



INSIGHT

Solar Tariff CRA Resolution: Evidence of a Failed Approach to Trade and Climate Policy

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Executive Summary

- On May 3, the Senate approved a House Joint Resolution using the Congressional Review Act (CRA) to reverse President Biden's pause of antidumping and countervailing duties on solar products from Cambodia, Malaysia, Thailand, and Vietnam after these imports were found to circumvent tariffs on the same imports from China.
- President Biden is expected to prioritize his climate agenda in this case by vetoing the CRA resolution to shield these solar products from the tariffs until 2024; the episode demonstrates the tension between Congress and the administration on trade policy, especially regarding trade enforcement on products from China that are considered essential by the administration for its climate agenda.
- This insight presents policy avenues for Congress and the administration to ensure effective trade enforcement in the case of solar products, as well as create an environment for both conventional and renewable energy sources to compete and flourish in the United States.

Introduction

On May 3, the Senate passed House Joint Resolution 39, which uses the Congressional Review Act to disapprove a Department of Commerce (DOC) rule pausing antidumping and countervailing duties on solar product imports from Cambodia, Malaysia, Thailand, and Vietnam (CMTV). DOC initially determined that tariffs were necessary because it found that solar product imports from these countries circumvented duties on similar products from China.

Congress and the administration agree on the necessity of trade enforcement but disagree on these tariffs specifically. Many in Congress view imposing tariffs on solar products from CMTV countries as essential to enforcing trade rules and addressing Chinese trade abuses. Other members view implementing these tariffs as an additional tool to target China's solar industry, which has been found to use forced labor. The administration ostensibly views solar product imports as essential to advance its climate objectives.

The two branches are at odds with how to thread the needle on trade and climate objectives. Yet it is possible to have effective trade enforcement while allowing for greater trade in solar products. This insight presents options for how Congress and the administration can pursue both objectives simultaneously.

Background

DOC initiated an [investigation](#) into imports of solar cells, modules, laminates, and panels (solar products) from CMTV countries in April 2022, following a petition from Auxin Solar, a small California-based solar panel manufacturer. The petition claimed that imports from these four countries were circumventing antidumping and countervailing duties on solar products from China, which have been in place since 2012. In December 2022, the DOC issued a preliminary decision in this case, finding that companies in the CMTV countries were evading the duties and subjected these imports to [tariffs](#) of up to 250 percent, retroactively and for future imports.

In June 2022, President Biden issued an [executive order](#) that delayed the application of antidumping and countervailing duties on solar product imports from the CMTV countries for two years "to promote the expansion of domestic solar manufacturing capacity, including our capacity to manufacture modules and other inputs in the solar supply chain." DOC issued a [final rule](#) incorporating the president's executive order in September 2022, which went into effect on November 15, 2022.

Trade Enforcement and Climate in Conflict

While the Biden Administration's approach to trade policy has been widely criticized, one area of agreement with Congress has been trade enforcement. Yet the administration's adherence to enforcing trade agreements has waned when it conflicts with its climate change agenda. Members from both sides of the aisle strongly [criticized](#) the president for intervening in this case of antidumping and countervailing duty circumvention. Some objected on the grounds of the United States' economic competition with China and broader concerns with China running afoul of trade rules. Others emphasized the connection between China's solar industry and forced labor in Xinjiang.

These duties are not the only instance of disagreement on trade and climate policies between Congress and the administration. The clean vehicle tax credits in the Inflation Reduction Act attempt to incentivize consumers to purchase electric vehicles, but Congress' attached [domestic content restrictions](#) for vehicles to qualify for the credit will make these vehicles more expensive and unlikely to qualify for the credits. The administration

responded by proposing a rule that would loosely interpret those requirements, although members have [objected](#) to their interpretation.

Threading the Needle on the Two Policies

With the passage of this resolution, Congress has signaled to the administration not only that it disapproves of the president's move to pause circumvention tariffs, but has also communicated disagreement with the administration on how to best thread the needle between trade policy and climate policy. The administration is, in turn, using executive power to interfere with agency processes and regulations set forth by Congress. A cohesive, market-driven strategy to carry out both federal climate policy as well as trade policy is sorely needed. Without one, Congress and the administration will continue to counteract each other's actions, leaving consumers to foot the bill for the additional layers of bureaucracy and tariffs.

To enforce U.S. trade laws while promoting competition in the energy market (for conventional and renewable energy), the administration should consider working with Congress to do the following:

- *Eliminate Section 201 solar tariffs.* In 2018, the Trump Administration imposed [“safeguard” tariffs](#) of up to 30 percent on imports of solar products from nearly all countries.¹ The Biden Administration continued these tariffs in February 2022. These tariffs were levied to foster the development of the domestic solar industry, but that has not occurred. Instead, the tariffs prevent Americans from accessing solar products from a variety of suppliers, not just China. These tariffs are too broad and ultimately counterproductive to the administration's goals of promoting cleaner energy.
- *Enforce the Uyghur Forced Labor Prevention Act (UFLPA) and Section 307 of the Tariff Act of 1930.* A significant portion of global solar product (and input) manufacturing takes place in the Xinjiang region of China, where the United States has determined that atrocities, including forced labor, are occurring. Congress passed the [UFLPA](#) to equip Customs and Border Protection with additional tools to target goods made with forced labor in Xinjiang. The administration should enforce the UFLPA, as well as continue to enforce Section 307 of the Tariff Act of 1930, which prohibits goods made with forced labor from entering the United States.
- *Create a domestic environment for energy competition.* The solar industry is one of the [most heavily subsidized](#) producers of energy in the United States. Despite countless tax credits, grants, loan programs, and other incentives, the manufacturing side of the industry is still nascent. [Eliminating subsidies](#) for energy in general would allow the various sources to compete and flourish. Moreover, allowing for [mining and processing of rare earth minerals](#) in the United States, with

¹ <https://www.dailysignal.com/2017/09/25/itc-wants-shield-select-solar-companies-thankfully-trump-can-reverse/>; <https://www.heritage.org/trade/report/us-solar-energy-sector-threatened-government-proposal-jack-prices>

appropriate science-based environmental safeguards, would help to increase access to essential components for solar product manufacturing.