Commission Implementing Regulation (EU) 2020/1081 of 22 July 2020 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1081

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THE EUROPEAN COMMISSION,

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

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[(1)] ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) In May 2014, the Commission imposed definitive anti-subsidy countervailing duties on imports of solar glass originating in the People's Republic of China ('China' or 'the PRC') by Commission Implementing Regulation (EU) No 471/2014[(2)] ('the original investigation').

(2) The individual countervailing duties currently in force range from 3,2 % to 17,1 %. All other companies are subject to a country-wide duty of 17,1 % ('the measures in force').

(3) In separate proceedings, the Commission also imposed anti-dumping duties ranging from 0,4 % to 36,1 % in May 2014[(3)]. In August 2015, following an absorption reinvestigation, the Commission amended the anti-dumping measures by Commission Implementing Regulation (EU) 2015/1394[(4)].

1.2. Initiation of an expiry review

(4) Following the publication of a notice of impending expiry of the countervailing measures in force[(5)], EU ProSun Glass ('the applicant'), representing more than 25 % of the total Union production of solar glass, requested the initiation of an expiry review on 13 February 2019 ('review request'). It argued that the expiry of the original measures would be likely to result in continuation or recurrence of subsidisation and a continuation or recurrence of injury to the Union industry.

(5) In accordance with Article 10(7) the basic Regulation, the Commission notified the Government of the People's Republic of China ('GOC') prior to the initiation of the proceeding that it had received a properly documented review request. The Commission invited the GOC for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOC accepted the offer of consultations which were subsequently held on 10 May 2019. During the consultations, no mutually agreed solution could be arrived at. The GOC did not cooperate further.

(6) On 14 May 2019 the Commission announced, by a notice published in the *Official Journal of the European Union*[6] ('the Notice of Initiation'), the initiation of an expiry review of the countervailing measures applicable pursuant to Article 18 of the basic Regulation.

1.3. **Investigation**

1.3.1. *Review investigation period and period considered*

(7) The review investigation period ('RIP') covered the period from 1 January 2018 to 31 December 2018. The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the RIP ('the period considered').

1.3.2. *Interested parties*

(8) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it contacted the applicant, the known producers in the Union, the known exporting producers in the PRC, the known unrelated importers, users of the product under review in the Union and the authorities of the PRC.

(9) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing with the Commission investigation services and/or with the Hearing Officer in trade proceedings ('the Hearing Officer').

(10) One of the Union producers requested its name to be kept confidential on the ground that the participation of the group of companies it belongs to in the proceedings could have repercussions on the group's business in China and for fear of retaliation by customers implicated by this investigation. The Commission examined the request. It considered that the mere presence of the group in China described an abstract danger and it was not sufficient to translate into a concrete threat of retaliation. No concrete element of proof was brought to the attention of the Commission services in this respect. Furthermore, none of the group's businesses in China related to solar glass business in particular. On this basis the Commission decided to reject the request.

(11) The company turned to the Hearing Officer on the issue. The Hearing Officer endorsed the Commission's rejection because it considered that the request for

anonymity had been based on assumptions of possible retaliation rather than on actual threats to the company or the group and because the company had not provided any new facts or information that would justify a change of the earlier decision.

(12) Several parties requested a hearing with the Commission services. A hearing between the Commission services and the two sampled Union producers took place on 9 January 2020. A hearing with the REC Group, Solitek and EU ProSun, an association representing several users, took place on 11 February 2020. The hearings concerned arguments of the different parties further detailed in Sections 4–6 on injury and on the Union interest.

1.3.3. *Sampling*

(13) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.3.3.1. Sampling of Union producers

(14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of two Union producers. The Commission selected the sample based on the largest volume of production and sales of the like product that could be reasonably investigated within the time available. The sample consisted of two Union producers accounting for more than 80 % of the Union production of the product under review. The Commission invited interested parties to comment on the provisional sample. The only comment received by the applicant was in favour of the sample. The sample is representative of the Union industry. It consists of the following two companies:

— Saint-Gobain Glassolutions Isolierglass-Center GmbH (‘Saint Gobain Solar’),

— Interfloat and GMB Glasmanufaktur Brandenburg GmbH (‘Interfloat Group’).

1.3.3.2. Sampling of importers

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation and invited them to participate in this investigation.

(16) No unrelated importer in the Union cooperated.

1.3.3.3. Sampling of exporting producers in the PRC

(17) To decide whether sampling was necessary with regard to the exporting producers and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People’s Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1081. (See end of Document for details)*

(18) No company from the PRC came forward within the time limit. One company sent a belated submission, but eventually did not cooperate.

(19) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 24 May 2019 that it intended to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the continuation or recurrence of subsidisation. The authorities of the PRC did not respond to the Note Verbale.

1.3.4. *Questionnaires and verification visits*

(20) The Commission sent questionnaires to the GOC and to the two sampled Union producers. The GOC did not provide any reply to the questionnaire. Both sampled Union producers provided questionnaire replies.

(21) Without prejudice to the application of Article 28 of the basic Regulation, the Commission verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of subsidisation and injury, and of the Union interest. Verification visits were carried out at the premises of the two sampled Union producers.

1.3.5. *Subsequent procedure*

(22) On 26 May 2020, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the countervailing duties in force. All parties were granted a period within which they could make comments on the disclosure. The applicant, EU ProSun and the association of Union PV manufacturing industry, European Solar Manufacturing Council ('ESMC'), submitted comments.

(23) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. A hearing between the Commission services and EU ProSun took place on 9 June 2020.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(24) The product under review is solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300–2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150K (measured according to EN 12150) and having a mechanical strength of 90 N/mm^2 or more (measured according to EN 1288-3), currently falling under CN code ex 7007 19 80 (TARIC codes 7007 19 80 12, 7007 19 80 18, 7007 19 80 80 and 7007 19 80 85) and originating in the People's Republic of China ('product under review', commonly referred to as 'solar glass').

(25) Solar glass can be patterned or non-patterned, with either a transparent or diffuse surface or a variety of edgeworks. There can be different patterns on both sides of the glass or it can be just single-sided patterned. Solar glass may have drillings and

can also be printed through the application of, for example, ceramic colours. The surface of the glass may be treated using different technologies. The most common is an anti-reflective coating applied before or after the tempering process. Other technologies allow the solar glass to be coated with thin functional layers providing increased transmittance, self-cleaning, anti-soiling or hardness properties.

(26) Solar glass is one of the components for making crystalline silicon photovoltaic modules and thin film photovoltaic modules to produce electricity, as well as flat photothermal energy collectors used, for example, in generating hot water. It can also be used in the construction of greenhouses (so-called 'horticultural glass' or 'greenhouse glass').

2.2. Like product

(27) As established in the original investigation, solar glass produced and sold by the Union industry in the Union and solar glass produced and sold on the domestic market of the PRC and solar glass imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

(28) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined first whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of subsidisation.

3.1. Introduction: status of the Chinese solar glass industry

(29) The 13th Five Year Plan for National Economic and Social Development of the PRC ('the 13th FYP'), which covers the period 2016–2020 and thus the RIP, highlights the strategic vision of the GOC for improvement and promotion of key industries, such as the solar energy industry. The 13th FYP is the successor of 12th FYP, in which the solar glass industry had been endorsed as a key field for development of manufacturing.

(30) Chapter 30 of the 13th FYP expresses the GOC's commitment to '[building] a Modern Energy System'. Section 1 of that Chapter, in particular, provides strong evidence to the fact that the GOC still views the solar glass industry as an encouraged industry. Indeed, Section 1 reads that '[the GOC] will continue to give impetus to the development of (…) photovoltaic power', and that '[the GOC] will improve supportive policies for power generation from (…) solar (…) energy'. Further, 'the development of (…) photovoltaic energy in the northern, north-eastern and north-western regions and in coastal areas' will be optimised in the context of Energy Development Projects. These excerpts demonstrate that the GOC continues to support the solar energy industry for which the solar glass is essential and thus forms an integral part for the development of the solar power industry.