Changes to legislation: *Commission Implementing Regulation (EU) No 1357/2013 is up to date with all changes known to be in force on or before 01 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commission Implementing Regulation (EU) No 1357/2013 of 17 December 2013 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

COMMISSION IMPLEMENTING REGULATION (EU) No 1357/2013

of 17 December 2013

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(1)], and in particular Article 247 thereof,

Whereas:

(1) Non-preferential rules of origin are to be applied to all non-preferential trade policy measures, including anti-dumping and countervailing duties.

(2) In Article 24 of Regulation (EEC) No 2913/92, the basic principle is laid down that goods whose production involved more than one country are to be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.

(3) The declaration for free circulation of crystalline silicon photovoltaic modules or panels and their key components has been made subject to provisional anti-dumping duties by Commission Regulation (EU) No 513/2013[(2)].

(4) In order to ensure the correct and uniform implementation of the provisional anti-dumping duties, a detailed rule for the interpretation of the principle of Article 24 of Regulation (EEC) No 2913/92 for the determination of the origin of the products covered by those measures needs to be laid down with regard to crystalline silicon photovoltaic modules or panels and one of their key components, crystalline silicon photovoltaic cells.

(5) The production process of crystalline silicon photovoltaic modules or panels can be divided into the following major steps: production of silicon wafers; processing of silicon wafers into crystalline silicon photovoltaic cells; assembly of several crystalline silicon photovoltaic cells into a crystalline silicon photovoltaic module or panel.

(6) The most important stage in the manufacture of the crystalline silicon photovoltaic panels or modules is the processing of silicon wafers into crystalline silicon photovoltaic cells. That is the decisive production stage during which the use to which the component

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parts of the panel or module are to be put becomes definite and where they are given their specific qualities.

(7) That transformation therefore should be considered as constituting the last substantial transformation in the production process of crystalline silicon photovoltaic modules or panels in accordance with Article 24 of Regulation (EEC) No 2913/92. The country of manufacture of the crystalline silicon photovoltaic cells should thus be the country of non-preferential origin of the crystalline silicon photovoltaic modules or panels.

(8) By Decision 94/800/EC[(3)] the Council approved, inter alia, the Agreement on Rules of Origin (WTO-GATT 1994), annexed to the final act signed in Marrakesh on 15 April 1994. According to the principles laid down in that Agreement for the Harmonisation Work Program, the determination of the country where goods underwent their last substantial transformation should first of all be based on the country where the production process has led to a change in tariff classification. Only where that criterion does not allow to determine the country of last substantial transformation can other criteria be used, such as a value added criterion or the determination of a specific processing operation. It is appropriate to use the same principles in the EU customs legislation.

(9) Crystalline silicon photovoltaic cells are classified in heading 8541 of the Harmonised System (HS). Crystalline silicon photovoltaic modules or panels are classified in the same heading. The input material, silicon wafers, is classified in HS heading 3818. The rule based on a change of tariff heading thus adequately expresses the last substantial transformation of the crystalline silicon photovoltaic cells. At the same time it excludes the assembly of the crystalline silicon photovoltaic panels or modules from cells to confer origin to the final product, as both panels and cells are classified in the same heading.

(10) An origin rule based on added value, which is usually combined with the change of tariff heading rule for the determination of products for which the last transformation is an assembly operation, is not appropriate in the case of crystalline silicon photovoltaic modules or panels, as the necessary predictability and legal certainty would be better attained for those particular products by identifying the most significant production step.

(11) A so-called ‘residual’ rule is necessary in order to determine the origin of the crystalline silicon photovoltaic panels or modules where the primary rule of change in tariff heading is not fulfilled. In that case, the origin of the crystalline silicon photovoltaic cells or of the major portion in value of the crystalline silicon photovoltaic cells should constitute the origin of the panel or module.

(12) Crystalline silicon photovoltaic modules or panels may also be classified under certain conditions in HS heading 8501. A similar rule as for HS heading 8541 should also be laid down for those crystalline silicon photovoltaic panels or modules.

(13) Commission Regulation (EEC) No 2454/93[(4)] should therefore be amended accordingly.

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(14) The Customs Code Committee did not deliver an opinion. An implementing act was deemed to be necessary and the chair submitted the draft implementing act to the appeal committee for further deliberation. The appeal committee did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

Annex 11 to Regulation (EEC) No 2454/93 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 2013.

For the Commission

The President

José Manuel BARROSO