Commission Implementing Regulation (EU) 2015/2018 of 11 November 2015 withdrawing the acceptance of the undertaking for two 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) 2015/2018

of 11 November 2015

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

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 subsidised 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 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. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, *inter alia*:

(a) Chint Solar (Zhejiang) Co. Ltd together with its related companies in the European Union, jointly covered by the TARIC additional code: B810 ('Chint Solar'); and

(b) Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd and Zhejiang Jinbest Energy Science and Technology Co. Ltd, jointly covered by the TARIC additional code: B825 ('Sunny Energy').

(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 product 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.

B. TERMS OF THE UNDERTAKING THAT HAVE BEEN BREACHED

(9) Each company from whom the undertaking was accepted undertook to sell only the product covered manufactured by this company. Sales of products manufactured by another company are not allowed.

(10) 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 laid down in the undertaking.

(11) The undertaking also clarifies, in a non-exhaustive list, what constitutes a breach of the undertaking. That list includes, in particular, making compensatory arrangements with customers, making misleading declarations regarding the origin of the product concerned or the identity of the exporter. Taking part in a trading system leading to a risk of circumvention also constitutes a breach. The list also includes that issuing a commercial invoice, as defined in the undertaking, for which the underlying financial transaction is not in conformity with its face value is a breach.

(12) Moreover, the exporting producers undertook not to sell any product other than the product covered produced or traded by them in excess of a given small percentage limit of the total sales value of the product covered to the same customers to which they sell the product covered ('the parallel sales limit').

(13) Furthermore, the undertaking obliges the exporting producers to provide the Commission on a quarterly basis and within specific deadlines, 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 that the reported transactions fully comply with the terms of the undertaking. Sales of products other than the product covered to the same customers also have to be reported.

(14) For the purpose of ensuring compliance with the undertaking, the exporting producers also undertook to allow verification visits at their premises in order to verify the accuracy and completeness of data submitted to the Commission in the quarterly reports and to provide all information considered necessary by the Commission.

C. TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL BY THE COMMISSION IN THE ABSENCE OF A BREACH

(15) The undertaking stipulates that the Commission may withdraw the acceptance of the undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable.

D. MONITORING OF THE EXPORTING PRODUCERS

(16) While monitoring compliance with the undertaking, the Commission verified information submitted by the two exporting producers referred to in recital 5 above that was relevant to the undertaking. The Commission also carried out verification visits at the premises of these exporting producers. The findings listed in recitals 17 to 27 address the problems identified for Chint Solar and Sunny Energy which oblige the Commission to withdraw acceptance of the undertaking for those two exporting producers.

E. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(i) **Chint Solar**

(17) Chint Solar's related companies in the Union referred to in recital 5(a) sold the product covered to independent customers in the Union in 2013 and in 2014. These sales were not reported to the Commission within the deadline provided in the undertaking. An incomplete report was only submitted at the beginning of the verification visit. The Commission therefore concluded that Chint Solar breached its reporting obligations.

(18) Chint Solar also sold modules to the Union which were manufactured by a related company not party to the undertaking. The Commission analysed this practice and concluded that Chint Solar breached the obligation to sell only those modules which were produced by the company which is party to the undertaking.

(19) In addition, a related producer of modules in the Union sold these products, *inter alia*, either to one of Chint Solar's customers or to customers related to a Chint Solar customer. A substantial part of these sales was carried out at prices below the MIP. The Commission analysed this business model. The Commission concluded that by selling at prices below the MIP to a Chint Solar customer or to a related customer of a Chint Solar customer, a compensatory arrangement took place and that Chint Solar breached the obligation under the undertaking not to enter into a compensatory arrangement.

(20) Moreover, Chint Solar partially produces modules under original equipment manufacturer ('OEM') agreements. For one group of its OEM customers, the contractual arrangement allows sales to this group of customers to the Union and non-Union destinations. Chint Solar did not provide all information considered necessary by the Commission for the monitoring of the undertaking. For another group of its OEM customers, the verification established that at least in one instance modules were delivered to both Union and non-Union members of this group.

(21) This business model leads to a risk of circumvention in the form of cross-compensation of the MIP. More specifically, this would be the case if modules are sold to OEM customer groups via Chint Solar's related company which is not party to the undertaking.

(22) The Commission concluded that the identified pattern of trade renders the monitoring of Chint Solar's undertaking impracticable.

(ii) **Sunny Energy**

(23) Sunny Energy issued several commercial invoices for solar modules for which the face value was in accordance with the MIP. However, an inspection of the relevant invoices which Sunny Energy submitted to the Chinese VAT authorities revealed that these sales transactions also included products not covered by the undertaking, e.g. inverters and cables defined in the undertaking as 'other products', which were not reported to the Commission. In addition, the sales of such 'other products' to the same customers exceeded the parallel sales limit authorised by the undertaking. These are

breaches of reporting obligations and of the limit for sales of 'other products' to the same customers.

(24) Furthermore, the verification visit established that the sales price of solar modules on the invoices which Sunny Energy submitted to the Chinese VAT authorities was lower than the price on the undertaking invoices. The Commission analysed this practice and concluded that Sunny Energy breached the undertaking by issuing commercial invoices for which the underlying financial transactions were not in conformity with their face value.

(25) Sunny Energy has also been exporting 'other products' over a substantial period of time into a bonded warehouse in the Union. The customs clearance of those products takes place once the customer orders those products. These sales fall outside the scope of the monitoring by the Commission.

(26) The Commission analysed the implications of this pattern of trade and concluded that there is a high risk of cross-compensation of the MIP, namely if products covered and products not covered are sold from the bonded warehouse to the same customers. The Commission concluded that the identified pattern of trade renders the monitoring of Sunny Energy's undertaking impracticable.

(27) In addition, the transaction records inspected on spot revealed that one customer had not paid the entire amount for the sales transaction in question. Further analysis established that this partial payment lead to sales price below the MIP. Selling at a price below the MIP constitutes a breach of the undertaking.

(iii) **Conclusions**

(28) The findings of breaches of the undertaking and its impracticability established for Chint Solar and Sunny Energy justify the withdrawal of the acceptance of the undertaking for these two exporting producers pursuant to Articles 8(7) and 8(9) of the basic anti-dumping Regulation, Articles 13(7) and 13(9) of the basic anti-subsidy Regulation, and pursuant to the terms of the undertaking.

F. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING

(29) 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.

(30) The Commission has accordingly assessed the impact of the breaches by Chint Solar and Sunny Energy on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

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