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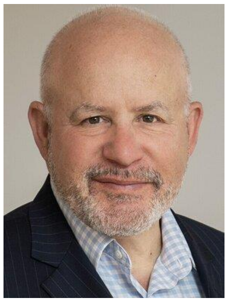
5 Tips For Solar Cos. Navigating Big Shifts In US Trade Policy

By **Carl Valenstein, Casey Weaver and Katelyn Hilferty** (July 24, 2024, 5:30 PM EDT)



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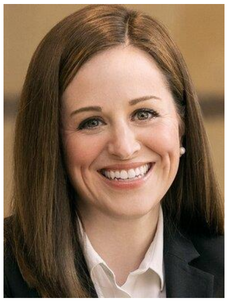

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The Biden administration continues to navigate the intricate course between fostering domestic solar manufacturing and countering perceived unfair trade practices by China. In a series of strategic maneuvers, the administration recently announced significant changes to the tariff structure under Sections 201 and 301 of the Trade Act of 1974, with the aim of bolstering the U.S. solar manufacturing sector and safeguarding American jobs and businesses.

Concurrently, two other events may create further instability in solar panel import pricing. The first is the expiration in June 2024 of the 24-month presidential moratorium on new tariffs for the importation of solar panels into the United States. The second is a new antidumping and countervailing duty, or AD/CVD, case initiated against solar panels from four Southeast Asian countries accounting for a predominant portion of the exports of solar panels to the U.S.

In this article, we provide an overview and timeline of the tariff actions taken on solar imports and share guidance for renewable energy developers on how to navigate this shifting regulatory landscape to ensure compliance, including best practices for reviewing procurement contracts, evaluating supply chain strategies, taking advantage of tax incentives under the Inflation Reduction Act and maintaining proper documentation.

Doubling Down on Solar Tariffs

In response to the Office of the U.S. Trade Representative's recommendation to "enhanc[e] the effectiveness of the tariff actions by adding or increasing Section 301 tariffs on certain products in strategic sectors," as the Trade Representative would later characterize its recommendations in a request for comment, President Joseph Biden issued a memorandum on May 14 directing the USTR to increase tariffs in 2024, 2025 and 2026 on $18 billion worth of imports from China, with a focus on solar cells and modules. The tariffs on these critical components will double from 25% to 50%, a move designed to protect domestic manufacturers from what the administration deems unfair trade practices by Chinese companies.

The USTR proposes that increases in 2024 be effective as of Aug. 1, with the 2025 and 2026 increases becoming effective Jan. 1 of the corresponding year. The USTR also proposes to modify the actions by granting 19 temporary exclusions for certain solar manufacturing equipment. The products subject to these proposed modifications and products being proposed for the exclusion process are set out in annexes to the Trade Representative's notice.

The USTR also proposed raising import tariffs on battery cells from China used in electric vehicles and energy storage systems. Tariffs for EV battery cells will increase to 25% in 2024, with energy storage tariffs following suit in 2026, with the goal of leveling the playing field for U.S. manufacturers that have long been undercut by cheaper imports.

A notable pivot in policy is the imminent removal of the bifacial module exclusion under Section 201. Bifacial solar panels, which are predominantly used in utility-scale projects, have enjoyed an exclusion from safeguard tariffs. This exclusion, implemented during the previous administration, has led to a surge in imports, undermining the efficacy of the Section 201 safeguard measures. The Biden administration's decision to eliminate this exclusion seeks to restore the protective intent of the original tariffs, granting U.S. manufacturers a stronger shield against unfair competition.

In addition, the administration has announced the end of the temporary "solar bridge" policy, which facilitated duty-free imports from Cambodia, Malaysia, Thailand and Vietnam. This measure, initially intended to support the ramp-up of domestic solar manufacturing, concluded on June 6. Producers in Southeast Asia that have been found to be circumventing AD/CVD on solar manufacturers from China will be subject to duties unless they have modified their manufacturing process to conform to the new certification requirements.

Concurrently, the administration has announced it will crack down on stockpiling practices by enforcing a 180-day installation requirement for duty-free imported panels. U.S. Customs and Border Protection will rigorously monitor compliance, necessitating detailed certifications from importers. Earlier in 2024, CBP began issuing questionnaires to solar companies requesting extensive disclosures about the source of modules, panels and other products.

On May 15, one day after the Biden administration announced the increased tariffs and in response to a petition filed by the American Alliance for Solar Manufacturing Trade Committee, the U.S. Department of Commerce announced the start of AD/CVD investigations into crystalline silicon photovoltaic cells — whether or not assembled into modules — originating from Cambodia, Malaysia, Thailand and Vietnam. On June 7, the U.S. International Trade Commission found that there is a reasonable indication that U.S. solar industry is "materially injured" or "threatened with material injury" by such imports.

The below table sets out the anticipated schedule of deadlines:

Event	**AD Investigations**	**CVD Investigations**
Petition(s) Filed	April 24, 2024	April 24, 2024
Commerce Initiation Date	May 14, 2024	May 14, 2024
ITC Preliminary Determinations	June 7, 2024	June 7, 2024

Commerce Preliminary Determinations	Oct. 1, 2024	July 18, 2024
Commerce Final Determinations	Dec. 16, 2024	Oct. 1, 2024
ITC Final Determinations	Jan. 30, 2025	Nov. 15, 2024
Issuance of Orders	Feb. 6, 2025	Nov. 22, 2024

These deadlines may be extended under the statute.

The U.S. Department of Energy and the Commerce Department will also intensify monitoring of solar module import patterns, particularly from Southeast Asia, where Chinese manufacturers have been found circumventing AD/CVD. This vigilance aims to prevent market oversaturation and ensure a fair competitive environment for U.S. producers.

Supporting U.S. Manufacturing

To further incentivize domestic production, the U.S. Department of the Treasury has issued new guidance on the domestic content bonus under the Inflation Reduction Act. This bonus rewards developers that source materials such as iron, steel and manufactured products domestically. The updated guidance includes an elective safe harbor, allowing developers to rely on DOE-provided default cost percentages to determine eligibility, thereby simplifying compliance and fostering greater domestic partnerships.

Moreover, the DOE is investing more than $70 million in research and development to support new technologies in the solar supply chain. This funding, part of the president's Bipartisan Infrastructure Law, will address key gaps and promote innovations in solar wafer and cell manufacturing, opening new markets for advanced solar technologies.

To support continued growth in U.S. solar manufacturing, the administration will manage the current 5-gigawatt tariff-rate quota for imported solar cells under Section 201. Should imports approach this quota, it will be raised by an additional 7.5 gigawatts to ensure a steady supply for domestic module manufacturing.

Guidance for Renewable Energy Developers

Given these sweeping changes, renewable energy developers and stakeholders must navigate this new regulatory environment with careful attention.

Here are five key takeaways to ensure compliance and strategic alignment.

1. Review existing procurement contracts.

Developers that are reliant on imports of solar panels must reassess their supply chains in light of the above developments. They should immediately review their existing procurement agreements to understand how the risk of tariff increases is allocated between the parties.

Clauses related to price adjustments, force majeure and tariff risk should be carefully examined and, if necessary, renegotiated to ensure clarity and fair allocation of risks.

2. Reevaluate supply chain strategies.

Given the upcoming end of the solar bridge and removal of the bifacial module exclusion, developers must reassess their supplier networks. It is crucial to identify and potentially diversify suppliers to mitigate risks associated with increased tariffs and ensure compliance with new regulations.

3. Use the domestic content bonus.

Developers should familiarize themselves with the new elective safe harbor guidelines to maximize eligibility for the domestic content bonus. Projects meeting the domestic content requirements can benefit from additional tax incentives, making it financially advantageous to source components domestically.

4. Plan for compliance and documentation.

With increased scrutiny on stockpiling and import certification, developers must ensure robust compliance mechanisms are in place. Maintain detailed records and certifications for duty-free imports to comply with CBP requirements and avoid penalties; accurate documentation and timely certification of solar module utilization within the 180-day period will be critical to avoid penalties and ensure smooth project execution.

For projects relying on imports from the four Southeast Asian countries, ensure all panels are not subject to the increased tariffs under the anticircumvention case through appropriate CBP certifications, and monitor developments in the new AD/CVD case involving solar panels from these countries.

5. Stay informed on policy updates.

Regularly consult guidance from the Departments of Treasury, Energy and Commerce to stay abreast of new incentives, quota adjustments and compliance requirements. Be prepared to make proactive adjustments to procurement strategies based on new developments and enforcement actions.

Conclusion

The recent regulatory changes present both challenges and opportunities for solar developers. By proactively assessing the impact of increased tariffs, diversifying their supplier networks and leveraging domestic content bonuses, developers can navigate these changes effectively.

Immediate action to review procurement agreements and secure necessary supplies will be crucial to mitigate risks and capitalize on the incentives available under the Inflation Reduction Act. As the clean energy landscape continues to evolve, staying informed and adaptable will be key to maintaining a competitive edge in the burgeoning U.S. solar market.

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