Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty 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

COUNCIL IMPLEMENTING REGULATION (EU) No 1238/2013

of 2 December 2013

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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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9(4) and 14(1) thereof,

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

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) The European Commission ('the Commission') by Regulation (EU) No 513/2013[(2)] ('the provisional Regulation') 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 People's Republic of China ('the PRC' or the 'country concerned').

(2) The investigation was initiated following a complaint lodged on 25 July 2012 by EU ProSun ('the complainant') on behalf of producers representing more than 25 % of the total Union production of crystalline silicon photovoltaic ('PV') modules and key components. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

2. Registration

(3) As mentioned in recital (3) to the provisional Regulation, following a request by the complainant supported by the required evidence the Commission adopted on 1 March 2013 Regulation (EU) No 182/2013[(3)] making imports of crystalline silicon PV modules and key components (i.e. cells and wafers) originating in or consigned

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from the People's Republic of China subject to registration as of 6 March 2013. The provisional Regulation ceased the registration of imports for the purpose of the anti-dumping investigation in accordance with Article 14(5) of the basic Regulation since a provisional anti-dumping duty provided protection against dumped imports.

(4) Some interested parties claimed that the decision for registration of imports was unfounded, as the conditions were not met pursuant to Article 14(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.

3. Acceptance of an Undertaking with regards to provisional duties

(5) By Commission Decision 2013/423/EU[(4)], the Commission has accepted an undertaking offered by exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME').

4. Subsequent Procedure

(6) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('the provisional disclosure'), the Government of China ('GOC') and several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted the opportunity to be heard. The Association for Affordable Solar Energy ('AFASE'), representing importers, downstream and upstream operators and one importer requested and were afforded hearings in the presence of the Hearing Officer of the Directorate-General for Trade.

(7) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(8) In addition, verification visits were carried out at the premises of the following companies:

(i) Downstream operators

— Jayme de la Costa, Pedroso, Portugal

— Sunedison Spain Construction, Madrid, Spain

(ii) Independent consultant

— Europressedienst, Bonn, Germany

(9) AFASE questioned the legal basis for the visit carried out at the premises of Europressedienst, as it is not an interested party in this investigation and does therefore not fall under Article 16 of the basic Regulation. Europressedienst, as mentioned in recitals (99) and (120) to the provisional Regulation has provided information on

macroeconomic indicators. It is clarified that the Commission carried out an on-the-spot verification at the premises of Europressedienst for the sake of the principle of good administration to verify the reliability and correctness of data on which the Commission based its findings.

(10) The GOC reiterated the claim that its rights of defence in relation to access to the files open for inspection by interested parties were violated because (i) information was missing from the non-confidential files without 'good cause' being shown or providing sufficiently detailed summaries, or exceptionally, the reasons for the failure to provide the non-confidential summary, (ii) the non-confidential version of an entire questionnaire response of a Union producer was missing and (iii) the delays to make non-confidential versions of the Union producers' questionnaire responses available for interested parties were excessive.

(11) (i) Regarding the claim that information was missing from the open file, the interested party did not specify to which information it was referring to. (ii) Its claim that the non-confidential version of an entire questionnaire response has not been made available was incorrect. (iii) As to the delays in making available the non-confidential replies of the questionnaires of the sampled Union producers, it had been explained to the party concerned that the questionnaires were only added to the non-confidential file after having been checked as to their completeness and reasonableness of the summaries. In order to ensure the Union producers' right to anonymity, it was also ascertained that the non-confidential versions of the questionnaires did indeed not reveal the identity of the Union producer concerned. In some cases, the non-confidential versions needed therefore to be corrected accordingly by the party submitting it before they could be made available for other interested parties.

(12) In any event, it is considered that this did in no way affect the interested parties' rights of defence. The Commission has given all the interested parties the opportunity to respond to the information included in the file open for inspection in time so that their comments could be taken into consideration, when substantiated and warranted before any conclusions were made in the investigation. The interested party had every opportunity to comment on the questionnaires from sampled Union producers also following the provisional and the final disclosure. Therefore, even if the disclosures and the access to the file open for inspection by interested parties are based on different legal provisions, it should be noted that there were ample opportunities for the interested parties to comment on all information made available by any party to the investigation. Therefore, this claim had to be rejected.

(13) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping 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 and the definitive collection of the amounts secured by way of provisional duty ('the final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

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(14) The comments submitted by the interested parties were considered and taken into account where appropriate.

5. Acceptance of an undertaking in view of definitive duties

(15) Following final disclosure, the Commission received an amended offer for an undertaking by exporting producers together with the CCCME, which covers also the parallel anti-subsidy investigation. By Commission Implementing Decision 2013/707/EU[(5)] of 4 December 2013 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, the Commission has confirmed the acceptance of that undertaking.

6. Parties concerned by the proceeding

(a) Sampling of Union producers

(16) Following the imposition of provisional measures, some interested parties reiterated the argument that excessive use of confidentiality prevented them from commenting on the selection of the sample of Union producers and thus from the proper exercise of their rights of defence. The Commission already addressed this issue in recital (9) to the provisional Regulation. As no new information was provided in this respect, the conclusions in recital (9) to the provisional Regulation are confirmed.

(17) The GOC reiterated its claim that the use of confidentiality of the names of the complainants and sampled Union producers is not warranted. As already stated in recital (9) to the provisional Regulation, the Union producers requested that their names be kept confidential due to the risk of retaliation. The Commission considered that these requests were sufficiently substantiated to be granted. The information that has been provided to the Commission in order to substantiate the risk of retaliation cannot be disclosed to third parties, as such disclosure would defeat the purpose of the request for confidentiality. Moreover, in a case, where, as reported by the GOC, a Union producer re-evaluated its position and revealed its identity by filing an application for a Court case against the provisional Regulation, there is no longer ground to disclose information on the basis of which anonymity was granted, as the identity has been revealed.

(18) Further to the provisional disclosure, one interested party reiterated that the information on which the selection of the sample was based was not reliable, without, however, providing any new evidence in this regard. This claim was therefore rejected.

(19) Following the final disclosure, the CCCME reiterated the arguments about the method used for the selection of the provisional sample of the Union producers. It claims in particular that the Institutions have not taken into account 120 producers. The Commission already addressed this issue in recital (9) to the provisional Regulation. Moreover, the Institutions have verified the activities of the companies provided on that list. It turned out that that list mostly includes installers, distributors, related importers and exporting producer in China, Taiwan, and India. It therefore was

not apt to demonstrate that the Institutions had overlooked a significant number of Union producers. Moreover, the CCCME has not contested the total Union production by providing alternative figures, nor has it put forward any evidence that the representativity of the sample could have been affected, as none of the alleged additional Union producers would have been selected into the sample, had it been known to the Commission.

(20) Following the exclusion of wafers from the definition of the product concerned, and thus from the scope of this investigation as cited in recital (32) below, the final sample consisted of eight Union producers. In the absence of any further comments with regard to the sampling of Union producers, the findings in recitals (7) to (10) to the provisional Regulation are herewith confirmed, as amended above.

(b) Sampling of unrelated importers

(21) Following the imposition of provisional measures, as mentioned in recital (12) to the provisional Regulation, the Commission contacted additional importers that had already cooperated in the investigation at the initiation stage by providing basic information on their activities related to the product under investigation during the investigation period, as specified in the Notice of Initiation. The purpose was to determine whether the size of the sample of unrelated importers could be increased. Six companies, qualifying as unrelated importers trading the product concerned (i.e. purchasing and reselling it), came forward and were willing to cooperate further in the investigation. Out of these six, five replied within the deadline. Out of the five replies received, only three were sufficiently complete and allowed for a meaningful assessment. On this basis, the sample of the unrelated importers was enlarged and consisted of four importers for modules, representing around 2 % — 5 % of the total imports from the country concerned. Given the structure of the unrelated importers, which were mostly small and medium-sized companies, it was not possible to have a sample representing a larger share, given the limited resources at the disposal of the Institutions.

(22) In the absence of any further comments with regard to the sampling of unrelated importers, recitals (11) and (12) to the provisional Regulation, as amended above are confirmed.

(c) Sampling of exporting producers

(23) Following the provisional disclosure, a number of non-sampled companies submitted comments arguing that their situation is different from the sampled companies. They argued that, as a consequence, they should benefit from an individual duty rate pursuant to Article 17(3) of the basic Regulation. However, due to the high number of co-operating companies (often groups of companies), it was not possible to individually investigate all companies. Therefore, pursuant to Article 9(6), these companies are subject to the weighted average duty of the sampled companies.

(24) In the absence of any further comments with regard to the sampling of exporting producers recitals (13) and (14) to the provisional Regulation are confirmed.