

**COMMISSION IMPLEMENTING REGULATION (EU) 2015/866****of 4 June 2015**

**withdrawing the acceptance of the undertaking for three 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 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic anti-dumping Regulation'), and in particular Article 8 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 <sup>(2)</sup> ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Informing the Member States,

Whereas:

**A. UNDERTAKING AND OTHER EXISTING MEASURES**

- (1) By Regulation (EU) No 513/2013 <sup>(3)</sup>, 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 <sup>(4)</sup>, the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 <sup>(5)</sup>, 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.
- (4) By Implementing Regulation (EU) No 1238/2013 <sup>(6)</sup>, 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 <sup>(7)</sup>, the Council also imposed a definitive countervailing duty on imports into the Union of the product concerned.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 188, 18.7.2009, p. 93.

<sup>(3)</sup> OJ L 152, 5.6.2013, p. 5.

<sup>(4)</sup> OJ L 209, 3.8.2013, p. 26.

<sup>(5)</sup> OJ L 209, 3.8.2013, p. 1.

<sup>(6)</sup> OJ L 325, 5.12.2013, p. 1.

<sup>(7)</sup> OJ L 325, 5.12.2013, p. 66.

- (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 <sup>(1)</sup> 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, including:
- (a) CSI Solar Power (China) Inc., Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co. Ltd together with their related company in the European Union jointly covered by the TARIC additional code: B805 ('Canadian Solar');
  - (b) ET Solar Industry Limited and ET Energy Co. Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B819 ('ET Solar'); and
  - (c) Renesola Zhejiang Ltd and Renesola Jiangsu Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B921 ('ReneSola').
- (6) By Implementing Decision 2014/657/EU <sup>(2)</sup> the Commission accepted a proposal by the group of the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the product 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 antidumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to as 'measures'.

#### B. TERMS OF THE UNDERTAKING THAT HAVE BEEN BREACHED

- (7) 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 laid down in the undertaking.
- (8) 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 their customers, and making misleading declarations regarding the origin of the product concerned or the identity of the exporter.
- (9) The exporting producers also undertook not to sell any products 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').
- (10) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to and re-sales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and the reported transactions fully comply with the terms of the undertaking.
- (11) 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.

#### C. TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL BY THE COMMISSION IN THE ABSENCE OF A BREACH

- (12) 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.

<sup>(1)</sup> OJ L 325, 5.12.2013, p. 214.

<sup>(2)</sup> OJ L 270, 11.9.2014, p. 6.

- (13) 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 shall justify the withdrawal of the undertaking.

#### D. MONITORING OF THE EXPORTING PRODUCERS

- (14) While monitoring compliance with the undertaking, the Commission verified information submitted by the exporting producers that was relevant to the undertaking. The findings listed in recitals 15 to 32 below address the problems identified for Canadian Solar, ET Solar and ReneSola, which oblige the Commission to withdraw acceptance of the undertaking for those three exporting producers.

#### E. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKINGS

##### (i) Canadian Solar

- (15) Canadian Solar provided certain benefits to several customers, which were not listed in their quarterly reports. The Commission analysed these non-reported benefits and concluded that Canadian Solar has breached their reporting obligation under the undertaking.
- (16) Further analysis of those non-reported benefits has led to the conclusion that Canadian Solar also breached their obligation to respect the MIP, as deducting these benefits from the sales price in the transactions with the customers concerned decreased those prices below the MIP.
- (17) Canadian Solar conducted also parallel sales of modules covered and not covered by the undertaking to the same customers in the same calendar year. This was done through parallel sales to the same customer, on a large scale, of, on the one hand, modules imported into the Union without having been subject to the measures and then stockpiled (through multiple channels) and, on the other hand, the product covered. Those sales exceeded substantially the parallel sales limit authorised by the undertaking. Thereby, Canadian Solar has breached that limit.
- (18) In addition, the Commission analysed the implications of that pattern of trade and concluded that there is a high risk of cross-compensation where the products covered and not covered by the undertaking are sold to the same customers, in particular where sales take place in such significant quantities.
- (19) Canadian Solar also used in their business model one unrelated original equipment manufacturer ('OEM'). That OEM assembled modules for Canadian Solar in a third country, allegedly using cells from another third country. Imports of modules by Canadian Solar from that OEM into the Union are not subject to the undertaking, because the undertaking only covers direct sales from the PRC into the Union. Those imports and sales, as well as the OEM, hence fall outside the scope of the monitoring by the Commission.
- (20) The Commission analysed the implications of that pattern of trade on the practicability of the undertaking. The Commission concluded that, although limited in scope, that OEM renders the monitoring of Canadian Solar's undertaking impracticable.

##### (ii) ET Solar

- (21) ET Solar sold the product covered by the undertaking as a part of sales of complete solar parks. The imports of the product covered into the Union were listed in the ET Solar's quarterly reports, but none of the sales of modules into the solar parks or as part of the solar parks was. ET Solar was, however, obliged under the undertaking to report those sales. When selling a solar park, ET Solar was selling a bundle of goods and services: the modules installed in the park, the remaining equipment necessary for the park, and the service of building the park and connecting it to the grid.

- (22) Furthermore, the sale of complete solar parks constitutes a parallel sale of the product covered and the products and services not covered by the undertaking to the same customers. These sales exceeded substantially the parallel sales limit authorised by the undertaking. Thereby, ET Solar has breached that limit.
- (23) In addition, the Commission analysed the implications of that pattern of trade and concluded that there is a high risk of cross-compensation where the product covered, and products and services not covered by the undertaking are sold to the same customers, in particular where sales take place in such significant quantities.
- (24) Moreover, ET Solar is not able to demonstrate that the MIP is respected in the sales of complete solar parks, as there is no sales price per se for the modules as the customer pays only a total price for the installation and no further reliable breakdown of the price for the modules, other equipment and services was provided.
- (25) Finally, the Commission analysed the implications of that pattern of trade and also concluded that this renders the monitoring of ET Solar's undertaking impracticable.

(iii) **ReneSola**

- (26) ReneSola's business model, besides using their own production capacities in the PRC, relies on an extensive network of unrelated OEMs in third countries and in the Union to assemble modules for them. Those OEMs use cells of various origins, including cells originating in or consigned from the PRC. Those cells are imported into the third countries and the Union, in a number of cases, through related companies located in different third countries.
- (27) The imports of modules from those OEMs in third countries and the sales of modules assembled by the OEM in the Union are not subject to the undertaking, because the undertaking only allows direct sales from the PRC into the Union. Those imports and sales, as well as the OEMs, hence fall outside the scope of the monitoring by the Commission.
- (28) The Commission analysed the implications of this pattern of trade and concluded that it renders the monitoring of ReneSola's undertaking impracticable.
- (29) Furthermore, ReneSola provided in its quarterly reports misleading information about transactions to a related importer in the Union. The related importer's transactions records inspected on the spot do not match the export sales reported to the Commission by ReneSola under the undertaking. Further verification established that ReneSola has not reported the cancellations or modifications of a large number of shipments to that related importer.
- (30) The Commission analysed these inconsistencies between ReneSola's undertaking reports and actual sales transactions and concluded that ReneSola has breached their reporting obligation under the undertaking.

(iv) **Conclusions**

- (31) The findings of breaches of the undertaking and its impracticability established for Canadian Solar, ET Solar, and ReneSola require the withdrawal of the acceptances of the undertaking for those three exporting producers pursuant to Article 8(7) and (9) of the basic anti-dumping Regulation, Article 13(7) and (9) of the basic anti-subsidy Regulation, and pursuant to the terms of the undertaking.
- (32) In addition, the Commission analysed the implications of actions by Canadian Solar, ET Solar, and ReneSola listed in recitals 15 to 30 above on their relationships of trust established with the Commission at the acceptance of the undertaking. The Commission concluded that the combination of these actions harmed the relationship of trust with these three exporting producers. Therefore, this accumulation of breaches also justifies the withdrawal of acceptances of the undertaking for those three exporting producers pursuant to the terms of the undertaking.

**F. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING**

- (33) The undertaking stipulates that any 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 shall assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.
- (34) The Commission has accordingly assessed the impact of the breaches by Canadian Solar, ET Solar, and ReneSola on the practicability of the undertaking with the effect for all exporting producers and the CCCME.
- (35) The responsibility for those breaches lies alone with the three exporting producers in question; the monitoring and the verifications have not revealed any systematic breaches by a major number of exporting producers or the CCCME.
- (36) The Commission therefore concludes 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.

**G. WRITTEN SUBMISSIONS AND HEARINGS**

- (37) 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. Canadian Solar, ET Solar and ReneSola submitted comments and have been heard. The CCCME also participated in the hearings. Comments were submitted from an association representing importers and users of the product covered and from an association representing the Union producers of solar modules and cells.

**(i) Canadian Solar**

- (38) Canadian Solar contested that they failed to report certain benefits that they provided to several customers and that by providing these, they violated the MIP. They argue that they were under no obligation to report these benefits, for three reasons:
- (39) First, that these benefits are part of the selling, general and administrative expenses ('SG&A') of their Chinese entity, and that any SG&A cannot, at the same time, constitute a benefit for purchasers of the product covered. Those categories would be mutually exclusive.
- (40) Second, that based on the guidance issued by the Commission's services only benefits paid by related companies in the Union should be reported and deducted from the sales price as benefits.
- (41) Third, that in any event, these expenses do not constitute a benefit for the purchasers of the product covered, because the payments correspond to the market value of the services rendered.
- (42) The Commission rejects those arguments as Canadian Solar was obliged to report any benefits given to customers and failed to do so. This is for the following reasons:
- (43) First, no exception for benefits classified as SG&A is mentioned in the undertaking. Indeed, SG&A can at the same time be a benefit for the purchaser, where the purchaser receives payment of a cost classified as SG&A.
- (44) Second, the argument of Canadian Solar presupposes that the payments correspond indeed to the market value of services rendered. Canadian Solar has provided no sufficient proof in that regard. Furthermore, even if they did correspond to the market value, *quod non*, this does not mean that payments under such a classification do not confer a benefit to the recipient, in this case the client of Canadian Solar, where there is a clear link between buying the service and selling the product covered.

- (45) Third, Canadian Solar quotes the guidance issued by the Commission's services out of context. Contrary to the view of Canadian Solar, these expenses do constitute benefits for the purchasers. The fact that they are only mentioned as benefits in an answer to a question concerning related companies in the Union cannot be relied upon *a contrario* to exclude that such expenses paid by the Chinese entity constitute benefits. There is no economic or legal rationale for treating such expenses of the Chinese entity differently from the same type of expenses of the related companies in the Union.
- (46) Fourth, the guidance issued by the Commission's services has a disclaimer that it cannot bind the Commission and that the replies in the guidance issued by the Commission's services are not individualised and based on limited information. For these reasons, the guidance has no binding value for the Commission.
- (47) The Commission therefore upholds its conclusion that Canadian Solar has breached their reporting obligation under the undertaking and that they also breached their obligation to respect the MIP, as deducting those benefits from the sales price in the transactions with the customers concerned decreased those prices below the MIP.
- (48) Canadian Solar defended also their parallel sales of products covered and not covered by the undertaking to the same customers above the parallel sales limit authorised by the undertaking.
- (49) Canadian Solar submitted that right after the entry into force of the undertaking, they first sold their stock of products predominantly originating in the PRC which was imported and customs cleared without having been subject to the measures and then stockpiled. Only once that stock had been exhausted, Canadian Solar sold products covered by the undertaking to the same customers.
- (50) Canadian Solar furthermore submits that customers that purchased OEM modules produced in and consigned from third countries were never sold products covered by the undertaking.
- (51) Furthermore, Canadian Solar refers to a guidance document issued by the CCCME, pursuant to which cells and modules other than those covered by the undertaking would not qualify as '*any other type of product produced or traded by the company*'. They claim that it was only by e-mail of 12 December 2013 that the Commission's services clarified the opposite.
- (52) Lastly, Canadian Solar claims that its sales of products imported and customs cleared without having been subject to the measures and then stockpiled are excluded from the obligations under the undertaking, that they sold modules not covered by the undertaking at a similar price as the MIP, and that they first liquidated stocks and only then sold the product covered. For those reasons, they do not see a risk of cross-compensation.
- (53) The Commission cannot accept those arguments. For the reasons as set out in recital 46 above, the guidance referred to by Canadian Solar cannot bind the Commission. It is clear from the wording and the general scheme of the undertaking that the exporting producer cannot sell to one and the same customer cells and modules covered by the undertaking and cells and modules which are not covered the undertaking above the parallel sales limit authorised by the undertaking.
- (54) This also applies to situations where modules were imported and customs-cleared without having been subject to the measures and then stockpiled. Indeed, in case of a parallel sale of modules, the risk of cross-compensation is even larger than in case of parallel sales of any other product.
- (55) The Commission is not obliged to prove the existence of cross-compensation, but only to show that there is a risk of cross-compensation by a particular exporting producer. The provisions of the undertaking aim at preventing the possibility of cross-compensation, because it is impossible to monitor at what price products not covered by the undertaking are sold. Finally, the e-mail of 12 December 2013 did not create a new legal situation, but only confirmed the text of the undertaking.
- (56) Canadian Solar has confirmed in its post-hearing submission that they sold, in 2013, modules that were imported and customs-cleared without having been subject to the measures and then stockpiled to the same customers to whom they also, in the same year, sold the product concerned, and that the value of the former sales is more than marginal. With regard to the argument that Canadian Solar first sold those modules, and then only the product covered, the Commission observes that the undertaking does not contain any exception on the basis of the order of sales. The Commission therefore rejects this argument.

- (57) Canadian Solar also submitted that they imported and resold limited quantities of OEM modules after entry into force of the undertaking, and that they stopped purchasing these products for the Union market in the meantime.
- (58) Indeed, Canadian Solar confirmed that the OEM strategy has been developed in order to adapt their business model to the undertaking, because OEM modules were used for selling modules included in kits, where the value of the other products contained in the kit exceeds the parallel sales limit authorised by the undertaking.
- (59) In addition, Canadian Solar submitted that they did not sell OEM modules to customers who purchased modules covered by the undertaking. Lastly, Canadian Solar claims that the Undertaking does not expressly forbid sales of OEM modules.
- (60) The Commission rejects these arguments. While the undertaking does indeed not expressly refer to sales of OEM modules, such OEM sales are not subject to the undertaking, as set out in recital 19 above. Hence OEM sales fall outside the scope of the monitoring by the Commission.
- (61) Moreover, the undertaking clearly states that changing the pattern of trade to the Union without economic justification other than the avoidance of trade defence measures is a breach of the undertaking.
- (62) In that respect, imports and re-sales of OEM modules into the Union by Canadian Solar constituted a change in the pattern of trade, designed to adapt the pattern of trade to circumvent the terms of the undertaking.
- (63) Moreover the basic anti-dumping Regulation and the basic anti-subsidy Regulation contain no requirement for a minimum percentage of sales in the assessment of a breach of an undertaking.
- (64) Therefore the Commission upholds its finding that, although limited in scope, these OEM sales rendered the monitoring of Canadian Solar's undertaking impracticable, and, on top, constitute a breach of the undertaking since they changed Canadian Solar's pattern of trade.
- (65) Finally, Canadian Solar argues that they always complied with the applicable rules and took all reasonable steps to properly interpret and implement the undertaking. In particular, they stress that they and their legal counsel made more than 50 requests to the Commission and the CCCME in order to seek clarification on compliance of Canadian Solar with the undertaking, and that they always complied with any advice they received.
- (66) The submissions of Canadian Solar do not change the overall assessment that the accumulation of all findings for Canadian Solar harmed the relationship of trust with the Commission on the impracticability of Canadian Solar's undertaking, and as such justify the withdrawal. Indeed, the commercial strategy of Canadian Solar aimed at reducing the practical scope of its obligations under the undertaking to a minimum, regardless of the spirit of the undertaking and the need to preserve the relationship of trust.

(ii) **ET Solar**

- (67) ET Solar clarified during the hearing that they had not reported sales of the product covered where those sales formed part of a solar park. Furthermore, they explained that many sales that occurred after the entry into force of the undertaking concerned modules that were customs-cleared (but not sold) without having been subject to the measures. They also explained a formatting error and another minor correction. As a result, the gap between sales on the books of the company and sales reported could be considered marginal.
- (68) ET Solar confirmed at the same occasion that they did omit to report these allegedly marginal quantities of sales to the Commission, and that significant quantities of solar modules were customs cleared without having been subject to the measures, but not sold prior to the entry into force of the undertaking. No explanation was provided as to whether those sales took place to the same customers to whom sales of the product covered took subsequently place.

- (69) ET Solar submitted also that sales of solar parks are not prohibited under the undertaking, as these are complex, integrated products that should be treated as a single unit and, as such, do not fall under the definition of the 'product covered'.
- (70) Therefore, ET Solar considers that the parallel sales limit for the sale of 'other products' authorised by the undertaking is not applicable to sales of solar parks, and that such sales do not need to be reported. At the same time, they confirmed that the intra-group transactions that result in the import of the product covered into the Union were reported.
- (71) The Commission rejects these arguments of ET Solar for following reasons.
- (72) The size of the breach is irrelevant. As mentioned in recital 63 above, the basic anti-dumping Regulation and the basic anti-subsidy Regulation contain no requirement for a minimum percentage of sales in the assessment of a breach of an undertaking.
- (73) Furthermore, the allegedly marginal quantities referred to in recital 67 above are not negligible, but correspond to a sizeable amount of several full containers. In addition, ET Solar could not exclude that significant quantities of solar modules customs-cleared without having been subject to the measures were sold to the same customers that also purchased the product covered; therefore, ET Solar's explanations show that the rules on the risk of cross-compensation have also been violated.
- (74) Solar parks sold by ET Solar mainly consist of modules imported under the undertaking. ET Solar was obliged to report the sales of these modules under the undertaking. Moreover, the undertaking clearly provides, without exception, that no more than the parallel sales limit of 'other products' can be sold to the same customer to avoid the risk of cross-compensation.
- (75) Therefore the Commission upholds the conclusion that ET Solar breached the undertaking by selling modules to solar parks and by non-reporting these sales. In consequence, the Commission also upholds the conclusions on the breach of the MIP and impracticability of ET Solar's undertaking.

(iii) **ReneSola**

- (76) ReneSola submitted that their business model, whereby they produce modules using their own production capacities in the PRC and an extensive network of unrelated OEMs in third countries and in the Union is not new and has been in place before the undertaking entered into force. ReneSola argued that such a business model had not been explicitly prohibited until November 2014.
- (77) ReneSola submitted also that they are ready to commit to not selling on the Union market the modules produced by their OEMs in third countries.
- (78) ReneSola expressed however interest in using the OEM production in the Union for sales on the Union market. ReneSola offered to undertake the simplification of their business model to render the monitoring of the undertaking practicable.
- (79) To avoid potential cross-compensations, ReneSola offered to develop an 'internal firewall' that is prohibiting sales from different sources to the same company, to companies in the same group, or selling to their own projects. ReneSola offered also to ensure that their OEM producers in the Union cooperate with the Commission.
- (80) The Commission rejects these arguments for the following reasons.
- (81) The monitoring of such extensive OEM business model remains impracticable as already explained in recitals 26 to 28 above. Despite the commitments offered by ReneSola, using an OEM in the Union would render the monitoring of the undertaking impracticable. The activities of OEMs, even in the Union, fall outside the scope of the undertaking, hence they fall outside monitoring by the Commission.

- (82) ReneSola's argument of the 'internal firewall' was not supported by any evidence and further explanation. In addition, the clarification given in November 2014 does not imply that the extensive OEM practice of ReneSola was not rendering the undertaking impracticable before. That can be illustrated by the fact that ReneSola does not dispute that the OEMs located in third countries use at least partially cells with origin in the PRC in their production, as can be seen from the pre-verification data submitted by ReneSola. It is impracticable to monitor that modules comprising those cells have not been supplied to the Union.
- (83) ReneSola submitted also additional information about a specific shipment for which they provided misleading information in their quarterly reports. ReneSola submitted that this was non-intentional and caused by a misunderstanding of the undertaking and maybe negligence. ReneSola submitted also that the implementation of the undertaking is complicated, stating that there are separate reporting obligations on the undertaking certificates and invoices, and both in the process of reporting and rectification several parties are involved.
- (84) The Commission rejects this argument for the following reasons.
- (85) ReneSola has not rectified the information (cancellation or modification of shipments) provided in their quarterly reports, according to their related importer's transactions records. Hence, ReneSola's quarterly reports do not reflect the actual sales transactions.
- (86) ReneSola informed the CCCME on the significant difference of the quantity delivered and the relevant undertaking certificate, and asked advice to rectify the situation only after the Commission's on the spot visit.
- (87) Therefore, the Commission upholds the assessment of the breach of the ReneSola's undertaking by incomplete and erroneous reporting of sales.

**(iv) Comments by other interested parties**

- (88) One interested party requested the Commission to withdraw the acceptance of the undertaking for the three exporting producers with retroactive effect from the date of the first documented violation or at least from the start of the verification exercise, to compensate the damage to the Union budget resulting from allegedly evaded import duties.
- (89) The Commission rejects that request as there are no grounds for invalidating any undertaking invoices issued by the three exporting producers until the day of entry into force of this Regulation, which could justify a retroactive collection of duties.
- (90) Another interested party urged the Commission to allow for a transitional period before the anti-dumping and countervailing duties are applicable in order to enable importers to reasonably execute or terminate existing contractual arrangements and find alternative suppliers.
- (91) The Commission rejects this request as pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation in the case of withdrawal of acceptance of the undertaking the anti-dumping and countervailing duties shall automatically apply and there is no legal basis for any transitional period.
- (92) Moreover, the importer is responsible both for payment of the import duties and for the regularity of the documents presented by it to the customs authorities. The adverse consequences of wrongful acts of its contractual partners cannot be borne by the Union. The possibility that a price undertaking may be withdrawn is a trade risk inherent in the importation business.

**(v) Conclusion**

- (93) Despite of the above submissions the Commission upholds its findings on breaches of the undertaking and its impracticability established for Canadian Solar, ET Solar, and ReneSola. The Commission also upholds the conclusion that the combination of actions by Canadian Solar, ET Solar, and ReneSola listed in recitals 15 to 32 above harmed the relationship of trust with each of these three exporting producers.

- (94) That justifies as such the withdrawal of acceptances of the undertaking for these three exporting producers pursuant to the terms of the undertaking.

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

- (95) 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 has concluded that the acceptance of the undertaking for Canadian Solar, ET Solar, and ReneSola shall be withdrawn.
- (96) 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 Council Implementing Regulation (EU) No 1238/2013 and the definitive countervailing duty imposed by Article 1 of Council Implementing Regulation (EU) No 1239/2013 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Canadian Solar (TARIC additional code: B805), ET Solar (TARIC additional code: B819), and ReneSola (TARIC additional code: B921) as of the day of entry into force of this Regulation.
- (97) For information purposes the table in Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Commission Implementing Decision 2014/657/EU is not affected,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Acceptance of the undertaking in relation to (i) CSI Solar Power (China) Inc., Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co. Ltd jointly covered by TARIC additional code: B805; (ii) ET Solar Industry Limited and ET Energy Co. Ltd jointly covered by the TARIC additional code B819; and (iii) Renesola Zhejiang Ltd and Renesola Jiangsu Ltd jointly covered by the TARIC additional code B921 is hereby withdrawn.

#### *Article 2*

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, 4 June 2015.

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

## ANNEX

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 Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
Changzhou Trina Solar Energy Co. Ltd Trina Solar (Changzhou) Science & Technology Co. Ltd Changzhou Youze Technology Co. Ltd Trina Solar Energy (Shanghai) Co. Ltd Yancheng Trina Solar Energy Technology Co. Ltd	B791
CHINALAND SOLAR ENERGY CO. LTD	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD	B812
CNPV Dongying Solar Power Co. Ltd	B813
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809
Chint Solar (Zhejiang) Co. Ltd	B810
Delsolar (Wujiang) Ltd	B792
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816

Name of the company	TARIC additional code
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT & EXPORT CO. LTD	B817
Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821
Konca Solar Cell Co. Ltd Suzhou GCL Photovoltaic Technology Co. Ltd Jiangsu GCL Silicon Material Technology Development Co. Ltd Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd GCL-Poly (Suzhou) Energy Limited GCL-Poly Solar Power System Integration (Taicang) Co. Ltd GCL SOLAR POWER (SUZHOU) LIMITED	B850
Guodian Jintech Solar Energy Co. Ltd	B822
Hangzhou Bluesun New Material Co. Ltd	B824
Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd Zhejiang Jinbest Energy Science and Technology Co. Ltd	B825
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
Jetion Solar (China) Co. Ltd Junfeng Solar (Jiangsu) Co. Ltd Jetion Solar (Jiangyin) Co. Ltd	B830
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 Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Seraphim Solar System Co. Ltd	B836
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838

Name of the company	TARIC additional code
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 LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Hareon Power Co. Ltd Hareon Solar Technology Co. Ltd Taicang Hareon Solar Co. Ltd Hefei Hareon Solar Technology Co. Ltd Jiangyin Xinhui Solar Energy Co. Ltd Altusvia Energy (Taicang) Co. Ltd	B842
Jiangyin Shine Science and Technology Co. Ltd	B843
JingAo Solar Co. Ltd Shanghai JA Solar Technology Co. Ltd JA Solar Technology Yangzhou Co. Ltd Hefei JA Solar Technology Co. Ltd Shanghai JA Solar PV Technology Co. Ltd	B794
Jinko Solar Co. Ltd Jinko Solar Import and Export Co. Ltd ZHEJIANG JINKO SOLAR CO. LTD ZHEJIANG JINKO SOLAR TRADING CO. LTD	B845
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd 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 Lightway Green New Energy(Zhuozhou) Co. Ltd	B851
MOTECH (SUZHOU) RENEWABLE ENERGY CO. LTD	B852
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854

Name of the company	TARIC additional code
Ningbo Huashun Solar Energy Technology Co. Ltd	B856
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo Osda Solar Co. Ltd	B859
Ningbo Qixin Solar Electrical Appliance Co. Ltd	B860
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
Phono Solar Technology Co. Ltd Sumec Hardware & Tools Co. Ltd	B866
RISEN ENERGY CO. LTD	B868
SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD	B869
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai BYD Co. Ltd BYD(Shangluo)Industrial Co. Ltd	B871
Shanghai Chaori Solar Energy Science & Technology Co. Ltd Shanghai Chaori International Trading Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
SHANGHAI SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co.Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881

Name of the company	TARIC additional code
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD 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 Tianwei New Energy (Chengdu) PV Module Co. Ltd 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
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Suntech Power Co. Ltd Suntech Power Co. Ltd Wuxi Sunshine Power Co. Ltd Luoyang Suntech Power Co. Ltd Zhenjiang Rietech New Energy Science Technology Co. Ltd Zhenjiang Ren De New Energy Science Technology Co. Ltd	B796
Wuxi Taichang Electronic Co. Ltd Wuxi Machinery & Equipment Import & Export Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Xi'an LONGi Silicon Materials Corp. Wuxi LONGi Silicon Materials Co. Ltd	B897
Years Solar Co. Ltd	B898
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797

Name of the company	TARIC additional code
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
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 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 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 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 Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT & EXPORT CO LTD	B918
Zhejiang Xiongtai Photovoltaic Technology Co. Ltd	B919
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920
Zhongli Talesun Solar Co. Ltd	B922
ZNSHINE PV-TECH CO. LTD	B923