



Shining a Light on the Solar Trade: Investigation Leads to Tariffs on Solar Energy- Related Imports (Part I)

Caitlain Devereaux Lewis
Legislative Attorney

January 26, 2018

On January 23, 2018, President Trump [proclaimed](#) a four-year safeguard measure in the form of a tariff-rate quota on imports of certain crystalline silicon photovoltaic (“CSPV”) products that enter the United States after midnight on February 7, 2018. (The President also [proclaimed](#) a three-year safeguard tariff-rate quota on imports of large residential washers the same day). A [tariff-rate quota](#) is a combination of two trade remedies—a tariff and a quota—whereby imports under a certain quota level volume are subject to one tariff rate, while a higher tariff rate is imposed on imports above that level. The [Proclamation](#) follows a [U.S. International Trade Commission](#) (“ITC” or “Commission”) safeguard investigation (“Solar Investigation”) conducted pursuant to [section 201 of the Trade Act of 1974](#). (For background on safeguard measures imposed under section 201, a type of trade remedy, see [this CRS report](#)). The imposition of these safeguards marks the first time such measures have been imposed since 2002, when President George W. Bush levied [safeguard duties on imports of certain steel products](#); these were ultimately lifted following an adverse ruling from the [World Trade Organization](#) (“WTO”) that resulted in the European Union’s announcement of [\\$2.2 billion in retaliatory tariffs on U.S. exports](#).

Part I of this two-part Sidebar provides background on section 201 safeguard investigations generally, while [Part II](#) specifically discusses the Solar Investigation that led to the new tariff-rate quota on CSPV products. [Part II](#) concludes with options for Congress moving forward.

Investigations under Section 201. The ITC, an [independent agency](#) with “broad investigative responsibilities on matters of trade,” is headed by six Commissioners—three from each political party—who are nominated by the President and confirmed by the Senate. (Currently, and during the pendency of the Solar Investigation, only [four Commissioners](#) are serving on the ITC due to two longstanding vacancies). Under [section 201 of the Trade Act of 1974](#), if the Commission determines “that an article is

Congressional Research Service

7-5700

www.crs.gov

LSB10065

being imported into the United States 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,” then the President “shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.”

To arrive at such a determination, the ITC [conducts an investigation](#) that ultimately results in a report to the President. During the first phase of an investigation under section 201—the injury determination—the ITC must consider whether “increased quantities” of a particular import is “a substantial cause of serious injury, or the threat thereof,” to the corresponding U.S. domestic industry. (For an overview of the domestic industry at issue in the Solar Investigation, see [this CRS report](#)). To reach an *affirmative* injury determination, the ITC [must find](#): (1) a particular article is being imported into the United States in “increased quantities”; (2) the domestic industry, as defined by the Commission according to statutory criteria, is seriously injured, or threatened by serious injury; and (3) the surge in imports is a “substantial cause” of the serious injury or threat thereof. If the ITC reaches an affirmative injury determination, it must then “[recommend the action that would address the serious injury](#), or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.” The [statute](#) “authorize[s] [the Commission] to recommend” any or all of the following “actions”:

- An increase in, or the imposition of, any duty on the imported article;
- A tariff-rate quota on the article;
- A modification or imposition of any quantitative restriction on the importation of the article;
- One or more appropriate adjustment measures, including the provision of trade adjustment assistance.

Further, if the Commission reaches an affirmative injury determination, several statutes that implement free trade agreements—such as the [North American Free Trade Agreement](#), the [U.S.-Dominican Republic-Central America Free Trade Agreement](#), and the [U.S.-Korea Free Trade Agreement](#)—require the ITC to make a number of additional country-specific findings. These findings may lead to the exemption of imports from specific countries from any trade action resulting from a safeguard investigation under section 201.

Upon completion of its investigation, the Trade Act of 1974 directs the Commission to submit a [report to the President](#) specifying its injury determination and, if the injury determination is affirmative, the ITC’s recommended “action that would address the serious injury, or threat thereof, to the domestic industry.” After the ITC submits a report with an affirmative injury determination, the [statute directs the President](#) to “take all appropriate and feasible action within his power.” The [statute](#) specifies that the President may proclaim any of the actions the ITC is authorized to recommend, as well as other non-trade remedies, such as entering trade negotiations with other countries and submitting legislative proposals to Congress. Cases involving the 2002 safeguard measures on certain steel imports suggest that the President has “broad latitude to determine the type of action to take.” In *Corus Group PLC. v. ITC*, for instance, the Federal Circuit described the Trade Act of 1974 as “provid[ing] an expansive, non-exclusive list of actions the President may take, including ‘any . . . action which may be taken by the President under the authority of law and which the President considers appropriate and feasible.’” Regardless of the action he selects, the President must [transmit his decision in writing](#) to Congress on the day of his decision.

For more on the section 201 safeguard investigation of CSPV products in particular, as well as options for Congress moving forward, proceed to [Part II](#) of this post.