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THE POLITICS OF EU TRADE DEFENCE

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ABSTRACT When a majority of Member States non-bindingly opposed anti-dumping sanctions on Chinese solar panels in June 2013, the proceeding turned into one of the most media-covered and highly politicised cases in the history of EU trade defence. Six months later the Council nevertheless adopted final measures in the form of a price undertaking. This article argues that in an institutional and procedural setting, which is already marked by significant Commission discretion and limited oversight on the part of Member States, the consistent political division within the Council between “Friends of TDI”, opponents thereof, and swing states explains why the vast majority of Commission proposals for permanent measures are ultimately adopted by EU governments.

KEYWORDS European Union; China; Trade Policy; Trade Defence; Anti-Dumping

Résumé : Quand en juin 2013, dans l’affaire des panneaux solaires chinois, une majorité d’Etats-membres a fait le choix d’opposer des sanctions d’une manière non-contraignante, celle-ci est immédiatement devenue l’un des dossiers les plus médiatisés et politisés de l’histoire de la défense commerciale de l’UE. Cependant, six mois plus tard, le Conseil a néanmoins adopté des mesures définitives sous la forme d’un engagement sur le prix. Cet article soutient que, dans un cadre institutionnel et procédural qui est déjà marqué par un pouvoir discrétionnaire important de la Commission et par une surveillance limitée de la part des États membres, la division politique, propre au Conseil, entre les « Amis des instruments de la défense commerciale de l’UE », leurs adversaires et les Etats indécis explique pourquoi la grande majorité des propositions de la Commission en matière de mesures permanentes est finalement adoptée par les gouvernements européens .

Mots clés :

Union Européenne, Chine, Politique commerciale, Défense commerciale, Anti-dumping

Introduction

“We are not making trade policy. We are implementing European law.”

DG Trade, Head of Unit, interview in Brussels on the 10th of March 2014

Trade defence is one of the EU’s few “exclusive competences”.¹ This, and its highly technical nature, has given rise to the idea that the field is part and parcel of technocratic Brussels’ policy-making (see Radaelli 1999), as confirmed by the Commission’s incessant assertions that its trade defence regime is exclusively fact-based and devoid of political objectives. It was therefore quite surprising that, in 2013, an EU anti-dumping case attracted such attention from the general public that, due to its immediately apparent political nature, it provided a window into the workings of trade defence policy behind its technocratic façade. Much public attention focused on the role of then Commissioner for Trade De Gucht, and most commentators were critical of his handling of the dossier. This was even more the case after Member States’ initial (and non-binding) rejection of the Commission’s proposal for an imposition of preliminary sanctions. It was interesting to observe that by December 2013, when definitive measures were eventually endorsed by the Council, the short-lived media attention had already turned elsewhere.

The observed case exhibited at least two seemingly counterintuitive features. *First*, Member States showed a puzzling reaction to the Commission’s initiation of the case. Germany, one of the most ardent supporters of green technology and home to the largest solar panel industry in Europe, went against its domestic import-competing producers (De Bièvre and Eckhardt 2011) and openly opposed the imposition of any sanctions (Gardner 2013). The French government did not remain on the sidelines either. Its strong support of trade defence measures on Chinese solar panels was baffling insofar as the French solar industry’s stake in the case was relatively limited. The *second* puzzling feature of the case was its outcome, namely the ultimate imposition of definitive sanctions. Although import-dependent firms mounted a remarkable lobbying effort against the proposed remedies, the Chinese side left no stone unturned to avoid fines, and most Member States opposed the imposition of provisional measures in a first non-binding vote at the beginning of June 2013, the Commission ultimately put in place final measures in the form of a “price undertaking”.

¹ This article is based on research I conducted for my Masters Thesis at Sciences Po Paris. While writing this Thesis, I incurred a great many debts, mostly to my supervisor Renaud Dehousse to whom I am immensely grateful for his guidance, his recommendations, and his support in applying for doctoral programmes around Europe, as well as to Cornelia Woll who took the time to read a terribly technical piece during a hot Parisian June and gave me invaluable advice on turning the Thesis into an article.

Member States' surprising ultimate acceptance of the Commission proposal dovetails with the observation that, according to the World Bank's "Global Anti-dumping Database" (Bown 2012), the overall number of cases in which proposed duties are ultimately *not* imposed by the EU is extremely low. From 1979 to 2012 definitive anti-dumping duties were imposed in 434 cases, while the fifteen-month WTO deadline for a case's conclusion expired without the imposition of final remedies in 18 cases. Thus, almost every time the Commission proposes a remedy, at least a simple majority of Member States in the Trade Defence Committee backs its proposal. Even in highly politicised contexts, such as in the 2005 case of sanctions against Chinese and Vietnamese footwear (see Eckhardt 2011) or in the 2013 proceedings against Chinese solar panels, the Council ultimately voted in favour of Commission proposals in the vast majority of cases. *If a simple majority of Member States can reject the imposition of final trade defence measures, why – the 2013 anti-dumping measures against imports of Chinese solar panels being a case in point – has virtually no Commission proposal ever been defeated in the Council?* This article argues that in an institutional and procedural setting that is already marked by significant Commission discretion and limited oversight on the part of Member States, the consistent political division within the Council explains the high rate of Commission proposals that are adopted by a simple majority of governments.

I. Existing scholarship on EU trade defence and this article's contribution

Despite its central role in the history of European integration and in the construction of the internal market, EU trade policy has received scant attention in the political science literature. According to Poletti and De Bièvre (2014: 102), scholarship on the EU's trade policy "remains underdeveloped, both theoretically and empirically". This is especially true in the subfield of trade defence within which Evenett and Vermulst (2005), De Bièvre and Eckhardt (2011), Eckhardt (2011), and Nordström (2011) have published the most comprehensive political science work. Most of this literature stresses the decisive role that domestic lobbies play in the preference formation of Member States and of the Commission, encouraging them to act as "transmission belts" for industry demands (see Eckhardt and de Bièvre 2011: 345). Indeed, a variety of phenomena that these scholars have noted to be characteristics of trade defence proceedings, especially the mobilisation of *ad hoc* industry coalitions, can be observed in the 2013 Chinese solar panels case as well. However, this article will argue that the mobilisation of organised *economic* interests played a subordinate role in the formation of most Member States' preferences, particularly for the governments that held longer-term preferences in trade

defence. It was rather the consistent *political* rift within the Council that, despite a massive mobilisation of both import-competing and import-dependent domestic lobbies, enabled the Commission to successfully pursue its plan to impose final trade defence measures.

My argument is in line with another strand of EU trade defence literature that stresses the political logic attached to Member States' preference formation. This strand includes the works of Vermulst and Evenett (2005) and Nordström (2011). The latter's account, which never been formally published but is widely known (Interview 1), has been particularly under-covered in the political science literature on the issue to date. Nordström's contribution is significant because it is the first to draw its inferences from reliable data on otherwise confidential voting patterns within the Anti-dumping Advisory Committee of the Commission. The data comes from notes taken by the Swedish government's Committee delegation between 1996 and 2004. Both Vermulst and Evenett (2005) and Nordström (2011) emphasize a political logic behind Member States' trade defence preference formation, and show that trade defence is not always a solely "firm-driven" (Interview 8) process – as the transmission belt argument would suggest. Rather, it appears that a number of Member States held strong and consistent preferences, on principle, either in favour of or against the imposition of trade defence, and that these preferences transcended short-term constituency demands. My own research has revealed (Interviews 4 and 8) that these distinct voting patterns have all but disappeared since 2004. Apparently, the imposition of trade sanctions and the perception of governments' "national interest", as opposed to the "Union interest", *also* contains a political component.

II. The Institutional Setting of Trade Defence in the EU

1. *The evolution of the Commission mandate in trade defence*

Although anti-dumping (Council Regulation No 1225/2009 of 30th November 2009 on protection against dumped imports) and the less frequently used anti-subsidy measures (Council regulation No 597/2009 of 11th June 2009 on protection against subsidised imports) are currently regulated through two different regulations, the procedure applied in both cases is very similar. Both measures' normative objective is to "restore market conditions" in response to dumped or subsidised imports into European markets. They therefore seek to counterbalance the "margin of dumping or subsidy" of those imported products, i.e. to counter the unfair economic advantage that dumped or subsidised imports enjoy over domestically produced non-dumped and non-subsidized products.

They do so by imposing duties or by implementing “price undertakings” (Gstöhl 2013: 15).

Table 1: The procedure in anti-dumping or -subsidy cases (before February 2014), based on Nordström 2011: 9

| | COMMISSION DG TRADE | | ADVISORY COMMITTEE | COUNCIL OF MINISTERS |
|--------------|--|---|--|---|
| Day 0 | Complaint lodged by individual firms or industry association (representing at least 25% of the EC industry) | ↔ | Consultations with the MS whether or not to initiate AD/AS proceedings | |
| Day 45 | Notice of initiation if <i>prima facie</i> evidence of dumping/subsidy and injury | | | |
| | Investigation begins - Exporters and other “interested parties” must respond within 15 days. - Commission questionnaires are due within 37 days. - Verification visits take place. | | | |
| 6-9 months | Proposal of provisional measures Investigation continues. | → | Advisory vote Commission decides. | |
| 12-13 months | Proposal of definitive measures | → | “Advisory vote” Commission “shall” take the majority opinion into account. | If negative: Mediation in Coreper or the Working Party on Trade Questions |
| ≤ 15 months | Revision of definitive proposal | | → | Decision by simple majority, abstentions counted in favour |

Anti-dumping complaints need to be lodged with the Commission either by an individual firm or by an industry group acting on behalf of its members. The complainant has to demonstrate that the complaint is supported by a quarter of the Community industry producing the “like product”. The complaint must moreover not be opposed by a group of producers disposing of a larger industry share. If these preconditions are met the complaint is usually deemed receivable by the Commission. If the complainant furthermore supports its claims with *prima facie* evidence of dumping and material injury the Commission, after non-bindingly consulting Member States in the Anti-dumping Advisory Committee, usually opens an investigation and announces the initiation of proceedings in the Official Journal of the European Union (Nordström 2011: 8-9). DG Trade’s Investigation Unit carries out the assessments of dumping and injury separately. To establish dumping, DG Trade contacts foreign producers, carries out on-site

verification visits, assesses their business records, and requests that they respond to a detailed questionnaire. Injury investigations, on the other hand, are conducted within the EU. In this case, domestic producers must prove that importation of the dumped product has materially injured them. The Commission also hears other interested parties, such as consumer interest groups, importers and retailers. From the assembled evidence, the Commission then concludes (1.) whether dumping can be established, (2.) whether material injury is present, and (3.) whether an overriding “Union interest” of the entire industry might be harmed by the imposition of measures.

Ten days before the Commission consults the Anti-dumping Advisory Committee on the imposition of preliminary duties, the outcome of the investigation is disclosed to Member States. Both the Commission’s factual argumentation and the remedy it proposes become subject to scrutiny. This survey of Member States’ positions on the imposition of preliminary duties is non-binding, however; even in cases where a majority opposes sanctions, the Commission can implement the measures it deems appropriate. The Commission investigation continues throughout the stage of preliminary sanctions and, depending on whether the grounds for sanctions persist, the Commission can ultimately propose the imposition of definitive measures to the Advisory Committee. Before it can implement final duties, however, the Commission must secure consent through a simple majority of votes in the Council, with abstentions being counted in favour of its proposal. When, even after mediation in Coreper or the Council’s Working Party on Trade Questions (WPTQ), no majority of approving Member States forms, the cases are allowed to expire by exceeding the official fifteen-month deadline. Even though they could formally reject a proposal in the Council, Ministers prefer to let the cases expire since this maintains the perception of a united Council and provides an easy way out of a controversial case without further action (Nordström 2011: 9-11).

All of this goes to show that, particularly during the first procedural stage until the imposition of preliminary sanctions, the Commission holds an influential position in the EU’s trade defence regime. It has developed significant expertise and capabilities in a knowledge-intensive field, is responsible for opening an investigation, elaborates and assesses the facts underpinning a case, and sets the agenda by proposing a legal reasoning and the ensuing (non-) imposition of sanctions (Delreux & Kerremans 2010: 370). Not only do national governments usually not gain access to the raw data on the case, but they also do not have sufficient time, expertise and personnel to assess the Commission’s numbers en détail (Interview 7). Moreover, not all features of the investigation are as

straightforward and as fact-based as the Commission claims they are; it enjoys a certain amount of “wobble room” (Interviews 4 and 8). Member States can only challenge its reasoning with regards to causation and Union interest (Nordström 2011: 8), whereas the “facts” on dumping that underpin both sides’ necessarily (due to the ECJ’s *Eurocoton* ruling) legal reasoning are established by the Commission’s findings. This is also why governments’ oversight competence vis-à-vis the Commission ultimately remains very limited at this stage.

2. Changes to the procedure: the dismantling of Member States’ oversight competencies

The basic characteristics of the first anti-dumping regulation No. 459/68 of April 1968 have thus far remained remarkably stable, such as the features of Commission investigations. The most remarkable changes to the regulation that have occurred over time all concern the oversight competencies granted to the Anti-dumping Advisory Committee. The Commission was originally bound to a confirming vote by a qualified majority of governments when it opted to impose provisional measures. This is no longer the case as the Commission is now able to set preliminary measures independently of the majorities in the Committee. After the imposition of provisional measures, the second and most important instance of Member States’ oversight occurs when the Commission proposes final duties. At first, a qualified majority was needed for a Commission proposal to pass in the Council, setting a rather high bar for measures to be adopted. With subsequent accessions, Treaty changes, and evolving WTO rules, the majority requirements were gradually adapted. The first time that the initial regulation was amended occurred in 1994 (European Communities 1994) when the majority requirement for permanent sanctions was lowered to a simple majority. It had been a French-led coalition of Member States with a vital interest in maintaining the functionality of the policy, i.e. the “implementability” of measures that had lobbied for an adapted majority requirement. This is understandable in light of the ensuing 1995 EU accession of “traditionally liberal” countries such as Finland and Sweden (Woolcock 2005: 387). With the 2004 enlargement, the voting procedure was adjusted for a second time, providing for abstentions to be counted in favour of a Commission proposal. With the latest Comitology regulation (European Union 2009), the majority requirement has once again substantially changed: as of the 16th of February 2014, only a qualified majority of Member States can *reject* a Commission proposal for final duties. (Nordström 2011: 11)

In its 2003 *Eurocoton* ruling (Case C-76/01 P), the European Court of Justice further limited Member States’ oversight in trade defence matters and subjected a veto or a case’s expiration to narrowly defined legal criteria. The Court

stipulated that the Council had to issue a legally binding (i.e. contestable before the General Court) “statement of reasons” explaining why governments had decided not to follow the Commission’s reasoning. The Court clarified that sound reasons had to draw on the basic anti-dumping regulation and legally refute the Commission’s reasoning in at least one of the three fundamental tests. The Court’s ruling thus clearly narrowed the Council’s possible margin of manoeuvre by restricting the range of potentially applicable arguments, ruling out reasons beyond the confines of the anti-dumping regulation, i.e. inherently political arguments based on foreign policy, environmental policy, labour standards, or the macroeconomic effects of potential remedies (European Commission 2006), and by possibly subjecting Member States’ reasoning to judicial scrutiny.

III. The 2011-13 EU Anti-dumping Proceedings against Chinese Solar Panels

Table 2: Timeline of the 2013 EU Anti-dumping Case against Chinese Solar Panels

| DATE | ACTOR(S) | INCIDENT | SOURCE |
|------------|--|--|---|
| 27/10/2011 | ProSun | First public indication of SolarWorld preparing an anti-dumping suit. | <i>Neslen 2011</i> |
| 17/02/2012 | French Ministry for the Environment | France follows Italy and Greece in granting a premium to installed panels “Made in the EU”. | <i>EurActiv 2012</i> |
| 24/07/2012 | ProSun | Solar panel manufacturers file their complaint, calling for a 120% tariff on modules, 80% on cells. | <i>Chaffin 2012</i> |
| 03/09/2012 | German Government | On a visit to China, Angela Merkel tells her Chinese counterpart that Germany has no interest in a row over panels. | <i>EurActiv 2012b</i> |
| 06/09/2012 | European Commission | The Commission opens investigations in its largest anti-dumping action ever. | <i>Commission note, 2012/C 269/04</i> |
| 25/09/2012 | ProSun | Solar manufacturers add anti-subsidy complaint. | <i>Chaffin 2012b</i> |
| 05/11/2012 | Chinese Government | China files a WTO case on EU solar premiums and considers blocking EU panel imports. | <i>Inman 2012</i> |
| 08/11/2012 | European Commission | The Commission also announces anti-subsidy investigations on Chinese panels. | <i>Commission note, 2012/C 340/06</i> |
| 23/02/2013 | AFASE | A study argues that the imposition of tariffs could lead to 242,000 job losses in the EU. | <i>Vesterbye 2013</i> |
| 10/05/2013 | European Commission | De Gucht informs the College of the decision to impose provisional duties averaging 47%. | <i>Emmott and Guarascio 2013, EurActiv 2013</i> |
| 26/05/2013 | German Government | Angela Merkel: “Germany will do what it can to prevent definitive import duties.” | <i>EurActiv 2013b Chaffin 2013</i> |
| 27/05/2013 | EU Member States | In the Anti-dumping Committee, a coalition of 16 of 27 EU Member States opposes the imposition of trade sanctions against China. | <i>Chaffin 2013b Interview 6</i> |

| | | | |
|------------|---|--|--|
| 28/05/2013 | European Commission/ European Parliament | De Gucht meets EP: "I couldn't care less. [China] can put pressure on Member States, but they will waste their time trying to do so with me." | <i>EurActiv 2013c Gardner 2013</i> |
| 05/06/2013 | European Commission | DG Trade announces provisional anti-dumping duties, set at 11.8%, and at 47.6% after 60 days. | <i>Commission Regulation, No 513/2013</i> |
| 05/06/2013 | Chinese Ministry of Commerce | China announces investigations into EU dumping of wine exports, targeting France and Italy. | <i>Traynor 2013</i> |
| 21/06/2013 | European Commission | DG Trade and China's ministry of commerce accept a "price undertaking". | <i>Chaffin and Hille 2013 Chaffin and Hille 2013b</i> |
| 27/07/2013 | European Commission | Details of the settlement emerge. 90 Chinese companies charge an EU price of 56 cents per Watt and obtain 60 per cent market share. | <i>Chaffin 2013c</i> |
| 03/08/2013 | European Commission | DG Trade implements the undertaking as a provisional anti-dumping measure. | <i>Commission Regulation, No 748/2013</i> |
| 28/08/2013 | European Commission | DG Trade announces it has evidence of subsidies being provided to Chinese panel producers. It delays acting on its evidence until December. | <i>EurActiv 2013d</i> |
| 02/12/2013 | Council of Ministers | Member States of the EU approve the price undertaking against Chinese solar panels, i.e. affirm the imposition of definitive anti-dumping and anti-subsidy measures for two years. | <i>Council Regulation, No 1238/2013 Council Regulation, No 1239/2013</i> |
| 04/12/2013 | European Commission | Commission implements Council decision. | <i>Commission Decision, No 2013/707/EU</i> |

1. Non-institutional actors involved in the case, their objectives and capabilities

Both *import-competing and import-dependent industry associations* rank among the potentially influential actors in trade defence proceedings (e.g. Eckhardt 2011, De Bièvre and Eckhardt 2011). In this case industry associations also played a prominent role. An import-competing coalition of EU panel producers prepared and lodged both an anti-dumping and an anti-subsidy complaint. Most of the producers seeking relief from their precarious position by means of EU trade defence measures resided in Germany. "EU ProSun", as their association was called, was modelled on the successful "ProSun" campaign that had lobbied for sanctions against Chinese solar panels in the United States in 2011 and 2012. "SolarWorld", the main initiator of the case, and other EU solar producers had come under considerable pressure due to the increasingly market-dominating position of Chinese panels. Between 2009 and 2012, Chinese producers were able to expand their sales volumes by around 300% for modules (ultimately acquiring 80% of market share), and by more than 400% for cells (25%; Council of the European Union 2013b). Against this backdrop, a mobilisation of import-competing firms in favour of relief becomes

understandable. Still, one of the case's distinctive features was that import-dependent business actors also joined forces to fight against sanctions. These firms included downstream installers, retailers and solar park operators, and upstream producers of polysilicone. They established an *ad hoc* coalition called "Alliance for Affordable Solar Energy". AFASE's exceptionally active lobbying efforts were remarkable insofar as import-dependent groups usually face more pressing collective action problems than import-competing ones, since the costs of imposing sanctions on downstream actors and consumers tend to be more thinly and diffusely spread than their immediate benefits to producers.

The Chinese government and industry stakeholders constituted a second influential group of actors. Two factors explain their forceful mobilisation. First, China has traditionally been the "country most accused of dumping by the EU" (Liu & Vandebussche 2002: 2, see Bown 2012). A number of cases initiated against Chinese importers were highly politicised, such as the 2005 case on shoe imports or the 2005 "bra wars" (De Bièvre & Eckhardt 2011: 349-350). Moreover, the ever-looming threat of an *ex officio* case of EU proceedings against Chinese telecom producers had consistently been weighing on Sino-EU trade relations. Ultimately, after various EU Members introduced premiums on the installation of EU-produced solar panels from 2010 to 2012, the Chinese government opted to invoke the WTO's judiciary. Second, the case's sheer size lent it salience. With 2012 annual imports of Chinese solar panels totalling 21 billion Euros, the case was the largest anti-dumping procedure that the Commission had ever engaged in. In 2012 alone, imports of solar panels constituted 7.2% of the overall 291.1 billion Euros worth of imports in goods from China to the EU (Eurostat 2013). Chinese stakeholders' adopted a two-pronged approach: first, in a *tour des capitales*, or a "*grande tournée de menaces*" (Interview 6), the Ministry of Commerce tried to obtain assurances from EU governments that they would oppose sanctions in the Anti-dumping Committee. A number of EU Members taken with the visits of the new Trade Minister in the run-up to the non-binding Committee vote in June 2013, pledged support in fighting the sanctions (Interview 6). Second, throughout the procedure the Chinese side threatened retaliation. When the initial EU ProSun anti-dumping complaint was lodged, the Chinese Chamber of Commerce immediately hinted at countermeasures (EurActiv 2012e). When the Commission eventually announced the imposition of preliminary measures, the Chinese government instantly responded by opening investigations into the dumping of EU wine exports, apparently targeting the two staunchest proponents of sanctions, France and Italy (Chaffin 2013e).

2. State actors' logic of preference formation in the observed case

When staking their position on the “Union interest” in a given case, Member States can, according to the Commission’s 2006 “clarification paper”, only take into account economic reasons linked to the impact of potential sanctions on an EU industry. Broader political considerations such as “foreign policy, environmental policy, labour standards, regional policy or the macro-economic effects of measures” (European Commission 2006: 5) cannot be claimed as justifications for the rejection of a sanctions proposal. Yet, the case in question did not corroborate an economic logic of preference formation, since the mobilisation of organised industry interests played a subordinate role in most Member States’ positions. The activities of both of the principal business lobbies, EU ProSun and AFASE, ultimately had a negligible impact on the case’s outcome given that most Member States’ preference formation followed a decidedly political logic. A break in the link between domestic lobbies and Member State governments was apparent, as exemplified by the German and French governments’ positions in the observed case. The two countries ended up on opposing sides, with Germany spearheading the effort to defeat the sanctions, and France serving as the leading proponent of the Commission proposal. In staking their position, both governments did not heed the petitions of domestic lobbies, but rather embraced broader considerations of macroeconomic and foreign policy.

The *German government* opposed sanctions in the Anti-dumping Advisory Committee despite ProSun’s lobbying effort in favour of sanctions, despite the fact that Germany’s dwindling solar industry had acted as a major provider of state-subsidised high-technology employment in its *Neue Bundesländer* throughout the 1990’s and 2000’s (see Spiegel Online 2014), and despite the industry’s pioneering role in the realm of “green technology”. Import-competing solar panel producers’ remaining employees who would be directly affected by the case’s outcome totalled around 10,000 to 12,000 (see Spiegel Online 2014). It was therefore puzzling that the German government not only decided to side with the opponents of trade defence measures, but also did so with fervent activism. Of course, the German ministry of economy held a hearing featuring the positions of both import-competing and import-dependent lobby associations. But the German government still decided to turn a deaf ear to the demands raised by ProSun, and did so even before the Commission had begun its investigation. The Merkel administration went as far as to publicly reiterate its stance, with the Chancellor herself engaging with the issue and stating her opposition by declaring that “protectionism [was] not the answer to globalisation” (Gardner 2013). The German government’s reasons for adopting such a pointed stance against sanctions were of a mostly macroeconomic and foreign-policy

nature. The Merkel administration was seeking to maintain the good trade relations Germany had established with the Chinese over the past couple of decades, and by all means wanted to avoid Chinese retaliatory measures against German producers of polysilicone and luxury cars that might harm a much broader factions of its largely export-dependent industry in the event of a “trade war”. This was understandable, considering that China is its third-biggest trading partner, and that Germany accounts for a remarkable 45% of EU exports in goods to China (Eurostat 2013).

“Even before the investigation was initiated, the Chancellor had already, at the occasion of an official visit to China, stated that she does not want that investigation to be opened. She declared that in Beijing. The Commission opened it anyway. And we cannot extract ourselves from what the Chancellor wants. [...] We are tied to what she says.” (Interview 7)

An equally political logic underpinned the *French government’s* decision to back sanctions. Its immediate economic interests were limited (Interview 6); the country does not possess a sizable domestic solar panel industry, let alone one as big as the German one is (or rather, once was). Still, the French government took a firm stance favouring sanctions and supporting the Commission proposal. Then Minister of Commerce Bricq repeatedly emphasized that her government would back the Commission in its bid to counter the investigated Chinese dumping of solar panels. While it was forming its position, the French government briefly met with representatives of AFASE, but did not consult the import-competing ProSun lobby group with whose complaint it eventually sided (ibid.). For the French administration it was rather “a question of principle” to oppose what it continues to perceive as unfair Chinese trade practices. In comparison to the Sino-German relations, the French approach towards the case was founded on clearly different, rather strained, trade preconditions: although France is the second-largest EU exporter to China, French exports are only a fifth of German exports and France has carried a markedly negative trade balance with the People’s Republic (Eurostat 2013). Furthermore, the French government had, half a year before ProSun lodged its complaint with the Commission, followed the Italian and Greek example and introduced a premium on installations of solar panels “Made in the EU”. As was the case for Germany, the ultimate decision to back the Commission proposal to implement provisional measures was taken at the level of the Prime Minister, reflecting the high salience that was ascribed to the case within the French government.

“La France ne peut pas, parce que ses intérêts économiques dans ce cas sont limités, s’abstenir de s’impliquer. Nous, la France, comme un des principaux états-membres de l’Union Européenne, se doit d’être déterminé face aux chinois. [...] La politique de la France a fortement compté sur la définition de la position française dans ce cas. [...] Nous

considérons qu'on n'est pas dans un rapport amical mais dans un rapport de force, qu'on a une force à exercer pour envoyer un signal clair." (Interview 6)

The rationale behind the French government's decision was a notably political one. *First*, the stark rise in European solar panel installations over the last decade had been a largely state-subsidised phenomenon. In supporting the Commission proposal, the French government thus advocated the direction of state subsidies towards products that had been assembled within domestic markets rather than imported at presumably dumped prices (Interview 6). *Second*, the concept of "reciprocity" in multilateral commercial relations, i.e. the granting of necessarily mutual concessions, inspired the French government's trade policy. The idea came from a 2012 report produced by Yvon Jacob and Serge Guillon at the behest of the French Ministry of Economy (Jacob and Guillon 2012). The ideas set forth in this report were apparently *"très largement partagées par la classe politique française"* and had a significant influence on the French position in the observed case (Interview 6).

Ultimately, at the Advisory Committee's meeting on the 27th of May 2013, it was the French-led coalition of the "like-minded" (Interview 6) or "Friends of TDI" (Trade Defence Instruments, Interview 7), comprising 11 Member State governments that backed the Commission proposal. The opposing group, including the outspoken German government, comprised 16 representatives. The Commission decided to omit this non-binding vote and, on the 5th of June 2013, proceeded to implement provisional duties. In the run-up to the vote, governments' preference formation had followed a political logic as their rationales for choosing sides transcended the narrowly defined economic stakes of the case. Economic rationales took a backseat, with political considerations coming to the fore, bringing about a marked divide between different factions. This was, of course, attributable to the highly political context of the case. Yet, as I will now show, this phenomenon is also of a more stable nature.

IV. A divided Council, an empowered Commission, and trade defence's outcome stability

1. Stable Member State coalitions within the Advisory Committee

Until recently, little was empirically established about the workings of the Anti-dumping Advisory Committee. Nordström's (2011) never formally published work provided the first analysis based on first-hand voting records, thereby shedding light on the political conflicts behind the technocratic façade of EU trade defence. Nordström's sample reveals the existence of longer-term preferences of different

Member States that transcend short-term domestic pressures. These more or less stable preferences revealed the enduring existence of at least three different political factions within the Committee, consisting of (1) the “Friends of TDI”, a standing coalition of Member States that routinely approves Commission proposals, (2) a number of swing states that adopt a case-by-case approach, and (3) the opponents of TDI that almost always choose to oppose the imposition of final measures.

“Sur cette question de défenses commerciales, et plus largement la politique commerciale, on a très clairement un clivage au sein de l’Europe, entre deux groupes, certains disent la Ligue du Nord et le Club Med. Donc nous, nous sommes les ‘Amis d’Anti-dumping’ face aux pays libéraux qui nous appellent aussi les ‘like-minded’. Il y a très clairement deux groupes qui se font face.” (Interview 6)

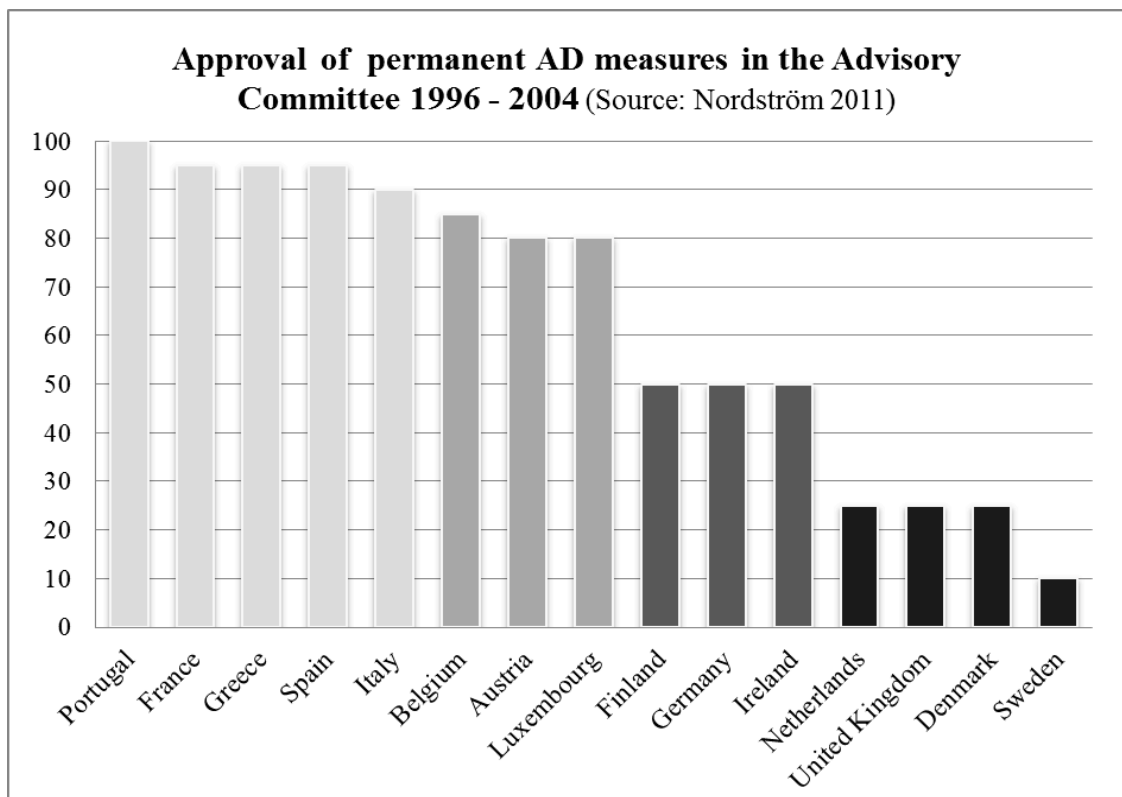


Table 3: Approval of permanent measures in the Advisory Committee 1996 – 2004, Source: Nordström 2011

First, these distinct voting patterns show that such a consistent rift among Member States is very unlikely to be solely attributable to their acting as case-by-case transmission belts of import-competing or import-dependent lobbies’ demands. Rather, a number of Member States do indeed possess longer-term political preferences in favour or against the imposition of trade sanctions. It is in particular for the non-aligned faction of swing Member States that a case-by-case logic of preference formation can nevertheless be expected. Second, these steady voting patterns suggest a certain degree of cohesion within the two

adversarial groups of “friends” and “opponents of TDI”. As domestic interests in trade defence cases are usually concentrated in a handful of varying Member States, these patterns hint at stable arrangements of logrolling between Member State governments that belong to a common faction (Nordström 2011: 32-33). Particularly among the “Friends of TDI” such practices of logrolling could amount to continuous reciprocal acts of goodwill.

These features of consistent political polarisation within the Anti-dumping Committee have, according to the findings of my own research, all but ceased in the aftermath of the latest rounds of EU enlargement and after the 2004 change in the Committee’s voting rules. Indeed, they were also observable in the case of the 2013 anti-dumping and anti-subsidy sanctions against imports of Chinese solar panels. They applied to both the procedure’s first critical moment, i.e. the non-binding negative vote on preliminary duties by the end of May, and its second critical moment, namely the positive Council vote on definitive measures. After the Commission, in mid-May 2013, had informed Member States about the outcomes of its investigation, and its willingness to impose preliminary measures, Member States formed their preferences vis-à-vis the Commission’s argumentation. In the run-up to the subsequent Committee meeting on May the 27th, the two different factions coordinated intensely amongst themselves and attempted to win the support of swing Member States.

“Oui, il y a des échanges permanents entre les Etats-Membres, avec ces deux blocs qui se coordonnent le plus possible pour qu’on ait une visibilité des décisions qui seront prises. Les intérêts économiques des pays divergent, mais si chacun votait seulement selon ses intérêts on ne serait jamais capable de mettre en place des mesures. Donc, il faut que nous soutenions nos voisins pour qu’ils nous ré-soutiennent le lendemain. Cette discussion est permanente entre les Etats-Membres. Entre ‘like-minded’, ceux du nord ou ceux du sud, il y a toujours une coordination.” (Interview 6)

Apart from the intense external pressure imposed on various Member State governments by the Chinese side, it was moreover the German administration that played a critical role in joining the ranks of the opponents of TDI. In a case to which it attributed the highest political salience, it coordinated with other Member State governments, contrary to its usual habit of independently forming its preferences on a case-by-case basis (Interview 7). With other swing states following suit, the “Friends of TDI” were ultimately not able to secure the support of a simple majority of 14 Member States for the non-binding vote.

“Jusqu’en été [2013] on était 27 [Etats-Membres], il fallait donc 14 pour une majorité simple. Si vous prenez les ‘Friends of TDI’ on est déjà 11 [...]. Il faut trois Etats-Membres pour s’assurer [...]. On trouve toujours le moyen de compléter cette majorité, souvent avec les Allemands, parfois sans eux. Mais dans ce cas-là, la réaction des Chinois a fait que, en Juin, on ne pouvait plus trouver une solution majoritaire.” (Interview 6)

2. The peculiar outcome of the observed case: the imposition of final measures

Notwithstanding the initial non-binding negative vote in the Advisory Committee, DG Trade, as was to be expected, decided to continue to actively push for sanctions and remained steadfast in the face of Member States opposition. At the same time, it decided not to proceed as if the negative vote had never occurred. Thus, the Commission did not just decide to impose preliminary measures, but also to push for negotiations with the Chinese Ministry and Chamber of Commerce, and to introduce sanctions in gradually escalating steps (European Commission 2013). In mid-June, the Chinese Chamber of Commerce suggested a “price undertaking”. On the 21st of June, the two parties reached a basic agreement (Chaffin and Hille 2013b) that the Commission implemented as preliminary measure on the 3rd of August (European Commission 2013c), and that Member States in the Council adopted as permanent measure for a duration of two years on the 2nd of December (Council of the European Union 2013, 2013b). Ultimately, just three weeks after “its” majority of EU governments had opposed sanctions, the Chinese side felt inclined to relent and propose a compromise. This puzzling phenomenon can be understood in the light of Chinese uncertainty over whether that majority would ultimately hold. Indeed, a number of Members had informed the Chinese side that they might be joining the ranks of the “Friends of TDI” in a binding vote (Interview 6).

“A variety of Member States have indicated to the Chinese that they should not be expecting the same result for the binding vote, that a majority against measures could once again be obtained. [...] If the Chinese and the Commission hadn't agreed on the price undertaking, I'm not sure whether no measures would have finally been imposed as the Chinese had hoped and as they had propagated. Along the lines of 'We had a majority against the imposition of preliminary measures, so we will also have a majority against final duties.' It is possible to assess the facts of a case in a differing manner half a year later.” (Interview 7)

Even in a highly contentious and politicised case as the observed one, the initially mentioned stability in policy outputs ultimately held. This, as I have argued, is due to both institutional and political factors. EU trade defence's institutional setting grants the Commission significant discretion, leading to considerable path dependency as both the ECJ's Eurocoton ruling and the Commission's “clarification paper” regarding the “Union interest test” limit Member States' margin for oversight. These requirements tend to deter reluctant Member States from following through with their objections. This is especially so in cases of low economic salience for swing Member States, which make case-by-case decisions. Such cases are numerous, however, as trade defence proceedings tend to be of confined spatial and sectoral economic impact. It is,

among other factors, this statement of reasons that makes a final negative vote considerably costlier than a preliminary non-binding one, and increases the uncertainty about whether a majority against duties can be upheld.

“[The statement of reasons] is why many Member States rapidly get cold feet. Because it is very difficult to reject a Commission proposal for legal reasons, since the Commission’s reasoning is already so waterproof that it can be defended before the ECJ. [...] It is therefore very difficult for Member States, also due to the brevity of time as the entire Council procedure after the meeting of the Anti-dumping Committee spans solely about half a month, to write a substantiated statement of reasons. Ultimately, it is much easier to say ‘no’ when preliminary measures are concerned than when it comes to the imposition of final measures.” (Interview 7)

When considering these institutional particularities in conjunction with the observed consistent *political division within the Council*, a procedural drive towards the ultimate imposition of measures can be clearly discerned. In the observed case, after the non-binding negative vote, the negotiation game among Member States began anew as the Commission had nonetheless been capable of imposing preliminary measures and thereby forced a final and binding vote six months later. In the final vote, however, it was more likely for the eleven “Friends of TDI” to attract the support of three undecided swing Member States. Opposing the Commission in a non-binding vote entails few costs. Bindingly voting against the Commission and the “Friends of TDI”, however, might be disadvantageous in future or parallel cases when the Member State in question would itself have to rely on the loyalty and “solidarity” (Interview 6) of the “like-minded”. Especially for swing Member State governments that do not attach a high value to a given case, joining the “Friends of TDI” and backing the Commission proposal in a final vote might ultimately be the more attractive option. This logic of “solidarity” among Member States might even be exacerbated by the voting rule applied in the Anti-dumping Advisory Committee and in the Council, i.e. the fact that abstentions are counted in favour of a Commission proposal. Although its ultimate relevance depends on the rationale that Member States attach to an act of abstention, it might allow Member States to use abstentions without antagonising both political factions and thereby “burning political capital” (Interview 1). If abstaining is understood as an expression of indifference among Committee members, then the applied voting rule would render the adoption of a proposal more likely as anti-dumping cases frequently affect the interests of only a couple of Member States. This would also be the case if swing Member States collusively voiced their “silent approval” of sanctions by means of abstentions, without rankling the opponents of TDI.

Conclusion and Outlook

In the preceding sections, I have argued, in reference to the case of the 2013 proceedings against Chinese solar panels, that the institutional and political setting of EU trade defence policy is skewed towards the ultimate imposition of definitive measures. The question of who is in the driver's seat – the Council or the Commission – lay at the very core of my research interest. Today, this question must be raised anew. Indeed, recent changes in the Anti-dumping Committee's voting rules came into effect in February 2014 (Christiansen and Dobbels 2012). With the inclusion of EU trade defence policy in the post-Lisbon comitology regime for implementing acts (European Union 2011), and with the new requirement of a qualified majority in order to *reject* a Commission proposal, the procedure seems to have witnessed a “mini-revolution” (Christiansen and Dobbels 2012: 12). 15 out of the 28 Member States, representing 65 percent of the EU population, now have to oppose the imposition of permanent measures. With the residual institutional and political setting of the policy remaining unchanged, the *de facto* capacity to adopt trade defence measures has thus been shifted further towards DG Trade. Under the new regime, it is hardly conceivable that a Commission proposal favouring final duties could ever be rejected by Member States. Particularly based on the aforementioned political and institutional context, Nordström might indeed be right to expect that “100 percent of the measures will pass in the future (unless the protectionist sentiment in the Council shifts radically in a liberal direction)” (2011: 12). Whether this is actually the case, however, remains a question for future research.

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Conducted interviews

- Interview 1, Dirk de Bièvre, University of Antwerp, Professor of International Politics, 5th of March 2014, via Skype.
- Interview 2, Jappe Eckhardt, World Trade Institute Bern, Senior Research Fellow, 13th of March 2014, via Skype.
- Interview 3, European Commission Directorate-General for Trade official, 10th of March 2014, Brussels.
- Interview 4, European Commission Directorate-General for Trade official, 10th of March 2014, Brussels.
- Interview 5, Fredrik Erixon, European Centre for International Political Economy, 13th of March 2014, via telephone.
- Interview 6, French government official, 20th of March 2014, Paris.
- Interview 7, German government official, 18th of March 2014, via telephone.
- Interview 8, Patrick Messerlin, Sciences Po Paris, Professor of economics (emeritus), 4th of March 2014, Paris.