# Commission Implementing Regulation (EU) 2017/1408 of 1 August 2017 withdrawing the acceptance of the undertaking for two exporting producers 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) 2017/1408

## of 1 August 2017

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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 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 Council Implementing Regulation (EU) No 1239/2013 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[(4)], and in particular Article 2 thereof,

Informing the Member States,

Whereas:

### A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013[(5)], 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[(6)], the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013[(7)], 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[(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 exporting producers for whom the undertaking was accepted, inter alia:

(a) Shenzhen Topray Solar Co. Ltd, together with its related companies in the PRC and in the Union, jointly covered by the TARIC additional code: B880 ('Topray Solar');

(b) Yuhuan BLD Solar Technology Co. Ltd, together with its related company in the PRC, jointly covered by the TARIC additional code: B899 ('BLD Solar').

(6) By Implementing Decision 2014/657/EU[(9)] 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 thereafter as 'measures'.

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

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1408. (See end of Document for details)*

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

(9) By Implementing Regulation (EU) 2015/2018[(12)] 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*[(13)] 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*[(14)] 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*[(15)] on 5 December 2015.

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

(14) 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.

(15) 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.

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

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

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

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

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

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/1408. (See end of Document for details)*

(21) Following the expiry and interim reviews referred to in recitals (10)-(12), the Commission maintained the measures in force by Implementing Regulations (EU) 2017/366[(24)] and (EU) 2017/367[(25)].

(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.

## B. TERMS OF THE UNDERTAKING

(26) 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.

(27) The undertaking also clarifies, in a non-exhaustive list, what constitutes a breach of the undertaking. That list includes, in particular, making compensatory arrangements with customers, making misleading declarations regarding the origin of the product concerned or the identity of the exporter. Taking part in a trading system leading to a risk of circumvention also constitutes a breach. The list also includes that issuing a commercial invoice, as defined in the undertaking, for which the underlying financial transaction is not in conformity with its face value is a breach.

(28) Moreover, the exporting producers undertook not to sell any product other than the product covered produced or traded by them in excess of a given small percentage limit of the total sales value of the product covered to the same customers to which they sell the product covered ('the parallel sales limit').

(29) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to the Union ('the quarterly reports'). The reporting also includes reporting of re-sales to the first independent customer in the Union through a related importer listed in the undertaking. These latter 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. Sales of products other than the product covered to the same customers also have to be reported. This data submitted in these quarterly reports must be complete and correct and the reported transactions should fully comply with the terms of the undertaking.

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

(31) The exporting producers also undertook to consult the Commission regarding any difficulties or questions, technical or otherwise, which may arise during the implementation of the undertaking.

(32) The undertaking also stipulates that the Commission may withdraw the acceptance of the undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable.

(33) The undertaking also obliges the exporting producers to notify the Commission in due time in case they intend to establish a party in the Union to which they will be related.

(34) For the purpose of ensuring compliance with the undertaking, the exporting producers also undertook to allow verification visits at their premises in order to verify the accuracy and completeness of data submitted to the Commission in the quarterly reports and to provide all information considered necessary by the Commission.

(35) 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 PRODUCERS

(36) While monitoring compliance with the undertaking, the Commission verified information submitted by the two exporting producers BLD Solar and Topray Solar that was relevant to the undertaking. In addition, the Commission also carried out verification visits at the premises of these exporting producers. The findings listed in recitals (37) to (48) address the problems identified for BLD Solar and Topray Solar which oblige the Commission to withdraw acceptance of the undertaking for those two exporting producers.

## D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

### (a) BLD Solar

(37) At the time of the verification visit in December 2016, BLD Solar's accounts showed that their four biggest allegedly unrelated customers had substantial amounts still due to be paid for modules purchased from BLD Solar. By way of example, one customer had not paid for more than one year after the last purchase. The balance still due amounted to more than 8 % of all BLD Solar sales to this customer. Such outstanding payments constitute ‘unlimited credits’ which are benefits to the customer. They are not allowed as compliance with the MIP cannot be verified for these transactions as set out in recital (26). BLD Solar had issued a large number of debit notes two days prior to the verification visit, allegedly claiming the outstanding payments. None of these debit notes had been entered into the accounts. In addition,