Commission Implementing Regulation (EU) 2017/1589 of 19 September 2017 withdrawing the acceptance of the undertaking for one exporting producer under 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

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1589

of 19 September 2017

withdrawing the acceptance of the undertaking for one exporting producer under 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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

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 Article 8 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 Article 13 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 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[(4)], and in particular Article 2 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[(5)], and in particular Article 2 thereof,

Having regard to Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1589. (See end of Document for details)*

and key components (i.e. cells) originating in or consigned from the People's Republic of China[6], and in particular Article 2 thereof,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013[7], the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').

(2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.

(3) By Decision 2013/423/EU[8], the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013[9], the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.

(4) By Implementing Regulation (EU) No 1238/2013, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013, the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

(5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU[10] the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:

— Chinaland Solar Energy Co. Ltd covered by TARIC additional code B808 ('Chinaland').

(6) By Implementing Decision 2014/657/EU[11], the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product

covered'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to hereafter as 'measures'.

(7) By Implementing Regulation (EU) 2015/866[(12)] the Commission withdrew the acceptance of the undertaking for three exporting producers.

(8) By Implementing Regulation (EU) 2015/1403[(13)] the Commission withdrew the acceptance of the undertaking for another exporting producer.

(9) By Implementing Regulation (EU) 2015/2018[(14)] the Commission withdrew the acceptance of the undertaking for two exporting producers.

(10) The Commission initiated an expiry review investigation of the anti-dumping measures by a Notice of Initiation published in the *Official Journal of the European Union*[(15)] on 5 December 2015.

(11) The Commission initiated an expiry review investigation of the countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union*[(16)] on 5 December 2015.

(12) The Commission also initiated a partial interim review of the anti-dumping and countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union*[(17)] on 5 December 2015.

(13) By Implementing Regulation (EU) 2016/115[(18)], the Commission withdrew the acceptance of the undertaking for another exporting producer.

(14) By Implementing Regulation (EU) 2016/185[(19)], the Commission extended the definitive anti-dumping duty imposed by Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

(15) By Implementing Regulation (EU) 2016/184[(20)], the Commission extended the definitive countervailing duty imposed by Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

(16) By Implementing Regulation (EU) 2016/1045[(21)], the Commission withdrew the acceptance of the undertaking for another exporting producer.

(17) By Implementing Regulation (EU) 2016/1382[(22)], the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(18) By Implementing Regulation (EU) 2016/1402[(23)], the Commission withdrew the acceptance of the undertaking for another three exporting producers.

(19) By Implementing Regulation (EU) 2016/1998[(24)], the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(20) By Implementing Regulation (EU) 2016/2146[25], the Commission withdrew the acceptance of the undertaking for another two exporting producers.

(21) Following the expiry and interim reviews referred to in recitals 10 to 12, the Commission maintained the measures in force by Implementing Regulation (EU) 2017/366 and Implementing Regulation (EU) 2017/367.

(22) The Commission also initiated a partial interim review on the form of measures by a Notice of Initiation published in the *Official Journal of the European Union*[26] on 3 March 2017.

(23) By Implementing Regulation (EU) 2017/454[27], the Commission withdrew the acceptance of the undertaking for four exporting producers.

(24) By Implementing Decision (EU) 2017/615[28], the Commission accepted a proposal by a group of exporting producers together with the CCCME concerning the implementation of the undertaking.

(25) By Implementing Regulation (EU) 2017/941[29], the Commission withdrew the acceptance of the undertaking for two exporting producers.

(26) By Implementing Regulation (EU) 2017/1408[30], the Commission withdrew the acceptance of the undertaking for another two exporting producers.

(27) By Implementing Regulation (EU) 2017/1497[31], the Commission withdrew the acceptance of the undertaking for one exporting producer.

(28) By Implementing Regulation (EU) 2017/1524[32], the Commission withdrew the acceptance of the undertaking for two exporting producers.

B. TERMS OF THE UNDERTAKING

(29) The exporting producers agreed, inter alia, not to sell the product covered to the first independent customer in the Union below a certain minimum import price ('the MIP') within the associated annual level of imports to the Union ('annual level') laid down in the undertaking. The MIP is set on a cash equivalent basis. If the payment term is different from the cash equivalent basis, a certain deduction is applied to the invoice value when compliance with the MIP is compared.

(30) The exporting producers also agreed to sell the product covered only by means of direct sales. For the purpose of the undertaking, a direct sale is 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.

(31) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. This list of breaches includes indirect sales to the Union by companies other than those listed in the undertaking.

(32) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to

and re-sales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and that the reported transactions fully comply with the terms of the undertaking. Reporting of re-sales in the Union is a particular obligation when the product covered is sold to the first independent customer through a related importer. Only these reports enable the Commission to monitor whether the re-sale price of the related importer to the first independent customer is in accordance the MIP.

(33) The exporting producer is liable for the breach of any of its related parties, whether or not listed in the undertaking.

(34) The undertaking further stipulates that the acceptance of the undertaking by the Commission is based on trust and any action which would harm the relationship of trust established with the Commission should justify the withdrawal of the undertaking.

C. MONITORING OF THE EXPORTING PRODUCER

(35) While monitoring compliance with the undertaking, the Commission verified information submitted by Chinaland that was relevant to the undertaking. The Commission also assessed publicly available information regarding the corporate structure of Chinaland.

(36) The Commission also received evidence from customs authorities of one Member State 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.

(37) The findings listed in recitals 38 to 40 address the problems identified for Chinaland which oblige the Commission to withdraw acceptance of the undertaking for this exporting producer.

D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(38) In its quarterly reports, Chinaland had reported sales transactions of the product covered to an allegedly unrelated importer in the Union and had issued undertaking invoices. These transactions amounted in value to around 20 % of its total sales to the Union. Based on the information available to the Commission, the importer involved in these transactions was related to Chinaland. In particular, several sales transactions of this allegedly unrelated importer were carried out by two of Chinaland's officials. In their communication with final customers, these officials stated that this allegedly unrelated customer was a Union company belonging to Chinaland. Email accounts of these officials also hint to Chinaland. The Commission analysed this trade pattern. As this importer is not listed as related party in the undertaking, Chinaland had breached the terms of the undertaking as described in recital 30.

(39) In addition, sales made by this importer to the first independent customer in the Union were carried out at prices below the MIP. Therefore, Chinaland breached the terms of the undertaking as described in recitals 29 and 33.