COMMISSION IMPLEMENTING REGULATION (EU) 2017/941

of 1 June 2017

withdrawing the acceptance of the undertaking for two exporting producers 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,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(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 ('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.

(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 the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013 [7], the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ L 176, 30.6.2016, p. 55.
[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. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:

(a) BYD (Shangluo) Industrial Co. Ltd, together with its related company in the PRC and in the Union, jointly covered by the TARIC additional code: B871 ('BYD');

(b) Yingli Energy (China) Co. Ltd, together with its related companies in the PRC and in the Union, jointly covered by the TARIC additional code: B797 ('Yingli').

(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 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 thereafter as 'measures'.

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

(8) By Implementing Regulation (EU) 2015/1403 ([4]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(9) By Implementing Regulation (EU) 2015/2018 ([5]) 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* ([6]) 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* ([7]) 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* ([8]) on 5 December 2015.

(13) By Implementing Regulation (EU) 2016/115 ([9]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(14) By Implementing Regulation (EU) 2016/185 ([10]), the Commission extended the definitive anti-dumping duty imposed by Implementing 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.

(15) By Implementing Regulation (EU) 2016/184 ([11]), the Commission extended the definitive countervailing duty imposed by Implementing 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.

([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.
([5]) OJ L 295, 12.11.2015, p. 23.
([6]) OJ C 405, 5.12.2015, p. 8.
([7]) OJ C 405, 5.12.2015, p. 20.
([8]) OJ C 405, 5.12.2015, p. 33.
([9]) OJ L 23, 29.1.2016, p. 47.
([10]) OJ L 37, 12.2.2016, p. 76.
([11]) OJ L 37, 12.2.2016, p. 56.

(16) By Implementing Regulation (EU) 2016/1045 ([1]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(17) By Implementing Regulation (EU) 2016/1382 ([2]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(18) By Implementing Regulation (EU) 2016/1402 ([3]) the Commission withdrew the acceptance of the undertaking for another three exporting producers.

(19) By Implementing Regulation (EU) 2016/1998 ([4]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(20) By Implementing Regulation (EU) 2016/2146 ([5]) 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)-(12), the Commission maintained the measures in force by Implementing Regulations (EU) 2017/366 ([6]) and (EU) 2017/367 ([7]).

(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* ([8]) on 3 March 2017.

(23) By Implementing Regulation (EU) 2017/454 ([9]) the Commission withdrew the acceptance of the undertaking for four exporting producers.

(24) By Implementing Decision (EU) 2017/615 ([10]), the Commission accepted a proposal by a group of exporting producers together with the CCCME concerning the implementation of the undertaking.

B. TERMS OF THE UNDERTAKING AND VOLUNTARY WITHDRAWAL BY YINGLI AND BYD

(25) As per the undertaking, any exporting producer may voluntarily withdraw its undertaking at any time during its application.

(26) BYD notified the Commission in March 2017 that it wished to withdraw its undertaking.

(27) Yingli notified the Commission in April 2017 that it wished to withdraw its undertaking.

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

(28) 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 has concluded that the acceptance of the undertaking for BYD and Yingli shall be withdrawn.

(29) 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) 2017/366 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by BYD (TARIC additional code: B871) and Yingli (TARIC additional code: B797) as of the day of entry into force of this Regulation.

([1]) OJ L 170, 29.6.2016, p. 5.
([2]) OJ L 222, 17.8.2016, p. 10.
([3]) OJ L 228, 23.8.2016, p. 16.
([4]) OJ L 308, 16.11.2016, p. 8.
([5]) OJ L 333, 8.12.2016, p. 4.
([6]) OJ L 56, 3.3.2017, p. 1.
([7]) OJ L 56, 3.3.2017, p. 131.
([8]) OJ C 67, 3.3.2017, p. 16.
([9]) OJ L 71, 16.3.2017, p. 5.
([10]) OJ L 86, 31.3.2017, p. 14.

(30) 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.

(31) Finally, the Commission observes that the acceptance of the voluntary withdrawal is without prejudice to the power conferred upon the Commission by Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(b) of Implementing Regulation (EU) 2017/367, Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(b) of Implementing Regulation (EU) 2017/366 to cancel undertaking invoices that have been issued prior to the acceptance of the voluntary withdrawal, where the Commission becomes aware of facts justifying such a cancellation.

(32) For information purposes the table in Annex 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 companies is hereby withdrawn:

Name of the company	TARIC additional code
Shanghai BYD Co. Ltd BYD (Shangluo) Industrial Co. Ltd	B871
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797

Article 2

1. Where customs authorities 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 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 3

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, 1 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

List of companies

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
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
CHINALAND SOLAR ENERGY CO. LTD	B808
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

Name of the company	TARIC additional code
Zheijiang 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
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

Name of the company	TARIC additional code
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
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 SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875

Name of the company	TARIC additional code
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co. Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
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
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
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

Name of the company	TARIC additional code
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
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 Shinew 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