



EUROPEAN COMMISSION

## MEMO

Brussels, 4 June 2013

### **Frequently asked questions: On the European Commission's decision to impose provisional duties on imports of solar panels from China (Case AD 590)**

#### **Q: Why is the European Commission intervening in this case?**

**A:** In July 2012, the Commission received a formal and valid complaint from an industry association of European solar panel manufactures, EU Pro Sun, which provided evidence that exporting producers from China are dumping solar panels into the EU and causing injury to the Union industry. When these conditions are met, the European Commission is legally obliged to open an anti-dumping investigation and to pursue such cases ([factsheet on anti-dumping complaints](#)). Trade relations with third countries must be based on the principle of fairness. Dumping and subsidising practices which are in breach of WTO rules run counter to the principle of fair trade and cause injury to the EU's domestic industry.

#### **Q: Is this the start of a trade war?**

**A:** It is the Commission's role to protect the European industry from unfair trading practices abroad. This is not about protectionism, and not about a trade war, but about re-establishing fair market conditions. Dumping is an unfair trade practice, hurting jobs in the EU, and it needs to be tackled if there is evidence. Hence, the EU's trade defence actions are about getting 'trade justice' for European companies and workers.

The current anti-dumping and anti-subsidy investigations concerning solar panels are no different from any other trade defence investigations and have the same aim of ensuring a level playing field for all. The Commission's intervention is based on clear and documented evidence of dumping and of the resulting injury suffered by the EU photovoltaics industry. The rights of defence of the Chinese producers have been – and will be – fully respected. What is different in this case, are the amounts involved. In 2011, China exported to the EU solar panels and their key components worth around €21 billion.

The European Commission has from the outset been open to find an appropriate negotiated solution with China. A formal negotiation can start as soon as a preliminary determination is reached. In the solar panels anti-dumping investigation, this is after 5 June 2013. A negotiated solution means a 'voluntary price undertaking' offered by exporters. An offer of this sort has to meet a number of general legal requirements. The main one is a commitment to respect a certain minimum price which removes the injurious dumping level. This commitment is not meant to fix prices at specific levels, rather to prevent them from falling below a certain floor price. Other general requirements are that the undertaking must remove the injurious dumping level, that it is workable from a practical point of view and that its implementation can be effectively monitored.

Hence, the EU has no interest in starting a trade war. If China considers our action unwarranted, it can refer the EU to the WTO. If China were to take countermeasures that were WTO-incompatible, however, then the EU would not hesitate to challenge them at the WTO.

*For further legal information on undertakings: [Art. 8 of the EU's Basic Anti-Dumping Regulation](#)*

Q: Why has no negotiated solution been found in this case so far?

**A:** The law states that such an offer can only be considered after provisional findings have been made. The European Commission would assess any such offer which responded adequately to the provisional findings most seriously. It is in regular contact with the Chinese authorities and is continuing to explore possibilities for finding an amicable solution.

### **Q: Are those measures protectionist?**

**A:** Trade defence measures are not protectionist measures. Nor are they illegal. On the contrary: they are the legal response to save an industry that is suffering from massive dumping from a third country. Trade defence measures aim at restoring a level playing field. There is no such thing as a right to cheap but dumped imports. All WTO Members, including China, have the right to take action if dumping causes injury to their domestic industry.

Furthermore, investigations of this sort under WTO rules are carried out by most WTO members, including China. The EU is a modest user of anti-subsidy and anti-dumping measures: in 2012, it had 112 measures in force, two less than China, in fact. Many of the EU's trade defence cases involve China: currently, the EU imposes definitive anti-dumping measures on 52 Chinese products and anti-subsidy measures on 2 Chinese products. Investigations are on-going on 14 anti-dumping and 2 anti-subsidy cases on China. This is the result of huge overcapacities due to government incentives. Nevertheless, they only concern a very small amount of trade between the two blocs and China has a huge trade surplus with the EU. In general, the EU's trade defence investigations affect around 0.17% of the EU's overall imports in 2012. So long as investigations follow WTO rules, there is no reason why they should affect EU-China trade relations.

The European Commission is obliged to take action when EU companies are injured by unfair trade practices. The Commission always does so in line with both the letter and spirit of the WTO rules. This has nothing to do with protectionism.

*Click here for statistics on [the EU's trade defence measures](#).*

**Q: How does the Commission determine the rate of duty?**

**A:** The Commission's methods for [calculating the rate of duty](#) are transparent and consistent. All interested parties have access to the non-confidential version of the investigation file. The rate of duty imposed is designed to remove the damage inflicted on the EU industry and to restore a level playing field – no more, no less. The calculation is based on verified prices and costs. By limiting the level of duty to what is strictly necessary to remove injury caused by dumping, the EU goes beyond its WTO obligations and imposes a lower rate than WTO rules allow ('lesser-duty-rule'). WTO rules would allow the EU to impose a duty equivalent to the much higher dumping margin.

**Q: Why is the duty is introduced in two steps in this case?**

**A:** In this particular case, in view of exceptional circumstances and in particular the need to ensure the stability of supply of solar panels in the short term, it is considered appropriate to phase-in the provisional duties and to introduce them in two steps. A period with a lower duty will ensure sufficient supply to meet all the demand, while allowing the Union industry to adapt to the situation and increase the supply gradually.

**Q: What are the main findings of the dumping investigation?**

**A:** The [investigation](#)'s provisional conclusion was that Chinese solar panels and their main components (wafers and cells) are being sold on the EU market below normal market value with dumping margins of up to 112.6%. Such practices are resulting in injury margins of up to 67.9%, causing serious injury to the EU industry and leading to numerous bankruptcies and insolvencies among EU producers. Finally, the assessment of the Union interest revealed that any potential negative effects of the measures would be outweighed by the economic gains for EU producers.

**Q: What elements were taken into consideration in the 'Union interest test'?**

**A:** The interests of various Union operators (Union producers, importers, raw material and machinery producers, project developers, installers and consumers/end-users) were analysed under the 'Union interest test' to assess whether there were compelling reasons against the imposition of provisional measures.

The provisional conclusions of the investigation were that provisional measures should restore fair trade conditions. This would give the photovoltaic industry the opportunity for sustainable growth, thereby increasing EU production and employment, and maintaining the EU's technological leadership in the sector.

On the other hand, any negative effects of the measures on importers, component suppliers and installers would probably be short-term as they would likely be able to diversify their activities and suppliers and at least partially compensate for the losses. Particular attention was given to the question of photovoltaic-related jobs. The measures are expected to have an overall positive impact on jobs in the photovoltaic sector, with more jobs secured and created than lost.

Finally, if measures are not imposed there is a serious risk of EU to become entirely dependent on imports from China, which could result in increased prices for consumers/end-users and lower quality.

**Q: Will the measures affect the EU's Agenda 2020 goals?**

**A:** There is no contradiction between the Commission's green goals such as the Agenda 2020 and the use of trade defence instruments. On the contrary, the duties would restore the level playing field in the photovoltaic market paving the way for the industry's sustainable growth in the EU. Nor does the achievement of the green goals depend exclusively on solar energy. Equally important are other green energy sources, a favourable legal and financial framework at European and national level, improved access to capital, and continuous spending on research and development. The duties will actually facilitate access to capital and ensure investment in research and development in the EU's photovoltaic sector.

*Click here for a [factsheet on the solar panels investigation and the EU's climate goals](#).*

**Q: What would happen if measures were not imposed?**

**A:** The investigation showed that in the absence of measures, 25,000 jobs in the EU would be at risk, as EU producers would quickly disappear. As a result, jobs based on costly investments and the EU's technological leadership – thanks to which the solar panel technology was promoted – would be lost. Chinese capacity represents 150% of world demand and Chinese imports to the EU represent over 80% of the EU's solar panel market. Hence, a lack of competition on the EU market could quickly result in dependence on Chinese supplies and quality. Also, as Chinese production is largely loss-making – something which is economically unsustainable – it is likely that the prices of Chinese modules would go up.

**Q: Is it true that the measures could result in significant job losses in the EU solar panel market?**

**A:** The Commission's assessment did not conclude that imposing the measures would result in a serious loss of jobs in the solar panel sector. On the contrary, a careful examination of the jobs argument confirmed that the measures would have an overall positive impact on jobs in the sector, with more jobs secured and created than lost. While a number of jobs may be lost among project developers and installers, the investigation showed that these groups do not depend on the solar panel sector, but also have other business activities. Suppliers (for example, of components) are present globally and should be able to offset the partial loss of the Chinese market by shifting supplies to new markets. Finally, the measures will secure 25,000 jobs among EU producers that are at serious risk now and could possibly even lead to an increase in employment in the short-term, due to a possible increase in EU production.

**Q: What is the impact of the measures on solar panels being installed in the EU?**

**A:** The measures should have a positive impact on solar panels being installed in the EU. Fair competition would allow the EU industry to expand, achieve better economies of scale and keep prices at reasonably low levels. In addition, price increases of imported products could be at least partly absorbed thanks to the profits made by installers. Furthermore, the technological leadership of the EU on the solar panels market, which is dependent on the existence of an industry manufacturing solar panels in the EU, will be maintained and would also generate jobs.

**Q: What are the main findings of the anti-subsidy investigation?**

**A:** The anti-subsidy investigation was initiated on 8 November 2012 following a complaint lodged by the same complainant and is still on-going. Provisional anti-subsidy measures, if any, would have to be imposed by 5 August 2013 and definitive measures by 5 December 2013. The subsidy allegations cover cheap loans, export credits and guarantees from state-owned banks, provision of goods by the government, grants and tax incentives. Verification visits have been carried out at all the eight sampled groups of exporters during the month of March and with the Chinese Government in mid-April of this year.

**Q: What are the implications for the investigation on solar glass?**

**A:** This investigation has no direct link with the complaint about imports of solar glass. It is a self-standing investigation concerning a clearly distinct product and is based on the evidence in the case at hand. The conclusion will also be self-standing and could possibly lead to a different outcome. The legal deadline for provisional measures in the solar glass case, if any, is 28 November 2013.

*Click here for further information on the [anti-dumping](#) and [anti-subsidy](#) investigations on solar glass*

**Q: What is the next step in the procedure?**

**A:** The Commission will analyse the comments made by interested third parties on the provisional regulation before making a proposal on definitive anti-dumping duties. The European Commission may propose to the Council (a) to terminate the case without measures or (b) to impose definitive anti-dumping measures for a duration of five years. According to the current rules, the Council can reject the Commission's proposal by simple majority. The final findings will be published in the Official Journal of the European Union by 5 December 2013.

Should the final decision be not to impose definitive anti-dumping duties, the provisional duties, which will be in the form of guarantees only, will not be collected.

The preliminary findings of the parallel anti-subsidy investigation should be available by the beginning of August.

## **For further information**

[IP/13/501](#): Press release

[MEMO/13/499](#): Remarks by EU Trade Commissioner Karel De Gucht on the decision

[MEMO/13/497](#): Memo on the decision

[MEMO/12/647](#): EU initiates anti-dumping investigation on solar panel imports from China, 6 September 2012

Further documents on the EU's anti-dumping investigation on imports of solar panels from China

[http://trade.ec.europa.eu/tdi/case\\_details.cfm?ref=ong&id=1895&sta=21&en=31&page=2&c\\_order=date&c\\_order\\_dir=Down](http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=1895&sta=21&en=31&page=2&c_order=date&c_order_dir=Down)

More on EU-China trade relations

<http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>

Questions and answers on anti-dumping proceedings

<http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/anti-dumping/>