



Cheese and Bourbon Face Risk of Backlash From U.S. Solar Tariff

Joe Ryan

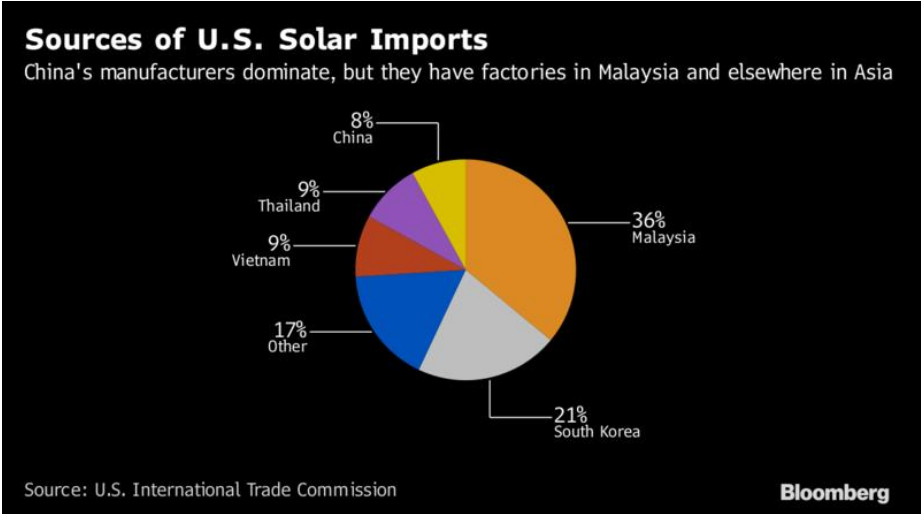
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If President Donald Trump imposes tariffs on solar panels, Wisconsin cheese and Kentucky whiskey may pay the price.

U.S. duties on imported solar equipment would almost certainly prompt challenges from China, South Korea and other nations at the World Trade Organization, trade lawyers say. That would open the door for retaliatory tariffs.

The dispute hinges on an obscure trade law that bankrupt panel manufacturer Suniva Inc. has invoked to ask Trump for protection against imports. The measure gives the president broad authority to levy tariffs, but the U.S. has lost every time the law has been challenged at the WTO. If it happens again and Trump won't yield, the WTO may grant other nations license to strike back with their own tariffs that hit U.S. lawmakers where it hurts.

“If we tell the WTO to shove it, China may target Kentucky bourbon and Wisconsin dairy, creating natural opponents to the tariffs in Mitch McConnell and Paul Ryan,” said Clark Packard, a trade policy analyst for the Washington free-market think tank R Street Institute. “There is a game element in the way this transpires.”



The threat of retaliatory tariffs came swiftly the last time the U.S. invoked this law, Section 201 of the Trade Act of 1974. It was in 2002 under President George W. Bush, and the duties targeted imported steel. The European Union, China, Japan and others filed challenges with the WTO, and the EU hit back with a \$2.2 billion list of duties on products including orange juice from Florida, where the president's brother Jeb Bush was governor.

Other targeted products were economic linchpins in swing states, including Harley-Davidson Inc. motorcycles from Wisconsin, North Carolina textiles and steel from Pennsylvania and West Virginia. Bush lifted the steel tariffs in 2003, days before the retaliatory measures were to take effect.

The prospect of a trade backlash complicates the matter for Trump, who has until mid-January to decide whether to impose solar tariffs.

“If there's retaliation against other industries in the U.S., it is going to turn the heat on the president,” said Dan Ikenson, director of the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute in Washington. “It will come down to the question of where are more jobs at stake.”

Protracted Process

It could be years before Suniva's trade complaint leads to eye-for-an-eye tariffs sanctioned by the WTO, a Geneva, Switzerland, based intergovernmental organization founded in 1995 to regulate international trade.

Suniva, based in Georgia, filed its case in April, arguing it had been crippled by a flood of cheap imported panels from Asia and elsewhere. The U.S. International Trade Commission voted last month to recommend that Trump impose tariffs of as much as 35 percent on imported panels. The president has the final say on the size, scope and duration of any duties.

Once tariffs are in place, it may take 18 months for any challenges to wend through the WTO's dispute resolution process, said Gary Hufbauer, a senior fellow at the Peterson Institute for International Economics. If the U.S. loses, it would have an opportunity to appeal before the WTO approves retaliatory tariffs.

If the past is any precedent, the White House will have a tough time winning. The law invoked by Suniva has been used at least six times in the last 20 years to levy tariffs or quotas on corn brooms, lamb, wheat gluten and other imports. The WTO has sided against Washington in every case.

Suniva spokesman Mark Paustenbach declined to discuss the issue.

“We're not going to speculate,” he said. “The facts of this case are clear, the ITC ruled decisively that American solar manufacturers suffered significant injury.”

'Broken' Statute

One key issue is that the U.S. law to protect domestic industries from surging imports is inconsistent with America's obligations to the WTO, trade analysts said. For instance, to win at the WTO, a company must show it was blindsided by foreign competition that could not have been reasonably foreseen; the U.S. law does not. Another issue is that the WTO requires companies to quantify how much imports hampered a industry compared to other factors.

“The U.S. safeguard statute is broken,” said Lewis Leibowitz, a Washington-based trade and customs lawyer. “The U.S. is very likely to lose any case involving it in the WTO.”