

ALERTS

International Trade And Energy Law Alert - President Trump Imposes Safeguard Tariffs On Imports Of Solar Cells And Modules

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This week, at the request of U.S. solar cell manufacturers, President Trump issued a Presidential Proclamation, imposing safeguard tariffs on imports of solar cells and modules.(1) The tariffs take effect on Feb. 7, 2018. This is the first time in 17 years that the United States has imposed trade restrictions under Section 201 of the Trade Act of 1974.

The process began in May 2017, when two U.S. companies, SolarWorld Americas and Sunvina Inc., petitioned to have global safeguard tariffs levied on imports of solar cells and modules because these imports allegedly caused serious injury.(2)

The President agreed to enact a tariff-rate quota safeguard measure. First, he levied a 30 percent safeguard tariff on all imports of solar cells and modules for four years, phasing out 5 percent each successive year. By 2021, the last year of imposition, the tariffs bottom out at 15 percent.

President Trump's tariffs followed closely the recommendation of his Trade Representative and of the U.S. International Trade Commission, both of which rejected the 50 percent tariffs requested by the U.S. companies.

Second, the Proclamation also directed the imposition of a quota for solar cell imports. The quota exempts the first 2.5 gigawatts of imported solar cells from the annual tariff. This quota is constant for the four years of the safeguard tariff, and it will be allocated among all countries. Details regarding the quota allocation are anticipated by the end of January and will likely address quota certification requirements and "warehoused" products, if outside the U.S. Customs territory.

Most countries are covered by the safeguard tariffs. The only countries excluded from the tariffs are developing countries designated by the U.S. as "GSP-Eligible Beneficiaries." (3) In contrast, Canada, Mexico, South Korea and other countries signatory to a Free Trade Agreement with the United States, as well as key exporting countries such as China, Malaysia, Thailand and the Philippines, are all subject to the safeguard. Solar cells and modules from China are already covered by separate antidumping duty and countervailing duty tariffs.

The products covered by the safeguard tariffs are broadly defined. The covered products are described as crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (CSPV products), and include all of the following:

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- Solar cells and solar modules in subheading 8541.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS)
- Parts or subassemblies of solar cells provided for in subheadings 8501.31.80, 8501.61.00, and 8507.20.80 of the HTSUS
- Inverters or batteries with solar cells attached provided for in subheadings 8501.61.00 and 8507.20.80 of the HTSUS
- DC generators with solar cells attached provided for in subheading 8501.31.80 of the HTSUS

Certain limited products are excluded, including those described in the *ITC Notice of Institution*, 82 Fed. Reg. 25331 (June 1, 2017), and listed in Annex I to the Presidential Proclamation. For instance, the ITC's notice excluded (i) imports of thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS); and (ii) solar cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose functions is not power generation and that consumes the electricity generated by the integrated solar cell. Once published in the *Federal Register*, the Presidential Proclamation Annex I will reveal any further exclusions.

Subsequent product exclusions from the tariffs are possible. The President directed the U.S. Trade Representative to publish rules and procedures for companies to request product exclusions by Feb. 22, 2018. USTR will work with the Departments of Commerce and Energy before authorizing any additional product exclusions.

It is also worth noting that the safeguard tariffs will almost surely be subject to legal challenges. Indeed, the last time the United States invoked the Section 201 safeguard (in 2001, for imports of steel), the World Trade Organization struck the safeguard down as a violation of WTO rules.

The impact of the safeguard tariffs will certainly affect costs in the solar energy sector. An analysis based on GTM Research predicts that the safeguard tariffs will reduce U.S. solar installations by 11 percent over the next five years, with the most concentrated effect in the utility-scale solar segment.⁽⁴⁾

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1. See *Presidential Proclamation to Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells* (issued Jan. 23, 2018) available at <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-facilitate-positive-adjustment-competition-imports-certain-crystalline-silicon-photovoltaic-cells/>
2. See *Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into other Products)*, Inv. No. TA-201-75,

- USITC Pub. No. 4739 (Nov. 2017) available at https://usitc.gov/publications/safeguards/pub4739-vol_i.pdf and https://www.usitc.gov/publications/safeguards/pub4739-vol_ii.pdf; see also, USTR Press Release on the Solar Cell Safeguard (Jan. 22, 2018) is available at <https://ustr.gov/sites/default/files/files/Press/fs/201%20Cases%20Fact%20Sheet.pdf> and Fact Sheet available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/january/president-trump-approves-relief-us>.
3. USTR publishes a list of such countries, which is available at: <https://ustr.gov/sites/default/files/gsp/Beneficiary%20countries%20March%202017.pdf>.
 4. Axion Generate (Jan. 24, 2018).

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