Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive 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 following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037

COMMISSION IMPLEMENTING REGULATION (EU) 2017/366

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 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[(1)], and in particular Article 18 thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Council Implementing Regulation (EU) No 1239/2013[(2)] ('the original Regulation'), the Council imposed definitive countervailing duties ranging to 11,5 % on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels from the People's Republic of China ('the PRC' or 'China'). These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

(2) The Commission confirmed by Implementing Decision 2013/707/EU[(3)] 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[(4)] clarifying the implementation of the undertaking. It also adopted five Implementing Regulations withdrawing the acceptance of the undertaking for several exporting producers[(5)].

(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[(6)]. 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[7].

(4) By Commission Implementing Regulation (EU) 2016/184[8], following an anti-circumvention investigation, the Council extended the definitive anti-countervailing imposed by Implementing Regulation (EU) No 1239/2013 to imports into the Union 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, whether declared as originating in Malaysia and in Taiwan or not.

1.2. **Request for a review**

(5) Following the publication of a notice of impending expiry[9] of the countervailing measures in force on the imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, the European Commission ('the Commission') received a request for review pursuant to Article 18 of Council Regulation (EC) No 597/2009[10] ('the basic Regulation').

(6) The request was lodged on 4 September 2015 by EU ProSun ('the applicant') on behalf of 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. The request was based on the grounds that the expiry of the measures would be likely to result in continuation of subsidisation and recurrence of injury to the Union industry.

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

(7) Having determined, after consulting the Committee established by Article 25(1) of the basic Regulation, that sufficient evidence existed to justify the initiation of an expiry review, the Commission announced, on 5 December 2015, by a notice published in the *Official Journal of the European Union* ('Notice of Initiation')[11] the initiation of an expiry review under Article 18 of the basic Regulation.

(8) On the same day, the Commission initiated an expiry[12] and a partial interim review[13] of the anti-dumping measures in force on the imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China. This is a parallel but distinct proceeding which is dealt with by means of a separate Regulation.

(9) Prior to the initiation of the expiry review, and in accordance with Articles 10(7) and 33(a) of the basic Regulation, the Commission notified the Government of China ('GOC') that it had received a properly documented review request and invited the GOC for consultations with the aim of clarifying the situation as regards the content of the review request and arriving at a mutually agreed solution. The GOC accepted the

offer for consultations and consultations were subsequently held on 2 December 2015. During the consultations, no mutually agreed solution could be reached. However, due note was taken of the comments submitted by the authorities of the PRC.

(10) On the same day the Commission initiated *ex officio* a partial interim review pursuant to Article 19(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**

(11) The investigation of the likelihood of a continuation or recurrence of subsidy covered the period from 1 October 2014 to 30 September 2015 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2012 to 30 September 2015 ('the period considered').

1.5. **Interested parties**

(12) In the Notices of initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known exporting producers in China and the Chinese authorities, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(13) 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.

1.6. **Sampling**

(14) In the notice of initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.6.1. *Union producers*

(15) 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 Union 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 sample. The Commission invited all interested parties to comment on the provisional sample. All companies that were provisionally selected agreed to be included in the sample.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

(22) 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 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*

(23) 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.

(24) 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. *Exporting producers*

(25) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of initiation. In addition, the Commission requested the authorities of China to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(26) While 86 exporting producers/group of exporting producers in China provided the information requested in Annex I to the notice of initiation for the purpose of sampling, the three largest main exporting producers/group of exporting producers (in terms of export sales of the product under review to the Union according to the Article 14(6) database) did not provide the requested information. In these circumstances, the Commission sampled the following three exporting producers/groups of exporting producers with the highest volume of export sales to the Union that provided the requested information and cooperated with the investigation

— Changzhou Trina Solar Energy Co. Ltd, Changzhou, China

— Jinko Solar Co Ltd, Shangrao, China

— Chint Group, Hangzhou, China

(27) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of China, were consulted on the selection of the sample. No comments were made.

1.7. **Questionnaire replies and verification visits**

(28) A questionnaire was sent to the GOC including specific questionnaires for the China Development Bank, Export Import Bank of China (‘EXIM’), Bank of Beijing, China Construction Bank (‘CCB’), Industrial and Commercial Bank of China (‘ICBC’), China Merchants Bank (‘MEB’), China Mingsheng Bank (‘MiB’), Ping An Bank, Suzhou Bank, and China Export & Credit Insurance Corporation (Sinosure) based on the fact that they had provided loans and financial services to the PV industry according to the information in the request. In addition, the GOC was asked to forward a questionnaire for banks to any other financial institutions known by the GOC to have provided loans to the industry concerned (the ‘photovoltaic industry’ or ‘PV industry’), This questionnaire for the GOC also included specific questionnaires for those polysilicon producers, those producers of aluminium extrusions and those producers of glass, which are partially or fully State-owned and which supplied these