

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 10 September 2014

accepting a proposal by a group of exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products for clarifications concerning the implementation of the undertaking referred to in Implementing Decision 2013/707/EU

(2014/657/EU)

THE EUROPEAN COMMISSION,

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

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 8 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 13 thereof,

After consulting the Committee established by Article 15(1) of the basic anti-dumping and Article 25 of the basic anti-subsidy Regulation,

Whereas:

A. PROCEDURE

- (1) On 6 September 2012, the European Commission ('the Commission') initiated an anti-dumping proceeding with regard to imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China ('PRC') ⁽³⁾. On 8 November 2012, the Commission initiated an anti-subsidy proceeding with regards to these imports ⁽⁴⁾.
- (2) By Regulation (EU) No 513/2013 ⁽⁵⁾, the Commission imposed a provisional anti-dumping duty on imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the PRC.
- (3) By Decision 2013/423/EU ⁽⁶⁾ the Commission accepted a price undertaking from a group of exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ⁽⁷⁾, 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) Following the notification of an amended version of the undertaking by a group of exporting producers together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ⁽⁸⁾ the acceptance of the undertaking as amended ('the undertaking') for the period of application of definitive measures.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 188, 18.7.2009, p. 93.

⁽³⁾ OJ C 269, 6.9.2012, p. 5.

⁽⁴⁾ OJ C 340, 8.11.2012, p. 13.

⁽⁵⁾ OJ L 152, 5.6.2013, p. 5.

⁽⁶⁾ OJ L 209, 3.8.2013, p. 26.

⁽⁷⁾ OJ L 209, 3.8.2013, p. 1.

⁽⁸⁾ OJ L 325, 5.12.2013, p. 214.

- (5) By Implementing Regulation (EU) No 1238/2013 ⁽¹⁾, the Council imposed a definitive anti-dumping duty on imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC which are not covered by the undertaking.
- (6) By Implementing Regulation (EU) No 1239/2013 ⁽²⁾, the Council also imposed a definitive countervailing duty on crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC which are not covered by the undertaking.

B. UNDERTAKING

1. Implementation of the undertaking

- (7) Subsequent to the adoption of Implementing Decision 2013/707/EU, EU ProSun, the association that filed the anti-dumping and anti-subsidy complaints, questioned the implementation of the price adaptation mechanism of the undertaking. EU ProSun considered that it could not properly exercise its rights of defence since the non-confidential version of the text of the undertaking does not spell out explicitly that the Bloomberg international price series which are the basis of price adaptations are 'expressed in euro'. Contrary to the initial understanding of the Commission services and of the exporting producers together with the CCCME, EU ProSun considered that international spot prices, as reported by Bloomberg database, should not be converted from USD into euro. Those views were also expressed in hearings with the Hearing Officer for Directorate General for Trade ('DG Trade') on 10 April 2014 and 14 May 2014.
- (8) Other issues raised were linked to the implementation of the undertaking in relation to the price and annual level adaptation for cells, as well as the reference consumption figure for the year 2013 used in the calculations leading to the first adaptation of the annual level. Those points have in the meantime been clarified between EU ProSun and the Commission services.
- (9) On the basis of the comments received from EU ProSun, the Commission sought on 2 May 2014 the views of the exporting producers together with the CCCME. In their reply of 13 May 2014, complemented on 16 June 2014, the CCCME took the view that application of the currency conversion from USD into euro was necessary for the implementation of the undertaking. In a hearing with the Hearing Officer for DG Trade on 12 June 2014, the CCCME repeated that view. In a letter dated 15 July 2014, EU ProSun commented on the views expressed by the CCCME in the hearing. On 13 June 2014, on the basis of provisions of the undertaking, the Commission requested consultations with the exporting producers together with the CCCME. The request concerned the currency to be used for the price adaptation mechanism. The Commission noted that that currency had not been spelled out in the undertaking and that the price adaptation mechanism therefore required further legal precision. On 1 July 2014, the exporting producers together with the CCCME accepted the request for consultations. On 9 July 2014, in order to clarify these technical issues concerning the implementation of the undertaking, consultations between the CCCME and the Commission took place, in accordance with the relevant clause of the undertaking. On 24 July 2014, the exporting producers together with the CCCME submitted a notification ('CCCME notification') proposing to clarify the implementation of the price adaptation mechanism by supplementing the drafting of the relevant provisions of the undertaking.
- (10) The CCCME notification was made available to interested parties in order to allow them to exercise their rights of defence in relation to the implementation of certain clauses of the undertaking. EU ProSun expressed its opposition to the proposed clarification of the implementation of the undertaking by letters of 28 July and 30 July 2014. It also requested the intervention of the Hearing Officer for DG Trade, and a hearing took place on 31 July 2014. On 4 August 2014, the Commission informed interested parties of the essential factual and legal elements on the basis of which it intended to accept the proposed clarification. It invited interested parties to express their views. On 6 August 2014, 14 August 2014 and belatedly 25 August 2014 EU ProSun repeated its opposition to the proposed clarification.

2. Assessment

- (11) The Commission now has to decide whether it can accept the clarifications proposed in the CCCME notification. EU ProSun contests that on the basis of five arguments. The present Decision is aimed at a technical clarification and not at reviewing the measures that are in place. Therefore EU ProSun's arguments can only be assessed in so far as they relate to the scope of the present Decision.

⁽¹⁾ OJ L 325, 5.12.2013, p. 1.

⁽²⁾ OJ L 325, 5.12.2013, p. 66

- (12) First, EU ProSun contested that the undertaking can be read as allowing for the conversion of the Bloomberg international price series into euro. Therefore, in its view, acceptance of the proposed clarification of the implementation of the undertaking would constitute an impermissible modification of the undertaking. The Commission, after hearing the parties, reiterates that the text of the undertaking is ambiguous, in so far as it does not expressly provide for a currency conversion, nor does it rule out such a conversion, and that, therefore, a clarification is appropriate in the interest of legal certainty. Furthermore, the interpretation resulting from the CCCME notification is in line with the logic and the general scheme of the undertaking, as reflected in the common understanding.
- (13) The Commission underlines that the conversion of Bloomberg international prices into euro was part of the common understanding of the parties to the undertaking. Furthermore, the conversion of the Bloomberg international price series into euro is necessary since they are used as benchmark to adapt the MIP, which is expressed in euro. The fact that the conversion takes place does not by itself lead to more (or less) injurious dumping or subsidisation, since currency fluctuations may move both upwards and downwards. It is an automatic price adaptation mechanism of the initial MIP expressed in euro. In any event, the exchange rate is a factor which is also taken into account by various operators when selling in a given market, which in the case at hand is the Union market.
- (14) Second, EU ProSun argued that acceptance of the proposed clarification of the implementation of the undertaking would lead to a downward spiral of the MIP. In this regard, the Commission notes that the adaptation mechanism precludes the risk of a downward (or upwards) price spiral by ensuring a return to the initial MIP if the price variation is less than a certain percentage in a given quarter. Furthermore, the Commission observes that price quotations collected by Bloomberg are considered representative for the worldwide prices of solar panels, and are based on a sample comprising prices observed in the different national markets by producers from different countries. In 2013, the European market accounted for around 28 % of the worldwide consumption of solar panels (10 975 MW out of 38 358 MW newly installed capacity), according to the European Photovoltaic Industry Association ('EPIA') ⁽¹⁾. Transactions covered by the undertaking represent as a result significantly less than 28 % of all worldwide transactions, for which the Bloomberg international price series is representative. Hence, the impact of a change of the MIP on the Bloomberg international price series is limited. Therefore, the allegation that the MIP adaptation mechanism would lead to a downward spiral of prices is incorrect.
- (15) Third, EU ProSun argued that the Commission should use international price series excluding the Chinese prices. The Commission noted that this option is mentioned in the text of the undertaking as a secondary option which is not immediately operational. It could be considered in the future, following the appropriate procedures.
- (16) Fourth, EU ProSun claimed that the adapted MIP does not remove injury caused to the Union industry. The Commission notes that the undertaking encompassed from the outset the initial MIP and a price adaptation. The assessment in Implementing Decision 2013/707/EU with regard to compliance with requirements for the acceptance of undertakings in the basic anti-dumping and the basic anti-subsidy Regulations therefore covers the price adaptation. This price adaptation is an automatic exercise. The MIP and the price adaptation mechanism are applied in accordance with the requirements stipulated in Article 8 of the basic anti-dumping Regulation and in Article 13 of the basic anti-subsidy Regulation.
- (17) Fifth, EU ProSun argued that the CCCME notification would not be economically justified. The first economic argument is that the Bloomberg database is an index, and not an explicit price quotation, because prices from different markets are standardised in USD. The Commission observes that the undertaking refers to 'average prices', and therefore is based on the view that the Bloomberg database contains price quotations. It is not disputed that the Bloomberg database is a collection of prices, which is available in USD. However the MIP is expressed in euro. Hence, it is appropriate to convert those quotations into euro, in order to know at what price in euro solar panels can be bought on the world market. As contracts concluded in the Union are mainly in euro, the Commission considers that average prices in euro are more relevant for assessing the impact of international price trends on the situation in the Union. The second economic argument relates to the aim of the adjustment mechanism and whether it is similar to the aim of adjustment mechanisms used in other undertakings, which were based on the price of raw materials. First, the Commission observes that recital 4 of Decision 2013/423/EU indeed indicates that the aim of the adaptation mechanism in the present case is identical to the aim of adaptation mechanisms used in earlier undertakings despite the fact that, for technical reasons, the price of raw materials could not be used in the case at hand. Second, the MIP is not based on production costs of Union producers including a reasonable profit, but on the methodology described in recital 7 of Decision 2013/423/EU and recital 22 of Implementing Decision 2013/707/EU.

⁽¹⁾ Global Market Outlook for Photovoltaics 2014-2018, p. 18.

3. Acceptance of the proposed clarification of the implementation of the undertaking

- (18) The Commission considers that the proposed clarification falls within the scope of the undertaking, as accepted by Implementing Decision 2013/707/EU.
- (19) In view of the concerns voiced by the third parties in the course of implementation of the undertaking, it is appropriate to accept the proposed clarification of the implementation of the undertaking, and to close consultations with the exporting producers together with the CCCME. Interested parties were informed of the essential facts and considerations upon which this decision is based,

HAS ADOPTED THIS DECISION:

Article 1

The proposal for clarifications concerning the implementation of the undertaking accepted from the exporting producers listed in the Annex to Implementing Decision 2013/707/EU together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products, 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, is hereby accepted.

Article 2

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

Done at Brussels, 10 September 2014.

For the Commission
The President
José Manuel BARROSO
