Commission Implementing Regulation (EU) 2015/866 of 4 June 2015 withdrawing the acceptance of the undertaking for three 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) 2015/866

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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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/866. (See end of Document for details)*

(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, including:

(a) CSI Solar Power (China) Inc., Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co. Ltd together with their related company in the European Union jointly covered by the TARIC additional code: B805 ('Canadian Solar');

(b) ET Solar Industry Limited and ET Energy Co. Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B819 ('ET Solar'); and

(c) Renesola Zhejiang Ltd and Renesola Jiangsu Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B921 ('ReneSola').

(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 antidumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to as 'measures'.

B. TERMS OF THE UNDERTAKING THAT HAVE BEEN BREACHED

(7) 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.

(8) 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 their customers, and making misleading declarations regarding the origin of the product concerned or the identity of the exporter.

(9) The exporting producers also undertook not to sell any products 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').

(10) 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.

(11) 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

(12) The undertaking also 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.

(13) The undertaking further stipulates that the acceptance of the undertaking by the Commission is based on trust and any action which would harm the relationship of trust established with the Commission shall justify the withdrawal of the undertaking.

D. MONITORING OF THE EXPORTING PRODUCERS

(14) While monitoring compliance with the undertaking, the Commission verified information submitted by the exporting producers that was relevant to the undertaking. The findings listed in recitals 15 to 32 below address the problems identified for Canadian Solar, ET Solar and ReneSola, which oblige the Commission to withdraw acceptance of the undertaking for those three exporting producers.

E. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKINGS

(i) Canadian Solar

(15) Canadian Solar provided certain benefits to several customers, which were not listed in their quarterly reports. The Commission analysed these non-reported benefits and concluded that Canadian Solar has breached their reporting obligation under the undertaking.

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(16) Further analysis of those non-reported benefits has led to the conclusion that Canadian Solar also breached their obligation to respect the MIP, as deducting these benefits from the sales price in the transactions with the customers concerned decreased those prices below the MIP.

(17) Canadian Solar conducted also parallel sales of modules covered and not covered by the undertaking to the same customers in the same calendar year. This was done though parallel sales to the same customer, on a large scale, of, on the one hand, modules imported into the Union without having been subject to the measures and then stockpiled (through multiple channels) and, on the other hand, the product covered. Those sales exceeded substantially the parallel sales limit authorised by the undertaking. Thereby, Canadian Solar has breached that limit.

(18) In addition, the Commission analysed the implications of that pattern of trade and concluded that there is a high risk of cross-compensation where the products covered and not covered by the undertaking are sold to the same customers, in particular where sales take place in such significant quantities.

(19) Canadian Solar also used in their business model one unrelated original equipment manufacturer ('OEM'). That OEM assembled modules for Canadian Solar in a third country, allegedly using cells form another third country. Imports of modules by Canadian Solar from that OEM into the Union are not subject to the undertaking, because the undertaking only covers direct sales from the PRC into the Union. Those imports and sales, as well as the OEM, hence fall outside the scope of the monitoring by the Commission.

(20) The Commission analysed the implications of that pattern of trade on the practicability of the undertaking. The Commission concluded that, although limited in scope, that OEM renders the monitoring of Canadian Solar's undertaking impracticable.

(ii) **ET Solar**

(21) ET Solar sold the product covered by the undertaking as a part of sales of complete solar parks. The imports of the product covered into the Union were listed in the ET Solar's quarterly reports, but none of the sales of modules into the solar parks or as part of the solar parks was. ET Solar was, however, obliged under the undertaking to report those sales. When selling a solar park, ET Solar was selling a bundle of goods and services: the modules installed in the park, the remaining equipment necessary for the park, and the service of building the park and connecting it to the grid.

(22) Furthermore, the sale of complete solar parks constitutes a parallel sale of the product covered and the products and services not covered by the undertaking to the same customers. These sales exceeded substantially the parallel sales limit authorised by the undertaking. Thereby, ET Solar has breached that limit.

(23) In addition, the Commission analysed the implications of that pattern of trade and concluded that there is a high risk of cross-compensation where the product

covered, and products and services not covered by the undertaking are sold to the same customers, in particular where sales take place in such significant quantities.

(24) Moreover, ET Solar is not able to demonstrate that the MIP is respected in the sales of complete solar parks, as there is no sales price per se for the modules as the customer pays only a total price for the installation and no further reliable breakdown of the price for the modules, other equipment and services was provided.

(25) Finally, the Commission analysed the implications of that pattern of trade and also concluded that this renders the monitoring of ET Solar's undertaking impracticable.

(iii) **ReneSola**

(26) ReneSola's business model, besides using their own production capacities in the PRC, relies on an extensive network of unrelated OEMs in third countries and in the Union to assemble modules for them. Those OEMs use cells of various origins, including cells originating in or consigned from the PRC. Those cells are imported into the third countries and the Union, in a number of cases, through related companies located in different third countries.

(27) The imports of modules from those OEMs in third countries and the sales of modules assembled by the OEM in the Union are not subject to the undertaking, because the undertaking only allows direct sales from the PRC into the Union. Those imports and sales, as well as the OEMs, hence fall outside the scope of the monitoring by the Commission.

(28) The Commission analysed the implications of this pattern of trade and concluded that it renders the monitoring of ReneSola's undertaking impracticable.

(29) Furthermore, ReneSola provided in its quarterly reports misleading information about transactions to a related importer in the Union. The related importer's transactions records inspected on the spot do not match the export sales reported to the Commission by ReneSola under the undertaking. Further verification established that ReneSola has not reported the cancellations or modifications of a large number of shipments to that related importer.

(30) The Commission analysed these inconsistencies between ReneSola's undertaking reports and actual sales transactions and concluded that ReneSola has breached their reporting obligation under the undertaking.

(iv) **Conclusions**

(31) The findings of breaches of the undertaking and its impracticability established for Canadian Solar, ET Solar, and ReneSola require the withdrawal of the acceptances of the undertaking for those three exporting producers pursuant to Article 8(7) and (9) of the basic anti-dumping Regulation, Article 13(7) and (9) of the basic anti-subsidy Regulation, and pursuant to the terms of the undertaking.

(32) In addition, the Commission analysed the implications of actions by Canadian Solar, ET Solar, and ReneSola listed in recitals 15 to 30 above on their relationships