



ML Strategies Update

David Leiter, DJLeiter@mlstrategies.com
Sarah Litke, SLitke@mlstrategies.com
Bryan Stockton, BStockton@mlstrategies.com
Jordan Collins, JMCollins@mlstrategies.com
Neal Martin, RNMartin@mlstrategies.com

FOLLOW US ON TWITTER: [@MLStrategies](https://twitter.com/MLStrategies)

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

JULY 28, 2014

Commerce Department Action on Solar Trade Case

By Jordan Collins

From time to time the Energy and Environment Update will focus on legislative and regulatory developments facing a particular energy sector.

For several years, solar arrays utilizing silicon photovoltaics have been central to driving the exponential growth of installed domestic solar capacity. However, an ongoing trade war spanning three continents and impacting the entire solar supply chain – from upstream polysilicon manufacturers to downstream installers - continues to present significant challenges as the growing number of tariffs imposed on imported solar components and systems may begin to dampen the solar industries' incredible momentum.

A series of anti-dumping (AD) and countervailing duty (CVD) cases brought primarily by SolarWorld in both U.S. and European courts beginning in 2012 against China, and now Taiwan, continues to demonstrate the company avails itself of every judicial forum with jurisdiction to address alleged illegal Chinese subsidies for its indigenous solar industries. The solar AD/CVD trade cases are complex, involving two separate, but related, causes of action alleging illegal governmental activities violating AD trade laws, and private sector activities violating CVD laws. Tariffs are imposed if such activity is proven. The mechanics of the case involve a two-step, quasi-adjudicatory process by Department of Commerce and the U.S. International Trade Commission (USITC)..

On July 25th, the latest development in the escalating solar trade dispute unfolded when Commerce issued a preliminary decision in the AD portion of most recent case against Chinese module manufacturers, and for the first time, against imports from Taiwan. Commerce will immediately impose AD duties ranging from 26.33% to 58.87% percent for China and 27.59% to 44.18% for Taiwan. According to Commerce, 2013 imports of Chinese and Taiwanese photovoltaics in the scope of the case represented \$1.5 billion and \$656 million in economic activity respectively, representing roughly a 50% decline in Chinese module imports and a 50% increase in Taiwanese imports from 2012. According to GTM Research, 31% of 2013 U.S. module installations utilized Chinese imports, and represented more than 50% of the U.S. distributed generation installations. The GTM report also found that non-Chinese suppliers are likely to gain share as a result of the erosion of Chinese price advantage resulting from the imposition of trade tariffs in the U.S. market. Likely beneficiaries include REC, SolarWorld, Suniva, and LG Solar in the distributed solar market, and First Solar in the utility market.

If Commerce and USITC finalize the preliminary determinations decisions of 2014 AD/CVD at the levels of the preliminary determinations, the additional tariffs could raise the overall prices of solar modules entering the U.S. market by an average of 14%, with a range of 7 to 20%. Commerce is set to make its final AD determination by

December 15, 2014, and USITC is scheduled set to make its final decision on January 29, 2015. Solar manufacturers have already developed multiple contingency plans for addressing the latest imposition of tariffs, and will decide the most economically efficient export strategy which includes strategic decisions about which tariffs to pay under the terms of multiple AD/CVD cases. A fourth option is to move manufacturing elsewhere to avoid the tariffs, which is not thought to be a common action taken by industry.

There has been a growing drum beat for all parties to reach a global settlement agreement in lieu of continuing to litigate the matters in court – a position held by many in the U.S. solar industry since 2012. Sources close to the negotiations have inferred the current U.S. Administration and Chinese government – who have been engaged in the trade policy discussions throughout the process – have intimated they are open to a settlement agreement, and would support such a step. An equitable settlement could potentially drive multiple direct and indirect benefits for the solar industry including: (1) the rescinding of a Chinese tariffs imposed in retaliation after the first AD/CVD case in 2012 against U.S. polysilicon manufacturers - the second largest polysilicon producers other than China, (2) a signal to industry that litigation is an inefficient modality for settling trade disputes because the continued imposition of tariffs in aggregate is beginning to materially and negatively impact supply chain economics, and (3) a multilateral effort by the industry to negotiate at arm's length to abide by, and to compete accordingly to a set of agreed upon principles.

ENERGY AND CLIMATE DEBATE

Congress will depart at the end of the week for the August recess. We, too, will take a short recess, with the next edition of our weekly Energy and Environment Update coming to you August 11. Before they depart, the House and Senate will race to complete two must-pass items: a supplemental spending bill, and a Highway Bill extension.

In the meantime, activities for the recess calendar continue to fall into place. Rounding out former Senator Hillary Clinton's keynote address, former Utah Governor Jon Huntsman announced last week that he would speak at Senate Majority Leader Harry Reid's (D-NV) seventh annual clean energy conference on September 4.

Senate Energy and Natural Resources Committee Chair Mary Landrieu (D-LA) cited July 24 three legislative priorities for her committee when Congress returns from the August recess: resolving the nuclear waste issue; promoting oil and gas exports; and authorizing increased revenue sharing with coastal states that support offshore energy production.

CONGRESS

Climate Change Threatens National Security

Deputy Assistant Secretary of Defense for Strategy and Force Development Daniel Chiu testified before the Senate Foreign Relations Subcommittee on International Development and Foreign Assistance, Economic Affairs, International Environmental Protection, and Peace Corps July 22 that rising global temperatures and sea levels will pose increasing threats to U.S. security in the coming decades.

House Approves Non-Controversial Energy Measures

The House approved July 22 the DOE Laboratory Modernization and Technology Transfer Act (H.R. 5120). The measure is companion legislation to a bill from Senators Chris Coons (D-DE) and Marco Rubio (R-FL) that would encourage public-private partnerships. The chamber also approved the Securing Energy Critical Elements and American Jobs Act (H.R. 1022). The measure supports Federal research on energy critical elements, including via university research and loan guarantees.

McCarthy on CPP

Testifying before the Senate Environment and Public Works Committee July 24, Environmental Protection Agency Administrator Gina McCarthy outlined and defended the Clean Power Plan. She reiterated the flexible nature of the proposed rule and lengthy discussions the agency had with invested parties prior to its release. She urged supporters and critics of the proposed rule to submit comments.

Sherwood-Randall Nomination

The Senate Energy and Natural Resources Committee considered Elizabeth Sherwood-Randall for deputy Energy secretary July 24, focusing much of their discussion around liquefied natural gas exports and nuclear defense programs. Committee Chair Mary Landrieu (D-LA) will fast track her nomination when they return from the August

recess. Ms. Sherwood-Randall would replace Daniel Poneman, who announced in June his plans to depart the agency in the fall after five years as deputy secretary.

Final 2014 RFS Forthcoming

White House advisor John Podesta told Senator Al Franken (D-MN) and other pro-biofuels senators July 24 that the Environmental Protection Agency would soon release its final rule establishing 2014 volume mandates for renewable fuels. Senator Franken believes that the final standard will include higher numbers than the proposed standard.

Upton to Attempt RFS Modification

A House Energy and Commerce Committee aide said July 24 that Committee Chair Fred Upton (R-MI) plans to reattempt legislation that would amend the renewable fuel standard in 2015.

Legislation Introduced

Representatives Ralph Hall (R-TX) and Eddie Bernice Johnson (D-TX) introduced the Energy and Water Research Integration Act ([H.R. 5189](#)) July 24. The energy-water nexus bill would increase research into more water-efficient energy technologies.

Legislation Introduced

The House Energy and Commerce Committee will hold a hearing July 29 to consider the Federal Energy Regulatory Commission's perspectives on the Environmental Protection Agency's proposed Clean Power Plan and other grid reliability issues.

Legislation Introduced

Senators Roy Blunt (R-MO) and Claire McCaskill (D-MO), on July 17, introduced "The Grid Reliability Act" – a bill that would exempt power plants from environmental statutes if ordered under Section 202(c) of the Federal Power Act to generate more power to increase demand. The bill is a companion bill to legislation passed by the House of Representatives last year.

Legislation Introduced

On July 17, Rep. Jerry McNerney (D-CA) introduced the "WaterSense, Efficiency, Conservation and Adaptation Act." The bill would authorize \$700 million for financial incentive programs set up by states, localities, and energy and water utilities to promote residential use of products that recycle and reuse wastewater. Such products would include water-efficient showers, dishwashers, and toilets, among others.

ADMINISTRATION

OMB Seeks Budget Guidance

The White House Office of Management and Budget announced July 18 that it will seek additional information from the departments of Agriculture, Defense, Energy, Homeland Security, Interior, and Transportation, and the Environmental Protection Agency, as well as other Federal agencies as part of the fiscal year 2016 budget process, specifically concerning infrastructure permitting improvement efforts.

NRC Nominees

President Obama nominated July 22 two nominees for the Nuclear Regulatory Commission. Nominees include former general counsel Stephen Burns, who left the agency for the Nuclear Energy Agency in 2012, and Jeff Baran, adviser to Representative Henry Waxman (D-CA) and Democratic staff director of the House Energy and Commerce Subcommittee on Energy and Environment. Commissioner Bill Magwood confirmed last week that he will depart the commission August 31 to begin a new position as director general of the Nuclear Energy Agency.

President to Attend Climate Summit

The White House announced July 24 that President Obama will participate in the September 23 United Nations climate summit in New York.

Opposition for TTIP Energy Inclusion

The Sierra Club led more than 35 other organizations July 24 in [calling](#) on U.S. Trade Representative Michael Froman to oppose the inclusion of a specific energy chapter in the Transatlantic Trade and Investment Partnership. The seventh round of TTIP talks will take place this September in Washington, D.C.

DEPARTMENT OF AGRICULTURE

\$12.5 for Biomass Assistance

The Department of Agriculture chose July 23 36 energy plants in 14 states to produce energy from subsidized deliveries of agriculture and forest waste. The department can spend \$12.5 million a year to subsidize the deliveries under the Biomass Crop Assistance Program.

DEPARTMENT OF COMMERCE

China Solar Trade Case

The Department of Commerce announced July 25 preliminary antidumping duty levels on certain solar products from China and Taiwan. The new tariffs were triggered by the SolarWorld complaint in an attempt to close a loophole in the 2012 duties.

DEPARTMENT OF DEFENSE

Biofuels Included in Bulk Fuel Solicitation

According to the Energy Information Administration, a recent bulk fuel solicitation from the Pentagon includes an optional procurement request for biofuel blends for military-specification diesel and jet fuel. The EIA states that the procurement request will only be accepted if certain cost and performance requirements are met.

DEPARTMENT OF ENERGY

LNG Export Review Reconsideration

The Department of Energy is expected to soon finalize planned changes to its process for granting natural gas export licenses. Comments on the proposal, to cease issuing conditional approvals and defer final approvals until the Federal Energy Regulatory Commission completes environmental reviews, were due July 21.

\$1.35 Million for Distributed Wind

The Department of Energy and the National Renewable Energy Laboratory announced July 24 funding for projects led by Pika Energy, Northern Power Systems, Endurance Wind Power, and Urban Green Energy to help reduce the cost of small and medium-sized wind energy systems. The teams will receive \$1.35 million through the second round of the Competitiveness Improvement Project.

\$6 Million for Commercial Building Efficiency

The Department of Energy announced July 24 up to \$6 million to deploy and demonstrate four emerging energy saving technologies in commercial buildings across the country. The projects will help commercial building owners adopt advanced ventilation, building energy use optimization software, more efficient commercial refrigeration fan motors, and advanced lighting controls.

DEPARTMENT OF STATE

Energy Envoy Announced

The Department of Secretary named July 25 Amos Hochstein acting special envoy and coordinator for international energy affairs. Mr. Hochstein replaces Carlos Pascual, who announced this summer that he would depart the agency to join the Center on Global Energy Policy at Columbia University's School of International and Public Affairs. The day before, Ambassador Pascual said that abundant domestic natural gas, China's increasing coal appetite, and increased African electricity demand will impact profoundly global energy markets in the coming decades.

Kerry to India

Secretary of State John Kerry will visit India July 30-August 1 to hold talks on a range of bilateral, regional, and global issues of mutual interest and co-chair the fifth India-US Strategic Dialogue. Deputy Energy Secretary Dan Poneman and State Department climate change envoy Todd Stern will accompany Secretary Kerry.

ENVIRONMENTAL PROTECTION AGENCY

CPP Electricity Rate Increase Concerns

The Partnership for a Better Energy Future sent a [letter](#) to Environmental Protection Agency Administrator Gina McCarthy July 21 asking the agency to withdraw its Clean Power Plan, citing potential electricity rate increases.

The agency estimates that the proposal could increase retail electricity prices by six to seven percent by 2020. The group is considering legal action against the agency's proposed rule.

Environmental Justice Advocates' CPP Concerns

Environmental justice advocates said during a WE ACT for Environmental Justice webinar July 21 that the Clean Power Plan would pose unique environmental justice issues for poor and minority communities. The group is concerned that the proposed rule relies too heavily on increased natural gas and nuclear generation and could create air pollution hot spots.

Environmental Justice Recommendation Rejected

The Environmental Protection Agency declined to implement July 22 a Science Advisory Board Environmental Justice Technical Guidance Review Panel [assessment](#) on how to evaluate environmental justice concerns of proposed regulations. Final recommendations will be sent to the full board for review in six to ten weeks.

Court Rejects NM Haze Plan Review

The U.S. Court of Appeals for the Tenth Circuit rejected July 23 a petition from WildEarth Guardians challenging the Environmental Protection Agency's Federal implementation plan for reducing regional haze near the Four Corners Power Plant in New Mexico. The plaintiff's chief concern was rendered moot by the closure of several units at the plant.

McCarthy Stresses Flexibility

Environmental Protection Agency Administrator Gina McCarthy told Business Forward July 24 that the Clean Power Plan is intended to provide economic opportunities and encourage investment in new technologies. Using a modest, flexible approach, Administrator McCarthy stressed the rule's benefits to small businesses.

CPP Benefits Natural Gas Production

The Center for Strategic and International Studies and Rhodium Group released a study July 24 finding that the Environmental Protection Agency's Clean Power Plan would increase natural gas production and revenues in Texas, Louisiana, and Pennsylvania. The report concluded that coal producers would not fare as well.

CPP Q2 Lobbying Up

More than 120 groups report lobbying Congress in the second quarter of 2014 on the Environmental Protection Agency's Clean Power Plan. Many of those groups continue to urge a vote on legislation (S. 1905) that would curtail the agency's ability to complete the standards. The House approved a companion bill (H.R. 3826) March 6.

Inspector General Report on Distribution Pipelines

According to a July 25 report from the EPA Inspector General, the agency has seen limited results from its program to reduce methane leaks, and EPA has used emissions factors dating from 1996 to calculate methane emissions from the oil and natural gas system. The report, titled "Improvements Needed in EPA Efforts to Address Methane Emissions from Natural Gas Distribution Pipelines," also found that the nation's pipelines lost \$192 million in natural gas due to leaks in calendar year 2011.

McCarthy Defends EPA at Senate Hearing

The Senate Environment and Public Works held a hearing on July 23 in which Republican members of the committee questioned whether the agency had the legal authority to regulate carbon emissions from existing power plants. EPA Administrator McCarthy defended the agency's authority, and also responded to questions about the influence of the Natural Resources Defense Council had enjoyed excessive influence in the development of the proposed rule for existing power plants.

FEDERAL ENERGY REGULATORY COMMISSION

FERC Commissioners

Federal Energy Regulatory Commission spokesperson Mary O'Driscoll said July 24 that Cheryl LaFleur will be sworn in to her five-year term on July 29. Norman Bay will be sworn in later, but will appear alongside the four sitting commissioners the same day to testify at the House Energy and Commerce Committee hearing on the Environmental Protection Agency's Clean Power Plan and electric reliability.

FERC to Testify at House Hearing on Carbon Emissions

On July 29, members of the Federal Energy Regulatory Commission will testify at a House Energy and Commerce Subcommittee on Energy and Power hearing regarding EPA's proposed rule to reduce carbon emissions from

existing power plants. The hearing and testimony from FERC come as the commission has been tasked by the subcommittee to produce an independent assessment of expected power plant retirements resulting from the EPA proposed rule.

INTERNATIONAL

Chinese Solar Company Seeks Chapter 15

Zhejiang Topoint Photovoltaic Company, a China-based solar panel maker, [filed](#) Chapter 15 bankruptcy in New Jersey July 16 following financial problems due to an overabundance of solar panels on the market. Assets in the United States include 200,000 solar panels in a New Jersey warehouse.

SDGs Outlined

A United Nations group working on a post-2015 development agenda highlighted addressing climate change as one of its 17 sustainable development [goals](#) July 19. Proposed goals must be finalized by next September.

Russia Initiates Arctic Council Environmental Action

Russia transferred funds to the Arctic Council July 21 to launch the group's financing mechanism, thus putting in motion the council's first environmental projects. Those projects include reducing persistent organic pollutants, mercury, and black carbon in the Russian Arctic.

Mexico to Issue Heavy-Duty Truck Emissions Standards

Mexico's Ministry of Environmental and Natural Resources is expected to issue by year's end new emissions standards for heavy-duty trucks. According to a ministry spokesperson, the proposed standards will be the equivalent of existing European Union standards.

Italy to Push for Changes to EU Emissions Trading System

During its six-month presidency of the European Union Council, which started this month and runs through December, Italy intends to urge that the proposed EU Emissions Trading System (ETS) be working by 2017, as opposed to 2021 as previously discussed. The ETS was proposed earlier this year as a market stability reserve for carbon emissions allowances which would allow surplus carbon permits to be removed from the market and then reintroduced at a later date when the surplus falls to a certain level.

EU Calls for Energy Efficiency Measures

On July 23, the European Commission unveiled a proposal intended to help the EU meet its 2020 energy efficiency target of 20 percent. With the EU likely fail in meeting the goal, the Commission has called for a non-binding 30 percent reduction in energy by 2030 use through energy efficiency measures.

STATES

FL Energy Efficiency Rebate Review

Florida Power and Light told the Florida Public Service Commission July 21 that energy efficiency rebate mandates reward wealthy Floridians at the expense of all residents and businesses, while program supporters contended that the utilities want to eliminate inexpensive renewable energy and develop more power plants.

Tesla Retools CA Plant

Tesla Motors idled production at its California assembly plant July 21 for the first time as it works to accelerate production of electric sedans and prepares to build its Model X sport-utility vehicle. Vehicle assembly will resume in two weeks, with a goal of increasing production by 25 percent.

IL Court Rules on FutureGen 2.0 Sourcing Agreements

The First District Illinois Court of Appeals ruled on July 22 that the Illinois Commerce Commission holds the authority to direct electric utilities to enter into sourcing agreements with the FutureGen 2.0 near zero-emission, coal-fired power plant.

CA Small Diesel Fleets

The California Air Resources Board approved July 24 [updated guidelines](#) for its incentive program that helps diesel truck owners replace older vehicles with newer, cleaner trucks so that fleets with one to three trucks have priority to the grants.

MISCELLANEOUS

Utilities Deploy Clean Energy

CERES and Clean Edge released a [report](#) July 21 ranking electric utilities' clean energy deployment. NV Energy, Xcel Energy, PG&E, Sempra, and Edison International received top marks, with between 17 and 21 percent of the utilities' retail sales coming from renewable sources in 2012.

Government Spurs Tech Developments

The American Energy Innovation Council released a [report](#) July 22 finding that Federal government support has catalyzed significant energy technology developments. The study considers how the government and private sector worked together to develop advanced diesel, electric vehicles, energy efficient windows, and unconventional gas production.

Vehicle Electrification Sought

The Edison Electric Institute released a [white paper](#) July 23 asking its members to electrify their vehicle fleets and dedicate five percent of their annual purchase plans to plug-in vehicles.

Wind Farm Tax Credit Suit

The U.S. Court of Federal Claims held July 24 that Terra-Gen Power, LLC, which is suing the Treasury Department for \$226 million in renewable energy tax credits, must allow the Federal government to determine rebate amounts through discovery.

EESI Expands Residential Energy Efficiency

The Environmental and Energy Study Institute announced July 25 the expansion of its on-bill financing initiative into a national effort to improve residential energy efficiency in homes served by rural electric cooperatives and public utilities.

MI Carbon Tax Poll

The University of Michigan's Center for Local, State, and Urban Policy and Muhlenberg College's Institute of Public Opinion released the results of a [poll](#) last week finding that a carbon tax remains unpopular with the public, but that most people would support such a measure if the revenue was used for renewable energy research and development or returned to taxpayers.

Environmentalists Critique BLM on Coal

A July 24 from four environmental groups – the Northern Plains Research Council, the Powder River Basin Resource Council, WildEarth Guardians, and the Western Organization of Resource Councils – is critical of the Bureau of Land Management's pricing of coal. The report, issued by the Sightline Institute, claims that BLM has furthered the effects of global climate change by underpricing coal due to a faulty assessment of coal exports.

Report Calls for National Strategy on Flood Risks from Coastal Storm Surges

The National Research Council, in a report released July 23, called for a new national strategy aimed at reducing flood risks from coastal storm surges on the Eastern and Gulf coasts. The report urges that federal, state, and local agencies work together to develop and implement a strategy focused on coastal risk reduction and resilience in coastal communities.

MS CCS Project to Be Operational by 2015

The Southern Company's carbon capture and storage technology project in Kemper County, MS – a \$5.5 billion endeavor – is expected to be operational by mid-2015 according to a company spokesman.

View ML Strategies professionals.

Boston · Washington www.mlstrategies.com