Commission Implementing Regulation (EU) 2016/1045 of 28 June 2016 withdrawing the acceptance of the undertaking for one exporting producer 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) 2016/1045

of 28 June 2016

withdrawing the acceptance of the undertaking for one exporting producer 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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (‘the basic anti-dumping Regulation’), and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidized imports from countries not members of the European Community[(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, including Zhejiang Xiongtai Photovoltaic Technology Co. Ltd ('Shinetime China') together with its related company in the Union (SHINETIME SOLAR GMBH, 'Shinetime Europe'), jointly covered by the TARIC additional code: B919.

(6) By Implementing Decision 2014/657/EU[9] the Commission accepted a proposal by the group of 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 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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1045. (See end of Document for details)*

(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 Council 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.

B. TERMS OF THE UNDERTAKING

(16) 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.

(17) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. That list includes, in particular, issuing a commercial invoice or re-sale 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.

The exporting producer is liable for the breach of any of its related parties which are defined in the undertaking.

(18) 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.

(19) For the purpose of ensuring compliance with the undertaking, the exporting producers also undertook to provide all information considered necessary by the Commission.

C. MONITORING OF THE EXPORTING PRODUCERS

(20) While monitoring compliance with the undertaking, the Commission verified information submitted by Shinetime China and its related company in the Union 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.

(21) The findings set out in recitals (22) to (25) address the problems identified for Shinetime China and its related company in the Union which oblige the Commission to withdraw the acceptance of the undertaking for this exporting producer.

D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(a) Sales by Shinetime China

(22) The evidence received and publicly available information demonstrate that an allegedly unrelated importer in the Union shared, at least for a certain time, the same address as Shinetime Europe. This allegedly unrelated importer had issued two re-sale invoices for one transaction of solar modules to his final customer: one invoice on which the MIP was respected and another invoice for which the MIP was not respected. Invoice numbers, volume of modules and company product codes were identical. The payment from the final customer was made to Shinetime China for this transaction and corresponded to the invoice value for which the MIP was not respected. This practise had occurred at least in one instance.

(23) In addition, the evidence received demonstrates the existence of another form of undertaking circumvention. Shinetime China had issued a pro-forma invoice below the MIP to an unrelated customer in the Union. This customer had engaged in paying the below MIP amount to Shinetime China's account in Hong Kong.

(b) Sales by Shinetime Europe

(24) The evidence received demonstrates that Shinetime Europe had also issued two re-sale invoices for one transaction of solar modules to the first unrelated customer in the Union: one invoice on which the MIP was respected and another invoice for which the MIP was not respected. Invoice numbers, volume of modules and company product codes were identical. The payment from the first unrelated customer in the Union to Shinetime Europe for this transaction corresponded to the invoice value for which the MIP was not respected.

(25) Moreover, for the period in which the transaction referred to in recital (24) had taken place, Shinetime Europe failed to submit a quarterly sales report to the Commission.

(26) The Commission assessed the evidence submitted and the non-reporting and concluded that breaches of the undertaking had occurred.

E. INVALIDATION OF UNDERTAKING INVOICE

(27) The evidence received demonstrates that the re-sale invoice referred to in recital (24) is linked to the following transaction:

Number of Commercial invoice accompanying goods subject to an undertaking	**Date**	**Issued by**	**Issued to**
XTSSG1501-004-CI	16 January 2015	Zhejiang Xiongtai Photovoltaic Technology Co. Ltd	SHINETIME SOLAR GMBH

Therefore, in accordance with Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013, this invoice is declared invalid. The customs debt incurred at the time of acceptance of the declaration for release into free circulation should be recovered by the national customs authorities under Article 105(3)-(6) of Regulation (EU) No 952/2013 of the European Parliament and of the Council[19] when the withdrawal of the undertaking in relation to Shinetime China together with its related company in the Union enters into force. The national customs authorities responsible for the collection of duties will be informed accordingly.

In this context, the Commission recalls that pursuant to Article 3(1)(b) read in conjunction with Annex III, Nr. 7 of Implementing Regulation (EU) No 1238/2013 and to Article 2(1)(b) read in conjunction with Annex 2, Nr. 7 of Implementing Regulation (EU) No 1239/2013, imports are only exempted from duties if the invoice indicates the price and possible rebates. Where those conditions are not complied with, duties are due, even where the commercial invoice accompanying the goods has not been invalidated by the Commission.

F. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING

(28) The undertaking stipulates that a breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission shall assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(29) The Commission has accordingly assessed the impact of the breaches by Shinetime China and its related company in the Union on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(30) The responsibility for the breaches lies alone with the exporting producer in question; the monitoring has so far not revealed any systematic breaches by a major number of exporting producers or the CCCME.

(31) The Commission therefore concludes that the overall functioning of the undertaking is not affected and that there are at present no grounds for withdrawal of the acceptance of the undertaking for all exporting producers and the CCCME.