

Rare Tariff Authority May Boost US Battery Manufacturing

By **Lidiya Mishchenko and Jennifer Fischell** (December 1, 2025, 4:42 PM EST)

The U.S. Department of Commerce and the International Trade Commission are poised to finalize tariffs on important components of lithium-ion batteries — with potentially significant effects on energy-storage pricing.

The agencies have already imposed preliminary tariffs on these components, invoking a rarely used statutory authority meant to assist in promoting fledgling areas of American manufacturing. Although the government shutdown introduced some uncertainty as to the timeline for finalizing these tariffs, the schedule should be reset any day now — likely for early 2026.[1]



Lidiya Mishchenko

Preliminary Findings Permitting Tariffs on Lithium-Ion Components

Under the Tariff Act of 1930, the Department of Commerce and the ITC are responsible for investigating and deciding whether certain duties or tariffs should be imposed on imported goods. One such duty is a countervailing duty, aimed at offsetting foreign-government efforts to subsidize certain products.[2] Another is an antidumping duty, aimed at goods that are being, or likely to be, sold into the U.S. at less than fair value.[3]



Jennifer Fischell

To decide whether to impose such duties, the Department of Commerce investigates whether dumping and subsidizing has occurred and determines the amount of the duty. The ITC, meanwhile, determines whether a domestic industry, or the establishment thereof, is injured by such practices.

If both agencies agree that duties are warranted, the Department of Commerce can impose tariffs to offset the dumping or foreign subsidies.[4]

On Dec. 18, 2024, a number of domestic lithium-ion battery producers filed a complaint with both the Department of Commerce and the ITC, alleging that China subsidizes and dumps — i.e., allows for sales below market value in the U.S. — a key component of rechargeable batteries: the active anode material.[5]

As described by the ITC in its preliminary findings addressing the complaint, released Feb. 25, active anode material is graphite within the anode of a lithium-ion battery that "releases and receives lithium ions during successive cycles of battery discharge and recharge." [6] It thus plays a key role in many important energy-storage applications, including electric vehicles, energy storage systems, and other

consumer, commercial, industrial and military electronic products.

In its findings, the ITC invoked its authority under the Tariff Act of 1930 to protect nascent industries in the U.S.[7] In particular, the ITC addressed (1) whether "domestic industry is not yet established" and (2) whether cheaper imports from China have hampered the establishment of an active-anode-material industry domestically — both of which are required elements for invoking its authority.[8]

The ITC preliminarily found both requirements satisfied.

Following up on the ITC's preliminary findings, the Department of Commerce promulgated preliminary findings of its own. In May and July, the Commerce Department imposed various preliminary duties to account for China's detrimental importation practices.[9]

Important Final Determinations on the Horizon

A final determination of whether to impose tariffs on active anode materials will have important legal and practical implications.

Legally, it could open the door to other complaints asking the ITC and the Commerce Department to impose tariffs.

The ITC has only rarely confronted whether the establishment of a nascent domestic industry has been hampered by foreign dumping or subsidies — and it has found that condition satisfied even less often.[10] In just six prior investigations, the agency found the injury requirement satisfied three times, most recently — before this case — in 1991.[11]

Practically, expanding uses of that power could have serious consequences for American consumers, the energy industry and the environment. Tariffs raise prices. Raising prices could create disincentives for the use of clean energy solutions by, for example, raising the costs of electric vehicles.

That said, if the ITC is to be believed, these tariffs could also provide a unique opportunity for U.S. manufacturers to finally enter the competitive market for active anode materials.

In a preliminary decision, the ITC observed that scaling up manufacturing of active anode materials is critical to success. It found evidence, however, that manufacturers are trapped in a loop with purchasers.

The preliminary decision noted that battery purchasers — like Tesla and Panasonic — look for manufacturers who can produce at scale, long-term, before they agree to large battery orders.[12] But without such large purchase agreements, those same manufacturers have trouble getting the funding they need to scale up their production in the first place.[13]

The ITC preliminarily concluded that "the dominant presence" of China's cheap active anode imports has contributed to the difficulties of establishing this domestic industry by decreasing the urgency purchasers feel in establishing relationships with domestic manufacturers and by discouraging other investors.[14]

Assuming the tariffs become final, they will also interact with other government strategies aimed at promoting domestic battery manufacturing. Although recent legislation cancelled the Biden-era EV tax

write-off — meant to foster manufacturing — some tax credits for battery-manufacturing facilities still remain.[15]

And the current administration is still providing other forms of financial assistance to manufacturers.[16] Will any new tariffs — either general or narrowly tailored — accompanied by these other incentives be enough to help cultivate U.S. rechargeable battery manufacturing?

Answers are likely to emerge in the new year. The ITC and the Commerce Department will consider whether to finalize its determinations soon. They were originally scheduled to make those determinations in early December, but the government shutdown delayed matters for both agencies.

Now that the government has reopened, the agencies should move quickly to finalize these investigations. It seems likely that by early 2026 — for the first time in 35 years — final tariffs could be in place based on a finding that the establishment of a nascent domestic industry was hampered by foreign dumping or subsidies.[17]

Just because the tariffs are likely to become final before the agencies does not mean it's the end of the road. Parties may still challenge the tariffs in the federal courts — and important tariff challenges can make their way all the way up to the U.S. Supreme Court, as the ongoing cases addressing the International Emergency Economic Powers Act tariffs show.

Any such challenges will take time to resolve. In the meantime, absent an emergency stay pending appeal, the tariffs would remain in effect, with potentially significant consequences, not just for the lithium-ion industry in the U.S., but for millions of downstream consumers.

Lidiya Mishchenko is special counsel and Jennifer Fischell is a partner at MoloLamken LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] New schedules are being posted once per business day on the ITC's website here: <https://www.usitc.gov/reschedulingadcvd.htm>.

[2] 19 U.S.C. §1671 et seq.

[3] 19 U.S.C. §1673 et seq.

[4] 19 U.S.C. §§1671(a), 1673, 1677(1)-(2); U.S. International Trade Commission, Understanding Antidumping & Countervailing Duty Investigations, https://www.usitc.gov/press_room/usad.htm (last visited November 3, 2025).

[5] *Id.* at *3.

[6] *In re Active Anode Material from China* ("ITC Opinion"), USITC Inv. Nos. 701-TA-752 and 731-TA-1730 (Preliminary) (Feb. 1, 2025), 2025 WL 1026263; https://www.usitc.gov/publications/701_731/pub5585.pdf.

[7] Id.

[8] ITC Opinion, 2025 WL 1026263, at *8.

[9] See Active Anode Material From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures, 90 Fed. Reg. 34423, 34423-27 (July 22, 2025); Active Anode Material From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 90 Fed. Reg. 22465, 22465-67 (May 28, 2025).

[10] ITC Opinion, 2025 WL 1026263, at *9 & n.50.

[11] Id.

[12] Id. at *17, *22.

[13] Id. at *22.

[14] Id. at *22.

[15] What Does the "Big Beautiful Bill" Mean for EVs, Batteries and Critical Minerals?, Benchmark Minerals (July 4, 2025), <https://source.benchmarkminerals.com/article/what-does-the-big-beautiful-bill-mean-for-the-ev-battery-and-critical-minerals>.

[16] Trump Advances \$1.3 Billion Biden-Approved Battery Loan, Transport Topics (Sept. 17, 2025, 2:37 PM), <https://www.ttnews.com/articles/trump-advances-battery-loan>.

[17] ITC Opinion, 2025 WL 1026263, at *9, n.50.