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# IS THE SUN RISING ON SOLAR PROTECTIONISM?

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## INTRODUCTION

Suniva Inc.—a Chinese-owned, Atlanta-based and bankrupt solar firm—filed a petition in May 2017 with the International Trade Commission seeking import relief. Eventually joined in the petition by another bankrupt solar firm, the German-owned SolarWorld AG, Suniva asked the ITC to impose duties on solar cells imported into the United States.

Suniva's filing was made under Section 201 of the Trade Act of 1974, a rarely used but nevertheless powerful statute. Section 201 relief differs markedly from a standard antidumping or countervailing duty case, both of which target "unfair" trade practices and permit the federal government to apply tariffs or other restrictions to imports from one particular country or company. Suniva and SolarWorld seek what is known as a "global safeguard," which would apply to fairly traded imports from all countries.

In theory, safeguard relief under Section 201 is designed to provide a safety valve for domestic industries against a sudden surge of imports. However, given the extreme remedy they offer, Section 201 cases are rare and the standard to grant relief is higher than for antidumping or countervailing duty cases.

Under domestic law and the United States' commitments to the World Trade Organization's (WTO) Agreement on Safeguards,[1] safeguard petitioners must show that an increase in imports was a substantial cause of a serious injury to the domestic industry or that increased imports pose a "clearly imminent" threat. Further, in its interpretation of the agreement, the WTO added an additional requirement that the surge in imports must have been an "unforeseen development" before relief may be granted.[2]

The ITC is expected to run in the case this week. If it finds the petitioners suffered injury as a result of an increase in imports, it will propose remedies to President Donald Trump. The president, in consultation with the Office of the U.S. Trade Representative (USTR), has broad authority to make a final determination on the appropriate remedy.

The companies have requested initial duties of $0.40 per-watt and an initial minimum price of $0.78 per-module, both of which would gradually decline over the four years of requested relief. If Suniva and SolarWorld's requested tariffs and price floors are implemented, the price of solar products would roughly double,[3] leaving the United States with the highest-priced solar energy in the world.[4]

## RECENT HISTORY OF SAFEGUARD MEASURES

Given the extreme remedies offered by Section 201 safeguards –tariffs or other restrictions applying to a particular product imported from all countries– the statute is rarely used. Nevertheless, in its 2017 Trade Policy Agenda, President Trump's USTR called Section 201 safeguard proceedings a "vital tool for industries needing temporary relief from imports to become more competitive."[5] While that may be the goal of the statute, as recent safeguard cases have demonstrated, the practical reality is far different.

The last time the United States imposed safeguard restrictions under Section 201 was in 2002, when then-President George W. Bush acquiesced to the domestic steel industry's demands for stiffer tariffs on imported steel. The tariffs caused a spike in steel prices, with one analysis finding those higher prices led to nearly 200,000 job losses in the United States in 2002 alone, particularly in steel-consuming industries.[6] In the study's approximation, the tariffs led to approximately $4 billion in lost wages between February and November 2002.[7] It is worth noting that, at the time, domestic steel producers employed less than 200,000 Americans in total. In other words, the tariffs killed more jobs than could have been saved.

In response to the steel tariffs, the European Union, China, Japan and others challenged the steel safeguards at the WTO. After an adverse ruling against the United States in the WTO's dispute settlement body,[8] the Bush administration initially refused to withdraw its tariffs. It eventually relented fter the European Union threatened significant retaliatory tariffs. In short, the 2002 tariffs on steel both were an economic disaster and failed to achieve their stated purpose to revitalize the domestic steel industry.[9]

The 1980s was a heyday of Section 201 safeguard cases, the most prominent of which was one that involved imported motorcycles. In 1983, at Harley-Davidson's urging, President Ronald Reagan imposed tariffs of up to 45 percent on imported heavyweight motorcycles—a tenfold increase from existing tariffs—targeted at Japanese manufacturers. The move drew a swift rebuke from Japan, which threatened to challenge the action in Geneva under the General Agreement on Tariffs and Trade, the precursor to the WTO.[10] The tariffs lasted four years, the maximum permitted under Section 201, and were phased down slightly on a yearly basis.

The current USTR, Ambassador Robert Lighthizer, served as deputy USTR during the Reagan administration. He routinely cites the 1983 case as a successful Section 201 action that revitalized the domestic motorcycle industry. However, subsequent scholarship casts doubt on this claim.[11]

A 1986 Peterson Institute for International Economics study found that the motorcycle tariffs actually cost Americans $150,000 (measured in 1986 dollars) for each motorcycle manufacturing job saved in 1984.[12] In today's dollars, this would make the cost to American consumers more than $350,000 for every job saved. Contrary to Lighthizer's claims, the safeguards also failed to revive Harley-Davidson or the domestic motorcycle industry more generally. According to a recent study conducted by the Cato Institute's Scott Lincicome: "the tariffs played a very small role, if any, in Harley's resurgence."[13]

Given these prominent recent examples of the failures of Section 201 safeguard cases, the ITC, USTR and the White House should be exceedingly cautious in the Suniva case.

## IMPORT RESTRICTIONS, THE DOMESTIC SOLAR INDUSTRY AND ENERGY CONSUMERS

Over the last few years, the domestic solar industry has grown significantly. Some of this growth can be attributed to misguided federal tax preferences. However, much of it can be tied to a rapid decline in solar prices that have come from increased competition, both domestically and abroad. If the ITC and President Trump grant Suniva's request for tariffs of $0.40 per-watt and a minimum price floor of $0.78 per-module on solar products, there would be myriad negative consequences.

As solar prices have declined by more than 50 percent since 2011, solar deployment and output has increased. Between 2014 and 2017, solar's net electricity generation doubled.[14] Likewise, the industry added more than 50,000 jobs in 2016 and more than 260,000 Americans are now employed in the solar industry, including nearly 40,000 in domestic manufacturing.[15] The two companies at the center of this case employ fewer than 1,000 Americans, are both in bankruptcy and do not compete in the largest segment of the solar market.

Companies all over the country are extremely sensitive to price changes driven by import restrictions. Domestic solar companies are no different. If Suniva's requested relief is granted and the price of solar cells doubles, it is estimated that approximately 88,000 solar jobs are in jeopardy.[16] In addition to these job losses, downstream domestic manufacturers who use finished solar products or solar cells in their processes would face exponentially greater production costs and potentially crippling job losses of their own.

In addition to this unnecessary loss of employment, a large price shock from import restrictions to this nascent but growing market could upend solar deployment. If costs were to rise artificially, it would destabilize planned investments, rendering some projects economically inefficient overnight. As domestic supply chains are forced to readjust, costs would escalate further. In the long run, these costs would stunt solar deployment, as investment shifts to alternative energy technologies. This could have the counter-intuitive effect of outsourcing demand for solar products and propping up manufacturing in places like China. Likewise, consumers would face escalating energy bills.

Moreover, such actions would reverse positive steps the market already is taking. Over the next few years, the misguided domestic tax preferences for solar products are set to be phased downward. Such reductions were predicated on projected cost declines for solar products, which largely have materialized due to the solar market's mature and competitive supply chain. To grant the petitioners' request in this case would artificially infuse the market with massive price increases and likely trigger calls to delay or stop the planned phase-down. The result would be to further entrench an already-flawed subsidy regime that the administration has vowed to untangle.

## LEGAL CHALLENGES AND RETALIATION AGAINST U.S. EXPORTS

A general rule of thumb in trade policy is that whatever barriers a country imposes on its imports, it can expect in retaliation for its exports. Countries often retaliate by targeting politically sensitive products that may be completely unrelated to the restrictions imposed on the original import in question. This can serve to expand the number of industries that oppose the initial import restriction. This was demonstrated when the European Union threatened retaliation against American exports as a result of the Bush administration's steel safeguards. Because the United States exports little steel to Europe, the EU expanded its list of potential targets for retaliation to included textiles, Harley Davidson motorcycles and even orange juice.[17] The possibility of more widespread impact is ultimately what forced the administration to acquiesce.[18] In the case of the proposed Suniva safeguards, it is reasonable to assume that a similar series of events would place the current administration between an equally unfavorable rock and hard place.[19]

Additionally, it is highly likely that a decision by the ITC and President Trump to impose tariffs or other restrictions on imported solar products would be met with a legal challenge at the WTO, and possible retaliation by China, India and others who would be most affected. As with steel during the Bush administration, it is unlikely our trading partners affected by domestic import restrictions would threaten merely to withdraw concessions on American solar exports. Instead, they would likely expand the retaliation to unrelated industries. China, for instance, could threaten retaliation against soybeans, the largest U.S. export to that country.[20] Not only would this hurt domestic soybean farmers, it also would foment opposition to the solar restrictions by a large, politically powerful lobby.

## CONCLUSION

The history of Section 201 safeguard cases, coupled with the economics involved with Suniva's requested relief, clearly demonstrate that the ITC and the Trump administration should avoid imposing tariffs or other import restrictions on solar products. Artificially raising prices in this manner is a dubious legal proposition; one that triggers threats of retaliation from our trading partners, knocks us off the path to a subsidy-free future and has the potential to devastate a growing market—both in terms of domestic employment and clean-energy deployment.

Under global trade rules, a country can exempt a product from safeguard import measures from another country with which it has a free-trade agreement. If the ITC and the Trump administration insist on restricting imports in this case, they should consider this as an alternative strategy.


### ABOUT THE AUTHOR

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Clark joined R Street in May 2017 from the National Taxpayers Union, where he was counsel and government affairs manager, serving as the organization's point person on trade and financial services policy and providing legal counsel to the organization's senior officers.


## ENDNOTES

1. This was ratified by the United States with the passage of the Uruguay Round Agreements Act in 1994.

2. World Trade Organization, *Korea-Definitive Safeguard Measure on Imports of Certain Dairy Products: Report of the Panel*, WT, DS98/AB/R June 21, 1999. http://www.worldtradelaw.net/reports/wtopanelsfull/korea-dairysafeguards(panel)(full).pdf.download.

3. Joe Ryan and Jennifer A. Dlouthy, "This Case Could Upend America's $29 Billion Solar Industry," Bloomberg, June 15, 2017. https://www.bloomberg.com/news/articles/2017-06-15/this-case-could-upend-america-s-29-billion-solar-industry.

4. Stephen Lacey, "A Guide to the Latest Solar Trade Dispute: How Suniva's Petition Could Impact the US Solar Industry," Greentech Media, April 26, 2017. https://www.greentechmedia.com/articles/read/a-guide-to-the-latest-solar-trade-case.

5. Office of the United States Trade Representative, "The President's 2017 Trade Policy Agenda," 2017, 3. https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I%20-%20The%20President%27s%20Trade%20Policy%20Agenda.pdf.

6. Dr. Joseph Francois and Laura M. Baughman, "The Unintended Consequences of U.S. Steel Import Tariffs: A Quantification of the Impact During 2002," Trade Partnership Worldwide, LLC, Feb. 7, 2003, 15. http://www.tradepartnership.com/pdf_files/2002jobstudy.pdf.

7. Ibid, 12.

8. World Trade Organization, *United States-Definitive Safeguard Measures on Imports of Certain Steel Products: Report of the Panel*, WT/DS/AB/R, Nov. 10, 2003. https://www.wto.org/english/tratop_e/dispu_e/248_259_abr_e.pdf.

9. See, e.g., Scott Lincicome, "Doomed to Repeat It: The Long History of America's Protectionist Failures," The Cato Institute, August 2017. https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-819-updated.pdf.

10. Clyde H. Farnsworth, "U.S. Raises Tariff for Motorcycles," *New York Times*, April 2, 1983. http://www.nytimes.com/1983/04/02/business/us-raises-tariff-for-motorcycles.html?mcubz=3.

11. Ibid.

12. Gary Clyde Hufbauer, Diane T. Berliner, et al., "Trade Protection in the United States: 31 Case Studies," Peterson Institute for International Economics, June, 1986.

13. Lincicome, 17. https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-819-updated.pdf.

14. United States Energy Information Administration, "Electricity Data Browser: Net generation for all sectors, annual," 2016. https://www.eia.gov/electricity/data/browser/#/topic/0?agg=2,0,1&fuel=vtvv&geo=g&sec=g&linechart=ELEC.GEN.ALL-US-99.A-ELEC.GEN.COW-US-99.A-ELEC.GEN.NG-US-99.A-ELEC.GEN.NUC-US-99.A-ELEC.GEN.HYC-US-99.A-ELEC.GEN.WND-US-99.A-ELEC.GEN.TSN-US-99.A&columnchart=ELEC.GEN.ALL-US-99.A-ELEC.GEN.COW-US-99.A-ELEC.GEN.NG-US-99.A-ELEC.GEN.NUC-US-99.A-ELEC.GEN.HYC-US-99.A-ELEC.GEN.WND-US-99.A&map=ELEC.GEN.ALL-US-99.A&freq=A&ctype=linechart&ltype=pin&rtype=s&maptype=0&rse=0&pin=.

15. Solar Industries Energy Association, "Suniva Trade Case: Suniva's Solar Trade Case, The U.S. International Trade Commission, and the Solar Industry's View," June 15, 2017, pp.1, 2. https://www.seia.org/sites/default/files/Suniva-Trade-Case-Membership-Factsheet_SEIA_6-15-2017-final.pdf.

16. Ibid.

17. Cold Steel," *The Economist*, Nov. 13, 2003. http://www.economist.com/node/2206255.

18. Ibid.

19. In fact, this scenario is currently playing out with respect to steel. Under its powers enumerated in Section 232 of the Trade Expansion Act of 1962 and Article XXI of the GATT, the U.S. Commerce Department is currently investigating whether steel and aluminum imports jeopardize national security. Known as the "National Security Exception," this provision, "permits [WTO members] to impose trade restrictions for purposes of national security without obligating them to demonstrate their rationale conforms with some agreed definition of national security or national security threats." See, e.g., Daniel J. Ikenson, "The Danger of Invoking National Security to Rationalize Protectionism," China-US Focus, May 15, 2017. In the case of steel, the national security case is thin. But it is worth noting that Jean Claude Juncker, European Commission president, has said that the EU would retaliate against American exports if the Trump administration imposed import restrictions against steel. Though Juncker declined to offer specifics, officials assembled a "list of US goods including whiskey, orange juice and dairy products to target for retaliation. This would be a politically savvy move because it would create powerful domestic opponents to the steel tariffs. Senate Majority Leader Mitch McConnell represents Kentucky, the largest producer of American whiskey, and House Speaker Paul Ryan represents Wisconsin, a large dairy producer. See, Daniel Griswold, "Steeled for Politics: The Trump administration's steel protections won't help U.S. industry or security," *U.S. News and World Report*, June 26, 2017. https://www.usnews.com/opinion/economic-intelligence/articles/2017-06-26/donald-trumps-steel-protections-weaken-us-industry-and-security; and Shawn Donnan, "EU targets Kentucky bourbon in steel retaliation," *Financial Times*, July 7, 2017. https://www.ft.com/content/c7a1c0f4-6240-11e7-91a7-502f7ee26895.

20. Ben Baden, "What America Exports to China," China Business Review, May 15, 2013. https://www.chinabusinessreview.com/what-america-exports-to-china/.