Commission Implementing Regulation (EU) 2016/184 of 11 February 2016 extending the definitive countervailing duty imposed by Council Implementing Regulation (EU) No 1239/2013 on imports 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

COMMISSION IMPLEMENTING REGULATION (EU) 2016/184

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)], and in particular Article 23(4) thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Implementing Regulation (EU) No 1239/2013[(2)], ('the original Regulation'), the Council imposed a definitive countervailing duty of 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') for all other companies than the ones mentioned in Article 1(2) and Annex 1 to that Regulation. 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'.

1.2. Initiation following a request

(2) On 15 April 2015 a Union producer of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels lodged a request indicating that the anti-dumping and countervailing measures on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels from the PRC are being circumvented via Malaysia and Taiwan.

(3) The request provided prima facie evidence that, following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC, Malaysia and Taiwan to the Union occurred, which seemed to be caused by the imposition of the measures in force. There was allegedly insufficient due cause or justification other than the imposition of the measures in force for such a change.

(4) Furthermore, the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that the increased imports from Malaysia and Taiwan were made at prices below the non-injurious price established in the original investigation.

(5) Finally, there was prima facie evidence that silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels originating from the PRC but consigned from Malaysia and Taiwan continue to be subsidised.

(6) Having determined, after having informed the Member States, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 23 of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2015/832[3] ('the initiating Regulation'). Pursuant to Articles 23(4) and 24(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels consigned from Malaysia and Taiwan. A request to cease the registration of solar cells from Taiwan, lodged by the applicant on 13 July 2015, was discussed at a hearing with the Hearing Officer in Trade Proceedings on 1 October 2015 and dismissed.

1.3. **Investigation**

(7) The Commission advised the authorities of the PRC, Malaysia and Taiwan, the exporting producers and traders in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC, Malaysia and Taiwan known to the Commission or which made themselves known within the deadlines specified in recital 15 of the initiating Regulation. Questionnaires were also sent to importers in the Union. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.

(8) Fourteen companies from Malaysia; 28 groups of companies or companies from Taiwan; nine companies from the PRC; 25 companies from the Union, including Union industry, unrelated importers and installers and five industry and users associations made themselves known.

(9) Fourteen companies in Malaysia made themselves known, of which nine submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 23(6) of the basic Regulation. *Malaysian*

Solar Resources sent a reply that was too incomplete to enable the Commission to properly investigate it. Therefore the Commission rejected this request. Five Malaysian companies *W&K Solar (M) Sdn. Bhd., Solexel (M) Sdn. Bhd., Solartif Sdn Bhd, Jinko Solar Technology Sdn. Bhd. and PV Hi Tech Solar Sdn. Bhd.* informed the Commission that they did not sell the product under investigation to the Union and did not intend to fill in the questionnaire. Some of those companies were in the start-up phase.

(10) Twenty-eight companies in Taiwan that made themselves known. *SunEdge Technology* informed the Commission that they did not sell the product under investigation to the Union. Therefore, their request has become without object, and was rejected. *Mosel Vitelic Inc.* informed the Commission that it ceased the production in June 2015; therefore it did no longer request an exemption. The remaining 26 companies submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 23(6) of the basic Regulation. Three companies *iSolar Energy Technology Co. Ltd, IST Energy Co. Ltd* and *DS Technology Co. Ltd* reported in their questionnaire reply that they did not have their own production. Therefore, the Commission considered that those companies do not fulfil the conditions to be eligible for an exemption, and rejected their requests. No verification visits were carried out to the companies which were considered not to fulfil the conditions to be eligible for an exemption or whose request was rejected. Therefore the Commission carried out the verification visits at the premises of 23 groups of companies or companies.

(11) No questionnaire reply was submitted by unrelated importers in the Union. Three Chinese exporting producers unrelated to the Taiwanese or Malaysian producers provided questionnaire replies and three related Chinese exporting producers provided questionnaire replies as well. In addition, the Commission received 14 submissions from the interested parties.

(12) The following Malaysian and Taiwanese groups of companies submitted complete replies to the questionnaires and verification visits were subsequently carried out at their premises.

Exporting producers in Malaysia:

— AUO — SunPower Sdn. Bhd.

— Eco Future Manufacturer Industry (M) Sdn. Bhd.

— Flextronics Shah Alam Sdn. Bhd. (*Flextronics is a contract manufacturer, the Commission also verified the OEM company SunEdison Products Singapore Pte Ltd*)

— Hanwha Q CELLS Malaysia Sdn. Bhd.

— Panasonic Energy Malaysia Sdn. Bhd.

— Promelight Technology (Malaysia) Sdn. Bhd.

— Sun M Energy Sdn. Bhd.

— TS Solartech Sdn. Bhd.

Exporting producers in Taiwan:

— AblyTek Co., Ltd

— ANJI Technology Co., Ltd
— AU Optronics Corporation
— Big Sun Energy Technology Inc.
— EEPV Corp.
— E-TON Solar Tech. Co., Ltd (*the verification of this company also included Gloria Solar*)
— Gintech Energy Corporation
— Gintung Energy Corporation
— Inventec Energy Corporation
— Inventec Solar Energy Corporation
— LOF Solar Corp.
— Ming Hwei Energy Co., Ltd
— Motech Industries, Inc.
— Neo Solar Power Corporation
— Perfect Source Technology Corp.
— Ritek Corporation
— Sino-American Silicon Products Inc.
— Solartech Energy Corp.
— Sunengine Corporation Ltd
— Topcell Solar International Co., Ltd
— TSEC Corporation
— Universal Hardware Corporation
— Win Win Precision Technology Co., Ltd

1.4. **Investigation period**

(13) The investigation period covered the period from 1 January 2012 to 31 March 2015 (the 'IP'). Data was collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. For the period 1 April 2014 to 31 March 2015 (the reporting period or 'the RP') more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and existence of subsidisation.

2. **RESULTS OF THE INVESTIGATION**

2.1. **General considerations**

(14) In accordance with Article 23(3) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between third countries and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/184. (See end of Document for details)*

prices and/or quantities of the like product and whether the imported like product and/or parts thereof still benefit from the subsidy.

2.2. **Product concerned and the like product**

(15) The product concerned by the possible circumvention is crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90 and originating in or consigned from the People's Republic of China, unless they are in transit in the sense of Article V GATT ('the product concerned').

(16) The following product types are excluded from the definition of the product concerned:

— solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries,

— thin film photovoltaic products,

— crystalline silicon photovoltaic products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s),

— modules or panels with a output voltage not exceeding 50 V DC and a power output not exceeding 50 W solely for direct use as battery chargers in systems with the same voltage and power characteristics.

(17) The product under investigation is the same as the 'product concerned' defined in the previous recitals, but consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not.

(18) The investigation showed that crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels, as defined above, exported to the Union from the PRC and those consigned from Malaysia and Taiwan to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 2(c) of the basic Regulation.

(19) The terms solar panel and solar module are used interchangeably by the industry and have the same meaning, namely a set of solar cells laminated together (most often 60 and 72) designed to absorb sunlight as a source of energy for generating electricity. The term solar and photovoltaic are also used interchangeably by the industry and with reference to solar cells and modules have the same meaning, namely converting solar energy into electricity. Crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels henceforth are referred to as 'solar cells and modules'.

2.3. **Results of the investigation concerning the PRC**