Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China

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THE COUNCIL OF THE EUROPEAN UNION,

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)], and in particular Article 15 thereof,

Having regard to the proposal from the European Commission, after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 8 November 2012, the European Commission (the 'Commission') announced by a notice published in the *Official Journal of the European Union*[(2)] ('Notice of Initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China ('PRC' or the 'country concerned').

(2) The anti-subsidy proceeding was initiated following a complaint lodged on 26 September 2012 by EU ProSun ('the complainant') on behalf of producers representing in this case more than 25 % of the total Union production of crystalline silicon photovoltaic modules and key components. The complaint contained *prima facie* evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(7) of Regulation (EC) No 597/2009 ('the basic Regulation'), the Commission notified the Government of the PRC ('the GOC') that it had received a properly documented complaint alleging that subsidised imports of crystalline silicon photovoltaic modules and key components originating in the PRC were causing material injury to the Union industry. The GOC was invited for consultations with the aim of clarifying the situation

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as regards the contents of the complaint and arriving at a mutually agreed solution. The GOC accepted the offer of consultations which were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the GOC regarding the non-countervailability of the schemes listed in the complaint. Following the consultations, submissions were received from the GOC.

1.2. Parallel anti-dumping proceeding

(4) On 6 September 2012, the Commission had announced by a notice published in the *Official Journal of the European Union*[(3)], the initiation of an anti-dumping proceeding concerning imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the PRC.

(5) On 6 June 2013, the Commission, by Commission Regulation (EU) No 513/2013[(4)], imposed a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the PRC ('Provisional anti-dumping Regulation').

(6) The injury analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are based on the same definition of the Union industry, the representative Union producers and the investigation period and led to identical conclusions unless otherwise specified. This was considered appropriate in order to streamline the injury analysis and to reach consistent findings in both proceedings. For this reason, comments on injury aspects put forward in any of these proceedings were taken into account in both proceedings.

1.3. Registration

(7) Following a request by the complainant supported by the required evidence the Commission adopted on 1 March 2013 Commission Regulation (EU) No 182/2013[(5)] making imports of crystalline silicon PV modules and key components (i.e. cells and wafers) originating in or consigned from the PRC subject to registration as of 6 March 2013.

(8) Some interested parties claimed that the decision for registration of imports was unfounded, as the conditions were not met pursuant to Article 24(5) of the basic Regulation. However, these claims were not substantiated or based on factual evidence. At the time the decision was taken to register imports the Commission had sufficient *prima facie* evidence justifying the need to register imports, in particular a sharp increase both in terms of absolute imports and in terms of market share. The claims in this regard had therefore to be rejected.

1.4. Parties concerned by the proceeding

(9) The Commission officially advised the complainants, other known Union producers, the known exporting producers in the PRC, the PRC authorities and known importers of the initiation of the proceeding. Interested parties were given the

opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(10) In view of the apparent high number of exporting producers, Union producers and unrelated importers, all known exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to the product concerned during the investigation period as defined in recital (38) below. This information was requested under Article 27 of the basic Regulation in order to enable the Commission to decide whether sampling would be necessary and if so, to select samples. The authorities of the PRC were also consulted.

(a) Sampling of exporting producers

(11) Initially 121 Chinese exporting producers/groups of producers provided the requested information and agreed to be included in a sample. The cooperating companies represent more than 80 % of the total Chinese export volume. On the basis of the information received from the exporting producers and in accordance with Article 27 of the basic Regulation the Commission initially proposed a sample of seven exporting producers/groups of exporting producers.

(12) The selected sample of seven groups of companies consists of the three cooperating exporters with the largest volume of exports of modules, the two cooperating exporters with the largest volume of exports of cells and the two cooperating exporters with the largest volume of exports of wafers. The sample of these seven groups of exporting producers served as the basis to determine the level of subsidisation for those groups as well as the level of subsidisation for all cooperating exporting producers not included in the sample, as required by Articles 15(2) and 15(3) of the basic Regulation. As explained in recital (46) below, the Commission excluded wafers from the product scope in the definitive stage of the investigation. Certain companies were selected into the sample on the basis of their largest volumes of exports of wafers. However, taking into account the fact that the Commission had already investigated these companies, verified the data submitted by them and also the fact that all of these companies had significant exports of modules and/or cells it was not deemed necessary to amend the sample.

(13) The number of sampled exporting producers was eventually deemed to be eight companies/groups. This is because, although it was initially reported that the Jinko Solar Co. Ltd and Renesola Jiangsu Ltd were related, it was subsequently established that they were not.

(b) Sampling of Union producers

(14) The Commission announced in the Notice of Initiation that it had provisionally selected a sample of Union producers. All known Union producers and known producers' association were informed about the selection of the provisional sample of Union producers. This provisional sample consisted of nine Union producers out of the around 215 Union producers that were known prior to the initiation of

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the investigation to produce the like product, selected on the basis of the largest representative volume of production, taking into account the sales volume and the geographical location that could reasonably be investigated within the time available. It was ensured that the sample covers both vertically integrated and non-integrated Union producers. Interested parties were also invited to make their views known on the provisional sample.

(15) Several interested parties raised the following objections concerning the provisional sample of Union producers:

(i) Some parties submitted that the limited information provided with regard to the provisionally selected sample was insufficient and prevented them from making any meaningful comments on the proposed sample. In particular, they criticised that the identity of the Union producers was kept confidential and requested that the Member States where the sampled Union producers were located should be disclosed, as well as the selected Union producers' share of production in the total production volume of PV modules and cells and the percentage of production and sales represented by the sampled companies individually and by the sample as a whole.

(ii) The method used for the selection of the sample was contested on the grounds that it ‘confuses three different steps’, namely the support for the initiation of the investigation, definition of the Union industry and sampling. Therefore, it was claimed that it was unclear whether the Union industry was already defined at the time of the selection of the sample, and therefore whether the sample could be considered as representative. Without defining the Union industry at sampling stage, interested parties were prevented from verifying whether the provisional sample was representative, and thus whether on the basis of the sample, the situation of the Union industry during the investigation period as defined in recital (38) below could be correctly assessed. Furthermore, it was claimed that it was inappropriate to select the provisional sample on the basis of the replies of the Union producers to the examination of the support for the initiation of the investigation.

(iii) It was also claimed that the provisional sample was selected merely on the basis of companies which have expressed their support to the present investigation.

(iv) One party claimed that, since vertically integrated companies are included in the provisional sample, the production volume of cells may be double or triple counted which casts doubts on the overall representativity of the sample. It was requested that for vertically integrated producers only the production volume of modules should be counted, but not the volume of cells.

(v) The same party alleged that the data on which the selection of the sample was based were at least partly unreliable which could have an impact on the representativity of the provisional sample as a whole.

(vi) One party provided a list containing allegedly around 150 additional Union producers of the like product, claiming that they should have been taken into consideration for the purposes of selecting a sample of Union producers.

(16) The arguments raised by the parties were addressed as follows: The Union producers requested that their names be kept confidential due to the risk of retaliation. There were indeed real threats against Union producers to harm their business both in the Union and outside. The Commission considered that these requests were sufficiently substantiated to be granted. The disclosure of the location or share in production and sales of individual Union producers selected in the sample could easily reveal the identity of the producer concerned and the requests in this regard had to be rejected.

(17) The Commission did not 'confuse' the determination of the support for the initiation of the investigation, the determination of the Union industry and the selection of provisional sample as these steps remained independent from each other and were decided upon separately. It was not demonstrated to what extent the use of production and sales data provided by the Union producers in the context of the examination of the support for the initiation of the investigation had affected the representativity of the sample. At initiation the Union industry had indeed been provisionally defined. All available information concerning the Union producers, including information provided in the complaint and data collected from Union producers and other parties before the initiation of the investigation, was used in order to provisionally establish the total Union production for the investigation period, as defined in recital (38) below.

(18) All Union producers that replied to questions related to the support for the initiation of the investigation were considered for the sample, regardless of whether they supported, opposed or expressed no opinion on the investigation. This claim was therefore rejected.

(19) The question of double/triple counting has been considered when the provisional sample was selected. It appeared that excluding production and sales of cells of the vertically integrated Union producers would not take into consideration the part of the production of cells sold on the free market. It was therefore considered that excluding sales of cells from the total production volume would not necessarily lead to a more representative sample. Furthermore, the representativity of the sample was established not only on the basis of the production volume but also on the basis of the geographical spread and a balanced representation of vertically integrated and non-integrated producers. The relative representativeness of the production volume was calculated at the level of each type of the like product. On this basis, it was considered that the methodology to select the provisional sample was reasonable and the sample is therefore considered representative for the Union industry of the product under investigation as a whole. Therefore, this claim was rejected. As far as the reliability of data is concerned, the sample was selected on the basis of the information available at the time of the selection of the sample as provided for in Article 27 of the basic Regulation. Concerning the reliability of data used in the support of the initiation of the investigation, the investigation found no evidence that the data collected prior to the