Commission Implementing Regulation (EU) 2016/12 of 6 January 2016 terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2016/12

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terminating the partial interim review of the anti-dumping and countervailing measures applicable to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China

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 11(3) thereof,

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[(2)] ('the basic anti-subsidy Regulation'), and in particular Article 19(3) thereof,

Whereas:

1. **Measures in force**

(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 ('China').

(2) The exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of this 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/12. (See end of Document for details)*

(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 China ('the product concerned'). By Implementing Regulation (EU) No 1239/2013[7], the Council also imposed a definitive countervailing duty on imports into the Union of the product 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.

(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 China, 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').

(7) By Implementing Regulation (EU) 2015/866[10] the Commission withdrew the acceptance of the undertaking for three exporting producers. By Implementing Regulation (EU) 2015/1403[11] the Commission withdrew the acceptance of the undertaking for one further exporting producer.

(8) The anti-dumping and countervailing measures referred to in recital 4 above, together with the undertaking and related Decisions referred to in recitals 3, 5 and 6 above, are jointly referred to as the 'measures in force'.

2. Relevant provisions of the undertaking

(9) Under the price undertaking accepted by the Commission, the minimum import price ('MIP') of the product covered is adjusted quarterly by reference to international spot prices of modules including Chinese prices as reported by the Bloomberg database ('the existing benchmark').

(10) The undertaking states also that 'spot prices excluding Chinese prices may be used as a benchmark, if made available by the Bloomberg database'.

3. Request for a partial interim review

(11) On 29 January 2015 the Commission received a request for a partial interim review from EU ProSun ('the applicant'), an association of producers of modules and cells in the Union. The request was limited in scope to the benchmark used as reference for the MIP adaptation mechanism set out in the undertaking.

(12) The request was based on the grounds that the existing benchmark is no longer representative of the development of module prices. The applicant provided the

following sufficient evidence that the circumstances on which the existing benchmark was accepted had changed and that these changes were of a lasting nature:

(a) the number of Chinese respondents reporting price data that was included in the existing benchmark had increased significantly since the acceptance of the undertaking, and in particular since the beginning of 2014;

(b) as a result, the weight of Chinese respondents in the existing benchmark had increased and had a significant effect on the evolution of this benchmark;

(c) in addition, the prices reported by Chinese respondents had historically been lower than prices reported by other respondents.

(13) According to the applicant, this evidence arguably showed that the existing benchmark was no longer representative of the development of module prices. The applicant therefore requested replacing the existing benchmark for the MIP adaptation mechanism by the 'International Average' price sub-series published by Bloomberg, which excludes prices reported by Chinese respondents.

4. Initiation of a partial interim review

(14) The Commission determined, after informing the Member States, that sufficient evidence existed to initiate a partial interim review limited to the benchmark used as reference for the MIP adaptation mechanism.

(15) The objective of this review is to investigate whether the existing benchmark is still representative of the development of module prices, and therefore still fulfils its objective as set out in the measures in force.

(16) The Government of China was invited for pre-initiation consultations in accordance with the basic anti-subsidy Regulation and these consultations took place.

(17) On 5 May 2015 the Commission initiated this partial interim review of the measures in force under Article 11(3) of the basic anti-dumping Regulation and Article 19(2) of the basic anti-subsidy Regulation. It published a Notice of Initiation in the *Official Journal of the European Union*[(12)].

5. Parties concerned by the investigation

(18) The Commission sent a questionnaire to Bloomberg New Energy Finance ('Bloomberg') to obtain information necessary for the investigation.

(19) The Commission also invited respondents who reported prices of modules to Bloomberg to come forward; to provide the Commission with their submissions to Bloomberg; and to make their views known in relation to the review.

(20) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for trade proceedings.

6. Questionnaire replies and verification visits

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/12. (See end of Document for details)*

(21) The Commission received a reply to its questionnaire from Bloomberg. The Commission also received submissions from a number of respondents that had reported prices of modules to Bloomberg and expressions of interest in the review from various parties in the Union and elsewhere.

(22) The Commission sought and verified all the information deemed necessary for the review. Verification visits were carried out at the premises of Bloomberg in Zurich, Switzerland and Hong Kong, Hong Kong SAR, China.

7. The investigation

(23) The Commission investigated whether the existing benchmark is still representative of the price development of modules and therefore still fulfils its objectives as set out in the measures in force.

7.1. *The existing benchmark and its sub-series*

(24) The existing benchmark is the 'Average all' price series, which consists of reported worldwide module spot prices. Bloomberg also publishes two sub-series to the 'Average all' price series for spot prices of modules that are of relevance to this investigation, namely:

(a) the 'Chinese Average' sub-series which contains prices reported by Chinese respondents; and

(b) the 'International Average' sub-series which contains all other prices reported.

(25) Data for these price series and sub-series are typically collected and published on a weekly basis. All series are published in USD. All quotes are regularly checked by Bloomberg's solar sector specialists who can contact any respondent for a quote clarification if they frequently submit data outside the defined ranges or appear to be trying to bias the final results.

(26) Bloomberg calculates the average price per week provided they have received at least three quotes. If a respondent submits multiple quotes, Bloomberg averages them and counts them as one quote.

(27) To avoid unusually high or low quotes, Bloomberg automatically flags all quotes more than 20 % above or below the average of the period selected to the analysts, who will request clarification from the participant. The analysts will decide whether to include the quote or not. The average is then calculated from the remaining quotes.

(28) All respondents must be active in the manufacturing or procurement of modules and Bloomberg must manually approve their participation before they may start contributing their quotes.

7.2. *Increase in the number and proportion of Chinese respondents*

(29) The applicant submitted that the number of Chinese respondents in the existing benchmark had increased significantly since the acceptance of the undertaking, and in particular since the beginning of 2014.

(30) The applicant further stated that 'Chinese participation in relation to the overall participation in the reporting of prices to Bloomberg has approximately tripled since 2013, and that increased participation has strongly influenced the evolution of the [existing benchmark] in 2014'.

(31) While the applicant provided complete information for the years 2013 and 2014 in the request, its arguments were based solely on a comparison of two isolated three-month periods, namely between May to July 2013 and October to December 2014.

(32) The Commission took the entire weekly participation data for 2013 and 2014 submitted by the applicant and analysed the data by aggregating the number of participants over calendar quarters. By doing so the Commission found that:

(a) indeed the average number of Chinese respondents per quarter in the existing benchmark had increased by around 20 respondents (56 %) between 2013 and 2014;

(b) this was coupled by a parallel drop in the average number of non-Chinese respondents per quarter by more than 100 respondents (– 46 %) between 2013 and 2014.

(33) Therefore the increase in the proportion of Chinese respondents in the existing benchmark was due both to a decreasing number of non-Chinese respondents and to an increasing number of Chinese respondents.

(34) Furthermore the proportion of the Chinese respondents increased from a rather low level to a level better reflecting the share of China in the worldwide solar market. As reported by Bloomberg in 2014 the Chinese production photovoltaic cells and modules is estimated to be 78 % of world output.

(35) Graph 1 below shows the aggregated participation of respondents in the existing benchmark and its two sub-series on a quarterly basis.