

ALERT

Wiley Rein International Trade Practice Wins Largest Trade Remedy Case Ever Against China: Commerce, ITC Rulings Conclude High-Profile Solar Trade Case

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On December 5, 2012, the United States International Trade Commission (ITC) issued its final report finding unanimously that imports of solar cells and modules from China have materially injured the domestic solar industry. This successfully concludes one of the largest trade cases ever filed against China and the first trade case concerning the renewable energy industry before the ITC.

Prior to the ITC's unanimous affirmative determination, the Department of Commerce (Commerce) published its final determination that found solar cell and module imports from China were being sold in the U.S. at dumped and subsidized prices. Commerce assigned antidumping (AD) duty margins of up to 249.96% of the value of the goods, and countervailing duty (CVD) margins of up to 15.97%. Accordingly, U.S. importers of record will be responsible for collective AD and CVD duties ranging from 24% to more than 255% of the entered value of the Chinese imports.

In 2011, U.S. imports of Chinese solar cells and modules reached more than \$2.8 billion, making this the largest trade remedy case ever filed against China. Chinese solar module imports increased more than 1,000% from 2009 to 2011, according to the ITC. The ITC's report confirms that these dumped and subsidized Chinese imports materially injured the domestic industry. In its report, the ITC found:

- "the picture emerges of a domestic industry: (1) with a steadily declining market share despite phenomenal demand growth,

Authors

Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law

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(2) that has lost market share due primarily to the significant and increasing volume of subject imports from China, (3) that has faced significant underselling by subject imports from China and depressed and suppressed prices, (4) that consistently lost money throughout the POI despite the tremendous demand growth and significant cost reductions, (5) that by the end of the POI experienced declines even in many of the performance indicators that previously had shown some improvement, and (6) that reported recognizing asset write-offs and/or costs related to the closure of production facilities, revalued inventories, and/or asset impairments. Based on the foregoing trends, we find that there is a causal nexus between subject imports and the poor condition of the domestic industry and that the domestic industry is materially injured by reason of subject imports.” [1]

Wiley Rein LLP represented Oregon-based SolarWorld Industries America Inc. and the Coalition for American Solar Manufacturing, a group of more than 225 companies and more than 18,000 workers, in the proceeding. Wiley Rein is one of the leading firms in trade remedies and import relief and has been recognized by *Chambers USA* for its impressive depth of expertise in trade remedies and policy matters (2012) and as home to “a superb trade remedies and trade policy practice . . . known in particular for its work on the petitioner side” (2011). In addition, *Law360* has named Wiley Rein’s International Trade Practice as “International Trade Group of the Year” the past two consecutive years. On behalf of clients in a variety of domestic industries, including steel and steel products, solar, wind towers, paper and chemicals, Wiley Rein has won significant antidumping and countervailing duty cases, including the most recent solar case. In the renewable energy field, Wiley Rein has also obtained preliminary affirmative determinations from the ITC and Commerce in the AD cases against Chinese and Vietnamese imports of utility scale wind towers, and the CVD case against Chinese imports of utility scale wind towers. Additionally, Wiley Rein has recently represented a U.S. industry coalition supporting the U.S. Trade Representative (USTR) in its successful World Trade Organization (WTO) challenge of China’s raw material export restrictions.

For more information on Wiley Rein’s International Trade Remedies Practice, contact Alan H. Price at 202.719.3375 or aprice@wiley.law or Timothy C. Brightbill at 202.719.3138 or tbrightbill@wiley.law.

[1] See *Crystalline Silicon Photovoltaic Cells and Modules from China*, Inv. Nos. 701-TA-431 and 731-TA-1190, USITC Pub. 4360 at 38 (Nov. 2012) (Final).