



Solar Panels Cases – challenges & latest developments

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Original Investigation

- *The initial investigation was concluded in December 2013 – Chinese solar panels were found to be dumped and subsidized*
- *The European Commission accepted an undertaking → a commitment from some Chinese producers to sell to the European Union at a price above a Minimum Import Price (famous 'MIP').*

What were the benefits of the undertaking?

- *An amicable solution that has restored stability to the European solar panel market at a sustainable price level.*
- *Imports of solar panels from China decreased drastically both in absolute terms and market share terms*
 - According to some sources Chinese market share went down from around 60% in 2012 to around 40% in 2014, this data is going to be verified by the investigation

Anti-circumvention investigations

- *In May 2015 the Commission opened two investigations into claims that the duties in force are being circumvented via Taiwan and Malaysia.*
- *Circumvention has been found and the duties were extended to Taiwan and Malaysia in February 2016.*
- *The premises of around thirty companies in MY & TW were verified and more than twenty genuine producers got exempted from extended tariffs.*

Expiry Review & Interim Review

- *The initial measures were imposed for the period of 2 years*
- *EU Pro Sun representing the Union producers requested the opening of the expiry reviews*
- *Following the request the Commission was legally obliged to open expiry reviews and did so on 5th December 2015*

How long does it take to finish an expiry review?

- *The Commission will normally finish its work within 12 months, but the legislation allows for up to 15 months for the review investigation.*
- *The measures and the Minimum Import Price will remain in force until the reviews are finished*
- *The expiry reviews keep the measures in force exactly as they are (including the 'MIP') or remove the measures altogether.*

Why there is also a partial interim review and what is it for?

- *The Commission on its own initiative decided to open an **interim review** to investigate if it is in the interest of the European Union to maintain the measures currently in force **on solar cells**.*
- *The Commission has opened this review because some EU cell producers have ceased production and some EU module producers are dependent on imports of cells.*

Non-Market Economy Statues (MES) of China - challenges

- *No Chinese solar company was granted an MES in the original investigation - the review investigation need to follow this finding*
- *An analogue country must be found - three countries considered*
 - USA, India, Taiwan
- *Each of them has certain downsides*
 - *Another challenge is that the producers in these countries need to agree to cooperate with the Commission?*

***Prima facie* evidence of continued dumping and subsidisation**

- *Announcements by the Chinese government on subsidy schemes and preferential treatment available to cells and modules producers*
- *Data on structural production overcapacity in China valuable from market intelligence*
- *According to EU Pro Sun the violations of the terms of MIP & circumvention via Malaysia, Taiwan & Japan*, proven by the Commission's investigations, indicate that the dumped imports continue reaching the customers in the Union*

Prima facie evidence of continued injury to the Union Industry

Many Union producers became insolvent, most prominent Q-cells.

Union capacity utilisation remains low, even if it is much below the Union consumption

The profitability of most of the Union producers remains negative or very low

The main issues to be investigated

- *If undercutting and subsidisation continue*
 - Price developments in China and in the EU
 - Do the subsidy schemes found in the original investigation continue? Have any new subsidies appeared?
- *If the overcapacities found in the original investigation persist in China*
 - The evolution of capacities in China & the Union as well as the evolution of demand in China, the Union and the rest of the world

Union Interest

- *Art 21 – 'Measures may not be applied if it can be clearly concluded that it is not in the Union Interest to apply such measures'*
- *Union Interest - all the various interests taken as a whole, including the industry, users and consumers*

Union Interest - challenges

- Many users and consumers expressed their opposition to the continuation of measures, either individually or through associations
- Users – i.e. upstream and downstream companies claim to account for up to 80% of employment and value-added in the EU solar sector
 - F.ex. production of poly-silicon & machines in the upstream
 - Installers, provision of auxiliary equipment, integrated EPCs providers (Engineering, Procurement & Construction) in the downstream

Union Interest - challenges

- A tough analytical challenge!
 - The sheer number and the value added of users & consumers interested to terminate any AD/AS case is always much higher than the number of people involved in a protected industry and its value added
 - However, the protected industry derives most of its earnings from the product subject to measures, hence if an unfair competition squeezes its profit, it's going to go out of the market without the measures, which is often not the case for the users & consumers



Thank you!