

COMMISSION IMPLEMENTING REGULATION (EU) 2016/185**of 11 February 2016****extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 1238/2013 on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Article 13(3) thereof,

Whereas:

1. PROCEDURE**1.1. Existing measures**

- (1) By Regulation (EU) No 1238/2013, ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 53,4 % on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels from the People's Republic of China ('the PRC' or 'China') for all other companies than the ones mentioned in Article 1(2) and Annex 1 of that Regulation. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

1.2. Initiation following a request

- (2) On 15 April 2015 a Union producer of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels lodged a request indicating that the anti-dumping and countervailing measures on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels from the PRC are being circumvented via Malaysia and Taiwan.
- (3) The request provided prima facie evidence that, following the imposition of the measures in force, a significant change in the pattern of trade involving exports from the PRC, Malaysia and Taiwan to the Union occurred, which seemed to be caused by the imposition of the measures in force. There was allegedly insufficient due cause or justification other than the imposition of the measures in force for such a change.
- (4) Furthermore, the evidence pointed to the fact that the remedial effects of the measures in force were being undermined both in terms of quantity and price. The evidence showed that the increased imports from Malaysia and Taiwan were made at prices below the non-injurious price established in the original investigation.
- (5) Finally, there was prima facie evidence that silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels consigned from Malaysia and Taiwan were dumped in relation to the normal value established for the like product during the original investigation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

- (6) Having determined, after having informed the Member States, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2015/833⁽¹⁾ ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels consigned from Malaysia and Taiwan. A request to cease the registration of solar cells from Taiwan, lodged by the applicant on 13 July 2015, was discussed at a hearing with the Hearing Officer in Trade Proceedings on 1 October 2015 and dismissed.

1.3. Investigation

- (7) The Commission advised the authorities of the PRC, Malaysia and Taiwan, the exporting producers and traders in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC, Malaysia and Taiwan known to the Commission or which made themselves known within the deadlines specified in recital (15) of the initiating Regulation. Questionnaires were also sent to importers in the Union. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.
- (8) Fourteen companies from Malaysia; 29 groups of companies or companies from Taiwan; nine companies from the PRC; 25 companies from the Union, including Union industry, unrelated importers and installers and five industry and users associations made themselves known.
- (9) Fourteen companies in Malaysia made themselves known, of which nine submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation. *Malaysian Solar Resources* sent a reply that was too incomplete to enable the Commission to properly investigate it. Therefore the Commission rejected this request. Five Malaysian companies *W&K Solar (M) Sdn. Bhd.*, *Solexel (M) Sdn. Bhd.*, *Solartif Sdn Bhd*, *Jinko Solar Technology Sdn. Bhd.* and *PV Hi Tech Solar Sdn. Bhd.* informed the Commission that they did not sell the product under investigation to the Union and did not intend to fill in the questionnaire. Some of those companies were in the start-up phase.
- (10) Twenty-eight companies in Taiwan made themselves known. *SunEdge Technology* informed the Commission that they did not sell the product under investigation to the Union. Therefore, their request has become without object, and was rejected. *Mosel Vitelic Inc.* informed the Commission that it ceased the production in June 2015; therefore it did no longer request an exemption. The remaining 26 companies submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation. Three companies *iSolar Energy Technology Co. Ltd*, *IST Energy Co. Ltd* and *DS Technology Co. Ltd* reported in their questionnaire reply that they did not have their own production. Therefore, the Commission considered that those companies do not fulfil the conditions to be eligible for an exemption, and rejected their requests. No verification visits were carried out to the companies which were considered not to fulfil the conditions to be eligible for an exemption or whose request was rejected. Therefore the Commission carried out the verification visits at the premises of 23 groups of companies or companies.
- (11) No questionnaire reply was submitted by unrelated importers in the Union. Three Chinese exporting producers unrelated to the Taiwanese or Malaysian producers provided questionnaire replies and three related Chinese exporting producers provided questionnaire replies as well. In addition, the Commission received 14 submissions from the interested parties.
- (12) The following Malaysian and Taiwanese groups of companies submitted complete replies to the questionnaires and verification visits were subsequently carried out at their premises.

Exporting producers in Malaysia:

— AUO — SunPower Sdn. Bhd.

— Eco Future Manufacturer Industry (M) Sdn. Bhd.

— Flextronics Shah Alam Sdn. Bhd. (*Flextronics is a contract manufacturer, the Commission also verified the OEM company SunEdison Products Singapore Pte Ltd*)

⁽¹⁾ OJ L 132, 29.5.2015, p. 60.

- Hanwha Q CELLS Malaysia Sdn. Bhd.
- Panasonic Energy Malaysia Sdn. Bhd.
- Promelight Technology (Malaysia) Sdn. Bhd.
- Sun M Energy Sdn. Bhd.
- TS Solartech Sdn. Bhd.

Exporting producers in Taiwan:

- AblyTek Co., Ltd
- ANJI Technology Co., Ltd
- AU Optronics Corporation
- Big Sun Energy Technology Inc.
- EEPV Corp.
- E-TON Solar Tech. Co., Ltd (*the verification of this company also included Gloria Solar*)
- Gintech Energy Corporation
- Gintung Energy Corporation
- Inventec Energy Corporation
- Inventec Solar Energy Corporation
- LOF Solar Corp.
- Ming Hwei Energy Co., Ltd
- Motech Industries, Inc.
- Neo Solar Power Corporation
- Perfect Source Technology Corp.
- Ritek Corporation
- Sino-American Silicon Products Inc.
- Solartech Energy Corp.
- Sunengine Corporation Ltd
- Topcell Solar International Co., Ltd
- TSEC Corporation
- Universal Hardware Corporation
- Win Win Precision Technology Co., Ltd

1.4. Investigation period

- (13) The investigation period covered the period from 1 January 2012 to 31 March 2015 (the 'IP'). Data was collected for the IP to investigate, inter alia, the alleged change in the pattern of trade. For the period 1 April 2014 to 31 March 2015 (the reporting period or 'the RP') more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (14) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between third countries and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Product concerned and the like product

- (15) The product concerned by the possible circumvention is crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (the cells have a thickness not exceeding 400 micrometres), currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90 and originating in or consigned from the People's Republic of China, unless they are in transit in the sense of Article V GATT ('the product concerned').
- (16) The following product types are excluded from the definition of the product concerned:
- solar chargers that consist of less than six cells, are portable and supply electricity to devices or charge batteries,
 - thin film photovoltaic products,
 - crystalline silicon photovoltaic products that are permanently integrated into electrical goods, where the function of the electrical goods is other than power generation, and where these electrical goods consume the electricity generated by the integrated crystalline silicon photovoltaic cell(s),
 - modules or panels with a output voltage not exceeding 50 V DC and a power output not exceeding 50 W solely for direct use as battery chargers in systems with the same voltage and power characteristics.
- (17) The product under investigation is the same as the 'product concerned' defined in the previous recitals, but consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not.
- (18) The investigation showed that crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels (henceforth 'solar cells and modules'), as defined above, exported to the Union from the PRC and those consigned from Malaysia and Taiwan to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.
- (19) The terms solar panel and solar module are used interchangeably by the industry and have the same meaning, namely a set of solar cells laminated together (most often 60 and 72) designed to absorb sunlight as a source of energy for generating electricity. The term solar and photovoltaic are also used interchangeably by the industry and with reference to solar cells and modules have the same meaning, namely converting solar energy into electricity. Crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels henceforth are referred to as 'solar cells and modules'.

2.3. Results of the investigation concerning the PRC

- (20) There was a low level of cooperation by producers/exporters in the PRC, with only six exporters/producers submitting a questionnaire reply. Therefore, on the basis of the information submitted by the cooperating parties no reasonable determination could be made as to export volumes of the product concerned from the PRC.

- (21) Given the above, findings in respect of exports of solar cells and modules from the PRC to the Union, Malaysia and Taiwan had to be made also on the basis of Comext database ⁽¹⁾; the data reported to the Commission by the Member States on the import trade in products subject to investigation and to measures in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database'); Chinese, Malaysian and Taiwanese national statistics and the information submitted in the request ⁽²⁾.
- (22) The import volume recorded in Malaysian, Taiwanese and Chinese statistics covered a larger product group than the product concerned or the product under investigation ⁽³⁾. However, on the basis of Comext data, the verified data regarding Chinese and Malaysian and Taiwanese producers of solar cells and modules and the request, it could be established that a significant part of this import volume covered the product concerned ⁽⁴⁾. Accordingly, these data could be used to establish any change in the pattern of trade and they could be cross-checked with other data such as the data provided by the cooperating exporting producers and importers.

2.3.1. Change in the pattern of trade between the PRC and the EU

- (23) Table 1 shows the volume of imports of the product concerned from the PRC into the Union since the imposition of the measures in force:

Table 1

Evolution of imports of the product concerned from the PRC to the Union in the investigation period; unit: megawatt (MW)

	2012	2013	2014	Reporting Period (RP)	Growth Rate 2012 — RP
Imports from the PRC	11 119	5 584	3 443	3 801	– 66 %
Share of total imports	71 %	54 %	43 %	46 %	– 35 %
Total Imports	15 740	10 300	8 067	8 325	– 47 %

Source: Comext

- (24) The imports of the product concerned from the PRC to the Union decreased significantly by 66 %. As the decrease in imports from the PRC was larger than the decrease in total imports into the Union, the share of the Chinese imports fell by 35 %.

2.4. Results of the investigation in Malaysia

2.4.1. Degree of cooperation and determination of the trade volumes in Malaysia

- (25) As stated in recital (9), eight exporting producers in Malaysia cooperated by submitting complete questionnaire replies. In the case of three of the cooperating Malaysian companies the application of Article 18(1) of the basic Regulation was found to be warranted for the reasons explained below in recitals (88) and following.
- (26) The cooperating Malaysian exporting producers accounted for 57 % of the total Malaysian imports of the product under investigation to the Union in the RP as reported in Comext.

⁽¹⁾ Comext is a database on foreign trade statistics managed by Eurostat.

⁽²⁾ See pages 9-16 of the request of 14 April 2015 version open for inspection as well as the annexes open for inspection 9 and 10

⁽³⁾ See footnote 17 of the request of 14 April 2015 version open for inspection

⁽⁴⁾ Idem

2.4.2. Change in the pattern of trade in Malaysia

Imports of the product under investigation from Malaysia into the Union

- (27) Table 2 shows the volume of imports of the product under investigation from Malaysia into the Union in the investigation period:

Table 2

Evolution of imports of the product under investigation from Malaysia to the Union in the investigation period; unit: megawatt (MW)

	2012	2013	2014	Reporting Period (RP)	Growth Rate 2012 — RP
Imports from Malaysia	466	495	1 561	1 610	245 %
Share of total imports	3 %	5 %	19 %	19 %	553 %
Total Imports	15 740	10 300	8 067	8 325	– 47 %

Source: Comext and request

- (28) While the imports of the product concerned from the PRC into the Union dropped as outlined in recital (24), the total imports of the product under investigation from Malaysia to the Union increased significantly by + 245 %. The increase was particularly steep after the imposition of the measures in force in 2013. As the total imports decreased substantially due to a fall in the Union consumption, the share of Malaysian imports in total imports into the Union increased even more (+ 553 %) compared to the increase of imports.
- (29) The change in the pattern of trade between Malaysia and the Union becomes even more significant for crystalline silicon photovoltaic modules ('modules') if they are analysed separately from the cells of the type used in crystalline silicon photovoltaic modules ('cells').
- (30) The imports of modules from Malaysia in volume increased from 108 MW in 2012 to 1 036 MW in the RP (+ 860 %). Given the falling total imports, the market share of imports of modules from Malaysia to the Union increased from 1 % in 2012 to 17 % in the RP (+ 1 793 %).
- (31) The imports of cells from Malaysia increased much less than modules — from 358 MW in 2012 to 573 MW in the RP (+ 60 %). The market share of imports of cells from Malaysia into the Union increased from 10 % in 2012 to 27 % in the RP (+ 165 %).
- (32) The data above shows that, since the original investigation was launched in 2012 and the measures in force were imposed in 2013, the imports of solar cells and modules from Malaysia have to some extent replaced the imports of the product concerned from the PRC to the Union.

Chinese exports to Malaysia

- (33) To establish the trend of the trade flow of solar cells and modules from China to Malaysia, Malaysian and Chinese statistics as well as data from the request was used ⁽¹⁾. Both Chinese and Malaysian statistics are only available at a higher product group level than the product concerned ⁽²⁾. However, on the basis of Comext data, verified data

⁽¹⁾ See pages 9-14 of the request of 14 April 2015 version open for inspection as well as the annexes open for inspection 9 and 10

⁽²⁾ See footnote 17 of the request of 14 April 2015 version open for inspection

regarding Chinese and Malaysian producers of solar cells and modules and the request, it was established that a significant part covered the product concerned, so these data could be taken into account ⁽¹⁾. There is a difference between the volumes of exports reported in Chinese statistics and the volumes of imports reported in the Malaysian statistics as the relevant customs codes in two countries have a different scope ⁽¹⁾. Although the Malaysian import data report much higher levels than the Chinese export data, both sets of data show the same upward trend of exports from China to Malaysia. As the Malaysian import data has much higher level than the Chinese export data, the latter is used for the analysis as a more conservative one.

- (34) There is evidence that some of the imports of the Chinese product into Malaysia were wrongly or fraudulently declared as other products. For example the imports of laminated solar modules were declared as solar glass or were declared as cells, whereas they should be reported as modules as explained in recital (62). This is why the Chinese export statistics shown in Table 3 most likely underestimate the imports of modules and can slightly overstate the imports of cells.

Table 3

Imports of solar cells and modules from the PRC to Malaysia according to Chinese statistics, Unit: megawatt (MW)

PRC to Malaysia	2012	2013	2014	Reporting Period (RP)
Cells	6	25	43	53
Modules	15	127	168	130
Total	21	152	211	183
<i>Index Cells</i>	100	417	717	883
<i>Index Modules</i>	100	847	1 120	867
<i>Index Total</i>	100	724	1 005	871

Source: Request, Global Trade Information Services

Table 4

Imports of solar cells and modules from the PRC to Malaysia according to Malaysian statistics, Unit: megawatt (MW)

Imports from PRC to Malaysia	2012	2013	2014	Reporting Period (RP)
Cells	137	313	339	405
Modules	27	65	379	290
Total	164	378	718	695

⁽¹⁾ idem

Imports from PRC to Malaysia	2012	2013	2014	Reporting Period (RP)
<i>Index Cells</i>	100	228	247	296
<i>Index Modules</i>	100	240	1 397	1 067
<i>Index Total</i>	100	230	437	423

Source: Request, Global Trade Information Services

- (35) Imports of solar cells and modules from the PRC to Malaysia increased by more than 800 % according to Chinese export data and by more than 400 % according to Malaysian data.
- (36) Table 5 shows the evolution of the domestic consumption in Malaysia in the reporting period. The consumption of modules at the Malaysian domestic market was far below the level of exports from the PRC after the measures in force were imposed in 2013 as shown in Table 5. Therefore, the evolution of the domestic consumption does not justify such an increase of imports of solar cells and modules from the PRC to Malaysia.

Table 5

Evolution of domestic consumption of solar modules in Malaysia in the years 2012, 2013 and 2014, unit: megawatt (MW)

Malaysia	2012	2013	2014	Reporting Period (RP)
Domestic Consumption of modules	32	107	87	88
<i>Index</i>	100	338	275	279

Source: Request

Conclusion on the change in the pattern of trade in Malaysia

- (37) The investigation found evidence of the decrease in imports from the PRC to the Union and the parallel increase in exports from the PRC to Malaysia and of exports from Malaysia to the Union of solar cells and modules after the original investigation was launched in 2012 and the measures in force were imposed in 2013. These changes in trade flows constitute a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand.

2.4.3. Nature of the circumvention practice in Malaysia

- (38) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.

Transshipment

- (39) The imports of the product under investigation from Malaysia into the Union accounted for more than 46 % of total imports from Malaysia in the reporting period as reported by Comext.
- (40) The cooperation for cells was 100 % and all the cells producers who cooperated in the investigation were found to be genuine producers.

- (41) The imports of modules by the non-cooperating companies constituted 71 % of total imports of modules from Malaysia in the same period. The modules are the final product; therefore they can be only imported into Malaysia for the domestic consumption or transshipment. The high level of imports of modules from the PRC exceeding the domestic consumption as indicated in recital (36) and the high level of non-cooperation by the Malaysian show that a large proportion of modules consigned from the PRC must have been transhipped via Malaysia to the Union.
- (42) In addition, as set out in detail below in recitals (88) and following, it was found that a number of the cooperating Malaysian producers provided misleading information, in particular regarding the relationship to Chinese manufacturers, imports of finished goods from China and the origin of exports of the product under investigation to the Union. Some of them were found to export Chinese origin crystalline silicon photovoltaic modules to the Union, some other companies were found to have fraudulently declared key components as solar glass and to have falsified the invoices.
- (43) In addition, in 2014 the European Anti-fraud Office (OLAF) started an investigation into alleged transshipment of solar cells and modules via Malaysia. This investigation is still on-going.
- (44) In light of the considerations above the existence of transshipment of the product under investigation via Malaysia has therefore been confirmed.

2.5. Results of the investigation in Taiwan

2.5.1. Degree of cooperation and determination of the trade volumes in Taiwan

- (45) As stated in recital (10) 23 groups of companies or companies in Taiwan cooperated and submitted complete replies to the questionnaire.
- (46) The cooperating Taiwanese exporting producers accounted for 63,3 % of the total Taiwanese exports of the product under investigation to the Union in the IP as reported in Comext.

2.5.2. Change in the pattern of trade in Taiwan

Imports of the product under investigation from Taiwan into the Union

- (47) Table 6 shows the volume of imports of the product under investigation from Taiwan into the Union in the investigation period:

Table 6

Evolution of imports of the product under investigation from Taiwan to the Union in the investigation period, unit: megawatt (MW)

	2012	2013	2014	Reporting Period (RP)	Growth Rate 2012 — RP
Imports from Taiwan	1 375	1 557	1 752	1 793	30 %
Share of total imports	9 %	15 %	22 %	22 %	147 %
Total imports	15 740	10 300	8 067	8 325	– 47 %

Source: Comext

- (48) Imports of the product concerned from China to the Union dropped significantly subsequent to the imposition of the measures in force in December 2013 as outlined in recital (24). On the other hand, the volume of imports of the product under investigation from Taiwan to the Union increased significantly (+ 30 % increase) in the same period. As the total imports of the product under investigation into the Union decreased, the market share of the Taiwanese imports into the Union of the product under investigation increased from 9 % in 2012 to 22 % in the RP (+ 147 % increase).
- (49) The data above shows that, since the original investigation was launched in 2012 and the measures in force were imposed in 2013, the imports of solar cells and modules from Taiwan have to some extent replaced the imports into the Union of the product concerned from the PRC.

Chinese exports to Taiwan

- (50) The Taiwanese authorities provided statistics reporting the imports and exports of solar cells and modules from free trade zones and bonded warehouses (henceforth 'FTZs'). In Taiwan it is prohibited to import solar cells and modules from the PRC. For this reason the Chinese solar cells and modules and other key components can only enter into FTZs, to be later re-exported or be used as a raw material in another product to be re-exported. The Commission notes that almost all the imports of cells and modules into the FTZs were from China. The data was provided for the years 2012, 2013 and 2014. The reporting period covers three quarters of the 2014 and one quarter of 2015, therefore it is unlikely that the trend would be significantly different between the year 2014 and the RP.
- (51) Table 7 shows the volume of imports of the solar cells and modules from the PRC into the Taiwanese free trade zones and bonded warehouses in the investigation period:

Table 7

Imports of solar cells and modules from the PRC into the Taiwanese FTZs, unit: megawatt (MW)

	2012	2013	2014
PRC to Taiwan FTZs	0	49	284
<i>Index</i>	100	243 150	1 421 000

Source: Bureau of Foreign Trade (BOFT)

- (52) Table 8 shows the volume of exports of solar cells and modules from the Taiwanese FTZs into the Union in the investigation period:

Table 8

Exports of solar cells and modules from the Taiwanese FTZs into the Union, unit: megawatt (MW)

	2012	2013	2014
Taiwan FTZs to the Union	2	48	223
<i>Index</i>	100	242 300	1 112 750

Source: Bureau of Foreign Trade (BOFT)

- (53) Table 7 shows a steep increase of imports of solar cells and modules into Taiwan after the original investigation was launched in 2012 and the measures in force were imposed in 2013. Table 8 clearly shows that most of the Chinese product concerned was re-exported to the Union.
- (54) The change in the pattern of trade between Taiwan and the PRC becomes even more significant for modules if they are analysed separately from cells.
- (55) The imports of modules from China into the Taiwanese FTZs increased from nearly 0 MW in 2012 to 213 MW in 2014. Almost all the imports into the FTZs were from China. Out of those 213 MW imported 202 MW were exported to the EU. Therefore, the exports of modules, which originally had Chinese origin from the Taiwanese FTZs accounted for at least 24 % of total Taiwanese exports of modules to the EU in 2014 as reported by Comext.
- (56) The imports of cells from China into the Taiwanese FTZs increased from nearly 0 MW in 2012 to 71 MW in 2014. 20 MW was reported as exported to the EU. Therefore, the exports of cells of Chinese origin from the Taiwanese FTZs accounted for 2 % of total Taiwanese exports of cells to the EU in 2014 as reported by Comext.
- (57) As the Chinese product concerned cannot be sold in Taiwan, there is no other justification for their import from China into Taiwan than for the purposes of transshipment or assembly/completion operations to re-export Chinese key components outside of Taiwan.

Conclusion on the change in the pattern of trade in Taiwan

- (58) The decrease of Chinese exports of solar cells and modules and the parallel increase of exports from the PRC to Taiwan and of exports from Taiwan to the Union after the original investigation was launched in 2012 and the measures in force were imposed in 2013 constitute a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand.

2.5.3. Nature of the circumvention practice in Taiwan

- (59) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.

Transshipment

- (60) The imports of the product under investigation into the Union accounted for more than 38 % of total imports from Taiwan in the investigation period as reported by Comext. The imports into the Union of cells by the non-cooperating companies constituted 11 % of total imports of cells from Taiwan in the same period. The imports into the Union of modules by the non-cooperating companies accounted for 64 % of total Taiwanese imports of modules as reported by Comext.
- (61) All the cells producers who cooperated in the investigation were found to be genuine. At the same time, as indicated in recital (56) the exports of cells of Chinese origin from the Taiwanese FTZs into the Union accounted for only 2 % of Taiwanese imports of cells into the Union as reported by Comext in 2014.
- (62) Moreover, as explained in recital (85) some companies in Taiwan were found to import laminated solar modules (also known as laminated solar panels) into their bonded warehouses and at least some of those laminated solar panels were declared as solar cells. Laminated solar module is an almost finished module, containing either 60 or

72 cells. Only a very basic assembly operation must be performed to make a solar module from a laminated module i.e. an aluminium frame must be attached to it and a junction box must be added. This is why a laminated solar module should be declared as a solar module. This means that at least part of the Chinese cells imported into the Taiwanese free trade zones and bonded warehouses were in fact laminated solar modules and should have been declared as modules.

- (63) As mentioned in recital (55) the exports of modules, which originally had Chinese origin from the Taiwanese FTZs constituted at least 24 % of Taiwanese imports of modules into the EU. The modules are the final product and the Chinese modules cannot be sold in Taiwan; therefore the only likely purpose of importing them into Taiwan must have been transshipment. Therefore, the Commission concludes that a large proportion of modules consigned from the PRC must have been transhipped via Taiwan to the Union.
- (64) In addition, in 2014 OLAF started an investigation into alleged transshipment of solar cells and modules via Taiwan. This investigation is still ongoing.
- (65) In addition, the Taiwanese authorities have carried out investigations into alleged circumvention practices at the same time and concluded that several companies, mainly traders, committed fraud by falsifying the origin of solar modules.
- (66) In light of the considerations above the existence of transshipment of the product under investigation via Taiwan has therefore been confirmed.

2.6. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty

- (67) The investigation did not bring to light any due cause or economic justification for the transshipment operations other than the avoidance of the measures in force on solar cells and modules originating in the PRC. No elements were found, other than the duty, which could be considered as a compensation for the costs of transshipment or import and re-export of crystalline silicon photovoltaic cells or modules, in particular regarding transport and reloading, from the PRC via Malaysia and Taiwan.

2.7. Evidence of dumping

- (68) Finally, in accordance with Article 13(1) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value previously established in the original investigation for the like products.
- (69) In the original Regulation the normal value was established on the basis of prices in India, which in that investigation was found to be an appropriate analogue country for the PRC. It was considered appropriate to use the normal value as previously established in line with Article 13(1) of the basic Regulation.
- (70) A significant part of Malaysian and Taiwanese exports were performed by non-cooperating exporters or by cooperating exporters that had provided misleading information. For this reason, for establishing the export prices from Malaysia and Taiwan, it was decided to base them on the average export price of solar cells and modules during the RP as reported in Article 14(6) database and Comext.
- (71) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the weighted average normal value as established in the original Regulation was compared with the weighted average export prices during this investigation's RP as reported in Article 14(6) database and Comext.
- (72) The average Taiwanese and Malaysian export prices of solar cells and modules in the RP were far below the normal value as established in the original investigation, which demonstrates the existence of substantial dumping.

2.8. Undermining of the remedial effect of the anti-dumping duty

- (73) To assess whether the imported products had, in terms of quantities and prices, undermined the remedial effects of the measures in force on imports of crystalline silicon photovoltaic modules and cells of the type used in crystalline silicon photovoltaic modules originating in the PRC, verified data from the cooperating exporting producers, Comext and Article 14(6) database were used as the best data available concerning quantities and prices of exports by non-cooperating companies. The prices so determined were compared to the injury elimination level established for Union producers in recital (415) of the original Regulation.
- (74) The increase of imports from Malaysia and Taiwan was considered to be significant in terms of quantities. The estimated Union consumption in the RP gives a similar indication about the significance of these imports. In terms of market share, the modules imported into the Union from non-cooperating companies and the companies that were found to be circumventing in Malaysia account for 9 % of the Union consumption of modules. The modules imported into the Union from non-cooperating companies and the companies that were found to be circumventing in Taiwan account for 7 % of the EU consumption. The cells that were imported into the Union from non-cooperating companies in Taiwan account for 3 % of the EU consumption.
- (75) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed significant underselling.
- (76) It was therefore concluded that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

3. MEASURES

- (77) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of crystalline silicon photovoltaic modules or panels and cells of the type used in crystalline silicon photovoltaic modules or panels originating in the PRC was circumvented by transshipment from Malaysia and Taiwan.
- (78) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the PRC, should be extended to imports of the same product consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (79) The measure to be extended should be the one established in Article 1(2) of Regulation (EU) No 1238/2013 for 'All other companies', which is a definitive anti-dumping duty of 53,4 % applicable to the net, free-at-Union-frontier price, before duty.
- (80) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of crystalline silicon photovoltaic modules and key components consigned from Malaysia and Taiwan.

4. REQUESTS FOR EXEMPTION

- (81) Fourteen companies in Malaysia made themselves known, out of which nine submitted a questionnaire reply and requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation. One company provided a highly deficient reply and did not reply in due time to the deficiency letter, so the Commission rejected its request. Therefore, the Commission carried out the verification visits at the premises of eight companies.
- (82) 28 groups of companies or companies in Taiwan made themselves known, of which one company informed the Commission that it ceased its activities. One company informed the Commission that it had no sales to the

Union and therefore was not eligible for an exemption. The remaining 26 companies submitted a questionnaire reply and requested an exemption from the possibly extended measures in accordance with Article 13(4) of the basic Regulation. As explained in recital (10) above, three of the Taiwanese companies who submitted a questionnaire reply turned out not to have production assets, and the Commission therefore rejected their request. Therefore the Commission carried out the verification visits at the premises of 23 groups of companies or companies.

- (83) Three companies in Malaysia and three companies in Taiwan that were verified were found to have provided false or misleading information. In accordance with Article 18(4) of the basic Regulation, these companies were informed of the intention to disregard the information submitted by them and to apply 'facts available', and were granted a time-limit to provide further explanations ('Article 18 letter'). These letters contained specific information as to which parts of the information submitted by these companies the Commission intended to disregard. Two Taiwanese companies did not reply to the Article 18 letter. Therefore, the Commission disregarded the information as announced. The three companies in Malaysia did reply, but could not dissipate the doubts of the Commission for the reasons set out below. Also for those companies, the Commission disregarded the information as announced. One Taiwanese company replied and provided additional information, which the Commission accepted, as set out in recital (111) below.
- (84) Other investigative authorities in the Union, like OLAF and national customs authorities, are currently investigating imports into the Union of these five companies as well. In order to protect these ongoing investigations, it is important not to divulge any information that would enable third parties to link the findings in the following recitals to a specific company. Hence, the Commission has not specified which company is concerned by which findings. Importers that have purchased the product under investigation from those companies and would like to understand what exactly is the situation of their supplier may contact directly their supplier, or the Commission, in view of having more detailed information.
- (85) For the purpose of this investigation the following details have been established: two of those three companies in Taiwan were found to import laminated solar modules from the PRC that they did not reveal in their questionnaire reply. One of those companies admitted during the verification visit that they reported these imports in their questionnaire reply as imports of solar cells from the PRC. This company had also reported these imports as solar cells in their customs declaration. In case of both those Taiwanese companies, documents were found clearly showing that they re-exported the laminated solar modules from the PRC to the Union.
- (86) These two companies in Taiwan did not provide any additional clarifications in reply to the Article 18(4) letter, as they did not reply at all (see above recital 83).
- (87) For the reasons set out above in recital (85) and with regard to the change in the pattern of trade and transshipment practices, as set out in section 2 of the present Regulation, each of which are sufficient on their own, these companies were found to be engaged in circumvention practices and could not be granted an exemption in accordance with article 13(4) of the basic regulation.
- (88) For the following three Malaysian companies, as explained below, use was made of facts available in accordance with Article 18(1) of the Basic Regulation for the following reasons.
- (89) One Malaysian company reported in their questionnaire reply that they purchased solar cells in the PRC, and they specified that the modules with Chinese cells were shipped to other markets than the Union. However, this company could not prove that it bought sufficient quantities of cells outside of the PRC that would enable them to produce the amount of solar modules that they exported to the Union. During the verification visit this company was found to import laminated solar modules from the PRC, which it fraudulently declared as imports of solar glass. This company was also found not to have sufficient production capacity to produce the volumes of the product under investigation that they exported. This company was also found to have links to a Chinese company active in the photovoltaic business.
- (90) In its reply to the Article 18(4) letter, the Malaysian company denied that they exported modules with Chinese cells to the Union. They claimed that they exported to the Union modules with South Korean cells that were, however, laminated in China. The company also replied that they ordered this 'laminated glass' because there was

a quality issue with their laminator. However, as stated above, this was fraudulently declared as solar glass. Furthermore, the company was not able to demonstrate that they had bought sufficient cells in South Korea for all modules it exported to the Union.

- (91) The company also argued that there had been a change in ownership since April 2014. This change of ownership, however, did not change the fact that links do exist between the Malaysian and Chinese companies in the sense that the Malaysian company's main supplier of raw materials continued to be the Chinese module manufacturer.
- (92) Therefore, the explanations provided by the company in reply to the Article 18(4) letter were not such as to lead to a change in the finding that they re-exported to the Union the Chinese laminated solar modules and that at least some of the modules exported to the EU used Chinese cells.
- (93) In view of the findings with regard to the change in the pattern of trade and transshipment practises, as set out in section 2, and the findings as set out in the recitals (89) to (92) above, each of which are sufficient on their own, the exemption as requested by this Malaysian company could not be granted in accordance with Article 13(4) of the basic Regulation.
- (94) Another company in Malaysia was found not to have sufficient production capacity to produce the volumes of the product under investigation that it exported. The same company was not able to supply any labour contracts for its employees; hence it was not able to prove that it had any employees during the investigation period. This company was not able to supply purchase contracts for the production machines for solar modules. This company also failed to disclose their relationship to a Chinese exporting producer and the purchases of the product under investigation from the related company. In addition, this company provided documents indicating different establishment dates. The investigation revealed that this company was established in 2013, i.e. after the initiation of the original AD and AS investigations and suspended the production shortly after May 2015, i.e. after the imposition of registration on Malaysian modules.
- (95) This company claimed, in their reply to the Article 18(4) letter, that most small companies in Malaysia do not have labour contracts for their employees. In addition, they claimed that they had sufficient capacity to produce the claimed amounts. The company also argued that they hired sales people from a Chinese company but did not have formal links with this Chinese company. These additional explanations were not such that this would lead to a change in the conclusions set out above. In particular, the company has not demonstrated that it was able to produce the quantities exported. In addition, there was a significant discrepancy between the quantity of imported cells as reported by the company and the quantity of cells reported by its supplier. Moreover, the fact that they hire staff from the Chinese company confirms the links found with the Chinese company.
- (96) In view of the findings with regard to the change in the pattern of trade and transshipment practices, as set out in section 2, and the findings as set out in the recitals (94) and (95) above, each of which are sufficient on their own, the exemption as requested by this Malaysian company could not be granted in accordance with Article 13(4) of the basic Regulation.
- (97) Another company in Malaysia was established in June 2013, i.e. after the initiation of the original AD and AS investigations, and started selling modules from December 2013 onwards, i.e. just after the imposition of definitive anti-dumping and countervailing duties by the original Regulation. The company produced polycrystalline PV modules during the Reporting Period from cells, which were mainly imported from Taiwan. This company appeared to have close ties to a Chinese company, from which an undertaking had been accepted and subsequently withdrawn for violations⁽¹⁾. First, the General Manager of the Malaysian company previously occupied a managerial position at the Chinese company. Second, cells were initially purchased on many occasions through the Chinese company and/or other Chinese companies whereby the cells physically were transported from a third country (mainly Taiwan) to the PRC, before apparently being transported further to the company located in Malaysia. Third, most modules sold to third countries during the Reporting Period were sold to a US company, which is related to the Chinese company. Fourth, the legal representative of the Chinese company was present during the on spot investigation of the Malaysian company. Fifth, sales contracts' templates

⁽¹⁾ Commission Implementing Regulation (EU) 2015/866 of 4 June 2015 withdrew the acceptance of the undertaking for three exporting producers under Implementing Decision 2013/707/EU (OJ L 139, 5.6.2015, p. 30. One of these three exporting producers is the Chinese company referred to above.

of both the Chinese and Taiwanese companies appear to be the same, both in terms of lay-out and substance. Sixth, a representative of the Chinese company stated in an internet video that the Chinese company is providing technical advice and supervision to the Malaysian company.

- (98) Other elements which were not disclosed by this Malaysian company during the on spot investigation, but were received from the customs authorities of a Member State are the following: The Malaysian company had concluded a brand usage authorisation agreement with the same Chinese company from which an undertaking had been accepted, by which the Malaysian company was authorised to use the Chinese company's brand name, if so requested by customers. In addition, one of the first customers in the Union was introduced to the Malaysian company by a sales representative of the Chinese company. Finally, the first shipment to the Union by the Malaysian company was subject to investigation by the customs authorities of a Member State as the modules were labelled 'Made in China', together with the brand name of the Chinese company on them.
- (99) The Malaysian company replied to the Article 18(4) letter by a letter dated 14 December 2015 stating that it had not intended to hide the commercial ties with the Chinese company and that they had replied in good faith to the exemption form. They also stated that the customs authorities of a Member State accepted after the investigation that the wrongly labelled modules were actually produced by the company in Malaysia. However, the customs authorities of a Member State confirmed to the Commission that these modules were not of Malaysian origin.
- (100) After disclosure, the Malaysian company alleged that the Commission based its decision on assumptions, allegations and false accusations, whereby their basis and proof, if at all available, had never been disclosed to them, undermining as such the company's right of defence. In particular, it criticized the Commission for not having disclosed the internet video referred to in recital (97) and the information received from the customs authorities of a Member State referred to in recital (98). The company also argued that it was not related to the Chinese company and that it had not hidden their brand usage authorization contract with this Chinese company during the verification visit. With regard to the investigation of the customs authorities of a Member State, the company argued that finally all goods were released as modules of Malaysian origin. Finally it argued that its date of establishment and the fact that the company sold to a company in the United States, which is related to the Chinese company, are not valid arguments on the basis of which the exemption can be denied. The Malaysian company also requested a hearing with the Hearing Officer in Trade Proceedings, which was held on 12 January 2016. Prior to that hearing, the internet video was disclosed to the company, which confirmed its accuracy during the hearing.
- (101) The additional explanations provided by the company were not such as to lead to a change in the conclusion as set out above for the reasons set out below.
- (102) The elements mentioned in recital (97) above are not mere assumptions and allegations, but facts which were as such not questioned by the company. In addition, these facts were presented to the company in the Article 18 letter of 3 December 2015, in which the company was invited to comment. Subsequently, the findings were disclosed to the company on 22 December 2015, on which the company again was invited to comment. Accordingly, the rights of defence of the company were fully respected. The fact remains that the company at least attempted to minimize, if not to hide, its commercial ties, including the existence of its brand usage authorisation agreement, with the Chinese company during the verification visit. Indeed the Malaysian company referred during the on spot verification to a brand usage of the Chinese company, however mentioning explicitly 'for a limited period'. The brand usage contract was neither provided nor was it revealed on spot that this agreement had been renewed for another four years. None of the elements mentioned above in recital (97), which showed strong commercial ties between the two companies, were explained in detail or shown to the Commission services during the verification visit. Also, the accuracy of these elements was not questioned by the company.
- (103) Article 13(4) of the basic Regulation provides that in order to obtain an exemption, the exporting producer needs to show that it is not related to any producer subject to the measures and not engaged in circumvention practices.
- (104) With regard to the first criterion (no relation to a producer subject to the measure), the exporting producer tried to minimise, if not to hide its multiple links with the Chinese exporting producer as set out in recital (97). However, the burden of proof on the absence of such a link is on the exporting producer. Because of the lack of cooperation on this point and the impossibility to verify all the new information submitted in reply to the

disclosure, the Commission had to rely on the facts available to assess whether the exporting producer did refute the prima facie impression, on the basis of facts available, that it is related to the Chinese company. In the view of the Commission, the exporting producer has not succeeded in doing so, as there are multiple indications of a close link between the Chinese company and the exporting producer.

- (105) In any event, and even if the first criterion was met, *quod non*, the Commission takes the view that the second criterion has not been met. The exporting producer has engaged in circumvention in two different manners, each of which is sufficient on its own to reject the request for exemption. An important indication of being engaged in circumvention activities, which is common to both manners and is undisputed, is that the exporting producer started its activities after the imposition of the original measures.
- (106) First, the statement of the company that all goods mentioned in recital (98) were released as modules of Malaysian origin is factually incorrect. The customs authorities of the Member State provided information to the Commission showing that these modules are considered to be of Chinese origin, whereby the name of the Chinese company was labelled on the pallets of the solar modules in question. In order to protect the ongoing investigation by this national customs administration, this information could not be disclosed to the Malaysian company. However, the Commission drew the attention of the company to the possibility that the Hearing Officer in Trade Proceedings could verify the accuracy of the information, on the basis of Articles 12, 13 and 15 of his terms of reference.
- (107) The information provided by the customs authorities constitutes proof of transshipment by the exporting producer, and therefore proof that the exporting producer is engaged in circumvention practices.
- (108) Second, the brand usage agreement with the Chinese exporting producer was concluded and prolonged at a point in time when the Chinese exporting producer was exporting to the Union under the terms of an undertaking. That undertaking prohibited, *inter alia*, sales to the Union of the product concerned produced in a third country, as that would have rendered supervision of the undertaking, and in particular of its provision on cross-sales, impossible, or at the very least impractical. The terms of the non-confidential version of the undertaking were well-known in the industry and were made available, upon request, by the Commission services. Furthermore, due to its close commercial links with the Chinese producer, they were also available to the exporting producer. By entering into the brand usage agreement, the exporting producer circumvented the terms of the undertaking, and engaged also in that manner in circumvention practices. During the hearing of 12 January 2016, the Malaysian company stated that it had not supplied false or misleading information and that it is a genuine Malaysian manufacturer of solar modules. Concerning the evidence collected from the national customs administration, which could not be disclosed to the Malaysian company for the reasons set out above, the company requested the Hearing Office to verify its accuracy. The Hearing Officer in Trade Proceedings subsequently informed the company that he verified the accuracy of the information from the national customs administration and that on this basis the national customs authorities concluded that a significant volume of modules of that shipment was of Chinese origin.
- (109) Therefore in accordance with Article 18(1) of the basic Regulation, findings with regard to this company were based on facts available.
- (110) In view of the findings with regard to the change in the pattern of trade and transshipment practices, as set out in section 2, and the findings as set out in the recitals (97) to (109) above, relating to finding the Malaysian company having close links to the Chinese company, engaging in transshipment and engaging in a breach of the undertaking, each of which are sufficient on their own, the exemption as requested by this Malaysian company could not be granted in accordance with Article 13(4) of the basic Regulation. In particular, in the light of those findings, the company cannot claim the benefit of the 'safe harbour' provided for in Article 13(2) of the basic Regulation, as both the transshipment and the violation of the undertaking constitute circumvention practices other than an assembly operation in a third country, and in any event because the Commission applies facts available.
- (111) One company in Taiwan failed to disclose in due time detailed information about the commercialisation of cells of their related company in China which had been presented as being a wafer slicer, import data, the respect of Taiwanese restrictions and the precise flows of purchases. Further explanations by this company, *following an Article 18(1) request*, were however sufficient to grant this company an exemption, as it provided the information requested which could be verified by the Commission.

- (112) The remaining five Malaysian and 21 Taiwanese exporting producers, including the company referred to in recital (111), were found not to be engaged in circumvention practices and therefore exemptions can be granted to the modules and cells produced in accordance with Article 13(4) of the basic Regulation.
- (113) In particular, a large majority of these companies were established before the imposition of measures against the PRC. Based on their questionnaire replies, the production facilities of all these companies were inspected. The verification, of production and capacity statistics, costs of production, purchases of raw materials, semi-finished and finished goods and export sales to the Union, confirmed that these companies were genuine producers of which no evidence of circumvention practises was found.
- (114) Other producers which did not come forward in this proceeding and did not export the product under investigation during the Investigation Period, which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete an exemption form in order to enable the Commission to determine whether an exemption may be warranted.
- (115) Following disclosure, several companies came forward and welcomed the Commission's decision to exempt them. These companies though, also pointed to the fact that arrangements (often referred to as OEM arrangements) between different companies are widely used in the solar panel industry, whereby cell producers/module manufacturers (often referred to as brand owners) sometimes consign part of their cells for assembly into modules by other manufacturers (often referred to as OEM manufacturers). These companies requested clarification that they would continue to benefit from an exemption when they entered into such an arrangement. The Commission confirms that such arrangements, which are more correctly referred to as subcontracting arrangements, exist in the solar panels industry and fall within the scope of the extension granted. Under such arrangements, the suppliers and origins of raw materials are controlled by the brand owners; the subcontractor is using the model design provided by the brand owner, whereby the latter supervises the production process. However, also under such arrangements, the cells must be manufactured by exempted companies, as set out in Article 1(2) below.
- (116) Where an exemption is warranted, the extended measures in force shall be amended accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set therein.
- (117) It is considered that special measures are needed in this case in order to ensure the proper application of such exemptions. These special measures are the requirement of the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Article 1(2). Imports not accompanied by such an invoice shall be made subject to the extended anti-dumping duty.

5. DISCLOSURE

- (118) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. None of the arguments presented gave rise to a modification of the definitive findings.
- (119) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Regulation (EU) No 1238/2013 on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, unless they are in transit in the sense of Article V GATT, is hereby extended to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia

and Taiwan whether declared as originating in Malaysia and in Taiwan or not, currently falling within CN codes ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90 (TARIC codes 8501 31 00 82, 8501 31 00 83, 8501 32 00 42, 8501 32 00 43, 8501 33 00 62, 8501 33 00 63, 8501 34 00 42, 8501 34 00 43, 8501 61 20 42, 8501 61 20 43, 8501 61 80 42, 8501 61 80 43, 8501 62 00 62, 8501 62 00 63, 8501 63 00 42, 8501 63 00 43, 8501 64 00 42, 8501 64 00 43, 8541 40 90 22, 8541 40 90 23, 8541 40 90 32, 8541 40 90 33) with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Malaysia	AUO — SunPower Sdn. Bhd.	C073
	Flextronics Shah Alam Sdn. Bhd.	C074
	Hanwha Q CELLS Malaysia Sdn. Bhd.	C075
	Panasonic Energy Malaysia Sdn. Bhd.	C076
	TS Solartech Sdn. Bhd.	C077
Taiwan	ANJI Technology Co., Ltd	C058
	AU Optronics Corporation	C059
	Big Sun Energy Technology Inc.	C078
	EEPV Corp.	C079
	E-TON Solar Tech. Co., Ltd	C080
	Gintech Energy Corporation	C081
	Gintung Energy Corporation	C082
	Inventec Energy Corporation	C083
	Inventec Solar Energy Corporation	C084
	LOF Solar Corp.	C085
	Ming Hwei Energy Co., Ltd	C086
	Motech Industries, Inc.	C087
	Neo Solar Power Corporation	C088
	Perfect Source Technology Corp.	C089
	Ritek Corporation	C090
	Sino-American Silicon Products Inc.	C091
	Solartech Energy Corp.	C092
	Sunengine Corporation Ltd	C093
	Topcell Solar International Co., Ltd	C094
	TSEC Corporation	C095
Win Win Precision Technology Co., Ltd	C096	

2. The application of exemptions granted to the companies specifically mentioned in paragraph 1 of this Article or authorised by the Commission in accordance with Article 2(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice issued by the producer or consignor, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function. In case of crystalline silicon photovoltaic cells this declaration shall be drafted as follows:

'I, the undersigned, certify that the (volume) of crystalline silicon photovoltaic cells sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

In case of crystalline silicon photovoltaic modules this declaration shall be drafted as follows:

'I, the undersigned, certify that the (volume) of crystalline silicon photovoltaic modules sold for export to the European Union covered by this invoice was manufactured

(i) by (company name and address) (TARIC additional code) in (country concerned); OR

(ii) by a subcontracted third party for (company name and address) (TARIC additional code) in (country concerned)

(delete as appropriate one of the two above options)

with the crystalline silicon photovoltaic cells manufactured by (company name and address) (TARIC additional code [to be added if the country concerned is subject to original or anti-circumvention measures in force]) in (country concerned).

I declare that the information provided in this invoice is complete and correct.'

If no such invoice is presented and/or one or both of the TARIC additional codes are not provided in the above-mentioned declaration, the duty rate applicable to 'all other companies' shall apply and shall require the declaration of TARIC additional code B999 in the customs declaration.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and Taiwan or not, registered in accordance with Article 2 of Commission Implementing Regulation (EU) 2015/833 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, with the exception of those produced by the companies listed in paragraph 1.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/39
1049 Brussels
Belgium

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EU) No 1238/2013, from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Commission Implementing Regulation (EU) 2015/833.

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, 11 February 2016.

For the Commission

The President

Jean-Claude JUNCKER
