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 following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036

COMMISSION IMPLEMENTING REGULATION (EU) 2017/367

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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)], and in particular Article 11(2) and (3) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) Following an anti-dumping investigation (‘the original investigation’), the Council imposed in December 2013 by Implementing Regulation (EU) No 1238/2013[(2)] (‘the original regulation’) a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) 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 (TARIC codes 8501 31 00 81, 8501 31 00 89, 8501 32 00 41, 8501 32 00 49, 8501 33 00 61, 8501 33 00 69, 8501 34 00 41, 8501 34 00 49, 8501 61 20 41, 8501 61 20 49, 8501 61 80 41, 8501 61 80 49, 8501 62 00 61, 8501 62 00 69, 8501 63 00 41, 8501 63 00 49, 8501 64 00 41, 8501 64 00 49, 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) and originating in or consigned from the People's Republic of China (‘PRC’) (‘the original measures’). The measures took the form of an ad valorem duty ranging between 27,3 % and 64,9 %.

(2) In the original investigation, 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

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2013/423/EU[3], 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[4] the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. Since then the Commission adopted Implementing Decision 2014/657/EU[5] clarifying the implementation of the undertaking. It also adopted five Regulations withdrawing the acceptance of the undertaking for several exporting producers[6].

(3) On 5 May 2015, the Commission published a Notice of Initiation of a partial interim review of the anti-dumping and countervailing measures applicable to imports of the product under review[7]. The review was limited in scope to the benchmark used as a reference for the price adaption mechanism set out in the above undertaking. It was terminated in January 2016 by virtue of Commission Implementing Regulation (EU) 2016/12[8].

(4) On 28 May 2015, the Commission initiated anti-circumvention investigations concerning the possible circumvention of both the anti-dumping and countervailing measures on imports of the product under review by imports of the product under review consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not[9][10]. As a result, the measures were extended 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 which were found not to circumvent[11].

1.2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry[12] of the original measures, on 4 September 2015 the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation. The request was lodged by EU ProSun on behalf of Union producers representing more than 25 % of the total Union production of crystalline silicon photovoltaic modules and key components (i.e. cells) and it was supported by Union producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Union industry expressing either support for or opposition to the request.

1.3. **Initiation of an expiry review and an interim review**

(6) On 5 December 2015, the Commission initiated an expiry review of the anti-dumping measures applicable to imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC ('the country concerned') and published a Notice of Initiation in the *Official Journal of the European Union*[13] ('the Notice of Initiation of an expiry review').

(7) On the same date the Commission initiated ex officio a partial interim review pursuant to Article 11(3) of the basic Regulation limited to the examination of whether or not it is in the Union interest to maintain measures currently in force on cells of

the type used in crystalline silicon photovoltaic modules or panels[14] ('the Notice of Initiation of an interim review').

1.4. **Review investigation period and period considered**

(8) The investigation of a continuation or recurrence of dumping covered the period from 1 October 2014 to 30 September 2015 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period ('the period considered'). The same periods were used in the partial interim review.

1.5. **Interested parties**

(9) In the Notices of Initiation, the Commission invited interested parties to contact it in order to participate in the investigations. In addition, the Commission informed the applicants, other known Union producers, known exporting producers in the PRC and the PRC authorities, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigations and invited them to participate.

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

(11) In the Notice of Initiation of an expiry review, the Commission informed interested parties that it envisaged the United States of America ('USA') and India, as well as Japan, Malaysia, South Korea and Taiwan as third market economy countries within the meaning of Article 2(7)(a) of the basic Regulation. The Commission informed the known producers in those countries about the initiations and invited them to participate.

1.6. **Sampling**

(12) In the Notices of Initiation, the Commission stated that it might sample the Chinese exporting producers (concerning the expiry review), the Union producers and Union unrelated importers (concerning both the expiry review and the interim review) in accordance with Article 17 of the basic Regulation.

1.6.1. *Sampling of Union producers*

(13) In its Notices of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest representative volume of EU sales, taking into account production volume and the geographical location, which could reasonably be investigated within the time available. The sample consisted of six Union producers for modules and three for cells. Both vertically integrated and non-integrated producers were included in the provisional sample. The Commission invited all interested parties to comment on it. All companies that were provisionally selected agreed to be included in the provisional sample.

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(14) Comments on the proposed sample were received from several interested parties. They criticised the fact that the names and the location of several Union producers were kept confidential which prevented them from making comments on the selected producers' share with respect to the total production and sales volumes of the Union industry.

(15) The Commission recalled that all sampled Union producers, except for SolarWorld, WARIS Srl ('Waris') and Sillia VL ('Sillia'), requested at initiation stage that their names be kept confidential. The Commission respected those requests, but invited them to confirm their wish to remain anonymous throughout the reviews investigations and to provide good cause for their request. All of the companies concerned, with the exception of one, confirmed their initial request and provided justification for their requests. In particular, the companies indicated that they fear losing business activities in the PRC, and/or supplies of raw materials and components sourced from the PRC. These reasons were found to be warranted. Thus the Commission decided to accept their claim for anonymity and to reject the requests by interested parties to reveal the identity and location of the sampled Union producers. Among the anonymous companies, only Jabil Assembly Poland sp. zoo. ('Jabil') agreed to have its name disclosed in the final sample.

(16) One exporting producer argued that the Commission failed to define the Union industry prior to selecting the provisional sample thereof. Therefore, it could not comment whether the latter is representative. In addition, some of the selected Union producers, like SolarWorld, are vertically integrated as they manufacture cells which are mainly used for their own modules production. Consequently, there is a risk that the production of the same final product, modules, has been counted twice.

(17) It follows from the Notices of Initiation that 'Union industry' refers to all Union producers of modules and key components (i.e. cells). In addition, the Union industry was already clearly defined in the original investigation. Finally, the captive use of cells production has been deducted when examining the standing and the representativeness of the Union industry. Therefore, this claim was rejected.

(18) Several other interested parties argued that the Commission should not have included in the sample Waris and Sillia since they are small Union producers of modules. As such they have a very specific business model which is not representative. Rather, the Commission should have included big and middle sized companies such as Jabil.

(19) The Commission rejected this argument as it included in the sample a significant number of big and middle sized modules producers. Waris and Sillia were included in the sample in order to ensure a wider geographical representativity.

(20) After the initiation of the proceeding the Commission had to exclude from the sample the company Sillia due to lack of cooperation. As a result, the remaining sampled Union producers accounted for 38,8 % of the total EU sales and 55 % of total Union production of modules. For cells they accounted for 76,6 % of the total EU sales

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volume and 77 % of the total Union production. Therefore, the modified sample was still considered representative of the Union industry.

1.6.2. *Sampling of importers*

(21) In order to decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notices of Initiation.

(22) Two unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

1.6.3. *Sampling of exporting producers*

(23) In view of the apparently high number of exporting producers, sampling was envisaged in the Notice of Initiation of an expiry review for the determination of dumping, in accordance with Article 17 of the basic Regulation. To decide whether sampling would be necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation of an expiry review. The authorities of the country concerned were also consulted.

(24) Eighty-one exporting producers in the country concerned (often groups of several companies) provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three groups on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. All three exported modules to the EU, one exported also cells. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.

(25) Following disclosure, one interested party argued that the sample of the exporting producers is inappropriate as it differs significantly from the sample of Union producers in terms of the sampled companies' production and production capacity.

(26) As explained in recital 24, the Commission selected a sample on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. According to Article 17 of the basic Regulation the sample used is to be statistically valid on the basis of information available at the time of the selection, or include the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. Therefore, the sample of exporting producers is to be representative of the exporting producers and not of their Union counterparts. As confirmed by the jurisprudence of the Court of Justice, the sample of exporting producers does not have to mirror that of Union producers[(15)]. This claim was therefore rejected.

1.7. **Questionnaire replies and verification visits**