

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of a partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China

(2017/C 67/10)

The European Commission (the Commission) has decided on its own initiative to initiate a partial interim review investigation of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in the People's Republic of China pursuant to Article 11(3) of 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 Article 19 of 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').

The partial interim review is limited to the form of the measures.

1. Product under review

The product subject to this 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) ('the product under review'), 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 and originating in or consigned from the People's Republic of China, unless they are in transit in the sense of Article V GATT.

The following product types are excluded from the definition of the product concerned:

- 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.

2. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Commission Implementing Regulation (EU) 2017/367 ⁽³⁾ and a definitive countervailing duty imposed by Commission Implementing Regulation (EU) 2017/366 ⁽⁴⁾, extended to imports consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, by Commission Implementing Regulation (EU) 2016/185 ⁽⁵⁾ and Commission Implementing Regulation (EU) 2016/184 ⁽⁶⁾, respectively.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 56, 3.3.2017, p. 131.

⁽⁴⁾ OJ L 56, 3.3.2017, p. 1.

⁽⁵⁾ Commission Implementing Regulation (EU) 2016/185 of 11 February 2016 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 1238/2013 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).

⁽⁶⁾ Commission Implementing Regulation (EU) 2016/184 of 11 February 2016 extending the definitive countervailing duty imposed by Council Implementing Regulation (EU) No 1239/2013 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).

On 2 August 2013, the Commission accepted a price undertaking offered by a group of cooperating exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') by way of Decision 2013/423/EU ⁽¹⁾. On 4 December 2013, the Commission confirmed the acceptance of the UT by Implementing Decision 2013/707/EU ⁽²⁾. The terms of the implementation of the undertaking referred to in Implementing Decision 2013/707/EU were further clarified in Implementing Decision 2014/657/EU ⁽³⁾. With successive Regulations a number of exporting producers have been withdrawn from the undertaking.

3. Grounds for the review

There is *prima facie* evidence that the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature.

This evidence is related to the technological development and efficiency gains by the industry and to the question as to how the current form of the measures, namely a price undertaking based on a minimum import price (MIP) that is subject to a periodic adaptation mechanism, sufficiently takes into consideration the impact of these aspects on the import prices of the product under review into the Union. In addition, the fact that a large number of exporting producers were withdrawn from the undertaking (either voluntarily or due to breaches or impracticability) since it entered into force raises the question whether the undertaking can still be considered as an appropriate form for the measures.

Indeed, the experience on the implementation of the undertaking with a MIP that was set under economic circumstances which have evolved in the past three years points to the need to reconsider the form of the measures.

Therefore, it appears appropriate to examine whether the form of the measures remains the most appropriate. *The prima facie* evidence suggests that both the anti-dumping and countervailing measures may reflect the changed circumstances more appropriately by taking the form of a variable duty, based on a MIP for all imports of the product under review. This means that all imports with a declared value at or above the MIP would no longer be subject to duties. Such variable MIP would be regularly adjusted to reflect further technological development and efficiency gains in the solar sector.

4. Procedure

Having determined, after informing the Member States, that sufficient evidence exists to justify the initiation of a partial interim review limited to the form of the measures, the Commission hereby initiates a review in accordance with Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation. The investigation will examine whether or not the form of the measures remains the most appropriate given the changed circumstances.

The Government of the People's Republic of China has been invited for consultations.

4.1. Review investigation period

The review investigation will cover the period from 1 January 2014 to 31 December 2016 ('the review investigation period').

4.2. Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission may send questionnaires to interested parties that come forward and make themselves known to the Commission within 15 days of the publication of this Notice in the *Official Journal of the European Union*. The replies to these questionnaires must reach the Commission within the specific deadlines set by the Commission in its communication with the parties.

4.3. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

⁽¹⁾ Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ L 209, 3.8.2013, p. 26).

⁽²⁾ Commission Implementing Decision 2013/707/EU of 4 December 2013 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 325, 5.12.2013, p. 214).

⁽³⁾ Commission Implementing Decision 2014/657/EU 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 (OJ L 270, 11.9.2014, p. 6).

4.4. *Instructions for making written submissions and sending completed questionnaires and correspondence*

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

All written submissions, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ⁽¹⁾. Any request for confidential treatment must be duly justified.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. These summaries must be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf

The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: TRADE-SOLAR-INJURY@ec.europa.eu

5. **Non-cooperation**

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic anti-dumping Regulation and Article 28 of the basic anti-subsidy Regulation, the result may be less favourable to that party than if it had cooperated.

⁽¹⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 21), Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 55), Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

6. Hearing Officer

Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

7. Schedule of the investigation

The investigation will be conducted pursuant to Article 11(5) of the basic anti-dumping Regulation and Article 22(1) of the basic anti-subsidy Regulation. The Commission endeavours to conclude it within 6 months and not later than 9 months of the date of the publication of this Notice in the *Official Journal of the European Union*.

8. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.