Commission Implementing Regulation (EU) 2016/2146 of 7 December 2016 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

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of 7 December 2016

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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,

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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/2146. (See end of Document for details)*

(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.

(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) Ningbo Huashun Solar Energy Technology Co., Ltd, covered by the TARIC additional code: B856 ('Huashun China');

(b) Jiangsu Seraphim Solar System Co., Ltd, covered by the TARIC additional code: B836 ('Seraphim China').

(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 as 'measures'.

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

(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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/2146. (See end of Document for details)*

(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.

B. TERMS OF THE UNDERTAKING

(20) 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.

(21) The exporting producers also agreed to sell the product covered only by means of direct sales. For the purpose of the undertaking, a direct sale is defined as a sale either to the first independent customer in the Union or via a related party in the Union listed in the undertaking.

(22) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. The list of breaches includes indirect sales to the Union by companies other than those listed in the undertaking.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/2146. (See end of Document for details)*

(23) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to and re-sales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and the reported transactions fully comply with the terms of the undertaking. Reporting of re-sales in the Union is a particular obligation when the product covered is sold to the first independent customer through a related importer. Only these 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.

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

C. MONITORING OF THE EXPORTING PRODUCERS AND VOLUNTARY WITHDRAWAL

(25) While monitoring compliance with the undertaking, the Commission verified information submitted by Huashun China and Seraphim China that was relevant to the undertaking. The Commission also assessed publicly available information regarding the corporate structure of the two companies.

(26) The findings set out in recitals 27 to 30 address the problems identified for Huashun China and Seraphim China which oblige the Commission to withdraw the acceptance of the undertaking for these exporting producers.

D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(a) Sales by Huashun China

(27) In its quarterly reports, Huashun China had reported numerous sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued undertaking invoices. Based on the information available to the Commission, the importer involved in these transactions was however related to Huashun China. As this importer is not listed as related party in the undertaking, Huashun China breached the terms of the undertaking as described in recitals 20 to 22.

(28) None of the re-sales by the related importer was reported to the Commission. Consequently, Huashun China also breached the terms of the undertaking as described in recital 23 and 24.

(b) Sales by Seraphim China

(29) In its quarterly reports, Seraphim China had reported numerous sales transactions of the product covered to an allegedly unrelated importer in the Union and had issued undertaking invoices. Based on the information available to the Commission, the importer involved in the above transactions was related to Seraphim China. As this importer is not listed as related party in the undertaking, Seraphim China breached the terms of the undertaking as described in recitals 20 to 22.

(30) None of the re-sales by the related importer was reported to the Commission. Consequently, Seraphim China also breached the terms of the undertaking as described in recital 23 and 24.

E. INVALIDATION OF UNDERTAKING INVOICES

(31) The indirect sales transactions made by Huashun China and Seraphim China are linked to the following undertaking invoices:

Number of Commercial invoice accompanying goods subject to an undertaking	**Date**	**Issued by**	**Issued to**
HS-CI13A0916	25.9.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-13A0812	12.8.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-CI13A0607	13.8.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-13A1022	29.10.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-13A1107	15.11.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-13A1120	29.11.2013	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-14A0312DE	12.3.2014	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH
HS-13A0325DE	20.4.2014	Ningbo Huashun Solar Energy Co. Ltd	Huashun Solar GmbH