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Solar Panels, Telecommunication Equipment – and the “Modernisation” of EU Trade Defence Policy

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Can trade defence instruments like anti-dumping and anti-subsidy/countervailing duties be smartly used to counter government subsidies distorting the world economy? Can it be Europe’s strategy to fight noxious state capitalism? The European Union is now in the process of reforming its trade defence policy. However, two highly controversial cases – on solar panels and (potentially) telecommunication equipment – and the way they have evolved show how a critical element of the reform package easily could backfire and create big problems for the EU.

The increasingly odd development of the European Union’s anti-subsidy case against solar panels from China and a potential case again telecommunication equipment exported from the same country carries a larger story about the Commission’s proposal of trade defence reform. The idea to politically charge its trade defence policy by initiating cases ex officio, without prior complaints from industry, is likely to exacerbate both internal and external conflicts about trade defence policy – and trigger rather than deter retaliation against EU producers.

Trade defence duties are normally imposed after domestic industry has made a formal complaint to the Commission, which subsequently has found evidence to support the complaint and that dumping or subsidies have caused material injury to domestic industry. A central plank of the Commission’s proposed reform is that the Commission can initiate cases at its own discretion. The purpose is to deflect attention from individual companies that fear retaliation if they formally lodge complaints.

Trade defence cases have seldom been as rules-based as authorities claim. In most countries that have been extensive users of trade defence instruments, there has been a bias among officials and authorities to exaggerate evidence in support of the complainants and downplay opposing evidence. More generally, the evidence presented by trade defence authorities in support of duties has invariably been incomplete, inadequate or susceptible to different interpretations. And trade defence has often been considered an expedient strategy to help selectively embraced sectors to fight off foreign competition, at least for a while.

In the solar panel case, the Commission has stepped farther away from a rules-based approach and decided to use the threat of full imposition of duties as a lever to get a negotiated outcome with the host government of those firms it believes compete unfairly on European soil. This strategy may or may not succeed in this particular case. Yet the broader concern is that such an approach turns trade defence policy into a tool of managed trade, the derided school of thought that targets market shares and empower government to intervene in trade to achieve political aims. This is obvious in the case of solar panels, where the Commission has actively been negotiating targets for prices and market shares for Chinese producers. Trade defence policy, of course, has always had an infection of industrial policy, but if greater discretionary flexibility is given to the

Commission to design its policy based it effectively means that political considerations should take up a larger role when decisions are made.

The belief that other countries will be less willing to retaliate simply because there has not been a formal complaint by domestic industry is misguided. No government with a retaliatory bent will be fooled or deterred from striking back against contingent duties they believe are unjustified or that for other reasons require retaliation. Arguably, countries will be encouraged rather than deterred to retaliate if they believe the Commission has come to the political conclusion that action against firms from their countries could be successful. A reform of trade defence instruments that would reduce or eliminate the role of politics in the entire process would be far more convincing. With the proposed reform, governments with a knack for retaliation will be almost compelled to respond to avoid political embarrassment. Countries with exports subject to new duties targeted will know they got targeted because the Commission made the analysis that they were not willing or capable of retaliating – that they are safe targets.

So ex officio cases rest on an impossible political calculation. This is also true for internal EU politics. Trade defence instruments are already controversial and often divide the membership. If the Commission initiates cases without formal complaints by the industry, there will be an even stronger opposition from those member states and industries that do not want such a case.

All of this is at display in the process around a potential anti-subsidy case against telecommunication network equipment case from China. Conceived as an ex officio case, it is hugely controversial with the EU membership. Some of the European firms in this sector have voiced strong opposition against it. And they believe, for understandable reasons, that their opposition has to be made even stronger because of fears that they are at risk of retaliatory action from the Chinese government if the Commission decides to press ahead with the case.

Furthermore, the Chinese government has responded very strongly against the threats of a case because it runs the risk of being politically embarrassed at home by the way the Commission has turned trade defence into political action. China typically responds strongly to most trade defence cases against them, but if one sorts out the substance from the rhetoric (China is pretty used to being targeted by trade defence instruments) there is a different order of magnitude in its response now because the government feels politically attacked.

The EU is correct in being worried about market and trade distortions – or state capitalism – in China. Yet it cannot fight foreign market distortions with own market distortions; it cannot fight fire with fire. Negotiating a fixed order of market shares as outcomes of trade defence cases is a dangerous strategy vis-à-vis China. Chinese firms may be acquiring market shares in Europe, but they typically represent far smaller market shares than what European firms in big sectors have in China. The telecom sector is a case in point. If the EU wants a managed trade approach to its imports of solar panels from China, why would not China opt for such an approach to its import of telecoms equipment? After all, sauce for the goose is sauce for the gander. Rather than politically charging its trade defence policy, the EU should depoliticise and discipline it.