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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

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主旨：陳報美國國際貿易法院(CIT)判決恢復豁免「雙面太陽能板」防衛關稅，並調降「太陽能電池與模組」防衛稅率事，敬請查參。

說明：

一、相關文號：本組本(110)年11月5日經美字第1100001378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年防衛措施(2018年2月至2022年2月)：

1、對於「太陽能電池」設定2.5 GW配額，超過配額始加徵關稅，第1年加徵關稅為30%，每年下降5%，第4年(本年2月起)為15%。

2、對於「太陽能模組」加徵關稅，第1年為30%，每年下降5%，第4年為15%。另，美國貿易代表署於2019年6月豁免「雙面太陽能板」該關稅。

(二)川普前總統於去(2020)年10月發布命令，將第4年防衛措施關稅由15%調高18%，且取消豁免「雙面太陽能板」

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。美國業者對該命令提起訴訟。

三、美國國際貿易法院(CIT)於本(11)月16日判決該命令違法，恢復豁免「雙面太陽能板」，並將第4年防衛措施稅率降為15%：

(一)針對美國「太陽能產業協會」(SEIA)及其他業者對該命令提起之訴訟，CIT判決該命令係對貿易法第204條之明顯錯誤解釋(clear misconstruction)，該命令逾越該法授予總統之權限，貿易法第204條(b)(1)(B)規定僅允許對於現行防衛措施，採取「貿易自由化」之修正(permits only trade-liberalizing modifications to existing safeguard measures)，而去年10月命令則是對貿易更加限制。

(二)美國政府不得繼續執行該命令，即應恢復豁免「雙面太陽能板」，並將第4年防衛措施稅率降為15%。美國政府並應退還本案原告因該違法命令而繳交之關稅。

四、美國「太陽能產業協會」(SEIA)表示，川普政府加重防衛關稅之命令係違法措施，該判決對太陽能產業為一大勝利，SEIA並承諾未來將持續建造美國太陽能供應鏈。

五、檢送SEIA聲明、相關報導，併請卓參。

正本：經濟部國際貿易局

副本：行政院經貿談判辦公室、經濟部、陳政務次長室(請經濟部代陳)、經濟部工業局
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U.S. Trade Court Reinstates Bifacial Tariff Exclusion, Returns Section 201 Tariff Rate to 15%

Tuesday, Nov 16 2021

Press Release

WASHINGTON, D.C. — In a win for the solar industry, the U.S. Court of International Trade (CIT) re-instated the exclusion of bifacial solar modules from the Section 201 tariffs. Originally granted in June 2019, the exclusion for bifacial modules was revoked by the Trump Administration in October 2020.

In addition to the exclusion, the CIT reduced the Section 201 tariff rate from 18% to 15% after it was raised to 18% in Proclamation 10101. Both actions will result in refunds of the tariffs that had been collected under the proclamation.

The court concluded, “Proclamation 10101’s withdrawal of the exclusion of bifacial solar panels and increase of the safeguard duties on CSPV modules constituted both a clear misconstruction [of] the statute and action outside the President’s delegated authority.”

Following is a statement from Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association (SEIA) on this positive decision:

“The decision by the U.S. Court of International Trade to strike down an order by President Trump to change the step-down rate for the Section 201 tariffs and reverse the bifacial module exclusion was clearly the right conclusion. Both actions were an unlawful attempt to harshen the Section 201 tariffs.

“We are committed to building the U.S. solar manufacturing supply chain and we believe there are policies in the Build Back Better Act that will help grow American manufacturing. We look forward to working with the Biden administration and Congress to get these critical policies, including Senator John Ossoff’s Solar Energy Manufacturing for America Act, over the finish line.”

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About SEIA®:

The Solar Energy Industries Association® (SEIA) is leading the transformation to a clean energy economy, creating the framework for solar to achieve 30% of U.S. electricity generation by 2030. SEIA works with its 1,000 member companies and other strategic partners to fight for policies that create jobs in every community and shape fair market rules that promote competition and the growth of reliable, low-cost solar power. Founded in 1974, SEIA is the national trade association for the solar and solar + storage industries, building a comprehensive vision for the Solar+ Decade through research, education and advocacy. Visit SEIA online at www.seia.org and follow @SEIA on Twitter, LinkedIn and Instagram.

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CIT restores Section 201 exclusion for bifacial solar panels, resets tariff rate

November 16, 2021 at 5:18 PM

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The U.S. Court of International Trade on Tuesday reversed a move made last year by former President Trump -- one the Biden administration has defended -- to strengthen Section 201 safeguard duties on certain solar products, reinstating an exclusion for bifacial solar modules and lowering a tariff rate.

The Trump administration in 2018 imposed tariffs on imports of crystalline silicon photovoltaic modules and cells under Section 201 of the Trade Act of 1974. The duties were set at 30 percent in 2018 and scheduled to decline by 5 percentage points each year before expiring in 2022. The first 2.5 gigawatts of solar cells were exempted from tariffs in each of the four years.

Trump, however, announced last year that he would set the 2021 tariffs at 18 percent instead of 15 percent, as originally planned. At the same time, he revoked an exclusion granted in June 2019 for bifacial modules, saying it had undermined the remedy's effectiveness.

Ruling on a complaint brought by the Solar Energy Industries Association and others in the U.S. solar supply chain, CIT said the former president's action was "a clear misconstruction" of Section 204 of the Trade Act of 1974 and constituted "action outside the President's delegated authority." Section 204(b)(1)(B) of the Trade Act of 1974 "permits only trade-liberalizing modifications to existing safeguard measures," the court noted in its decision.

Accordingly, the court said, the U.S. is enjoined from enforcing Trump's decree, meaning the exclusion effectively is reinstated. In addition, the groups that brought the case will be refunded for safeguard duties paid pursuant to that decree, the court said.

The Biden administration in March had sought to dismiss the complaint, telling the court that Trump had acted "within his authority" by "closing a loophole" in the safeguard measure.

The Solar Energy Industries Association, which describes itself as a "national trade association for the solar and solar + storage industries," hailed the court's decision as a "win" for the industry.

In a statement on Tuesday, SEIA President and CEO Abigail Ross Hopper called Trump's moves to tighten the remedies "an unlawful attempt to harshen the Section 201 tariffs."

CIT during the Trump administration blocked efforts by the Office of the U.S. Trade Representative to reverse the exclusion, contending that aspects of the administration's process violated the Administrative Procedures Act. This case, however, "principally involves" Trump's 2020 decree invoking Section 204 of the Trade Act of 1974 -- a "separate track not adjudicated in the previous litigation," according to the court.

U.S. solar manufacturers Auxin Solar Inc. and Suniva Inc. in August petitioned the U.S. International Trade Commission asking to extend the Section 201 tariffs, which are set to expire in February. During a public hearing earlier this month, Auxin Solar CEO Mamun Rashid told the ITC that the exclusion for two-sided modules -- in place for 34 months until Trump revoked it -- significantly dampened the remedy's impact. Stockpiling ahead of the remedy and the pandemic also undermined it, he said.

The Section 201 tariffs are among a slate of solar-related trade issues that intersect with concerns about forced labor and the Biden administration's ability to meet climate goals.

U.S. Customs and Borders Protection in June issued a withhold-release order on silica-based products -- critical solar panel materials -- made by Hoshine Silicon Industry Co., Ltd., and its subsidiaries based on "information reasonably indicating" the company uses forced labor, according to a White House statement.

China produces much of the world's polysilicon in Xinjiang, where it has come under fire for human-rights abuses against Uyghur Muslims.

The Commerce Department, meanwhile, last week threw out petitions from a group of U.S. solar manufacturers asking the department to investigate imports of CSPV cells and modules from companies in Vietnam, Malaysia and Thailand, where the companies said components are shipped from China and undergo "minor processing" before being exported to the U.S. -- evading longstanding antidumping and countervailing duty orders on imports of those goods from China.

Commerce imposed the duties in December 2012 following investigations by the U.S. International Trade Commission the year before. After a review in 2019, the department determined the orders should continue.

The anti-circumvention petitioners, citing concerns that China would retaliate against its members, had asked Commerce to treat their identities as business-proprietary information -- a request the department said was unwarranted and could interfere with its ability to decide whether to launch probes.

The petitioners, which collectively call themselves the American Solar Manufacturers Against Chinese Circumvention (A-SMACC) in a statement on Monday said they "strongly disagree with Commerce's rationale for denying proprietary treatment" of their identities, saying the U.S. is "well aware of the real risk of retaliation that A-SMACC members, like all U.S. companies, face from the Chinese government and Chinese competitors."

The group added that it was "evaluating all options available to us under the trade remedy and other laws, including but not limited to refiling a petition satisfying the Commerce Department's concerns."

The group also urged Commerce and the Biden administration to "consider all options to address unfair trade in the solar energy sector, including but not limited to self-initiation of further circumvention actions and trade cases."

Some lawmakers and industry groups that have opposed A-SMACC's petitions have argued that circumvention investigations would not be the proper avenue for investigating imports of solar products from the three countries, suggesting that A-SMACC was trying to sidestep a "full" ITC investigation by requesting the circumvention probes. -- *Margaret Spiegelman* (mspiegelman@iwppnews.com)

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