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# Insights to the Trade Barrier on Solar Cells and Modules

*by Lance Brasher and Luke Meisner*

**ON JANUARY 22, 2018, U.S. TRADE REPRESENTATIVE** (USTR) Robert E. Lighthizer announced that President Donald Trump had decided to impose safeguard remedies, or temporary trade barriers, with respect to imports of crystalline silicon photovoltaic cells and modules — key components for solar panels. The president's decision follows a petition for remedies brought by the U.S. manufacturers Suniva, Inc. and SolarWorld Americas, Inc. in April 201,7 and subsequent recommendations by the International Trade Commission and the Office of the USTR.

Given the significant impact that these safeguard remedies will have on the market conditions for solar cells and modules in the U.S., stakeholders in the solar industry should be prepared to analyze and adjust to the remedies that will be imposed.

## Background

Section 201 of the Trade Act of 1974 authorizes the imposition of temporary trade barriers to protect U.S. industries that are injured — or threatened with serious injury — by increased imports. These safeguards are intended to protect the domestic industry by reducing the flow of global imports, thereby relieving pressure on U.S. producers, and giving them time to "make a positive adjustment to import competition." Unlike other trade remedies, safeguards do not require a finding that foreign producers and exporters have engaged in unfair trade practices. However, the level of injury experienced by the U.S. industry must be more significant.

Potential safeguard remedies that could be imposed include, but are not limited to, increased tariffs, quotas, tariff-rate quotas (TRQs), import licenses and international negotiations. While the president is required to consider recommendations for safeguards from the commission and USTR, he is not held to them and can choose other forms of remedies or decide not to impose any relief. Remedies are put in place for four years, with the possibility of an extension.

## The Solar Safeguards Case

According to data gathered by the commission, annual U.S. consumption of solar cells and modules in new solar power installations increased from 2.7 GW in 2012 to 13.5 GW in 2016 — a nearly 400 percent increase. Over the same period, the average price of solar cells and modules in the United States fell by roughly a third, due to both declining costs and competition from imports. In 2012, solar power represented 9 percent of all newly installed electricity-generating capacity in the United States. By 2016, that figure had grown to almost 40 percent, with more solar power capacity installed in 2016 than any other electricity generator, including natural gas, wind, and coal. Significantly, however, the vast majority of the increase in U.S. consumption of solar cells and modules has been supplied by lower-priced imports. In 2016, imports comprised over 95 percent of all solar cells and modules consumed in the United States.

In April 2017, based on these trends, Suniva and SolarWorld filed a petition with the International Trade Commission for

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safeguards regarding imports of solar cells and modules. The commission later determined that U.S. producers of solar cells and modules had been injured as a result of increased imports of such products into the United States. Three commissioners recommended, in a report to President Trump on November 13, 2017, that a TRQ with tariffs of up to 30 percent be applied to imports of solar cells, and that a flat-rate tariff of up to 35 percent be applied to imports of solar modules. A fourth commissioner recommended that imports be subject to a maximum quota of 8.9 GW, as well as a licensing system whereby each import license is auctioned at a minimum of $0.01/W.

The USTR then solicited comments from interested parties; it held a public hearing on the appropriate remedy that should be imposed, in order to make its own recommendation to the president. In addition, the USTR asked the commission for additional information regarding “any unforeseen developments that led to the articles at issue being imported into the United States in such increased quantities as to be a substantial cause of serious injury,” which has resulted in successful challenges of prior U.S. safeguards at the World Trade Organization. The commission issued a supplemental report on December 27, 2017, in which it stated that the “unforeseen developments” included the fact that “the government of China implemented a series of industrial policies, five-year plans, and other government support programs favoring renewable energy product manufacturing, including [solar cells and modules].”

On January 22, 2018, President Trump approved applying safeguard tariffs for the next four years, with the following terms: The remedies will include a tariff of 30 percent in the first year, 25 percent in the second year, 20 percent in the third year, and 15 percent in the fourth year. Additionally, the first 2.5 GW of imported solar cells will be exempt from the safeguard tariff in each of those four years.

## Implications

President Trump’s decision to impose safeguard tariffs will have a significant impact on the solar industry over the next several years. Some industry analysts have predicted that safeguard tariffs will result in a decrease in the consumption of solar cells and modules, and the cancellation or delay of planned solar projects during this time period. As a result, companies and investors should begin taking steps to reduce the impact on their businesses and, potentially, even take advantage of the changed market conditions. Key players in the solar industry should consider the following as a result of the remedies:

Because the first 2.5 GW of imported solar cells will be exempt from the safeguard tariffs, importers of solar cells may want to consider acting quickly to obtain products before the tariffs begin to apply.

Consumers are expected to face higher prices and potential supply shortages for solar cells and modules. This may lead them to re-evaluate the viability of their planned solar installation projects and perhaps cancel or delay projects. Consumers may wish to establish relationships with a diverse set of suppliers to ensure an adequate supply of panels, including manufacturers in the U.S. and in any countries excluded from the safeguards.

Investors and other sector participants may be presented with new opportunities - following increased prices and tightening supply conditions - that will likely be created in the U.S. market. The imposition of safeguard remedies may cause a spike in demand for U.S.-manufactured solar products and imports from excluded countries or for substitute products not subject to the safeguards, such as thin-film solar panels that do not use solar cells and modules, and are thus outside the scope of the Section 201 investigation.

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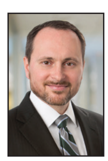

*Luke Meisner focuses his practice on advising clients in international trade litigation and policy. Mr. Meisner has significant experience litigating complex antidumping and countervailing duty cases. He has represented clients in matters before the U.S. Department of Commerce, the U.S. International Trade Commission, the Office of the U.S. Trade Representative, the Court of International Trade and the Court of Appeals for the Federal Circuit. In addition, Mr. Meisner regularly provides advice and policy recommendations on international trade developments in the executive branch and before Congress, especially with respect to bilateral trade issues between the United States and China. He also works with clients in transactional and compliance matters involving U.S. export controls, U.S. customs laws and regulations, and the Committee on Foreign Investment in the United States.*

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