Commission Implementing Regulation (EU) 2016/1402 of 22 August 2016 withdrawing the acceptance of the undertaking for three 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) 2016/1402

of 22 August 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.

(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 Osda Solar Co. Ltd, covered by the TARIC additional code: B859 ('Osda Solar');

(b) Ningbo Qixin Solar Electrical Appliance Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B860 ('Qixin Solar');

(c) SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD together with its related company in the Union, jointly covered by the TARIC additional code: B869 ('Linuo').

(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 under Article 11(2) of the basic anti-dumping Regulation 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 under Article 18 of the basic anti-subsidy Regulation 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 under Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation 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 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 Council 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.

B. TERMS OF THE UNDERTAKING

(18) 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.

(19) 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.

(20) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. That list includes, in particular, issuing a commercial invoice ('undertaking invoice' as defined in the Implementing Regulations referred to in recital

4) or resale invoice for which the underlying financial transaction (e.g. the amount of money actually received from the buyer after any adjustments for credit/debit notes and the like) is not in conformity with the face value of the commercial invoice.

(21) The list of breaches also includes indirect sales to the Union by companies other than listed in the undertaking and taking part in a trading system leading to a risk of circumvention.

(22) 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 resales 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.

(23) 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

(24) While monitoring compliance with the undertaking, the Commission verified information submitted by Osda Solar, Qixin Solar, and Linuo that was relevant to the undertaking. The Commission also received evidence from customs authorities of one Member State on the basis of Article 8(9) of the basic anti-dumping Regulation and Article 13(9) and of the basic anti-subsidy Regulation.

(25) The findings set out in recitals 26 to 34 address the problems identified for Osda Solar, Qixin Solar and Linuo 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 Osda Solar

(26) In its quarterly reports, Osda Solar had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Osda Solar. As this importer is not listed as related party in the undertaking, Osda Solar breached the terms of the undertaking as described in recitals 19 and 21.

(27) In addition, this related importer issued at least one resale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Osda Solar breached the terms of the undertaking as described in recitals 18 and 23.

(b) Sales by Qixin Solar

(28) In its quarterly reports, Qixin Solar had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Qixin Solar. As this importer

is not listed as related party in the undertaking, Qixin Solar breached the terms of the undertaking as described in recitals 19 and 21.

(29) In addition, the related importer issued at least one resale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Qixin Solar breached the terms of the undertaking as described in recitals 18 and 23.

(30) Moreover, in the month in which the transaction referred to in recital 29 had taken place, Qixin Solar carried out direct sales of the product covered to the same customer, thus entering into a trading system leading to cross-compensation. Therefore, Qixin Solar breached the terms of the undertaking as described in recital 21.

(c) **Sales by Linuo**

(31) In its quarterly reports, Linuo had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Linuo. As this importer is not listed as related party in the undertaking, Linuo breached the terms of the undertaking as described in recitals 19 and 21.

(32) In addition, this related importer issued at least one re-sale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Linuo breached the terms of the undertaking as described in recitals 18 and 23.

E. INVALIDATION OF UNDERTAKING INVOICES

(33) The information contained in the quarterly reports and the evidence received demonstrate that the re-sale invoices referred to in recitals 27, 29 and 32 and the undertaking invoices referred to in recital 30 are linked to the following transactions.

Number of Commercial invoice accompanying goods subject to an undertaking	**Date**	**Issued by**	**Issued to**
ODAEU150006	23.12.2015	Ningbo Osda Solar Co. Ltd	Triple Shine B.V.
QXC150051	20.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	Energy Plus B.V
QXC150040	2.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH