

Safeguard investigation concerning imports of “Solar cells whether or not assembled in modules or panels” into India – Final Findings – Proceedings under the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997

CONTEXT

1. An application has been filed before the Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry on 05.12.2017 under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by the Indian Solar Manufacturers Association (ISMA) on behalf of five Indian producers, namely (i) M/s Mundra Solar PV Limited, Ahmedabad; (ii) M/s Indosolar Limited, 3Gautam Budh Nagar, Greater Noida; (iii) M/s Jupiter Solar Power Limited, Baddi, Solan; (iv) M/s Websol Energy Systems Limited, Falta, 24 South Praganas, West Bengal; and (v) M/s Helios Photo Voltaic Limited, Okhla Industrial Estate, Phase-III, New Delhi 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 of like or, directly competitive products from serious injury/threat of serious injury caused by their increased imports.
2. The matter has been examined by the Director General (Safeguard) and the following has been recommended:
 - i) The increased imports of ‘PUC (solar cells)’ into India, have caused serious injury and threaten to cause serious injury to the domestic producers of PUC and it will be in the public interest to impose safeguard duty on imports of PUC into India in terms of Rule 12 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules’ 97, for a period of two years.
 - ii) Considering the average cost of production of PUC of the domestic producers after allowing a reasonable return on the cost of production minus interest, safeguard duty as indicated below has been recommended to be imposed:

Year	Safeguard duty recommended
First Year	Safeguard duty @ 25% ad valorem
Second Year (for the first six months)	Safeguard duty @ 20% ad valorem
Second Year (for the next six-months)	Safeguard duty @ 15% ad valorem

- iii) It is further mentioned that the import of product under consideration originating from developing nations except for China PR, and Malaysia will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975.

NATIONAL SOLAR MISSION AND SOLAR POWER

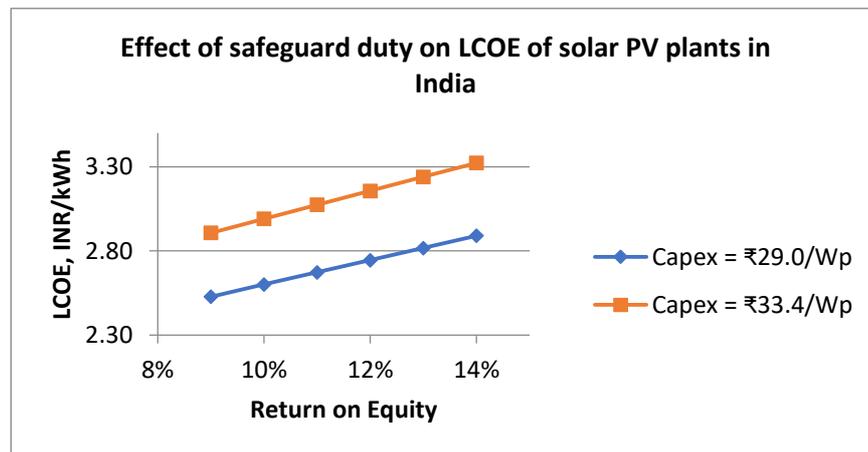
3. The Jawaharlal Nehru National Solar Mission was launched on 11th January, 2010 with the objective of establishing India as a global leader in solar energy, by creating the policy conditions for its large-scale diffusion across the country and achieving a scale to drive down costs to levels required to achieve grid parity as soon as possible. The Mission had set the target of deploying 20,000 MW of grid-connected solar power by 2022. Of this target, 1,000 MW capacity was earmarked for implementation in its first phase by 2013. Already a declining trend was observed in solar power generation costs at the time, and it was envisaged that it will create conditions to allow large investments in domestic manufacturing capacities.
4. Promotion and enhancement of domestic manufacturing capacity has always been considered as one of the important objectives of the National Solar Mission. In order to promote domestic manufacturing, bidding guidelines for selection of projects provided a provision to mandate use of domestically produced solar modules in the first batch (150 MW) of projects, and that of solar cells and modules both in the second batch (350 MW). Since there was no significant base of manufacturing PV modules based on thin film technologies or concentrator PV cells, these were allowed to be sourced from other countries. Special treatment to domestic manufacturing was continued in phase II of NSM in the form of reserving capacity for domestic manufacturing with a provision to allow higher Viability Gap Funding (VGF) for these projects. It is in public record that many of these tenders did not have sufficient bids from the domestic industry and had to be re-bid time and again. This process of reserving capacities for projects based on domestic manufacturing, however, was curtailed after a WTO ruling¹. Even then, the government created a number of avenues for the promotion of domestic manufacturing through special schemes for CPSUs, defence sector and rooftop solar projects.
5. In June 2015, the Government of India scaled up the target of National Solar Mission from 20 GW to 100 GW to be achieved by 2022 and declared it as one of the important elements of the overall strategy to meet Intended Nationally Determined Contributions (INDCs) for the country. As of now, around 22 GW of installed solar power plant capacity has been achieved. The government at various levels, including at the level of Honourable Union Minister for Power and Renewable Energy, has announced the schedule of bids aimed at achieving the target capacity over the remaining four years. It implies that over 30 GW of solar power plant capacity could be bid out annually.
6. As per the Ministry of New and Renewable Energy (MNRE), the present manufacturing capacity of solar cells and solar modules is about 3.1 GW and 8.8 GW, respectively. The actual capacity utilisation for solar cells and solar modules, however, is 1.5 GW and 2.0-3.0 GW, respectively. The main reason for underutilisation of the installed manufacturing capacities is the inability of domestic manufacturers to compete with foreign manufacturers, believed to be due to lack of economies of scale, modern technology and higher cost of funds. Not having

¹ India — Certain Measures Relating to Solar Cells and Solar Modules , World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm, accessed on 17 July 2018

manufacturing capacity for poly-silicon and ingot/wafer in the country also contributed to the plight of solar manufacturers.

7. The recommendations from DGTR has given a number of justifications to levy safeguard duty, which include unforeseen developments as a result of which the increased imports occurred, serious injury and/or threat of serious injury to the domestic industry, adjustment plan and public interest. Taking cognisance of the facts mentioned in the previous paragraphs, it is hard not to have foreseen the emerging requirement of the solar modules. Considerable amount of opportunities have been provided to promote domestic manufacturing, and the impact is clearly noted even in the DGTR report. The aspect related to public interest would probably require to be further examined in view of the following:

a. Based on the financial model on the pattern of Central Electricity Regulatory Commission (CERC) with reduced rate of interest for debt, impact of the proposed safeguard duty @ 25% ad valorem could be about 15% of the Levelised Cost of Electricity (LCOE).



b. This will result in higher Average Power Purchase Cost (APPC) for the buying utilities and higher costs to the consumers.

c. In the above scenario, the solar tariff may become higher than the APPC in certain states, which buying utilities may not prefer, thus endangering the pace of growth of solar power and thereby achievement of the national target.

8. In the adjustment plan, domestic industry has relied on the strategy of long-term price negotiation with the major suppliers, which could be quite detrimental to the aim of improving competitiveness in view of unpredictable changes in the price structure of the raw material due to various geopolitical and global trade issues. It is opined very clearly in some of the responses to the DGTR that in the past similar long-term agreements may have been a reason for financial losses among domestic manufacturers.

9. Imposition of safeguard duty at this stage could be counterproductive as a large number of new tenders are already out and a large capacity of solar power is under installation wherein projects have been selected through reverse bidding. It is true that MNRE has issued a clarification on the clause w.r.t “Change in Law” in the bidding norms for solar projects whereby duties and cess have been included in the said clause. This would enable developers to claim pass-through of the impact to the buying utilities. However, determination of the impact on tariff is an independent regulatory exercise involving filing of petitions, public hearings and other legal steps, which takes its own time. Such uncertainties may result in investor confidence dropping, leading to higher financial costs and ultimately higher tariffs.
10. In view of India’s long-term energy security and also as a stated goal of the National Solar Mission, it is however agreed that domestic manufacturing capacity needs to be promoted strongly. The government has taken several steps in this regard. These include a recent tender by Solar Energy Corporation of India (SECI) linking allocation of power purchase agreements (PPAs) of solar projects with setting up the domestic manufacturing capacity. A special scheme to promote solar PV manufacturing has also been proposed in the near future. In its concept note², MNRE has stated the objective to create end-to-end solar PV manufacturing capacity in India through direct financial support and indirect support in the form of concessions.

INFERENCES

11. It is felt that levying of safeguard duties is a protectionist measure and may not help the domestic industry. The experience of the National Solar Mission has shown that the preferred treatment to domestic industry (viz. reservation of capacities, higher VGF) has neither been able to make the domestic industry competitive nor increase the manufacturing capacity base in India substantially.
12. Levying of safeguard duties would increase the cost of solar power, making it less attractive to buying utilities, thus jeopardising the pace of growth of development of solar power.
13. Rooftop solar systems have started gaining momentum due to falling PV prices and establishment of an eco-system that would be favourable to domestic manufacturers in view of their local presence and therefore assurances on quality through guarantees/ warrantees.
14. It is strongly suggested to expedite policy to boost end-to-end solar manufacturing in India in reasonable capacity.

² Concept Note on Solar PV Manufacturing Scheme, Ministry of New and Renewable Energy, <https://mnre.gov.in/file-manager/UserFiles/gspd-concept.pdf>, accessed on 17 July 2018