

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1997

of 7 November 2017

amending Implementing Regulations (EU) 2016/184 and (EU) 2016/185 extending the definitive countervailing and 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 to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not

THE EUROPEAN COMMISSION,

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

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 Articles 11(4) and 13(4) thereof and 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 to Articles 23(6) and 24(5) thereof,

Whereas:

A. MEASURES IN FORCE

- (1) The Council imposed on 2 December 2013 anti-dumping ⁽³⁾ and countervailing measures ⁽⁴⁾ on crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China ('the original measures').
- (2) On 11 February 2016, the Commission extended those measures to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, with the exception of imports produced by certain companies specifically exempted from those measures ('the extended measures') ⁽⁵⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ 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 (OJ L 325, 5.12.2013, p. 1).

⁽⁴⁾ 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 (OJ L 325, 5.12.2013, p. 66).

⁽⁵⁾ Commission Implementing Regulation (EU) 2016/184 of 11 February 2016 extending the definitive countervailing duty imposed by 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 to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not (OJ L 37, 12.2.2016, p. 56) and Commission Implementing Regulation (EU) 2016/185 of 11 February 2016 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 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 to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not (OJ L 37, 12.2.2016, p. 76).

- (3) On 5 December 2015, the Commission initiated expiry reviews of the original anti-dumping ⁽¹⁾ and countervailing ⁽²⁾ measures as well as a partial interim review of those measures ⁽³⁾. Subsequently, on 1 March 2017, the Commission imposed anti-dumping and countervailing duties for a period of 18 months ('the continued measures') and terminated the partial interim review ⁽⁴⁾.
- (4) On 3 March 2017, the Commission initiated a partial interim review limited to the form and level of the continued measures ⁽⁵⁾. Following this review, the Commission amended the continued measures with effect as of 15 days following the publication of Commission Implementing Regulation (EU) 2017/1570 ⁽⁶⁾.
- (5) Accordingly, the countervailing and anti-dumping measures currently in force are those imposed by Commission Implementing Regulation (EU) 2017/366 and Commission Implementing Regulation (EU) 2017/367, as amended by Implementing Regulation (EU) 2017/1570.

B. PROCEDURE

1. Initiation

- (6) By Commission Implementing Regulation (EU) 2017/242 ⁽⁷⁾ ('the Initiation Regulation'), the Commission initiated a review of the extended measures for the purpose of determining the possibility of granting an exemption from those measures to Jinko Solar Technology SDN.BHD ('the applicant' or 'Jinko Malaysia'), a Malaysian exporting producer of crystalline silicon photovoltaic modules and key components (i.e. cells). The Regulation initiating the review also repealed the anti-dumping duties with regard to the applicant and made imports from it subject to registration.
- (7) The review was opened following a request lodged by the applicant, which contained sufficient *prima facie* evidence to support the applicant's claim that it was a new exporting producer and fulfilled the criteria for an exemption under Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, namely:
 - that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures, i.e. from 1 April 2014 to 31 March 2015,
 - that it has not been engaging in circumvention practices, and
 - it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

⁽¹⁾ Notice of initiation 2015/C 405/08 (OJ C 405, 5.12.2015, p. 8).

⁽²⁾ Notice of initiation 2015/C 405/09 (OJ C 405, 5.12.2015, p. 20).

⁽³⁾ Notice of initiation 2015/C 405/10 (OJ C 405, 5.12.2015, p. 33).

⁽⁴⁾ Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037 (OJ L 56, 3.3.2017, p. 1), and Commission Implementing Regulation (EU) 2017/367 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 following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036 (OJ L 56, 3.3.2017, p. 131).

⁽⁵⁾ OJ C 67, 3.3.2017, p. 16.

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/1570 of 15 September 2017 amending Implementing Regulation (EU) 2017/366 and Implementing Regulation (EU) 2017/367 imposing definitive countervailing and anti-dumping duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China and repealing 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 (OJ L 238, 16.9.2017, p. 22).

⁽⁷⁾ Commission Implementing Regulation (EU) 2017/242 of 10 February 2017 initiating a review of Implementing Regulations (EU) 2016/184 and (EU) 2016/185 (extending the definitive countervailing and 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 to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not) for the purposes of determining the possibility of granting an exemption from those measures to one Malaysian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration (OJ L 36, 11.2.2017, p. 47).

2. Product under review

- (8) The product under review is crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90.
- (9) The following product types are excluded from the definition of the product under review:
- solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries,
 - thin film photovoltaic products,
 - crystalline silicon photovoltaic products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s),
 - modules or panels with a output voltage not exceeding 50 V DC and a power output not exceeding 50 W solely for direct use as battery chargers in systems with the same voltage and power characteristics.

3. Reporting Period

- (10) The reporting period covered the period from 1 April 2014 to 31 December 2016.

4. Investigation

- (11) The Commission advised Jinko Solar Technology SDN.BHD, the Union industry represented by the complainant in the original investigation (EU ProSun) and the representatives of Malaysia and the People's Republic of China of the initiation of the review.
- (12) The Commission sought and verified all the information deemed necessary for the purposes of the review. In particular, it received questionnaire replies from the applicant and its related sales company, Jinko Solar Technology Limited (Hong Kong) ('Jinko HK'). A verification visit was carried out at the premises of the applicant in Malaysia. With regard to Jinko HK the Commission was informed during the investigation that although this company is established in Hong Kong, all export sales documentation was kept by its related company, Jinko Solar Co., Ltd, in the People's Republic of China ('PRC'). Accordingly, a verification visit in respect of export sales, was also carried out at the premise of its related company in Shanghai, PRC.

C. FINDINGS

- (13) The findings of the investigation demonstrated that Jinko Malaysia is a genuine Malaysian producer of crystalline silicon photovoltaic modules and cells that was incorporated in January 2015 and which started commercial production of modules and cells in June/July the same year.
- (14) During the investigation the Commission established that Jinko Malaysia had not exported the product under review to the Union during the investigation period used in the investigation that led to the extended measures, i.e. from 1 April 2014 to 31 March 2015. It also established that Jinko Malaysia had not purchased the product under review from the PRC for further re-sales or transshipment to the Union. Moreover, Jinko Malaysia had not exported the product under review to the Union up until the end of the reporting period, i.e. 31 December 2016.
- (15) However, Jinko Malaysia had in October 2016 entered into a contract to export significant volumes of the product under review to the Union. According to the contractual terms, the delivery of those volumes is suspended pending the current review investigation.

- (16) The Commission took note that the applicant is a wholly owned subsidiary of Jinko Solar Co., Ltd, a Chinese producer of the product under review that is currently subject to the original measures, as amended. As indicated in the Initiation Regulation the Commission carefully examined this relationship and verified whether Jinko Malaysia was established or used to circumvent the existing measures.
- (17) Jinko Solar Co., Ltd is part of a larger business group belonging to Jinko Solar Holding Co., Ltd. This company is incorporated in the Cayman Island and its shares are quoted on the New York Stock Exchange. The Jinko Solar Group has a worldwide presence and production facilities in several countries, currently in China, Portugal, South Africa and Malaysia. According to minutes of the Board of Directors from 2014, the Group's business strategy in recent years is to further increase overseas production facilities and to establish such facilities in countries with strong project development potential. As part of this business strategy, the Board of Directors decided in the same year to establish a manufacturing plant in Malaysia.
- (18) Moreover, the Commission established that Jinko Malaysia is a genuine producer of the product under review with complete and state of the art production facilities for both cells and modules, including R & D. It had not been engaged in circumvention activities, such as transshipment, assembly operations or re-sales of solar modules and cells originating in the People's Republic of China to the Union.
- (19) The Commission thus concluded that Jinko Malaysia was neither established nor used for circumventing the original measures and that the Chinese ownership, in itself, did not constitute a reason to reject the application.
- (20) Against this background the Commission did not find it necessary to impose any particular monitoring conditions should the exemption be granted. In order to ensure the proper application of the exemption, the Commission considered appropriate to apply the special measures applicable to all companies which had been granted exemptions. These special measures are the requirement of the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Article 1(2) of Commission Implementing Regulation (EU) 2016/184 and Article 1(2) of Commission Implementing Regulation (EU) 2016/185. Imports not accompanied by such an invoice shall be made subject to the extended dumping and countervailing duty respectively.
- (21) In the light of the findings described in recitals (13) to (19), the Commission concluded that Jinko Solar Technology SDN.BHD fulfils the criteria laid down in Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation and should be exempted from the extended measures.
- (22) The findings above were disclosed to the the applicant and other interested parties, which were given the opportunity to provide comments. Only the applicant responded, with minor comments of technical nature.

D. MODIFICATION TO THE LIST OF COMPANIES BENEFITTING FROM AN EXEMPTION TO THE EXTENDED MEASURES

- (23) Given the findings referred to above the Commission concluded that the company Jinko Solar Technology SDN. BHD should be added to the list of companies that are exempted from the countervailing duty and anti-dumping duty imposed by Implementing Regulation (EU) 2016/184 and Implementing Regulation (EU) 2016/185, respectively.
- (24) Accordingly, Jinko Solar Technology SDN.BHD should be added to the list of individually identified companies in Article 1(1) of Implementing Regulation (EU) 2016/184 and Article 1(1) of Implementing Regulation (EU) 2016/185.
- (25) Furthermore, the application of the exemption is conditional upon compliance with the requirement set out in Article 1(2) of Implementing Regulation (EU) 2016/184 and in Article 1(2) of Implementing Regulation (EU) 2016/185.
- (26) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

The table set out in Article 1(1) of Implementing Regulation (EU) 2016/184 is replaced by the following table:

Country	Company	TARIC additional code
Malaysia	AUO — SunPower Sdn. Bhd.	C073
	Flextronics Shah Alam Sdn. Bhd.	C074
	Hanwha Q CELLS Malaysia Sdn. Bhd.	C075
	Panasonic Energy Malaysia Sdn. Bhd.	C076
	TS Solartech Sdn. Bhd.	C077
	Jinko Solar Technology SDN.BHD	C203
Taiwan	ANJI Technology Co., Ltd	C058
	AU Optronics Corporation	C059
	Big Sun Energy Technology Inc.	C078
	EEPV Corp.	C079
	E-TON Solar Tech. Co., Ltd	C080
	Gintech Energy Corporation	C081
	Gintung Energy Corporation	C082
	Inventec Energy Corporation	C083
	Inventec Solar Energy Corporation	C084
	LOF Solar Corp.	C085
	Ming Hwei Energy Co., Ltd	C086
	Motech Industries, Inc.	C087
	Neo Solar Power Corporation	C088
	Perfect Source Technology Corp.	C089
	Ritek Corporation	C090
	Sino-American Silicon Products Inc.	C091
	Solartech Energy Corp.	C092
	Sunengine Corporation Ltd	C093
	Topcell Solar International Co., Ltd	C094
	TSEC Corporation	C095
Win Win Precision Technology Co., Ltd	C096	

Article 2

The table set out in Article 1(1) of Implementing Regulation (EU) 2016/185 is replaced by the following table:

Country	Company	TARIC additional code
Malaysia	AUO — SunPower Sdn. Bhd.	C073
	Flextronics Shah Alam Sdn. Bhd.	C074
	Hanwha Q CELLS Malaysia Sdn. Bhd.	C075
	Panasonic Energy Malaysia Sdn. Bhd.	C076
	TS Solartech Sdn. Bhd.	C077
	Jinko Solar Technology SDN.BHD	C203

Country	Company	TARIC additional code
Taiwan	ANJI Technology Co., Ltd	C058
	AU Optronics Corporation	C059
	Big Sun Energy Technology Inc.	C078
	EEPV Corp.	C079
	E-TON Solar Tech. Co., Ltd	C080
	Gintech Energy Corporation	C081
	Gintung Energy Corporation	C082
	Inventec Energy Corporation	C083
	Inventec Solar Energy Corporation	C084
	LOF Solar Corp.	C085
	Ming Hwei Energy Co., Ltd	C086
	Motech Industries, Inc.	C087
	Neo Solar Power Corporation	C088
	Perfect Source Technology Corp.	C089
	Ritek Corporation	C090
	Sino-American Silicon Products Inc.	C091
	Solartech Energy Corp.	C092
	Sunengine Corporation Ltd	C093
	Topcell Solar International Co., Ltd	C094
	TSEC Corporation	C095
Win Win Precision Technology Co., Ltd	C096	

Article 3

Customs authorities are directed to cease the registration of imports carried out pursuant to Article 3 of Implementing Regulation (EU) 2017/242. No anti-dumping duty shall be collected on the imports thus registered.

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 is binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 November 2017.

For the Commission
The President
Jean-Claude JUNCKER