Commission Regulation (EU) No 182/2013 of 1 March 2013 making 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 subject to registration

COMMISSION REGULATION (EU) No 182/2013

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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 anti-dumping Regulation'), and in particular Articles 10(4) and 14(5) thereof,

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[(2)] ('the basic anti-subsidy Regulation'), and in particular Articles 16(4) and 24(5) thereof,

After consulting the Advisory Committee,

Whereas:

(1) On 6 September 2012, the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union*[(3)], the initiation of an anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China ('China' or 'the country concerned') 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 modules and key components (i.e. cells and wafers).

(2) On 8 November 2012, the Commission announced by a notice published in the *Official Journal of the European Union*[(4)] the initiation of an anti-subsidy proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in China following a complaint lodged on 25 September 2012 by EU ProSun on behalf of producers representing more than 25 % of the total Union production of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers).

A. **PRODUCT CONCERNED**

(3) The product subject to the registration is crystalline silicon photovoltaic modules or panels and cells and wafers of the type used in crystalline silicon photovoltaic modules or panels, currently falling within CN codes ex 3818 00 10, 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 country concerned. The cells and wafers have a thickness not exceeding 400 μm.

(4) From the product under registration the following product types are excluded:

— 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).

B. REQUEST

(5) The registration requests pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation were made by the complainant in the complaints at the origin of the proceedings initiated by the notices mentioned in recitals 1 and 2 and were reiterated and supplemented in the subsequent submissions. The complainant requested that imports of the product concerned are made subject to registration so that measures may subsequently be applied against those imports from the date of such registration.

C. GROUNDS FOR THE REGISTRATION

(6) According to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

(7) The complainant claimed that registration is justified as the product concerned was being dumped and subsidised and significant injury to the Union industry, which is difficult to repair, was being caused by the low-priced imports.

(8) As regards dumping, the Commission has at its disposal sufficient prima facie evidence that imports of the product concerned from China are being dumped. The complainant provided evidence on the normal value based on total cost of production plus a reasonable amount for selling, general and administrative expenses and for profits, based on the choice of the US as analogue country. The evidence on dumping is based on the comparison of the normal value thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. As a whole, and given the extent of the dumping margin alleged, this evidence provides sufficient support at this stage that the exporters in question practice dumping.

(9) In relation to subsidisation, the Commission has at its disposal sufficient prima facie evidence that imports of the product concerned from the country concerned are being subsidised. The alleged subsidies consist, inter alia, of preferential lending to the solar panel industry (e.g. credit lines and low-interest policy loans granted by State-Owned Commercial Banks and Government Policy Banks, export credit subsidy programmes, export guarantees, insurances for green technologies, granting access to offshore holding companies, loan repayments by Government), grant programmes (e.g. Export Product Research and Development Fund, 'Famous Brands' and 'China World Top Brands' subsidies, Funds for Outward Expansion of Industries in Guangdong Province, Golden Sun Demonstration Programme), government provision of goods for less than adequate remuneration (e.g. provision of polysilicon, aluminium extrusions, glass, power and land), direct tax exemption and reduction programmes (e.g. income tax exemptions or reductions under the Two Free/Three Half Programme, income tax exemptions for export-oriented Foreign Invested Enterprises (FIEs), income tax reductions for FIEs based on geographic location, income tax reductions for FIEs purchasing Chinese-made equipment, tax offset for R & D at FIEs, tax refunds for reinvestment of FIEs' profits in export-oriented enterprises, preferential corporate income tax for FIEs recognised as High and New Technology Industries, tax reductions for High and New Technology Enterprises involved in designated projects, preferential income tax policy for enterprises in the North-East Region, Guangdong Province tax programmes) and indirect tax and import tariff programmes (e.g. VAT exemptions for use of imported equipment, VAT rebates on FIEs' purchases of Chinese-made equipment, VAT and tariff exemptions for purchases of fixed assets under the Foreign Trade Development Programme). It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of China or other regional governments (including public bodies) and confer a benefit to the recipients. They are alleged to be contingent upon export performance and/or the use of domestic over imported goods and/or are limited to certain sectors and/or types of enterprises and/or locations, and are therefore specific and countervailable. In the anti-subsidy complaint and the subsequent submissions related to the request for registration, the evidence regarding the price and volume of imports shows a massive increase of imports in absolute terms and in terms of market share in the period between 2009 and 2011. Given the above, the evidence provides sufficient support at this stage that the exports of the product in question are benefiting from countervailable subsidies.

(10) As regards injury, the Commission has at its disposal sufficient prima facie evidence that the exporters' dumping and subsidy practices are causing material injury to the Union industry, which is difficult to repair. In the complaints and the subsequent submissions related to the requests for registration, the evidence regarding the price and volume of imports shows a massive increase of imports in absolute terms and in terms of market share in the period between 2009 and 2011. Despite the decrease in imports in absolute terms in 2012, the market share of the imports of the product concerned from the country concerned further increased. The volume and prices of the imported product concerned have had a negative impact on the quantities sold and level of the prices charged in the Union market and the market share held by the Union industry resulting

in substantial adverse effects on the overall performance and the financial situation of the Union industry. This evidence consists of data, contained in the complaints and the subsequent submissions regarding registration but is also supported by information from the Union industry and public sources, concerning the key injury factors set out in Article 3(5) of the basic anti-dumping Regulation and Article 8(4) of the basic anti-subsidy Regulation.

(11) The Commission also has at its disposal sufficient prima facie evidence, contained in the anti-dumping complaint and the subsequent correspondence, that the importers were aware, or should have been aware, that the exporters' dumping practices are injurious or are likely to be injurious to the Union industry. A number of articles in the press over an extended period of time suggested that the Union industry may have been suffering injury as a result of dumped imports from the country concerned. Finally, given the extent of the dumping that may be occurring, it is reasonable to assume that the importers would be aware, or should be aware, of the situation.

(12) In relation to subsidisation, the request provides sufficient evidence of critical circumstances where for the subsidised product in question injury, which is difficult to repair, is caused by massive imports benefiting from countervailable subsidies in a relatively short period of time. Evidence of such circumstances includes the rapid nature of the deterioration of the situation of the Union industry.

(13) As regards dumping, the Commission has at its disposal sufficient prima facie evidence that such injury is being caused or would be caused by a further substantial rise in these imports, which in light of the timing and the volume of the dumped imports and other circumstances (such as the growing level of stocks or reduced capacity utilisation) would be likely to seriously undermine the remedial effect of any definitive duties, unless such duties would be applied retroactively. In addition, in view of the initiation of the current proceedings, it is reasonable to assume that the imports of the product concerned may further increase prior to the adoption of provisional measures, if any, and inventories may be rapidly built up by the importers.

D. PROCEDURE

(14) In view of the above, the Commission has concluded that the complainant provided sufficient prima facie evidence to justify making imports of the product concerned subject to registration in accordance with Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation.

(15) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

E. REGISTRATION

(16) Pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation imports of the product concerned should be made subject to registration in order to ensure that, should the investigations result in