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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (CFSP) 2019/1328

of 18 February 2019

on the signing and conclusion of the Agreement between the European Union and the Hashemite Kingdom of Jordan establishing a framework for the participation of the Hashemite Kingdom of Jordan in European Union crisis management operations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof, in conjunction with Article 218(5) and (6) of the Treaty on the Functioning of the European Union,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 13 November 2017 the Council approved a Decision authorising the opening of negotiations for an agreement with the Hashemite Kingdom of Jordan establishing a framework for its participation in Union crisis management operations, pursuant to Article 37 of the Treaty on European Union (TEU) and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU), on the basis of the text of the draft Framework Participation Agreement approved by the Council on 23 February 2004, to be updated as required in the light of subsequent agreed changes.
- (2) The High Representative of the Union for Foreign Affairs and Security Policy subsequently negotiated the Agreement between the European Union and the Hashemite Kingdom of Jordan establishing a framework for the participation of the Hashemite Kingdom of Jordan in European Union crisis management operations (the 'Agreement').
- (3) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Hashemite Kingdom of Jordan establishing a framework for the participation of the Hashemite Kingdom of Jordan in European Union crisis management operations is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 17(1) of the Agreement ⁽¹⁾.

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 18 February 2019.

For the Council
The President
F. MOGHERINI

AGREEMENT**between the European Union and the Hashemite Kingdom of Jordan establishing a framework for the participation of the Hashemite Kingdom of Jordan in European Union crisis management operations**

THE EUROPEAN UNION (the 'Union' or the 'EU'),

of the one part, and

THE HASHEMITE KINGDOM OF JORDAN,

of the other part,

hereinafter jointly referred to as the 'Parties',

WHEREAS:

- (1) In the framework of its common security and defence policy, the European Union may decide to undertake crisis management operations which may include the tasks set out in Articles 42 (1) and 43 (1) of the Treaty on European Union, as decided by the Council.
- (2) The Hashemite Kingdom of Jordan and the EU recognise the importance of world peace for the development of all States, and remain committed to contributing towards maintaining peace and security in their respective neighbourhood and in the broader world, based on the principles of the United Nations Charter.
- (3) Considering the commitment between the Parties to strengthening their cooperation in matters concerning security and defence, and recognising that the capabilities and abilities of the security forces of the Hashemite Kingdom of Jordan could be used in EU crisis management operations.
- (4) The Hashemite Kingdom of Jordan and the EU wish to set down general conditions regarding the participation of the Hashemite Kingdom of Jordan in EU crisis management operations in an agreement establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned.
- (5) Such an agreement should be without prejudice to the decision-making autonomy of the Union, and should not prejudice the case-by-case nature of the decision by the Hashemite Kingdom of Jordan to participate in an EU crisis management operation.
- (6) The Union will decide whether third States will be invited to participate in an EU crisis management operation. The Hashemite Kingdom of Jordan may accept the invitation by the Union and offer its contribution. In such a case, the Union will decide on the acceptance of the proposed contribution,

HAVE AGREED AS FOLLOWS:

SECTION I**GENERAL PROVISIONS***Article 1***Decisions relating to participation**

1. Following the decision of the Union to invite the Hashemite Kingdom of Jordan to participate in an EU crisis management operation, the Hashemite Kingdom of Jordan shall, in the implementation of this Agreement, communicate the decision of its competent authority regarding its participation, including its proposed contribution, to the European Union.
2. The assessment by the Union of the proposed contribution by the Hashemite Kingdom of Jordan shall be conducted in consultation with the latter.
3. The Union shall provide the Hashemite Kingdom of Jordan with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting the Hashemite Kingdom of Jordan in the formulation of its offer.

4. The Union shall communicate the outcome of its assessment and decision on the proposed Hashemite Kingdom of Jordan contribution to the Hashemite Kingdom of Jordan in writing, with a view to securing the participation of the Hashemite Kingdom of Jordan, in accordance with the provisions of this Agreement.
5. The offer by the Hashemite Kingdom of Jordan pursuant to paragraph 1, and its acceptance by the EU pursuant to paragraph 4, shall constitute the basis for the application of this Agreement to each specific crisis management operation.
6. The Hashemite Kingdom of Jordan may, on its own initiative or at the request of the Union, and following consultations between the Parties, withdraw wholly or in part, at any time, from participation in an EU crisis management operation.

Article 2

Framework

1. The Hashemite Kingdom of Jordan shall associate itself with the relevant Council Decision by which the Council of the European Union decides that the Union will conduct a crisis management operation, and with any other Decision by which the Council of the European Union decides to extend an EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. The contribution of the Hashemite Kingdom of Jordan to an EU crisis management operation shall be without prejudice to the decision-making autonomy of the Union.

Article 3

Status of personnel and forces of the Hashemite Kingdom of Jordan

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by the Hashemite Kingdom of Jordan shall be governed by the relevant agreement on the status of forces/mission, if such is concluded, or by any other arrangement between the Union and the State(s) in which the operation is conducted. The Hashemite Kingdom of Jordan shall be informed thereof.
2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation takes place shall be governed by arrangements between the headquarters and command elements concerned and the competent authorities of the Hashemite Kingdom of Jordan.
3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, the Hashemite Kingdom of Jordan shall exercise jurisdiction over its personnel participating in the EU crisis management operation. Where the forces of the Hashemite Kingdom of Jordan operate on board a vessel or aircraft of a Member State of the European Union, that Member State may exercise jurisdiction subject to any existing and/or future agreements, and in accordance with its laws and regulations and with international law.
4. The Hashemite Kingdom of Jordan shall be responsible for answering any claims linked to the participation in an EU crisis management operation from or concerning any of its personnel and shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel in accordance with its laws and regulations.
5. The Parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss of, or destruction of assets owned or operated by either Party, or injury or death of personnel of either Party, arising out of the performance of their official duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.
6. The Hashemite Kingdom of Jordan undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which the Hashemite Kingdom of Jordan participates, and to do so when signing this Agreement.

7. The Union undertakes to ensure that the Member States of the European Union make a declaration as regards the waiver of claims for any future participation of the Hashemite Kingdom of Jordan in an EU crisis management operation, and to do so when signing this Agreement.

Article 4

Classified information

1. The Hashemite Kingdom of Jordan shall take appropriate measures to ensure that EU classified information is protected in accordance with the Council security rules for protecting EU classified information, contained in Council Decision 2013/488/EU ⁽¹⁾, and in accordance with further guidance issued by competent authorities, including by the EU Operation Commander concerning an EU military crisis management operation, or by the EU Civilian Operation Commander concerning an EU civilian crisis management operation.

2. Where the Parties conclude an agreement on security procedures for the exchange of classified information, such agreement shall apply in the context of an EU crisis management operation.

SECTION II

PROVISIONS ON PARTICIPATION IN EU CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. The Hashemite Kingdom of Jordan shall:

(a) ensure that its personnel seconded to an EU civilian crisis management operation undertake their mission in accordance with:

- (i) the relevant Council Decision and subsequent amendments thereto as referred to in Article 2(1);
- (ii) the Operation Plan;
- (iii) any applicable implementing arrangements;
- (iv) any applicable policy for EU civilian crisis management operations.

(b) inform the Civilian Operation Commander in due time of any change to its contribution to the EU civilian crisis management operation.

2. Personnel seconded by the Hashemite Kingdom of Jordan to an EU civilian crisis management operation shall undergo a medical examination, be vaccinated and be certified medically fit for duty by its competent authority, and shall produce a copy of that certification.

3. Personnel seconded by the Hashemite Kingdom of Jordan shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind, while adhering to the highest standards of behaviour set out in the policies applicable to EU civilian crisis management operations.

Article 6

Chain of command

1. All personnel participating in an EU civilian crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer operational control to the Civilian Operation Commander of the Union.

3. The Civilian Operation Commander shall assume responsibility and exercise command and control of the EU civilian crisis management operation at strategic level.

4. The Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level and assume its day-to-day management.

⁽¹⁾ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ EU L 274, 15.10.2013, p. 1).

5. The Hashemite Kingdom of Jordan shall have the same rights and obligations in terms of day-to-day management of the operation as the Member States of the European Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
6. The Head of Mission shall be responsible for disciplinary control over the personnel of the EU civilian crisis management operation. Where required, disciplinary action shall be taken by the national authority concerned.
7. A National Contingent Point of Contact ('NPC') shall be appointed by the Hashemite Kingdom of Jordan to represent its national contingent in the operation. The NPC shall report to the Head of Mission on national matters and shall be responsible for the day-to-day discipline of the contingent of the Hashemite Kingdom of Jordan.
8. The decision to end the operation shall be taken by the Union, following consultation with the Hashemite Kingdom of Jordan if it is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

Article 7

Financial aspects

1. Without prejudice to Article 8, the Hashemite Kingdom of Jordan shall assume all the costs associated with its participation in an EU civilian crisis management operation apart from the running costs, as set out in the operational budget of the operation. To that effect, the Hashemite Kingdom of Jordan may receive bilateral support for its participation in an EU civilian crisis management operation from an EU Member State or a third party.
2. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, issues of possible liability and compensation by the Hashemite Kingdom of Jordan shall be governed by the conditions set out in the applicable agreement on the status of mission referred to in Article 3(1) or any alternative applicable provisions.

Article 8

Contribution to the operational budget

1. Subject to paragraph 4 of this Article and notwithstanding Article 1(5), the Hashemite Kingdom of Jordan shall contribute to the financing of the operational budget of the EU civilian crisis management operation concerned.
2. Such contribution to the operational budget shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:
 - (a) the share of the reference amount for the operational budget which is in proportion to the ratio of the Hashemite Kingdom of Jordan's gross national income (GNI) to the total GNIs of all States contributing to the operational budget of the operation; or
 - (b) the share of the reference amount for the operational budget which is in proportion to the ratio of the number of personnel from the Hashemite Kingdom of Jordan participating in the operation to the total number of personnel of all States participating in the operation.
3. Notwithstanding paragraphs 1 and 2, the Hashemite Kingdom of Jordan shall not make any contribution towards the financing of per diem allowances paid to personnel of the Member States of the European Union.
4. Notwithstanding paragraph 1, the Union shall, in principle, exempt the Hashemite Kingdom of Jordan from financial contributions to a particular EU civilian crisis management operation when:
 - (a) the Union decides that the Hashemite Kingdom of Jordan provides a significant contribution which is essential for that operation; or
 - (b) the Hashemite Kingdom of Jordan has a GNI per capita which does not exceed that of any Member State of the Union.

5. Subject to paragraph 1, any arrangement on the payment of the contributions of the Hashemite Kingdom of Jordan to the operational budget of an EU civilian crisis management operation shall be signed between the competent authorities of the Parties and shall, inter alia, include provisions on:

- (a) the amount of the financial contribution concerned;
- (b) the arrangements for payment of the financial contribution; and
- (c) the auditing procedure.

SECTION III

PROVISIONS ON PARTICIPATION IN EU MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in an EU military crisis management operation

1. The Hashemite Kingdom of Jordan shall ensure that its forces and personnel participating in an EU military crisis management operation undertake their mission in accordance with:

- (a) the relevant Council Decision and subsequent amendments thereto as referred to in Article 2(1);
- (b) the Operation Plan;
- (c) any applicable implementing arrangements; and
- (d) any applicable policy for EU military crisis management operations.

2. The Hashemite Kingdom of Jordan shall inform the EU Operation Commander in due time of any change to its participation in the operation.

3. Personnel seconded by the Hashemite Kingdom of Jordan shall carry out their duties and conduct themselves solely with the interests of the EU military crisis management operation in mind, while adhering to the highest standards of behaviour set out in the policies applicable to EU military crisis management operations.

Article 10

Chain of command

1. All forces and personnel participating in an EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the operational and tactical command and/or control of their forces and personnel to the EU Operation Commander, who is entitled to delegate his authority.

3. The Hashemite Kingdom of Jordan shall have the same rights and obligations in terms of the day-to-day management of the operation as the Member States of the European Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).

4. The EU Operation Commander may, following consultations with the Hashemite Kingdom of Jordan, at any time request the withdrawal of the contribution by the Hashemite Kingdom of Jordan.

5. A Senior Military Representative ('SMR') shall be appointed by the Hashemite Kingdom of Jordan to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for the day-to-day discipline of the contingent of the Hashemite Kingdom of Jordan.

Article 11

Financial aspects

1. Without prejudice to Article 12 of this Agreement, the Hashemite Kingdom of Jordan shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1), as well as in Council Decision (CFSP) 2015/528^(?). To that effect, the Hashemite Kingdom of Jordan may receive bilateral support for its participation in an EU military crisis management operation from an EU Member State or a third party.

^(?) Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) (OJ EU L 84, 28.03.2015, p. 39).

2. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, issues of possible liability and compensation by the Hashemite Kingdom of Jordan shall be governed by the conditions set out in the applicable agreement on the status of forces referred to in Article 3(1) or any applicable alternative provisions.

Article 12

Contribution to the common costs

1. Subject to paragraph 3 of this Article and notwithstanding Article 1(5), the Hashemite Kingdom of Jordan shall contribute to the financing of the common costs of the EU military crisis management operation concerned.

2. Such contribution to the common costs shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

- (a) the share of the common costs which is in proportion to the ratio of the Hashemite Kingdom of Jordan's GNI to the total GNIs of all States contributing to the common costs of the operation; or
- (b) the share of the common costs which is in proportion to the ratio of the number of personnel from the Hashemite Kingdom of Jordan participating in the operation to the total number of personnel of all States participating in the operation.

Where the formula under point (b) is used, and the Hashemite Kingdom of Jordan contributes personnel to the Operation or Force Headquarters only, the ratio used shall be that of its personnel to the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all personnel contributed by the Hashemite Kingdom of Jordan to the total personnel of the operation.

3. Notwithstanding paragraph 1, the Union shall, in principle, exempt the Hashemite Kingdom of Jordan from financial contributions to a particular EU military crisis management operation when:

- (a) the Union decides that the Hashemite Kingdom of Jordan provides a significant contribution which is essential for this operation; or
- (b) the Hashemite Kingdom of Jordan has a GNI per capita which does not exceed that of any Member State of the Union.

4. Subject to paragraph 1, any arrangements for the payment of the contributions of the Hashemite Kingdom of Jordan to the common costs shall be concluded between the competent authorities of the Parties and shall include, *inter alia*, provisions on:

- (a) the amount of the financial contribution concerned;
- (b) the arrangements for payment of the financial contribution; and
- (c) the auditing procedure.

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to Articles 8(5) and 12(4), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the competent authorities of the Parties.

Article 14

Competent authorities

For the purposes of this Agreement, the competent authorities of the Hashemite Kingdom of Jordan shall be the Jordan Armed Forces (JAF), unless the European Union is otherwise notified.

*Article 15***Non-compliance**

Should either Party fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by providing one month's written notice.

*Article 16***Dispute settlement**

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

*Article 17***Entry into force, duration and termination**

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal legal procedures necessary for the entry into force of this Agreement.
2. This Agreement shall be subject to review not later than 1 August 2021, and subsequently at least every three years.
3. This Agreement may be amended on the basis of a mutual written agreement between the Parties. The amendments shall enter into force in accordance with the procedure laid down in paragraph 1.
4. This Agreement may be terminated by either Party by written notice of termination given to the other Party. Such termination shall take effect six months after receipt of notification by the other Party.

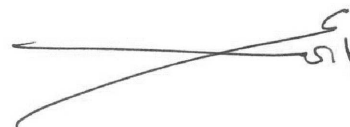
IN WITNESS WHEREOF, the undersigned, both being duly authorised thereto by the respective Parties, have signed this Agreement.

Done at Luxembourg, on 17 June 2019 in duplicate in the English and Arabic languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the European Union



For the Hashemite Kingdom of Jordan



DECLARATION BY THE MEMBER STATES OF THE EU APPLYING AN EU COUNCIL DECISION ON AN EU CRISIS
MANAGEMENT OPERATION, IN WHICH THE HASHEMITE KINGDOM OF JORDAN PARTICIPATES REGARDING THE
WAIVER OF CLAIMS

'The EU Member States applying an EU Council Decision on an EU crisis management operation in which the Hashemite Kingdom of Jordan participates will endeavour, insofar as their internal legal systems so permit, to waive as much as possible any claims against the Hashemite Kingdom of Jordan for injury to, or death of, their personnel or damage to, or loss of, any assets owned by them and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel, contributed by the Hashemite Kingdom of Jordan to an EU crisis management operation, in the execution of their duties in connection with the EU crisis management operation, except in cases of gross negligence or wilful misconduct; or
 - arose from the use of any assets owned by the Hashemite Kingdom of Jordan, provided that the assets were used in connection with the operation, except in cases of gross negligence or wilful misconduct by personnel contributed by the Hashemite Kingdom of Jordan to the EU crisis management operation using those assets.'
-

DECLARATION BY THE HASHEMITE KINGDOM OF JORDAN REGARDING THE WAIVER OF CLAIMS AGAINST ANY
STATE PARTICIPATING IN EU CRISIS MANAGEMENT OPERATIONS

The Hashemite Kingdom of Jordan, having agreed to participate in an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as much as possible any claims against any State participating in the EU crisis management operation for injury to, or death of, its personnel or damage to, or loss of, any assets owned by it and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in cases of gross negligence or wilful misconduct; or
 - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation, except in cases of gross negligence or wilful misconduct by EU crisis management operation personnel using those assets.’
-

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1329

of 6 August 2019

invalidating invoices issued by Zhejiang Sunflower Light Energy Science & Technology Ltd in breach of the undertaking repealed by Implementing Regulation (EU) 2017/1570

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⁾, and in particular Articles 8 and 14 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⁾, and in particular Articles 13 and 24 thereof,

Having regard to 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 ⁽³⁾, and in particular Article 3 thereof,

Having regard to 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 ⁽⁴⁾, and in particular Article 2 thereof,

Having regard to 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 ⁽⁵⁾,

Having regard to Commission Implementing Regulation (EU) 2017/367 of 1 March 2017 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 ⁽⁶⁾,

Having regard to 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 ⁽⁷⁾,

⁽¹⁾ OJ L 176, 30.6.2016, p. 21 as amended by Regulation (EU) 2017/2321 of the European Parliament and of the Council (OJ L 338, 19.12.2017, p. 1) and Regulation (EU) 2018/825 of the European Parliament and of the Council (OJ L 143, 7.6.2018, p. 1).

⁽²⁾ OJ L 176, 30.6.2016, p. 55 as amended by Regulation (EU) 2017/2321.

⁽³⁾ OJ L 325, 5.12.2013, p. 1.

⁽⁴⁾ OJ L 325, 5.12.2013, p. 66.

⁽⁵⁾ OJ L 56, 3.3.2017, p. 1.

⁽⁶⁾ OJ L 56, 3.3.2017, p. 131.

⁽⁷⁾ OJ L 238, 16.9.2017, p. 22.

Whereas:

A. UNDERTAKING AND OTHER MEASURES

- (1) By Implementing Regulation (EU) No 1238/2013, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells ('the product concerned') originating in or consigned from the People's Republic of China (the 'PRC'). By Implementing Regulation (EU) No 1239/2013, the Council also imposed a definitive countervailing duty on imports into the Union of the product concerned.
- (2) The China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME') submitted, on behalf of a group of exporting producers, a price undertaking to the Commission. By Decision 2013/423/EU⁽⁸⁾, the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. Following the notification of an amended version of the price undertaking by a group of exporting producers together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU of 4 December 2013⁽⁹⁾ the acceptance of the price undertaking as amended for the period of application of anti-dumping and countervailing definitive measures ('the undertaking'). The undertaking was accepted, inter alia, for Zhejiang Sunflower Light Energy Science & Technology Ltd covered by the TARIC additional code B914 ('Zhejiang Sunflower').
- (3) The Commission also adopted a Decision clarifying the implementation of the undertaking⁽¹⁰⁾ and 15 regulations withdrawing the acceptance of the undertaking for several exporting producers⁽¹¹⁾.
- (4) By Implementing Regulations (EU) 2016/185⁽¹²⁾ and (EU) 2016/184⁽¹³⁾, the Commission extended the definitive anti-dumping and countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan with the exception of a number of genuine producers.
- (5) By Implementing Regulation (EU) 2017/367 (the 'expiry review anti-dumping Regulation'), the Commission extended the definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC following an expiry review and terminating the partial interim review investigation pursuant to respectively, Article 11(2) and Article 11(3) of Regulation (EU) 2016/1036 (the 'basic anti-dumping Regulation').
- (6) By Implementing Regulation (EU) 2017/366 (the 'expiry review anti-subsidy Regulation'), the Commission extended a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC following an expiry review and terminating the partial interim review investigation pursuant to respectively, Article 18(2) and Article 19(3) of Regulation (EU) 2016/1037 (the 'basic anti-subsidy Regulation').

⁽⁸⁾ 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).

⁽⁹⁾ 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).

⁽¹⁰⁾ OJ L 270, 11.9.2014, p. 6.

⁽¹¹⁾ Commission Implementing Regulations (EU) 2015/866 (OJ L 139, 5.6.2015, p. 30), (EU) 2015/1403 (OJ L 218, 19.8.2015, p. 1), (EU) 2015/2018 (OJ L 295, 12.11.2015, p. 23), (EU) 2016/115 (OJ L 23, 29.1.2016, p. 47), (EU) 2016/1045 (OJ L 170, 29.6.2016, p. 5), (EU) 2016/1382 (OJ L 222, 17.8.2016, p. 10), (EU) 2016/1402 (OJ L 228, 23.8.2016, p. 16), (EU) 2016/1998 (OJ L 308, 16.11.2016, p. 8), (EU) 2016/2146 (OJ L 333, 8.12.2016, p. 4), (EU) 2017/454 (OJ L 71, 16.3.2017, p. 5), (EU) 2017/941 (OJ L 142, 2.6.2017, p. 43), (EU) 2017/1408 (OJ L 201, 2.8.2017, p. 3), (EU) 2017/1497 (OJ L 218, 24.8.2017, p. 10), (EU) 2017/1524 (OJ L 230, 6.9.2017, p. 11), (EU) 2017/1589 (OJ L 241, 20.9.2017, p. 21) withdrawing the acceptance of the undertaking for several exporting producers.

⁽¹²⁾ 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 no (OJ L 37, 12.2.2016, p. 76).

⁽¹³⁾ 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).

- (7) By Implementing Regulation (EU) 2017/1570 (the 'repeal Regulation'), the Commission repealed the undertaking.
- (8) By Notices 2018/C 310/06 ⁽¹⁴⁾ and 2018/C 310/07 ⁽¹⁵⁾, the Commission gave notice that the anti-dumping duty and the anti-subsidy duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC would expire on 3 September 2018.

B. TERMS OF THE UNDERTAKING

- (9) Under the terms of the undertaking, the exporting producers agreed, inter alia, not to sell the product concerned to the first independent customer in the Union below a certain minimum import price ('the MIP'). The MIP was subject to a quarterly adjustment mechanism by reference to international spot prices of modules as reported by the Bloomberg database.
- (10) The exporting producers also agreed to sell the product concerned only by means of direct sales. For the purpose of the undertaking, a direct sale was defined as a sale either to the first independent customer in the Union or via a related party in the Union listed in the undertaking. Indirect sales to the Union by companies other than those listed in the undertaking constituted a breach of the undertaking.
- (11) The undertaking also clarified, in a non-exhaustive list, what constituted a breach of the undertaking. That list included, in particular, making compensatory arrangements with customers and taking part in a trading system leading to a risk of circumvention. The sale of solar panels for the construction of solar parks by companies related to the exporting producer also constituted a breach of the undertaking.
- (12) By letter of 30 September 2014, the Commission services explicitly clarified to CCCME that, under the terms of the undertaking, sales for the construction of solar parks by related parties constituted a breach to the undertaking. After the entry into force of the undertaking the Commission services noted a substantial increase in the exports as captive sales to build solar parks, which constituted a change in the pattern of trade. Hence, the undertaking could no longer be effectively monitored. The Commission services requested the CCCME to disseminate this information to all Chinese exporting producers participating in the undertaking. Furthermore, this information was repeatedly disseminated by the Commission services during seminars held in the PRC. During these seminars the Commission services provided the exporting producers extensive information and explanations concerning the implementation of the undertaking, inter alia, information contained in the letter above mentioned.
- (13) The undertaking reporting obligations stipulated that each exporter submitted to the Commission, inter alia, quarterly reports of its direct sales to independent customers in the Union, of its sales to related parties in the Union and of the sales of its related parties to the first independent customer in the Union. This implied that the data submitted in these quarterly reports must be complete and correct and that the reported transactions fully complied with the terms of the undertaking. Reporting of re-sales in the Union was a particular obligation when the product concerned was sold to the first independent customer through a related importer. Only these reports enabled the Commission to monitor whether the re-sale price of the related importer to the first independent customer was in accordance with the MIP.
- (14) According to the undertaking, each exporting producer would also be liable for the breach of any of its related parties, whether or not listed in the undertaking.
- (15) Similarly, the exporting producers undertook to consult the Commission regarding any difficulties or questions, technical or otherwise, which may arise during the implementation of the undertaking. No such request has been received by the Commission services from Zhejiang Sunflower.

C. REPEAL OF THE UNDERTAKING

- (16) The undertaking was initially accepted from more than 120 companies/company groups. In the meantime, the Commission withdrew its acceptance of the undertaking for 19 companies. 17 of these were found to have breached the undertaking while the remaining two companies had business models that made it impracticable to monitor their compliance with the undertaking. In addition, 16 other Chinese companies voluntarily withdrew from the undertaking.

⁽¹⁴⁾ OJ C 310, 3.9.2018, p. 4.

⁽¹⁵⁾ OJ C 310, 3.9.2018, p. 5.

- (17) By the repeal Regulation, the Commission repealed the undertaking and introduced a variable duty in the form of a minimum import price ('the variable duty MIP'). The variable duty MIP had the effect that eligible imports with a declared value at, or above, the MIP would not be subject to duties. In addition, the customs authorities would levy duties immediately if the product is imported at a price below the MIP. The repeal Regulation applies to all imports that are customs cleared after its date of entry into force.
- (18) At the time of entry into force of the repeal Regulation on 1 October 2017, the Commission continued to conduct investigations concerning the compliance with the undertaking, and considered appropriate to open new investigations for goods that were released for free circulation while the undertaking was still in force. For those investigations, a customs debt would be incurred at the time of acceptance of the declaration for release into free circulation: (a) whenever it is established, in respect of imports invoiced by companies subject to the undertaking, that one or more of the conditions of the undertaking was not fulfilled; or (b) when the Commission finds that the undertaking was breached, in a regulation or decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.
- (19) By Implementing Regulation (EU) 2018/1551 ⁽¹⁶⁾, the Commission invalidated invoices issued by two exporting producers in breach of the undertaking while it was still in force.

D. MONITORING OF THE EXPORTING PRODUCERS

- (20) On the basis of Articles 8(9) and 14(7) of the basic anti-dumping Regulation and Articles 13(9) and 24(7) of the basic anti-subsidy Regulation, the customs authorities of one Member State submitted to the Commission evidence regarding noncompliance of Zhejiang Sunflower with the undertaking.
- (21) The findings listed in recitals 22 to 27 below address the allegations received from the customs authorities of the Member State referred to in recital 20 for Zhejiang Sunflower regarding alleged breaches of the undertaking while it was still in force.

E. GROUNDS FOR THE INVALIDATION OF UNDERTAKING INVOICES

- (22) The evidence received from customs authorities of the Member State mentioned in recital 20 indicates that Zhejiang Sunflower and its related importer sold solar panels in the Union systematically below the MIP, thus breaching the provisions of the undertaking as described in recital 9 above.
- (23) Based on the evidence received from customs authorities of the Member State mentioned in recital 20, Zhejiang Sunflower set up a trading system (e.g. kickback payments, fraudulent undervaluation of services in particular related to solar parks) with its related importer in the Union to sell solar panels below the MIP since the entry into force of the undertaking.
- (24) Zhejiang Sunflower sold solar panels to its related importer in the Union, which further sold them to independent customers. Based on the evidence received from customs authorities, those independent customers had received kickback payments via a Hong Kong-based company related to Zhejiang Sunflower. Thus, the final sales prices of the solar panels stated on the Resale Invoice were in reality lowered to levels in breach of the applicable MIPs.
- (25) The related importer also sold solar panels for the construction of solar parks by final unrelated customers. The related importer negotiated with these final customers the price for the full package consisting of solar panels, inverters and engineering, procurement and construction services. On the invoice, the price of the solar panels was increased to respect the applicable MIP whereas the price of the engineering, procurement and construction services was decreased accordingly to compensate for the artificial increase in the solar panels' price. Thus, the final sales prices of the solar panels stated on the Resale Invoice were in reality lowered to levels in breach of the applicable MIPs.
- (26) One final customer that had bought solar panels for the construction of solar park projects was found to be, in reality, related to Zhejiang Sunflower, as it belonged to the same group as Zhejiang Sunflower and its related importer. The sale of solar panels for the construction of solar parks by companies related to the exporter was in breach of the undertaking (see recital 12).

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2018/1551 of 16 October 2018 invalidating invoices issued by two exporting producers in breach of the undertaking repealed by Implementing Regulation (EU) 2017/1570 (OJ L 260, 17.10.2018, p. 8).

- (27) Finally, based on the information received from customs authorities, the Commission also established that Zhejiang Sunflower breached its reporting obligations. Several re-sale transactions to the final customers identified in the evidence submitted by the customs authorities were not reported to the Commission. Furthermore, the final independent customers identified by the customs authorities were not reported in the 'List of Customers' report by the exporter as requested under the Undertaking terms.

F. RELEVANT UNDERTAKING INVOICES

- (28) The systematic nature of the breaches identified above means that all transactions between Zhejiang Sunflower and its related importer are affected by the breaches. In particular, it would seem, in view of that systemic nature, that potentially all imports by the related importer had the ultimate goal to be used to circumvent the undertaking, by the different techniques identified above. Furthermore, the violations of the reporting obligations render any verification by the Commission of individual transactions very difficult.
- (29) The sales transactions made by Zhejiang Sunflower and its related importer are listed in the following table. For the reason set out in recital 28, all of them were found to be in breach of the undertaking (recitals 23 to 27):

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE14047	22.3.2014
SUNOWE14050	19.3.2014
SUNOWE14050-RE	26.3.2014
SUNOWE14175	24.6.2014
SUNOWE14199	23.7.2014
SUNOWE14307-RE	19.11.2014
SUNOWE14308-RE	19.11.2014
SUNOWE14309-RE	19.11.2014
SUNOWE15340	29.9.2015
SUNOWE15341	29.9.2015
SUNOWE15342	29.9.2015
SUNOWE15343	29.9.2015
SUNOWE15344	29.9.2015
SUNOWE15345	29.9.2015
SUNOWE15346	29.9.2015
SUNOWE15347	29.9.2015
SUNOWE13247	13.9.2013
SUNOWE13248	13.9.2013
SUNOWE13249	13.9.2013
SUNOWE13250	13.9.2013
SUNOWE13341	4.11.2013
SUNOWE13342	4.11.2013

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE13383	3.12.2013
SUNOWE13384	3.12.2013
SUNOWE13385	3.12.2013
SUNOWE13386	3.12.2013
SUNOWE13388	5.12.2013
SUNOWE13397	16.12.2013
SUNOWE13398	16.12.2013
SUNOWE13399	16.12.2013
SUNOWE13407	18.12.2013
SUNOWE13407	18.12.2013
SUNOWE13408	18.12.2013
SUNOWE13409	18.12.2013
SUNOWE13410	18.12.2013
SUNOWE13411	18.12.2013
SUNOWE13412	18.12.2013
SUNOWE13413	18.12.2013
SUNOWE14096	17.4.2014
SUNOWE14143	22.5.2014
SUNOWE14182	24.6.2014
SUNOWE14206	17.7.2014
SUNOWE14224	2.8.2014
SUNOWE14228	9.8.2014
SUNOWE14232	12.8.2014
SUNOWE14249	22.8.2014
SUNOWE14258	28.8.2014
SUNOWE14265	13.9.2014
SUNOWE14266	13.9.2014
SUNOWE14290	20.9.2014
SUNOWE14291	20.9.2014
SUNOWE14307	20.10.2014
SUNOWE14308	20.10.2014

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE14309	20.10.2014
SUNOWE14406	19.12.2014
SUNOWE14413	23.12.2014
SUNOWE14421	27.12.2014
SUNOWE14427	5.1.2015
SUNOWE15001	9.1.2015
SUNOWE15007	19.1.2015
SUNOWE15136	17.4.2015
SUNOWE15137	17.4.2015
SUNOWE15138	17.4.2015
SUNOWE15139	17.4.2015
SUNOWE15186	12.5.2015
SUNOWE15187	12.5.2015
SUNOWE15188	12.5.2015
SUNOWE15194	19.5.2015
SUNOWE15251	19.6.2015
SUNOWE15251-RE	1.7.2015
SUNOWE15278	6.7.2015
SUNOWE15279	6.7.2015
SUNOWE15280	6.7.2015
SUNOWE15281	6.7.2015
SUNOWE15350	29.9.2015
SUNOWE15351	29.9.2015
SUNOWE15352	8.10.2015
SUNOWE15353	8.10.2015
SUNOWE15421	12.11.2015
SUNOWE15435	17.11.2015
SUNOWE15435	17.11.2015
SUNOWE16023	22.1.2016
SUNOWE16025	27.1.2016
SUNOWE16055	11.3.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16056	11.3.2016
SUNOWE16075	23.3.2016
SUNOWE16075	23.3.2016
SUNOWE16076	23.3.2016
SUNOWE16107	8.4.2016
SUNOWE16108	8.4.2016
SUNOWE16119	15.4.2016
SUNOWE16120	15.4.2016
SUNOWE16121	15.4.2016
SUNOWE16128	21.4.2016
SUNOWE16133A	27.4.2016
SUNOWE16134A	27.4.2016
SUNOWE16135A	27.4.2016
SUNOWE16146A	6.5.2016
SUNOWE16147A	6.5.2016
SUNOWE16155A	7.5.2016
SUNOWE16156A	7.5.2016
SUNOWE16228-A	13.6.2016
SUNOWE16229-A	13.6.2016
SUNOWE16260A	29.6.2016
SUNOWE16261A	29.6.2016
SUNOWE16262A	29.6.2016
SUNOWE16263A	29.6.2016
SUNOWE16274A	11.7.2016
SUNOWE16275A	11.7.2016
SUNOWE16276A	11.7.2016
SUNOWE16277A	11.7.2016
SUNOWE16278A	11.7.2016
SUNOWE16279A	11.7.2016
SUNOWE16280A	11.7.2016
SUNOWE16281A	11.7.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16282A	11.7.2016
SUNOWE16283A	11.7.2016
SUNOWE16284A	11.7.2016
SUNOWE16285A	11.7.2016
SUNOWE16286A	11.7.2016
SUNOWE16287A	11.7.2016
SUNOWE16288A	11.7.2016
SUNOWE16289A	11.7.2016
SUNOWE16289A	11.7.2016
SUNOWE16308A	5.8.2016
SUNOWE16309A	5.8.2016
SUNOWE16310A	5.8.2016
SUNOWE16311A	5.8.2016
SUNOWE16312A	5.8.2016
SUNOWE16313A	5.8.2016
SUNOWE16314A	5.8.2016
SUNOWE16315A	5.8.2016
SUNOWE16316A	13.8.2016
SUNOWE16317A	13.8.2016
SUNOWE16318A	13.8.2016
SUNOWE16319A	13.8.2016
SUNOWE16320A	13.8.2016
SUNOWE16321A	13.8.2016
SUNOWE16322A	13.8.2016
SUNOWE16323A	13.8.2016
SUNOWE16324A	13.8.2016
SUNOWE16341	23.8.2016
SUNOWE16342	23.8.2016
SUNOWE16343	23.8.2016
SUNOWE16344	23.8.2016
SUNOWE16345	5.9.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16346	5.9.2016
SUNOWE16347	5.9.2016
SUNOWE16354A	13.9.2016
SUNOWE16355A	13.9.2016
SUNOWE16356A	13.9.2016
SUNOWE16357A	13.9.2016
SUNOWE16358A	13.9.2016
SUNOWE16359A	13.9.2016
SUNOWE16370A	27.9.2016
SUNOWE16371A	27.9.2016
SUNOWE16372A	27.9.2016
SUNOWE16373A	27.9.2016
SUNOWE16374A	27.9.2016
SUNOWE16378A	29.9.2016
SUNOWE16379A	29.9.2016
SUNOWE16380A	29.9.2016
SUNOWE16381A	29.9.2016
SUNOWE16382A	29.9.2016
SUNOWE16404A	14.10.2016
SUNOWE16405A	14.10.2016
SUNOWE16406A	14.10.2016
SUNOWE16407A	14.10.2016
SUNOWE16408A	14.10.2016
SUNOWE16415A	21.10.2016
SUNOWE16416A	21.10.2016
SUNOWE16417A	21.10.2016
SUNOWE16418A	21.10.2016
SUNOWE16419A	21.10.2016
SUNOWE16426A	26.10.2016
SUNOWE16427A	26.10.2016
SUNOWE17020A	13.2.2017

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE17021A	13.2.2017
SUNOWE17022A	13.2.2017
SUNOWE17023A	13.2.2017
SUNOWE17024A	13.2.2017
SUNOWE17025A	13.2.2017
SUNOWE17026A	13.2.2017
SUNOWE17027A	13.2.2017
SUNOWE17028A	13.2.2017
SUNOWE17029A	13.2.2017
SUNOWE17030A	13.2.2017
SUNOWE17034A	20.2.2017
SUNOWE17035A	20.2.2017
SUNOWE17041A	27.2.2017
SUNOWE17042A	27.2.2017
SUNOWE17044A	28.2.2017
SUNOWE17045A	28.2.2017
SUNOWE17049A	3.3.2017
SUNOWE17050A	3.3.2017
SUNOWE17051A	3.3.2017
SUNOWE17052A	3.3.2017
SUNOWE17053A	3.3.2017
SUNOWE17054A	3.3.2017
SUNOWE17055A	3.3.2017
SUNOWE17056A	3.3.2017
SUNOWE17060A	8.3.2017
SUNOWE17061A	8.3.2017
SUNOWE17103A	10.4.2017
SUNOWE17104A	10.4.2017
SUNOWE17105A	10.4.2017
SUNOWE17150A	10.5.2017
SUNOWE17151A	10.5.2017

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE17201A	1.6.2017
SUNOWE17202A	1.6.2017
SUNOWE17203A	1.6.2017
SUNOWE17204A	1.6.2017
SUNOWE17255A	1.6.2017
SUNOWE17372A	5.7.2017
SUNOWE17373A	5.7.2017
SUNOWE17374A	5.7.2017
SUNOWE17375A	5.7.2017
SUNOWE17376A	5.7.2017
SUNOWE17573A	23.9.2017

G. WRITTEN SUBMISSIONS AND HEARINGS

- (30) Interested parties were informed of the findings, in particular the intention to invalidate the undertaking invoices. Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation.
- (31) The exporting producer, its related importer in the Union and twelve final unrelated customers of the related importer made written submissions.
- (32) Several unrelated customers and the exporting producer and its related importer requested a hearing. Only the exporting producer and its related importer followed up on their request.
- (33) In addition, the lawyer representing the exporting producer and its related importer requested a second hearing with the Commission services in the presence of the Hearing Officer. He was granted the hearing concerning a letter sent to the Commission by a German lawyer representing the exporting producer and its related importer before the national German court. Both the previously mentioned letter and the hearing request were submitted outside the deadline applicable for submitting comments and requesting a hearing respectively.
- (34) Zhejiang Sunflower and its related importer claimed that the Commission cannot invalidate undertaking invoices and order an alleged retroactive collection of duties on past imports of solar panels released into free circulation. According to them, retroactive collection of anti-dumping and countervailing duties without having registered and re-imposed a provisional duty on those imports beforehand would be in violation of Article 8(1), (9) and (10) and Article 10(5) of the basic anti-dumping Regulation and of Article 13(1), (9) and (10) and Article 16(5) of the basic anti-subsidy Regulation.
- (35) The Commission considered the comments submitted by the interested parties and addressed them below.
- (36) The Commission first addressed the claim of alleged retroactivity of the imposition of measures. In this regard, it observed that, according to Article 8(10) of the basic anti-dumping Regulation and Article 13(10) of the basic anti-subsidy Regulation, a provisional duty may be imposed in case where the investigation that led to the undertaking has not been completed. That being said, those provisions do not apply in a scenario such as the present. In the case at hand, the customs authorities of the Member States are charged with invalidating customs invoices that were issued pursuant to a voluntary commitment, by some exporting producers of the product concerned, including Zhejiang Sunflower, for a price undertaking in lieu of the payment of anti-dumping and countervailing duties to remove the injury arising from their dumping practices and unfair subsidization of the product concerned.

- (37) In other words, the present case concerns a case of lifting the temporary non-payment of anti-dumping and countervailing duties, because the conditions for the continuation of that non-payment were no longer found to hold true. As set out in recital 20 *et seq.*, the Commission has received information from the customs authorities of a Member States that evidences that sales of Zhejiang Sunflower to its related importer and subsequent re-sales to the first independent customer were not made in accordance with the conditions of the undertaking.
- (38) The Commission recalls that, pursuant Commission Decision 2013/423/EU, a breach of the conditions of the undertaking can manifest itself in wrong invoices of particular transactions ⁽¹⁷⁾. It is those invalid invoices that represent the breach of the conditions of the undertaking. Consequently, it is also those invoices that need to be invalidated by the Commission. This ensures that the customs authorities of the Member States collect the full customs debt owed by Zhejiang Sunflower. This is without prejudice of the possibility for customs authorities to collect those duties independently from the formal finding of a breach of the undertaking by the Commission, based on the general rules of Implementing Regulations (EU) No 1238/2013 and (EU) No 1239/2013.
- (39) In this respect, it should be highlighted that Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 recognise the power of the Commission, arising from Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, to not only find a breach of, and withdraw the acceptance of, the undertaking, but also to invalidate the invoices issued pursuant to that undertaking.
- (40) Through that invalidation, the Commission notifies the customs authorities of the Member States that the temporary non-collection of the applicable anti-dumping and countervailing duties is lifted and that the individual duties have to be collected for the imports concerned. In those circumstances, the definitive duties put in place by Articles 9(4) and 14(4) of the basic Regulations kick in and apply.
- (41) That collection of duties that should have been due all along is not a violation of the principle of non-retroactivity, or, for that matter, a violation of the principle of legitimate expectations: Zhejiang Sunflower was subject to a situation not to breach the conditions of the undertaking, and, in return, benefit from the temporary non-collection of the anti-dumping and countervailing duties. Since it did not respect those conditions, it cannot claim to have acquired legitimate expectations from a situation that was capable of being altered under certain circumstances. The claims against the invalidation of invoices were rejected.
- (42) Zhejiang Sunflower and its related importer also claimed that the Commission should not invalidate certain invoices relating to solar panels that were never re-sold to final independent customers since these sales were not in breach of the conditions of the undertaking. They claimed that invoices relating to solar panels used in a solar park built by a related company should not be invalidated since these solar panels were not sold to final independent customers but were instead used in a solar park by the related company. They also claimed that invoices relating to solar panels which remained in inventory until after the expiry of the undertaking or of the measures should not be invalidated since they were not re-sold to a first independent customer. According to the parties, clause 3.1 of the undertaking does not regulate the price charged between two related companies, but only the price charged to the first independent customer. Thus, according to the parties, under clause 3.8 of the undertaking, the MIP applicable to a resale in the Union by a related company to the first independent customer is the MIP applicable at the time of the resale and not the MIP applicable when the related importer imported the solar panels.
- (43) The Commission noted that the sales of solar panels that were allegedly never re-sold to final customers entered the Union and were cleared for free circulation under undertaking invoices and were thus exempted from anti-dumping and countervailing duties. As highlighted in recital 12, the Commission informed the CCCME that exports of solar panels for the building of solar parks (captive sales) constituted a breach of the undertaking. As mentioned in recital 12 this information was disseminated to the exporting producers concerned. Finally, the evidence received from the customs authorities mentioned in recital 20 indicated that, in addition to the unlawfully captive exports, the related companies involved in the construction of solar park also received kickback payments. The claim not to invalidate invoices relating to the construction of solar parks by related companies was, thus, rejected.

⁽¹⁷⁾ 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, recitals 14 and 15.

- (44) As regards the claim not to invalidate invoices relating to solar panels that were never re-sold to final independent customers, the Commission again highlighted that these imports entered the Union accompanied by undertaking invoices, and were cleared for free circulation without the need to pay the anti-dumping and countervailing duty on the basis of the conditions of the undertaking holding true. Therefore, it cannot be claimed now that those goods are not subject to the undertaking terms.
- (45) In support of the claim, the parties presented an example of a warehousing invoice and an excel table listing some invoices and the corresponding container references. While the parties claim that all documentary evidence can be produced, it has not been submitted. The Commission notes that some of the goods that were allegedly not resold were imported in 2013. This means that the goods are stored for many years. This means that overall for the operations of this company the link between importation and resale transactions is completely broken. In other words, there is no correlation between goods imported and resold. Such system in itself cannot be monitored and creates the risk of speculation with regard to the MIP.
- (46) Furthermore, Zhejiang Sunflower and its related importer base their claim on clause 3.8 of the undertaking. According to that clause, the Re-sale Invoice had to respect the MIP as it stood in the quarter that preceded the date of the Re-Sale Invoice. In their interpretation, this means that if the sale takes place more than one quarter after the entry into force of the repeal Regulation, no MIP for the preceding quarter exists any more. As a result, the related importer would be free to sell at the price it wishes to sell.
- (47) This interpretation of the undertaking cannot be reconciled with the overall structure and spirit of the undertaking ⁽¹⁸⁾. Throughout the text of the undertaking, and in particular in clause 3.1 of the undertaking, the exporting producers commit to respect the MIP also in situations where imports are done via a related importer. Hence, there is no doubt that the MIP applies to Resale Invoices at whatever date they are issued. The goods imported under the undertaking remain governed by the terms of the undertaking until they are sold to the first independent customer. Hence, if any Resale Invoice is issued more than one quarter after the entry into force of the repeal Regulation, the MIP of the last quarter continues to apply, as this is the only possible interpretation that reconciles clause 3.8 of the undertaking with the overall structure and spirit of the undertaking, and in particular clause 3.1.
- (48) The Commission also notes that as mentioned in recital 23 Zhejiang Sunflower set up a fraudulent trading system (e.g. kickback payments, fraudulent undervaluation of services) with its related importer in the Union to sell solar panels below the MIP. Hence, all transactions and related invoices for solar panels sold by Zhejiang Sunflower via its related importer onto the Union market are considered to be affected by this fraudulent trading system irrespective of whether they were resold or not to independent customers in the Union.
- (49) In any event, according to the allegation put forward by Zhejiang Sunflower and its related importer, only partial quantities of the relevant undertaking invoices were allegedly still in stock. In other words, partial quantities contained in the relevant invoices were sold to final independent customers in breach of the undertaking and the remaining quantities were allegedly never resold.
- (50) The Commission observed, in reply to that allegation, that all imports of the product concerned cleared through customs and for free circulation in the Union have to satisfy the terms of the undertaking. Consequently, what matters for the purposes of determining the correct customs debt, is whether, in importing the product concerned into the Union, Zhejiang Sunflower and its related importer abided by the terms of the undertaking; in case of violation of the undertaking, the duties become due. As set out in recitals 20 to 22, their sales, insofar as they fall within the undertaking invoices listed in this regulation, did not satisfy those conditions. Accordingly, whether or not the applicable anti-dumping or countervailing duty should be paid on those products does not depend on whether said products were resold to independent customers in the Union or kept in storage: what matters is that the terms of the undertaking voluntarily agreed to by Zhejiang Sunflower were not adhered to. This claim was, thus, rejected.
- (51) One final unrelated customer submitted that it could not identify in its records any of the invoices listed in the Commission's disclosure document. It also claimed that all the solar panels it purchased from Zhejiang Sunflower were respecting the MIP.

⁽¹⁸⁾ Judgment of 2 September 2015, *Surmaès*, C-127/14, EU:C:2015:522, paragraph 28 and the jurisprudence cited.

- (52) The Commission notes that the evidence collected by the customs authorities of the Member State referred to in recital 20 indicated that this final customer received kickback payments from the related importer in the Union and that the applicable MIP was not respected. Indeed, the unrelated final customer could not identify the invoices listed in the disclosure document since the invoices in recital 28 were issued by Zhejiang Sunflower to its related importer in the Union. These claims were, thus, rejected.
- (53) Another final customer submitted that it was unaware of any trading system set up by the exporting producer and its related importer and that it purchased solar panels directly from the exporting producer above the MIP.
- (54) The evidence received from the customs authorities of the Member State referred to in recital 20 indicated that this customer also received kickback payments thus purchasing solar panels below the applicable MIP. In addition, this final customer was found to be related to the exporting producer and to the company that constructed the solar park. Thus the claims were rejected.
- (55) Nine final unrelated customers claimed that they were unaware of any trading system put in place by the exporting producer and its related importer and that, in their capacity as final unrelated customers and not party to the undertaking, they had no information concerning the applicable MIP levels. Furthermore, they claimed to have never received kickback payments or agreed on other unlawful practices with the exporting producer or its related importer. Finally, they also submitted that they were unable to verify the facts disclosed to them by the Commission since there was no way of allocating the invoices mentioned to specific sales relating to them.
- (56) The Commission disclosed its findings to all the final unrelated customers reported under the undertaking reporting obligations to ensure transparency of the proceeding. The evidence received from the customs authorities mentioned in recital 20 demonstrated that the solar panels imported by the related importer were re-sold systematically in breach of the undertaking. The nine unrelated customers did not provide any evidence to prove that their purchases related to invoices that should be excluded from those listed in recital 28. Therefore, as mentioned in recital 46, the Commission maintained its proposal to invalidate all invoices issued by Zhejiang Sunflower to its related importer in the Union. The claims were therefore rejected.

H. BREACH OF THE UNDERTAKING AND IMPOSITION OF DEFINITIVE DUTIES

- (57) In accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and in accordance with the terms of the undertaking, the Commission concluded that Zhejiang Sunflower breached the undertaking while it was still in force.
- (58) Therefore, in accordance with 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 in force at the time of acceptance of the customs declaration for release into free circulation, Zhejiang Sunflower' invoices listed in recital 28 are declared invalid, and the definitive duties set up pursuant to Articles 9(4) and 14(4) of the basic Regulations should apply.
- (59) It falls to the national customs authorities to assess whether the applicable limitation periods have expired in line with the rules contained in Article 221 of Council Regulation (EEC) No 2913/92⁽¹⁹⁾ and Article 103 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁽²⁰⁾. Those rules being substantive rules, their application *ratione temporis* depends on the date of entry into free circulation of the goods⁽²¹⁾.
- (60) The customs debt incurred at the time of acceptance of the declaration for release for free circulation should be recovered and entered in the accounts by the national customs authorities in accordance with Articles 218-220 of Regulation (EEC) No 2913/92 and Article 105 of Regulation (EU) No 952/2013.

⁽¹⁹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

⁽²⁰⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁽²¹⁾ Judgement of 23 February 2006, *Molenbergnatie NV*, C-201/04, ECLI: EU:C:2006:136, paragraph 41.

- (61) 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.
- (62) Where the customs authorities of the Member States conclude that there has been such a violation or that the MIP has not been respected, they should collect the duties as a consequence thereof.
- (63) In order to facilitate 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 on the basis of Article 4(3) of the Treaty on the Functioning of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1

1. The undertaking invoices listed in the Annex are declared invalid.
2. The anti-dumping and countervailing duties due at the time of acceptance of the customs declaration for release into free circulation under 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 shall be collected.

Article 2

1. Where the customs authorities of the Member States have indications that the price presented on an undertaking invoice pursuant to Article 3(1)(b) of the 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 Zhejiang Sunflower Light Energy Science & Technology Ltd prior to the entry into force of this regulation does not correspond to the price paid and that therefore the company 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 on the day when the undertaking invoice was issued.
2. Where the verification referred to in paragraph 1 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 the 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 the 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, 6 August 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

List of undertaking invoices issued by Zhejiang Sunflower Light Energy Science & Technology Ltd which are declared invalid:

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE14047	22.3.2014
SUNOWE14050	19.3.2014
SUNOWE14050-RE	26.3.2014
SUNOWE14175	24.6.2014
SUNOWE14199	23.7.2014
SUNOWE14307-RE	19.11.2014
SUNOWE14308-RE	19.11.2014
SUNOWE14309-RE	19.11.2014
SUNOWE15340	29.9.2015
SUNOWE15341	29.9.2015
SUNOWE15342	29.9.2015
SUNOWE15343	29.9.2015
SUNOWE15344	29.9.2015
SUNOWE15345	29.9.2015
SUNOWE15346	29.9.2015
SUNOWE15347	29.9.2015
SUNOWE13247	13.9.2013
SUNOWE13248	13.9.2013
SUNOWE13249	13.9.2013
SUNOWE13250	13.9.2013
SUNOWE13341	4.11.2013
SUNOWE13342	4.11.2013
SUNOWE13383	3.12.2013
SUNOWE13384	3.12.2013
SUNOWE13385	3.12.2013
SUNOWE13386	3.12.2013
SUNOWE13388	5.12.2013
SUNOWE13397	16.12.2013
SUNOWE13398	16.12.2013
SUNOWE13399	16.12.2013

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE13407	18.12.2013
SUNOWE13407	18.12.2013
SUNOWE13408	18.12.2013
SUNOWE13409	18.12.2013
SUNOWE13410	18.12.2013
SUNOWE13411	18.12.2013
SUNOWE13412	18.12.2013
SUNOWE13413	18.12.2013
SUNOWE14096	17.4.2014
SUNOWE14143	22.5.2014
SUNOWE14182	24.6.2014
SUNOWE14206	17.7.2014
SUNOWE14224	2.8.2014
SUNOWE14228	9.8.2014
SUNOWE14232	12.8.2014
SUNOWE14249	22.8.2014
SUNOWE14258	28.8.2014
SUNOWE14265	13.9.2014
SUNOWE14266	13.9.2014
SUNOWE14290	20.9.2014
SUNOWE14291	20.9.2014
SUNOWE14307	20.10.2014
SUNOWE14308	20.10.2014
SUNOWE14309	20.10.2014
SUNOWE14406	19.12.2014
SUNOWE14413	23.12.2014
SUNOWE14421	27.12.2014
SUNOWE14427	5.1.2015
SUNOWE15001	9.1.2015
SUNOWE15007	19.1.2015
SUNOWE15136	17.4.2015
SUNOWE15137	17.4.2015

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE15138	17.4.2015
SUNOWE15139	17.4.2015
SUNOWE15186	12.5.2015
SUNOWE15187	12.5.2015
SUNOWE15188	12.5.2015
SUNOWE15194	19.5.2015
SUNOWE15251	19.6.2015
SUNOWE15251-RE	1.7.2015
SUNOWE15278	6.7.2015
SUNOWE15279	6.7.2015
SUNOWE15280	6.7.2015
SUNOWE15281	6.7.2015
SUNOWE15350	29.9.2015
SUNOWE15351	29.9.2015
SUNOWE15352	8.10.2015
SUNOWE15353	8.10.2015
SUNOWE15421	12.11.2015
SUNOWE15435	17.11.2015
SUNOWE15435	17.11.2015
SUNOWE16023	22.1.2016
SUNOWE16025	27.1.2016
SUNOWE16055	11.3.2016
SUNOWE16056	11.3.2016
SUNOWE16075	23.3.2016
SUNOWE16075	23.3.2016
SUNOWE16076	23.3.2016
SUNOWE16107	8.4.2016
SUNOWE16108	8.4.2016
SUNOWE16119	15.4.2016
SUNOWE16120	15.4.2016
SUNOWE16121	15.4.2016
SUNOWE16128	21.4.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16133A	27.4.2016
SUNOWE16134A	27.4.2016
SUNOWE16135A	27.4.2016
SUNOWE16146A	6.5.2016
SUNOWE16147A	6.5.2016
SUNOWE16155A	7.5.2016
SUNOWE16156A	7.5.2016
SUNOWE16228-A	13.6.2016
SUNOWE16229-A	13.6.2016
SUNOWE16260A	29.6.2016
SUNOWE16261A	29.6.2016
SUNOWE16262A	29.6.2016
SUNOWE16263A	29.6.2016
SUNOWE16274A	11.7.2016
SUNOWE16275A	11.7.2016
SUNOWE16276A	11.7.2016
SUNOWE16277A	11.7.2016
SUNOWE16278A	11.7.2016
SUNOWE16279A	11.7.2016
SUNOWE16280A	11.7.2016
SUNOWE16281A	11.7.2016
SUNOWE16282A	11.7.2016
SUNOWE16283A	11.7.2016
SUNOWE16284A	11.7.2016
SUNOWE16285A	11.7.2016
SUNOWE16286A	11.7.2016
SUNOWE16287A	11.7.2016
SUNOWE16288A	11.7.2016
SUNOWE16289A	11.7.2016
SUNOWE16289A	11.7.2016
SUNOWE16308A	5.8.2016
SUNOWE16309A	5.8.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16310A	5.8.2016
SUNOWE16311A	5.8.2016
SUNOWE16312A	5.8.2016
SUNOWE16313A	5.8.2016
SUNOWE16314A	5.8.2016
SUNOWE16315A	5.8.2016
SUNOWE16316A	13.8.2016
SUNOWE16317A	13.8.2016
SUNOWE16318A	13.8.2016
SUNOWE16319A	13.8.2016
SUNOWE16320A	13.8.2016
SUNOWE16321A	13.8.2016
SUNOWE16322A	13.8.2016
SUNOWE16323A	13.8.2016
SUNOWE16324A	13.8.2016
SUNOWE16341	23.8.2016
SUNOWE16342	23.8.2016
SUNOWE16343	23.8.2016
SUNOWE16344	23.8.2016
SUNOWE16345	5.9.2016
SUNOWE16346	5.9.2016
SUNOWE16347	5.9.2016
SUNOWE16354A	13.9.2016
SUNOWE16355A	13.9.2016
SUNOWE16356A	13.9.2016
SUNOWE16357A	13.9.2016
SUNOWE16358A	13.9.2016
SUNOWE16359A	13.9.2016
SUNOWE16370A	27.9.2016
SUNOWE16371A	27.9.2016
SUNOWE16372A	27.9.2016
SUNOWE16373A	27.9.2016

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE16374A	27.9.2016
SUNOWE16378A	29.9.2016
SUNOWE16379A	29.9.2016
SUNOWE16380A	29.9.2016
SUNOWE16381A	29.9.2016
SUNOWE16382A	29.9.2016
SUNOWE16404A	14.10.2016
SUNOWE16405A	14.10.2016
SUNOWE16406A	14.10.2016
SUNOWE16407A	14.10.2016
SUNOWE16408A	14.10.2016
SUNOWE16415A	21.10.2016
SUNOWE16416A	21.10.2016
SUNOWE16417A	21.10.2016
SUNOWE16418A	21.10.2016
SUNOWE16419A	21.10.2016
SUNOWE16426A	26.10.2016
SUNOWE16427A	26.10.2016
SUNOWE17020A	13.2.2017
SUNOWE17021A	13.2.2017
SUNOWE17022A	13.2.2017
SUNOWE17023A	13.2.2017
SUNOWE17024A	13.2.2017
SUNOWE17025A	13.2.2017
SUNOWE17026A	13.2.2017
SUNOWE17027A	13.2.2017
SUNOWE17028A	13.2.2017
SUNOWE17029A	13.2.2017
SUNOWE17030A	13.2.2017
SUNOWE17034A	20.2.2017
SUNOWE17035A	20.2.2017
SUNOWE17041A	27.2.2017

Number of Commercial invoice accompanying goods subject to an undertaking	Date
SUNOWE17042A	27.2.2017
SUNOWE17044A	28.2.2017
SUNOWE17045A	28.2.2017
SUNOWE17049A	3.3.2017
SUNOWE17050A	3.3.2017
SUNOWE17051A	3.3.2017
SUNOWE17052A	3.3.2017
SUNOWE17053A	3.3.2017
SUNOWE17054A	3.3.2017
SUNOWE17055A	3.3.2017
SUNOWE17056A	3.3.2017
SUNOWE17060A	8.3.2017
SUNOWE17061A	8.3.2017
SUNOWE17103A	10.4.2017
SUNOWE17104A	10.4.2017
SUNOWE17105A	10.4.2017
SUNOWE17150A	10.5.2017
SUNOWE17151A	10.5.2017
SUNOWE17201A	1.6.2017
SUNOWE17202A	1.6.2017
SUNOWE17203A	1.6.2017
SUNOWE17204A	1.6.2017
SUNOWE17255A	1.6.2017
SUNOWE17372A	5.7.2017
SUNOWE17373A	5.7.2017
SUNOWE17374A	5.7.2017
SUNOWE17375A	5.7.2017
SUNOWE17376A	5.7.2017
SUNOWE17573A	23.9.2017

DECISIONS

EUROPEAN COUNCIL DECISION (EU) 2019/1330

of 5 August 2019

appointing the High Representative of the Union for Foreign Affairs and Security Policy

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 18(1) thereof,

Whereas:

- (1) European Council Decision 2014/639/EU ⁽¹⁾ appointed the High Representative of the Union for Foreign Affairs and Security Policy until 31 October 2019.
- (2) The High Representative of the Union for Foreign Affairs and Security Policy should be appointed for the period from the end of the current term of office of the Commission until 31 October 2024.
- (3) By letter of 26 July 2019, the President-elect has agreed to the appointment of Mr Josep BORRELL FONTELLES as High Representative of the Union for Foreign Affairs and Security Policy.
- (4) In accordance with the third subparagraph of Article 17(7) of the Treaty on European Union, the President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission are subject as a body to a vote of consent by the European Parliament,

HAS ADOPTED THIS DECISION:

Article 1

Mr Josep BORRELL FONTELLES is hereby appointed High Representative of the Union for Foreign Affairs and Security Policy for the period from the end of the current term of office of the Commission until 31 October 2024.

Article 2

This Decision shall be notified to Mr Josep BORRELL FONTELLES by the President of the European Council.

It shall take effect on the day of its notification.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 5 August 2019.

For the European Council

The President

D. TUSK

⁽¹⁾ European Council Decision 2014/639/EU of 30 August 2014 appointing the High Representative of the Union for Foreign Affairs and Security Policy (OJ L 262, 2.9.2014, p. 6).

COMMISSION IMPLEMENTING DECISION (EU) 2019/1331**of 5 August 2019****on the terms and conditions of the authorisation of a biocidal product containing peppermint oil and citronellal referred by the United Kingdom in accordance with Article 36(1) of Regulation (EU) No 528/2012 of the European Parliament and Council***(notified under document C(2019) 5691)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 36(3) thereof,

Whereas:

- (1) On 24 November 2017, the company Bird Free Ltd ('the applicant') submitted an application for authorisation of the biocidal product 'Bird Free' under the simplified authorisation procedure to the competent authority of the United Kingdom. The product was authorised in the United Kingdom on 5 June 2018. 'Bird Free' is a bird-repellent of product-type 19 and the two active substances contained in it, peppermint oil and citronellal, are included in Annex I of Regulation (EU) No 528/2012 without restrictions.
- (2) 'Bird Free' is a gel which may be used to deter feral pigeons from roosting on buildings and other structures. In accordance with Article 27(1) of Regulation (EU) No 528/2012 the authorisation holder notified the Member States on whose territory it intended to place the product on the market on 12 June 2018.
- (3) Pursuant to the first subparagraph of Article 27(2) of Regulation (EU) No 528/2012, France and Germany referred objections to the coordination group on 12 July 2018, indicating that the contested biocidal product does not meet the requirements laid down in Article 25 of that Regulation.
- (4) In its objection France considers that 'Bird Free' seems to repel birds by visual aversion due to UV light emission and considers that this effect should have been reported in the application. It also considers that an additional negative control, i.e. testing of a formulation of the product without the active substances is required in order to ensure that the biocidal effect is caused by the active substances. France questions the efficacy of the active substances in 'Bird Free' because of the low quantities thereof present in the product and the decrease of concentration of citronellal during storage of the product. Therefore France considers that new tests should be carried out in order to demonstrate that the efficacy of 'Bird Free' is the result of an olfactory aversion due to the presence of the active substances.
- (5) In its objection Germany considers the efficacy data provided by the applicant not acceptable as the biocidal product without the active substances was not used in the control groups. Germany considers that without such a control it cannot be confirmed that the active substances have a repellent effect on pigeons. It also considers that it is unclear which mode of action is causing the repellent effect.
- (6) The coordination group secretariat invited the Member States and the applicant to submit written comments about the referral. The referral was discussed in the meeting of the coordination group on 25 September 2018 and a teleconference on 12 October 2018.
- (7) As no agreement was reached in the coordination group, the United Kingdom referred the unresolved objections to the Commission pursuant to Article 36(1) of Regulation (EU) No 528/2012 on 31 October 2018. The United Kingdom thereby provided the Commission with a detailed statement of the matters on which Member States were unable to reach agreement and the reasons for their disagreement. A copy of that statement was forwarded to the Member States concerned and the applicant.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

- (8) On 27 November 2018, the Commission requested an opinion from the European Chemicals Agency ('the Agency') pursuant to Article 36(2) of Regulation (EU) No 528/2012 on a number of questions concerning the unresolved objections.
- (9) The Agency adopted its opinion ⁽²⁾ on 1 March 2019 after having given the opportunity to the applicant to provide written comments pursuant to Article 38(2) of Regulation (EU) No 528/2012.
- (10) According to the Agency, the biocidal product 'Bird Free' is sufficiently effective and therefore meets the condition for granting an authorisation in accordance with the simplified authorisation procedure laid down in Article 25(d) of Regulation (EU) No 528/2012.
- (11) In light of the opinion of the Agency, the contested biocidal product is considered as sufficiently effective as required under Article 25(d) of Regulation (EU) No 528/2012.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The biocidal product 'Bird Free', identified by the case number BC-RG035397-31 in the Register for Biocidal Products, meets the condition laid down in Article 25(d) of Regulation (EU) No 528/2012.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 5 August 2019.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽²⁾ ECHA opinion of 1 March 2019 on a request according to Article 36(2) and 38 of Regulation (EU) No 528/2012 on 'Questions on unresolved objection during the notification in accordance with Article 27(1) of the Biocidal Products Regulation of a product type 19 biocidal product "Bird Free" containing peppermint oil and citronellal used to deter feral pigeons' (ECHA/BPC/224/2019).

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