Commission Implementing Regulation (EU) 2015/832 of 28 May 2015 initiating an investigation concerning the possible circumvention of countervailing measures 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 by imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not, and making such imports subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2015/832

of 28 May 2015

initiating an investigation concerning the possible circumvention of countervailing measures 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 by imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not, and making such imports subject to registration

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)] (‘the basic regulation’), and in particular Articles 23(4) and 24(5) thereof,

After having informed the Member States,

Whereas:

A. **REQUEST**

(1) The European Commission (‘the Commission’) has received a request pursuant to Articles 23(4) and 24(5) of the basic Regulation to investigate the possible circumvention of the countervailing measures imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China and to make imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not, subject to registration.

(2) The request was lodged on 15 April 2015 by SolarWorld AG, a Union producer of crystalline silicon photovoltaic modules and key components (i.e. cells) and hence an interested party in the meaning of Article 23(4) of the basic Regulation.

B. **PRODUCT**

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/832. (See end of Document for details)*

(3) 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').

(4) 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

(5) The product under investigation is the same as that defined in recitals (3) and (4) above, but consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not, currently falling within the same CN codes as the product concerned ('the product under investigation').

C. EXISTING MEASURES

(6) The measures currently in force and *prima facie* being circumvented are countervailing measures imposed by Council Implementing Regulation (EU) No 1239/2013[(2)] ('the existing measures').

D. GROUNDS

(7) The request contains sufficient evidence that the countervailing measures on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China are being circumvented by imports of the product under investigation consigned from Malaysia and Taiwan.

(8) The evidence submitted is as follows.

(9) The request shows that a significant change in the pattern of trade involving exports from the People's Republic of China, Malaysia and Taiwan to the Union has taken place following the imposition of the measures, without sufficient due cause or economic justification for such a change other than the imposition of the duty.

(10) This change appears to stem from the consignment of the product concerned via Malaysia and Taiwan to the Union. However, the investigation covers any practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the countervailing duty.

(11) Furthermore, the request contains sufficient evidence that the remedial effects of the existing countervailing measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that imports of the product under investigation are made at prices below the non-injurious price established in the investigation that led to the existing measures.

(12) Finally, the request contains sufficient evidence that the prices of the product under investigation continue to be subsidised as previously established.

E. PROCEDURE

(13) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23(4) of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Malaysia and Taiwan or not, subject to registration, in accordance with Article 24(5) of the basic Regulation.

(14) The Governments of the People's Republic of China, Malaysia and Taiwan have been invited for consultations.

(a) Questionnaires

(15) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in Malaysia and Taiwan, to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China, Malaysia and Taiwan. Information, as appropriate, may also be sought from the Union industry.

(16) In any event, all interested parties should contact the Commission forthwith, but not later than within the time-limits set in Article 3 of this Regulation, and request a questionnaire within the time-limit set in Article 3(1) of this Regulation, given that the time-limit set in Article 3(2) of this Regulation applies to all interested parties.

(17) The authorities of the People's Republic of China, Malaysia and Taiwan will be notified accordingly of the initiation of the investigation.

(b) Collection of information and holding of hearings

(18) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/832. (See end of Document for details)*

parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) **Exemption of registration of imports or measures**

(19) In accordance with Article 23(5) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(20) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 23(5) of the basic Regulation, to producers in Malaysia and Taiwan of the product under investigation that can show that they are not related[(3)] to any producer subject to the existing measures[(4)] and that are found not to be engaged in circumvention practices as defined in Article 23(3) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time-limit indicated in Article 3(3) of this Regulation.

F. **REGISTRATION**

(21) Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount can be levied from the date on which registration of such imports consigned from Malaysia and Taiwan was imposed.

G. **CUSTOMS DECLARATION**

(22) Statistics on crystalline silicon photovoltaic modules and key components (i.e. cells) are frequently expressed in Watt. However, there is no such supplementary unit for crystalline silicon photovoltaic modules and key components (i.e. cells) specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87[(5)]. It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of Watt for the imports of the product under investigation must be entered in the declaration for release for free circulation. The number of Watt shall be indicated for TARIC codes 8541 40 90 22, 8541 40 90 23, 8541 40 90 32 and 8541 40 90 33.

H. **TIME-LIMITS**

(23) In the interest of sound administration, time-limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Malaysia and Taiwan may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(24) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time-limits laid down in Article 3 of this Regulation.

I. NON-COOPERATION

(25) In cases in which any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

(26) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

(27) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

(28) Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

J. SCHEDULE OF THE INVESTIGATION

(29) The investigation will be concluded, pursuant to Article 23(4) of the basic Regulation, within nine months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

K. PROCESSING OF PERSONAL DATA

(30) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council[6].

L. HEARING OFFICER

(31) Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

(32) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Regulation in the *Official Journal of the European Union*.