Adding imports to injury

Trade dispute | Battle lines have been drawn as another trade dispute convulses the US solar industry. John Parnell reports on an increasingly bitter war of words as the case hearings get underway

Credit: zimmytws/Getty Images

At the time of writing, many in the downstream US solar industry are feeling the weight of an impending period of darkness. An inevitable and unavoidable event that will stop solar power generation in its tracks. The solar eclipse on the 21 August is, happily, a predictable and manageable event. A similar eclipse in Europe during March 2015 passed without incident as transmission operators were able to put plans into place. The UK's National Grid pointed out that demand suppression created by the number of people gawking at the sky would offset the impact of lost solar generation and, in the event of bad weather keeping people indoors, there would be less PV-sourced power to come offline anyway.

The solar eclipse, while a dramatic event, is predictable and easily solvable. The more concerning shadow hanging over the US solar industry is of course the Section 201, or Global Safeguard trade case.

The arguments of the case began to take precedence in the weeks running up to the first public hearing in mid-August. The initial petitioner, Suniva, was under the spotlight as its majority Chinese ownership generated questions about its motive for making solar imports into the US more expensive. Its insolvency was also a focus. The so-called "blackmail" letter from Suniva's largest creditors, SQN Capital, created a stir. The company, which is paying Suniva's legal fees via its debtor in possession finance, offered to pull the case if the China Chamber Of Commerce For Import & Export Of Machinery & Electronic Products (CCCME) thelped it recover its debt. In a letter now made public, SQN offered to end its backing of the safeguards case if the CCCME found a buyer for Suniva's assets, valued at around US$50 million.

From there, competing studies on the impact of tariffs on US solar jobs presented cheese and chalk alternatives for the domestic solar value chain in an environment with punitive duties on all solar imports. More substantive arguments began to rear their heads as the hearing neared and the apparent strategies of either side's argument were taking shape.

What they want

Before running through the core arguments that the Us International Trade Commission (ITC) will hear, let's take a look at the remedies requested by the petitioners. The initial complaint requests a tariff of US$0.40/W for cells and US$0.78/W on modules, that includes the 40 cents component from the cells. They ask that these last for four years. In addition they have asked for duties from the two previous anti-dumping cases in the US to be "distributed equitably". In addition they want the formation of a development fund for the domestic industry using tariffs from the 201 case and finally, that the president instigate negotiations to "restore a supply and demand balance in the global market".

The hearing in August was to determine whether US manufacturers had suffered 'injury' as a result of imports

If the ITC decides that imports are the reason for the domestic industry's woes, it will then recommend a set of remedies to President Trump. The final decision on what form these will take, if any, rests with the White House.

Representative

One of the earliest facts that must be established is whether the two petitioners in the case represent the US solar industry. The SEIA trade body insists that the ITC should be considering the entire

solar value chain as one entity and not separating out the manufacturers. By this definition, it says the petitioners represent less than 1% of the US industry.

A running theme in the case, and trade cases before it, is the way that the same information can be presented so very differently without either being inaccurate. The petitioners argue that between them, they are the largest (SolarWorld Americas) and second largest (Suniva) US cell and module manufacturers.

Adding imports to injury

The case, it must be remembered, applies to all imports of cells and modules. For it to proceed, it must be shown that imports caused injury to the US domestic manufacturers. The added complication is that this import-induced injury must be singularly identifiable in order for the ruling to remain compliant with the World Trade Organisation's rules on safeguard measures.

"The existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports," the WTO states. This means any other impacts on domestic manufacturers muddy the waters.

Step forward the SEIA with a slew of criticism of the petitioners' business practices and alternative reasons for their struggles. These included a failure to switch 72-cell modules in order to capture the utility-scale market. In its pre-hearing brief, it backed these up with signed affidavits from customers of the petitioners and former employees. The following excerpt gives a taster of some of the SEIA's criticisms:

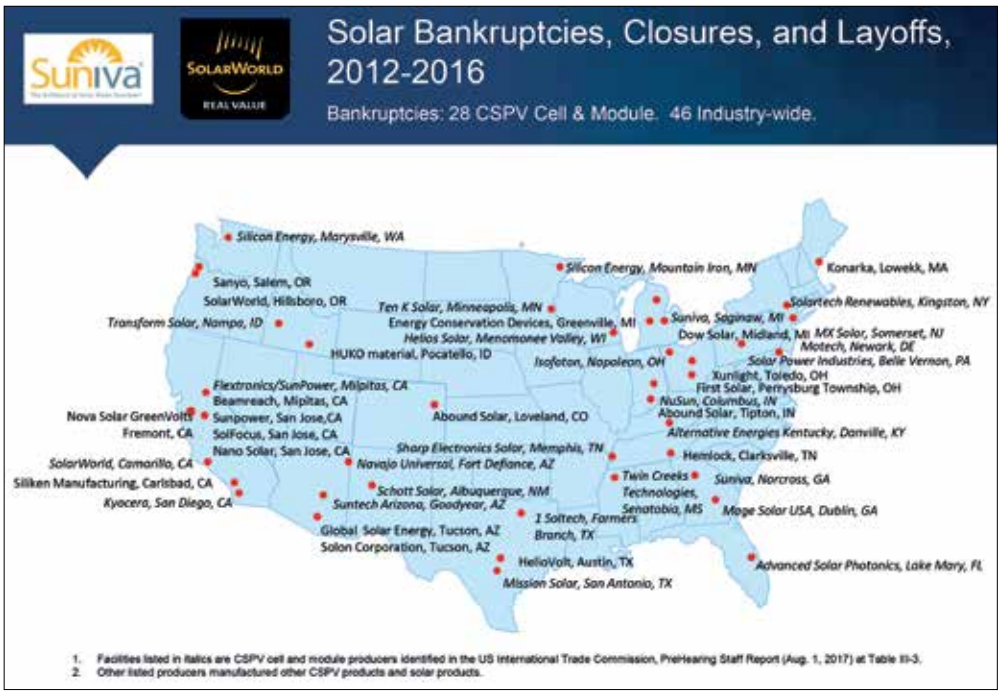
"Suniva experienced quality problems with panels assembled in their own module manufacturing facility located in Saginaw, Michigan. The facility did not have airconditioning in the fabrication area nor the proper "clean room" environment as one would find in other module manufacturing facilities owned by the larger cell and panel manufacturers. They also had a large amount of turnover in this facility making it a challenging to keep skilled labor.

"From time to time, Suniva would have white labeled product (cells and panels) made by contract manufacturing with a Suniva label. These products were produced outside the United States, primarily in Asia. Suniva also contracted with an unaffiliated company, Silfab in Toronto, Canada, to assemble panels for the small utility market. This arrangement required Suniva to provide bill of materials (BOM) or components to Silfab for assembly. Suniva routinely delayed or failed to ship components and Silfab could not produce panels in sufficient quantities."

The response from the petitioners to the claims of the SEIA was heated to say the least.

"SEIA's statements are false, misleading and disingenuous, and their tactics are shameful in the face of the thousands of real American manufacturers who have lost their jobs due to unfair imports from China and globally. SEIA has yet to offer any constructive path forward to helping US manufacturing. In fact, SEIA's own pre-hearing brief acknowledges injury to the US industry, including other companies' bankruptcies. This is not about the two companies that lasted the longest; this is about nearly 30 companies and nearly an entire industry that has shuttered their doors in the last five years. Is SEIA's next step going to demean all of the workers and investors for all of those companies?"

Another consideration for the ITC is the



Credit: Suniva/SolarWorld Americas

interplay between these perceived "errors" as presented by the SEIA and the undoubted increase in imports. Keeping in mind the WTO rule on discounting injury that has multiple simultaneous sources and the task looks like a difficult one.

Just ahead of the hearing, Suniva and SolarWorld published a map with the locations of the all the US solar manufacturers that they say have either cut staff or closed completely.

Guessing

Attempting to guess how the ITC's four voting members judge this material is a fools' errand. If two commissioners back the imposition of remedies, the case will proceed.

Few are willing to publicly predict what will happen but compressed procurement timelines would suggest that those in need of modules are hedging their bets.

First Solar, whose thin-film panels are exempt from the case, has refused to comment on the investigation when asked by this publication. CEO Mark Widmar did tell an analyst call that the company had seen increased urgency from customers to secure orders but that the company would not use its status to hold customers over a barrel.

"I'm not looking at this as some opportunistic ASP grab that we could get into the marketplace. I mean, we're going to engage customers from a relationship standpoint and a long-term partnership perspective and capture the right appropriate value for the product, not necessarily trying to be overly optimistic because of a potential trade dispute that may happen or may not happen," he said.

US solar manufacturers claimed by the trade-case petitioners to have shed jobs or closed down due to unfairly priced imports

Politics

The known unknown in the final outcome of the case is the Trump administration.

"This part of the case is a factual investigation by the commission, there may be more of a political element at the end, assuming there is a positive injury determination and the president declares a remedy," says Timothy Brightbill of law firm Wiley Rein and legal counsel for SolarWorld Americas in the case. "The administration has a great deal of discretion in that process. We think given the administration's focus on US jobs, on US manufacturing that they should also want a remedy that is comprehensive, that treats everyone the same and doesn't make any exceptions or exclusions."

There is an air of inevitability growing that the ITC will indeed find evidence of injury but it could still choose not to recommend any punitive remedies. Australia's anti-dumping case found evidence of harm but ruled that measures were against its best interests.

Whether or not the remedies would be good for the industry as a whole is almost a moot point. The first glimmer of hope after the darkness of the mud-slinging in the build up to the hearing would be an open dialogue between all sides and an eventual agreement. On past experience of solar trade cases, the petitioners could be forgiven for feeling that no deal is better than a bad deal. Right now certainty in any form would be a great relief.

The ITC must vote before 22 September on whether or not to recommend trade remedies. ■

Highlights from the hearing

Matt Card, executive VP of commercial operations, Suniva

"As a country, we will have ceded manufacturing of the next meaningful source of electrical generation to China and its proxies in Southeast Asia and other global outposts. As we continue to stress the needs of energy independence as a country, the US, in fact, will have no control of its own destiny when it comes to power generation from the sun.".

Stephen Shea, formerly vice president at Beamreach Solar

"Beamreach was forced in Chapter 7 bankruptcy in large part because of the surge of low cost imports. Beamreach could not keep pace with the rapid reduction in prices driven by imports, first from China, then from countries like Taiwan, Vietnam, Malaysia, Korea, etc. and the resulting glut of product quickly destroyed the profit margins."

Matt Nicely, legal counsel, SEIA

"Solar is an American success story, whose future remains bright. Its continued success could be destroyed by the misguided actions of the two petitioners and their small group of supporters – whose workers represent less than 1% of all those that work for this dynamic American industry. That the two petitioners would even bring this case demonstrates their poor business judgment – and their hubris. They seek a public remedy for their own, private failings."

Representative Jason Saine (R-NC, 97th district)

"As a policymaker, every day I am faced with decisions that can create trade-offs, and therefore can create winners and losers in any industry. Imposing tariffs on imported modules is NOT the way to go about saving solar manufacturing. It is about providing a government handout to two companies that apparently couldn't provide their customers with the specific kinds of products or sufficiently high-quality products they needed for their installations. As I understand you will hear today, if this petition is granted, it may save a few hundred cell or module manufacturing jobs, but there are many thousands of good manufacturing and installation jobs that will be lost."