

Targeting the Environment

Exploring a New Trend in the EU's
Trade Defence Investigations



Kommerkollegium
National Board of Trade

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Abstract

In recent years, the European Union's (EU's) trade defence instruments (TDI) have increasingly been directed towards renewable energy sources, in particular biofuels (biodiesel and bioethanol) and solar panels. The TDI investigations on renewable energy sources affect import values which are among the highest of any of the EU's TDI measures. This provides an indication that there are considerable environmental values involved.

The TDI measures on solar panels affect import values that are one and a half times larger (EUR 11.5 billion) than the combined total of all of the EU's 120 other TDI measures currently in force (EUR 8 billion). The TDI measures relating to renewable energy sources, taken together, affect an import value of about EUR 14 billion, which is almost 75 per cent of all of the TDI measures currently in force.

As a consequence of the new trend for the EU's TDI policy to target the environment, a new conflict has broken out between the EU's TDI policy and the EU's climate policy. The goal of the EU's climate policy is to increase the share of the energy consumed that has been produced from renewable energy sources, such as wind, solar and biomass, to 20 per cent by 2020. The climate policy recognizes the need to increase trade and competition in the EU's renewable energy market.

The EU's trade policy, through its TDI policy, is, however, moving in the opposite direction. Increasing the price of imported renewable energy sources and increasing the level of unpredictability for importers, user industries and consumers will, most likely, affect the availability of affordable renewable energy in the EU market in the near future. As a consequence, the EU's TDI policy will have negative consequences for the shift towards renewable energy and energy efficiency and, in the long-term, for the environment.

It is vital that the EU has policies that are coherent in all fields. The EU's trade policy, in particular the EU's TDI policy, should, therefore, have to take the EU's climate policy into account. Environmental effects should, thus, be considered as part of the 'Union interest test' before imposing TDI measures. For the environmental benefits, it does not matter where the renewable energy is produced.

1. The EU's TDI Measures and the Environment

In recent years, a new trend has become apparent in the EU's TDI investigations. The TDI investigations have increasingly been directed towards renewable energy sources. Given the presumption that the use of renewable energy will have a positive effect on the environment, the TDI investigations may, thus, be seen to be targeting the environment. These investigations have an impact on import values that are among the highest ever in the history of the EU's TDI investigations, which also indicates that there are considerable environmental values involved.

Box

What are Trade Defence Instruments (TDI)?

There are three kinds of trade defence instruments: (1) anti-dumping measures, targeting dumped imports; (2) anti-subsidy measures, targeting subsidized imports; and (3) safeguards, targeting sudden increases in imports. Anti-dumping measures and anti-subsidy measures are the most frequently used TDI measures in the EU. TDI measures might be used against dumped and subsidized imports if these are causing injury to industry in the EU. The measures may only be imposed if it is not against the interests of the EU as a whole to raise the tariffs, i.e. the 'Union interest test'. Environmental concerns are not currently considered in the evaluation of interests that may be harmed by the imposition of TDI measures.

1.1 The EU's TDI measures increasingly affect renewable energy

Over the last five years, the EU's TDI investigations have increasingly been directed towards different sorts of renewable energy sources, in particular biofuels (biodiesel and bioethanol) and solar panels (see Table 1).

In 2009, anti-dumping and anti-subsidy measures were imposed on imports of *biodiesel* from the US. In 2011, the measures were extended to encompass imports of biodiesel from Canada, in order to avoid alleged circumvention. Imports of biodiesel from Singapore were also investigated, but the investigation was cancelled due to a lack of evidence of circumvention. In 2012, a combined anti-dumping and anti-subsidy investigation was initiated against biodiesel from Argentina and Indonesia. As a result, anti-dumping measures were imposed in 2013. The anti-subsidy investigation was cancelled since the complainant withdraw its allegation.

In 2010, anti-dumping measures on imports of *glass fibre filaments* from China were imposed. In 2013, a similar anti-subsidy investigation was initiated. Glass fibre filaments constitute an important input in the production of blades for wind turbines.

In 2011, anti-dumping and anti-subsidy investigations on imports of *bioethanol* from the US were initiated. The anti-subsidy investigation was cancelled at the end of 2012 due to the lack of evidence of US subsidies, but anti-dumping measures were imposed in 2013.

The most recent anti-dumping and anti-subsidy measures are targeted at imports of *solar panels* and its key components (i.e. solar cells) from China. The measures were imposed in 2013 in combination with a price undertaking. New anti-dumping and anti-subsidy investigations also encompass *solar glass* from China. The anti-dumping measures were imposed in 2013 and the anti-subsidy measures will most likely be imposed in 2014.

A TDI investigation has an effect on imports from the time it is initiated, as well as on other related business decisions, given the unpredictability of the proceedings in terms of the scope of the duties, their level and the date they will be imposed. However, most importers are only directly affected once the measures have been imposed at their provisional and/or definitive level. The investigations and imposition of TDI measures on renewable

energy sources, in the form of unpredictability and high duties, thus affect their availability, which has a negative long-term effect on the environment.

In addition to initiating TDI investigations on renewable energy sources, there has also been a tendency for the EU to impose TDI measures on renewable energy sources *retroactively*. In the TDI investigations into biodiesel from Argentina and Indonesia, bioethanol from the US and solar panels from China, the imports were registered before measures were imposed in order to facilitate the imposition of measures retroactively. This affects the imports more than the normal procedure, which is to impose measures at the end of the investigation period. In addition, it creates further unpredictability for importers that are not aware of the retroactive effects of the TDI proceedings.

Table 1: List of TDI investigations targeting renewable energy sources

Product	Country	TDI measure	Initiation of TDI investigation	TDI measures in force
Biodiesel	US	AD + AS	2008	2009
Biodiesel	Canada	AD + AS	2010	2011
Biodiesel	Singapore	AD + AS	2010	-
Biodiesel	Argentina/Indonesia	AD + AS	2012	2013
Bioethanol	US	AD + AS	2011	2013
Glass fibres	China	AD + AS	2009	2010
Solar panels	China	AD + AS	2012	2013
Solar glass	China	AD + AS	2013	2013

Note: Measures in force, anti-dumping measures (AD) and anti-subsidy measures (AS) are highlighted in **bold**. Investigations that have been terminated are ~~erased~~. The remaining measures are under investigation, but will most probably come into force during 2014.

Source: National Board of Trade

1.2 The EU's TDI measures increasingly affect the demand for alternative renewable energy

The EU's TDI investigations and the measures that are in force on renewable energy sources are having an effect on considerable import values. In actual fact, the highest import values of the EU's current TDI measures (see Table 2).

Three of the TDI measures on renewable energy sources, i.e. the TDI measures on solar panels from China, biodiesel from Argentina and Indonesia, and biodiesel from the US, are found in the top five largest and most “expensive” measures currently in force, when it comes to the import values that are affected. Two of the most recently imposed measures, i.e. the TDI measures on solar panels from China and biodiesel from the US, are the EU's two largest measures ever.

Table 2: TDI measures on renewable energy sources on the top listing by the import values affected

Product	Country	Import value (EUR millions)	Ranking (Highest import values)
Solar panels	China	11 448	1
Biodiesel	Argentina/ Indonesia	2 081	2
Tableware	China	728	3
Biodiesel	US	700	4
Other products...	
Bioethanol	US	430	Interval 5-10
Other products...	
Biodiesel	Canada	122	Interval 15-20
Glass fibre filament	China	110	Interval 15-20
Solar glass	China	37	Interval 30-35

Note: The import value for each product is based on the investigation period before the imposition of TDI measures.

Source: National Board of Trade

The import value affected by the TDI measures on solar panels is one and a half times as large as that of the combined total of all of the EU's other TDI measures currently in force. The EU's other current TDI measures, i.e. about 120 measures, together affect an import value of about EUR 8 billion. However, the TDI measures on solar panels alone affect an import value of about EUR 11.5 billion. The TDI measures on renewable energy sources, taken together, affect an import value of about EUR 14 billion, which is almost 75 per cent of the total for all of the TDI measures currently in force.

The European Commission's Delegation in China thus observed that the new and ongoing TDI investigations on renewable energy sources will have a tremendous impact on trade relations between the EU and China.¹

“In total we have 52 anti-dumping and anti-subsidy cases against China that only cover 1% of Chinese exports into the Europe /.../ However, if we include these last developments and hypothetically consider possible measures /.../ we would be increasing the less than 1% of coverage to almost 10% from China to Europe. So there is a potential risk of things taking a different dimension to what they have had until now.”

As a consequence of the high import values of renewable energy sources that are affected by TDI investigations, there is a negative effect on the current high demand for renewable energy sources. Ultimately, this has negative consequences for the shift towards renewable energy and, in the long-term, for the environment.

1.3 The EU's TDI measures increasingly affect global renewable energy production

The EU's TDI policy of imposing high duties on renewable energy products is taking a step in the opposite direction to the globalized production of and trade in renewable energy sources to the detriment of the environment (see Table 3).

Imposing TDI measures on intermediate products, many of which have a large proportion of the value of the end product added by EU industry, will result in higher costs to EU producers that have outsourced parts of their production process to third countries. This will adversely affect the globalized EU producers of renewable energy sources.

The TDI measures affecting imports of solar panels from China is a clear example of how global production, supply and value chains are being particularly badly affected. The solar panel industry is characterized by complex global production and assembly. The EU's TDI investigations also recognize that the origin of the solar panels on which measures are imposed is unclear.²

"[T]he anti-dumping and countervailing investigations /.../ highlighted the complexity of the production and assembly operations which might or might not confer origin. /.../ It should /.../ be noted that the complaints and the requests for registration relate to imports from China without specifying the origin thereof."

Moreover, the production and trade of basic commodities, such as biodiesel, is complex. The EU decided to impose TDI measures on imports of biodiesel from Canada, regardless of the origin of the product.³

"[The] measures in force on imports of the product concerned originating in the USA, should therefore be extended to imports of the same product consigned from Canada, whether declared as originating in Canada or not."

When it comes to bioethanol, the US producers are not even aware of their products being exported to the EU, and they are, accordingly, even less involved with pricing and dumping practices. TDI measures are imposed regardless of this fact.⁴

"[The] investigation showed that none of [the US producers] exported bioethanol to the Union market. /.../ [The US producers] were not systematically aware whether or not their production was intended for the Union market or any other destination /.../ and had no knowledge of the traders/blenders sales prices. In effect, this means that the US producers of bioethanol are not the exporters of the product concerned to the Union."

Glass fibre filaments is another example of an intermediate product with multiple uses. Glass fibres are used in the production of wind turbine blades. TDI measures on this intermediate product are also estimated to be to the detriment of the production and use of wind turbines in the EU.

The imposition of TDI measures in an innovative and growing environmental industry, dependent on specialization, skills and global value chains clearly hampers the developments that are urgently needed for the environment. This is an example of how untimely the EU's TDI measures are.

Table 3: TDI duties on renewable energy sources

Product	Country	Duty level
Biodiesel	US	172.2 EUR/tonne
Biodiesel	Canada	172.2 EUR/tonne
Biodiesel	Argentina/ Indonesia	245.67 EUR/tonne/ 178.85 EUR/tonne
Bioethanol	US	9.5%
Glass fibre filaments	China	13.8%
Solar panels	China	53,4% + 11,5%
Solar glass	China	42,1%

Source: Based on the National Board of Trade

2. The EU's TDI Policy vs. the EU's Climate Policy

As a consequence of the increased targeting of environmental products, the EU's TDI policy has come into conflict with the EU's climate policy. The TDI measures on imports of renewable energy sources from third countries could also trigger countermeasures (such as TDI measures on the EU's production and exports of renewable energy sources) that only serve to increase the negative impact on the environment. This emphasizes the importance of coherent EU policies in all fields.

2.1 Import protection is increasing the cost of renewable energy

The goal of the EU's climate policy is to adopt legislation to raise the share of energy consumed that has been produced from renewable energy sources, such as wind, solar and biomass, to 20 per cent by 2020.⁵

The EU's climate policy states:

"The well-being of our people, industry and economy depends on safe, secure, sustainable and affordable energy. /.../ The energy challenge is thus one of the greatest tests which Europe has to face.

It will take decades to steer our energy systems onto a more secure and sustainable path. Yet the decisions to set us on the right path are needed urgently as failing to achieve a well-functioning European energy market will only increase the costs for consumers and put Europe's competitiveness at risk.

The European Council in 2007 adopted ambitious energy and climate change objectives for 2020 – to reduce greenhouse gas emissions by 20%, rising to 30% if the

conditions are right, to increase the share of renewable energy to 20%, and to make a 20% improvement in energy efficiency."

There is an apparent risk that the TDI measures on renewable energy sources will lead to negative consequences for the EU's climate policy goals. The TDI measures will make renewable energy sources more expensive and less accessible for the user industries and consumers in the EU. The EU's current TDI investigations do not take the environmental impact of imposing TDI measures into account, even though the negative impact of imposing measures is not in the EU's interests.

As a matter of fact, the EU's climate policy recognizes the need to increase trade and competition in the EU's renewable energy market. The EU's trade policy, through its TDI policy, is moving in the opposite direction to the EU's climate policy. The EU also recognizes the importance of climate policy being consumer-oriented and demand-driven. Furthermore, the policy emphasizes the importance of consumers having access to renewable energy at affordable prices.⁶

"Given the remaining anti-competitive practices in the energy sector, pro-active competition enforcement, not only by the Commission, but also by Member States, is needed. /.../ Active competition policy enforcement at European and national levels remains indispensable to foster competition and guarantee that consumers have access to energy at affordable prices."

The imposition of TDI measures on renewable energy sources are also contrary to the WTO negotiations on environmental goods. The imposition of TDI measures on renewable energy sources will



also make them less competitive, compared to fossil fuels where duties are almost non-existent.

In addition to the EU perspective, the global environment will also be affected by the imposition of TDI measures on renewable energy sources, regardless of where they are imposed. For the environment, it does not matter where the renewable energy is produced.

2.2 Other negative consequences of targeting the environment

The EU's TDI policy of imposing TDI measures on renewable energy sources can have additional negative consequences for the environment if the targeted third countries impose reciprocal TDI measures on the EU's exports of renewable energy sources and/or if the EU's subsidies on renewable energy sources are brought to the World Trade Organization (WTO).

In the context of the imposition of TDI measures against China's use of public policies and subsidies, it has to be noted that the EU also uses different kinds of public policy measures, as well as subsidies, to increase the use of renewable energy.⁷

The EU's climate policy states:

"[The] EU's renewable energy market is largely fragmented into national markets with numerous barriers to open and fair competition" and that "[a] wide range of different financial instruments are used in all Member States to help reduce renewable energy costs."

The fact that the EU and Member States use public policy measures and at the same time impose TDI measures on third country imports has triggered the use of countermeasures at a bilateral and/or multilateral level on the EU's exports of renewable energy and/or public policies. This might also have a detrimental impact on the environment.

China announced the initiation of anti-dumping and anti-subsidy proceedings against solar-grade polysilicon from the EU some weeks after the EU's

announcement that TDI investigations were being launched against China.⁸

“The Bureau of Fair Trade for Imports and Exports, with the authorisation of the Ministry of Commerce of the People’s Republic of China /.../ has formally accepted for consideration, an application and the relevant proofing documents, requesting to initiate anti-dumping and anti-subsidy investigation against Solar-Grade Polysilicon imported from the EU.”

In addition to initiating TDI investigations, China, shortly thereafter, requested WTO consultations about subsidies which they allege are prohibited to use, according to the WTO. China alleged that Italian and Greek laws, and possibly also the laws of other Member States, that authorize high “feed-in tariffs” to encourage solar power genera-

tors facilitate prohibited subsidies that directly discriminate against foreign companies.⁹

“China considers that the measures are inconsistent with the WTO rules on national treatment and most-favored nation treatment, and constitute import substitution subsidies that are banned by the WTO”.

When it comes to the TDI measures on solar panels, there is also a risk involved in replacing TDI measures with other even less transparent measures. The solution should not be to replace one protective instrument with another, such as a “*solution through talks*” with minimum import prices and quotas.¹⁰ The EU’s market for renewable energy sources must be open to trade opportunities and competition for the benefit of the environment.



3. The EU's TDI Policy should be Coherent with the EU's Climate Policy

The EU's TDI measures on renewable energy sources are clearly acting in opposition to the goals of the EU's climate policy, which recognizes the potential in creating an open, competitive and demand-driven renewable energy sector.

At present, environmental aspects are not taken into account in the EU's TDI investigations. This implies that the negative externalities of the imposition of TDI measures on renewable energy sources, i.e. the negative environmental impact, will technically be considered as not against the interests of the EU in TDI investigations. Accordingly,

the measures will be imposed without considering the climate.

In the 'modernization review' of the EU's TDI system, that is currently taking place, there may be the opportunity to include environmental aspects in the EU's TDI investigations as part of the 'Union interest test' analysis.¹¹ In addition, the requirement for the Directorate-General for Trade to consult internally with, for example, the Directorate-General for Climate Action, should be compulsory.¹² It is vital that the EU has policies that are coherent in all fields.



Notes

- 1 "Trade Defence Instruments: Latest Developments", EU Commercial Counsellors Meeting, as of 17 October, 2012
- 2 Commission Regulation No 182/2013 (OJ L 61, as of 5 March 2013)
- 3 Council Implementing Regulation No 444/2011 (OJ L 122, as of 11 May 2011)
- 4 Council Implementing Regulation No 157/2013 (OJ L 49, as of 22 February 2013)
- 5 "Energy 2020: A strategy for competitive, sustainable and secure energy" [COM(2010)639/3]
- 6 "Energy 2020: A strategy for competitive, sustainable and secure energy" [COM(2010)639/3]
- 7 "Energy 2020: A strategy for competitive, sustainable and secure energy" [COM(2010)639/3]
- 8 "Notification concerning formal acceptance for consideration of application for anti-dumping and anti-subsidy investigation on Solar-Grade Polysilicon, and inviting for consultation" by China to the Delegation of the European Commission to China, as of 15 October 2012
- 9 "China takes solar power dispute to the WTO", Financial Times, as of 5 November 2012
- 10 "Merkel faces EU clash over China" ["We should try to solve the problems in the solar sector to avoid an anti-dumping case ... We have time for that, and it would be better if we could find a solution through talks."], Financial Times, as of 30 August 2012
- 11 The 'modernization review' of the EU's TDI rules and practice was initiated by the European Commission in the autumn of 2011. At the beginning of 2013, the European Commission presented its proposal. The proposal does not take the environmental aspects into account as part of the EU's overall interest before imposing measures on environmental goods. The European Commission's proposal is currently being discussed among the EU Member States and will, at a later stage, be discussed in the European Parliament
- 12 The Directorate-General for Climate Action ("DG CLIMA") was established in February 2010, climate change being previously included in the remit of DG Environment of the European Commission. It leads international negotiations on climate, helps the EU to deal with the consequences of climate change and to meet its targets for 2020, as well as develops and implements the EU Emissions Trading System.



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