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GOVERNMENT

## Energy lawyers say tariffs hurt solar

*Preliminary decision calls for big tariffs on imported Chinese solar products*

By Paul Jones

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A preliminary decision to impose hefty tariffs on imported Chinese solar products was announced Thursday by the U.S. Department of Commerce, surprising some industry insiders.

California attorneys involved in solar energy say that if the tariffs are ultimately imposed, it could harm solar adoption at a time when lapsing incentives and low natural gas prices are already a problem for the industry. Regardless of how the case ends up, they said, the decision will hurt the industry until it is resolved.

"There will be an immediate impact," said Adam S. Umanoff, an attorney with Akin Gump Strauss Hauer & Feld LLP who works in renewable energy. He said customs now will require cash deposits on imports of Chinese products. "There is a real economic impact on the marketplace."

The decision by the department is in response to complaints against China filed last October by the Coalition for American Solar Manufacturing, a group of U.S.-based solar panel manufacturers headed up by SolarWorld USA. The Department of Commerce in March issued a preliminary decision finding China had granted illegal subsidies to its solar companies and supporting tariffs in response. However, the proposed tariffs were low — between 3 percent and 5 percent — which caused many in the industry to believe the trade case might not significantly impact the solar industry.

Thursday's decision, which addressed allegations that China flooded the market with cheap panels to harm competitors, has flipped that narrative: The Department of Commerce announced it may ultimately impose tariffs as high as 31 percent for a number of large Chinese solar manufacturers; some exporters could face tariffs as high as 250 percent.

SolarWorld was quick to praise



Daily Journal File Photo

Adam Umanoff, an attorney with Akin Gump Strauss Hauer & Feld LLP who works in renewable energy

the decision.

"For the many former employees of at least 12 solar producers that have staged layoffs, shuttered plants or entered bankruptcies

dus said. However, "It's our hope that by the time a final decision is made, these percentages are dramatically lower. This will be the primary focus of CASE, to reduce

even for some manufacturers competing with Chinese companies.

"If the demand side shrinks because of increased costs or uncertainty, it's bad for everyone," said R. Todd Johnson, an attorney with Jones Day's Silicon Valley office who works in renewable energy. "I fear that's what will happen — that the large project developers who are agnostic about what to install may slow down and try to see if there's retaliation [from China] or a compromise. It's much bigger duties than I think anyone had anticipated."

Terry D. Avchen, an attorney with Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP's Los Angeles office, said new solar technologies with higher energy production efficiencies could potentially help offset increases in solar costs if tariffs by the U.S. — and retaliatory protectionism by China — increase the cost of solar panels.

"There are a lot of new technologies that are about to come out on the market that may well change the nature of the landscape," he said.

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since 2010, it may be too late. But today's announcement gives rise to the possibility that domestic solar manufacturing ... might one day soon return to boosting U.S. manufacturing, jobs and energy security," SolarWorld Chief Executive Officer Gordon Brinser said in a statement.

The decision is disappointing, but the fight isn't over, according to Kevin Lapidus, general counsel for SunEdison and a representative for the Coalition for Affordable Solar Energy, which opposed the trade case against China.

"This is a disappointing, surprising decision that the tariffs are this high, and there will be a harmful impact to the solar industry," Lapi-

these margins."

Umanoff agreed the narrative could change substantially before a final decision. The case so far has mainly focused on the complaints by SolarWorld and CASM, he said. Now the International Trade Commission will have to do a much more thorough investigation to determine if harm has been caused to the domestic solar industry. Also, project developers — which have generally opposed the trade case because it could increase the cost of panels, making solar projects less competitive — will now have a better opportunity to make their case against tariffs, he said.

The immediate impact on the solar industry could be negative,

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