

Wiley Rein Helps Secure Favorable Federal Circuit Ruling in Solar Panel Import Case, Upholding Customs' Authority to Enforce Tariffs Prior to Scope Inquiries

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Washington, DC – On behalf of client SolarWorld Americas, Inc., Wiley Rein helped secure a favorable decision yesterday from the U.S. Court of Appeals for the Federal Circuit (CAFC) in a dispute over the authority of U.S. Customs and Border Protection to enforce tariffs at the border on certain imports.

The unanimous en banc ruling, in *Sunprime Inc. v. United States*, overturned last year's decision by a three-judge Federal Circuit panel that limited Customs' enforcement power regarding goods that are subject to "ambiguous" duty orders. Wiley Rein represents SolarWorld as defendant-intervenor in the case, which involves tariffs SolarWorld had sought – and the U.S. levied beginning in 2012 – on Chinese solar imports.

A California solar company, Sunprime, had been importing Chinese solar modules that Customs had determined fell within the scope of antidumping (AD) and countervailing (CVD) duties set by the U.S. Department of Commerce. In the process of challenging whether the duties should be imposed, Sunprime filed suit at the U.S. Court of International Trade (CIT), which ruled in 2016 that Commerce had unlawfully instructed CPB to suspend liquidation of imports that

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entered the United States prior to initiation of the scope inquiry.

Both Sunpreme and the U.S. government appealed to the Federal Circuit, whose three-judge panel ruled in May 2019 that Commerce could only instruct the CBP to suspend liquidation of Sunpreme's imports as of the date that Commerce initiated the scope inquiry, but not before. As a result, the United States petitioned for an en banc rehearing of its cross appeal to determine whether it is within Customs' authority to preliminarily suspend liquidation of goods based on an ambiguous AD or CVD duty order. The full Federal Circuit concluded yesterday that it is within Customs' authority.

In its opinion, the court determined that "Customs is both empowered and obligated to determine in the first instance whether goods are subject to existing antidumping or countervailing duty orders. While Customs may not expand or alter the scope of such orders, its authority and responsibility to determine whether they apply does not dissipate simply because an order lacks perfect clarity."

The court further concluded: "Contrary to the CIT's conclusion, Customs' yes-or-no answer to whether an order applies does not invade the interpretive province of Commerce. Any other result would significantly limit Customs' ability to perform its statutory role and would encourage gamesmanship by importers hoping to receive the type of windfall that Sunpreme seeks here."

SolarWorld is represented by Timothy C. Brightbill, partner in Wiley Rein's International Trade Practice, along with partners Laura El-Sabaawi and Maureen E. Thorson, and of counsel Tessa Capeloto.

A link to the decision can be found [here](#). *Law360's* coverage of yesterday's ruling can be found [here](#).