

**U.S.- CHINA  
SAFEGUARDS  
MEASURE ON PV  
PRODUCTS  
DS 562/ PANEL 2021**

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**ITRN 603: Global Trade Relations**

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# BACKGROUND INFORMATION

- **January 2018**, President Trump announced that he would impose additional tariffs on imports of Crystalline Silicon Photovoltaic (CSPV) cells and modules.
- President Trump acted based on findings by the International Trade Commission (ITC) that found an **increase of U.S. imports of these products were a substantial cause of serious injury to U.S. Manufacturers.**
  - **Nov. 2017 ITC Report** on investigation under Section 201 of Trade Act 74' on CSPV.
- The MOFOM Trade Remedy and Investigation immediately stated: *“U.S. once again launched global safeguard measure investigation on imported photovoltaic products ... imposed stringent taxation. It is an abuse of trade remedy measures, and China expresses strong dissatisfaction with this”*

# CONTEXT OF U.S. ACTIONS ON FOREIGN IMPORTS:

## ITC Findings:

- 2012 to 2016, the volume of solar generation capacity installed annually in the United States more than tripled.
  - Spurred on by artificially low-priced solar cells and modules from China.
- Imports grew by approximately 500%, and prices dropped precipitously.
- Prices for solar cells and modules fell by 60 percent.

## The China Effect

- Chinese industrial planning focused on increasing its capacity and production of solar cells and modules.
- 2005 Renewable Energy Law
- By way of State-directed initiatives, China's share of global solar cell production saw a 54% increase in 7 years.

# U.S. SOLAR SAFEGUARD ACTION

## Safeguard Action

- Placed an annual tariff-rate quota (TRQ) of 2.5 gigawatts on solar cells.
  - Imports above that level will be assessed a 30% tariff.
- Additionally, placed a 30% tariff on solar modules.
- Applies to all countries *except certain developing country* WTO members.
- NAFTA partners Mexico and Canada were included in the safeguard.

## Terms of 4-year Safeguards:

	Year 1	Year 2	Year 3	Year 4
Safeguard Tariff on Modules and Cells	30%	25%	20%	15%
Cells Exempted from Tariff	2.5 gigawatts	2.5 gigawatts	2.5 gigawatts	2.5 gigawatts

# CONTESTED ISSUE OF U.S. LAW INVOLVED

- The reasoning behind the Administration's actions originated from investigations under **Section 201 of the Trade Act of 1974**.
- **Section 201 “Safeguard”** actions provide temporary import relief to facilitate positive adjustment of a U.S. industry to import competition.
  - **Positive adjustment.**
  - **Differs from other trade remedy tools.**
- Section 201 focuses on import surges of *fairly traded goods*.



# CHINA'S COMPLAINT

- **August 2018**, China requested consultations with the U.S. concerning the definitive safeguard measure imposed by the United States.
- China claimed that the new measures were inconsistent with Articles of the **GATT 1994** and Articles of the **Agreement of Safeguards**.
- **China's challenge focused on different aspects of ITC's report:**
  - Unforeseen developments / Effect of obligations incurred.
  - Casual Link between increased imports & serious injury.
  - Procedural and functional treatment of confidential information during investigation.

# SPECIFIC WTO AGREEMENTS INVOLVED- CLAIMED BY CHINA

- **Article XIX: 1(a) of GATT 94'**
  - “If, as a result of unforeseen developments and of the effect of the obligations incurred”
- **Articles 2.1, 3.1, and 4.2(b) of the Agreement on Safeguards**
  - The United States failed to establish the required "causal link" between the increased imports and the serious injury found to exist.
- **Articles 2.1, 3.1, and 4.2(b) of the Agreement on Safeguards**
  - The United States failed to ensure that injury caused by other factors was not attributed to increased imports.
- **Articles 3.1 and 3.2 of the Agreement on Safeguards**
  - United States provided non-confidential summaries to interested parties with such delay that the parties were not provided with an adequate opportunity to exercise their right to present a defense.

# U.S. & THIRD PARTIES POSITIONS

## Third Parties

- **The United States** argued that the intentional development of overcapacity in China after the imposition of the CSPV I and CSPV II orders demonstrates that China...
  - Was incorrect to argue that CSPV production "naturally" shifted to countries with lower duties and therefore would have been foreseen.
- **Therefore;** China's CSPV was not a natural growth but artificially spurred by Beijing's harmful government policies.
- **Thailand:** The safeguard measures substantially affected Thailand's exports of CSPV products to the US.
- **European Union:** As major exporter of CSPV, EU has substantial trade interest in the consultations.

# DS 562 WTO PROCEEDINGS

- **July 2019**, China requested the establishment of a Panel. At its meeting on 22 July 2019, the DSB deferred the establishment of a panel.
- **August 2019**, the DSB established a panel.
  - Brazil, Canada, the European Union, India, Japan, Korea, Malaysia, the Philippines, the Russian Federation and Chinese Taipei reserved their third-party rights.
- **October 2019**, China requested the Director-General to compose the panel... 10 days later DG composed the panel.
- **April 2020**, the Chair of the panel informed the DSB there would be delay and did not expect final report before end of year.
- **December 2020**, the Chair of the panel announced they are expected to issue its final report to the parties around the middle of 2021.
- **September 2021**, the panel report was circulated to Members.

# WTO DECISION & RECOMMENDATION

- **The panel rejected all of China's claims, finding that:**
  - China did not establish that the United States' safeguard measure on CSPV products failed to comply with the requirement in Article XIX:1(a) of the GATT 1994...
  - China did not establish that the United States acted inconsistently with Articles 2.1, 3.1, and 4.2(b) of the Agreement on Safeguards...
  - China did not establish that the United States acted inconsistently with Articles 3.1 and 3.2 of the Agreement on Safeguards ...
  - **Considering its rejection of China's claims**, the Panel made no recommendation to the DSB pursuant to Article 19.1 of the DSU.

WTO OMC

# AFTERMATH OF WTO PANEL DECISION

- **September 2021, China notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report.**

*“China regrets that currently no division of the Appellate Body can be established to hear this appeal in accordance with Article 17.1 of the DSU...”*



93d Congress }  
2d Session }

COMMITTEE PRINT

# TRADE ACT OF 1974

## SUMMARY OF THE PROVISIONS OF H.R. 10710

PREPARED BY THE STAFFS OF  
COMMITTEE ON FINANCE

OF THE

U.S. SENATE

AND

COMMITTEE ON WAYS AND MEANS

OF THE

U.S. HOUSE OF REPRESENTATIVES



DECEMBER 30, 1974

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# CONSISTENCY & RESULTS

- Section 201- Global Safeguards are in accordance with GATT Article XIX and WTO Safeguards Agreement.
- Criteria for import relief under section 201 are based on those in article XIX of the GATT, as further defined in the WTO Agreement on Safeguards.
- U.S. deployed more solar domestically in 2019 than 2018 (23% Increase).
- Congressional support for extension of Safeguards due to COVID-19 and cites ITC “an extension of less than 4-years would not appear sufficient for industry’s effort to adjust to competition by imports.”
  - Eliminate dependency on CCP.



# OBSERVATIONS

1. Trump Administration enacted 4-year safeguard measure through the proper investigations that were held by U.S. agencies.
2. China proclaimed that the U.S. overstated its authority and improperly characterized multiple WTO agreements.
3. WTO investigated thoroughly and found that Beijing's claims were false, or the case was not sufficient.
4. **Overall, this case represents the proper use of an international organization employing an independent investigation to come to an authentic finding.**
5. **Due to the Great Power Competition, they will replicate many cases soon on the WTO stage.**

# SOURCES

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