

Energy Technology Article

## Is a Global Settlement Agreement on the Horizon for Solar Trade Issues?

09.15.2014

BY [JORDAN COLLINS](#)

For several years, solar arrays utilizing silicon photovoltaics have been central to driving exponential market penetration in the U.S. distributed and utility-scale industry segments. However, an ongoing trade war, spanning three (3) continents, and impacting the entire solar supply chain — from upstream polysilicon manufacturers to downstream installers — continues to present significant challenges as the growing number of tariffs imposed on imported solar components and systems may begin to dampen the solar industries' incredible momentum.

Beginning in 2012, a series of anti-dumping (AD) and countervailing duty (CVD) cases have been brought, primarily by SolarWorld, in both U.S. and European courts against China, and now Taiwan. These cases continue to demonstrate how the company is pursuing every judicial forum with jurisdiction to address alleged illegal Chinese subsidies for its indigenous solar industries, and Chinese companies — largely backed by Beijing in many cases — developing pricing schemes deemed to be set illegally below fair market value. The solar AD/CVD trade cases are complex, involving two (2) separate, but related causes of action alleging illegal governmental activities violating anti-dumping trade laws, and private sector activities violating countervailing duty laws and the imposition of tariffs if such activity is proven. The mechanics of the case involve a two-step, quasi-adjudicatory process by Department of Commerce and the International Trade Commission (USITC) who both have jurisdiction over components of AD/CVD cases, and who issue preliminary and final determinations laying out the rationale underlying the decision, as well as the scope, timeframe, and levels of the tariffs.

On July 25th, the latest development in the escalating solar trade dispute unfolded when Commerce issued a [preliminary decision](#) in the AD portion of most recent case against Chinese module manufacturers, and for the first time, against imports from Taiwan. Commerce will immediately impose AD duties ranging from **26.33% to 58.87%** percent for China and **27.59% to 44.18%** for Taiwan. According to Commerce, 2013 imports of Chinese and Taiwanese photovoltaics in the scope of the case represented **\$1.5 billion** and **\$656 million** in economic activity respectively, representing roughly a **50% decline** in Chinese module imports and a **50% increase** in Taiwanese imports from 2012. According to GTM Research, **31%** of 2013 U.S. module installations utilized Chinese imports, and represented more than **50%** of the U.S. distributed generation installations. The GTM report also found that non-Chinese suppliers are likely to gain share as a result of the erosion of Chinese price advantage resulting from the imposition of trade tariffs in the U.S. market, and that. Likely beneficiaries include REC, SolarWorld, Suniva and LG Solar in the distributed solar market, and First Solar in the utility market.

If Commerce and USITC finalizes the preliminary determinations decisions of 2014 AD/CVD at the levels of the preliminary determinations, the additional tariffs [could raise the overall prices of solar modules entering the U.S. market by an average of 14%, with a range of 7 to 20%](#). Commerce is set to make its final AD determination by **December 15th 2014**, and USITC is scheduled set to make its final decision on **January 29th, 2015**. Solar manufacturers have already developed multiple contingency plans for addressing the latest imposition of tariffs, and will decide the most economically efficient export strategy which include strategic decisions about which tariffs to pay under the terms of multiple AD/CVD cases. A fourth option is to move manufacturing elsewhere to avoid the tariffs, which is not thought to be a common action taken by industry.

There has been a growing drum beat for all parties to reach a global settlement agreement in lieu of continuing to litigate the matters in court — a position held by many in the US solar industry since 2012. Sources close to the negotiations have inferred the current U.S. Administration and Chinese government — who have been



*Jordan Collins, ML Strategies -  
Director of Government Relations*

---

#### RELATED INDUSTRIES

[▶ Energy Technology](#)

engaged in the trade policy discussions throughout the process — have intimated they are open to a settlement agreement, and would support such a step. An equitable settlement could potentially drive multiple direct and indirect benefits for the solar industry including: (1) the rescinding of a Chinese tariffs imposed in retaliation after the first AD/CVD case in 2012 against U.S. polysilicon manufacturers — the second largest polysilicon producers other than China, (2) a signal to industry that litigation is an inefficient modality for settling trade disputes because the continued imposition of tariffs in aggregate is beginning to materially and negatively impact supply chain economics, and (3) a multilateral effort by the industry to negotiate at arm's length to abide by, and to compete accordingly to a set of agreed upon principles would be a more prudent approach to dispute resolution, creating more long-term stability for the industry.

---

Boston | London | Los Angeles | New York | San Diego | San Francisco | Stamford | Washington

[www.mintz.com](http://www.mintz.com)

Copyright © 2015 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

4258-0914-NAT-ET