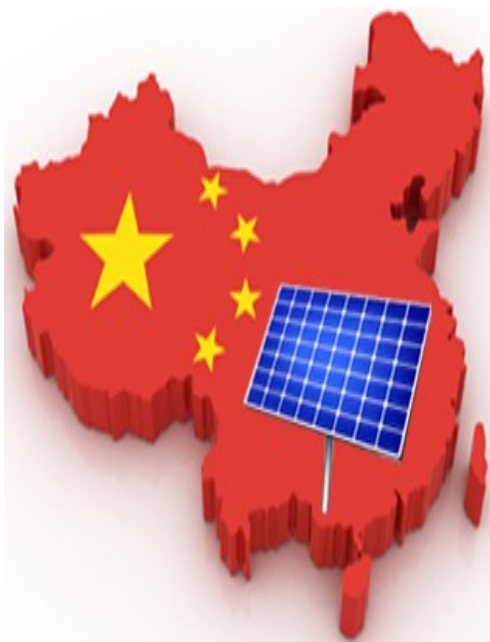


EU Anti-dumping Duties imposed against Chinese Solar Panels' Producers



- On **4 June 2013**, the European Commission decided to impose **provisional anti-dumping duties** on imports of solar panels, cells and wafers **originating in China**.
- Duties have been set at **11.8% until 6 August 2013**. From August on, the duty will be set at the level of **47.6%**, until the final decision on definitive measures (if any) will be made (i.e. by 5 December 2013).

The practice of "dumping" and the imposition of "anti-dumping" measures

What does "dumping" mean?

In general terms, dumping is a situation of **international price discrimination**, where the **price** of a product when sold to the importing country is **lower than** the sale price of that product in the **exporting country**, **causing damages** to producers and consumers of the **importing countries**.

Which is the remedy used to clash the practice of "dumping"?

Countries suffering from the damages caused by dumping tend to adopt "**anti-dumping**" **measures**, essentially consisting in the imposition of temporary duties (i.e. *ad valorem* duties, specific duties or price undertakings) on goods exported by the dumping foreign producers.

In order to impose "anti-dumping" measures, 4 elements need to be proven:

- imports must be dumped;
- material prejudice to the importing country's industry producing the like product must be caused;
- a link between the dumped imports and the harm caused to the industry must exist; and
- anti-dumping measures must not be against the Community interest.



The Chinese solar panel case: the claim and the proceedings



- In **July 2012**, EU ProSun – a sector specific industry association, *ad hoc* established for filing the complaint and representing more than 20 EU solar industrial producers –, **filed a complaint** with the European Commission alleging that **silicon photovoltaic wafers, cells and panels manufactured in and imported from China entered the European market at prices below their market value**.
- On **6 September 2012**, having EU ProSun proved that there was **sufficient *prima facie* evidence** to warrant the opening of **an investigation**, the European Commission – in this case headed by EU trade commissioner, Mr Karel De Gucht – commenced the investigation phase.
- On **5 March 2013**, the Commission imposed the **registration of imports** of solar modules, cells and wafers originating in or consigned from China: this will allow the imposition of **definitive anti-dumping duties retroactively**.
- On **4 June 2013**, the European Commission decided to impose **provisional anti-dumping duties** on imports of solar panels, cells and wafers from China. A **phased approach** will be followed, with the duty being set at **11.8% until 6 August 2013**, and rising up to **47.6% from August onwards**. According to the Commission, such level of duty will be sufficient to restore a level playing field.
- The phased approach adopted by the Commission in relation to the provisional duties confirms the latter's willingness (as well as several Member States' willingness) to **pursue discussions with Chinese exporters** and with the Chinese Chamber of Commerce in order to **find a negotiated solution**, so that provisional duties can be suspended. Also the **US government** has recently **proposed to the European Commission to work together in order to find an amicable solution with China** in relation to Chinese solar panels being exported to US and to Europe (i.e. fixing a maximum quota and a minimum price for solar panels originating from China).
- Should an amicable agreement not be reached between EU and China, the **definitive anti-dumping duties** (if any) will need to be imposed by the European Council – on the basis of the Commission's proposal – **by 5 December 2013**, and may last for 5 years therefrom. The definitive duties will **range between 37% and 68%**.

The three main (contrasting) views of the interested parties

Since the beginning of the proceedings, the Chinese solar panel case has interested and involved a relevant number of politicians, diplomats and operators, both European and Chinese, which, during the past months, have expressed their thoughts and fears in relation to the imposition (or non-imposition) of anti-dumping duties.

Below we summarize the views of the three main "actors" of the Chinese solar panel case: (i) Europeans which support the imposition of duties; (ii) Europeans which oppose the imposition of duties; and (iii) Chinese operators.

1) The European view: the supporters of anti-dumping measures

Several European companies and companies' association (such as EU ProSun) **support the imposition of anti-dumping measures** to Chinese solar panel manufacturers.



Why

Chinese solar products' manufacturers have been gaining relevant market shares in areas such as United States and Europe thanks to **illegal subsidies** and an **aggressive dumping policy (extremely low prices are not justifiable only with lower labour costs, which accounts approximately for only 10% of the total production costs)**.

What if
no duties
are
imposed

- ❑ **China** may manage to gain a **worldwide monopoly for solar products**, with the consequence of being able to later **raise prices without worrying about competitors**;
- ❑ **decline in the innovation** of solar products (the EU investments made throughout the last decade into developing the world's leading solar technologies would partially, if not entirely, be lost); and
- ❑ **thousands of people in Europe would lose their jobs**, both in the upstream segment (producers of solar panels and of their main components) as well as in the downstream segment (dealers, distributors and maintainers of photovoltaic plants).

2) The European view: the opponents of anti-dumping measures

A relevant percentage of **European upstream and downstream companies** which – directly or indirectly – operate in the solar power sector, are **against the imposition of punitive tariffs**.



Why

Punitive tariffs would **significantly increase the prices of solar products**, thus **affecting** European companies operating along the **entire supply chain** in the solar industry, including those situated before module production (70% of the components of a solar panel produced in China originate from Europe) or after the module production.

What if
duties
are
imposed

Prices of solar products **will rise**, and, jointly to the constant decrease in feed-in tariffs constantly decreasing, the increased cost of capital and the **overcapacity** of solar panels will lead to a **decrease in the demand of such products**. Additionally, the **grid parity** will **hardly be achievable**.

The **German government** holds that **anti-dumping duties will hurt not only their intended victims** (Chinese solar panels' makers), but **also European operators**

3) The Chinese view

The **Chinese government** and the **Chinese solar panels producers** are particularly **worried** about the imposition of **anti-dumping duties** on wafers, cells and panels originating from China.



Why

- ❑ More than **60% of the Chinese solar panels are exported to EU**; and
- ❑ Chinese governments and banks have issued some **privileged policies** for companies operating in such sector, by granting **credit to construct industrial plants** and to **expand production and exportation**.

What if
duties
are
imposed

- ❑ **Companies may shut down**, the equipment and the plants will depreciate and the loans will not be redeemable; and
- ❑ the stability of the **economy**, of the **society** and of the **public welfare** will also be **affected** (some one million practitioners are directly and indirectly involved in the solar energy industry).

The consequences of the imposition of anti-dumping measures in the US solar panel case

Despite it being difficult to forecast with precision which will be the consequences of duties being imposed against Chinese solar panels' producers, it is useful to analyze the consequences resulting from the imposition of anti-dumping measures against Chinese solar panels' producers in another recent case.



Indeed, in November 2012, the Department of Commerce of the **United States** ruled that 12 categories of Chinese subsidies for its solar manufacturers were illegal, and that **Chinese exporters dumped solar cells in the United States at margins between 30% and 250%** (such companies received more than Euro 25 billion of illegal government subsidies).

The imposition of such duties has produced, among others, the following effects:

- ❑ the **demand of solar panels has not decreased; conversely, it has increased;**
- ❑ **prices of solar panels** and of their components have slightly **decreased instead of increasing;**
- ❑ some **Chinese producers have gone round anti-dumping measures**, by **producing in other countries** or **purchasing** solar panels' components **in countries where production costs are lower** (such as Taiwan);
- ❑ **big US players** are **still facing difficulties**, despite the introduction of the anti-dumping measures.

Although the US market and economy are slightly different from EU ones, the consequences arising from the imposition by the EU authorities of duties against Chinese operators may be similar to the ones recently occurred in the US.

Conclusions

Despite the recent imposition of provisional anti-dumping duties by the European Commission, European operators (except for those who lodged and supported the claim) do not seem to be satisfied by such decision.

Indeed, the main feelings of the operators may be summarized as follows:

- ❑ the European Commission decision has arrived too late with respect to the needs of the European solar energy industry. A response from the authorities could have made better results if enacted promptly, at least one year ago (as it happened in the US);
- ❑ there is still a general perception of uncertainty in relation to the imposition of duties, given that, as of today, only provisional duties have been imposed, and that the EU body competent for the imposition of the definitive duties (the European Council, composed by the premiers of each Member State) may well vote in conflict with the recent European Commission decision, thus impeding the imposition of definitive duties; and
- ❑ the imposition of provisional duties has sparked off a trade war between Europe and China. Clear evidence of the existence of a "trade war" may be identified in the fact that, on 5 June 2013, just after the decision of the European Commission to impose provisional anti-dumping measures against China, the latter – whose government's officials and industry operators have already broadly expressed their disappointment with the EU behaviour – launched an anti-dumping and anti-subsidy probe into EU wine exports to China.

To sum up, the general feeling is that no real benefit will rise out of the adoption of provisional measure against Chinese solar panels' producers. Conversely, this will harshen the – already tense – trade relationships between China and Europe, in an already complicated economic environment.

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