Commission Implementing Regulation (EU) 2017/1497 of 23 August 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

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of 23 August 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,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013[(3)], 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[4], the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013[5], 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[6], 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[7], the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

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[8] 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 group of exporting producers for whom the undertaking was accepted by, inter alia, Shanghai Shenzhou New Energy Development Co. Ltd ('Shanghai Shenzhou'), together with its related companies in the PRC (that is, Shanghai Solar Energy S&T Co. Ltd and Lianyungang Shenzhou New Energy Co. Ltd), jointly covered by the TARIC additional code: B875.

(5) By Implementing Decision 2014/657/EU[9], the Commission accepted a proposal by the group of 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 code 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 group of exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to thereafter as 'measures'.

(6) By Implementing Regulation (EU) 2015/866[10], the Commission withdrew the acceptance of the undertaking for three exporting producers.

(7) By Implementing Regulation (EU) 2015/1403[11], the Commission withdrew the acceptance of the undertaking for another exporting producer.

(8) By Implementing Regulation (EU) 2015/2018[12], the Commission withdrew the acceptance of the undertaking for two exporting producers.

(9) 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*[13] on 5 December 2015.

(10) 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*[14] on 5 December 2015.

(11) 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*[(15)] on 5 December 2015.

(12) By Implementing Regulation (EU) 2016/115[(16)], the Commission withdrew the acceptance of the undertaking for another exporting producer.

(13) By Implementing Regulation (EU) 2016/185[(17)], the Commission extended the definitive anti-dumping duty imposed by Implementing 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.

(14) By Implementing Regulation (EU) 2016/184[(18)], the Commission extended the definitive countervailing duty imposed by Implementing 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.

(15) By Implementing Regulation (EU) 2016/1045[(19)], the Commission withdrew the acceptance of the undertaking for another exporting producer.

(16) By Implementing Regulation (EU) 2016/1382[(20)], the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(17) By Implementing Regulation (EU) 2016/1402[(21)], the Commission withdrew the acceptance of the undertaking for another three exporting producers.

(18) By Implementing Regulation (EU) 2016/1998[(22)], the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(19) By Implementing Regulation (EU) 2016/2146[(23)], the Commission withdrew the acceptance of the undertaking for another two exporting producers.

(20) Following the expiry and interim reviews referred to in recitals 9 to 11, the Commission maintained the measures in force by Implementing Regulation (EU) 2017/366[(24)] and Implementing Regulation (EU) 2017/367[(25)].

(21) 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.

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

(23) 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.

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

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

B. TERMS OF THE UNDERTAKING AND VOLUNTARY WITHDRAWAL BY SHANGHAI SHENZHOU

(26) As per the text of the undertaking, any exporting producer may voluntarily withdraw its agreement to the undertaking at any time during its application.

(27) Shanghai Shenzhou notified the Commission in June 2017 that it wished to withdraw its agreement thereto on its own behalf as well as on behalf of the related companies listed in recital 4 above.

C. WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITIONS OF DEFINITIVE DUTIES

(28) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and with the terms of the undertaking, the Commission concluded that the acceptance of the undertaking for Shanghai Shenzhou and the related companies listed in recital 4 should be withdrawn.

(29) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2017/367 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) 2017/366 automatically apply to imports of the product concerned originating in or consigned from the PRC and produced by Shanghai Shenzhou and the related companies listed in recital 4 above (jointly covered by TARIC additional code B875) as of the day of entry into force of this Regulation.

(30) For those imports cleared before the date of entry into force of this Regulation, the rules applicable to the undertaking should be respected. Accordingly, the Commission recalls that where the customs authorities of the Member States have indications that the price presented on an undertaking invoice does not correspond to the price actually paid, they should investigate whether the requirement to include any rebates in the undertaking invoices has been violated or the MIP has not been respected. Where customs authorities of the Member States conclude that there has been such a violation or whether the MIP has not been respected, they should collect the duties as a consequence thereof. In order to facilitate, on the basis of Article 4(3) of the Treaty, the work of the customs authorities of the Member States, the Commission should share in such situations the confidential text and other information of the undertaking for the sole purpose of national proceedings.

(31) Finally, the Commission observes that the acceptance of the voluntary withdrawal is without prejudice to the power conferred upon the Commission by Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(b) of

Implementing Regulation (EU) 2017/367, Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(b) of Implementing Regulation (EU) 2017/366 to cancel undertaking invoices that have been issued prior to the acceptance of the voluntary withdrawal, where the Commission becomes aware of facts justifying such a cancellation.

(32) For information purposes, the table in Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking in relation to the following companies is hereby withdrawn:

Name of the company	TARIC additional code
Shanghai Shenzhou New Energy Development Co. Ltd Shanghai Solar Energy S&T Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875

Article 2

1 Where customs authorities have indications that the price presented on an undertaking invoice pursuant to Article 3(1)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(1)(b) of Implementing Regulation (EU) 2017/367, Article 2(1)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(1)(b) of Implementing Regulation (EU) 2017/366 issued by one of the companies from which the undertaking was initially accepted by Implementing Decision 2013/707/EU does not correspond to the price paid and that therefore those companies may have violated the undertaking, the customs authorities may, if necessary for the purpose of conducting national proceedings, request the Commission to disclose to them a copy of the undertaking and other information in order to verify the applicable minimum import price ('MIP') on the day when the undertaking invoice was issued.

2 Where that verification reveals that the price paid is lower than the MIP, the duties due as a consequence under Article 8(9) of Regulation (EU) 2016/1036 and Article 13(9) of Regulation (EU) 2016/1037 shall be collected. Where that verification reveals that discounts and rebates have not been included in the commercial invoice, the duties due as a consequence under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366 shall be collected.

3 The information in accordance with paragraph 1 may only be used for the purpose of enforcement of duties due under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366. In this context, customs authorities of the Member States may provide the debtor of those duties with this information for the sole purpose of safeguarding their rights of defence. Such information may under no circumstances be disclosed to third parties.