

行政院及所屬各機關因公出國人員出國報告書
(出國類別：其他：參加會議)

參加「美國太陽能防衛措施期中複查公聽會」
出國報告

服務機關：經濟部國際貿易局

姓名職稱：楊專業研究員健弘、蘇專員莉雯

派赴國家：美國華府

出國期間：108年12月4日至8日

報告日期：108年12月18日

參加「美國太陽能防衛措施期中複查公聽會」報告

摘要

- 一、美國太陽能業者 2017 年 4 月向美國國際貿易委員會 (USITC) 提出控訴，要求就進口太陽能晶矽電池及模組展開防衛措施調查，經 USITC 調查後，自 2018 年 2 月 7 日起對全球進口太陽能晶矽電池與模組採取 4 年防衛措施，稅率逐年依序為 30%、25%、20%、15%，其中進口太陽能電池享有每年 2.5 GW 免稅配額。
- 二、依據美國貿易法 (Trade Act of 1974) 規定，USITC 應於超過 3 年之防衛措施採行過半前，向總統及國會提交監測報告，檢視是否調整措施，爰 USITC 訂於 2019 年 12 月 5 日召開公聽會，聆聽各利害關係人意見。
- 三、本局由楊專業研究員撰寫我方書面意見，並與太陽光電產業協會開會討論確立論點，包括：建議美方提高太陽能電池關稅配額，以及加強監管違規轉運；並指派楊專業研究員於 USITC 舉行之公聽會中提出證言，表達我國立場。我國主張於公聽會中獲多數美國模組業者及韓國等外國政府呼應，我方發言並獲美國知名貿易新聞 Inside U.S. Trade 引述報導。
- 四、依據公聽會討論過程，鑒於原申請人 Sunvia 目前已無生產太陽能電池，且美國內亦無可供商用之電池，不足供應下游模組廠需求，推測 ITC 可能建議總統提高電池關稅配額；亦可能不會建議總統取消太陽能模組關稅，以避免模組場面臨中國大陸產品之競爭。

參加「美國太陽能防衛措施期中複查公聽會」報告

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參加「美國太陽能防衛措施期中複查公聽會」 出國報告

壹、背景與目的

一、背景

(一) 調查歷程

美國太陽能業者 Suniva 及 SolarWorld 於 2017 年 4 月 26 日向美國國際貿易委員會(USITC)提出控訴，要求就全球輸美之太陽能晶矽電池及模組展開防衛措施調查，美國總統於 2018 年 1 月 23 日公布救濟措施，同年 2 月 7 日生效，內容如下。

(二) 措施內容

美國自全球進口太陽能晶矽電池與模組採取 4 年防衛性關稅，稅率逐年依序為 30%、25%、20%、15%；其中進口太陽能電池享有每年 2.5 GW 免稅配額，超過該配額之進口即課徵上述防衛性關稅。

(三) 召開公聽會

依據美國貿易法規定，USITC 應於超過 3 年之防衛措施採行過半前，向總統及國會提交監測報告，檢視該措施是否達到保護國內產業目的，及評估是否調整措施，爰於 8 月 1 日於聯邦公報公告，訂於 12 月 5 日召開公聽會聆聽各利害關係人意見。

二、目的

本局由楊專業研究員撰寫我方書面意見，並與社團法人台灣太陽能光電產業協會開會討論確立論點，

包括：建議美方提高太陽能電池關稅配額，以及加強監管違規轉運。目的為避免我國出口之太陽能電池遭課徵額外關稅。

貳、活動情形

一、參加美國太陽能防衛措施期中複查公聽會

(一) 公聽會進行方式

公聽會 12 月 5 日上午 9 時 30 分於 USITC 1 樓聽證會議室舉行，由該會主席 Mr. David S. Johanson 主持，以及 Ms. Rhonda K. Schmidlein 委員、Mr. Jason E. Kearns 委員、Mr. Randolph J. Stayin 委員、Ms. Amy A. Karpel 委員等 5 位委員參加，登記發言之業者及律師代表估計約 50 人，加上旁聽席及記者席人員，預估全場計近百人與會。

公聽會首先由美國州政府官員（3 位）、各外國大使館及政府代表（4 位）發表口頭聲明，續由贊成採行防衛措施之業者及反對之業者或律師分別進行 5 分鐘之開場陳述，接續分為上、下午半場進行討論。

上、下午半場分別由各方業者及律師代表分別陳述主張，並接受 USITC 委員之詢問及答詢，每位委員分別輪流詢問，共詢問 3 輪，部分問題係開放式提問，由出席之企業自願回答，部分問題為指定特定企業回答。公聽會末由正、反方律師發表結論陳述，並於晚間 7 時結束。

(二) 各利害關係人及我國之訴求

1. 美國喬治亞州訴求

喬治亞州 Dalton 及 Whitfield 兩市均因此一防衛措施，使外國太陽能模組廠增加在該市投資、創造就業機會，因此主張防衛措施不應取消。

2. 各國政府訴求

- (1) 我國：由本局楊專業研究員提出證詞，主張現行之太陽能電池關稅配額不利於美下游模組產業發展，應逐步增加配額量。理由包括：原申請人已無生產電池，即便有，也不足供應國內需求、2020 年美模組廠擴廠後預估增加 5GW 之產能，創造對進口電池之大量需求、未來 5 年美國內之模組安裝率將有顯著成長，需大幅仰賴進口電池。最後，我方建議美國加強監管進口太陽能產品之違規轉運與規避行為，以避免配額外產品流入美國。
- (2) 韓國：重申依據美韓自由貿易協定，韓國應排除於防衛措施。倘該措施持續實施，太陽能電池之關稅配額應逐步自由化，因為美國之電池產量無法滿足下游模組廠所需。
- (3) 加拿大：重申依據北美自由貿易協定，加國因為並非前五大進口國，因此非造成美國國內損害之來源，應排除於防衛措施之外。
- (4) 印尼：主張其出口系爭產品屬於微量，應持續排除於防衛措施。

3. 產業意見

(1) 原申請人

Suniva、SolarPower 主張防衛措施應維持，且配額不

應提高。Suniva 表示，此防衛措施已見成效，該公司已從破產保護中存活下來，倘貿然取消，該公司將面臨更大競爭。SolarPower 將原申請人 SolarWorld 併購，經營漸入佳境，爰建議維持該措施。

(2) 美國國內模組廠

Hanwha Q Cells、LG Electronics、Auxin Solar、Mission Solar 等受惠於防衛措施之太陽能模組業者，均表示應維持對進口模組之關稅措施，不應放寬條件或縮短期限，惟主張目前電池關稅配額將不敷使用，建議提高配額至 5 GW，以滿足下游模組廠之強大需求。另許多企業代表主張防衛措施不應排除雙面吸光太陽能板 (Bi-facial Module)，因此舉將使美國內產業面臨進口激增之威脅，減損措施效益。

(3) 美國太陽能產業協會 (SEIA)

太陽能產業協會 (SEIA) 及太陽能產業下游系統商、工程承包商，如 Clearway Energy Group、Swinerton 等表示防衛措施將使 2021 年相較於 2017 年，太陽能產業投資減少 190 億美元、產量減少 10.5GW、就業機會減少 6 萬 2,000 個，主張應取消防衛措施。

SEIA 表示該措施促進模組廠就業人數，但是造成模組裝置量大幅下降，犧牲了下游裝置太陽能設備之勞工工作機會，且對模組實施的關稅實際上係轉嫁給消費者負擔。長期而言，加徵關稅將使太陽能發電價格無法於市場上競爭，亦不符合美政府再生能源政策。SEIA 表示，若要維持措施，電池之關稅配額應增加至 5 GW，以因應下游模組廠的強大需求。

專攻公用事業(utility)太陽能模組發電之產業代表，如 Southern Current 亦提出呼籲，相較於商業及住家用之太陽能模組，公用事業所需太陽能系統規模是最大的，呼籲美國政府亦應重視其等需求。

(4) 外國產業代表

加拿大產業代表，如 Heliene、Silfab Solar、Canadian Solar、Recurrent 主張，美國內生產之太陽能模組未能符合大量需求，且若以北美自由貿易協定標準檢驗，自加進口模組過去迄今量均極少；另美國內並無可供商業使用之太陽能電池，自加進口有助美太陽能產業發展；並以 Heliene 及 Silfab Solar 母公司在加拿大，但於美國設模組廠為例，說明加拿大有助於美國發展太陽能產業，而非構成阻礙。呼籲 ITC 應如同初始調查階段，建議總統應將加拿大列入豁免清單，並呼籲提高太陽能電池 2.5GW 配額，以符合 2020 年美國太陽能模組製造商需求及創造就業。

新加坡產業代表 REC Americas LLC 表示，該國在調查期間之出口低於 3%，依美星貿易協定屬微量，然未獲排除適用防衛措施，呼籲 ITC 依據防衛協定及美星 FTA 規定，排除星國適用此措施。

(三) 委員詢答

各委員詢問與會代表諸多產業及數據的問題，例如：

1. 本案申請人 Suniva 自調查後已無生產電池，其生產計劃如何？

Suniva 表示將於近百日內重新生產電池，並可達商

業規模。並將提升自身技術，製造更有效率之電池。

2. 倘依據模組廠之建議，將電池提高 TRQ 至 5 GW，對於申請人之影響如何？

Suniva 表示將重新面臨更大競爭，但仍可存活。

3. 為何目前的防衛措施只吸引了國外模組廠來美投資，未見電池廠來投資？

業者回應因電池廠技術含量高，研發及設置需及高成本，設備也較模組廠貴上數倍，爰設置模組廠較容易。惟電池廠係自動化設備，模組廠實際上可創造較多就業機會。

4. 為何亞洲國家對於太陽能產業較美國發達？

業者回應，中國、韓國等國大力扶植太陽能產業，提供誘因、促進研發，且區域供應鏈整合良好，具有地緣上的優勢。

(四) 主席總結

感謝各方代表今日參與，將依據各方意見做出決定，向總統提出建議。另請 SEIA 提出之太陽能產業前景相關數據來源表示關切，盼協會應提出參考資料及數據推論方式，作為委員複查及利害關係人會後遞交書面意見之參考。

二、拜會 Akin Gump 法律事務所

本團 12 月 6 日下午 1 時前往拜會華府 Akin Gump 法律事務所負責貿易救濟律師 Shana Hofstetter 及 Bernd Janzen，就太陽能期中複查調查案未來可能發展及其他

經貿議題交換意見，重點如下：

(一) ITC 期中複查報告未必包含建議措施

H 律師表示，依據美國防衛措施法規，如總統沒有要求 ITC 提出政策建議，ITC 沒有義務於期中複查報告提出建議措施。由於本案未聽聞總統對 ITC 有任何指示，渠等預測該報告只有對美國產業之事實陳述及數據分析，未必包含建議措施。即便有建議措施，亦可能有 2 個版本。

(二) 後續政策方向可能與明年選舉高度相關

美國法規並未規定總統應於多久時限內要求 ITC 提出變更現行防偽措施之建議，故總統有極高可能視明（2020）年底大選選情調整措施，例如某些搖擺州要求應增加太陽能電池配額、維持或移除措施等，總統均可能為拉攏該等州別選民而進行調整。

(三) 汽車 232 國安調查報告迄今尚未公布

對於我方詢及汽車 232 國安調查報告迄今均未公布，後續可能發展事，律師推測該調查報告論述基礎可能十分薄弱，即便在美國會施壓下仍未提供。H 律師舉例，川普政府前提名 Nazak Nikakhtar 擔任督導商務部產業與安全局（BIS）次長，惟面對參議員要求提供汽車 232 國安調查報告方同意該認明案，川普政府卻選擇撤回任命案，故推測該調查報告可能永遠不會公布。

另針對政府是否仍可對進口汽車課徵 232 國安關稅或採取相關措施，H 律師表示，川普政府已錯過

原展延 180 日之期限，多數法律見解認為已失去採取相關措施之法律授權。總統如為談判需要採取相關措施，可能導致各方之法律挑戰。

參、心得與建議

一、我國訴求獲美國模組業者及外國政府呼應

- (一) 本次公聽會整體而言，計有 3 類立場，一為下游模組廠及外國政府建議提高電池配額，維持模組關稅；另一為產業協會建議全面取消防衛措施；惟僅有原申請人 Suniva 一家廠商建議維持原措施。我國於會中主張增加太陽能電池配額量之訴求，獲多數美國模組業者及外國政府之呼應，並獲美媒體 Inside US Trade 詳細報導。
- (二) 鑒於原申請人 Suniva 目前已無生產太陽能電池，且美國內亦無可供商用之電池，不足供應下游模組廠需求，推測 ITC 可能回應議總統之要求建議提高電池關稅配額；然而可能不會建議總統取消太陽能模組關稅，以避免模組場面臨中國大陸產品之競爭。

二、美國公聽會流程完備足以借鏡

本次公聽會流程，除各利害關係人應事先登記發言，並可提交會前及會後聲明外；現場開會時，各單位亦須依議程所訂發言時限進行，各調查委員每次提問時間亦有限制。而整場公聽會給予 5 位委員每人 6 次提問時間，充分賦予利害關係人表達主張並與委員交換意見之機會，過程完備透明，足供我國借鏡。

伍、附件

附件一：團員名單

No.	單位	姓名	職稱
1.	經濟部國際貿易局	楊健弘	專業研究員
2.	經濟部國際貿易局	蘇莉雯	專員
3.	駐美國代表處經濟組	侯文革	經濟秘書

附件二：行程表

108 年 12 月 4 日 (星期三)	
11:30	從臺北出發赴舊金山轉機
12 月 4 日 (星期四)	
6:30	抵達舊金山機場
10:45	從舊金山飛往華府
6:30	抵達華府
20:00-20:30	團務會議
12 月 5 日 (星期四)	
9:30-19:00	參加太陽能防衛措施期中複查公聽會 (地點：美國國際貿易委員會會議室)
12 月 6 日 (星期五)	
13:00-14:00	拜會 Akin Gump 法律事務所 (地點：Akin Gump 法律事務所辦公室)
15:00	前往機場
17:30	出發赴舊金山轉機
20:20	抵達舊金山機場
12 月 7 日 (星期六)	
0:05	從舊金山返臺
12 月 8 日 (星期日)	
5:55	抵臺

附件三：公聽會議程

As of December 5, 2019 @ 6:20 a.m. (subject to change)

TENTATIVE CALENDAR OF PUBLIC HEARING

Those listed below are scheduled to appear as witnesses at the United States International Trade Commission's hearing:

Subject: Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled into Other Products: Monitoring Developments in the Domestic Industry

Inv. Nos.: TA-201-75 (Monitoring)

Date and Time: December 5, 2019 - 9:30 a.m.

Sessions will be held in connection with these investigations in the Main Hearing Room (Room 101), 500 E Street, SW., Washington, DC.

STATE GOVERNMENT APPEARANCES:

The Honorable Dennis Mock, Mayor of Dalton, Georgia

The Honorable R. Lynette Laughter, Chairwoman, Whitfield County Board of Commissioners

Carl Campbell, Executive Director, Dalton-Whitfield County Joint Development Authority

EMBASSY APPEARANCES:

Embassy of the Republic of Indonesia
Washington, DC

Mr. Wijayanto, Commercial Attaché

Embassy of the Republic of Korea
Washington, DC

Jungsoo Hur, Commercial Counsellor

Embassy of Canada
Washington, DC

Carrie Goodge O'Brien, Acting Minister-Counsellor

Taipei Economic and Cultural Representative Office
Washington, DC

Oscar Yang, Senior Trade Specialist, Bureau of Foreign Trade,
Ministry of Economic Affairs

OPENING REMARKS:

TIME ALLOCATION:

Panel 1 (Matthew J. McConkey, Mayer Brown LLP; and
John M. Gurley, Arent Fox LLP)

5 minutes

Panel 2 (Matthew R. Nicely, Hughes Hubbard & Reed LLP)

5 minutes

Panel 1:

TIME ALLOCATION:

60 minutes total

Mayer Brown LLP
Washington, DC
on behalf of

Suniva, Inc. ("Suniva")

Matt Card, President and Chief Operating Officer, Suniva, Inc.

Jeffrey Klenk, Director, Berkeley Research Group, LLC

Robert Rogowsky, Special Advisor and Professor,
Berkeley Research Group, LLC

Warren Payne, Senior International Trade Advisor,
Mayer Brown LLP

Matthew J. McConkey)
) – OF COUNSEL
Timothy Keeler)

Panel 1 (continued):

Arent Fox LLP
Washington, DC
on behalf of

Hanwha Q CELLS USA, Inc.

Jinhong (Martin) Park, Head of Strategy, Marketing & HR,
Hanwha Q CELLS USA, Inc.

Scott Moskowitz, Director of Strategy and Market Intelligence,
Hanwha Q CELLS USA, Inc.

Lisa Nash, Human Resources Manager,
Hanwha Q CELLS USA, Inc.

Panel 1 (continued):

Andrew Munro, General Counsel, Hanwha Q CELLS USA, Inc.

Paul Mutchler, Director of Commercial Operations,
Mission Solar Energy LLC

Mamun Rashid, Chief Executive Officer, Auxin Solar Inc.

W. Bradley Hudgens, Senior Economist,
Georgetown Economic Services, LLC

Michael T. Kerwin, Director, Georgetown Economic Services, LLC

John M. Gurley)
Diana Dimitriuc-Quaia) – OF COUNSEL

TradeWins LLC
Washington, DC
on behalf of

SunPower Manufacturing Oregon (SPMOR)

Thomas Werner, Chief Executive Officer, SunPower Corp.

Thomas Starrs, Vice President Market Strategy & Policy,
SunPower Corp.

John R. Magnus) – OF COUNSEL

Panel 1(continued):

Curtis, Mallet-Prevost, Colt & Mosle LLP
Washington, DC
on behalf of

LG Electronics USA, Inc.
LG Electronics, Inc.

Brian Lynch, Director of Solar and ESS Sales, LGEUS

Daniel L. Porter)
Gina M. Colarusso) – OF COUNSEL
Kimberly A. Reynolds)

Panel 2 (continued):

James P. Dougan, Vice President, Economic Consulting Services, LLC

Gillian Priddy, Staff Economist, Economic Consulting Services, LLC

Matthew R. Nicely)
Dean A. Pinkert) – OF COUNSEL
Julia K. Eppard)

Hogan Lovells US LLP
Washington, DC
on behalf of

Canadian Solar Inc.
Silfab Solar WA, Inc.
Silfab Solar, Inc.
Heliene USA Inc.
Heliene Inc.
Recurrent Energy, LLC

Martin Pochtaruk, President, Heliene Inc. and Heliene USA Inc.

Paolo Maccario, President and Chief Executive Officer,
Silfab Solar, Inc. and Silfab Solar WA, Inc.

Vincent Ambrose, General Manager for North America, Canadian Solar Inc.

Michael Arndt, Managing Director of Development, Recurrent Energy, LLC

Jonathan T. Stoel)
Craig A. Lewis)
) – OF COUNSEL
Michael G. Jacobson)
Nicholas W. Laneville)

Curtis, Mallet-Prevost, Colt & Mosle LLP
Washington, DC
on behalf of

Government of Canada

Christopher Dunn)
) – OF COUNSEL
Tung Nguyen)

Panel 2 (continued):

Holland & Knight LLP
Washington, DC
on behalf of

REC Americas LLC

Cary Hayes, President, REC Americas LLC

Ronald A. Oleynik)
) – OF COUNSEL
Andrew K. McAllister)

NextEra Energy, Inc.
NextEra Energy Resources, LLC
Florida Power & Light Company
Juno Beach, FL

Michael O' Sullivan, Senior Vice President-Development,
NextEra Energy Resources, LLC

H. Deen Kaplan, of Counsel, Hogan Lovells US LLP

Warren Maruyama, of Counsel, Hogan Lovells US LLP

Utility Scale Solar Coalition
Charleston, SC

Steffanie Dohn, Director of Government Relations, Southern Current LLC

Hamilton Davis, Director of Regulatory Affairs, Southern Current LLC

REBUTTAL/CLOSING REMARKS:

Panel 1 (Matthew J. McConkey, Mayer Brown LLP; and John R. Magnus, TradeWins LLC)
Panel 2 (Dean A. Pinkert, Hughes Hubbard & Reed LLP)

附件四：我國發言內容

ORAL STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF CHINA (TAIWAN) IN THE PUBLIC HEARING REGARDING MIDTERM REVIEW OF SAFEGUARD MEASURES ON IMPORTED CSPV PRODUCTS BY THE UNITED STATES INTERNATIONAL TRADE COMMISSION

On behalf of the Government of Taiwan, I would like to thank the Commission for the opportunity to make this brief statement regarding the safeguard measures on CSPV Cells and Modules imposed under Section 201 of the Trade Act of 1974.

Our government and solar industry are deeply concerned about this safeguard measure. It is our position that the tariff-rate quota (“TRQ”) of solar cells will negatively impact on U.S. downstream solar module producers and should therefore be gradually increased. With the support of the Taiwan Photovoltaic Industry Association (“TPVIA”), I would like to make the following points:

I. SOLAR CELLS ARE NOT CURRENTLY PRODUCED IN THE UNITED STATES

First, based on our understanding, solar cells for commercial sales are not currently produced in the United States. Since before the imposition of safeguard measures, there has been only TWO domestic solar cell producers: Suniva and SolarWorld. However, there is now no indication that these two companies produce solar cells for domestic sales. Before the safeguard measures, the production of solar cells by these two companies are mostly consumed internally for the production of modules, with only a very small volume, available for commercial sale.

In addition, although the Commission’s prehearing report stated that there were TWO firms – Panasonic and Solaria – with domestic solar cell production as of September 2019, their productions are highly unlikely to meet the huge demand of downstream module facilities.

Those are the reasons for U.S. module factories to use imported solar cells for installation in solar modules. The safeguard measures on solar cells will prevent module producers from being able to purchase highly efficient imported solar cells at reasonable prices when the solar cell TRQ is exhausted.

Thus, the TRQ on solar cells in fact harms the U.S. solar module industry, which the petitioners are part of. It is our belief that the current TRQ protects a non-active industry at the expense of a vibrant downstream industry.

II. NEW MODULE FACTORIES IN THE U.S. ARE EXPECTED INCREASE MODULE MANUFACTURING AND DEMAND FOR SOLAR CELLS IN 2020

Second, the new module factories in the U.S. are expected to increase module manufacturing and demand for solar cells in 2020. The demand for solar cells is expected to grow significantly in the next two years because foreign module producers, such as Hanwha Q Cells, JinkoSolar, LG Electronics, Heliene, and American PV manufacturer First Solar, are expanding their investments or reopening their solar module facilities in the United States to avoid the safeguard tariffs on solar modules.

Those new module factories are expected to produce modules of a total of 5 GW capacity in 2020, which will significantly increase the demand for imported solar cells.

III. DOMESTIC U.S. SOLAR MODULE INSTALLATIONS ARE EXPECTED TO GROW SIGNIFICANTLY IN THE NEXT FIVE YEARS

Third, domestic U.S. solar module installations are expected to grow significantly in the next five years. According to the Solar Energy Industries Association (“SEIA”), solar module installations are expected to exceed 12 GW in 2019 and the total installed solar capacity will be expected to reach 100 GW by 2021.

Since imported solar modules will be subject to 20% safeguard tariffs in 2020, the demand for domestic solar modules, installed with imported solar cells, will significantly increase in the next few years.

IV. THE 2.5 GW TRQ WILL BE EASILY EXHAUSTED IN THE NEXT TWO SAFEGUARD PERIODS AND MODULE PRODUCERS WILL HAVE TO PAY EXTRA COSTS IN PURCHASING IMPORTED SOLAR CELLS.

Fourth, the demand for imported solar cells by U.S. module producers will easily exhaust the 2.5 GW TRQ in the next two safeguard periods because ALL the domestic module producers rely on imported solar cells, and domestic module producers will have to pay extra costs in purchasing imported solar cells.

According to the data released by the U.S. Customs and Border Protection (“CBP”), 28% of the solar cell TRQ was used in the first year, but in the second year so far, 73.32% of the TRQ had been used as of December 2, 2019. According to this growth rate, imported solar cells will easily exceed the 2.5 GW TRQ in the next two safeguard periods.

According to this growth trend, the 20% tariff rate will likely be imposed on more than half of the imported solar cells in 2020. The U.S. module producers will have to pay extra costs in purchasing foreign solar cells. These costs will, in turn, be passed onto consumers and business users.

Thus, we urge the Commission to gradually increase the TRQ for solar cells in the remaining safeguard period to meet the increasing demand of U.S. solar module producers and the expected growth in module installations.

V. U.S. AUTHORITIES SHOULD CONSIDER REINFORCING THE MECHANISM TO MONITOR ILLEGAL SHIPMENTS OF SOLAR CELLS AND MODULES

Finally, the U.S. authorities could consider mitigating the harm resulting from the increased TRQ through alternative methods, such as reinforcing its monitoring of shipments of solar cells and modules to the United States and inspections of the countries of origin of such products. An abnormal increase in the import volume from countries that excluded from the safeguard measures may indicate illegal transshipment and circumvention of the safeguard measures.

In this regard, our government and industry associations have been diligent in their efforts to eliminate any illegal transshipments, and urge our exporters not to use forged certificates of origin, or become involved in evasion or customs fraud.

For the reasons presented above, the Taiwan Government respectfully urges the Commission to gradually increase the TRQ on solar cells to meet the demands of U.S. downstream module producers. This would allow U.S. module producers to purchase more efficient solar cells, which would, in turn, increase productivity, create more jobs in U.S. module factories, and meet the demand of solar module installations in the United States.

Thank You.

附件五：我國書面意見

I. INTRODUCTION

On behalf of the Government of Taiwan (“Taiwan Government”), we present this brief for the U.S. International Trade Commission’s Midterm Review of the safeguard measures on Crystalline Silicon Photovoltaic (“CSPV”) Cells and modules imposed under Section 201 of the Trade Act of 1974.

The Taiwan Government is deeply concerned about the current safeguard measures imposed on solar cells and modules. It is the Taiwan government’s position that the Tariff-Rate Quota (“TRQ”) on solar cells should be gradually increased in the third and fourth year of the safeguard measure in order to meet the future demands of U.S. downstream solar module producers and module installation growth. In this regard, the Taiwan Government, with the support of the Taiwan Photovoltaic Industry Association (“TPVIA”), submits that the TRQ on solar cells should gradually increase in order to mitigate the negative impact to U.S. downstream solar module producers. To alleviate any ongoing injury to the domestic industry, the U.S. authorities could consider reinforcing the mechanism to monitor illegal transshipments and circumventions of solar cells and modules.

The TRQ on solar cells will negatively impact U.S. downstream solar module producers and should therefore be gradually increased (Section II). This section notes that because there is no current solar cell production in the United States, U.S. downstream solar module manufacturers can only meet their demand by using imported solar cells. Furthermore, new module factories in the United States are expected to manufacture over 5 GW of modules in 2020 and domestic solar module installations are expected to grow significantly in the next five years. Therefore, the 2.5 GW TRQ will be easily exhausted during the next two years, forcing module manufactures to pay tariffs to import foreign cells. These costs will, in turn, be passed on to U.S. solar module consumers and constrain U.S. module manufacturing growth.

Should there be concern about ongoing injury to the domestic industry as a result of increasing the TRQ, U.S. authorities could seek alternative methods of alleviating injury to the domestic industry by reinforcing the mechanism to monitor illegal transshipments of solar cells and modules (Section III). This section addresses the possibility of illicit shipments of solar cells and modules through countries which are excluded from the safeguard measures.

II. THE TARIFF-RATE QUOTA OF SOLAR CELLS WILL NEGATIVELY IMPACT U.S. DOWNSTREAM SOLAR MODULE PRODUCERS AND THEREFORE SHOULD BE GRADUALLY INCREASED

1. There is no current solar cell production in the United States

The Taiwan Government notes that before the imposition of the safeguard measure, there were only two U.S. domestic producers – Suniva and SolarWorld – who were both vertically integrated producers that used their own cells in the production of modules.¹ However, there is no indication that these two companies currently produce solar cells. Since it secured confirmation for its bankruptcy plan, Suniva’s website only offers product information of solar modules and no longer discusses solar cell product information.² Also, SolarWorld was bought by SunPower and now focuses only on solar module production.³

Even if both companies still produced solar cells, because they are consumed internally for the production of modules, only a very small volume of domestically produced cells would be available for commercial sale. The Commission has confirmed this point by noting that “relatively few CSPV cells in the United States are sold commercially. In fact, during 2016, [xxxxx] percent of U.S. producers’ total shipments were commercially shipped in the United States and [xxxxx] percent were exported to unrelated firms.”⁴

The fact that there is no current solar cell production in the U.S. forces the downstream module manufacturing facilities to use imported cells for installation in solar modules. The imposition of TRQ on solar cells will impede solar module manufacturers from being able to purchase highly efficient imported solar cells at reasonable prices when the TRQ had been exhausted. Therefore, the solar cell TRQ actually harms the U.S. solar module industry, including the petitioners. In other words, the current TRQ protects a non-active industry at the expense of a vibrant downstream industry.

2. New module factories in the U.S. are expected to bring over 5 GW of module manufacturing in 2020

Second, the demand for solar cells is expected to grow exponentially in the next two years because the major foreign module producers are expanding their investments

¹ USITC Prehearing Report (Confidential Version) at Table IV-49. (“C.R.”)

² See Law360.com. (2019). *Suniva Ch. 11 Plan, DIP Lender Deal Confirmed In Del. - Law360*. [online] Available at: <https://www.law360.com/articles/1148316> [Accessed 6 Nov. 2019]. Also, Suniva’s website only offers product information of solar modules and no longer discusses solar cell product information. See Suniva.com. (2019). *Cells - Suniva*. [online] Available at: <http://www.suniva.com/cells.php> [Accessed 6 Nov. 2019].

³ See Gheorghiu, I. (2019). *SunPower becomes biggest US solar panel builder with SolarWorld purchase*. [online] Utility Dive. Available at: <https://www.utilitydive.com/news/sunpower-becomes-biggest-us-solar-panel-builder-with-solarworld-purchase/538815/> [Accessed 6 Nov. 2019]. See also Roselund, C. (2019). *SunPower is selling the former SolarWorld factory in Oregon*. [online] PV magazine USA. Available at: <https://pv-magazine-usa.com/2019/05/17/sunpower-is-selling-the-former-solarworld-factory-in-oregon/> [Accessed 6 Nov. 2019].

⁴ See C.R. at III-15.

or reopening their solar module facilities in the U.S. to avoid the safeguard measures on solar modules.

For example, Hanwha Q Cells opened its largest solar factory in Georgia this past September, which has 1.7 GW of annual production.⁵ Also, JinkoSolar has begun producing modules at its factory in Florida, which has 400 MW of annual production, and is the third-largest module factory by capacity in the United States.⁶ Moreover, LG Electronics has announced plans for a 500 MW solar module manufacturing facility in Alabama.⁷ Finally, Heliene is planning to reopen its factory in Minnesota, which will have the capacity to manufacture 450 MW of modules when complete.⁸ In addition, American PV manufacturer First Solar's 1.9 GW production line is currently under construction in Ohio.⁹

Accordingly, these new module factories and their announced manufacturing capacities are expected to bring approximately 5 GW of module manufacturing in 2020, which will create a significant demand for imported solar cells.

3. The U.S. domestic solar module installations are expected to grow significantly in the next five years

Third, according to a report from the Solar Energy Industries Association (“SEIA”), solar module installation is expected to exceed 12 GW in 2019.¹⁰ Also, solar module installations will continue to grow in 2020 and 2021 and “total installed solar capacity will more than double, with cumulative deployment topping 100 GW by 2021.”¹¹

Since solar modules are subject to 20 percent and 15 percent safeguard tariffs in the next two years, respectively, the demand for domestic solar modules will significantly increase in the next few years. All of these module productions rely on imported solar

⁵ See Roselund, C. (2019). *Hanwha Q Cells opens largest solar factory in the Western Hemisphere*. [online] PV magazine International. Available at: <https://www.pv-magazine.com/2019/09/23/hanwha-q-cells-opens-largest-solar-factory-in-the-western-hemisphere/> [Accessed 6 Nov. 2019].

⁶ See Roselund, C. (2019). *Inside JinkoSolar's Jacksonville factory*. [online] PV magazine USA. Available at: <https://pv-magazine-usa.com/2019/02/26/inside-jinkosolars-jacksonville-factory/> [Accessed 6 Nov. 2019].

⁷ See Weaver, J. (2019). *LG to make high-efficiency solar panels in Alabama*. [online] PV magazine USA. Available at: <https://pv-magazine-usa.com/2018/06/27/breaking-lg-to-make-high-efficiency-solar-panels-in-alabama/> [Accessed 6 Nov. 2019].

⁸ See Roselund, C. (2019). *Heliene retools its Minnesota module factory*. [online] pv magazine USA. Available at: <https://pv-magazine-usa.com/2018/07/23/heliene-retools-its-minnesota-module-factory/> [Accessed 6 Nov. 2019].

⁹ See Pickerel, K. (2019). *First Solar completes manufacturing expansion in Ohio, now with total solar panel production capacity at 1.9 GW*. [online] Solar Power World. Available at: <https://www.solarpowerworldonline.com/2019/10/first-solar-completes-manufacturing-expansion-in-ohio-now-with-total-solar-panel-production-capacity-at-1-9-gw/> [Accessed 6 Nov. 2019].

¹⁰ See SEIA. (2019). *Solar Industry Research Data* | SEIA. [online] Available at: <https://www.seia.org/solar-industry-research-data> [Accessed 6 Nov. 2019].

¹¹ *Id.*

cells.

4. The 2.5 GW tariff-rate quota will be easily exhausted in the next two periods and module manufactures will have to pay extra costs in purchasing foreign cells

Fourth, the demand for imported solar cells by domestic solar module manufacturers will easily exhaust the TRQ – 2.5 GW – in the next two safeguard periods because there is no solar cell production in the United States

The TRQ used during the first and second year shows the trend of significant demand for imported solar cells. In the Quota Status Report released by U.S. Customs and Border Protection (“CBP”), 28.01 percent of the solar cell TRQ was used during the first year (i.e. February 7, 2018 through February 6, 2019).¹² However, 62.79 percent of the TRQ for the second year (i.e. February 7, 2019 through February 6, 2020) is projected to be used as of November 4, 2019.¹³ According to this growth rate, imported cells will easily exceed 2.5 GW TRQ in the third and fourth year of the safeguard measures.

Based on the above figures, the 20 percent tariff rate will likely be imposed on more than half of the imported cells. In that time, U.S. module manufactures will have to pay extra costs in purchasing foreign cells. These costs will, in turn, be passed on to U.S. solar module consumers and business users.

Thus, the Taiwan Government urges the Commission to increase the TRQ for solar cells gradually in the third and the fourth year of the safeguard measure to meet the demands of U.S. downstream solar module producers and expected module installation growth.

III. U.S. AUTHORITIES SHOULD CONSIDER REINFORCING THE MECHANISM TO MONITOR ILLEGAL SHIPMENTS OF SOLAR CELLS AND MODULES

In light of the absence of a U.S. domestic industry for solar cells, and the negative impact on U.S. downstream users, the Commission should gradually increase the TRQ for solar cells in the third and fourth years of the safeguard measure. To the extent that there continues to be concern about injury to the domestic industry as a result of the increased TRQ, the U.S. authorities could consider mitigating such harm through alternative methods, such as reinforcing its monitoring of shipments of solar cells and

¹² See CBP.gov. (2019). Commodity Status Report | U.S. Customs and Border Protection. [online] Available at: <https://www.cbp.gov/document/report/commodity-status-report> [Accessed 6 Nov. 2019].

¹³ *Id.*

modules to the United States and its inspection of the country of origin of such products. An abnormal increase in the import volume from countries excluded from the safeguard measures may indicate illegal transshipment and circumvention of the safeguard measures. In this regard, the Taiwan Government, together with the Taiwanese industry associations, has been diligent in its efforts to eliminate any illicit shipments. Moreover, the Taiwan Government has reiterated to our companies not to conduct illegal transshipments, not to use forged certificates of origin, and not to get involved in any other means of evasion or customs fraud.

IV. CONCLUSION

For the reasons discussed above, the Taiwan Government respectfully urges the Commission to gradually increase the TRQ on solar cells to meet the demands of U.S. downstream solar module producers. This could allow U.S. module manufacturers to purchase better and more cost-effective imported solar cells, which would, in turn, increase productivity and employment in U.S. module factories. Increasing the TRQ can also respond to the needs of solar module installation growth in the United States. To alleviate any ongoing injury to the domestic industry, U.S. authorities to consider alternative measures, such as reinforcing its mechanism to monitor shipments of solar cells and modules to guard against illegal shipments such as transshipment and circumvention of duties.

附件六：媒體報導

➤ Inside US Trade “Foreign governments, U.S.-based producers call on ITC to boost solar cell quota threshold”

2019/12/6 Foreign governments, U.S.-based producers call on ITC to boost solar cell quota threshold | InsideTrade.com

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Foreign governments, U.S.-based producers call on ITC to boost solar cell quota threshold

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Several foreign governments and U.S. companies are pushing the U.S. International Trade Commission to recommend that the president increase the amount of solar cells that can be imported under a safeguard remedy imposed in 2018.

The ITC on Thursday held a hearing as part of its midterm review of tariff-rate quotas that President Trump imposed in February 2018 on imports of crystalline silicon photovoltaic cells and modules under Section 201 of the Trade Act of 1974. As required by the statute, the ITC is required to submit a report on “Monitoring Developments in the Domestic Industry” to the president and Congress by Feb. 7, 2020.

In February 2018, Trump imposed a 30 percent tariff on all foreign CSPV cells and modules, with the tariff to decline by 5 percentage points each year for three years, while exempting the first 2.5 gigawatts of imported solar cells in each of the four years.

Embassy representatives from the governments of Taiwan and South Korea called on the ITC to consider increasing that 2.5-gigawatt quota due to changes in global demand. They also contended the threshold would be easily exceeded by 2022.

The quota should be expanded gradually in 2021 and 2022 “in order to meet the future demands of U.S. downstream solar module producers and module installation growth,” said Oscar Yang, senior trade specialist in Taiwan’s Ministry of Economic Affairs. Specifically, the quota should be increased to “mitigate the negative impact to U.S. downstream solar module producers,” Yang said, adding, “there is no current solar cell production in the United States.”

“The 2.5-GW TRQ will be easily exhausted during the next two years, forcing module manufacturers to pay tariffs to import foreign cells. These costs will, in turn, be passed on to U.S. solar module consumers and constrain U.S. module manufacturing growth,” he said during the hearing.

Jungsoo Hur, commercial counselor with the Korean Embassy, echoed that message. Citing “increased numbers of module manufacturing facilities in the U.S.,” Hur contended the surge “has led to a growing demand in imported cells from other countries including Korea.” Cells are a key input of solar modules.

“The current volume of 2.5 gigawatts cannot possibly meet U.S. demand given that the U.S. module manufacturing capacity has already reached 6 gigawatts. The Korean government is of the opinion that at least 5 gigawatts” be allowed through 2022, Hur continued.

John Gurley, an attorney with Arent Fox LLP who represents Hanwha Q Cells, a South Korean-headquartered company with facilities in Georgia and California, said while the safeguard tariffs should remain the same for the full four years – with “no easing of rates” or additional exclusions – the quota on cells should be increased to 5 GW.

Brian Lynch, director of solar and energy storage systems sales with LG Electronics USA, concurred, pointing to the lack of cell production capacity stateside. LGE is also headquartered in South Korea, with several facilities in the U.S.

“Since early 2018, the combination of new production facilities, expanded existing facilities, and increased efficiencies has led to a dramatic increase in the domestic industry’s capacity and production of U.S.-produced solar modules. While this has occurred there has been no domestic cell capacity brought online to support the U.S. module manufacturers,” Lynch testified. “This lack of cell manufacturing capacity has meant that new U.S. solar module producers have no choice but to look to imports for their supply of needed solar cells. In order for

<https://insidetrade.com/daily-news/foreign-governments-us-based-producers-call-itc-boost-solar-cell-quota-threshold> 1/3

U.S. module producers to maintain production, increase capacity utilization and continue to make positive adjustments, we must rely on imported solar cells."

And while the safeguard quota has "thus far not been an issue for us or other domestic module producers, there is no question that the quota will cause real harm in the very near term," he added.

"In the coming months, the new producers are expected to be running at full capacity, at which point the domestic industry will have more than 4 GW of production capacity," Lynch continued. "The 2.5-GW quota on cells will therefore severely restrict the domestic industry's ability to efficiently utilize its full production capacity. If the quota is not increased, domestic solar producers will be faced with the Hobson's choice of incurring extra costs by advancing purchases of imported cells in order to get under the quota, and consigning their U.S. production to last year's technology, or incurring extra costs by paying the steep safeguard duties."

Representatives from Auxin Solar Inc., a California-based module producer, and Mission Solar Energy LLC, a Texas-based module producer, also pushed for a boost to the cell quota, contending it would allow U.S. module producers to source the necessary inputs at more competitive prices.

But Suniva, Inc., a co-petitioner in the Section 201 case that led to the remedies, argued against increasing the quota threshold. The U.S.-based company, which exited Chapter 11 bankruptcy in April 2019, plans to restart cell production soon.

"The TRQ, as is, still provides tariff-free cells for over 80 percent of projected domestic needs, as indicated in the [ITC] Staff Report," said Matt Card, Suniva's president and chief operating officer. "For the American cell industry to experience a resurgence the current TRQ cannot be increased. This sector should have the same opportunity to grow as the domestic module industry. The remedies must ensure that domestic demand for cells outstrips the supply of tariff-free imports."

Commissioner Rhonda Schmidlein asked what about the likely impact on Suniva if the president changed the TRQ to 5 GW. Card said it would make the "environment significantly more challenging."

"To say we will survive or not survive is premature," he said. "If we are going to have a solar energy manufacturing industry in this country and we do not make solar cells here – we are dependent on foreign sources [and] that still creates a risk. We have to create an environment that allows solar cells ... to come back. We are not in an environment today with the existing set of remedies because the TRQ has not been reached where solar cell manufacturing has had the opportunity to come back. We are stronger as a country if solar cell manufacturing comes back."

Schmidlein, citing national security, also asked panelists whether if they had concerns about being "wholly dependent" on foreign cells.

The representative from Hanwha Q Cells said that while all of the cells his company uses are made in Korea, he was "not too concerned" about that because the parent company is Korean.

LGE's Brian Lynch said while his company was in a similar situation "in that we are manufacturing cells in Korea and are a Korea-owned company," things could change.

"LG does not have security concerns [at the moment] ... because we have reliable access to cells we know and trust," he said. "But if that environment changes -- that materially changes the answer to your question and we have to think about that."

In response, Schmidlein suggested the issue was more of a concern for the U.S. government than for individual producers, acknowledging to Lynch "that you are able to get your own cells, but the question was really a larger policy question."

Commissioner Jason Kearns asked about incentives for companies to continue producing in the U.S. once the safeguard remedy expired, prompting Lynch to say the significant capital "investment hurdle" was behind his company. "So, it makes sense as long as the market is favorable to grow the facility," he said.

Kearns also asked why the module segment was booming in the U.S. while the cell sector was not doing as well. Lynch said cells were smaller and easier to ship, whereas modules are "much more cumbersome."

The Solar Energy Industries Association and the Canadian government also testified at Thursday's hearing, which lasted more than four hours. SEIA, a non-profit solar energy trade association, continued its assault against the remedy, calling for its [complete elimination](#) due to what it said were severe impacts on the solar industry's growth.

Carrie Goodge O'Brien, acting minister-counselor with the Canadian Embassy, cited an [October 2017 ITC report](#) in which a majority of Commissioners recommended that President Trump exclude Canada from any safeguard remedy.

"In the Commission's original investigation, a majority of Commissioners determined that imports from Canada were not a substantial share of total imports, and did not contribute to importantly to injury," O'Brien asserted. "As a result, the Commission recommended that Canada be excluded from any safeguard action."

"As we know, this recommendation was not followed. Instead, safeguard measures were imposed on Canada. This midterm review provides an opportunity to revisit the issue and for the Commission to re-affirm its original recommendation – bolstered by further evidence," she said, pointing to statistics she said showed significantly reduced imports from Canada. – *Isabelle Icoo* (iicoo@iwnews.com)

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附件七：活動照片



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