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

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

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 Article 11(3) and Article 8(9) 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 19 and Article 13(9) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EU) No 1238/2013[(3)] the Council imposed 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 (or ‘PRC’) (the original anti-dumping investigation). The measures took the form of an *ad valorem* duty ranging between 27,3 % and 64,9 %.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1570. (See end of Document for details)*

(2) By Regulation (EU) No 1239/2013[4], the Council imposed definitive countervailing duties up to 11,5 % on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (the original anti-subsidy investigation).

(3) The China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') submitted, on behalf of a group of exporting producers, a price undertaking to the Commission. By Decision 2013/423/EU[5], 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[6] the acceptance of the price undertaking as amended for the period of application of anti-dumping and countervailing definitive measures. The Commission also adopted a Decision clarifying the implementation of the undertaking[7] and 11 Regulations withdrawing the acceptance of the undertaking for several exporting producers[8].

(4) By Implementing Regulation (EU) 2016/12[9], following a partial interim review limited in scope to the benchmark used as a reference for the price adaption mechanism set out in the above undertaking, the Commission terminated the partial interim review without amending the measures.

(5) By Implementing Regulations (EU) 2016/185[10] and (EU) 2016/184[11], 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 People's Republic of China 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 producers.

(6) By Implementing Regulation (EU) 2017/367[12] 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 People's Republic of China following an expiry review pursuant to Article 11(2) of the basic anti-dumping Regulation and terminated the partial interim review investigation pursuant to Article 11(3) of the basic anti-dumping Regulation ('expiry review anti-dumping investigation').

(7) By Implementing Regulation (EU) 2017/366[13] 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 People's Republic of China following an expiry review pursuant to Article 18(2) of the basic anti-subsidy Regulation and terminated the partial interim review investigation pursuant to Article 19(3) of the basic anti-subsidy Regulation (expiry review anti-subsidy investigation) (the expiry review anti-dumping investigation and the expiry review anti-subsidy investigation are hereinafter commonly referred as 'expiry review investigations').

(8) By Implementing Decision (EU) 2017/615[14], the Commission accepted the proposal from the exporting producers to maintain the minimum import price ('MIP') at the level applicable in March 2017.

1.2. **Initiation of a partial interim review**

(9) On 3 March 2017 the Commission initiated *ex officio* this partial interim review limited to the form of the measures pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation[15] ('the Notice of Initiation'). The Commission's intention to initiate this review was announced in the Union Interest chapter of the two expiry review regulations as a means to strike the right balance between the diverging interests that the expiry review investigations had found to exist on the solar market for the remaining period of the measures' duration[16].

1.3. **Interested parties**

(10) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission informed the CCCME, known exporting producers in the PRC and the PRC authorities of the investigations and invited them to participate.

(11) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. **Disclosure**

(12) On 19 July 2017, the Commission disclosed to all interested parties the essential facts and considerations of the investigation and invited them to comment within 14 days. The Commission received replies, within the deadline, from 20 interested parties, namely the association of the Union producers, seven Union producers, two associations of users, four upstream and downstream interested parties in the Union, four Chinese exporting producers, the CCCME and the Government of the PRC. Subsequently, the Commission sent an additional disclosure document to all interested parties and invited them to comment. This redisclosure was limited to only two elements of the methodology for establishing the MIP and a provision regarding the entry into force of this regulation.

2. **FINDINGS OF THE INVESTIGATION**

(13) The Commission sent a request for information on 21 March 2017 to more than 100 interested parties. It received replies from 26 interested parties: two Union producers; five European upstream and downstream companies as well as three associations; the CCCME; the Government of the PRC; 13 exporting producers and one Malaysian exporting producer.

2.1. **Variable duty under the form of a minimum import price**

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1570. (See end of Document for details)*

(14) The current form of the measures is an *ad valorem* anti-dumping duty set out in Article 1 of Implementing Regulation (EU) 2017/367 and *ad valorem* countervailing duty set out in Article 1 of Implementing Regulation (EU) 2017/366. A price undertaking was offered by a group of cooperating exporting producers together with the CCCME and accepted by the Commission. One of the core elements of the undertaking is the MIP which is subject to a quarterly adjustment mechanism. Under the price undertaking accepted by the Commission, the MIP for the modules and cells is adjusted quarterly by reference to international spot prices of modules including Chinese prices as reported by the Bloomberg database. The undertaking was initially accepted from more than 120 companies/company groups. In the meantime, the Commission withdrew its acceptance of the undertaking for 14 companies. Twelve 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, 15 other Chinese companies voluntarily withdrew from the undertaking[(17)].

(15) When reviewing the interests of unrelated importers and non-vertically integrated Union module manufactures in the expiry review investigations, the Commission received complaints about the heavy administrative burden put on them, while the Union producers complained about ongoing circumvention[(18)]. For instance, both the CCCME and the exporting producers have to submit monthly and quarterly reports to the Commission for the monitoring of the undertaking. These reports have been essential to verify that the annual level is not exceeded and to carry out a first analysis whether the reported sales transactions comply with the MIP.

(16) All the interested parties who replied to the request for information considered that a variable duty in the form of a MIP ('variable duty MIP') is a more appropriate form of measures than the previous *ad valorem* duty coupled with the price undertaking ('undertaking MIP'). In particular the interested parties considered that a variable duty MIP will be more transparent, predictable and enforceable. The interested parties considered that a variable duty MIP would reduce the administrative burden and costs for the importers. Some of the interested parties encouraged the Commission to ensure that the new form of the measures does not impose significant restrictions on the Union companies in terms of their business deals with manufacturers worldwide. In their view, these restrictions resulted in significant risks, liabilities, expensive due diligence and delays for the Union importers. The same parties also claimed that the existing cap on volumes of imports contained in the undertaking should be removed as it added further administrative burden and did not serve any purpose as the imports were anyway significantly below it.

(17) The Commission accepted these points. It considered that the measures should take the form of a variable duty MIP. The variable duty MIP means that eligible[(19)] imports with a declared value at, or above, the MIP would not be subject to duties and customs authorities will levy duties immediately if the product is imported at a price below the MIP. The variable duty MIP will alleviate the administrative burden on the exporting producers, the importers and the Commission as the monthly reporting

by the CCCME and the quarterly reporting to the Commission by all the exporting producers will no longer be necessary. In addition, the level of the variable duty MIP will be published. This will provide transparency and enable a better enforcement of the measures.

(18) The Commission also agreed with the interested parties that the variable duty MIP should not be accompanied by a list of additional restrictions and caps. Indeed, the exports have always been well below the annual level. It will be up to the Union customs authorities to verify if the companies involved did not enter into any cross compensation agreements and other arrangements circumventing the MIP.

2.2. **Distinction between mono-crystalline and multi-crystalline products**

(19) Several interested parties companies, including the Union producers, considered that there should be separate variable duty MIP for different product types. Most of the interested parties also considered that the best differentiation is based on technology i.e. mono-crystalline vs multi-crystalline (sometimes also called poly-crystalline) products. Mono-crystalline and multi-crystalline products are priced differently and the main price indexes such as PV Insights and Energy Trend PV quote separate prices for mono- and multi-crystalline cells and modules. Mono-crystalline products are consistently more expensive as they have higher output per area of space. According to the price quotes by PV Insights[(20)], between 1 January 2014 and 31 March 2017 the average price difference between mono-crystalline and multi-crystalline modules was EUR 0,047/W and between multi-crystalline and mono-crystalline cells was EUR 0,040/W.

(20) The distinction between mono-crystalline and multi-crystalline products also fits into the reasoning brought forward in the expiry review investigations to strike an appropriate balance between competing interests. On the one hand, it will better protect the Union industry, which is increasingly focusing on manufacturing high-end mono-crystalline products for the rooftop sector. On the other hand, such a distinction will serve better the interests of unrelated importers and engineering, procurement and construction companies (EPCs) active in the utility-scale sector, which need access to cheap commodity type multi-crystalline modules to be able to compete with other renewable energy sources in technology neutral tenders.

(21) Mono-crystalline and multi-crystalline cells can be easily distinguished by customs authorities. Multi-crystalline cells are made of multi-crystalline silicon (multi-Si) consisting of small crystals. Mono-crystalline cells are made of mono-crystalline silicon (mono-Si), a continuous crystal. Mono- and multi-crystalline cells are never combined in one device, therefore there are no modules that are made with both mono- and multi-crystalline cells. Multi-crystalline modules are made exclusively of multi-crystalline cells; and mono-crystalline modules are made exclusively of mono-crystalline cells. Mono-crystalline products have higher efficiency of converting sunlight into electrical current, which results in a higher output per area of space. Mono-crystalline products can be identified from multi-crystalline products by physical