



# Free Trade Bulletin

No. 54 • August 19, 2013

## Free Trade in Environmental Goods: The Trade Remedy Problem

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In late June of 2013, in a major speech on climate change, President Obama announced a plan “to launch negotiations toward global free trade in environmental goods and services,” including clean energy technology.<sup>1</sup> In this regard, the president’s “Climate Action Plan” states that

The U.S. will work with trading partners to launch negotiations at the World Trade Organization towards global free trade in environmental goods, including clean energy technologies such as solar, wind, hydro and geothermal. The U.S. will build on the consensus it recently forged among the 21 Asia-Pacific Economic Cooperation (APEC) economies in this area. In 2011, APEC economies agreed to reduce tariffs to 5 percent or less by 2015 on a negotiated list of 54 environmental goods. The APEC list will serve as a foundation for a global agreement in the WTO, with participating countries expanding the scope by adding products of interest.<sup>2</sup>

Removing or lowering tariffs on goods such as solar panels and wind turbines would lead to lower prices and greater availability of those products. However, there is one major hurdle to progress in this area: While normal tariffs are covered by the APEC declaration, special tariffs imposed through the so-called “trade remedies”—antidumping (AD) duties, countervailing duties (CVD), and safeguards—are not.

Unfortunately, CVDs imposed to offset foreign subsidies and AD duties ostensibly targeting price discrimination are being used with increasing frequency to impede trade in environmental goods. Domestic industries seeking protection from foreign competition petition to have these remedies imposed, and the agencies that conduct these

investigations usually find in their favor. These trade remedies always result in higher prices for consumers, and thus the continued use of trade remedies on green products is directly at odds with President Obama’s goal of global free trade in environmental goods. As New York University law professor Rob Howse has observed: “What is the worth of such efforts if WTO members can continue to frustrate trade in green goods by unilaterally imposing retaliatory duties, as is happening now in the case of solar panels?”<sup>3</sup>

### The Trade Remedy Problem

Over the last couple of years, trade remedy actions on clean energy products have intensified. In the wind industry, the Wind Tower Trade Coalition, an association of U.S. producers of wind towers, brought an AD/CVD complaint against imported wind towers in 2011. The U.S. Commerce Department started an investigation, and announced a preliminary decision in December 2012. This decision found both subsidization and dumping in relation to Chinese imports and imposed an antidumping tariff of between 44.99% and 70.63%, as well as countervailing duties of 21.86%–34.81%. The Commerce Department also established a separate antidumping duty of 51.40%–58.49% on Vietnamese wind tower manufacturers.<sup>4</sup>

In the solar industry, in October 2011, the Coalition for American Solar Manufacturing, a group of seven U.S. solar panel manufacturers led by Solar World Industries America, accused Chinese solar panel companies of dumping products in the United States. The Commerce Department opened an investigation in 2011 and announced the final ruling in 2012. The decision was to impose antidumping tariffs ranging from 24% to 36% on Chinese producers.<sup>5</sup>

In Europe, a Belgian industry association, ProSun, filed a complaint against Chinese solar panels, cells, and wafers in 2012, claiming that these products were being dumped in the EU market. Solar panels made up 6.5% of China’s exports to Europe in 2011 at a value of around \$27 billion,

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making this the largest antidumping investigation by value in history.<sup>6</sup> In June 2013 the EU announced that it would impose antidumping levies of up to 47% on Chinese solar products. A lower interim duty of 11.8% was established pending the negotiation of a settlement agreement with China.<sup>7</sup> By August, an agreement was reached whereby the EU would suspend antidumping duties for Chinese manufacturers who agreed to not sell panels in the European market at a price below €0.56 per watt.<sup>8</sup>

The Chinese government has offered its own contribution to the trade remedy fracas. In July 2012, China initiated AD/CVD investigations on imports of U.S., European, and Korean polysilicon, a primary input in photovoltaic solar cells. Preliminary antidumping duties have been set between 53.3% and 57% for the United States and between 2.4% and 48.7% for Korea.<sup>9</sup> The decision for European polysilicon was delayed and will likely depend on the outcome of negotiations between the EU and China.<sup>10</sup>

India is also investigating an antidumping case in the solar industry. The case was filed by the Indian Solar Manufacturers' Association against module imports from China, the United States, Malaysia, and Taiwan in January 2012. The petitioners are now seeking to extend the case to include imports from Europe and Japan. The decision in this case is still pending.<sup>11</sup>

## The Search for Solutions

What all of this makes clear is that any progress that comes from the removal of normal tariffs on environmental goods will be undermined by the use of trade remedies. The point of free trade is more competition and lower prices. For environmental goods, lower prices are essential to draw consumers, both public and private, away from conventional alternatives. Lowering normal tariffs will help this, but imposing high trade remedy tariffs will take us in the wrong direction, with tariffs that are sometimes close to being prohibitive.

In a forthcoming paper, law professors Mark Wu and James Salzman recognize this problem.<sup>12</sup> They note that an “obvious solution” would be for countries to agree on a “temporary cease fire on the use of unilateral trade remedies against each other” in the area of environmental goods. They say, however, that such a proposal is “politically unrealistic.” They go on to suggest what they consider to be “more realistic solutions”:

- “Governments, before imposing a trade remedy, could be required to undertake an economic analysis of the effect of the proposed tariff increase on prices. They would also estimate the amount of additional tariff revenue that the trade remedy would bring in. Based on this analysis, the government would designate a portion of the additional tariff revenue into a fund that provides rebates to consumers of the product on which a trade remedy has been imposed.”
- “A second possibility is to limit the number of trade remedies that may be applied to environmental goods simultaneously. For example, WTO members might agree on a decision that sets the limit at no more than

three simultaneous trade remedy measures on environmental goods.”

- “A third and related idea is to place a strict time limit on how long trade remedies may be maintained for environmental goods.”
- “A fourth and final proposal is to place an upper-bound on the size of the additional tariff that may be imposed in a trade remedy case.”

Along the same lines, Rob Howse has proposed that “a WTO pact on environmental trade could require a prior period of negotiations, or that all alternatives be exhausted, before states resort to punitive unilateralism.”<sup>13</sup>

## Sometimes the Simplest Solution Is the Best One

There can be little doubt that trade remedies are a sensitive area. For decades now, supporters of trade remedies have been able to resist almost all attempts at reform. Thus, Wu and Salzman are right to recognize the political realities here.

However, with resistance this strong, these weak proposals may still have little chance of success. Arguably, then, a bolder proposal would have just as much chance. Weakening the reform with more complex options might not be much help.

Moreover, the modest reforms that Wu and Salzman propose may not be sufficient to address the impact of trade remedies on environmental goods. The first proposal they offer would offset the price effects of a tariff with a subsidy. This would at best return the market to pre-tariff prices, but would not address the initial protectionist effect of the trade remedy tariff.

The second and third proposals, capping the number of simultaneous actions and decreasing the length of time a remedy is in place, are both undermined by the fact that trade remedies are enacted pursuant to privately initiated investigations. Limiting the number of active orders might even incentivize domestic firms to file complaints just to make sure they do not lose their opportunity by waiting. Placing a time limit on trade remedies would merely force complainants to re-file once their protection expires.

On the other hand, binding the rate of duty a government can impose in a trade remedy case—Wu and Salzman’s fourth proposal—sounds very appealing, because it would truly limit the effect of trade remedies for environmental goods and reduce the incentive to seek an investigation. Unfortunately, by calling into question the complainant’s entitlement to relief from competition tied to the level of subsidization or margin of dumping, this proposal may strike too deeply at the heart of trade remedy policy. Trade remedies continue to exist in large part because of a perception that they restore a “level playing field” by correcting an illegitimate distortion of the market. Negotiating a bound rate for trade remedies would expose their essentially protectionist character, and so may suffer from the same political problems as an outright ban.

To be clear, our concern is not that Wu and Salzman have chosen to advocate the wrong reform proposals. Indeed, reducing the number, duration, and size of anti-dumping and countervailing duties is key to liberalizing

trade in environmental goods. Unfortunately, modest reform may not be enough to ensure open, competitive markets, yet may still be too much to appease political interests.

As a result, we think it is worth taking the Wu/Salzman proposal one step further, by proposing a total exclusion of the listed environmental goods from trade remedies.<sup>14</sup> The benefits are clear. More trade in these products will mean more competition and lower prices. This will promote the spread and adoption of these new technologies, which have increasingly been targets of protectionism. It will also reduce the trade friction that has increasingly been seen in this area, and thus contribute to a peaceful and stable trading system more generally.

A special free-trade regime for one narrowly defined industry is not without its drawbacks. In essence, it favors one industry over others, steering investment away from where market forces might direct it. Ideally, governments would push for total free trade, including the removal of trade remedies, in all industries.<sup>15</sup> Moreover, drawing lines between specific sectors is challenging. Determining which products should be counted as “environmental goods” is not always easy.

Nonetheless, it is clear that removing tariffs, including trade remedy tariffs, on environmental goods would lead to lower prices and more consumer choice for these products. This will be good for the economy in general and will help the environmental movement by making environmentally friendly products more widely available. For those who support green energy, liberalizing trade in this way is a great way to promote it.

## Conclusion

Whether a proposal to exempt environmental goods from trade remedies is politically realistic remains to be seen. No one will really know the answer to this question until a government makes the proposal. In recent years, governments have talked a lot about supporting the environment and about promoting free trade. If they are serious about these goals, a proposal to eliminate all tariffs, including trade remedy tariffs, on a wide range of environmental goods would be a good way to accomplish both.

## Notes

1. The White House, “Remarks from the President on Climate Change,” press release, June 25, 2013, <http://www.whitehouse.gov/the-press-office/2013/06/25/remarks-president-climate-change>.
2. The White House, “The President’s Climate Action Plan,” June 2013, <http://www.whitehouse.gov/sites/default/files/image/president27climateactionplan.pdf>.
3. Robert Howse, “Obama’s Free-Trade Green Plan Has a Chance of Breaking WTO Inertia,” *Globe and Mail*, June 27, 2013, <http://www.theglobeandmail.com/report-on-business/economy/economy-lab/obamas-free-trade-green-plan-has-a-chance-of-breaking-wto-inertia/article12870243/>.
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5. Diane Cardwell and Keith Bradsher, “U.S. Will Place Tariffs on Chinese Solar Panel,” *New York Times*, October 10, 2012, <http://www.nytimes.com/2012/10/11/business/global/us-sets-tariffs-on-chinese-solar-panels.html>.
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7. Juergen Baetz, “EU Slaps Levies on Chinese Solar Panel Imports,” *USA Today*, June 4, 2013, [www.usatoday.com/story/money/business/2013/06/04/eu-tariffs-chinese-solar/2387951/](http://www.usatoday.com/story/money/business/2013/06/04/eu-tariffs-chinese-solar/2387951/).
8. James Kanter and Keith Bradsher, “Europe and China Agree to Settle Solar Panel Fight,” *New York Times*, July 27, 2013, [www.nytimes.com/2013/07/28/business/global/european-union-and-china-settle-solar-panel-fight.html](http://www.nytimes.com/2013/07/28/business/global/european-union-and-china-settle-solar-panel-fight.html). Of course, this “settlement” is not much different in effect from the imposition of trade remedies themselves, except that it would reduce revenue from tariffs and further burden the future of the solar industry with an anti-competitive cartel. Existing industry players would benefit from establishing limits on competition, but consumers and the environment would be stuck with higher-priced solar energy.
9. Michael Martina, “China Hits U.S., South Korea with Solar Material Duties, Skirts EU Decision,” *Reuters*, July 18, 2013, <http://www.reuters.com/article/2013/07/18/us-china-dumping-idUSBRE96H10N20130718>.
10. Zhongrong Liang, “Deadline for China’s Antidumping Investigation on the US and EU Polysilicon Is Due Soon,” *21st Century Business Herald*, July 5, 2013, <http://business.sohu.com/20130705/n380746189.shtml> translated by Huan Zhu; Europa, “EU Imposes Provisional Anti-dumping Tariffs on Chinese Solar Panel,” press release, June 4, 2013, [europa.eu/rapid/press-release\\_IP-13-501\\_en.htm](http://europa.eu/rapid/press-release_IP-13-501_en.htm).
11. Jasmeet Khurana, “India Begins Anti-dumping Investigation on Module Imports from China, US, Malaysia and Taiwan,” *PV Tech*, November 30, 2012, [www.pv-tech.org/guest\\_blog/india\\_begins\\_anti\\_dumping\\_investigation\\_on\\_module\\_imports\\_from\\_china\\_us\\_mal](http://www.pv-tech.org/guest_blog/india_begins_anti_dumping_investigation_on_module_imports_from_china_us_mal); Natalie Obiko Pearson, “India May Expand Solar Dumping Probe to EU, Japan Cells,” *Bloomberg*, July 20, 2013, <http://www.bloomberg.com/news/2013-07-19/india-may-expand-solar-anti-dumping-probe-to-eu-japan.html>.
12. Mark Wu and James Salzman, “The Next Generation of Trade and Environment Conflicts: The Rise of Green Industrial Policy,” *Northwestern University Law Review* 108 (forthcoming 2014) Draft available at <http://www.law.harvard.edu/faculty-workshops/wu.faculty.workshop.spring-2013.pdf>.
13. “Obama’s Free-Trade Green Plan Has a Chance of Breaking WTO Inertia.”
14. Antidumping duties are a particular problem, as they purport to target “unfair trade,” but in reality impose tariffs without any objective basis whatsoever. Countervailing duties at least target foreign subsidies, which themselves can be trade-distorting, although it should be noted that WTO rules can also serve as a basis for challenging such measures. As for safeguards, they have not yet been an issue for environmental goods; while they are problematic, they do have the redeeming quality of being an honest attempt at protectionism.
15. Daniel J. Ikenson, “Economic Self-Flagellation: How U.S. Antidumping Policy Subverts the National Export Initiative,” *Cato Institute Trade Policy Analysis* no. 46, May 31, 2011.