

## Solar Tariffs Threaten the Deployment of Solar in the U.S. and the Attainment of Clean Energy Goals

As the global ocean surface temperature reaches a new high and with a looming El Niño that will bring warmer temperatures, the world might breach the 1.5 degrees Celsius warming threshold that the Paris Climate Accord set to avoid.<sup>1</sup> The implications of surpassing this tipping point include amplified natural disasters, food shortages, and potential other severe climate related impacts.<sup>2</sup> By curbing the emissions that cause warming, clean energy may be an effective method to mitigate these looming effects.<sup>3</sup> The Biden Administration's target of 100 percent renewable power by 2035 involves rapidly increasing solar energy in the U.S.<sup>4</sup> Solar energy involves heavy imports from countries that have current manufacturing and mining capacity as the U.S. has little to none.<sup>5</sup> The solar energy outlook is positive; however, a recent proposed revival of a U.S. solar tariff could entirely derail climate goals and wreak havoc on the industry.

Allegations swirled in March of 2022 that Chinese companies were dodging a U.S. tariff on solar cells and modules by building them in Cambodia, Malaysia, Thailand, and Vietnam.<sup>6</sup> The Department of Commerce investigated this potential circumvention of tariffs after receiving a petition from a boutique solar manufacturer, Auxin Solar, which notably only produces around 150 MW annually.<sup>7</sup> The four countries under investigation supplied approximately 80 percent of U.S. solar imports in 2021.<sup>8</sup> In contrast to Auxin Solar, Chinese solar factories have production capacities in the 5-to-50-gigawatt range.<sup>9</sup> In 2022, WoodMackenzie found that the U.S. produces 7.5 gigawatts of PV modules out of 400 gigawatts globally.<sup>10</sup> Without these imported panels, utility-scale solar project development in the U.S. would stall.<sup>11</sup>

President Biden suspended the tariffs on the four Southeast Asian nations in question to support the solar industry's continued growth as U.S. manufacturing hopefully ramps up with

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<sup>1</sup> Laura Paddison & Rachel Ramirez, *The oceans just reached the hottest temperature on record as El Niño looms. Here are 6 things to watch for*, CNN (Apr. 1, 2023), <https://www.cnn.com/2023/04/01/world/el-nino-forecast-weather-climate-impacts/index.html>.

<sup>2</sup> *Id.*

<sup>3</sup> EXEC. OFF. OF THE PRESIDENT, FACT SHEET: PRESIDENT BIDEN TAKES BOLD EXECUTIVE ACTION TO SPUR DOMESTIC CLEAN ENERGY MANUFACTURING (2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/>.

<sup>4</sup> *Id.*

<sup>5</sup> Eric Wesoff, *Will the Biden administration let one company kill US solar?*, CANARY MEDIA (Apr. 25, 2022), <https://www.canarymedia.com/articles/solar/will-the-biden-administration-let-one-company-kill-us-solar>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Ryan Kennedy, *Solar tariffs caused a year of uncertainty could a US-based supply chain help?*, PV MAG. (Sept. 20, 2022), <https://pv-magazine-usa.com/2022/09/20/u-s-solar-tariffs-caused-a-year-of-uncertainty-the-nation-could-now-pivot-to-a-domestic-supply-chain/>.

<sup>9</sup> Wesoff, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

incentives from the Inflation Reduction Act and the invocation of the Defense Production Act.<sup>12</sup> When all was thought to be said and done, the Department of Commerce released a preliminary statement that Chinese manufacturers were in fact using countries to dodge U.S. tariffs.<sup>13</sup> Lawmakers against this circumvention introduced a resolution intended to reinstate the tariffs to overrule Biden's decision.<sup>14</sup>

The Congressional Review Act gives Congress 60 days to review and undo regulations from federal agencies.<sup>15</sup> A simple majority is needed in both chambers along with a signature from the president.<sup>16</sup> A bipartisan group of lawmakers is attempting to pass a resolution that would overturn the two-year waiver on solar tariffs.<sup>17</sup> Even if the House of Representatives and Senate passed the resolution, President Biden is expected to veto; it then could only be overturned by a two-thirds supermajority in both chambers.<sup>18</sup>

The group of lawmakers that is pushing for the reinstatement of a solar tariff argue that American corporations and the Chinese government are benefitting from the two-year waiver, with American workers and business being hurt in the process.<sup>19</sup> Lawmakers on this side are frustrated that foreign solar manufacturers are violating trade laws without punishment.<sup>20</sup> It is believed that American manufacturing should be instead encouraged and accelerated by reinstating the tariff.<sup>21</sup>

The Solar Energy Industries Association (SEIA), made up of 1,000 companies and other strategic partners, agrees that there needs to be reinvestment in American solar manufacturing, but that investment and the building of these factories takes time that the solar industry does not currently have.<sup>22</sup> The argument is that the solar industry should be allowed to continue to provide carbon-free electricity, jobs, and investments into local communities by securing panels abroad while an American manufacturing industry develops.<sup>23</sup> Representative Scott Peters from California added that the tariff will ultimately undermine the U.S.'s ability to compete with China by hampering solar deployment.<sup>24</sup>

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<sup>12</sup> EXEC. OFF. OF THE PRESIDENT, *supra* note 3.

<sup>13</sup> Eric Wesoff, *The threat of new US solar tariffs is back*, CANARY MEDIA (Apr. 3, 2023), <https://www.canarymedia.com/articles/solar/the-threat-of-new-us-solar-tariffs-is-back>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Maxine Joselow, *Inside the impending fight over solar tariffs on Capitol Hill*, WASH. POST (Mar. 17, 2023), <https://www.washingtonpost.com/politics/2023/03/17/inside-impending-fight-over-solar-tariffs-capitol-hill/>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *The High Cost of Tariffs*, SOLAR ENERGY INDUS. ASS'N (2023), <https://www.seia.org/research-resources/high-cost-tariffs>.

<sup>23</sup> *Id.*

<sup>24</sup> Joselow, *supra* note 19.

As the impacts of climate change continue to be felt, it is hard to see any reason to slow down the deployment of clean energy. American manufacturing is important and will be a necessary component in energy security for the United States. However, factories cannot be built overnight, and a potential delay in utility-scale solar installations would have major negative implications for the solar industry and climate goals – which would directly impact everyday human life.