

SHEDDING ANY NEW LIGHT? THE WTO'S LATEST RULING IN THE US-CHINA SOLAR BATTLE

*Meng (Mandy) Fang**

ABSTRACT

The World Trade Organization (hereinafter “WTO”) panel report in United States — Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products (hereinafter “US — Safeguard Measure on PV Products”) could have far-reaching implications on the future of WTO jurisprudence and the interface between climate-related values and trade-related ones. For the first time, a panel determined that a Member’s imposition of a global safeguard was consistent with the WTO rules governing the safeguard regime.

A review of the panel decisions in US — Safeguard Measure on PV Product raises a few questions: Does the departure from the seemingly unfulfillable requirements established in the previous jurisprudence solve “the safeguards mess”? Has the panel provided guidance for Members seeking compliance with the regulatory

* Dr. Meng (Mandy) Fang joined City University of Hong Kong (City U) School of Law as Assistant Professor in July 2020. Dr. Fang held post-doctoral fellowships at the Chinese University of Hong Kong (CUHK) and National University of Singapore. She obtained her PhD from CUHK, her LLM from University College London, and Bachelor of Management and Bachelor of Laws degrees from Chongqing University. Her research interests include International Economic Law, World Trade Organization Law, Energy Law and Chinese Environmental Law. Her publications include peer-reviewed articles in various journals such as *Leiden Journal of International Law*, *Journal of World Trade*, and *Journal of World Investment and Trade*. The paper was presented at the 7th Asian International Economic Law Network (AIELN) conference (Singapore Management University, 9 December 2021). The author would like to thank participants for the helpful comments received during the conference. All errors remain her own. The author can be reached at: mengfang@cityu.edu.hk.

requirements for the application of a safeguard measure? Why did the panel deviate from the previous jurisprudence and halt the string of adverse rulings against Member's seeking to defend the application of safeguards? Will the panel's legitimization of safeguards protection open the floodgate to a new wave of protectionism?

In answering these questions, this article argues the panel's rulings in US — Safeguard Measure on PV Products fail to establish a sound legal framework disciplining the use of safeguard measures. Furthermore, the article argues that the panel decision does not provide much-needed interpretive guidance on the key issues of safeguard measures that have remained ambiguous or even controversial, such as causal link and non-attribution requirement. More broadly, at a time when the world is racing to mitigate climate change, lowering the thresholds for the invocation of safeguards will likely be hijacked by trade protectionists and hinder the diffusion of climate-friendly technologies. In a post-pandemic era marked by rising protectionism, it is crucial that the WTO and its Dispute Settlement Body strike a delicate balance between respecting Member's policy autonomy to use safeguards in a WTO-consistent manner and preventing such measures from being abused and jeopardizing environmental sustainability interests.

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