

FOR IMMEDIATE RELEASE

Preliminary Injunction Granted Against U.S. Government in Solar Energy Tariff Case

Washington – December 6, 2019: The U.S. Court of International Trade has granted a preliminary injunction prohibiting the federal government, including U.S. Trade Representative Robert Lighthizer and Acting Commissioner of U.S. Customs and Border Protection Mark Morgan, from implementing the withdrawal of a tariff exclusion for bifacial solar panels without due process. The government’s withdrawal comes only months after the tariff exclusion had been put in place following an extensive notice-and-comment process.

Judge Gary S. Katzmann wrote in his December 5th decision that “the government must follow its own laws and procedures when it acts, and the court finds it likely that it did not do so in withdrawing the exclusion without adequate process.”

Crowell & Moring represented multiple clients in the case, including Invenergy Renewables LLC, Clearway Energy Group LLC, and AES Distributed Energy, Inc. in their fight against what they perceive is regulatory overreach and disregard for the Administrative Procedure Act, the Trade Act of 1974, and constitutional due process.

The court rejected all of the government’s arguments and adopted almost all of the arguments that the firm’s team put forth in briefs and at the hearing on both the jurisdictional and merits issues, providing multiple bases for its conclusions and thus making the injunction difficult to overturn on appeal. Previously, the firm’s team had secured a temporary restraining order that precluded the government from acting on the withdrawal, a rare outcome from the Court of International Trade. The court’s decision on December 5th came just before the TRO was set to expire on December 6th at 12:01 a.m.

The court found that our clients had suffered economic, business, and reputational injuries sufficient to establish both standing and irreparable harm. The decision is important because it will relieve clients from having to pay tens of millions of dollars to complete existing solar projects; it will allow them to qualify for the 30% “Safe Harbor” tax credit for solar projects by purchasing bifacial panels before the end of the year, when the 30% tax credit expires; and it will significantly increase the likelihood of their being able to secure favorable deals to import panels and complete new projects.

The Crowell & Moring team that secured this major victory was led by partners John Brew, Kathryn Clune, and Larry Eisenstat and included lawyers from across multiple practices and offices; Robert LaFrankie (senior counsel, DC), Frances Hadfield (counsel, NY), Amanda Shafer Berman (counsel, DC), Jacob Zambrzycki (counsel, NY), Leland Frost (associate, DC), Alexander Rosen (associate, NY), and Brian McGrath (associate, NY).

About Crowell & Moring LLP

Crowell & Moring LLP is an international law firm with more than 550 lawyers representing clients in litigation and arbitration, regulatory, and transactional matters. The firm is internationally recognized for its representation of Fortune 500 companies in high-stakes litigation, as well as its ongoing commitment to *pro bono* service and diversity. The firm has offices in Washington, D.C., New York, Los Angeles, San Francisco, Orange County, London, and Brussels.

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