II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/12

of 6 January 2016

terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic anti-dumping Regulation'), and in particular Article 11(3) thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ([2]) ('the basic anti-subsidy Regulation'), and in particular Article 19(3) thereof,

Whereas:

1. **Measures in force**

(1) By Regulation (EU) No 513/2013 ([3]), the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('China').

(2) The exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of this price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.

(3) By Decision 2013/423/EU ([4]), the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ([5]), the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.

(4) By Implementing Regulation (EU) No 1238/2013 ([6]), the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from China ('the product concerned'). By Implementing Regulation (EU) No 1239/2013 ([7]), the Council also imposed a definitive countervailing duty on imports into the Union of the product concerned.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 188, 18.7.2009, p. 93.
([3]) OJ L 152, 5.6.2013, p. 5.
([4]) OJ L 209, 3.8.2013, p. 26.
([5]) OJ L 209, 3.8.2013, p. 1.
([6]) OJ L 325, 5.12.2013, p. 1.
([7]) OJ L 325, 5.12.2013, p. 66.

(5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU [1] the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures.

(6) By Implementing Decision 2014/657/EU [2] the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from China, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered').

(7) By Implementing Regulation (EU) 2015/866 [3] the Commission withdrew the acceptance of the undertaking for three exporting producers. By Implementing Regulation (EU) 2015/1403 [4] the Commission withdrew the acceptance of the undertaking for one further exporting producer.

(8) The anti-dumping and countervailing measures referred to in recital 4 above, together with the undertaking and related Decisions referred to in recitals 3, 5 and 6 above, are jointly referred to as the 'measures in force'.

2. **Relevant provisions of the undertaking**

(9) Under the price undertaking accepted by the Commission, the minimum import price ('MIP') of the product covered is adjusted quarterly by reference to international spot prices of modules including Chinese prices as reported by the Bloomberg database ('the existing benchmark').

(10) The undertaking states also that 'spot prices excluding Chinese prices may be used as a benchmark, if made available by the Bloomberg database'.

3. **Request for a partial interim review**

(11) On 29 January 2015 the Commission received a request for a partial interim review from EU ProSun ('the applicant'), an association of producers of modules and cells in the Union. The request was limited in scope to the benchmark used as reference for the MIP adaptation mechanism set out in the undertaking.

(12) The request was based on the grounds that the existing benchmark is no longer representative of the development of module prices. The applicant provided the following sufficient evidence that the circumstances on which the existing benchmark was accepted had changed and that these changes were of a lasting nature:

(a) the number of Chinese respondents reporting price data that was included in the existing benchmark had increased significantly since the acceptance of the undertaking, and in particular since the beginning of 2014;

(b) as a result, the weight of Chinese respondents in the existing benchmark had increased and had a significant effect on the evolution of this benchmark;

(c) in addition, the prices reported by Chinese respondents had historically been lower than prices reported by other respondents.

(13) According to the applicant, this evidence arguably showed that the existing benchmark was no longer representative of the development of module prices. The applicant therefore requested replacing the existing benchmark for the MIP adaptation mechanism by the 'International Average' price sub-series published by Bloomberg, which excludes prices reported by Chinese respondents.

4. **Initiation of a partial interim review**

(14) The Commission determined, after informing the Member States, that sufficient evidence existed to initiate a partial interim review limited to the benchmark used as reference for the MIP adaptation mechanism.

[1] OJ L 325, 5.12.2013, p. 214.
[2] OJ L 270, 11.9.2014, p. 6.
[3] OJ L 139, 5.6.2015, p. 30.
[4] OJ L 218, 19.8.2015, p. 1.

(15) The objective of this review is to investigate whether the existing benchmark is still representative of the development of module prices, and therefore still fulfils its objective as set out in the measures in force.

(16) The Government of China was invited for pre-initiation consultations in accordance with the basic anti-subsidy Regulation and these consultations took place.

(17) On 5 May 2015 the Commission initiated this partial interim review of the measures in force under Article 11(3) of the basic anti-dumping Regulation and Article 19(2) of the basic anti-subsidy Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([1]).

5. **Parties concerned by the investigation**

(18) The Commission sent a questionnaire to Bloomberg New Energy Finance ('Bloomberg') to obtain information necessary for the investigation.

(19) The Commission also invited respondents who reported prices of modules to Bloomberg to come forward; to provide the Commission with their submissions to Bloomberg; and to make their views known in relation to the review.

(20) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for trade proceedings.

6. **Questionnaire replies and verification visits**

(21) The Commission received a reply to its questionnaire from Bloomberg. The Commission also received submissions from a number of respondents that had reported prices of modules to Bloomberg and expressions of interest in the review from various parties in the Union and elsewhere.

(22) The Commission sought and verified all the information deemed necessary for the review. Verification visits were carried out at the premises of Bloomberg in Zurich, Switzerland and Hong Kong, Hong Kong SAR, China.

7. **The investigation**

(23) The Commission investigated whether the existing benchmark is still representative of the price development of modules and therefore still fulfils its objectives as set out in the measures in force.

7.1. *The existing benchmark and its sub-series*

(24) The existing benchmark is the 'Average all' price series, which consists of reported worldwide module spot prices. Bloomberg also publishes two sub-series to the 'Average all' price series for spot prices of modules that are of relevance to this investigation, namely:

(a) the 'Chinese Average' sub-series which contains prices reported by Chinese respondents; and

(b) the 'International Average' sub-series which contains all other prices reported.

(25) Data for these price series and sub-series are typically collected and published on a weekly basis. All series are published in USD. All quotes are regularly checked by Bloomberg's solar sector specialists who can contact any respondent for a quote clarification if they frequently submit data outside the defined ranges or appear to be trying to bias the final results.

(26) Bloomberg calculates the average price per week provided they have received at least three quotes. If a respondent submits multiple quotes, Bloomberg averages them and counts them as one quote.

([1]) OJ C 147, 5.5.2015, p. 4.

(27) To avoid unusually high or low quotes, Bloomberg automatically flags all quotes more than 20 % above or below the average of the period selected to the analysts, who will request clarification from the participant. The analysts will decide whether to include the quote or not. The average is then calculated from the remaining quotes.

(28) All respondents must be active in the manufacturing or procurement of modules and Bloomberg must manually approve their participation before they may start contributing their quotes.

7.2. *Increase in the number and proportion of Chinese respondents*

(29) The applicant submitted that the number of Chinese respondents in the existing benchmark had increased significantly since the acceptance of the undertaking, and in particular since the beginning of 2014.

(30) The applicant further stated that 'Chinese participation in relation to the overall participation in the reporting of prices to Bloomberg has approximately tripled since 2013, and that increased participation has strongly influenced the evolution of the [existing benchmark] in 2014'.

(31) While the applicant provided complete information for the years 2013 and 2014 in the request, its arguments were based solely on a comparison of two isolated three-month periods, namely between May to July 2013 and October to December 2014.

(32) The Commission took the entire weekly participation data for 2013 and 2014 submitted by the applicant and analysed the data by aggregating the number of participants over calendar quarters. By doing so the Commission found that:

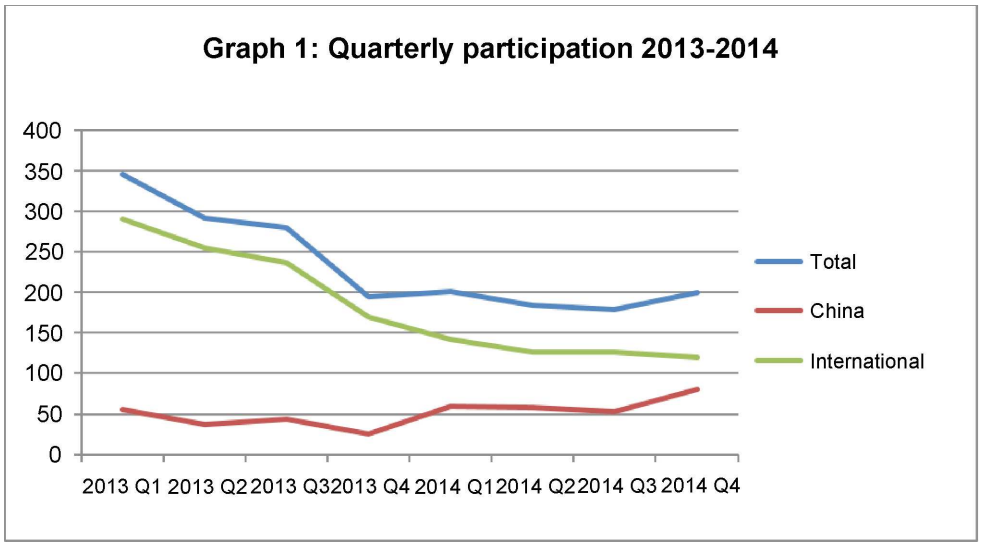
(a) indeed the average number of Chinese respondents per quarter in the existing benchmark had increased by around 20 respondents (56 %) between 2013 and 2014;

(b) this was coupled by a parallel drop in the average number of non-Chinese respondents per quarter by more than 100 respondents (– 46 %) between 2013 and 2014.

(33) Therefore the increase in the proportion of Chinese respondents in the existing benchmark was due both to a decreasing number of non-Chinese respondents and to an increasing number of Chinese respondents.

(34) Furthermore the proportion of the Chinese respondents increased from a rather low level to a level better reflecting the share of China in the worldwide solar market. As reported by Bloomberg in 2014 the Chinese production photovoltaic cells and modules is estimated to be 78 % of world output.

(35) Graph 1 below shows the aggregated participation of respondents in the existing benchmark and its two subseries on a quarterly basis.



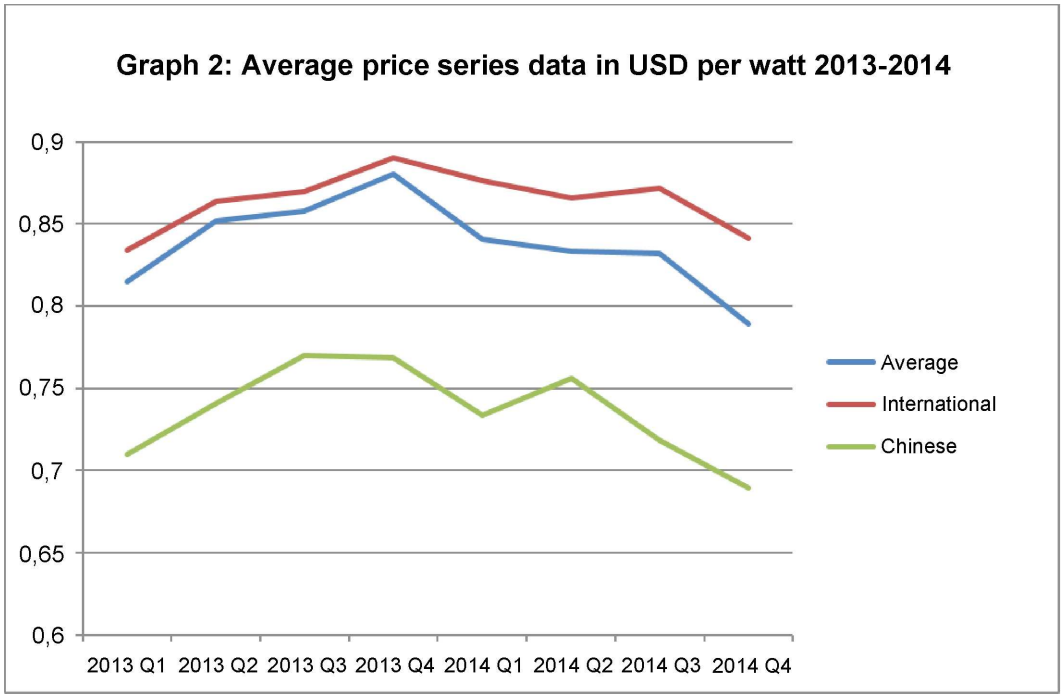
Source: Request for review

7.3. *Development of Chinese and non-Chinese prices*

(36) The applicant stated that the 'Chinese Average' price sub-series had historically been lower than the 'International Average' price sub-series. The Commission notes that the 'Chinese Average' price sub-series is indeed historically below the 'International Average' price sub-series.

(37) The applicant further argued that the 'International Average' price sub-series '[…] [has] essentially remained stable since the acceptance of the [undertaking]'.

(38) The investigation has shown that contrary to the applicant's claim the 'International Average' price sub-series has not remained stable since the acceptance of the undertaking. In fact, in 2013 and 2014 both the 'International Average' price sub-series and the 'Chinese Average' price sub-series followed a similar trend (typically within +/– 0,01 USD). Graph 2 below shows the two sub-series compared to the 'Average all' price series from the start of 2013 to the end of 2014.



Source: Bloomberg, investigation

7.4. *No substantial downward effect on the existing benchmark*

(39) The applicant's arguments set out in sections 7.2 and 7.3 above led them to conclude that both the increase in number of Chinese respondents and the increase of their proportion in the 'Average all' price series has had a 'substantial downward impact' on the existing benchmark. Therefore, by relying on the existing benchmark, the MIP adjustments so far have essentially reflected the increased number of Chinese respondents reporting lower prices to Bloomberg.

(40) The Commission verified all relevant and duly documented evidence collected during the investigation. The findings of the investigation are as set out in sections 7.2 and 7.3 above, namely:

(a) firstly that there has been an increase in the number of Chinese respondents sending data to be published in the 'Chinese Average' price sub-series;

(b) secondly, as shown in Graph 1 above, this increase of Chinese respondents was coupled with a more significant decrease in the number of non-Chinese respondents;

(c) thirdly, the increase in the proportion of Chinese respondents is both due to the increase in number of Chinese respondents and the drop in number of non-Chinese respondents;

(d) fourthly, the proportion of the Chinese respondents has increased from a rather low level to a level better reflecting the share of China in the worldwide solar market; and

(e) finally, as Graph 2 shows both the 'Chinese Average' price sub-series and the 'International Average' price sub-series of the existing benchmark follow a similar trend for 2013 and 2014.

7.5. *Conclusions*

(41) The Commission concludes that:

(a) the existing benchmark remains representative of the development of worldwide module prices because it includes prices submitted by Chinese respondents;

(b) and because both sub-series have developed following a similar trend, meaning that the 'Chinese Average' sub-series is indeed lower than the 'International Average', but the 'Chinese Average' has not fallen faster than the 'International Average'; and therefore

(c) the proportion of Chinese respondents in the existing benchmark has increased to a level better reflecting the share of Chinese producers in the world solar market;

(d) the existing benchmark therefore still fulfils its objective as set out in the measures in force.

(42) The Commission therefore concluded to terminate this review.

7.6. *Written submissions*

(43) The findings of the investigation have been disclosed to the interested parties. They were granted the opportunity to be heard and to comment pursuant to Article 20 of the basic anti-dumping Regulation and Article 30 of the basic anti-subsidy Regulation. The applicant and the government of China submitted comments.

Comments of the applicant

(44) Firstly, the applicant submitted that 'while the level of Chinese participation in the Bloomberg index increased substantially […] the Chinese global market share changed little if at all, meaning that the evolution for that period in the "Average all" Bloomberg price index did not reflect global market share evolution realities'.

(45) The Commission recognises that indeed the Chinese global market share has not changed substantially in the period of 2013 to 2014. This however only supports the conclusion that the representativity of the existing benchmark has improved for the reasons already stated in recital 34. Also, the very purpose of this price series is to reflect the evolution of prices not the evolution of market shares.

(46) Secondly, the applicant submitted that 'there was a substantial drop in the "Chinese Average" price sub-series, which was already well below the price level of the "International Average" price sub-series, and that price drop was more than 5 % greater than the price drop over the same period of the "International Average" price sub-series.'

(47) The Commission observes that when looking at the whole period 2013 to 2014 (which was the data period submitted by the applicant) this statement is factually incorrect. In fact, none of the three price series concerned show a clear downward trend in 2013 and 2014 as shown in Graph 2 in recital 38 and Table 1 below.

(48) Contrary to the applicant's statement, the starting point and the end point for each of the three price series are very close to each other (divergence of maximum 0,01 USD up and 0,02 USD down), and have all shown a fluctuation up and down in between. That fluctuation follows a similar pattern, with the high point reached in the Q3 and Q4 of 2013. Also the differences between the highest and the lowest data point is comparable (0,09 USD for 'Average all', 0,06 USD for 'International Average', and 0,08 USD for 'Chinese Average').

Table 1

Average price series data in USD per watt 2013-2014

Quarter	'Average all'	'International Average'	'Chinese Average'
2013 Q1	0,81	0,83	0,71
2013 Q2	0,85	0,86	0,74
2013 Q3	0,86	0,87	0,77
2013 Q4	0,88	0,89	0,77
2014 Q1	0,84	0,88	0,73
2014 Q2	0,83	0,87	0,76
2014 Q3	0,83	0,87	0,72
2014 Q4	0,79	0,84	0,69

Source: Bloomberg, investigation

(49) On the basis of those figures, there is no indication whatsoever that any kind of manipulation of the index would have been successful. It is true that as a result of the higher participation of Chinese companies, the 'Average all' price series shows a slightly steeper drop than the 'International Average' price sub-series. However, that finding cannot call into question the appropriateness of the use of the 'Average all' price series. It is only the logical consequence of the fact that the input into that price series is now more representative of the market share of China in the world market then it was initially. In other words: the 'Average all' price series now serves its purpose even better than it did when it was introduced.

(50) It is also incorrect that the price drop of 'Chinese Average' was more than 5 % than the 'International Average'. Indeed, the 'Chinese Average' decreased by 2,8 % while the 'International Average' increased by 1,2 %. This gives combined difference of 4 %.

(51) The Commission furthermore observes again the applicant's argument is based solely on a comparison of two isolated quarters, namely Q3 2013 and Q4 2014. The Commission's analysis takes into account the evolution of the price series over 2013 and 2014, i.e. the full period for which the applicant submitted information in their request.

(52) The applicant alleged that '[…] the increasing number of Chinese respondents was bound to pull down the existing benchmark beyond where it would be if the number of Chinese respondents had not increased.'

(53) The Commission rejects this argument as the applicant again failed to provide any evidence to substantiate their allegation.

(54) The applicant alleged that the Commission did not analyse '[…] the effect of the increase in the participation of the Chinese respondents on the [existing] benchmark […]', '[…] either the price effect of the overall change in proportion or the price effect from the two components individually […].', and '[…] whether there were any factors other than the increased reporting of Chinese prices which would account for that result'.

(55) The Commission rejects this allegation as it did carry out such analysis and its conclusion is set sections 7.2 and 7.3 above.

(56) The applicant further submitted that the Commission did not analyse '[…] whether the use of the "International Average" price sub-series as the benchmark would have yielded a substantially different result than the use of the existing benchmark over the period in question'. The applicant further requests such analysis.

(57) The Commission rejects both this argument and the follow-up request as this would fall outside the scope of this interim review set out in the Notice of Initiation and repeated in recital 15. The objective of this review is not to examine whether using other benchmarks would have yielded a substantially different result than the use of the existing benchmark over the period in question.

(58) The Commission emphasizes that an appropriate benchmark should be objective, transparent and based on the widest possible coverage. Excluding Chinese producers who represent 78 % of the world solar market cannot be justified in this case.

(59) The applicant submitted that the fourth finding in recital 40 above 'tacitly admits the non-representativeness of the [existing] benchmark index at the start of the UT [Undertaking], which in itself would be reason enough to move to a different benchmark as the quarter preceding the UT's entry into effect continues to be the base reference period.' The applicant further submitted that 'the mere inclusion of prices from Chinese respondents does not of itself assure the representativeness of the existing benchmark in terms of global module prices'.

(60) The Commission rejects this argument as the increase in proportion of Chinese respondents in the existing benchmark only improved its representativeness, as it better reflects the share of Chinese producers in the world solar market.

(61) Finally, the applicant requested the Commission to continue the investigation for further facts finding. However, the applicant has not provided any new facts beyond those in the request for the review set out in recital 12 above. Thus, the Commission has no basis to continue the investigation.

Comments of the government of China

(62) The government of China submitted comments only in further support of the Commission's conclusion to terminate this review.

7.7. *Conclusion on written submissions and on the review*

(63) Despite of the above submissions of the interested parties the Commission's findings in this investigation are upheld. The Commission therefore terminates this review.

(64) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009 and by Article 25(1) of Regulation (EC) No 597/2009,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China is hereby terminated.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 January 2016.

For the Commission
The President
Jean-Claude JUNCKER