



June 2022

## **Biden Uses Emergency Powers to Pause New Solar Import Tariffs—Frequently Asked Questions**

On June 6, 2022, President Biden issued the Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia ([emergency declaration](#)), which provides for the importation of solar panels and cells from Cambodia, Malaysia, Thailand, and Vietnam free of certain duties for a two-year period to ensure “the United States has access to a sufficient supply of solar modules to assist in meeting our electricity generation needs.” The declaration authorizes the secretary of commerce to issue regulations to specifically allow for the importation of solar cells and modules from those four countries without the imposition of any antidumping or countervailing duties.

Following are frequently asked questions as a result of Biden’s declaration:

- *Can the president’s authority be challenged?* The emergency declaration, which was issued pursuant to the little-used 19 USC Section 1318(a) of the Tariff Act of 1930, may be challenged as beyond the executive reach; however, it may be difficult to override the president’s use of emergency authority.
- *How does the emergency declaration affect the Auxin Investigation?* The Commerce Department’s anti-circumvention proceeding will continue, and a preliminary determination is expected at the end of August 2022.

- *Does the emergency declaration eliminate the risk of retroactive tariffs?* No retroactive tariffs will be imposed on modules and cells imported from Cambodia, Malaysia, Thailand, and Vietnam during the suspension period: June 6, 2022-June 5, 2024. The suspension period may end sooner should the commerce secretary declare “the emergency...has terminated.”
- *Will Commerce be issuing regulations?* Commerce is anticipated to issue regulations to provide additional clarity on the question of retroactive tariffs between April 1, 2022, the date of the investigation, and June 6, 2022, the date of the announcement, should Commerce make an affirmative preliminary determination.
- *How will the determination in the Auxin case apply?* Once Commerce has reached a final determination in early 2023 and the suspension period is over, the Commerce decision will apply to imports of cells and modules from those countries.
- *Does the emergency declaration protect against new tariffs?* The president’s declaration states that no new antidumping or countervailing duties on solar panels and cells from Cambodia, Malaysia, Thailand and Vietnam will be imposed during the emergency period, including should another petitioner bring a second circumvention case. However, existing Section 201 tariffs on solar products, in place since 2018, remain in effect.
- *Does the emergency declaration cover Chinese and Taiwanese imports?* Antidumping duties also remain in effect on Chinese and Taiwanese imports of solar cells and modules.
- *Does the emergency declaration cover Section 301 duties?* Section 301 duties remain in effect on certain solar products of China.
- *Does the emergency declaration cover the Uyghur Forced Labor Act?* Biden’s announcement does not impact the Uyghur Forced Labor Act, which takes effect June 21, 2022. Importers of cells and modules should be aware that there will be increased enforcement by U.S. Customs and Border Protection, and silicon products are considered high-risk for forced labor in the supply chain. For more information, see [GT Alert, Fourth Update on Forced Labor for Imported Products](#).

## Authors

This GT Alert was prepared by:

- [Jeffrey A. Chester](#) | +1 310.586.7743 | [chesterj@gtlaw.com](mailto:chesterj@gtlaw.com)
- [John Eliason](#) | +1 202.331.3188 | [eliasonj@gtlaw.com](mailto:eliasonj@gtlaw.com)
- [Laura Siegel Rabinowitz](#) | +1 212.801.9201 | [rabinowitzl@gtlaw.com](mailto:rabinowitzl@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>~</sup>Houston. Las Vegas. London. <sup>\*</sup>Long Island. Los Angeles. Mexico City. <sup>+</sup>Miami. Milan. <sup>»</sup>Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul. <sup>∞</sup>Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup>Tokyo. <sup>\*</sup>Warsaw. <sup>~</sup>Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer’s legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>~</sup>Greenberg Traurig’s Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>+</sup>Greenberg Traurig’s Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>»</sup>Greenberg Traurig’s*

*Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*