

LEGAL UPDATES

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## Services

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# Suniva's Petition for Safeguards May Adversely Affect U.S. Purchasers of Solar Cells and Modules

On April 26, 2017, Suniva, Inc., a U.S. producer of crystalline silicon photovoltaic (CSPV) cells, filed a petition with the U.S. International Trade Commission (ITC) under Section 201 of the Trade Act of 1974 seeking relief from foreign manufactured CSPV cells and modules. Suniva requests relief in the form of an established minimum price for solar modules imported into the United States, and imposition of an additional four-year tariff on all imported CSPV cells and modules.

In particular, the requested relief calls for an initial tariff of \$0.40/watt per solar cell (to decrease annually over the course of four years to \$0.33/watt in year four), and a minimum floor price of \$0.78/watt per solar module (decreasing to \$0.68/watt in year four). If Suniva's request is granted, the price of imported CSPV cells and modules would nearly double.

A case under Section 201 is highly unusual, and does not require a finding of "unfair trade." Typically, unfair trade cases involve dumping (unfairly low prices), government subsidies, or intellectual property violations. In contrast, Section 201 cases require only that the ITC be convinced that imports of the subject merchandise have increased, or that U.S. producers are seriously injured or threatened with serious injury by those imports.

Section 201 cases have two main components:

1. 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."

2. If the ITC determines there is such serious injury, it recommends a remedy to the President of the United States, who conducts final review and makes the ultimate decision on remedy. The President may modify or agree with the ITC's remedy recommendation.

The proposed remedy may be seen as Suniva's "opening offer" and will not likely be adopted exactly as requested. Historically, the U.S. has been hesitant to impose minimum pricing standards as part of a remedy because, among other reasons, they are notoriously difficult to enforce.

### **What This Means to You**

The outcome of this case has ramifications that impact are likely to affect U.S. purchasers of solar cells and modules. Difficulties in estimating the cost of projects, problems in assessing the competitiveness of solar with other energy forms, and the disruption of established supply chains are matters of grave concern to many companies.

Purchasers of cells and modules have the opportunity to get involved and protect their interests. In our experience, the ITC listens carefully in Section 201 cases to the effects on purchasers and their industries, regarding both alleged injury and possible remedies. In previous cases, the White House also has been receptive to consideration of adverse effects on other industries. The ITC has not yet announced its hearing schedule, but a hearing sometime in late July 2017 seems likely based on schedules for past Section 201 cases. Thus, getting organized soon is a key to success for companies and other interested parties to wish to submit their views to the government.

### **Contact Us**

For more information on how this case may affect your business, please contact Jeffrey S. Neeley, a member of Husch Blackwell's International Trade & Supply Chain team; or John Crossley, Jim Goettsch or Cacki Jewart, members of Husch Blackwell's Energy & Natural Resources team.