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駐美國代表處經濟組 函

受文者：經濟部國際貿易局

發文日期：中華民國109年10月29日

發文字號：經美字第1090000951號

速別：普通件

密等及解密條件或保密期限：

附件：如文 (經美1090000951_Attach1.pdf, 經美1090000951_Attach2.pdf)

主旨：陳報美國國際貿易法院就白宮撤銷對雙面太陽能板豁免防衛措施，發布臨時禁制令事，敬請查參。

說明：

一、相關文號：本組本(109)年10月13日經美字第1090000887號函。

二、本案背景：

(一)美國於2018年2月起針對進口太陽能電池與模組採取4年全球防衛措施，惟該防衛措施排除產品清單包含雙面太陽能板。

(二)川普總統本年10月10日發布公告，撤銷對雙面太陽能板之排除，本案防衛措施將適用於該產品。

三、據報導，美國國際貿易法院(CIT)就上述白宮撤銷對雙面太陽能板豁免防衛措施，發布臨時禁制令，要點如下：

(一)美國貿易代表署(USTR)前於2019年10月確認將雙面太陽能板產品排除於防衛措施外將減損防衛措施效用，爰決定撤銷雙面太陽能板產品之豁免。

(二)美業者Invenergy Renewables LLC就本案向美國國際貿

經濟部
國際貿易局

國際貿易局 109/10/30



1097034541

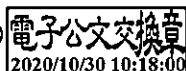
易法院(CIT)提起訴訟，指控USTR該措施未經公眾評論程序，爰法院對其發出臨時禁制令。

(三)本年10月10日白宮發布前揭公告後，CIT法官於10月24日就該公告有關雙面太陽能板部分，再次發布臨時禁制令(temporary restraining order)，在未來2週禁止行政機關撤銷雙面太陽能板產品之豁免。法官未來仍可能延長該禁制令。

四、檢送相關報導，併請卓參。

正本：經濟部國際貿易局

副本：經濟部工業局(含附件)



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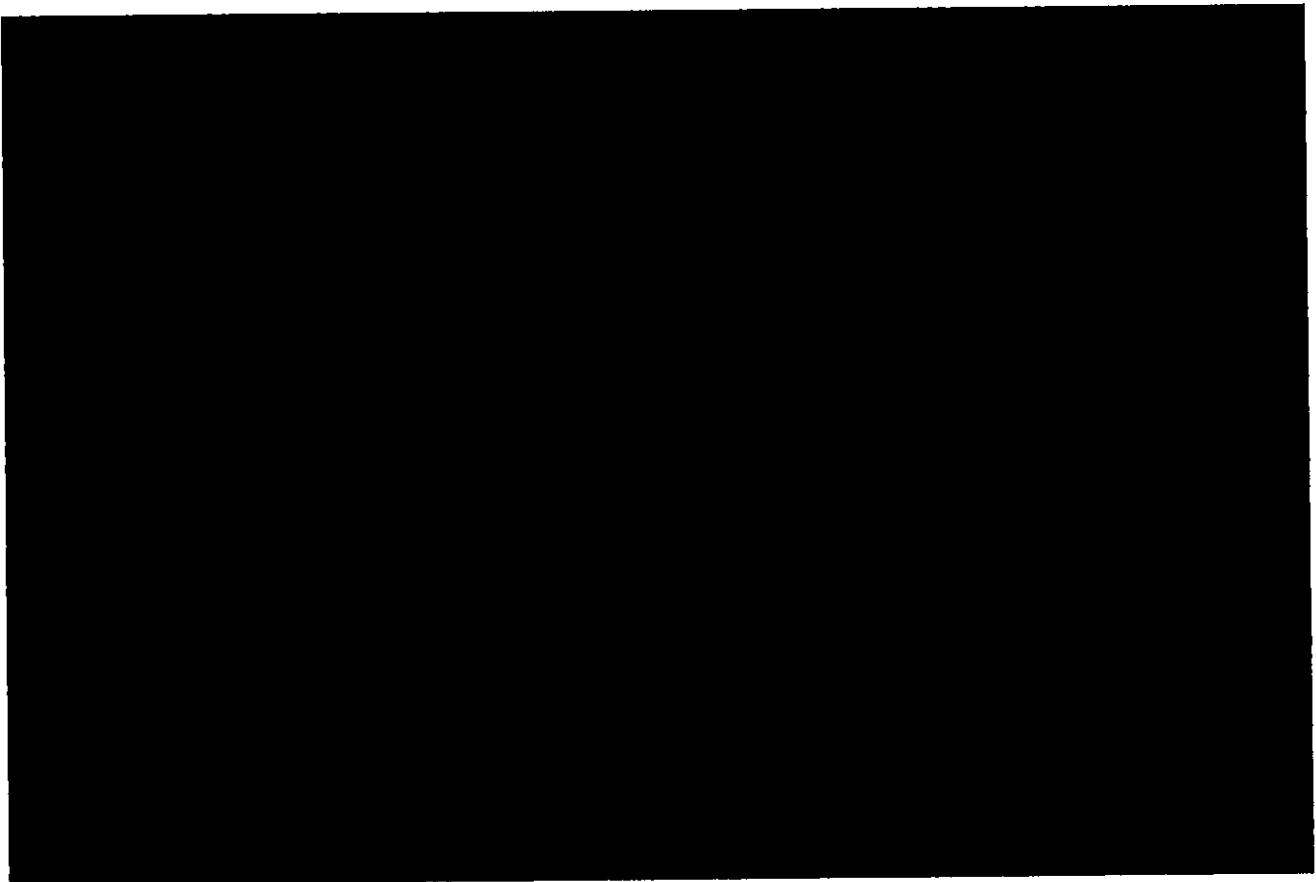
Trump Thwarted in Latest Bid to Kill Solar-Tariff Loophole

By [Brian Eckhouse](#)

October 24, 2020, 12:01 PM EDT

Updated on October 26, 2020, 12:28 PM EDT

- ▶ Court blocks removal of solar-tariff exemption sought by U.S.
- ▶ Move temporarily prevents tariff exemption from being removed



Photographer: Bing Guan/Bloomberg

A U.S. trade court temporarily blocked the Trump administration's latest bid to end a loophole it had granted on two-sided solar panels.

The order Saturday came weeks after President Donald Trump moved to eliminate a tariff exemption for so-called bifacial, panels. Prior to that proclamation, the government tried for more than a year to revoke the exemption, only to get repeatedly thwarted by the trade court.



Court of International Trade Judge Gary Katzmann issued a temporary restraining order that effectively prevents the tariff exemption from being removed for two weeks, unless the court takes other action during that time. A spokesman for the U.S. Trade Representative didn't respond to an email seeking comment about the order.

China-based manufacturer JinkoSolar Holding Co. gained 0.8% to \$64.87 at 12:28 p.m. in New York.

Read: [Solar Stocks Tumble After Trump Moves to Cut Tariff Loophole](#)

In [early 2018](#), Trump approved four years of tariffs on solar panel imports, starting at 30% and to be reduced by 5 percentage points in each subsequent year. The tariffs were part of a campaign promise to get tough on China, which dominates solar-panel manufacturing, and to boost the U.S. industry.

But his administration surprised many in the sector when it [granted an exclusion](#) for bifacial panels in 2019. While bifacial was considered a niche product, the tariffs had encouraged some [new solar manufacturing](#) in the U.S., and module imports exempt from those duties posed a threat.

Read Also: [The Solar-Powered Future Is Being Assembled in China](#)



In the October proclamation, Trump said it was necessary to revoke the bifacial exemption because the loophole has “impaired and is likely to continue to impair the effectiveness” of the tariffs intended to bolster U.S. solar manufacturing.

That’s why he also said it was necessary to set tariffs on most imported solar cells and modules at 18% starting in February, instead of reducing them to 15% from 20% as originally planned.

(Updates with solar company’s shares in fourth paragraph)

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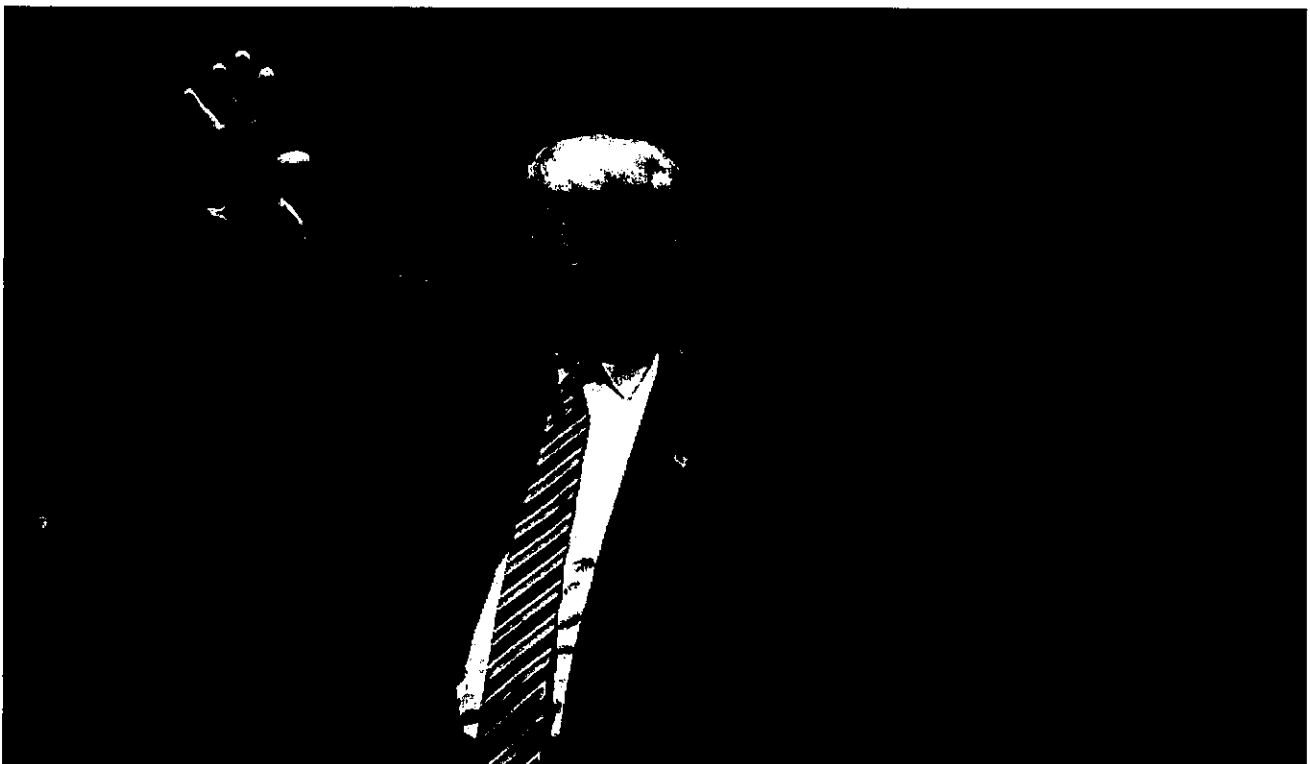
SOLAR (/ARTICLES/CATEGORY/SOLAR)

Trump Administration's Attempt to Revoke Exclusion for Bifacial Solar Modules Hits Another Roadblock

An October presidential proclamation on Section 201 tariffs faces legal challenge.

EMMA FOEHRINGER MERCHANT

OCTOBER 26, 2020



A judge has stopped a tariff on bifacial solar panels from going into effect — for the time being.

A Saturday ruling from the U.S. Court of International Trade has once again paused the Trump administration's plans to extend Section 201 tariffs to two-sided solar panels.

Judge Gary Katzmann placed a temporary restraining order on an October presidential proclamation, which members of the solar industry argued should fall under the purview of an injunction the court had already put in place to stop the administration from tariffing bifacial solar panels.

For the moment, the ruling quashes the administration's latest salvo to extend the reach of its tariffs on imported solar, a fight the Trump administration continues to pursue just days away from the U.S. presidential election. Bifacial solar panels will continue to enter the U.S.

tariff-free.

The U.S. Trade Representative's reversal on an exclusion (<https://www.greentechmedia.com/articles/read/us-reverses-course-on-tariff-exclusion-for-bifacial-solar-modules>) for bifacial solar panels, initiated in October of 2019, has already been challenged (<https://www.greentechmedia.com/articles/read/court-ruling-stalls-trump-plan-for-tariffs-on-bifacial-solar>) by a group including the Solar Energy Industries Association and Invenergy Renewables, with a case in the U.S. Court of International Trade.

Those plaintiffs argued to the court last week that the presidential proclamation (<https://www.greentechmedia.com/articles/read/presidential-proclamation-to-increase-extend-section-201-tariffs>), which separately aimed to revoke the Section 201 exemption offered to bifacial solar panels and increase overall duties from 15 to 18 percent in the last year of the tariffs, should be considered under the existing case.

Judge Katzmann stopped short of extending the injunction but established a two-week restraining order on tariffs for bifacial solar during which the court may rule on extending the injunction. The order may also be renewed.

"It's so directly tied to the ongoing litigation that I don't see how the court wouldn't extend the injunction to this action," David Glynn, an attorney at Holland & Hart, told Greentech Media last week.

With the presidential proclamation now caught up in the existing Invenergy case, the avenues via which the administration could pursue stricter tariffs are narrowing. Though the president generally has wide latitude on trade-related matters, the nature of Section 201 tariffs could limit the administration's argument as the case wends its way through the courts, said Glynn.

"We're talking harm to the economy, harm to industry, but not national security," said Glynn. "That's distinguishable, and I think that's where a presidential proclamation like this might have trouble."

Of course, there are several unknowns in how the case may progress. That includes the election: it's uncertain whether Joe Biden, if elected, would press on with the case initiated by his predecessor and opposed by the solar industry. The Supreme Court is another factor if the case is appealed. Judge Amy Coney Barrett, appointed by Trump, is likely to be confirmed to the court today.