Commission Implementing Regulation (EU) 2018/1017 of 18 July 2018 amending Implementing Regulations (EU) 2017/366 and (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 Implementing Regulations (EU) 2016/184 and (EU) 2016/185 extending the definitive countervailing and anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1017

of 18 July 2018

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)] (‘the basic anti-dumping Regulation’), and in particular Articles 11(4) and 13(4) thereof,

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)] (‘the basic anti-subsidy Regulation’) and in particular to Articles 23(6) and 24(5) thereof,

Whereas:

A. MEASURES IN FORCE

(1) On 2 December 2013, the Council imposed anti-dumping[(3)] and countervailing measures[(4)] on crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (‘the original measures’).

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1017. (See end of Document for details)*

(2) On 11 February 2016, the Commission extended those measures to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, with the exception of imports produced by certain companies specifically exempted from those measures ('the extended measures')[5].

(3) Following expiry review investigations of the original measures the Commission, on 1 March 2017, imposed anti-dumping and countervailing duties for a period of 18 months ('the continued measures')[6]. On the same day it also terminated two partial interim review investigations that had been limited to the Union interest[7].

(4) On 3 March 2017, the Commission initiated a partial interim review limited to the form and level of the continued measures[8]. Following this review, the Commission amended the continued measures following the publication of Commission Implementing Regulation (EU) 2017/1570[9], which entered into force on 1 October 2017.

(5) On 8 November 2017, the Commission amended the extended measures by adding a new exporting producer to the list of exempted companies set out Article 1(1) of Commission Implementing Regulation (EU) 2016/184 and Commission Implementing Regulation (EU) 2016/185, respectively[10].

(6) Accordingly, the countervailing and anti-dumping measures currently in force with regard 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, are those imposed by Commission Implementing Regulation (EU) 2017/366 and Commission Implementing Regulation (EU) 2017/367, with the exception of imports produced by the companies specifically exempted from those measures as set out in Implementing Regulation (EU) 2016/184 and Implementing Regulation (EU) 2016/185, as amended by Implementing Regulation (EU) 2017/1997.

B. PROCEDURE

1. Initiation

(7) By Commission Implementing Regulation (EU) 2017/1994[11] ('the Initiation Regulation'), the Commission initiated a review of the extended measures for the purpose of determining the possibility of granting an exemption from those measures to Longi (Kuching) SDN.BHD ('the applicant' or 'Longi Kuching'), a Malaysian exporting producer of crystalline silicon photovoltaic modules and key components (i.e. cells). The Regulation initiating the review also repealed the anti-dumping duties with regard to the applicant and made imports from it subject to registration.

(8) The request lodged by the applicant contained sufficient *prima facie* evidence to support the applicant's claim that it was a new exporting producer and fulfilled the criteria for an exemption under Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, namely:

— that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures, i.e. from 1 April 2014 to 31 March 2015,

— that it has not been engaging in circumvention practices, and

— that it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

2. **Product under review**

(9) The product under review is crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not, currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90.

(10) The following product types are excluded from the definition of the product under review:

— solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries,

— thin film photovoltaic products,

— crystalline silicon photovoltaic products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s),

— modules or panels with a output voltage not exceeding 50 V DC and a power output not exceeding 50 W solely for direct use as battery chargers in systems with the same voltage and power characteristics.

3. **Reporting Period**

(11) The reporting period covered the period from 1 January 2017 to 31 December 2017.

4. **Investigation**

(12) The Commission advised Longi Kuching, the Union industry represented by the complainant in the original investigation (EU ProSun) and the authorities of Malaysia and the People's Republic of China of the initiation of the review.

(13) The Commission sought and verified all the information deemed necessary for the purposes of the review. In particular, it received a questionnaire reply from the applicant. A verification visit was carried out at the premises of the applicant in Malaysia in March 2018.

C. **FINDINGS**

(14) Longi Kuching is a genuine Malaysian producer of crystalline silicon photovoltaic modules and cells that was incorporated in January 2016. It started commercial production of modules and cells in May 2016.

(15) Longi Kuching had not exported the product under review to the Union during the investigation period used in the investigation that led to the extended measures, i.e. from 1 April 2014 to 31 March 2015. Longi Kuching had neither purchased the product under review from the PRC for further re-sales or transhipment to the Union up until the end of the reporting period, i.e. 31 December 2017. It had, however, entered into a contractual obligation to export the product under review to a customer in the Union.

(16) During verification at the applicant's premises it was demonstrated that the contract had been fulfilled and the applicant had delivered the product under review to a customer in Poland in November 2017. No other Union sales had been made up to date.

(17) The applicant is a wholly owned subsidiary of a Hong Kong based company, Longi H.K. Trading Limited, which in turn is wholly owned by the the Chinese company Longi Green Energy Technology Co., Ltd The latter company is the ultimate parent company of the Longi Group, which is active throughout the Solar PV value chain and produces, amongst others, wafers, ingots, solar cells and solar modules. The Longi Group is subject to the countervailing and anti-dumping measures currently in force on imports of crystalline silicon photovoltaic modules and cells originating in the People's Republic of China. As indicated in the Initiation Regulation, the Commission carefully examined this relationship and verified whether Longi Kuching was established or used to circumvent the existing measures.

(18) The Commission found that Longi Kuching is a genuine producer of the product under review with complete and state of the art production facilities for both cells and modules, including R&D. It had not been engaged in circumvention activities, such as transhipment, assembly operations or re-sales of solar modules and cells originating in the People's Republic of China to the Union.

(19) The Commission thus concluded that Longi Kuching was neither established nor used for circumventing the original measures and that the Chinese ownership, in itself, did not constitute a reason to reject the application.

(20) Against this background, the Commission did not find it necessary to impose any particular monitoring conditions should the exemption be granted. In order to ensure the proper application of the exemption, the Commission considered it appropriate to apply the special measures applicable to all companies which had been granted exemptions. These special measures are the requirement of the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Article 1(2) of Implementing Regulation (EU) 2016/184 and Article 1(2) of Implementing Regulation (EU) 2016/185. Imports not accompanied by such an invoice shall be made subject to the extended dumping and countervailing duty respectively.

(21) In the light of the findings described in recitals (13) to (19), the Commission concluded that Longi (Kuching) SDN.BHD fulfils the criteria laid down in Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation and should be exempted from the extended measures.

(22) The findings above were disclosed to the applicant and other interested parties, which were given the opportunity to provide comments. No comments were received.

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

(23) Given the findings referred to above, the Commission concluded that the company Longi (Kuching) SDN.BHD should be added to the list of companies that are exempted from the countervailing duty and anti-dumping duty imposed by Implementing Regulation (EU) 2016/184 and Implementing Regulation (EU) 2016/185, respectively.

(24) Given that the list of the exempted exporting producers from Malaysia and Taiwan was also included in Implementing Regulation (EU) 2017/366 and Implementing Regulation (EU) 2017/367, Longi (Kuching) SDN.BHD should also be added to the list of exporting producers contained in those two regulations.

(25) Accordingly, Longi (Kuching) SDN.BHD should be added to the list of individually identified companies in Article 1(1) of Implementing Regulation (EU) 2016/184, Article 1(1) of Implementing Regulation (EU) 2016/185, Article 4(1) of Implementing Regulation (EU) 2017/366 and Article 4(1) of Implementing Regulation (EU) 2017/367.

(26) Furthermore, the application of the exemption is conditional upon compliance with the requirement set out in Article 1(2) of Implementing Regulation (EU) 2016/184 and in Article 1(2) of Implementing Regulation (EU) 2016/185. This requirement is also reflected in Article 4(2) of Implementing Regulation (EU) 2017/366 and in Article 4(2) of Implementing Regulation (EU) 2017/367.

(27) The list of individually identified companies should be identical in all implementing regulations in force. Since, by means of Implementing Regulation (EU) 2017/1997, Jinko Solar Technology SDN.BHD had been included in the list of individually identified companies in Article 1(1) of Implementing Regulation (EU) 2016/184 and Article 1(1) of Implementing Regulation (EU) 2016/185, its name has to be also inserted in the list of individually identified companies in Article 4(1) of Implementing Regulation (EU) 2017/366 and Article 4(1) of Implementing Regulation (EU) 2017/367.

(28) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION: