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REPORT



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Victoria Prussen Spears

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Suniva Requests Global Safeguards for U.S. Solar Industry under Section 201

*By James McCall Smith, Victor D. Ban, Shara L. Aranoff,
and John K. Veroneau**

Suniva, Inc., a U.S.-based solar manufacturer recently filed a petition for global safeguards with the U.S. International Trade Commission requesting the imposition of tariffs on solar cells and the establishment of a minimum price for solar modules imported into the United States. The authors of this article discuss the petition and its implications.

The U.S.-based solar manufacturer Suniva, Inc., recently filed a petition for global safeguards with the U.S. International Trade Commission¹ (“ITC”). In particular, Suniva requests the imposition of tariffs on solar cells and the establishment of a minimum price for solar modules imported into the United States. The petition was filed under Section 201 of the Trade Act of 1974,² as amended, which authorizes global safeguards investigations, also known as “escape clause” investigations. Throughout the proceedings, affected parties will have multiple opportunities to submit their views not only to the ITC but also to the Trump Administration, which will have the final say on any relief recommended by the ITC.

THE SUNIVA PETITION

Suniva is a manufacturer of high-efficiency solar cells and panels based in Georgia, with production facilities in Georgia and Michigan. Earlier this year, Suniva laid off nearly 200 employees; in mid-April, it also filed for Chapter 11 bankruptcy protection. The company’s ITC petition claims that unless global safeguards are imposed, Suniva will be forced to shutter its remaining production operations permanently.

Suniva is filing its Section 201 petition against a backdrop of existing trade remedy measures in the solar industry. Specifically, the ITC and the U.S. Commerce Department previously imposed antidumping and countervailing

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¹ <https://www.usitc.gov/>.

² <https://legcounsel.house.gov/Comps/93-618.pdf>.

duties against solar cells and modules from China and Taiwan, and those tariffs remain in effect.

The Suniva petition goes beyond the existing antidumping and countervailing duty orders because the requested safeguards are not limited to imports from specific countries; rather, the remedies under Section 201, if granted, would be global in scope and would affect all solar cells and modules imported into the United States, regardless of origin. The scope of the petition is limited to crystalline silicon photovoltaic cells and modules; it expressly excludes competing thin film photovoltaic products. The petition also excludes modules, laminates, and panels produced in other countries using cells manufactured in the United States.

In terms of duration, Suniva asks the ITC to recommend that the President impose global safeguards for four years—the maximum statutory period. The requested relief is an initial duty rate on imported solar cells of \$0.40/watt, along with an initial minimum price on solar modules of \$0.78/watt. These initial rates would be reduced slightly over the course of the proposed four year schedule. Reports suggest that under current market conditions, the price of imported solar modules would roughly double if Suniva's request were granted.

SECTION 201 INVESTIGATIONS

In a Section 201 investigation, the ITC must determine whether an article is being imported “in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.” If the ITC issues an affirmative injury determination, it recommends a remedy to the President, who ultimately decides what remedy, if any, will be imposed.

The ITC is currently reviewing Suniva's petition to determine whether it was “properly filed” in accordance with its rules. By regulation, petitions must contain specific supporting information including import data, domestic production data, and data showing the alleged injury. Once this initial review is complete, the ITC will decide whether to institute the investigation and will publish a notice of its decision in the *Federal Register*.

If the ITC institutes an investigation, stakeholders will have various opportunities to present their views. Public hearings are held during the ITC's consideration of injury (or threat of injury) to the domestic industry and during any subsequent remedy phase. “All interested parties and consumers, including any association representing the interests of consumers,” may attend, present evidence, and cross-question other presenters at hearings.

The injury phase must be concluded within 120 days after the petition's filing, though the ITC has an extra 30 days to complete “extraordinarily

complicated” investigations. Then, in the event of an affirmative injury determination, the ITC submits a report to the President at the conclusion of the remedy phase containing its findings and recommendations. This report must be submitted within 180 days after the petition’s filing.

In determining what relief to provide, if any, the President must take into account the ITC report, the domestic industry’s efforts to make a positive adjustment to import competition, the economic and social costs and benefits of the proposed relief, U.S. economic and security interests, and other statutory factors. Additionally, an interagency trade group must make a recommendation to the President about any action to be taken. This interagency group—chaired by the U.S. Trade Representative and including the Secretaries of Commerce, State, Agriculture, Labor, and the Treasury—will request public comments following an affirmative injury determination by the ITC.

THE 2017 TRADE POLICY AGENDA

In his recently released 2017 Trade Policy Agenda,³ President Trump emphasized that the “safeguard” provisions of Section 201 “can be a vital tool for industries needing temporary relief from imports to become more competitive.” While it remains to be seen what actions the Administration may take in response to the results of the ITC’s Section 201 investigation, Suniva’s petition appears designed to capitalize upon the Administration’s stated interest in strictly enforcing U.S. trade remedy laws, strengthening the nation’s manufacturing base, and protecting against domestic job losses. Depending upon the outcome, the beneficiaries could include not only Suniva but also traditional energy sectors that compete with the solar industry.

³ [https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter](https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I---The%20Trade%20Policy%20Agenda.pdf)
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