

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1589**of 19 September 2017**

withdrawing the acceptance of the undertaking for one exporting producer under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic anti-dumping Regulation'), and in particular Article 8 thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Having regard to Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ⁽³⁾, and in particular Article 3 thereof,

Having regard to Commission Implementing Regulation (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ⁽⁴⁾, and in particular Article 2 thereof,

Having regard to Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ⁽⁵⁾, and in particular Article 2 thereof,

Having regard to Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ⁽⁶⁾, and in particular Article 2 thereof,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

- (1) By Regulation (EU) No 513/2013 ⁽⁷⁾, 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 ('the PRC').
- (2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that 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.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 325, 5.12.2013, p. 1.

⁽⁴⁾ OJ L 56, 3.3.2017, p. 131.

⁽⁵⁾ OJ L 325, 5.12.2013, p. 66.

⁽⁶⁾ OJ L 56, 3.3.2017, p. 1.

⁽⁷⁾ OJ L 152, 5.6.2013, p. 5.

- (3) By Decision 2013/423/EU ⁽¹⁾, the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ⁽²⁾, 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, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013, the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.
- (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 ⁽³⁾ the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:
- Chinaland Solar Energy Co. Ltd covered by TARIC additional code B808 ('Chinaland').
- (6) By Implementing Decision 2014/657/EU ⁽⁴⁾, 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 the PRC, 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'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to hereafter as 'measures'.
- (7) By Implementing Regulation (EU) 2015/866 ⁽⁵⁾ the Commission withdrew the acceptance of the undertaking for three exporting producers.
- (8) By Implementing Regulation (EU) 2015/1403 ⁽⁶⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (9) By Implementing Regulation (EU) 2015/2018 ⁽⁷⁾ the Commission withdrew the acceptance of the undertaking for two exporting producers.
- (10) The Commission initiated an expiry review investigation of the anti-dumping measures by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁸⁾ on 5 December 2015.
- (11) The Commission initiated an expiry review investigation of the countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁹⁾ on 5 December 2015.
- (12) The Commission also initiated a partial interim review of the anti-dumping and countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ⁽¹⁰⁾ on 5 December 2015.
- (13) By Implementing Regulation (EU) 2016/115 ⁽¹¹⁾, the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (14) By Implementing Regulation (EU) 2016/185 ⁽¹²⁾, the Commission extended the definitive anti-dumping duty imposed by Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

⁽¹⁾ OJ L 209, 3.8.2013, p. 26.

⁽²⁾ OJ L 209, 3.8.2013, p. 1.

⁽³⁾ OJ L 325, 5.12.2013, p. 214.

⁽⁴⁾ OJ L 270, 11.9.2014, p. 6.

⁽⁵⁾ OJ L 139, 5.6.2015, p. 30.

⁽⁶⁾ OJ L 218, 19.8.2015, p. 1.

⁽⁷⁾ OJ L 295, 12.11.2015, p. 23.

⁽⁸⁾ OJ C 405, 5.12.2015, p. 8.

⁽⁹⁾ OJ C 405, 5.12.2015, p. 20.

⁽¹⁰⁾ OJ C 405, 5.12.2015, p. 33.

⁽¹¹⁾ OJ L 23, 29.1.2016, p. 47.

⁽¹²⁾ OJ L 37, 12.2.2016, p. 76.

- (15) By Implementing Regulation (EU) 2016/184 ⁽¹⁾, the Commission extended the definitive countervailing duty imposed by Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (16) By Implementing Regulation (EU) 2016/1045 ⁽²⁾, the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (17) By Implementing Regulation (EU) 2016/1382 ⁽³⁾, the Commission withdrew the acceptance of the undertaking for another five exporting producers.
- (18) By Implementing Regulation (EU) 2016/1402 ⁽⁴⁾, the Commission withdrew the acceptance of the undertaking for another three exporting producers.
- (19) By Implementing Regulation (EU) 2016/1998 ⁽⁵⁾, the Commission withdrew the acceptance of the undertaking for another five exporting producers.
- (20) By Implementing Regulation (EU) 2016/2146 ⁽⁶⁾, the Commission withdrew the acceptance of the undertaking for another two exporting producers.
- (21) Following the expiry and interim reviews referred to in recitals 10 to 12, the Commission maintained the measures in force by Implementing Regulation (EU) 2017/366 and Implementing Regulation (EU) 2017/367.
- (22) The Commission also initiated a partial interim review on the form of measures by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁷⁾ on 3 March 2017.
- (23) By Implementing Regulation (EU) 2017/454 ⁽⁸⁾, the Commission withdrew the acceptance of the undertaking for four exporting producers.
- (24) By Implementing Decision (EU) 2017/615 ⁽⁹⁾, the Commission accepted a proposal by a group of exporting producers together with the CCCME concerning the implementation of the undertaking.
- (25) By Implementing Regulation (EU) 2017/941 ⁽¹⁰⁾, the Commission withdrew the acceptance of the undertaking for two exporting producers.
- (26) By Implementing Regulation (EU) 2017/1408 ⁽¹¹⁾, the Commission withdrew the acceptance of the undertaking for another two exporting producers.
- (27) By Implementing Regulation (EU) 2017/1497 ⁽¹²⁾, the Commission withdrew the acceptance of the undertaking for one exporting producer.
- (28) By Implementing Regulation (EU) 2017/1524 ⁽¹³⁾, the Commission withdrew the acceptance of the undertaking for two exporting producers.

B. TERMS OF THE UNDERTAKING

- (29) The exporting producers agreed, inter alia, not to sell the product covered to the first independent customer in the Union below a certain minimum import price ('the MIP') within the associated annual level of imports to the Union ('annual level') laid down in the undertaking. The MIP is set on a cash equivalent basis. If the payment term is different from the cash equivalent basis, a certain deduction is applied to the invoice value when compliance with the MIP is compared.

⁽¹⁾ OJ L 37, 12.2.2016, p. 56.

⁽²⁾ OJ L 170, 29.6.2016, p. 5.

⁽³⁾ OJ L 222, 17.8.2016, p. 10.

⁽⁴⁾ OJ L 228, 23.8.2016, p. 16.

⁽⁵⁾ OJ L 308, 16.11.2016, p. 8.

⁽⁶⁾ OJ L 333, 8.12.2016, p. 4.

⁽⁷⁾ OJ C 67, 3.3.2017, p. 16.

⁽⁸⁾ OJ L 71, 16.3.2017, p. 5.

⁽⁹⁾ OJ L 86, 31.3.2017, p. 14.

⁽¹⁰⁾ OJ L 142, 2.6.2017, p. 43.

⁽¹¹⁾ OJ L 201, 2.8.2017, p. 3.

⁽¹²⁾ OJ L 218, 24.8.2017, p. 10.

⁽¹³⁾ OJ L 230, 6.9.2017, p. 11.

- (30) The exporting producers also agreed to sell the product covered only by means of direct sales. For the purpose of the undertaking, a direct sale is defined as a sale either to the first independent customer in the Union or via a related party in the Union listed in the undertaking.
- (31) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. This list of breaches includes indirect sales to the Union by companies other than those listed in the undertaking.
- (32) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to and re-sales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and that the reported transactions fully comply with the terms of the undertaking. Reporting of re-sales in the Union is a particular obligation when the product covered is sold to the first independent customer through a related importer. Only these reports enable the Commission to monitor whether the re-sale price of the related importer to the first independent customer is in accordance with the MIP.
- (33) The exporting producer is liable for the breach of any of its related parties, whether or not listed in the undertaking.
- (34) The undertaking further stipulates that the acceptance of the undertaking by the Commission is based on trust and any action which would harm the relationship of trust established with the Commission should justify the withdrawal of the undertaking.

C. MONITORING OF THE EXPORTING PRODUCER

- (35) While monitoring compliance with the undertaking, the Commission verified information submitted by Chinaland that was relevant to the undertaking. The Commission also assessed publicly available information regarding the corporate structure of Chinaland.
- (36) The Commission also received evidence from customs authorities of one Member State on the basis of Articles 8(9) and 14(7) of the basic anti-dumping Regulation and Articles 13(9) and 24(7) of the basic anti-subsidy Regulation.
- (37) The findings listed in recitals 38 to 40 address the problems identified for Chinaland which oblige the Commission to withdraw acceptance of the undertaking for this exporting producer.

D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

- (38) In its quarterly reports, Chinaland had reported sales transactions of the product covered to an allegedly unrelated importer in the Union and had issued undertaking invoices. These transactions amounted in value to around 20 % of its total sales to the Union. Based on the information available to the Commission, the importer involved in these transactions was related to Chinaland. In particular, several sales transactions of this allegedly unrelated importer were carried out by two of Chinaland's officials. In their communication with final customers, these officials stated that this allegedly unrelated customer was a Union company belonging to Chinaland. Email accounts of these officials also hint to Chinaland. The Commission analysed this trade pattern. As this importer is not listed as related party in the undertaking, Chinaland had breached the terms of the undertaking as described in recital 30.
- (39) In addition, sales made by this importer to the first independent customer in the Union were carried out at prices below the MIP. Therefore, Chinaland breached the terms of the undertaking as described in recitals 29 and 33.
- (40) None of the re-sales by the related importer was reported to the Commission. Consequently, Chinaland also breached the terms of the undertaking as described in recitals 32 and 33.
- (41) The Commission analysed the findings set out in recitals 38 to 40 and concluded that these also harmed the relationship of trust established with the Commission.

E. INVALIDATION OF UNDERTAKING INVOICES

(42) The indirect sales transactions made by Chinaland are linked to the following undertaking invoices:

Number of commercial invoice accompanying goods subject to the undertaking	Date
CHN160765	8.10.2016
CHN160839	18.8.2016
CHN160759	18.8.2016
CHN160739	27.7.2016
CHN160608	25.7.2016
CHN160743	27.7.2016
CHN160815	18.8.2016
CHN160730	9.8.2016
CHN160760	18.8.2016
CHN160833-2	20.8.2016
CHN160648	9.8.2016
CHN160818	18.8.2016
CHN160828	22.8.2016
CHN160834	13.8.2016
CHN160755	13.8.2016
CHN160738	27.7.2016
CHN160737	9.8.2016
CHN160764	16.8.2016
CHN160803	27.9.2016
CHN160804	9.8.2016
CHN160719	22.7.2016
CHN160736	13.7.2016
CHN160631	6.7.2016
CHN160901	20.8.2016
CHN160731	9.8.2016
CHN160822	22.8.2016
CHN160718	13.7.2016
CHN160835	13.8.2016

Number of commercial invoice accompanying goods subject to the undertaking	Date
CHN160314	7.4.2016
CHN160528	16.6.2016
CHN160628	25.6.2016
CHN160436	27.4.2016
CHN160632	29.6.2016
CHN160513	2.6.2016
CHN160622	12.6.2016
CHN160430	3.5.2016
CHN160405	7.4.2016
CHN160507-1	25.4.2016
CHN160505	29.4.2016
CHN160551	18.6.2016
CHN150739	6.1.2016
CHN151131	15.1.2016
CHN160322	25.3.2016
CHN160337	24.3.2016
CHN160313	28.3.2016

- (43) Therefore, in accordance with Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013, these invoices are declared invalid. The customs debt incurred at the time of acceptance of the declaration for release into free circulation should be recovered by the national customs authorities under Article 105(3) to (6) of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁾ laying down the Union Customs Code, when the withdrawal of the undertaking in relation to the exporting producer enters into force. The national customs authorities responsible for the collection of duties will be informed accordingly.
- (44) In this context, the Commission recalls that pursuant to Article 3(1)(b) read in conjunction with Annex III, No 7 of Implementing Regulation (EU) No 1238/2013, Article (2)(1)(b) read in conjunction with Annex III, No 7 of Implementing Regulation (EU) 2017/367 and to Article 2(1)(b) read in conjunction with Annex 2, No 7 of Implementing Regulation (EU) No 1239/2013, Article 2(2)(b) read in conjunction with Annex 2, No 7 of Implementing Regulation (EU) 2017/366, imports are only exempted from duties if the invoice indicates the price and possible rebates for the product covered. Where those conditions are not complied with, duties are due, even where the commercial invoice accompanying the goods has not been invalidated by the Commission.

F. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING

- (45) The undertaking stipulates that a breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission should assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

- (46) The Commission accordingly assessed the impact of the breaches by Chinaland on the practicability of the undertaking with the effect for all exporting producers and the CCCME.
- (47) This case is similar to previous withdrawal cases. The Commission had already informed the CCCME on those occasions that should breaches of a similar pattern persist in the future, the Commission might re-assess the overall practicability of the undertaking ⁽¹⁾. The Commission continues to reserve its right to do so.

G. WRITTEN SUBMISSIONS AND HEARINGS

- (48) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation.
- (49) Chinaland submitted comments after the disclosure. It contested the relationship with the importer in the Union.
- (50) Chinaland further alleged that the importer in the Union was owned by another person than the exporting producer. Chinaland also alleged that the two officials (referred to in recital 38 above) were pursuing their personal interests without authorisation of Chinaland in referring to the affiliation between the importer and Chinaland. The Commission, however, considers that, in absence of evidence to the contrary, communications of the exporter's officials towards third parties made within their usual business activities are to be attributed to Chinaland. As Chinaland failed to disprove this presumption, the claim is therefore rejected.
- (51) Chinaland also contested the invalidation of invoices. It claimed that the Commission cannot impose duties/order customs to levy duties on imports released for free circulation before the date of the withdrawal of the acceptance of the undertaking if imports have not been registered. That claim is made by reference to Articles 8 and 13 of the basic anti-dumping and anti-subsidy Regulations. That understanding is, however, not correct. According to Article 8(10) of the basic anti-dumping Regulation and Article 13(10) of the basic anti-subsidy Regulation, a provisional duty may be imposed retroactively for a limited period where registration of imports occurred. Those provisions, however, address a different point in time during an anti-dumping or anti-subsidy investigation. The articles do not apply to the case at hand where the investigations were already completed in 2013 with the imposition of definitive anti-dumping and countervailing duties and the voluntary commitment, by some exporting producers of the product concerned, including Chinaland, for a price undertaking in lieu of the payment of those duties to remove the injury arising from their dumping practices. In any case, the retroactive invalidation of invoices and the related claim for the payment of outstanding duties is not effected under those provisions. The claim is, therefore, rejected.
- (52) Chinaland also claimed that the Commission could not impose duties retroactively without falling foul of the principle of non-retroactivity, having allegedly itself recognised in another case, that there would be no legal basis for such a retroactive withdrawal ⁽²⁾. Chinaland also cites a previous decision according to which it allegedly deserves like treatment ⁽³⁾. First, it should be noted that all Commission decisions withdrawing the acceptance of an undertaking are taken on a case-by-case basis. Decisions taken within these individual cases are, accordingly, limited and specific to the circumstances at hand, so that a like casting of reasoning therein on a different case cannot be done. In any case, Chinaland has advanced no arguments on how its case resembles that of the exporting producer concerned by Implementing Regulation (EU) 2015/866. Second, it is true that the activities of the European institutions are subject to the general principles of law, in particular those of legal certainty and non-retroactivity. However, the Commission recalls that settled case-law of the Court of Justice recognises that an economic operator cannot entertain a legitimate expectation that an 'existing situation' which is capable of being altered by decisions taken by the Union institutions within the limits of their discretion will be maintained ⁽⁴⁾. The principle of legitimate expectations does not protect situations in which no legitimate expectations existed, especially where the economic operator was warned from the outset about the consequences of breach of an undertaking through particular transactions. Against this background it becomes obvious that in scenarios where incorrect or incomplete undertaking invoices are presented, the ordinary anti-dumping/countervailing duty otherwise due for the exporting producer in question takes hold as if the latter had not presented an undertaking invoice and that the duties that were not paid as a cause of this presentation of undertaking invoices must become due as if no exemption thereof existed. Third, this type of invalidation of undertaking invoices and related exposure to the duties not paid is not a retroactive imposition of measures within the meaning of European Union law, nor does it fall within Articles 10(5) and 16(5) of the basic anti-dumping and anti-subsidy Regulations. The fact that Chinaland offers no definition of 'retroactivity' that would deviate from the established

⁽¹⁾ Implementing Regulation (EU) 2016/1402, recital 37.

⁽²⁾ Implementing Regulation (EU) 2015/1403, recitals 30 to 32.

⁽³⁾ Implementing Regulation (EU) 2015/866, recitals 88 and 89.

⁽⁴⁾ Judgment of 17 October 1996, *Konservenfabrik Lubella v Hauptzollamt Cottbus*, C-64/95, EU:1996:388, paragraph 31. See also, more recently, Judgment of 10 December 2015, *SIA Veloserviss*, Case C-427/14, EU:C:2015:803, at paragraph 39.

general principle of European Union law recalled by reference to case-law above underscores this. In light of the above reasons, the claims forwarded by Chinaland against the withdrawal of the acceptance of the undertaking are rejected.

H. WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITIONS OF DEFINITIVE DUTIES

- (53) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission concluded that the acceptance of the undertaking for Chinaland should be withdrawn.
- (54) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2017/367 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) No 1239/2013 and maintained by Article 1 of Implementing Regulation (EU) 2017/366 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Chinaland as of the day of entry into force of this Regulation.
- (55) The Commission also recalls that where the customs authorities of the Member States have indications that the price presented on an undertaking invoice does not correspond to the price actually paid, they should investigate whether the requirement to include any rebates in the undertaking invoices has been violated or the MIP has not been respected. Where customs authorities of the Member States conclude that there has been such a violation or whether the MIP has not been respected, they should collect the duties as a consequence thereof. In order to facilitate, on the basis of Article 4(3) of the Treaty, the work of the customs authorities of the Member States, the Commission should share in such situations the confidential text and other information of the undertaking for the sole purpose of national proceedings.
- (56) For information purposes the table in the Annex II to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking in relation to the following company is hereby withdrawn:

Name of the company	TARIC additional code
CHINALAND SOLAR ENERGY CO. LTD	B808

Article 2

1. The undertaking invoices listed in Annex I to this Regulation are declared invalid.
2. The anti-dumping and countervailing duties due at the time of acceptance of the customs declaration for release into free circulation under Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 shall be collected.

Article 3

1. Where customs authorities of the Member States have indications that the price presented on an undertaking invoice pursuant to Article 3(1)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(1)(b) of Implementing

Regulation (EU) 2017/367, Article 2(1)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(1)(b) of Implementing Regulation (EU) 2017/366 issued by one of the companies from which the undertaking was initially accepted by Implementing Decision 2013/707/EU does not correspond to the price paid and that therefore those companies may have violated the undertaking, the customs authorities of the Member States may, if necessary for the purpose of conducting national proceedings, request the Commission to disclose to them a copy of the undertaking and other information in order to verify the applicable minimum import price ('MIP') on the day when the undertaking invoice was issued.

2. Where that verification reveals that the price paid is lower than the MIP, the duties due as a consequence under Article 8(9) of Regulation (EU) 2016/1036 and Article 13(9) of Regulation (EU) 2016/1037 shall be collected.

Where that verification reveals that discounts and rebates have not been included in the commercial invoice, the duties due as a consequence under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366 shall be collected.

3. The information in accordance with paragraph 1 may only be used for the purpose of enforcement of duties due under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366. In this context, customs authorities of the Member States may provide the debtor of those duties with this information for the sole purpose of safeguarding their rights of defence. Such information may under no circumstances be disclosed to third parties.

Article 4

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, 19 September 2017.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

List of undertaking invoices issued by CHINALAND SOLAR ENERGY CO. LTD which are declared invalid:

Number of commercial invoice accompanying goods subject to the undertaking	Date
CHN160765	8.10.2016
CHN160839	18.8.2016
CHN160759	18.8.2016
CHN160739	27.7.2016
CHN160608	25.7.2016
CHN160743	27.7.2016
CHN160815	18.8.2016
CHN160730	9.8.2016
CHN160760	18.8.2016
CHN160833-2	20.8.2016
CHN160648	9.8.2016
CHN160818	18.8.2016
CHN160828	22.8.2016
CHN160834	13.8.2016
CHN160755	13.8.2016
CHN160738	27.7.2016
CHN160737	9.8.2016
CHN160764	16.8.2016
CHN160803	27.9.2016
CHN160804	9.8.2016
CHN160719	22.7.2016
CHN160736	13.7.2016
CHN160631	6.7.2016
CHN160901	20.8.2016
CHN160731	9.8.2016
CHN160822	22.8.2016
CHN160718	13.7.2016

Number of commercial invoice accompanying goods subject to the undertaking	Date
CHN160835	13.8.2016
CHN160314	7.4.2016
CHN160528	16.6.2016
CHN160628	25.6.2016
CHN160436	27.4.2016
CHN160632	29.6.2016
CHN160513	2.6.2016
CHN160622	12.6.2016
CHN160430	3.5.2016
CHN160405	7.4.2016
CHN160507-1	25.4.2016
CHN160505	29.4.2016
CHN160551	18.6.2016
CHN150739	6.1.2016
CHN151131	15.1.2016
CHN160322	25.3.2016
CHN160337	24.3.2016
CHN160313	28.3.2016

ANNEX II

List of companies:

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD HUOSHAN KEBO ENERGY TECHNOLOGY CO. LTD	B812
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT EXPORT CO. LTD	B817
Zhejiang Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821
Guodian Jintech Solar Energy Co. Ltd	B822

Name of the company	TARIC additional code
Hangzhou Bluesun New Material Co. Ltd	B824
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY CO. LTD	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Shine Science and Technology Co. Ltd	B843
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795
Juli New Energy Co. Ltd	B846
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849
Lightway Green New Energy Co. Ltd Lightway Green New Energy(Zhuozhou) Co. Ltd	B851

Name of the company	TARIC additional code
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854
Ningbo Jinshi Solar Electrical Science Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
SHANGHAI ALEX SOLAR ENERGY SCIENCE TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai Chaori Solar Energy Science Technology Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co. Ltd	B878
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD Ningbo Sun Earth Solar Energy Co. Ltd	B882
SUZHOU SHENGLONG PV-TECH CO. LTD	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy (Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877

Name of the company	TARIC additional code
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Taichang Electronic Co. Ltd China Machinery Engineering Wuxi Co.Ltd Wuxi Taichen Machinery Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Yuhuan Sinosola Science Technology Co. Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd Zhejiang Topoint Photovoltaic Co. Ltd	B906
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd Zhejiang Fortune Photovoltaic Co. Ltd	B910
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shiness Photoelectronic Technology Co. Ltd	B912
Zhejiang Sunflower Light Energy Science Technology Limited Liability Company Zhejiang Yauchong Light Energy Science Technology Co. Ltd	B914
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT EXPORT CO LTD	B918
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920