

# EU-China solar wars: the political limits of EU ‘trade defence’

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## Summary

This week EU officials have been in Beijing working out a negotiated settlement to the EU-China dispute over low-price solar panel exports to Europe. The case has seen the European Commission’s attempts to take a tougher line on Chinese subsidy practice, and enforce European ‘trade defence’ rules, collide with some very stark realities about the political limits on this area of European trade policy. Beijing no doubt sees Europe’s lack of unity as a sign of weakness. In reality, it is a reflection of the very genuine divided interests created by the globalisation of European supply chains.

EU Trade Commissioner Karel de Gucht was in Beijing last week in an attempt to find a negotiated settlement for the trade dispute that [has sprung up around the EU’s threat to impose ‘trade defence’ tariffs on European imports of subsidised Chinese solar panels](#). Commissioner De Gucht appears to have agreed, in principle, with his Chinese counterpart Gao Huacheng that a price undertaking from Chinese producers - effectively an agreement by Chinese exporters to Europe sell at prices the EU accepts are closer to an undistorted cost of production - should be enough to end the dispute. Price undertakings are a conventional part of trade defence cases, although they are rarely, if ever, negotiated in this kind of spotlight and at the level of the Trade Commissioner. They are also unprecedented on this scale - a price undertaking would have to cover dozens of Chinese firms and billions of euros in solar panel exports.

De Gucht’s leverage in Beijing was the threat of multi-year tariffs to be imposed by European states in December, when his investigation concludes. When De Gucht proposed substantial temporary duties after a preliminary investigation in May 2013, his intention was probably to push Beijing and Chinese solar panel firms to the negotiating table. Instead, he provoked a minor revolt among European Member States and was forced to revise his preliminary duties down from a proposed 47% to 11.8%. So De Gucht had a weak hand in China.

Beijing probably suspects that, assuming it holds, an eventual price undertaking will not be punitive, and will at least keep the European market relatively open to Chinese exporters such as Trina Solar and Yingli Solar. The European Commission in principle has the power to raise the duties temporarily in August if no deal is reached with Beijing, but the issue reverts to Member States for a final decision in December. Despite French and Italian attempts to build a coalition behind the Commission and companies like Suntech AG for multi-year duties, at this stage the required support is not there - including from a pivotal Berlin, which has resisted duties from the start. If Beijing called their bluff, European capitals would probably act, but not as aggressively as De Gucht and the European Commission would like.

## A policy out of its political depth

Beijing no doubt sees the EU’s divided front on the solar panel case as a sign of weakness. But Europe’s divisions are a reflection of the genuinely changed realities of European production models and global supply chains, as much as a failure of political will or strategic clarity. The European Commission argues that in seeking to redress what it determines as unfair trade, it is simply enforcing EU and WTO rules. The reality is that in a case on this scale, the political economy of European trade has become a lot more complex than the rules allow for. Hence

Commissioner De Gucht’s uncomfortable trip to Beijing.

European member states (like the US and most large importers in the WTO) have imposed trade defence duties on imports for decades. In the political economy of trade liberalisation in Europe, trade defence is the pressure valve. It provides a political guarantee for European producers that ‘unfair’ trade competition will not be the result of market opening. In Europe these imports have often been chemicals and industrial inputs (Fig 1). Support for trade defence measures has generally been much stronger among southern European member states and generally weaker among the ‘liberals’ of Scandinavia, the Netherlands and the UK. However, the southern bloc, often supported by Germany, has usually had the qualified majority of votes required to ensure that duties are imposed.

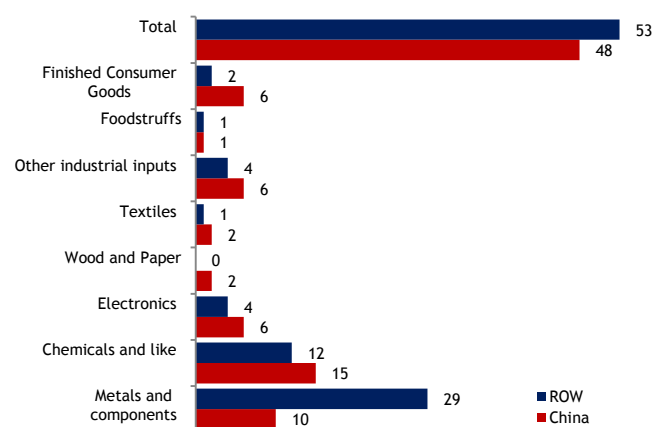


Fig 1: EU Anti-dumping measures in place as of May 2013  
Source: European Commission

The rise of China and the restructuring of global supply chains over the last decade have complicated this political economy in two simple but important ways. First, the outsourcing of European production to China has divided producer interests. Many now split production between Europe and China, or locate production in China and higher value functions such as marketing in the EU. Second, China’s substantial imports to Europe have created a constituency of retailers and consumers who see price competition

from Chinese exports as in their interests, even if it results from subsidy or price distortion.

The trade defence system is poorly equipped to handle the tension this has created. Trade defence rules are built around defending producer interests in a world without global supply chains and in which producer interests are implicitly politically paramount. Although EU rules nod to the principle of consumer interest, they are designed to ensure that such interests in low cost goods do not trump producer interests in ‘fair’ import competition. An attempt to try and strengthen the consumer interest test in trade defence rules failed in 2008 and has not even been attempted in the proposed reforms of the EU’s trade defence system announced this year. This leaves the consumer/producer tension to be worked out at the political level.

Which is exactly what has happened in the solar panels case. The imports in question not only have a major consumer base in Europe, but they represent a policy priority in their own right; the deployment of low carbon energy generation in Europe. They are also part of a supply chain that, in many cases, actually starts in Europe with European polysilicon exports to China. The trade volumes in question are so large - a market worth €14bn in 2012 - that the kind of horse-trading that usually defines trade defence measures is very difficult. It is not clear what a Member State supporting the case for tactical reasons could hope to get back in return. Throw in the threat of retaliation and the diplomatic reluctance to antagonise Beijing in most of the large EU capitals and the trade defence system is well out of its political depth.

### Sit back and wait for Europe to settle

Beijing understands this all very well, as its conduct has shown. Its retaliatory threats have been targeted precisely where they needed to be. First, the threat of a WTO case against European solar subsidies and a trade defence case of its own against the polysilicon wafers from Germany that go into ‘Chinese’ solar panels, to remind Berlin of its multiple supply chain interests. Then threats of similar cases against wine, targeted against trade defence stalwarts in Madrid,

Paris and Rome. Finally a further threat of an investigation into German car exports to China, just to keep Berlin from wavering in its resistance to duties.

All this leaves the European Commission in a difficult position. European law constrains it to investigate dumping and to propose duties where it finds it. For years this system has functioned as an effective pressure valve for tension in Europe about trade liberalisation and as a minor forum for the trading of political favours among member states. On a general level, it will no doubt continue to perform this function, where cases are small in scale and the duties in question are less visible to end users.

However, the controversial 2006 trade defence case on leather shoes from China suggested the limits of this system when it started to stray into markets with vocal retailers and consumers. The solar panel case has made them starkly clear. The trade defence system is not equipped for mediating profound European debates about the balance of sometimes irreconcilable interests between its producers and its consumers. Or in this case, between the value of green technology production in Europe, and access to that technology at the lowest possible cost.

The prospects for changing this are minimal. Those in the EU who see the trade defence system as a vital last line of defence for producer interests believe that widening the scope for reflecting consumer interests would be to strip it of its fundamental purpose and to condone implicitly subsidised exports in the name of cheap goods. The current package of reforms to the trade defence system proposed by the European Commission does not make any attempt to touch the balance of consumer/producer interests. This suggests that future cases of this sensitivity or scale are likely to play out exactly the same way solar panels has. Not a point that will be lost in either Brussels or Beijing.

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