

COMMISSION IMPLEMENTING DECISION (EU) 2017/615**of 30 March 2017****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 concerning the implementation of the undertaking referred to in Implementing Decision 2013/707/EU**

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,

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

Whereas:

A. PROCEDURE

- (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.
- (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 ⁽⁸⁾ the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures.

⁽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.⁽⁸⁾ OJ L 325, 5.12.2013, p. 214.

- (6) By Implementing Decision 2014/657/EU ⁽¹⁾ 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 as 'measures'.
- (7) By Implementing Regulation (EU) 2015/866 ⁽²⁾ the Commission withdrew the acceptance of the undertaking for three exporting producers.
- (8) By Implementing Regulation (EU) 2015/1403 ⁽³⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (9) By Implementing Regulation (EU) 2015/2018 ⁽⁴⁾ 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* ⁽⁵⁾ 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* ⁽⁶⁾ on 5 December 2015.
- (12) The Commission also initiated a partial interim review on the form of the measures by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁷⁾ on 5 December 2015.
- (13) By Implementing Regulation (EU) 2016/115 ⁽⁸⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (14) By Implementing Regulation (EU) 2016/185 ⁽⁹⁾, 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 products concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (15) By Implementing Regulation (EU) 2016/184 ⁽¹⁰⁾, 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 products concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (16) By Implementing Regulation (EU) 2016/1045 ⁽¹¹⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (17) By Implementing Regulation (EU) 2016/1382 ⁽¹²⁾ the Commission withdrew the acceptance of the undertaking for another five exporting producers.

⁽¹⁾ OJ L 270, 11.9.2014, p. 6.

⁽²⁾ OJ L 139, 5.6.2015, p. 30.

⁽³⁾ OJ L 218, 19.8.2015, p. 1.

⁽⁴⁾ OJ L 295, 12.11.2015, p. 23.

⁽⁵⁾ OJ C 405, 5.12.2015, p. 8.

⁽⁶⁾ OJ C 405, 5.12.2015, p. 20.

⁽⁷⁾ OJ C 405, 5.12.2015, p. 33.

⁽⁸⁾ OJ L 23, 29.1.2016, p. 47.

⁽⁹⁾ OJ L 37, 12.2.2016, p. 76.

⁽¹⁰⁾ OJ L 37, 12.2.2016, p. 56.

⁽¹¹⁾ OJ L 170, 29.6.2016, p. 5.

⁽¹²⁾ OJ L 222, 17.8.2016, p. 10.

- (18) By Implementing Regulation (EU) 2016/1402 ⁽¹⁾ the Commission withdrew the acceptance of the undertaking for another three exporting producers.
- (19) By Implementing Regulation (EU) 2016/1998 ⁽²⁾ the Commission withdrew the acceptance of the undertaking for another five exporting producers.
- (20) By Implementing Regulation (EU) 2016/2146 ⁽³⁾ 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 Regulation (EU) 2017/366 ⁽⁴⁾ and Implementing Regulation (EU) No 2017/367 ⁽⁵⁾.
- (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* ⁽⁶⁾ on 3 March 2017.
- (23) By Implementing Regulation (EU) 2017/454 ⁽⁷⁾ the Commission withdrew the acceptance of the undertaking for four exporting producers.

B. UNDERTAKING

1. Implementation of the undertaking

- (24) On the basis of the provisions of the undertaking, the exporting producers together with the CCCME requested consultations with the Commission on 6 March 2017. The exporting producers and the CCCME argued that the MIP should be maintained at its current level until the completion of the partial interim review referred to in recital 22.
- (25) In their notification, the exporting producers and the CCCME recalled that the aim of the ongoing partial interim review, initiated by the Commission on its own initiative, is amongst others to investigate as to whether the undertaking based on the MIP (subject to a periodic adaptation mechanism) can be still considered as an appropriate form for the measures. As it is linked to the adaptation mechanism, the MIP should be maintained at its current level to avoid any interference with the ongoing partial interim review throughout its duration.
- (26) The CCCME's notification was made available to interested parties in order to allow them to exercise their rights of defence in relation to maintaining the MIP at its current level for the duration of the interim review referred to in recital 22.

2. Written submissions and assessment

- (27) One party claimed that the CCCME's proposal is a violation of the provisions of the undertaking that foresee that any changes to the undertaking should be introduced via an interim review during which all provisions of the undertaking remain in force. That party further claimed that the adaptation mechanism is automatic and that there is no practical reason to maintain the MIP at the current level pending the outcome of the ongoing interim review.
- (28) The Commission notes first and foremost that the clause of the undertaking that the party referred to explicitly excludes from its scope the provisions on adaptation.

⁽¹⁾ OJ L 228, 23.8.2016, p. 16.

⁽²⁾ OJ L 308, 16.11.2016, p. 8.

⁽³⁾ OJ L 333, 8.12.2016, p. 4.

⁽⁴⁾ OJ L 56, 3.3.2017, p. 1.

⁽⁵⁾ OJ L 56, 3.3.2017, p. 131.

⁽⁶⁾ OJ C 67, 3.3.2017, p. 16.

⁽⁷⁾ OJ L 71, 16.3.2017, p. 5.

- (29) Further, it is the *operation* of the MIP adaptation system that has been indeed designed as automatic. The ongoing interim review on the form of measures touches the core of the existing measure but its aim is not per se to revise the content of the undertaking. All the provisions of the undertaking remain in force. The automatism of the operation of the adaptation mechanism does not prevent a party that offered the undertaking to request a modification, even more so a temporary one. The modification is solely a temporary maintaining of the MIP at the current level pending the outcome of the interim review on the form of measures.
- (30) The party also referred to a review investigation concluded by the Commission by an Implementing Regulation (EU) 2016/12 ⁽¹⁾. That review, however, was requested by a party external to the undertaking and aimed at exploring an alternative price benchmark for the adaptation mechanism (a secondary option not immediately operational). The current interim review focuses on the need to reconsider the form of the measures as such. Finally, the Commission points out that on another occasion the MIP was maintained at the same level ⁽²⁾ pending adoption of the clarification Implementing Decision 2014/657/EU.
- (31) On the basis of the above, the claims of the party are hereby rejected.

3. Acceptance of maintaining the MIP at the current level for the duration of the ongoing interim review

- (32) Therefore, on the basis of the notification by the exporting producers and the CCCME, the Commission considers appropriate to accept the proposed freeze of the MIP until the completion of the ongoing partial interim review referred to in recital 22 and to close consultations with the exporting producers together with the CCCME,

HAS ADOPTED THIS DECISION:

Article 1

The proposal to maintain the MIP at the level applicable in March 2017 for the undertaking accepted from the exporting producers listed in the Annex to Implementing Decision 2013/707/EU, as subsequently amended, 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 pending the conclusion of the partial interim review initiated by the Commission ⁽³⁾ 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, 30 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ OJ L 4, 7.1.2016, p. 1.

⁽²⁾ Letter of 13 June 2014 made available for inspection by interested parties

⁽³⁾ OJ C 67, 3.3.2017, p. 16.