Commission Implementing Regulation (EU) 2020/1216 of 24 August 2020 invalidating invoices issued by Zhejiang Trunsun Solar Co Ltd. in breach of the undertaking repealed by Implementing Regulation (EU) 2017/1570

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1216

of 24 August 2020

invalidating invoices issued by Zhejiang Trunsun Solar Co 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 in breach of the undertaking repealed by Implementing Regulation (EU) 2017/1570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],

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[9] the acceptance of the price undertaking as amended for the period of application of anti-dumping and countervailing definitive measures ('the undertaking'). The Commission accepted the undertaking, inter alia, for the exporting producer Zhejiang Trunsun Solar Co. Ltd, covered by the TARIC additional code B917 ('Trunsun Solar').

(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 exporting 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 terminated 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 terminated 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').

(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 expired 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 undertaking also clarified, in a non-exhaustive list, what constituted a breach of the undertaking. That list included, in particular, the issuance of a commercial invoice by the exporting producer for which the underlying financial transaction was not in conformity with the face value of the invoice. Furthermore, issuing a commercial invoice for which the net sales price was not in conformity with the MIP also constituted a breach.

(11) Under the terms of the undertaking, each exporting producer undertook not to issue a commercial invoice for any sales transaction of the product concerned that was not in conformity with any of the obligations stipulated in the undertaking. Therefore, the exporting producer could issue solely invoices corresponding to the requirements laid down in Annex III and Annex 2 to the expiry review anti-dumping and anti-subsidy Regulations respectively ('undertaking invoice') and sell the product under the undertaking terms while in force. In other words, exporters could not issue an 'ordinary' commercial invoice pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively while the undertaking was in force. The date to determine these requirements was the date of the issuance of the invoice.

(12) The undertaking reporting obligations also stipulated that each exporting producer 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 ('resales'). 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.

(13) Similarly, the exporting producers undertook to consult the Commission regarding any difficulties or questions, technical or otherwise, which might arise during the implementation of the undertaking.

C. REPEAL OF THE UNDERTAKING

(14) 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. Seventeen 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.

(15) 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 variable duty MIP would not be subject to duties. In addition, the customs authorities would levy duties immediately if the product was imported at a price below the variable duty MIP. In order to benefit from the variable duty MIP, a commercial invoice pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively had to be presented at the time the goods entered into free circulation in the Union.

(16) At the time of entry into force of the repeal Regulation on 1 October 2017 and in accordance with its recitals 54 and 57, 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.

(17) The repeal Regulation entered into force on 1 October 2017, and hence is applicable *ratione temporis* only to imports that took place on or after that date. Invoices issued prior to 1 October 2017 are also to be invalidated. This applies irrespectively of when those invoices were presented to customs authorities, and includes cases where they were relied upon as commercial invoices pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively for imports on or after 1 October 2017.

(18) By Implementing Regulation (EU) 2018/1551[16], Implementing Regulation (EU) 2019/1329[17] and Implementing Regulation (EU) 2020/444[18], the Commission

invalidated invoices issued by four exporting producers in breach of the undertaking while it was still in force.

D. MONITORING OF THE EXPORTING PRODUCERS

(19) Based on Articles 8(7) and 14(7) of the basic anti-dumping Regulation and Articles 13(9) and 24(7) of the basic anti-subsidy Regulation, the Slovenian finance authorities submitted to the Commission evidence regarding Trunsun Solar's non-compliance with the undertaking. This evidence concerns transactions represented by commercial invoices issued by Trunsun Solar prior to 1 October 2017 to an importer. For each transaction, Trunsun Solar issued both an undertaking invoice and a commercial invoice pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively. Both the undertaking invoice and the commercial invoice pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively concern the same shipment, have the same invoice number, the same invoice date, the same invoice quantity and the same invoice price. Both invoices together were used by the importer on or after 1 October 2017 in order to benefit from the variable duty MIP. The Commission further analysed information submitted to it by Trunsun Solar under its reporting obligations, and compared in particular the prices shown on the invoices transmitted by the finance authorities and the prices reported for the same invoice numbers by Trunsun Solar.

(20) The findings described in recitals 21 to 24 address the breaches uncovered for Trunsun Solar following receipt of evidence from the Slovenian finance authorities.

E. GROUNDS FOR THE INVALIDATION OF UNDERTAKING INVOICES

(21) The information received from the Slovenian finance authorities compared with the information submitted by Trunsun Solar to the Commission in its quarterly reports gives the following picture. Trunsun Solar issued undertaking invoices and commercial invoices pursuant to Annex V and Annex 4 to the expiry review anti-dumping and anti-subsidy Regulations respectively for solar panels prior to 1 October 2017 at a price below the MIP, in breach of the provisions of the undertaking as described in recital 9. Those are the invoices transmitted by the Slovenian finance authorities. At the same time, Trunsun Solar reported those invoices as undertaking invoices to the Commission, but stating a higher price than that shown on the invoices presented to the Slovenian finance authorities, so that the Commission would be under the impression that the applicable MIP had been complied with.

(22) Based on the evidence received from the Slovenian finance authorities, it appears that an importer custom-cleared solar panels bought from Trunsun Solar after the repeal Regulation entered into force. The invoices presented at the customs clearance by that importer bear the same date and reference number as appear in the table of undertaking invoices reported by Trunsun Solar to the Commission. They did not comply with the content requirements for undertaking invoices set out in Annex III and Annex 2 to the expiry review anti-dumping and anti-subsidy Regulations respectively. Indeed, those invoices did not include the mandatory elements of an undertaking invoice listed under points 1 and 9 of Annex III and Annex 2 to the expiry