

Solar Cell, Washing Machine Imports May Face Additional Duties and Quotas Under New Section 201 Cases

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In May 2017, the U.S. International Trade Commission (ITC) began examining two petitions filed under Section 201 of the Trade Act of 1974. Because it applies to imports of a product or products from all countries — as opposed to other forms of trade remedies that may be specific to particular countries — Section 201 is also known as the “global safeguards” provision of the U.S. trade laws.

The first of the new Section 201 cases was filed on April 26, 2017, by Suniva, Inc., a Georgia-based manufacturer of solar cells, against solar cell imports from all countries. SolarWorld Americas, Inc., another solar cell manufacturer based in Oregon, later joined with Suniva as a second petitioner. The second Section 201 case was filed on May 31, 2017, by Whirlpool Corporation against imports of residential washing machines from all countries. With the exception of a Section 201 petition on aluminum imports that was withdrawn soon after its filing in 2016, these are the first such global safeguards cases to be brought in well over a decade. These cases are further indication of the more expansive application of U.S. trade remedy laws under the Trump administration.¹

The ITC initiated its Section 201 investigation of solar cells in response to the Suniva and SolarWorld petition on May 17, 2017. Illustrating the rapid pace of a Section 201 case, the ITC is set to announce its initial determination on September 22, 2017. As part of that determination, the ITC must decide whether solar cells are being imported in such increased quantities as to be a “substantial cause of serious injury or the threat of serious injury” to the U.S. industry. This is a higher standard than the injury standard that is applied in anti-dumping and countervailing duty proceedings.

If the ITC reaches an affirmative injury determination, it will then prepare a recommendation to the president of an appropriate remedy — which can take the form of additional tariffs, quotas or a “tariff-rate quota” that imposes additional tariffs after imports exceed a certain predetermined level. The remedy recommendation can also include the provision of trade adjustment assistance to the U.S. industry and its workers.

If it finds injury in the solar cells case, the ITC will announce its remedy findings by November 13, 2017, after which the president can decide to impose tariffs, quotas or other remedies for an initial period of up to four years. Such remedies can later be extended for an additional four years following further ITC proceedings.

Companies wishing to participate in the Section 201 investigation of solar cells must enter their appearance at the ITC no later than June 22, 2017. Initial briefs in favor of or opposed to Section 201 relief are due by August 8, 2017, and a public hearing on injury will be held on August 15, 2017. The ITC will also issue questionnaires and gather additional information from foreign producers, importers, the U.S. industry and other interested parties. Questionnaire responses are likely to be due no later than mid-July 2017.

The ITC has not yet determined whether it will initiate an investigation of washing machine imports in response to Whirlpool’s petition. If it does, the investigation is likely to follow a similarly tight schedule, with a final recommendation on remedy likely to be submitted to the president as early as the end of 2017.

¹ See also, e.g., our April 24, 2017, client alert “[National Security Investigation of Imported Steel Could Be Prelude to Similar Actions Against Other Imports](#)”; our April 5, 2017, client alert “[Trump Administration Takes New Actions to Enforce Anti-Dumping and Countervailing Duties and Customs Laws](#)”; and our 2017 Insights article “[Significant Changes Likely for US Trade Policy and Enforcement](#).”

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Companies and investors in the solar cell and home appliance industries should closely monitor the development of the current Section 201 proceedings and engage with relevant stakeholders to advance and protect their interests. Companies in other industries that have been adversely impacted by a surge in imports may also wish to consider taking action under the provisions of Section 201.