development of dozens of gigawatts of solar generation facilities and lead to tens of thousands of lost jobs. In fact, the mere existence of the case allegedly caused several tax-equity investors to delay their 2018 investment decisions in projects that have not yet secured PV panels and finalized costs.

At a hearing scheduled for October 3, 2017, the ITC will consider a broad array of potential remedies, including tariffs, minimum prices, or importation quotas. The ITC must issue a recommendation to President Trump by November 13, 2017, who will then have 60 days to determine whether and how to implement the ITC's proposal, or whether to take any other action.

The impact of the ITC's decision on the U.S. solar industry will depend on the recommendations of the ITC and what remedy is ultimately imposed by President Trump. The nature and duration of any remedy imposed, along with the countries whose imports would be affected, will be key in determining whether the ruling will be a passing cloud or a serious storm on the horizon for the burgeoning U.S. solar industry.

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