Commission Implementing Regulation (EU) 2017/1997 of 7 November 2017 amending 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) 2017/1997

of 7 November 2017

amending 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

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

(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) On 5 December 2015, the Commission initiated expiry reviews of the original anti-dumping[(6)] and countervailing[(7)] measures as well as a partial interim review of those measures[(8)]. Subsequently, on 1 March 2017, the Commission imposed anti-

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1997. (See end of Document for details)*

dumping and countervailing duties for a period of 18 months ('the continued measures') and terminated the partial interim review[9].

(4) On 3 March 2017, the Commission initiated a partial interim review limited to the form and level of the continued measures[10]. Following this review, the Commission amended the continued measures with effect as of 15 days following the publication of Commission Implementing Regulation (EU) 2017/1570[11].

(5) Accordingly, the countervailing and anti-dumping measures currently in force are those imposed by Commission Implementing Regulation (EU) 2017/366 and Commission Implementing Regulation (EU) 2017/367, as amended by Implementing Regulation (EU) 2017/1570.

B. PROCEDURE

1. Initiation

(6) By Commission Implementing Regulation (EU) 2017/242[12] ('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 Jinko Solar Technology SDN.BHD ('the applicant' or 'Jinko Malaysia'), 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.

(7) The review was opened following a request lodged by the applicant, which 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

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

2. Product under review

(8) 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.

(9) 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**

(10) The reporting period covered the period from 1 April 2014 to 31 December 2016.

4. **Investigation**

(11) The Commission advised Jinko Solar Technology SDN.BHD, the Union industry represented by the complainant in the original investigation (EU ProSun) and the representatives of Malaysia and the People's Republic of China of the initiation of the review.

(12) The Commission sought and verified all the information deemed necessary for the purposes of the review. In particular, it received questionnaire replies from the applicant and its related sales company, Jinko Solar Technology Limited (Hong Kong) (‘Jinko HK’). A verification visit was carried out at the premises of the applicant in Malaysia. With regard to Jinko HK the Commission was informed during the investigation that although this company is established in Hong Kong, all export sales documentation was kept by its related company, Jinko Solar Co., Ltd, in the People's Republic of China (‘PRC’). Accordingly, a verification visit in respect of export sales, was also carried out at the premise of its related company in Shanghai, PRC.

C. **FINDINGS**

(13) The findings of the investigation demonstrated that Jinko Malaysia is a genuine Malaysian producer of crystalline silicon photovoltaic modules and cells that was incorporated in January 2015 and which started commercial production of modules and cells in June/July the same year.

(14) During the investigation the Commission established that Jinko Malaysia 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. It also established that Jinko Malaysia had not purchased the product under review from the PRC for further re-sales or transhipment to the Union. Moreover, Jinko Malaysia had not exported the product under review to the Union up until the end of the reporting period, i.e. 31 December 2016.

(15) However, Jinko Malaysia had in October 2016 entered into a contract to export significant volumes of the product under review to the Union. According to the contractual terms, the delivery of those volumes is suspended pending the current review investigation.

(16) The Commission took note that the applicant is a wholly owned subsidiary of Jinko Solar Co., Ltd, a Chinese producer of the product under review that is currently subject to the original measures, as amended. As indicated in the Initiation Regulation the Commission carefully examined this relationship and verified whether Jinko Malaysia was established or used to circumvent the existing measures.

(17) Jinko Solar Co., Ltd is part of a larger business group belonging to Jinko Solar Holding Co., Ltd This company is incorporated in the Cayman Island and its shares are quoted on the New York Stock Exchange. The Jinko Solar Group has a worldwide presence and production facilities in several countries, currently in China, Portugal, South Africa and Malaysia. According to minutes of the Board of Directors from 2014, the Group's business strategy in recent years is to further increase overseas production facilities and to establish such facilities in countries with strong project development potential. As part of this business strategy, the Board of Directors decided in the same year to establish a manufacturing plant in Malaysia.

(18) Moreover, the Commission established that Jinko Malaysia 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 Jinko Malaysia 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 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 the Article 1(2) of Commission Implementing Regulation (EU) 2016/184 and Article 1(2) of Commission 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 Jinko Solar Technology 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.