

## **EU ProSun: Definition of Protectionism**

**“The real protectionism, China’s, has fostered massive overcapacity and resulted in a flood of below-cost priced solar modules which threatens to wipe out EU producers”**

On the occasion of recent talks between Chancellor Merkel and the Chinese Prime Minister Li Keqiang, during which both of them warned against protectionism in international trade, the German and European companies affected by the Chinese dumping would like to give their view on the problem of protectionism.

### **Protectionism IS NOT ...**

- enforcing the applicable trade law.
- tackling trade distorting practices.
- verifying the compliance of China's export subsidies with the WTO rules.
- introducing, as the EU Commission is doing currently, WTO conforming measures to address the illegal dumping which has already been confirmed by a thorough and independent investigation.

### **Protectionism IS ...**

- supplying one’s own industry with illegal advantages over others.
- foreclosing one’s own market.
- subsidizing one’s own businesses so they can sell products below cost.
- supporting one’s domestic export-oriented solar industry with 200 billion Euros while domestic solar installations are worth only about 10 billion Euros.
- building massive overcapacity of one’s domestic producers in accordance with the provisions of one’s Five-year Plans, resulting in huge overproduction which is flooding the international market (China's solar module production capacity is 60 GW, while global demand is 30 GW).
- stimulating international activities of one’s domestic companies with state bank loans.
- acting, as the Chinese government is doing currently, to prevent by all means the legitimate application of WTO laws to the illegal practices of one’s own companies.

### **International trade law explicitly prohibits illegal dumping and export subsidies and foresees compensatory duties as a way to address them.**

In simple terms it is like doping in sports. It is also banned and no one speaks of suppressing the sport when authorities take action against doping. However, in practice, doped athletes are disqualified from competition. In the trade law context, the doped athlete gets merely a compensating handicap, in the exact same amount as the unfair advantage he gained thanks to doping.

Threats of retaliation, intimidation, etc. are just as illegal as the dumping and subsidies.

### **What are the negotiations demanded among others by Germany?**

An essential condition to start negotiations on any kind of undertaking in an anti-dumping proceeding is the adoption of provisional anti-dumping duties by the European Commission. Before that, EU law does not foresee negotiations on prices and market behavior because there is no measure of the extent of the injury caused by the dumped imports until the Commission reaches its provisional findings, and any undertaking must be sufficient to remove the injury.

In the solar case, the negotiating parties would be the EU and the Government of the People's Republic of China, as well as Chinese exporting producers. The result may be a commitment agreement (the so-called 'undertaking'). The negotiated undertaking must be appropriate to eliminate the injurious effect of dumping according to the specifications of EU anti-dumping law. As long as the Chinese manufacturers then stick to this commitment, and for imports covered by the commitment, the duties would be suspended. Against this background, the imposition of provisional anti-dumping duties by the EU Commission is legally essential to start negotiations. Besides negotiations with China would be worthless without this leverage - without the duties, China would not have any reason to offer to negotiate.