Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing 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 and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration

COMMISSION REGULATION (EU) No 513/2013

of 4 June 2013

imposing 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 and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China 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 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 7 and Article 14(5) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 6 September 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-dumping proceeding with regard to imports into the European Union ('the Union') of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in 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) 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 from the PRC subject to registration as of 6 March 2013.

3. **Parties concerned by the proceeding**

(4) The Commission officially advised the complainant, other known Union producers, the known exporting producers, the PRC authorities and known importers of the initiation of the investigation. The Commission also advised producers in the USA, which was envisaged as a possible analogue country.

(5) 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. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(6) In view of the large number of exporting producers in the country concerned, unrelated importers and Union producers involved in the investigation, and in order to complete the investigation within the statutory time limits, the Commission announced in the Notice of Initiation that it had decided to limit to a reasonable number the exporting producers in the country concerned, unrelated importers and Union producers that would be investigated by selecting a sample in accordance with Article 17 of the basic Regulation (this process is also referred to as 'sampling').

(a) *Sampling of Union producers*

(7) 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 9 Union producers out of the around 220 Union producers that were known prior to the initiation of the investigation to produce the like product (see recital 26 below), 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. A number of interested parties commented on the provisional sample and one party requested a hearing with the Hearing Officer.

(8) 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, cells and wafers 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 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 19 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 wafers and 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 and wafers.

(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.

(9) The arguments raised by the parties were addressed as follows:

(i) 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.

(ii) 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

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 513/2013. (See end of Document for details)*

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 19 below.

(iii) 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.

(iv) The question of double/triple counting has been considered when the provisional sample was selected. It appeared that excluding production and sales of wafers and cells of the vertically integrated Union producers would not take into consideration the part of the production of wafers and cells sold on the free market. It was therefore considered that excluding sales of wafers and 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.

(v) 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 17(1) 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 initiation was significantly deficient. Therefore, it can be reasonably assumed that the basis on which the provisional sample was selected was sufficiently reliable. Therefore, this claim was rejected.

(vi) Concerning the list of around 150 additional Union producers, it should be noted that this information was submitted far outside the deadline set for interested parties to comment on the selection of the provisional sample and for Union producers to come forward and to request to be selected in the sample. Moreover, about 30 of the Union producers contained in this list were in fact known to the Commission at the time of the selection of the

sample. Furthermore, all Union producers that made themselves known after the publication of the Notice of Initiation were considered when selecting the sample. On this basis, the representativity of the sample has not been affected. Therefore, this claim was rejected.

(10) Following receipt of comments, the composition of the sample was revised on the ground that there were indications that one of the selected companies would not have been in the position to fully cooperate. In order to maintain the level of representativity of the sample an additional Union producer was selected. This revised sample consisted thus of 10 companies, selected on the basis of the largest representative volume for each level of production, taking into account sales volume on the EU market and geographical location that could reasonably be investigated within the time available. As a result, the revised sample of Union producers accounted, expressed as a percentage of out of the total Union production, between 18 and 21 % for modules, between 17 and 24 % for cells and between 28 and 35 % for wafers and covered vertically integrated and non-integrated producers. Given that a precise percentage would allow calculating the production volume of the above mentioned additional Union producer and thus its identity could be determined, no such precise percentages could be disclosed.

(b) *Sampling of unrelated importers*

(11) In view of the potentially high number of unrelated importers, sampling was envisaged in the Notice of Initiation in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all 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 under investigation during the investigation period, as defined in recital 19 below.

(12) Of the around 250 unrelated importers put forward by the complainant, that the Commission contacted, 36 parties replied to the sampling form attached to the Notice of Initiation, 35 for modules, only 1 reply for cells and no reply for wafers. The sample was selected in accordance with Article 17 of the basic Regulation to cover the largest representative volume of imports which can reasonably be investigated within the time available. On this basis, the Commission selected a sample of three unrelated importers for modules and one for cells. Further to the comments received, the Commission decided to include one more unrelated importer for modules in the sample. This company came forward and argued that its level of activity would justify the inclusion in the sample. Their initial submission was therefore re-examined and it became apparent that a clerical error occurred in relation to the volume of imports reported by the importer concerned. On these grounds, the company in question was included in the sample of unrelated importers. Moreover, two companies that were initially selected in the sample did not reply to the questionnaires and were therefore considered as non-cooperating with the investigation and excluded from the sample of unrelated importers. Therefore, the sample of the unrelated importers consisted of two importers for modules and one importer for cells, representing around 2-5 % of the total imports from the country concerned. After the receipt of the questionnaire reply,