# COMMISSION IMPLEMENTING REGULATION (EU) 2017/1408

## of 1 August 2017

## withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU 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 EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic anti-dumping Regulation'), and in particular Article 8 thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ([2]) ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Having regard to Council Implementing Regulation (EU) No 1238/2013 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 ([3]), and in particular Article 3 thereof,

Having regard to Council Implementing Regulation (EU) No 1239/2013 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 ([4]), and in particular Article 2 thereof,

Informing the Member States,

Whereas:

### A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013 ([5]), the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').

(2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.

(3) By Decision 2013/423/EU ([6]), the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ([7]), the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 176, 30.6.2016, p. 55.
([3]) OJ L 325, 5.12.2013, p. 1.
([4]) OJ L 325, 5.12.2013, p. 66.
([5]) OJ L 152, 5.6.2013, p. 5.
([6]) OJ L 209, 3.8.2013, p. 26.
([7]) OJ L 209, 3.8.2013, p. 1.

(4) By Implementing Regulation (EU) No 1238/2013, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013, the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

(5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ([1]) the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:

(a) Shenzhen Topray Solar Co. Ltd, together with its related companies in the PRC and in the Union, jointly covered by the TARIC additional code: B880 ('Topray Solar');

(b) Yuhuan BLD Solar Technology Co. Ltd, together with its related company in the PRC, jointly covered by the TARIC additional code: B899 ('BLD Solar').

(6) By Implementing Decision 2014/657/EU ([2]) the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital (4) above, together with the undertaking, are jointly referred to thereafter as 'measures'.

(7) By Implementing Regulation (EU) 2015/866 ([3]) the Commission withdrew the acceptance of the undertaking for three exporting producers.

(8) By Implementing Regulation (EU) 2015/1403 ([4]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(9) By Implementing Regulation (EU) 2015/2018 ([5]) the Commission withdrew the acceptance of the undertaking for two exporting producers.

(10) The Commission initiated an expiry review investigation of the anti-dumping measures by a Notice of Initiation published in the *Official Journal of the European Union* ([6]) on 5 December 2015.

(11) The Commission initiated an expiry review investigation of the countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ([7]) on 5 December 2015.

(12) The Commission also initiated a partial interim review of the anti-dumping and countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ([8]) on 5 December 2015.

(13) By Implementing Regulation (EU) 2016/115 ([9]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(14) By Implementing Regulation (EU) 2016/185 ([10]), the Commission extended the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

([1]) OJ L 325, 5.12.2013, p. 214.
([2]) OJ L 270, 11.9.2014, p. 6.
([3]) OJ L 139, 5.6.2015, p. 30.
([4]) OJ L 218, 19.8.2015, p. 1.
([5]) OJ L 295, 12.11.2015, p. 23.
([6]) OJ C 405, 5.12.2015, p. 8.
([7]) OJ C 405, 5.12.2015, p. 20.
([8]) OJ C 405, 5.12.2015, p. 33.
([9]) OJ L 23, 29.1.2016, p. 47.
([10]) OJ L 37, 12.2.2016, p. 76.

(15) By Implementing Regulation (EU) 2016/184 ([1]), the Commission extended the definitive countervailing duty imposed by Implementing Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

(16) By Implementing Regulation (EU) 2016/1045 ([2]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(17) By Implementing Regulation (EU) 2016/1382 ([3]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(18) By Implementing Regulation (EU) 2016/1402 ([4]) the Commission withdrew the acceptance of the undertaking for another three exporting producers.

(19) By Implementing Regulation (EU) 2016/1998 ([5]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(20) By Implementing Regulation (EU) 2016/2146 ([6]) the Commission withdrew the acceptance of the undertaking for another two exporting producers.

(21) Following the expiry and interim reviews referred to in recitals (10)-(12), the Commission maintained the measures in force by Implementing Regulations (EU) 2017/366 ([7]) and (EU) 2017/367 ([8]).

(22) The Commission also initiated a partial interim review on the form of measures by a Notice of Initiation published in the *Official Journal of the European Union* ([9]) on 3 March 2017.

(23) By Implementing Regulation (EU) 2017/454 ([10]) the Commission withdrew the acceptance of the undertaking for four exporting producers.

(24) By Implementing Decision (EU) 2017/615 ([11]), the Commission accepted a proposal by a group of exporting producers together with the CCCME concerning the implementation of the undertaking.

(25) By Implementing Regulation (EU) 2017/941 ([12]), the Commission withdrew the acceptance of the undertaking for two exporting producers.

## B. **TERMS OF THE UNDERTAKING**

(26) The exporting producers agreed, inter alia, not to sell the product covered to the first independent customer in the Union below a certain minimum import price ('the MIP') within the associated annual level of imports to the Union ('annual level') laid down in the undertaking. The MIP is set on a cash equivalent basis. If the payment term is different from the cash equivalent basis, a certain deduction is applied to the invoice value when compliance with the MIP is compared.

([1]) OJ L 37, 12.2.2016, p. 56.
([2]) OJ L 170, 29.6.2016, p. 5.
([3]) OJ L 222, 17.8.2016, p. 10.
([4]) OJ L 228, 23.8.2016, p. 16.
([5]) OJ L 308, 16.11.2016, p. 8.
([6]) OJ L 333, 8.12.2016, p. 4.
([7]) OJ L 56, 3.3.2017, p. 1.
([8]) OJ L 56, 3.3.2017, p. 131.
([9]) OJ C 67, 3.3.2017, p. 16.
([10]) OJ L 71, 16.3.2017, p. 5.
([11]) OJ L 86, 31.3.2017, p. 14.
([12]) OJ L 142, 2.6.2017, p. 43.

(27) The undertaking also clarifies, in a non-exhaustive list, what constitutes a breach of the undertaking. That list includes, in particular, making compensatory arrangements with customers, making misleading declarations regarding the origin of the product concerned or the identity of the exporter. Taking part in a trading system leading to a risk of circumvention also constitutes a breach. The list also includes that issuing a commercial invoice, as defined in the undertaking, for which the underlying financial transaction is not in conformity with its face value is a breach.

(28) Moreover, the exporting producers undertook not to sell any product other than the product covered produced or traded by them in excess of a given small percentage limit of the total sales value of the product covered to the same customers to which they sell the product covered ('the parallel sales limit').

(29) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to the Union ('the quarterly reports'). The reporting also includes reporting of re-sales to the first independent customer in the Union through a related importer listed in the undertaking. These latter reports enable the Commission to monitor whether the re-sale price of the related importer to the first independent customer is in accordance the MIP. Sales of products other than the product covered to the same customers also have to be reported. This data submitted in these quarterly reports must be complete and correct and the reported transactions should fully comply with the terms of the undertaking.

(30) The exporting producer is liable for the breach of any of its related parties, whether or not listed in the undertaking.

(31) The exporting producers also undertook to consult the Commission regarding any difficulties or questions, technical or otherwise, which may arise during the implementation of the undertaking.

(32) The undertaking also stipulates that the Commission may withdraw the acceptance of the undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable.

(33) The undertaking also obliges the exporting producers to notify the Commission in due time in case they intend to establish a party in the Union to which they will be related.

(34) For the purpose of ensuring compliance with the undertaking, the exporting producers also undertook to allow verification visits at their premises in order to verify the accuracy and completeness of data submitted to the Commission in the quarterly reports and to provide all information considered necessary by the Commission.

(35) The undertaking further stipulates that the acceptance of the undertaking by the Commission is based on trust and any action which would harm the relationship of trust established with the Commission should justify the withdrawal of the undertaking.

## C. **MONITORING OF THE EXPORTING PRODUCERS**

(36) While monitoring compliance with the undertaking, the Commission verified information submitted by the two exporting producers BLD Solar and Topray Solar that was relevant to the undertaking. In addition, the Commission also carried out verification visits at the premises of these exporting producers. The findings listed in recitals (37) to (48) address the problems identified for BLD Solar and Topray Solar which oblige the Commission to withdraw acceptance of the undertaking for those two exporting producers.

## D. **GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING**

### (a) BLD Solar

(37) At the time of the verification visit in December 2016, BLD Solar's accounts showed that their four biggest allegedly unrelated customers had substantial amounts still due to be paid for modules purchased from BLD Solar. By way of example, one customer had not paid for more than one year after the last purchase. The balance still due amounted to more than 8 % of all BLD Solar sales to this customer. Such outstanding payments constitute 'unlimited credits' which are benefits to the customer. They are not allowed as compliance with the MIP cannot be verified for these transactions as set out in recital (26). BLD Solar had issued a large number of debit notes two days prior to the verification visit, allegedly claiming the outstanding payments. None of these debit notes had been entered into the accounts. In addition, BLD Solar failed to consult the Commission on this issue contrary to the obligations set out in recital (31).

(38) BLD Solar paid a substantial amount to one of the four customers mentioned in recital (37). This benefit constitutes a compensatory arrangement. In addition, the payment was not reported. The Commission analysed the implications of this benefit and concluded that BLD Solar had breached its obligation not to enter into compensatory arrangements, as mentioned in recital (27). Moreover, by not reporting this benefit, BLD breached the reporting obligations referred to in recital (29).

(39) According to publicly available information, BLD Solar had an office in the Union sharing the same address with one of its customers mentioned in recital (37). BLD Solar claimed this being unrealised business cooperation. Another one out of the four customers mentioned in recital (37) published a website which is nearly identical with BLD Solar's site, including the same linguistic errors.

(40) The Commission also found that BLD accounted the sales to two importers under a joint customer account. In its quarterly reports to the Commission, however, BLD declared these customers as different entities, hence putting into question the correctness of the reports, as referred to in recital (29). In addition, BLD gave contradictory explanations regarding the business relationship with one of these customers which is related to a Chinese exporting producer not subject to the undertaking.

(41) The Commission analysed the findings set out in recitals (39) to (40) and concluded that these harmed the relationship of trust established with the Commission.

(42) In addition the Commission concluded that the findings set out in recitals (37) and (38) BLD Solar breached the terms of the undertaking, as described in recitals (26), (27), (29) and (31).

(b) Topray Solar

(43) In addition to modules, Topray Solar sold big quantities of so-called consumer products like solar fountains and briefcase chargers. These products are not covered by the undertaking. No undertaking invoice should be issued for these products. However, Topray Solar unilaterally defined these products as product covered by the undertaking and issued undertaking invoices to the same customers which contained both: products covered and products non-covered by the undertaking. Moreover, the value of the product not covered by the undertaking was in excess of the parallel sales limit to the same customers. In addition, Topray Solar did not consult the Commission contrary to the obligations set out in recital (31).

(44) Apart from the sales referred to in recital (43), Topray Solar sold additional products not covered by the undertaking (e.g. solar charge controllers) to the same customers without reporting these sales to the Commission. These sales further increased the parallel sales limit excess referred to in recital (43) and constitute a breach of the reporting obligations referred to in recital (29).

(45) The Commission analysed the implications of this pattern of trade and concluded that there is a high risk of cross-compensation of the MIP, namely if products covered and products not covered are sold to the same customers in excess of the parallel sales limit. The Commission concluded that the identified pattern of trade renders the monitoring of Topray Solar's undertaking impracticable.

(46) Topray Solar also sold significant quantities of products not covered by the undertaking (e.g. solar charge controllers) to its related importer in the Union. Topray Solar could not demonstrate that these products were ultimately not sold to a customer which purchased modules in parallel. The Commission analysed the implication of this pattern of trade and concluded that a high risk of cross-compensation exists insofar Topray Solar's related importer may sell products not covered by the undertaking to the same customers that purchase modules in parallel from Topray Solar. Such trade pattern renders the monitoring of Topray Solar's undertaking impracticable. Topray Solar also failed to report these transactions to the Commission, thus breaching the obligations as described in recital (29).

(47) The Commission also found that Topray Solar accounted the sales to two importers under a joint customer account. In its quarterly reports to the Commission, however, Topray Solar declared these customers as different entities, hence putting into question the correctness of the reports, as referred to in recital (29).

(48) Topray Solar also failed to notify the Commission about the acquisition of two related companies in the Union, in breach of the requirement set out in recital (33) above. In addition, a minor sales transaction to one of these companies was reported as sales to an unrelated importer, in breach of the obligations mentioned in recital (29).

## E. **ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING**

(49) The undertaking stipulates that a breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission is required to assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(50) The Commission accordingly assessed the impact of the breaches by BLD Solar and Topray Solar on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(51) The responsibility for the breaches lies alone with the exporting producers in question; the monitoring has not revealed any systematic breaches by a major number of exporting producers or the CCCME.

(52) The Commission therefore concluded that the overall functioning of the undertaking is not affected and that there are no grounds for withdrawal of the acceptance of the undertaking for all exporting producers and the CCCME.

## F. **WRITTEN SUBMISSIONS AND HEARINGS**

(53) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation. The Commission received comments from an association representing the Union producers of solar modules and cells.

(54) The association requested the Commission to withdraw the acceptance of the undertaking for the two exporting producers with retroactive effect as it considers that these breaches had seriously and repeatedly harmed the Union industry and distorted the Union market.

(55) The Commission examined whether there are reasons to invalidate individual undertaking invoices issued by the two exporting producers pursuant to Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013.

(56) As regards BLD Solar, the Commission could not establish that there was a direct link between the trade practises described in recitals (36) to (41) and individual undertaking invoices. Therefore, it considers that it is not appropriate to invalidate any undertaking invoices.

(57) Regarding Topray Solar, the Commission considered the cases where products covered by the undertaking were sold together with products not covered by the undertaking to the same customer and where undertaking invoices were issued for the sales of products not covered by the undertaking. The Commission considered that Topray Solar, by issuing undertaking invoices in these cases, was in a position to conceal the excess of the parallel sales limit. Therefore, the Commission concluded that there is a direct link between the trade practise constituting a breach of the undertaking and the issue of such individual undertaking invoices.

## G. **INVALIDATION OF UNDERTAKING INVOICES**

(58) The sales transactions referred to in recital (57) by Topray Solar are linked to the following undertaking invoices:

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2013092301 | 23.9.2013 |
| XD2015042401 | 24.4.2015 |
| XD2016041802 | 18.4.2016 |
| XD2014060401 | 4.6.2014 |
| XD2014061102 | 11.6.2014 |

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2014061104 | 11.6.2014 |
| XD2014071001 | 10.7.2014 |
| XD2014071801 | 18.7.2014 |
| XD2014072301 | 23.7.2014 |
| XD2014080201 | 2.8.2014 |
| XD2014091201 | 12.9.2014 |
| XD2014120501 | 5.12.2014 |
| XD2014121902 | 19.12.2014 |
| XD2014122602 | 26.12.2014 |
| XD2015021001 | 10.2.2015 |
| XD2015021501 | 15.2.2015 |
| XD2015032601 | 26.3.2015 |
| XD2015041201 | 12.4.2015 |
| XD2015052001 | 20.5.2015 |
| XD2015052002 | 20.5.2015 |
| XD2015060401 | 4.6.2015 |
| XD2015060402 | 4.6.2015 |
| XD2015062701 | 27.6.2015 |
| XD2015062701-R | 5.7.2016 |
| XD2015071001 | 10.7.2015 |
| XD2015071001-R | 5.7.2016 |
| XD2015072803 | 28.7.2015 |
| XD2015072804 | 28.7.2015 |
| XD2015081401 | 14.8.2015 |
| XD2015081401-R | 5.7.2016 |
| XD2015092401 | 24.9.2015 |
| XD2015093003 | 30.9.2015 |
| XD2015120801 | 8.12.2015 |
| XD2015122101 | 21.12.2015 |
| XD2015122401 | 24.12.2015 |
| XD2016010701 | 7.1.2016 |
| XD2016011101 | 11.1.2016 |
| XD2016032001 | 20.3.2016 |

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2016032801 | 28.3.2016 |
| XD2016041501 | 15.4.2016 |
| XD2016041801 | 18.4.2016 |
| XD2016052701 | 27.5.2016 |
| XD2016061702 | 17.6.2016 |
| XD2016062401 | 24.6.2016 |
| XD2016071201 | 12.7.2016 |
| XD2014021901 | 19.2.2014 |
| XD2016011001 | 10.1.2016 |
| XD2016011002 | 10.1.2016 |
| XD2016051502 | 15.5.2016 |
| XD2015091801 | 18.9.2015 |
| XD2014111401 | 14.11.2014 |
| XD2014032801 | 28.3.2014 |
| XD2014050901 | 9.5.2014 |
| XD2014080601 | 6.8.2014 |
| XD2014082801 | 28.8.2014 |
| XD2014091901 | 19.9.2014 |
| XD2014121901 | 19.12.2014 |
| XD2015020602 | 6.2.2015 |
| XD2015032001 | 20.3.2015 |
| XD2015052201 | 22.5.2015 |
| XD2015062702 | 27.6.2015 |
| XD2015091803 | 18.9.2015 |
| XD2015101601 | 16.10.2015 |
| XD2015112602 | 26.11.2015 |
| XD2015123102 | 31.12.2015 |
| XD2016042002 | 20.4.2016 |
| XD2016052002 | 20.5.2016 |
| XD2016071801 | 18.7.2016 |
| XD2016072702 | 27.7.2016 |
| XD2016092601 | 26.9.2016 |
| XD2015021002 | 10.2.2015 |

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2015021502 | 15.2.2015 |
| XD2015032602 | 26.3.2015 |
| XD2015112601 | 26.11.2015 |
| XD2016020301 | 3.2.2016 |
| XD2016042701 | 27.4.2016 |
| XD2016061701 | 17.6.2016 |
| XD2016062801 | 28.6.2016 |
| XD2016070101 | 1.7.2016 |
| XD2015051302 | 13.5.2015 |
| XD2016090501 | 5.9.2016 |
| XD2016072701 | 27.7.2016 |

(59) The Commission disclosed the reasons for invalidation and the list of invoices to Topray Solar and to the importers concerned as reported by Topray Solar in its periodic reports. The Commission granted certain extensions to both Topray Solar and several importers to submit their comments upon reasoned justification.

(60) Topray Solar made general statements that it had mistakenly reported the solar products not covered by the undertaking and that such mistake would not be sufficient to trigger the invalidation of undertaking invoices. It also submitted that it had no intention to breach the undertaking. Topray Solar further submitted that it had a misunderstanding of the solar products not covered by the undertaking.

(61) As referred to in recitals (29) and (31), the exporter is obliged to issue undertaking invoices according to the provisions of the undertaking. Any difficulties or questions regarding the implementation have to be consulted with the Commission. In this regard, the Commission refers to comprehensive guidance that had been issued with regard to the term 'product covered'. Moreover, the Commission held several training seminars, *inter alia*, on this issue. Finally, the assessment whether an undertaking invoice should be invalidated is only based on factual evidence.

(62) Therefore, the arguments mentioned in recital (60) are rejected.

(63) Topray Solar also contested the invalidation of invoices. It claimed that Article 8 and 10(5) of the basic anti-dumping Regulation and Article 13 and 16(5) of the basic anti-subsidy Regulation do not contain an empowerment to invalidate undertaking invoices. It claimed that the Commission cannot impose duties/order customs to levy duties on imports released for free circulation before the date of the withdrawal of the acceptance of the undertaking if imports have not been registered. The claim is based on an understanding that the Commission may decide to impose provisional duties before the withdrawal of the acceptance of the undertaking. According to Article 8(10) of the basic anti-dumping Regulation and Article 13(10) of the basic anti-subsidy Regulation, a provisional duty may be imposed in case where the investigation that led to the undertaking has not been completed. This is not the case in the case at hand where the investigations have been completed with the imposition of definitive anti-dumping and countervailing duties. Moreover, the empowerment to invalidate undertaking invoices stems directly from Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013. Consequently, in accordance with Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, in case of breach or withdrawal of the acceptance of the undertaking by the Commission, the definitive duties shall automatically apply. The claim is therefore rejected.

(64) In addition, six importers submitted comments concerning the invalidation of undertaking invoices.

(65) Two importers claimed that they had traded in good faith with Topray Solar and could not be in position to know that Topray Solar did not respect the undertaking. The first importer also claimed that the products not covered amounted to a small fraction compared to the solar modules it purchased from Topray Solar. In addition, the first importer submitted that the invalidation of invoices would be devastating and that it would become liable for circumstances beyond its control. The second importer claimed to have only one commercial transaction with Topray Solar in August 2013 and it did not know about the acceptance of the undertaking at that time.

(66) The Commission recalls that importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 11 and 12 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission, as stipulated in Decision 2013/423/EU accepting the undertaking and confirmed by Implementing Decision 2013/707/EU. The Commission also notes that the product not covered purchased by the first importer did not represent a small fraction: it was well beyond the parallel sales limit. In addition, the Commission points out that Decision 2013/423/EU was published prior to the conclusion of the sales transaction claimed by the second importer. The Commission also notes that none of the importers contested that the undertaking invoices were issued for products not covered by the undertaking. The arguments of the two importers are therefore rejected.

(67) The third importer submitted only the respective documentation related to the undertaking invoice which the Commission proposes to invalidate. Similarly to the other two importers referred to in recitals (65) and (66), this importer did not contest that the undertaking invoice was issued for a product not covered by the undertaking. Therefore, the Commission confirms its initial finding that the undertaking invoice has to be invalidated.

(68) The fourth importer claimed that it cannot be hold responsible for the breach of Topray Solar and the undertaking invoice was issued for solar panels, which are product covered by the undertaking. In addition, this importer submitted general comments concerning the absence of a reasonable time limit for submission. The fifth importer submitted that the price of solar modules purchased from Topray Solar were well above the alleged MIP and that they imported less or the same quantity of other products (controllers) than solar panels.

(69) The Commission first recalls that the 'product covered' by the undertaking are only those solar panels that are explicitly referred to in recital (6). The MIP is not applicable for products not covered by the undertaking, in particular for solar panels falling outside the scope defined in recital (6). It is meaningless to compare the sales price of the product not covered by the undertaking to the alleged MIP. These products were not subject to the investigation; hence their price cannot be verified and compared to the alleged MIP. Topray Solar should not have issued undertaking invoices at all for products not covered by the undertaking. By issuing these undertaking invoices in breach of the undertaking, Topray Solar was in position to conceal the excess of the parallel sales limit. The sales of controllers referred to by the fifth importer constitute yet an additional layer to the already existing breach of the parallel sales limit as referred in recital (44). As regards the reasonable time limit to provide comments, the Commission recalls that despite the extension granted to the fourth importer, it failed to submit further comments on the substance of the disclosure. The Commission therefore rejects these arguments.

(70) The sixth importer claimed that the other products for which undertaking invoices were issued being solar panels purchased for demonstrative purposes.

(71) The Commission notes that indeed part of the undertaking invoice could have been considered as a sample and the importer could have followed the respective customs procedure for samples to release them into free circulation in the Union. However, this was not the case and the importer did not contest that Topray Solar issued undertaking invoices for product not covered by the undertaking. Therefore, this argument is rejected.

(72) Therefore, in accordance with Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013, these invoices are declared invalid. The customs debt incurred at the time of acceptance of the declaration for release for free circulation should be recovered by the national customs authorities under Article 105(3)-(6) of Regulation (EU) No 952/2013 of the European Parliament and of the Council ([1]) when the withdrawal of the undertaking in relation to the exporting producer enters into force. The national customs authorities responsible for the collection of duties will be informed accordingly.

([1]) OJ L 269, 10.10.2013, p. 1.

(73) In this context, the Commission recalls that pursuant to Article 3(1)(b) read in conjunction with Annex III, Nr. 7 of Implementing Regulation (EU) No 1238/2013 and to Article 2(1)(b) read in conjunction with Annex 2, Nr. 7 of Implementing Regulation (EU) No 1239/2013, imports are only exempted from duties if the invoice indicates the price and possible rebates for the product covered. Where those conditions are not complied with, duties are due, even where the commercial invoice accompanying the goods has not been invalidated by the Commission.

## H. **WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITIONS OF DEFINITIVE DUTIES**

(74) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission concluded that the acceptance of the undertaking for BLD Solar and Topray Solar should be withdrawn.

(75) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) No 1238/2013 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) No 1239/2013 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Topray Solar and BLD Solar as of the day of entry into force of this Regulation.

(76) The Commission also recalls that where the customs authorities of the Member States have indications that the price presented on an undertaking invoice does not correspond to the price actually paid, they should investigate whether the requirement to include any rebates in the undertaking invoices has been violated or the MIP has not been respected. Where customs authorities of the Member States conclude that there has been such a violation or whether the MIP has not been respected, they should collect the duties as a consequence thereof. In order to facilitate, on the basis of Article 4(3) of the Treaty, the work of the customs authorities of the Member States, the Commission should share in such situations the confidential text and other information of the undertaking for the sole purpose of national proceedings.

(77) For information purposes the table in the Annex II to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

*Article 1*

Acceptance of the undertaking in relation to the following companies is hereby withdrawn:

| Name of the company | TARIC additional code |
|---|---|
| Shenzhen Topray Solar Co. Ltd, Shanxi Topray Solar Co. Ltd, Leshan Topray Cell Co. Ltd, together with their related company in the Union | B880 |
| Yuhuan BLD Solar Technology Co. Ltd, Zhejiang BLD Solar Technology Co. Ltd | B899 |

*Article 2*

1. The undertaking invoices listed in Annex I to this Regulation are declared invalid.

2. The anti-dumping and countervailing duties due at the time of acceptance of the customs declaration for release for free circulation under Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 shall be collected.

*Article 3*

1. Where customs authorities have indications that the price presented on an undertaking invoice pursuant to Article 3(1)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(1)(b) of Implementing Regulation (EU) No 1239/2013 issued by one of the companies from which the undertaking was initially accepted by Implementing Decision 2013/707/EU does not correspond to the price paid and that therefore those companies may have violated the undertaking, the customs authorities may, if necessary for the purpose of conducting national proceedings, request the Commission to disclose to them a copy of the undertaking and other information in order to verify the applicable minimum import price ('MIP') on the day when the undertaking invoice was issued.

2. Where that verification reveals that the price paid is lower than the MIP, the duties due as a consequence under Article 8(9) of Regulation (EU) 2016/1036 and Article 13(9) of Regulation (EU) 2016/1037 shall be collected.

Where that verification reveals that discounts and rebates have not been included in the commercial invoice, the duties due as a consequence under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 shall be collected.

3. The information in accordance with paragraph 1 may only be used for the purpose of enforcement of duties due under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013. In this context, customs authorities of the Member States may provide the debtor of those duties with this information for the sole purpose of safeguarding their rights of defence. Such information may under no circumstances be disclosed to third parties.

*Article 4*

This Regulation shall enter into force on the 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, 1 August 2017.

*For the Commission*
*The President*
Jean-Claude JUNCKER

*ANNEX I*

List of undertaking invoices issued by Shenzhen Topray Solar Co. Ltd, Shanxi Topray Solar Co. Ltd or Leshan Topray Cell Co. Ltd, which are declared invalid:

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2013092301 | 23.9.2013 |
| XD2015042401 | 24.4.2015 |
| XD2016041802 | 18.4.2016 |
| XD2014060401 | 4.6.2014 |
| XD2014061102 | 11.6.2014 |
| XD2014061104 | 11.6.2014 |
| XD2014071001 | 10.7.2014 |
| XD2014071801 | 18.7.2014 |
| XD2014072301 | 23.7.2014 |
| XD2014080201 | 2.8.2014 |
| XD2014091201 | 12.9.2014 |
| XD2014120501 | 5.12.2014 |
| XD2014121902 | 19.12.2014 |
| XD2014122602 | 26.12.2014 |
| XD2015021001 | 10.2.2015 |
| XD2015021501 | 15.2.2015 |
| XD2015032601 | 26.3.2015 |
| XD2015041201 | 12.4.2015 |
| XD2015052001 | 20.5.2015 |
| XD2015052002 | 20.5.2015 |
| XD2015060401 | 4.6.2015 |
| XD2015060402 | 4.6.2015 |
| XD2015062701 | 27.6.2015 |
| XD2015062701-R | 5.7.2016 |
| XD2015071001 | 10.7.2015 |
| XD2015071001-R | 5.7.2016 |
| XD2015072803 | 28.7.2015 |
| XD2015072804 | 28.7.2015 |
| XD2015081401 | 14.8.2015 |
| XD2015081401-R | 5.7.2016 |
| XD2015092401 | 24.9.2015 |
| XD2015093003 | 30.9.2015 |
| XD2015120801 | 8.12.2015 |
| XD2015122101 | 21.12.2015 |
| XD2015122401 | 24.12.2015 |
| XD2016010701 | 7.1.2016 |
| XD2016011101 | 11.1.2016 |
| XD2016032001 | 20.3.2016 |

| Number of Commercial invoice accompanying goods subject to an undertaking | Date |
|---|---|
| XD2016032801 | 28.3.2016 |
| XD2016041501 | 15.4.2016 |
| XD2016041801 | 18.4.2016 |
| XD2016052701 | 27.5.2016 |
| XD2016061702 | 17.6.2016 |
| XD2016062401 | 24.6.2016 |
| XD2016071201 | 12.7.2016 |
| XD2014021901 | 19.2.2014 |
| XD2016011001 | 10.1.2016 |
| XD2016011002 | 10.1.2016 |
| XD2016051502 | 15.5.2016 |
| XD2015091801 | 18.9.2015 |
| XD2014111401 | 14.11.2014 |
| XD2014032801 | 28.3.2014 |
| XD2014050901 | 9.5.2014 |
| XD2014080601 | 6.8.2014 |
| XD2014082801 | 28.8.2014 |
| XD2014091901 | 19.9.2014 |
| XD2014121901 | 19.12.2014 |
| XD2015020602 | 6.2.2015 |
| XD2015032001 | 20.3.2015 |
| XD2015052201 | 22.5.2015 |
| XD2015062702 | 27.6.2015 |
| XD2015091803 | 18.9.2015 |
| XD2015101601 | 16.10.2015 |
| XD2015112602 | 26.11.2015 |
| XD2015123102 | 31.12.2015 |
| XD2016042002 | 20.4.2016 |
| XD2016052002 | 20.5.2016 |
| XD2016071801 | 18.7.2016 |
| XD2016072702 | 27.7.2016 |
| XD2016092601 | 26.9.2016 |
| XD2015021002 | 10.2.2015 |
| XD2015021502 | 15.2.2015 |
| XD2015032602 | 26.3.2015 |
| XD2015112601 | 26.11.2015 |
| XD2016020301 | 3.2.2016 |
| XD2016042701 | 27.4.2016 |
| XD2016061701 | 17.6.2016 |
| XD2016062801 | 28.6.2016 |
| XD2016070101 | 1.7.2016 |
| XD2015051302 | 13.5.2015 |
| XD2016090501 | 5.9.2016 |
| XD2016072701 | 27.7.2016 |

*ANNEX II*

List of companies:

| Name of the company | TARIC additional code |
|---|---|
| Jiangsu Aide Solar Energy Technology Co. Ltd | B798 |
| Alternative Energy (AE) Solar Co. Ltd | B799 |
| Anhui Chaoqun Power Co. Ltd | B800 |
| Anji DaSol Solar Energy Science & Technology Co. Ltd | B802 |
| Anhui Schutten Solar Energy Co. Ltd<br>Quanjiao Jingkun Trade Co. Ltd | B801 |
| Anhui Titan PV Co. Ltd | B803 |
| Xi'an SunOasis (Prime) Company Limited<br>TBEA SOLAR CO. LTD<br>XINJIANG SANG'O SOLAR EQUIPMENT | B804 |
| Changzhou NESL Solartech Co. Ltd | B806 |
| Changzhou Shangyou Lianyi Electronic Co. Ltd | B807 |
| CHINALAND SOLAR ENERGY CO. LTD | B808 |
| ChangZhou EGing Photovoltaic Technology Co. Ltd | B811 |
| CIXI CITY RIXING ELECTRONICS CO. LTD<br>ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD<br>HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD | B812 |
| CSG PVtech Co. Ltd | B814 |
| China Sunergy (Nanjing) Co. Ltd<br>CEEG Nanjing Renewable Energy Co. Ltd<br>CEEG (Shanghai) Solar Science Technology Co. Ltd<br>China Sunergy (Yangzhou) Co. Ltd<br>China Sunergy (Shanghai) Co. Ltd | B809 |
| Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd | B816 |
| EOPLLY New Energy Technology Co. Ltd<br>SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD<br>JIANGSU EOPLLY IMPORT & EXPORT CO. LTD | B817 |
| Zheijiang Era Solar Co. Ltd | B818 |
| GD Solar Co. Ltd | B820 |
| Greenway Solar-Tech (Shanghai) Co. Ltd<br>Greenway Solar-Tech (Huaian) Co. Ltd | B821 |
| Guodian Jintech Solar Energy Co. Ltd | B822 |
| Hangzhou Bluesun New Material Co. Ltd | B824 |

| Name of the company | TARIC additional code |
|---|---|
| Hanwha SolarOne (Qidong) Co. Ltd | B826 |
| Hengdian Group DMEGC Magnetics Co. Ltd | B827 |
| HENGJI PV-TECH ENERGY CO. LTD | B828 |
| Himin Clean Energy Holdings Co. Ltd | B829 |
| Jiangsu Green Power PV Co. Ltd | B831 |
| Jiangsu Hosun Solar Power Co. Ltd | B832 |
| Jiangsu Jiasheng Photovoltaic Technology Co. Ltd | B833 |
| Jiangsu Runda PV Co. Ltd | B834 |
| Jiangsu Sainty Photovoltaic Systems Co. Ltd<br>Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd | B835 |
| Jiangsu Shunfeng Photovoltaic Technology Co. Ltd<br>Changzhou Shunfeng Photovoltaic Materials Co. Ltd<br>Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd | B837 |
| Jiangsu Sinski PV Co. Ltd | B838 |
| Jiangsu Sunlink PV Technology Co. Ltd | B839 |
| Jiangsu Zhongchao Solar Technology Co. Ltd | B840 |
| Jiangxi Risun Solar Energy Co. Ltd | B841 |
| Jiangxi LDK Solar Hi-Tech Co. Ltd<br>LDK Solar Hi-Tech (Nanchang) Co. Ltd<br>LDK Solar Hi-Tech (Suzhou) Co. Ltd | B793 |
| Jiangyin Shine Science and Technology Co. Ltd | B843 |
| Jinzhou Yangguang Energy Co. Ltd<br>Jinzhou Huachang Photovoltaic Technology Co. Ltd<br>Jinzhou Jinmao Photovoltaic Technology Co. Ltd<br>Jinzhou Rixin Silicon Materials Co. Ltd<br>Jinzhou Youhua Silicon Materials Co. Ltd | B795 |
| Juli New Energy Co. Ltd | B846 |
| Jumao Photonic (Xiamen) Co. Ltd | B847 |
| King-PV Technology Co. Ltd | B848 |
| Kinve Solar Power Co. Ltd (Maanshan) | B849 |
| Lightway Green New Energy Co. Ltd<br>Lightway Green New Energy(Zhuozhou) Co. Ltd | B851 |
| Nanjing Daqo New Energy Co. Ltd | B853 |
| NICE SUN PV CO. LTD<br>LEVO SOLAR TECHNOLOGY CO. LTD | B854 |

| Name of the company | TARIC additional code |
|---|---|
| Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd | B857 |
| Ningbo Komaes Solar Technology Co. Ltd | B858 |
| Ningbo South New Energy Technology Co. Ltd | B861 |
| Ningbo Sunbe Electric Ind Co. Ltd | B862 |
| Ningbo Ulica Solar Science & Technology Co. Ltd | B863 |
| Perfectenergy (Shanghai) Co. Ltd | B864 |
| Perlight Solar Co. Ltd | B865 |
| SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD<br>SHANGHAI ALEX NEW ENERGY CO. LTD | B870 |
| Shanghai Chaori Solar Energy Science & Technology Co. Ltd | B872 |
| Propsolar (Zhejiang) New Energy Technology Co. Ltd<br>Shanghai Propsolar New Energy Co. Ltd | B873 |
| SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD | B874 |
| SHANGHAI SOLAR ENERGY S&T CO. LTD<br>Shanghai Shenzhou New Energy Development Co. Ltd<br>Lianyungang Shenzhou New Energy Co. Ltd | B875 |
| Shanghai ST Solar Co. Ltd<br>Jiangsu ST Solar Co. Ltd | B876 |
| Shenzhen Sacred Industry Co. Ltd | B878 |
| Sopray Energy Co. Ltd<br>Shanghai Sopray New Energy Co. Ltd | B881 |
| SUN EARTH SOLAR POWER CO. LTD<br>NINGBO SUN EARTH SOLAR POWER CO. LTD<br>Ningbo Sun Earth Solar Energy Co. Ltd | B882 |
| SUZHOU SHENGLONG PV-TECH CO. LTD | B883 |
| TDG Holding Co. Ltd | B884 |
| Tianwei New Energy Holdings Co. Ltd<br>Tianwei New Energy (Chengdu) PV Module Co. Ltd<br>Tianwei New Energy (Yangzhou) Co. Ltd | B885 |
| Wenzhou Jingri Electrical and Mechanical Co. Ltd | B886 |
| Shanghai Topsolar Green Energy Co. Ltd | B877 |
| Shenzhen Sungold Solar Co. Ltd | B879 |
| Wuhu Zhongfu PV Co. Ltd | B889 |
| Wuxi Saijing Solar Co. Ltd | B890 |

| Name of the company | TARIC additional code |
|---|---|
| Wuxi Shangpin Solar Energy Science and Technology Co. Ltd | B891 |
| Wuxi Solar Innova PV Co. Ltd | B892 |
| Wuxi Taichang Electronic Co. Ltd<br>China Machinery Engineering Wuxi Co.Ltd<br>Wuxi Taichen Machinery & Equipment Co. Ltd | B893 |
| Xi'an Huanghe Photovoltaic Technology Co. Ltd<br>State-run Huanghe Machine-Building Factory Import and Export Corporation<br>Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd | B896 |
| Yuhuan Sinosola Science & Technology Co. Ltd | B900 |
| Zhangjiagang City SEG PV Co. Ltd | B902 |
| Zhejiang Fengsheng Electrical Co. Ltd | B903 |
| Zhejiang Global Photovoltaic Technology Co. Ltd | B904 |
| Zhejiang Heda Solar Technology Co. Ltd | B905 |
| Zhejiang Jiutai New Energy Co. Ltd<br>Zhejiang Topoint Photovoltaic Co. Ltd | B906 |
| Zhejiang Kingdom Solar Energy Technic Co. Ltd | B907 |
| Zhejiang Koly Energy Co. Ltd | B908 |
| Zhejiang Mega Solar Energy Co. Ltd<br>Zhejiang Fortune Photovoltaic Co. Ltd | B910 |
| Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd | B911 |
| Zhejiang Shinew Photoelectronic Technology Co. Ltd | B912 |
| Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company<br>Zhejiang Yauchong Light Energy Science & Technology Co. Ltd | B914 |
| Zhejiang Sunrupu New Energy Co. Ltd | B915 |
| Zhejiang Tianming Solar Technology Co. Ltd | B916 |
| Zhejiang Trunsun Solar Co. Ltd<br>Zhejiang Beyondsun PV Co. Ltd | B917 |
| Zhejiang Wanxiang Solar Co. Ltd<br>WANXIANG IMPORT & EXPORT CO LTD | B918 |
| ZHEJIANG YUANZHONG SOLAR CO. LTD | B920 |