

Directorate General of Trade Remedies: Safeguard Duty on Solar Panels and Modules

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On August 20, 2018, Additional Director General, Directorate General of Trade Remedies (DGTR), which functions under the commerce ministry, held a public hearing on imposing 25% safeguard duty on imported solar cell - panels and modules (SPM) at DGTR office, Parliament Street, New Delhi. On July 16, 2018 the DGTR decided to impose 25% safeguard duty on PUC imported from China for two years. However, the safeguard duty was yet to be implemented. In January, 2018 Directorate General of Safeguards had recommended imposing conditional safeguard duty of 70% on imported solar panels and modules for a period of 200 days on the grounds that such imports had enlarged multiple times within the previous few years and were inflicting ‘serious injury’ to the domestic solar producing business. Following a stay order from the Chennai High Court, however, this might not be enforced. There was a provision that the DGTR had to take a final decision on safeguard duty within 270 days of the filing of the petition, the period ended in August 20, 2018 since the petition from local solar manufacturers under the banner of the Indian Solar Manufacturers Association (ISMA) seeking safeguard duty and petition from solar developer – Acme solar opposing imposition of safeguard duty was filed in December 2017

BACKGROUND

An application dated 28.11.2017 had been filed before Mr. Sunil Kumar, Director General (Safeguard) on 05.12.2017 under Rule 5 of the Customs Tariff by the Indian Solar Manufacturers Association (ISMA) on behalf of five Indian producers, namely (i) M/s Mundra Solar PV Limited, (ii) M/s Indosolar Limited, (iii) M/s Jupiter Solar

Power Limited, (iv) M/s Websol Energy Systems Limited, and (v) M/s Helios Photo Voltaic Limited, , through M/s Athena Law Associates, New Delhi-110075, seeking imposition of Safeguard Duty on imports of “Solar Cells whether or not assembled in modules or panels” into India to protect the Domestic Industry from serious injury / threat of serious injury caused by their increased imports. The applicants had claimed that on account of the surge in imports of the SPM, many domestic producers have kept their production facilities almost idle and the heavy losses have crippled the Domestic Industry. For this reason, the applicants had requested for imposition of provisional Safeguard Duty as a measure to mitigate their injury.

Since then, in early May, DG Safeguards and DG Anti-Dumping were unified to create DGTR, in line with US International Trade Commission (USITC), for providing comprehensive and swift trade defense mechanism under one umbrella, and each department conjointly shifted from the finance ministry to the commerce ministry. In step with arranged down procedure, any recommendation for safeguard duty had to be discussed by the standing committee on safeguards, as well as at a public hearing, and then a report is sent to a panel of secretaries for a final judgment.

A meeting of the standing committee on safeguards in May had decided no safeguard duty need be set on solar products. Though the meeting was confidential, its minutes were disclosed to the Delhi High Court by the government’s counsel, after solar developer Acme Solar filed a petition opposing imposition of such duty. The government counsel urged no safeguard duty was being contemplated anyway, and consequently the court disposed of the matter without announcing any verdict. “As of now there will be no duty,” Anand Kumar, Secretary, Ministry of Renewable Energy, “If it ever comes up within the future, we will confirm the interests of all stakeholders is safeguarded,” he had aforesaid.

After seven months of intense dialogue between solar developers opposing the step and domestic solar makers insist on that, before the Directorate General of Trade Restrictions (DGTR), the DGTR finally decided on July 16, 2018 that safeguard duty on SPM imported from China and Malaysia was imposed for two years – 25% for the first year, 20% for the first six months of the second year and 15% for the remaining six months. It upheld the domestic manufacturers’ contention that excessive imports of Chinese and Malaysian solar equipment by developers was inflicting them serious injury.

Safeguard duty – which was separate from anti-dumping duty or countervailing duty – was a temporary relief provided once imports of a product increase unexpectedly and threaten domestic makers of similar products. Earlier this year, US President Donald Trump also decided to levy tariff on imported solar panels. Trump imposed a 30% tariff on imported solar cells and module in the first year, with the duties declining to 15% in the fourth year. In the last three years, India had initiated more than 130 anti-dumping/countervailing duty/safeguard cases to deal with the rising incidence of unfair trade practices and to provide a level playing field to the domestic industry.

INDIAN SOLAR MANUFACTURING SECTOR

The current installed capacity of the Indian solar cell manufacturing was 1,386 MW and that of modules about 2,500 MW. Less than 20 percent of domestic manufacturing capacity was operational because of low demand. India's current solar power installed capacity was 20,000 MW. The domestic business claimed that India had potential of 11,000 MW of producing capacity. Indian manufactures were capable of innovation, product efficiency and quality. Safeguard duty would help achieve the required energy security in the country and inspire players to become active partners said Sunil Rathi, Director, Waaree Energies, A Mumbai-based solar panel manufacturer. The share of Indian solar capacity mentioned in exhibit – 1.

Exhibit – 1 Share of Indian solar Manufacturer capacity

Market share	Unit	2014-15	2015-16	2016-17	2017-18
Imports	MW	1,275 (90%)	4,186 (96%)	6,375 (92%)	9,833 (93%)
Domestic sale by Indian producers	MW	143 (10%)	193 (4%)	543 (8%)	785 (7%)
Domestic Demand	MW	1419 (100%)	4381 (100%)	6918 (100%)	10618 (100%)
Domestic Installed capacity	MW	292	373	373	373
Capacity Utilization	%	48	51	84	85

The DGTR report ended that the domestic solar business had so suffered due to “a significant increase in imports, (following which) its share of total sales of solar panels and modules had fallen from 10% of the total in 2014-15 to 4% in 2015-16 to 8% in 2016-17 and 7% in 2017-18 (up to September 2017). Acknowledging the step could lead on to an increase in solar tariffs, therefore safeguard duty was necessary to prevent “complete erosion of the manufacturing base of the solar industry in India”. Around 90% of the solar panels employed in Indian projects were imported from China and Malaysia, mainly because imported equipment comes 25-30% cheaper than domestically created ones. The detail of the cost of imported solar cells was given in chart – 1 below. The domestic industry had suffered serious injury, considering overall performance, on the basis of listed economic parameters such as market share

and profitability in past 4 years. The import of Solar cell from china had risen more than 20 % in 2017-18. The detail is given in Chart – 2

Chart - 1

Cost of imported solar cells (Rs. /Watt)

The cost of Chinese panel in India had fallen 25 percent in 4 years

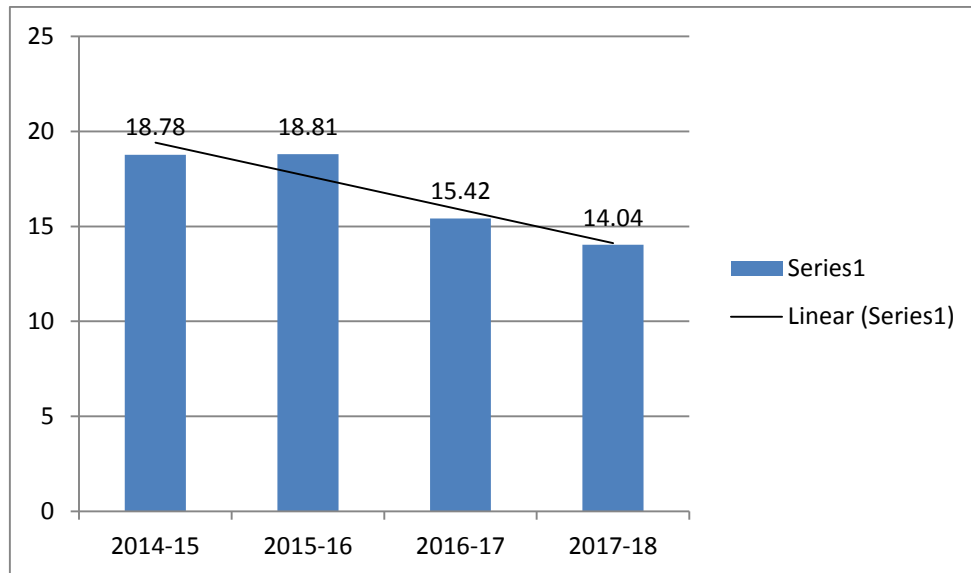
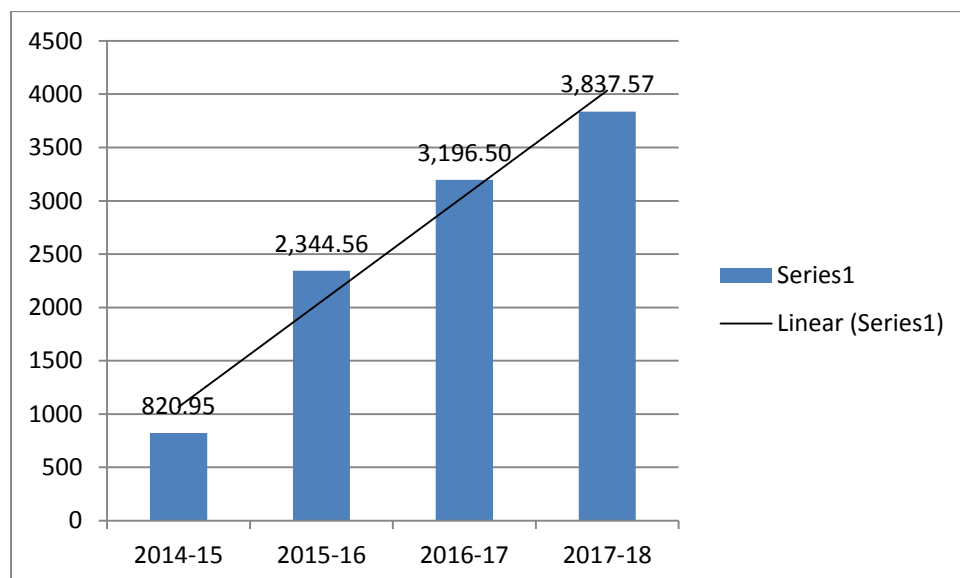


Chart - 2

Solar cells/photovoltaic cells (\$ Billion)

Solar cell imports rose more than 20 percent in 2017-18



Price Undercutting: There had been a significant price undercutting by the imported SPM, as shown in the exhibit – 2. It was evident that the high level of price undercutting prevented the Indian domestic solar manufacturers from increasing their prices as a result of which they suffered losses.

Exhibit – 2 (Price Undercutting)

Particulars	Unit	2014-15	2015-16	2016-17	2017-18
Landed value of import					
Solar cell	Rs./Watt	18.96	18.99	15.58	13.75
Solar modules	Rs./Watt	36.18	36.53	29.49	22.75
Net sale realization of domestic industry					
Solar cell (Indexed)	Rs./Watt	100	87	82	53
Price undercutting					
Solar Cell (Indexed)	Rs./Watt	100	61	83	-4

INDIAN SOLAR DEVELOPER INDUSTRY

In the letter to DG (Safeguard), Indian solar Developer Association had mentioned that the country was aiming for 100 GW of power generation. India had currently achieved a little more than 12 GW. India's demand of power could not be met by the domestic producers. Investments of around 40,000 crores had happened recently and more than 50,000 jobs had been created lately. Any duty would adversely affect the financial viability of these projects and render the bank loans into NPAs.

The solar industry had calculated that this duty imposition had led to any increase of 50-60 paisa in the solar cost for instance; ACME solar which quoted Rs 2.44 per unit for 600 MW capacities was expecting an increase in per unit cost by 57 paisa. India had achieved a record low solar power tariff of ₹2.44 per unit in May 2017. In July 2018 also, solar tariffs again touched ₹2.44 per unit in an auction conducted by state-run Solar Energy Corp. of India. ACME Group Vice-chairman Shash Shekhar had shown concern that whether Power distribution companies will buy solar power at Rs. 3 a unit and tariff revision was a long drawn process, No bank gave money till the tariff is finalized. Power project developers were expecting close to 7,000 Mw of projects to face problems because of safeguard duty. Developers were assuming that the imposition of safeguard duty might have impact on target of 100 Gw of solar

power by 2020. The Project developers wondered where to source their solar panels from. More than 85 percent of India's solar capacity is built from Chinese panels, which had attracted safeguard duty. India had to meet the ambitious target it had set for itself – 100 Gw of solar power capacity by 2020 and had decided to set up 225 Gw of solar by 2022. Since last five years, the tariffs had slid 80 percent and capacity addition increased ten-fold. Against the target of 100 GW of solar capacity by 2020, India (by end-July 2018) had installed 23,115 MW.

Solar developers as well as the Ministry of Renewable Energy had argued that any such safeguard duty, by raising solar tariffs, would put a brake on India's ambitious programme of setting up 100,000 MW of solar capacity by 2020. Such a step will impact Chinese module manufacturers such as Jinko Solar, JA Solar Holdings, ET Solar, Chint Solar, GCL-Poly Energy Holdings Ltd and Trina Solar Ltd. Representatives of Chinese, Malaysian and Taiwanese companies, the Chinese Embassy and even the European Commission had also made their representations to the DGTR, opposing safeguard duty.

SOLAR CELL- PANELS AND MODULES (SPM)

“The SPM was “Solar Cells whether or not assembled in modules or panels” classifiable under Tariff Heading 8541 and Tariff Item 85414011 of the Customs Tariff Act, 1975. Solar Cells were also known as Photovoltaic Cells in the market parlance. Photovoltaic technology enabled direct conversion of sunlight into electricity at the atomic level and Solar Cells were solid state electrical devices that converted sunlight directly into electricity by the photovoltaic effect. For practical use, Solar Cells were packaged and connected into an assembly and such an assembly of Solar Cells was referred to as a Solar Panel or Solar Module. The electrical connections were made to the Solar Cells in series to achieve desired output wattage and / or in parallel to provide a desired current capability. The SPM was being manufactured using either of the two major technologies: (1) Crystalline Silicon (c-Si) based Solar Cell technology, also known as Silicon Wafer based technology, and (2) Thin Film technology. The c-Si technology might use n-type and p-type Silicon, and also mono crystalline and multi crystalline Silicon materials. The Thin Film technology might use Amorphous Silicon, Cadmium Tellurium (CdTe) or Copper Indium Gallium Selenide as semi-conductor materials. Solar Cells based on both c-Si technology and Thin Film technology was imported into India.

The domestic industry manufactures of Solar Cells / modules / panels were using only c-Si technology and not thin Film technology. The domestic industry association had claimed that Solar Cells based on both cSi and Thin Film technologies were used in Solar power plants. According to the domestic industry representation, the Central Government projects such as Jawaharlal Nehru National Solar Mission (JNNSM) or projects of various State Governments neither differentiate the technologies nor award separate auction price for projects based on different technologies. Moreover, there was no material differences between Solar Cells based on either of these technologies and these were all meant for the same end uses. Therefore, the domestic industries

representatives contend that the domestically produced PUC based on c-Si technology were like and directly competitive products to the imported SPM based on either c-Si technology or Thin Film technology.”

CHINA’S PRODUCTION CAPACITY OF SOLAR CELL

China had more than doubled its production capacity of Solar Cells from 11.12 GW in 2012 to 27.78 GW in 2016. Similarly, the production capacity of Solar Modules had increased from 12.46 GW in 2012 to 35.47 GW in 2016. Further, data of 35 producers who collectively account for 57% of Solar Cells and 67% of Solar Modules production in China revealed excess capacity, as indicated in the exhibit – 3 below.

Exhibit – 3 (China’s Solar cell production capacity)

Solar Cells					
In GW	2012	2013	2014	2015	2016
Capacity (cells)	16.70	19.30	22.19	26.46	33.14
Production (cells)	11.12	14.03	18.54	22.72	27.78
Domestic Consumption	10.68	13.06	17.31	22.26	26.76
Exports	0.40	0.81	0.87	0.52	0.50
Idle Capacity	33.41%	27.31	16.49	14.31%	16.15%
Solar Module					
Capacity (solar module)	20.13	22.77	27.99	34.71	46.40
Production (solar modules)	12.46	16.32	22.07	28.79	35.47
Domestic Consumption	2.46	5.94	7.73	12.86	20.69
Exports	9.61	10.39	13.64	15.62	13.93
Idle capacity	30.10%	28.32%	21.15%	17.05%	23.99%
Exports share in production	77.12%	63.66%	61.80%	54.25%	39.27%

CHINA'S EXPORT TO INDIA

In year 2015-16, China's direction and volume of export trade changed in a significant manner towards India, as is established from the exhibit - 4 below. To illustrate, while China's exports to India constituted a paltry 1.52% of its total global exports during 2012, this increased to 21.58% during 2016.

Exhibit – 4 (China's solar cell export to the world)

Chinese Exports To (USD 000')	2012	2013	2014	2015	2016
World	12,775,263	10,150,759	12,319,183	12,938,427	11,347,462
Japan	892,923	2,794,236	4,394,922	3,341,833	2,558,724
India	193,756	510,278	488,619	1,356,754	2,448,216
USA	1,416,963	1,208,074	1,818,175	1,634,799	1,368,664
EU	8,283,128	2,914,197	2,352,842	2,054,177	1,288,605
Share of India	1.52%	5.03%	3.97%	10.49%	21.58%

Question: In this context, Additional Director General was wondering how to justify 25% safeguard duty taking into consideration Indian Solar Manufacturers Association (ISMA) seeking safeguard duty, and solar developers and Acme Solar opposing imposition of safeguard duty.

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