Commission Implementing Regulation (EU) 2016/1382 of 16 August 2016 withdrawing the acceptance of the undertaking for five 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) 2016/1382

of 16 August 2016

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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)] ('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) Delsolar (Wujiang) Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B792 ('Delsolar');

(b) CNPV Dongying Solar Power Co. Ltd covered by the TARIC additional code: B813 ('CNPV');

(c) MOTECH (Suzhou) RENEWABLE ENERGY CO. LTD covered by the TARIC additional code: B852 ('MOTECH');

(d) Xi'an LONGi Silicon Materials Corp. and Wuxi LONGi Silicon Materials Co. Ltd, jointly covered by the TARIC additional code: B897 ('Xi'an LONGi'); and

(e) LERRI Solar Technology (Zhejiang) Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B898 ('LERRI 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 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) 2016/1382. (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 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 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.

B. TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL IN THE ABSENCE OF A BREACH

(17) The undertaking stipulates that the Commission may withdraw the acceptance of the undertaking during its period of application, if monitoring and enforcement prove to be impracticable, including any change in circumstances.

(18) In addition, any exporting producer may also voluntarily withdraw its undertaking at any time during its application.

C. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING FOR DELSOLAR AND MOTECH

(19) Both Delsolar and MOTECH have a related party in Taiwan that were granted exemption in the anti-circumvention investigations referred to in recitals 14 and 15.

(20) The Commission analysed the implication of these exemptions on the practicability of the undertaking. The exemptions represent a change in circumstances compared to those at the time of accepting the undertaking. Their objective is to exempt imports into the Union of the products concerned which were manufactured by the related parties of Delsolar and MOTECH in Taiwan. Such imports fall outside the scope of the undertaking.

(21) The Commission considers that this exemption for imports into the Union creates a high risk of cross-compensation. In fact, the related parties exempted in the anti-circumvention investigation may sell the product concerned to the same Union customers to whom the product covered is sold and the prices for such transactions could be set in a way to compensate for the Minimum Import Price under the undertaking. The Commission is not in a position to monitor the sales to the same Union customers under the undertaking and from Taiwan.

(22) Therefore, the Commission concluded that the above exemptions render the monitoring of Delsolar's and MOTECH's undertaking impracticable.

D. VOLUNTARY WITHDRAWAL BY LERRI SOLAR, XI'AN LONGi AND CNPV

(23) LERRI Solar notified the Commission in March 2016 that it wished to withdraw from the undertaking.

(24) Xi'an LONGi and CNPV notified the Commission in May 2016 that they wished to withdraw from the undertaking as well.

E. WRITTEN SUBMISSIONS AND HEARINGS

(25) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation. Delsolar and MOTECH submitted comments.

(i) *Delsolar*

(26) Delsolar contested that the exemption granted to its Taiwanese related party represents a change in circumstances. Delsolar notified the Commission on the merger with the Taiwanese company in the original investigations referred to in recital 4 which the Commission did not object. As the product concerned produced by Delsolar's Taiwanese related party has neither before nor after the anti-circumvention investigations been subject to the measures, the situation does not differ from the one that existed prior to the anti-circumvention investigations.

(27) The Commission cannot accept this argument.

(28) First of all, the Commission recalls that the market share of imports from third countries excluding the PRC into the Union was 6,8 % of the Union market during the investigation period. In particular, the market share of imports from Taiwan was 0,8

% (Table 12 of Regulation (EU) No 513/2013). It follows from those figures that the exports from the existing production facilities of companies producing in Taiwan and related to Chinese companies having offered the undertaking were marginal.

(29) However, as a result of the granting of the exemptions under Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, it can be expected that Delsolar's Taiwanese related party will export significant volumes of modules and cells to the Union.

(30) The decision to withdraw the acceptance of the undertaking is due to risk of cross-compensation that the Commission cannot monitor. The issue of whether goods produced in third country facilities are subject to measures is not relevant in the assessment of monitoring risks. The exemption concerns the imports of the product concerned manufactured by Delsolar's Taiwanese related party that are specifically destined to the Union market. Therefore, it creates a high risk of cross-compensation. The assessment of monitoring risks is also case specific and might evolve during the lifetime of the undertaking, as certain risks materialize, new risks emerge and the Commission can better assess the practical aspects of case-specific monitoring. Again, in this relation, it is irrelevant whether the imports prior to the anti-circumvention investigation were subject to the measures.

(31) Delsolar also claimed that the mere exemption of its related Taiwanese party does not warrant the conclusion that the monitoring of Delsolar's undertaking becomes impracticable. In Delsolar's view, the increased risk of cross-compensation is purely hypothetical. As the undertaking prohibits sales to the same customers, any violation could lead to the withdrawal of Delsolar's undertaking. In this regard, Delsolar stated that it does not sell the product covered to the same customer to whom its Taiwanese related party sells the product concerned. The compliance can be verified by on-spot visits at the premises of Delsolar and its Taiwanese related party. In addition, Delsolar claimed that the Commission, in the anti-circumvention investigations referred to in recitals 14 and 15, considered its Taiwanese related party as a genuine producer not circumventing the measures. Hence, any allegation on the potential risk of cross-compensation is purely speculative.

(32) The Commission rejects this argument. The anti-circumvention investigations referred to in recitals 14 and 15 established that Delsolar's Taiwanese related part did not engage in circumvention practices in the meaning of Article 13 of basic anti-dumping Regulation and Article 23 of the basic anti-subsidy Regulation. However, the scope of those investigations did not include considering the risks related to Delsolar's undertaking. Neither those findings imply that no circumvention of the undertaking in the meaning of price cross-compensation took place. On the contrary, the exemption granted to the Delsolar' Taiwanese related party increases significantly the circumvention risks related to Delsolar's undertaking. Such exemption implies specific intention to sell to the Union. Hence, it would require the Commission to monitor the sales both under the undertaking and from Taiwan. This renders the monitoring of Delsolar's undertaking impractical. The Commission also recalls in this regard that the monitoring of the undertaking has increasingly become more difficult during