

Official Journal of the European Union

L 37



English edition

Legislation

Volume 59

12 February 2016

Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation** 1
- ★ **Commission Implementing Regulation (EU) 2016/182 of 11 February 2016 renewing the approval of the active substance pyraflufen-ethyl in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽¹⁾** 40
- ★ **Commission Implementing Regulation (EU) 2016/183 of 11 February 2016 amending Implementing Regulation (EU) No 686/2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of the active substances whose approval expires by 31 December 2018 at the latest ⁽¹⁾** 44
- ★ **Commission Implementing Regulation (EU) 2016/184 of 11 February 2016 extending the definitive countervailing duty imposed by Council Implementing Regulation (EU) No 1239/2013 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** 56
- ★ **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** 76

⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Commission Implementing Regulation (EU) 2016/186 of 11 February 2016 establishing the standard import values for determining the entry price of certain fruit and vegetables	97
--	----

DECISIONS

★ Decision (EU) 2016/187 of the European Central Bank of 11 December 2015 amending Decision ECB/2013/1 laying down the framework for a public key infrastructure for the European System of Central Banks (ECB/2015/46)	100
★ Decision (EU) 2016/188 of the European Central Bank of 11 December 2015 on the access and use of SSM electronic applications, systems, platforms and services by the European Central Bank and the national competent authorities of the Single Supervisory Mechanism (ECB/2015/47)	104

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/181

of 10 February 2016

imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation

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⁾, and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. INITIATION

- (1) On 14 May 2015, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) ('cold-rolled flat steel products') originating in the People's Republic of China ('PRC') and the Russia Federation ('Russia') (together, referred to as 'the countries concerned') on the basis of Article 5 of Regulation (EC) No 1225/2009 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 1 April 2015 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of certain cold-rolled flat steel products. The complaint contained evidence of dumping of the said product and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. REGISTRATION

- (3) Following a request by the complainant supported by the required evidence, the Commission published on 12 December 2015 Implementing Regulation (EU) 2015/2325 ⁽³⁾ making imports of certain cold-rolled flat steel products originating in the PRC and Russia ('the Registration Regulation') subject to registration as of 13 December 2015.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 161, 14.5.2015, p. 9.

⁽³⁾ Commission Implementing Regulation (EU) 2015/2325 of 11 December 2015 making imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration (OJ L 328, 12.12.2015, p. 104).

- (4) Some interested parties claimed that the request for registration of imports was unfounded, as the conditions pursuant to Article 14(5) of the basic Regulation were not met. They alleged that the conditions for the retroactive collection of duties are not fulfilled as the request would be based on arbitrarily selected time periods, would neglect the cyclical nature of imports and, as to the registration of imports, as well as the retroactive application of measures, would be against the Union interest. However, at the time when the decision was taken the Commission had sufficient *prima facie* evidence justifying the need to register imports: imports and market shares from the countries concerned had sharply increased. The claim in this regard was therefore rejected.

1.3. INTERESTED PARTIES

- (5) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, the Chinese and Russian authorities, known importers, suppliers and users, traders and associations known to be concerned about the initiation and invited them to participate.
- (6) Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

1.4. ANALOGUE COUNTRY PRODUCERS

- (7) The Commission also informed producers in Brazil, Canada, India, Japan, South Korea, Taiwan, Turkey, Ukraine and the USA about the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it provisionally chose Canada as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.

1.5. SAMPLING

- (8) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.1. Sampling of Union producers

- (9) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission had selected the sample on the basis of the highest representative production and sales volumes whilst ensuring a geographical spread. This provisional sample consisted of five Union producers located in five different Member States and accounted for over 35 % of Union production of cold-rolled flat steel products. The Commission invited interested parties to comment on the provisional sample.
- (10) Eurofer submitted comments and for various reasons suggested a change in the proposed sample. However, after analysing these comments the Commission concluded that changing the sample as proposed by Eurofer would not improve its overall representativity. The Commission therefore confirmed the sample and received no further comments in this regard.

1.5.2. Sampling of importers

- (11) The Commission asked unrelated importers to provide the information specified in the Notice of Initiation in order to decide whether sampling was necessary and, if so, to select a sample.
- (12) Thirteen importers provided the requested information and agreed to be included in the sample. Four of them were sampled, but only one of them submitted an importers questionnaire reply. In order to base its findings on a greater number of unrelated importers, the Commission contacted the remaining unrelated importers which had come forward in the sampling exercise but none of them confirmed their willingness to complete the importers questionnaire.

1.5.3. Sampling of exporting producers in the PRC and Russia

- (13) To decide whether sampling is necessary and, if so, to select a sample for the PRC and Russia respectively, the Commission asked all exporting producers in the PRC and Russia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union and the Permanent Mission of the Russian Federation to the European Union to identify and/or contact exporting producers that could be interested in participating in the investigation.
- (14) Ten groups of exporting producers in the PRC and three in Russia provided the requested information and agreed to be included in the samples for the PRC and Russia respectively. With regard to the PRC and in accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two groups of companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the PRC, were consulted on the selection of the sample. Having examined the comments received from one exporting producer, the Commission confirmed its proposed sample.
- (15) In view of the limited number of exporting producers in Russia the Commission decided not to select a sample for Russia but to investigate all the three groups of companies concerned. The companies in question and the authorities of Russia were informed accordingly.

1.6. INDIVIDUAL EXAMINATION

- (16) Six groups of exporting producers in the PRC indicated that they wish to request individual examination under Article 17(3) of the basic Regulation. However, none of them replied to the questionnaire and, thus, no individual examination could be considered.

1.7. REPLIES TO THE QUESTIONNAIRE

- (17) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the Notice of Initiation. Questionnaire replies were received from five Union producers, three users, a group of related steel service centres, one steel service centre not related to an exporting producer in the countries concerned, three exporting producers in Russia, two groups of exporting producers in the PRC, and one producer in an analogue country.

1.8. VERIFICATION VISITS

- (18) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies/association:

— Association:

— Eurofer, Brussels, Belgium.

— Union producers:

— ThyssenKrupp Germany, Duisburg, Germany

— Tata Steel UK Limited, Port Talbot, United Kingdom

— ArcelorMittal Belgium NV, Ghent, Belgium

— ArcelorMittal Sagunto S.L., Puerto de Sagunto, Spain

— U. S. Steel Košice, s.r.o., Košice, Slovak Republic.

— Unrelated importers in the Union:

— S. Polo Lamiere, San Polo di Torriale (PR), Italy.

- Users and/or steel service centres in the Union:
 - Valpro Ltd, Valmiera, Latvia
 - Dinex Latvia Ltd, Ozolnieku Novads, Latvia
 - Gonvarri I. Centro De Servicios, S.L., Madrid, Spain
 - Industrial Ferrodistribuidora, S.L., Puerto de Sagunto, Spain
 - Steel & Alloy processing limited, West Bromwich, United Kingdom.
- Exporting producers in the PRC:
 - Angang Group:
 - Angang Steel Company Limited, Anshan
 - Tianjin Angang Tiantie Cold Rolled Sheets Co. Ltd, Tianjin.
 - Shougang Group:
 - Beijing Shougang Cold Rolling Co. Ltd, Beijing
 - Shougang Jintang United Iron & Steel Co. Ltd, Tagshan.
- Related importer in the Union:
 - Ansteel Spain S.L., Alcobendas, Spain.
- Exporting producers in Russia:
 - Magnitogorsk Iron & Steel Works OJSC, Magnitogorsk
 - OJSC Novolipetsk Steel, Lipetsk
 - PAO Severstal, Cherepovets.
- Related steel service centre/trader/importer in the Union:
 - SIA Severstal Distribution, Riga, Latvia
- Related traders/importers outside the Union:
 - NOVEX Trading (Swiss) SA, Lugano, Switzerland
 - MMK Steel Trade AG, Lugano, Switzerland
 - Severstal Export GmbH, Stansstad, Switzerland.
- Producer in the analogue country:
 - ArcelorMittal Dofasco, Hamilton, Canada.

1.9. INVESTIGATION PERIOD AND PERIOD CONSIDERED

- (19) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('the investigation period' or 'IP').
- (20) The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. PRODUCT CONCERNED

- (21) The product concerned is flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced), currently falling within CN codes ex 7209 15 00, 7209 16 90, 7209 17 90, 7209 18 91, ex 7209 18 99, ex 7209 25 00, 7209 26 90, 7209 27 90, 7209 28 90, 7211 23 30, ex 7211 23 80, ex 7211 29 00, 7225 50 80, 7226 92 00 and originating in the PRC and Russia.

The following product types are excluded from the definition of the product concerned:

- flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, not further worked than cold-rolled, whether or not in coils, of all thickness, electrical,
 - flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, in coils, of a thickness of less than 0,35 mm, annealed (known as 'black plates'),
 - flat-rolled products of other alloy steel, of all width, of silicon-electrical steel, and
 - flat-rolled products of alloy steel, not further worked than cold-rolled (cold-reduced), of high-speed steel.
- (22) Cold-rolled flat steel products are produced from hot-rolled coils. The cold-rolling process is defined by passing a sheet or strip — that has previously been hot rolled and pickled — through cold rolls, i.e. below the softening temperature of the metal. Cold-rolled flat steel products are manufactured to meet certain specifications or proprietary end-user specifications. They can be delivered in various forms: in coils (oiled or not oiled), in cut lengths (sheet) or narrow strips. Cold-rolled flat steel products are an industrial input purchased by end-users for a variety of applications, mainly in manufacturing (general industry, packaging, automotive, etc.) but also in construction.

2.2. LIKE PRODUCT

- (23) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:
- (a) the product concerned;
 - (b) the product produced and sold on the domestic market of Russia, the PRC and Canada;
 - (c) the product produced and sold in the Union by the Union industry.
- (24) The Commission therefore provisionally decided that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. THE PRC

3.1.1. Normal value

3.1.1.1. Market economy treatment ('MET')

- (25) Pursuant to Article 2(7)(b) of the basic Regulation the Commission determines normal value in accordance with Article 2(1) to (6) of that Regulation for the exporting producers in the PRC which comply with the criteria in Article 2(7)(c) of the basic Regulation and could therefore be granted MET.
- (26) For the determination of whether the criteria in Article 2(7)(c) of the basic Regulation are met, the Commission sought the necessary information by asking the exporting producers to fill in the MET claim form. None of them claimed MET.

3.1.1.2. *Analogue country*

- (27) According to Article 2(7)(a) of the basic Regulation normal value was determined on the basis of the price or constructed value in a market economy third country for the exporting producers not granted MET. For this purpose, an analogue country had to be selected.
- (28) In the Notice of Initiation, the Commission indicated that it provisionally chose Canada as an appropriate analogue country and invited interested parties to comment. One exporting producer and the China Iron and Steel Association ('CISA') opposed the choice of Canada and claimed that Russia would constitute an appropriate choice.
- (29) The situation of Russia was examined in accordance with Article 2(7)(a) of the basic Regulation which provides that 'where appropriate, a market economy third country which is subject to the same investigation shall be used'. However, the Commission considers that Russia is not an appropriate analogue country for two reasons:
- Due to the imposition of international sanctions, prolonged geopolitical tensions in Ukraine and falling oil prices, the Russian economy was in an exceptional situation during the investigation period. Its gross domestic product had contracted for three quarters in a row and the Russian rouble had significantly lost value against major currencies, in particular 40 % against the Chinese currency, reaching its lowest level in 10 years. The Commission considers that the normal value which can be determined in such a rapidly deteriorating economy is only relevant for domestic producers and cannot serve as a reasonable analogue for the normal value in the PRC. Indeed, in a rapidly deteriorating economic situation prevailing in Russia during the IP, the prices for the like product could not and were not formed in circumstances which are as similar as possible to those in the PRC.
 - The Russian market is relatively closed and there is hence no genuine competition on this market. The market share of imports is not insignificant (10 % during the investigation period) but these imports originate almost exclusively from the Commonwealth of Independent States Free Trade Area. There are import duties in place (5 %) and the deteriorating value of the rouble during the investigation period further limits the ability of international suppliers to compete on the Russian market.
- (30) Subsequently, the Commission therefore examined whether any other market economy third country in which the like product is produced, could constitute an appropriate analogue country. In addition to India, South Korea and Ukraine, which were mentioned in the Notice of Initiation, the Commission contacted producers in Brazil, Japan, Taiwan, Turkey, and the USA. On the basis of the information received and of its own research, the Commission asked 35 known and potential producers of the like product in these countries to provide information. None of them replied to the analogue country producers' questionnaire. In addition, the Commission contacted three producers in Canada. Only one replied to the analogue country producers' questionnaire.
- (31) On the basis of the information collected and verified, Canada appears to be an appropriate analogue country for the following reasons:
- The product sold in the PRC and the product produced in Canada are identical in their physical characteristics, production process and applications. The Canadian market is sufficiently large. The cooperating producer is a large player with representative domestic sales.
 - The Canadian market is an open and competitive market. There are three Canadian producers of the like product. If the Canadian cooperating producer is by far the largest, it competes with a large amount of imports (59 % of market share during the investigation period) which enter Canada without duty. Most of these imports originate from three producers located in the USA. However, Canada also attracts a diversified base of other international suppliers which together account for a market share of approximately 15 % and includes the PRC, Japan, Russia, Turkey and South-Korea.
- (32) One exporting producer and the China Iron and Steel Association ('CISA') claimed that Canada was not an appropriate choice in so far as:
- The only Canadian producer that submitted an analogue country questionnaire in Canada is a company related to one of the complainants.

- The level of economic development of Canada is substantially different than that of the PRC.
 - The Canadian market is dominated by a single domestic producer; even if Canada has a large proportion of imports, they do not exert a competitive pressure because they mostly originate from the USA.
 - Contrary to the Chinese market where production exceeds the apparent consumption, the domestic production in Canada cannot meet the demand for cold-rolled steel on the Canadian market even with the highest capacity utilisation.
- (33) With regards to these claims, the Commission notes that:
- The existence of a relationship between the analogue country producer and an EU producer does not invalidate or affect the determination of the normal value which is based on duly verified data. In addition, the party has failed to produce any evidence capable of proving that those data are incorrect, or even to explain how the link in question could have affected their reliability.
 - The different level of overall economic development is, in itself, not a relevant factor when selecting an analogue country. As recently confirmed by the Court of Justice, high competitiveness, which is present in Canada, and technological development can offset the fact that a country has a higher level of costs.
 - It cannot be sustained that the cooperating producer holds a dominant position since the Canadian market is open to a large amount of imports. Regardless of their origins, these imports compete with the products sold by Canadian producers. In addition, the origin of these imports is not limited to the USA and includes a significant proportion of imports from other countries.
 - The choice of an analogue country cannot seek to replicate economic imbalances, such as over-capacity, which reflect a distortion in the allocation of assets in a non-market economy context. On the contrary, the fact that a large part of the Canadian consumption is not met by the domestic production but by imports shows that the decision to invest in production capacities is made on the basis of an open and competitive environment.
- (34) The Commission thus concluded at this stage that Canada is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

3.1.1.3. *Normal value (analogue country)*

- (35) The information received from the cooperating producer in the analogue country was used as a basis for the determination of the normal value for the exporting producers not granted MET, pursuant to Article 2(7)(a) of the basic Regulation.
- (36) The Commission first examined whether the total volume of domestic sales of the cooperating producer in the analogue country was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of total export sales volume of the product concerned to the Union of each sampled Chinese exporting producer group during the investigation period. On this basis, the total sales of the cooperating producer of the like product on the domestic market of the analogue country were representative.
- (37) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the sampled groups of exporting producers.
- (38) The Commission then examined whether the domestic sales by the analogue country producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established for both Chinese groups of exporting producers that domestic sales were representative for the majority of product types.

- (39) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (40) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (1) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (2) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (41) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (42) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (1) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (2) the weighted average price of this product type is below the unit cost of production.
- (43) The Commission's analysis of domestic sales showed that for most exported product types more than 80 % of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, for these product types the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period.
- (44) When a product type was not sold in representative quantities on the domestic market by the analogue country producer, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (45) For the product type not sold in representative quantities on the domestic market, normal value was constructed by adding the average selling, general and administrative ('SG&A') expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types to the average cost of production of the like product of the cooperating analogue country producer during the investigation period.

3.1.2. Export price

- (46) One sampled group of exporting producers exported to the Union both directly to independent customers and through related importers.
- (47) If the groups of exporting producers export the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (48) If the group of exporting producers export the product concerned to the Union through related companies acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

3.1.3. Comparison

- (49) The Commission compared the normal value and the export price of the sampled groups of exporting producers on an ex-works basis.

- (50) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport related costs, handling, loading and ancillary charges, indirect taxes, commissions, credit costs and bank charges.

3.1.4. Dumping margins

- (51) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (52) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

Dumping margins, the PRC

Company	Provisional dumping margin (%)
Angang Group	59,1
Shougang Group	52,7

- (53) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled groups of exporting producers.
- (54) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 56,9 %.
- (55) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (56) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted around 87 % of the total exports to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the sampled company with the highest dumping margin.
- (57) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 2

Dumping margins, the PRC

Company	Provisional dumping margin (%)
Angang Group	59,1
Shougang Group	52,7

Company	Provisional dumping margin (%)
Other cooperating companies	56,9
All other companies	59,1

3.2. RUSSIA

3.2.1. Introduction

- (58) The Commission investigated three Russian exporting producers representing almost all exports from Russia to the Union during the investigation period. As set out below, a number of issues emerged which led the Commission to provisionally consider the application of Article 18 of the basic Regulation for two of them.
- (59) For one exporting producer the Commission adjusted the costs of production reported in the reply to the questionnaire as set out in recital 76.
- (60) For the other exporting producer, the on-the-spot verification revealed that this company did not report to the Commission the totality of its production volume and capacity of the product concerned. The Commission found also on-the-spot that the company did not submit full information on its product coding system used for the production and sales of the product concerned, thereby making it impossible for the Commission to link information on sales per product type with information on production per product type. The Commission found further that during the on-the-spot verification the company did not have readily available information per product type on the quantities sold or used captive in further production. This information would have allowed the Commission to verify on-the-spot the deduction of captive use from the total cost of production reported, which the company claimed should be made to arrive at the cost of production of the reported quantity of the product concerned sold. The company provided the information necessary for the reconciliation of production, sales and captive use, which was requested at the verification, only after the verification visit of the Commission. The Commission analysed this new information by performing a stock reconciliation between the quantities of the product concerned produced, as reported after the verification visit, and the quantity sold or transferred for processing to other products. This stock reconciliation demonstrated that the company reported an overall higher quantity sold than what production made physically possible, taking into account stock variations, rejects and waste as reported by the company.
- (61) The Commission considered that for the reasons mentioned in recital 60 the information provided by the exporting producer, both before and after the on-the-spot verification visit, did not enable it to ascertain the accuracy and reliability of the information on sales volumes and costs of the product concerned provided by that exporting producer. The Commission concluded that the exporting producer failed to cooperate by not providing the information which it requested in order to assess and verify the sales volume and the production cost of the product concerned. This prevented the Commission from reliably establishing the export price and the normal value. Furthermore, given that the lack of reliability affected the entire data set provided at various stages by the exporting producer, the Commission was not in a position to rely on specific sub-sets of data provided concerning the different components of the dumping margin. Therefore, the Commission had to determine the dumping margin of that exporting producer on the basis of facts available and had to disregard the information provided by the exporting producer, because it could not arrive at reasonably accurate findings and because the information was not verifiable.
- (62) The Commission informed the exporting producer concerned on 30 October 2015 that for the reasons set out under recitals 60 and 61, it considered that the company had not provided the necessary information concerning export prices and cost of production of the product concerned within the time limits set in the basic Regulation and that it intended to apply facts available in accordance with Article 18 of the basic Regulation for the establishment of possible dumping for the company in question.
- (63) The company commented on the intention of the Commission to use facts available on 13 November 2015 and stated that it cooperated with the investigation to the best of its abilities. The company submitted that it had provided all information that would allow the Commission to arrive at reasonably accurate findings but that it could not be asked to report information that would impose an unreasonable, excessive investigative burden on it. The company further requested an exceptional second verification visit before the imposition of any provisional duty.

- (64) The Commission examined the comments of the company and concluded that these comments did not put forward any new, yet verifiable elements that could alter its intention to use, at this stage of the investigation, facts available in the determination of possible dumping for the company concerned. The Commission also considers that it has not imposed any unreasonable burden on the company by insisting on a proper reconciliation of its production and sales data which is necessary for the verification of such data for the product concerned. Furthermore, the Commission considers that in light of the deficiencies already identified in the information reported by the company itself, a second on-the-spot verification visit would not be meaningful. Thus, in line with Article 18 of the basic Regulation the Commission provisionally established the dumping margin for this company on the basis of facts available.

3.2.2. Normal value

- (65) The Commission first examined whether the total volume of domestic sales for each of the two exporting producers was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by each exporting producer of the like product on the domestic market were representative.
- (66) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producers with representative domestic sales.
- (67) The Commission then examined whether the domestic sales by each of the two exporting producers on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (68) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (69) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (1) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (2) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (70) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (71) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (1) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (2) the weighted average price of this product type is below the unit cost of production.
- (72) The analysis of domestic sales showed that for some product types, some domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was

calculated as a weighted average of prices of all domestic sales during the investigation period where conditions set under recital 69 above were met, or as a weighted average of the profitable sales only, where those conditions were not met. Where there were no or insufficient sales of certain product types of the like product or where no sales were found in the ordinary course of trade, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

- (73) Normal value was constructed by adding the following to the average cost of production of the like product of the two exporting producers during the investigation period:
- (1) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (2) the weighted average profit realised by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (74) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.
- (75) All exporting producers acknowledged in their financial statements significant losses due to the foreign currency exchange differences arising on translation of transactions not denominated in Russian roubles. The Commission considered those as being part of the company's SG&A expenses and included those in the normal value calculation.
- (76) In the light of the findings of the on-the-spot verifications, the Commission adjusted the cost of production for one of the exporting producers. The Commission found that the exporting producer in question had not properly and accurately reflected the actual costs of materials and related purchase costs in its cost reported. The Commission was not able to reconcile the quantities, values and related costs of certain raw material purchased to the accounts of the company, as the company failed to report these costs in the purchase listings of the raw materials that it submitted to the Commission in its replies to the questionnaire and deficiency letter. The Commission found also that the company in question did not report the purchases of raw materials, as amended with its reply to the deficiency letter, in the format requested in the questionnaire, thereby making it impossible for the Commission to verify stock variations and material consumption during the investigation period. Furthermore, the Commission has evidence which it collected during the on-the-spot verification showing that the manufacturing costs in the accounts of the company differ from the manufacturing costs shown for the same accounts in the automated cost allocation module used for the allocation of costs to the different products.
- (77) The Commission informed the exporting producer concerned on 30 October 2015 that for the reasons set out under recital 76, it considered that the company had not provided the necessary information concerning the manufacturing cost of the product concerned within the time limits set in the basic Regulation and that it intended to make use of facts available in accordance with Article 18 of the basic Regulation for establishing the normal value.
- (78) The exporting producer commented on 13 November 2015 on the intention of the Commission to use the facts available and submitted additional explanations regarding differences between the expenses accounted in its general ledger accounts and costs identified in its cost calculation report. The company further admitted on 13 November 2015 the existence of discrepancies the Commission found during the on-the-spot verification visit and which pertain to purchase costs of raw materials, but it claimed that it could immediately identify the reasons for these discrepancies that it considered to be clerical mistakes.
- (79) The Commission examined the comments and explanations of the company and considered that the accuracy of the additional information submitted could no longer be verified and reconciled to the accounts of the company. The Commission further considered that the discrepancies that it found on-the-spot concerning purchase costs of raw materials were not clerical mistakes and noted that the company has not contested the Commission finding that the information on raw material purchase related costs, on stocks of raw material and on raw material consumption was missing from its replies to the questionnaire and deficiency letter. The Commission concluded that the comments and additional explanations of the company had not brought forward any new, yet verifiable

elements that could alter its intention to use, at this stage of the investigation, facts available in the determination of the normal value.

- (80) The Commission found also during the on-the-spot verification that the material consumption ratios that it obtained from the company's controlling department during the verification differed significantly from the material consumption ratios that the company reported on 24 September 2015 in its reply to the deficiency letter of the Commission. The Commission requested information from the company on-the-spot on this anomaly. The company clarified that for the reporting of its material expenses it had not used the consumption ratios from its controlling department but rather calculated the consumption ratios by dividing the material expenses that it reported to the Commission by the cost of the goods sold. For this reason, the Commission considered that the material consumption ratios that the company reported did not enable the Commission to make an accurate assessment of its material expenses. Consequently, as set out above, the Commission decided to modify the cost of production reported by the company to bring it in line with the factual evidence on costs of raw material that it collected during the on-the-spot verification.

3.2.3. Export price

- (81) The exporting producers exported to the Union either directly, via related companies acting as importers in the Union, or via related or unrelated traders/importers based in Switzerland. Those Swiss related companies, owned by the Russian exporting producers, purchased the product concerned from the exporting producers and further sold it to the Union and other countries.
- (82) When the exporting producer exported the product concerned directly to independent customers in the Union, the export price was established on the basis of prices actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (83) When the exporting producers exported the product concerned to the Union through a related company acting as an importer, the export price was constructed on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. The export price was also, in accordance with the same Article, constructed when the product concerned was not resold in the condition in which it was imported. In such cases, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits.
- (84) The verification of one exporting producer showed that 20 % of the export sales to the Union were made to an unrelated trader based in Switzerland. The exporting producer reported those sales as sales to an independent party in the Union, claiming it has no relationship with this trader. Customs export declarations were used to prove the goods destination. Despite the sales currency agreed in the contracts between the exporting producer and trader being euros or US dollars, the exporting producer reported those sales as done in Russian roubles with corresponding invoices in Russian roubles. The Commission will continue investigating this matter, in particular whether the sales were actually made to an independent buyer for consumption in the Union and reported in the appropriate currency. The Commission provisionally included those sales in the determination of the export price.

3.2.4. Comparison

- (85) The Commission compared the normal value and the export price of the cooperating exporting producers on an ex-works basis.
- (86) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (87) As regards export prices, adjustments were made for transport related costs, handling, loading and ancillary charges, import charges, sales commissions, credit costs and bank charges. Concerning domestic prices, adjustments were made for domestic transportation costs, packing costs, credit costs, handling and commissions.

- (88) For price comparison involving foreign currencies, the Commission used, under Article (2)(10)(j) of the basic Regulation the exchange rate applicable at the date of purchase order or sales contract which more appropriately establishes the material terms of sale than the invoice date as the price negotiation resulting in establishing the price was made in the period close to the purchase order or sales contract date. The corresponding invoice was issued when the product has been shipped, which was generally one or two months later.
- (89) The Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (90) For the determination of the provisional dumping margin of the exporting producer referred to in recitals 60 to 64, the Commission used as a fact available, the level of the dumping margin of the most exported product type that was found to be just above the overall dumping margin of one of the others exporting producers. The Commission based the selection of the suitable exporting producer on the sounder comparableness of the sales volumes on the domestic market and Union exports, geographical proximity, structure of the essential raw material inputs and reported capacity utilisation. On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 3

Dumping margins, Russia

Company	Provisional dumping margin (%)
Magnitogorsk Iron & Steel Works OJSC	19,8
PAO Severstal	25,4
OJSC Novolipetsk Steel	26,2

- (91) For all other exporting producers in Russia, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation.
- (92) As set out in recital 58, the investigated companies represented almost all exports from Russia to the Union. On this basis, the Commission decided to base the dumping margin for all other companies at the level of the company with the highest dumping margin.
- (93) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 4

Dumping margins, Russia

Company	Provisional dumping margin (%)
Magnitogorsk Iron & Steel Works OJSC	19,8
PAO Severstal	25,4

Company	Provisional dumping margin (%)
OJSC Novolipetsk Steel	26,2
All other companies	26,2

4. INJURY

4.1. DEFINITION OF THE UNION INDUSTRY AND UNION PRODUCTION

- (94) Within the Union, 13 companies provided production and sales data in the standing exercise and indicated that they produced the like product during the investigation period. Based on the available information from the complaint, there are 15 other Union producers of the like product in the Union.
- (95) The total Union production during the investigation period was established at around 37 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information from the complainant and from all known producers in the Union.
- (96) The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will be thereafter referred to as the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (97) The cooperating Union producers represent 89 % of the total Union production of the like product.
- (98) The business model of the Union producers and their degree of vertical integration varies. 'Re-rollers', which have to source their pre-material needs from other producers, represent a minor share.

4.2. UNION CONSUMPTION

- (99) As mentioned in recital 21, cold-rolled flat steel products fall within a number of CN codes including certain ex codes. In order not to underestimate Union consumption, and in view of the apparent marginal impact of such codes on total consumption, import volumes of CN ex codes have been fully accounted for the purpose of calculating Union consumption.
- (100) As the Union industry is mostly vertically integrated and cold-rolled flat steel products are regarded as a primary material for the production of various value added downstream products, captive and free market consumptions were analysed separately.
- (101) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies and are therefore not reliable. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices.
- (102) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of cold-rolled flat steel products and determined whether the production was destined for captive use or for the free market. The Commission found that around 82 % of the total Union producers' production was destined for captive use.

4.2.1. Captive consumption

- (103) The Commission established the Union captive consumption on the basis of the captive use and captive sales on the Union market of all known producers in the Union. On this basis, the Union captive consumption developed as follows:

Table 5

Captive consumption (tonnes)

	2011	2012	2013	2014	IP
Captive consumption	29 121 785	27 555 796	28 900 235	30 309 067	30 183 620
<i>Index (2011 = 100)</i>	100	95	99	104	104

Source: Verified Eurofer questionnaire reply.

- (104) During the period considered, the Union captive consumption increased by around 4 %. This increase is mainly due to a growth of the captive markets, such as for the automotive industry.

4.2.2. Free market consumption

- (105) The Commission established the Union free market consumption on the basis of: (a) the sales on the Union market of all known producers in the Union; and (b) the imports into the Union from all third countries as reported by Eurostat, thereby also considering the data submitted by the cooperating exporting producers in the countries concerned. On this basis, the Union free market consumption developed as follows:

Table 6

Free market consumption (tonnes)

	2011	2012	2013	2014	IP
Free market consumption	7 839 959	6 819 677	7 376 829	7 152 193	7 122 682
<i>Index (2011 = 100)</i>	100	87	94	91	91

Source: Verified Eurofer questionnaire reply and Eurostat.

- (106) During the period considered, the Union free market consumption decreased by around 9 %. The drop is mainly due to a slow or lack of economic recovery for the downstream industry.

4.3. IMPORTS FROM THE COUNTRIES CONCERNED

4.3.1. Cumulative assessment of the effects of imports from the countries concerned

- (107) The Commission examined whether imports of the product concerned originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

- (108) The margins of dumping established in relation to the imports from the PRC and Russia are summarised under recital 57 and recital 93 above. All these margins are well above the *de minimis* threshold laid down in Article 9(3) of the basic Regulation.
- (109) The volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation. The PRC and Russia held, in the investigation period, an EU market share of 10,3 % and 9,8 % respectively.
- (110) The conditions of competition between the dumped imports from the countries concerned and the like product were also similar. Indeed, the imported products competed with each other and with the product concerned produced in the Union because they were sold to similar categories of end customers.
- (111) Therefore and contrary to the claim made by one interested party, all criteria set out in Article 3(4) of the basic Regulation were met and imports from the countries concerned were examined cumulatively for the purposes of the injury determination.

4.3.2. Volume and market share of the imports from the countries concerned

- (112) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the imports was established by comparing import volumes with the Union free market consumption as reported in Table 6 above.
- (113) Imports into the Union from the countries concerned developed as follows:

Table 7

Import volume (tonnes) and market share

	2011	2012	2013	2014	IP
Volume of imports from the countries concerned	1 117 820	917 610	1 380 382	1 344 898	1 430 044
<i>Index (2011 = 100)</i>	100	82	123	120	128
Market share countries concerned	14,3 %	13,5 %	18,7 %	18,8 %	20,1 %
<i>Index (2011 = 100)</i>	100	94	131	132	141
Volume of imports from the PRC	651 654	406 811	653 366	620 140	732 383
<i>Index (2011 = 100)</i>	100	62	100	95	112
Market share PRC	8,3 %	6 %	8,9 %	8,7 %	10,3 %
<i>Index (2011 = 100)</i>	100	72	107	104	124
Volume of imports from Russia	466 165	510 800	727 016	724 758	697 661
<i>Index (2011 = 100)</i>	100	110	156	155	150

	2011	2012	2013	2014	IP
Market share Russia	5,9 %	7,5 %	9,9 %	10,1 %	9,8 %
<i>Index (2011 = 100)</i>	100	126	166	170	165

Source: Eurostat.

- (114) The above table shows that in absolute figures the imports from the countries concerned have increased significantly during the period considered. In parallel, the total market share of the dumped imports into the Union increased by 5,8 percentage points during the period considered.

4.3.3. Prices of the imports from the countries concerned and price undercutting

- (115) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports into the Union from the countries concerned developed as follows:

Table 8

Import prices (EUR/tonne)

	2011	2012	2013	2014	IP
PRC	619	589	533	510	505
<i>Index (2011 = 100)</i>	100	95	86	82	82
Russia	630	574	518	499	489
<i>Index (2011 = 100)</i>	100	91	82	79	78
Average price of dumped imports	624	581	525	504	497
<i>Index (2011 = 100)</i>	100	93	84	81	80

Source: Eurostat.

- (116) The average prices of the dumped imports decreased from 624 EUR/tonne in 2011 to 497 EUR/tonne during the investigation period. During the period considered, the decrease of the average unit price of the dumped imports was around 20 %.
- (117) The Commission assessed the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the five Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices at CIF Union frontier level per product type of the imports from the cooperating producers of the countries concerned to the first independent customer on the Union market, with appropriate adjustments for post-importation costs.

- (118) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period.
- (119) On the basis of the above, the dumped imports from the countries concerned were found to undercut the Union industry prices by respectively 8,1 % and 14,4 % for the PRC and Russia.

4.4. ECONOMIC SITUATION OF THE UNION INDUSTRY

4.4.1. General remarks

- (120) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (121) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, stock, growth, market share, employment, productivity and magnitude of dumping margins) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the complainant, cross-checked with data provided by Union producers and available official statistics (Eurostat).
- (122) The analysis of microeconomic indicators (sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, wages and cost of production) was carried out at the level of the sampled Union producers. The assessment was based on their information, duly verified.
- (123) For some injury indicators relating to the Union industry, the Commission analysed separately data related to the free and the captive market and made a comparative analysis. These factors are: sales and market share, unit prices, unit cost and profitability. However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry because they depend on the whole activity, whether the production is captive or sold on the free market. These factors are: production, capacity, capacity utilisation, cash flow, investments, return on investments, employment, productivity, stocks and labour costs. For these factors, analysis of the whole Union industry is warranted in order to establish a complete injury picture of the Union industry, as the data in question cannot be separated out between captive sales and free sales.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (124) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 9

Production, production capacity and capacity utilisation

	2011	2012	2013	2014	IP
Production volume (tonnes)	36 296 343	34 174 111	35 788 676	36 912 062	36 633 691
Index (2011 = 100)	100	94	99	102	101

	2011	2012	2013	2014	IP
Production capacity (tonnes)	53 566 734	51 657 090	52 658 719	51 628 090	51 693 593
<i>Index (2011 = 100)</i>	100	96	98	96	97
Capacity utilisation	68 %	66 %	68 %	71 %	71 %

Source: Verified Eurofer questionnaire reply.

- (125) During the period considered, the Union industry's production volume increased by 1 %. The reported capacity figures refer to technical capacity, which implies that adjustments, considered as standards by the industry, for set-up time, maintenance, bottle necks and other normal stoppages have been taken into consideration. On this basis, the capacity decreased by 3 % during the period considered in an effort by the Union industry to contribute to the global overcapacity reduction.
- (126) The increase in capacity utilisation rate resulted from a slight increase in the production volume mainly driven by the increase in captive consumption and a capacity reduction.

4.4.2.2. Sales volume and market share

- (127) The Union industry's sales volume and market share in the free market developed over the period considered as follows:

Table 10

Sales volume and market share (free market)

	2011	2012	2013	2014	IP
Sales volume (tonnes)	5 867 858	5 521 017	5 518 202	5 220 466	5 044 928
<i>Index (2011 = 100)</i>	100	94	94	89	86
Market share	74,8 %	81,0 %	74,8 %	73,0 %	70,8 %
<i>Index (2011 = 100)</i>	100	108	100	98	95

Source: Verified Eurofer questionnaire reply and Eurostat.

- (128) The Union industry sales volume on the Union market decreased by 14 % during the period considered, from about 5,9 million tonnes in 2011 to 5 million tonnes during the investigation period.
- (129) During the period considered, the Union industry's market share decreased from 74,8 % to 70,8 %. The decrease of Union industry's sales volume exceeded significantly the decrease in the Union free market consumption. Moreover, to avoid an even stronger shrinking of its market share, the Union industry was forced to lower its sales prices due to the continuous price pressure exerted by the imports concerned.

- (130) As far as the captive market is concerned, the captive volume and market share developed over the period considered as follows:

Table 11

Captive volume and market share

	2011	2012	2013	2014	IP
Captive volume	29 121 785	27 555 796	28 900 235	30 309 067	30 183 620
<i>Index (2011 = 100)</i>	100	95	99	104	104
Market share (out of total captive and free markets)	79 %	80 %	80 %	81 %	81 %
<i>Index (2011 = 100)</i>	100	100	102	101	103

Source: Verified Eurofer questionnaire reply and Eurostat.

- (131) The Union industry captive volume (composed of captive use and captive sales) on the Union market increased by 4 % during the period considered, from about 29,1 million tonnes in 2011 to 30,2 million tonnes during the investigation period.
- (132) As a consequence, the Union industry's captive market share expressed as a percentage of total consumption (both captive and free market) increased from 79 % to 81 % over the period considered.

4.4.2.3. Employment and productivity

- (133) Employment and productivity developed over the period considered as follows:

Table 12

Employment and productivity

	2011	2012	2013	2014	IP
Number of employees (Full time employment/FTE)	21 598	21 292	20 331	19 781	19 513
<i>Index (2011 = 100)</i>	100	99	94	92	90
Productivity (tonne/FTE)	1 681	1 605	1 760	1 866	1 877
<i>Index (2011 = 100)</i>	100	96	105	111	112

Source: Verified Eurofer questionnaire reply.

- (134) The level of the Union industry employment decreased significantly in the period considered in order to reduce production costs and gain efficiency in view of the increasing competition from dumped imports on the market. This resulted in a reduction of workforce by 10 % during the period considered. As a consequence and in view of the slightly increasing production volume (+ 1 %) over the period considered, the productivity of the Union industry's workforce, measured as output per person employed per year, increased much more than the decrease in actual production. This shows that the Union industry was willing to adapt to the changing market conditions in order to remain competitive.

4.4.2.4. Inventories

- (135) Stock levels of the Union producers developed over the period considered as follows:

Table 13

Inventories

	2011	2012	2013	2014	IP
Closing stocks (tonnes)	1 270 093	1 119 887	1 201 229	1 190 252	1 075 152
<i>Index (2011 = 100)</i>	100	88	95	94	85
Closing stocks as a percentage of production	3,5 %	3,3 %	3,4 %	3,2 %	2,9 %
<i>Index (2011 = 100)</i>	100	94	96	92	84

Source: Verified Eurofer questionnaire reply.

- (136) During the period considered the level of closing stocks decreased by 15 %. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator remained relatively stable at ca. 3 % of the production volume.

4.4.2.5. Magnitude of the dumping margin

- (137) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual high margins of dumping on the Union industry was not negligible, given the volume and prices of imports from the countries concerned.

4.4.2.6. Growth

- (138) The Union consumption decreased by around 9 % during the period considered, while the sales volume of the Union Industry on the Union market decreased by 14 %. The Union industry thus lost market share, contrary to the market share of the imports from the countries concerned which increased during the period considered.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (139) The weighted average unit sales prices of the Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 14

Sales prices in the Union

	2011	2012	2013	2014	IP
Sales price (EUR/tonne)	657	619	571	545	534
Index (2011 = 100)	100	94	87	83	81
Unit cost of production (EUR/tonne)	654	655	587	552	548
Index (2011 = 100)	100	100	90	84	84

Source: Verified questionnaire reply of sampled Union producers.

- (140) The table above shows the evolution of the unit sales price in the Union free market as compared to the corresponding cost of production. During the period considered, sales prices have on average decreased more (– 19 %) than their corresponding cost (– 16 %). Moreover, sales prices have on average been lower than the unit cost of production during the period considered, with the exception of 2011.
- (141) In order to limit the loss in market share, the Union producers were forced to follow the downward price spiral and reduce their sales price significantly. On the other hand, the decrease in cost of production can be explained by the decrease in raw material prices and the productivity gains obtained namely through workforce reductions as explained in Table 12 above.
- (142) Among the sampled producers, cold-rolled flat steel products for captive consumption were transferred or delivered at transfer prices for further downstream processing using different pricing policies (cost, cost plus, market price). Therefore, no meaningful conclusion can be drawn from captive use price evolution. In the same respect, the cost of production of the captive volume was not analysed either.

4.4.3.2. Labour costs

- (143) The average labour costs of the Union producers developed over the period considered as follows:

Table 15

Average labour costs per FTE

	2011	2012	2013	2014	IP
Average labour costs per FTE (EUR)	60 184	61 231	64 819	65 849	66 825
Index (2011 = 100)	100	102	108	109	111

Source: Verified questionnaire reply of sampled Union producers.

- (144) During the period considered, the average wage per employee went up by 11 % which is slightly above the overall increase in prices in the EU due to inflation. This should however be considered in the context of the severe cuts in employment, as explained in recital 134.

4.4.3.3. Profitability, cash flow, investments, return on investments and ability to raise capital

- (145) Profitability, cash flow, investments and return on investments of the Union producers developed over the period considered as follows:

Table 16

Profitability, cash flow, investments and return on investments

	2011	2012	2013	2014	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	0,5 %	– 5,7 %	– 2,9 %	– 1,5 %	– 2,7 %
<i>Index (2011 = 100)</i>	100	– 1 200	– 621	– 317	– 561
Cash flow ('000 EUR)	18 943	– 41 751	1 074	24 409	25 941
<i>Index (2011 = 100)</i>	100	– 220	6	129	137
Investments ('000 EUR)	32 617	18 548	16 878	23 049	28 136
<i>Index (2011 = 100)</i>	100	57	52	71	86
Return on investment	– 3,09 %	– 8,63 %	– 6,42 %	– 3,54 %	– 3,35 %

Source: Verified questionnaire reply of sampled Union producers.

- (146) The Commission established the profitability of the Union producers by expressing the pre-tax net loss of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (147) Profitability developed negatively over the period considered from a slight profit situation in 2011 to continuous losses from 2012 (– 5,7 %) to the investigation period (– 2,7 %). While the heavy losses in the year 2012 are partly linked to the European debt crisis and subsequent economic crisis, the considerable price and volume pressure exerted on the Union industry by the increasing imports from the countries concerned over the period 2013-investigation period have not allowed the Union industry to benefit from the slow recovery of the European economy.
- (148) As mentioned above, in view of the wide variety of pricing policies (e.g. cost, cost plus, market price) among the sampled EU producers for captive volumes, no meaningful conclusion can be drawn from captive use price evolution, nor from captive use profitability evolution.
- (149) According to an interested party, there is a risk that integrated mills like many EU producers may manipulate individual production unit profitability data for the purpose of the investigation. However, the Commission verified the data submitted by the producers and was satisfied by the figures eventually obtained.

- (150) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow followed an upward trend (+ 37 %), mainly due to a reduction in inventories.
- (151) As return on investment remained negative overall (ca. – 3 %), the Union industry reduced the level of its investments by 14 % between 2011 and the investigation period. The ability to raise capital has been affected by the losses incurred during the period considered as can be seen from the decrease in investments.

4.4.4. Conclusion on injury

- (152) The Union industry as a whole could slightly increase its production volumes and improve its capacity utilisation rate due to the strong increase in captive consumption. It also took concrete actions to improve efficiency by reducing labour force and production capacity and by keeping a tight grip on costs of manufacturing.
- (153) Despite these concrete actions by the Union industry during the period considered to improve its overall performance, the situation of the Union industry in the free market deteriorated significantly during the period considered as losses started to accumulate from 2012 onwards. Indeed, sales volumes on the Union free market decreased by 14 %, sales unit prices dropped by 19 % while cost of production only decreased by 16 %. Moreover the Union industry lost market share to imports from the countries concerned and had to reduce investments in the light of the continuously negative return on investment.
- (154) According to the Russian authorities, the fact that some complainants envisage to invest in non-EU countries undermines the allegation of injury. However nothing on file shows that such investments are for cold-rolled flat steel products. Moreover, the investments seem to concern rather companies that, although they might be within the same group as the Union producers, are active in other parts of the world.
- (155) On the basis of the above, it can be concluded that the Union industry, analysed in its two segments and as a whole, suffered material injury in the main injury indicators, such as negative profitability and loss of sales volume and market share.

5. CAUSATION

- (156) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. These factors are: the economic crises, Union producers not being sufficiently competitive/efficient, imports by Union producers, imports from third countries, the export sales performance of the Union producers, certain quotas, the performance of non-complainants and some capacity issues.

5.1. EFFECTS OF THE DUMPED IMPORTS

- (157) Sales prices of the exporting producers decreased on average from 624 EUR/tonne in 2011 to 497 EUR/tonne during the investigation period (– 20 %). By continuously lowering their unit sales price during the period considered, the producers from the countries concerned were able to significantly increase their market share from 2011 (14,3 %) to the investigation period (20,1 %).
- (158) While the drop in demand caused by the financial crisis affected negatively the performance of the Union industry in 2012, the subsequent almost continuous increase in imports from the countries concerned at undercutting prices has had a clear negative impact on the performance of the Union industry. Indeed, while the Union industry was cutting its costs by reducing employment and benefitting from the decrease in raw material prices, dumped imports kept on increasing and forced the Union industry to decrease its Union sales prices even more to limit its loss of market share. Further, while the Union industry's profitability showed slight

improvement by reducing losses in 2014, the volume of imports increased further and prices decreased even more in the investigation period bringing the Union industry prices and profitability further down.

- (159) In view of the clearly established coincidence in time between, on the one hand, the ever-increasing level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of sales volume and price depression resulting in a loss-making situation, it is concluded that the dumped imports were responsible for the injurious situation of the Union industry.
- (160) Moreover, the progressive slowing down of the Chinese economy and the, according to the file, very significant overcapacity of the Chinese steel industry has pushed Chinese steel producers to redirect their excess production towards export markets and the Union market is an attractive export destination. Indeed, a large number of other traditionally important export markets imposed or are considering imposing measures against Chinese and also Russian steel products, including cold-rolled flat steel products, because prices are artificially driven down by unfair imports leading to unhealthy competition. With the growing imposition of trade defence measures across the globe, the Union market has become one of the most attractive destinations for Chinese and Russian dumped imports, to the detriment of Union industry. This conclusion is corroborated by the most recent Eurostat import statistics which show that Chinese and Russian imports have increased even more since the end of the investigation period. Import volumes in September 2015 were 48 % higher than in April 2015 while average prices of these imports continued to decrease.

5.2. EFFECTS OF OTHER FACTORS

5.2.1. The economic crises

- (161) The world economic crisis caused a contraction of demand in the Union and declining sales prices.
- (162) A party raised a number of arguments highlighting the specificities of the year 2012 ('Eurozone crisis') for the cold-rolled flat steel products Union market and contested that the Union industry was impacted by Chinese imports during that period. Similarly, Russian producers suggested that the 2012 market downturn was at the origin of the injury incurred by the Union industry.
- (163) The investigation could not confirm such allegations. On the one hand, even if the Union cold-rolled flat steel products market has been impacted by the crises, namely during the years 2008-2009 and in 2012, the market was recovering slightly from their effects with a relatively stable, yet stagnating market demand. The Russian authorities acknowledged the slow recovery of the largest consumer of steel products in the Union, the construction industry. On the other hand, whereas between 2012 and 2013 the Union industry could have benefited from the recovery of the market, it was prevented from doing so by a further increase in imports from the PRC and Russia. Cheap imports gradually increased and captured market shares to the detriment of the Union industry. In addition, the particular situation in 2012 should not bear a crucial impact on the trend during the longer period of analysis and it is in any event clear that the continuous pressure of imports started to be fully felt in 2012.
- (164) The exclusion of 2012 from the volume-effect analysis requested by the party was found not to be justified. Trends would be missing one key element, thus distorted.
- (165) It can be provisionally concluded that the economic crises are not the root cause of the Union industry's injury and do not break the causal link between the dumped imports and the injury of the Union industry.

5.2.2. Union producers are not sufficiently competitive/efficient

- (166) Some interested parties alleged that the Union producers were not sufficiently competitive due to comparatively higher costs and that alleged injury stems from the inefficiency of the complainants.

- (167) The Russian authorities referred to the high production costs of the European steel companies, in particular, from the environmental modernisation of metallurgy production in the Union. They notably blamed the establishment of sectoral limits on greenhouse gas emissions and increasing fees for carbon dioxide emissions and costs of compliance with regulatory requirements in the area of environmental and climate policy for the European companies.
- (168) In reply to this allegation, however, Eurofer emphasised that, based on the complaint, the costs of goods sold of the complainants decreased in the year for which the costs of compliance with regulatory requirements should have allegedly incurred. In addition, it is important to mention that the numerous environmental regulations implemented in the Union are in general not recent and the investigation showed that the share of environmental compliance costs is moderate and had thus no significant impact on the operations of the Union steel mills during the period considered.
- (169) The Russian producers challenged the soundness of the investments made by the complainants in 2011-2012 and the capacity increase in 2011. They attributed the decreased profitability to the Union industry's own business decisions and the injury to the inability of complainants to reposition themselves in the face of global competition. However the investigation showed that business decisions made during the period considered were carefully assessed. Investments, upstream and downstream, were made in order to increase efficiency, improve the product quality, develop high technological products and satisfy the increasing customer requirements. Indeed, the capacity of the Union industry decreased by 3 % during the period considered (see Table 5). In addition, the cold-rolled flat steel products production capacity is not entirely dedicated to the cold-rolled flat steel products market per se as the cold-rolled flat steel production is also used for downstream activities, as pinpointed in Section 4.2. The impact of the export performance of the Union industry is explained below.

5.2.3. Decrease in raw materials and cold-rolled flat steel products prices on the global market

- (170) In the view of several parties, cold-rolled flat steel products prices of the Union producers and of the countries concerned would follow a sole worldwide price trend and basically reflect the decreasing prices of raw materials. One party also alleged that the complainants failed to take the advantage of decreasing raw material costs and reduce their average costs of goods sold.
- (171) However, if a general decreasing trend in cold-rolled flat steel products prices may have played a certain role, the decreasing prices on the Union market cannot be attributed solely to such a general worldwide situation.
- (172) First, the price development of cold-rolled flat steel products in the international context shows regional differences. Countries with limited installed capacities, such as Brazil or Argentina, have a relatively low impact on the global price setting process and price development is less volatile. By contrast, in established steel markets, domestic producers compete with many import sources, leading to a growing price pressure and, consequently, to price erosions. This situation gets exacerbated by dumped prices.
- (173) Second, even if the PRC and Russia are amongst the most steel-consuming countries in the world, both countries have a significant excess capacity. Producers from the PRC and Russia are thus incentivised to export their surplus of production at low prices, thereby impacting and distorting global prices.
- (174) Third, as noted by Eurofer, import prices from the countries concerned have decreased more than the decrease in raw material prices/upstream material over the same period. This observation is corroborated by the comparison between the cost of production of the Union industry, which decreased altogether by 16 % over the period considered, whereas the average import prices decreased by 20 % over the same period. Or, although the decrease in cost of production was not only due to a lower cost for the raw materials used but also efficiency gains achieved by Union producers (see recital 134), it was still inferior to the decrease in import prices from the PRC and Russia.
- (175) Under fair market conditions, the Union industry could have maintained its sales price levels so as to reap the benefits of a reduction in costs and reach profitability again. However Union producers had to continue to depress their sales price and after the investigation period prices continued to fall down to historically low levels.

5.2.4. Imports from third countries

(176) The volume of imports from third countries developed over the period considered as follows:

Table 17

Import volume from other countries (tonnes) and market share

	2011	2012	2013	2014	IP
Volume of imports from third countries	854 281	381 049	478 244	586 829	647 710
<i>Index (2011 = 100)</i>	100	45	56	69	76
Market share	10,9 %	5,6 %	6,5 %	8,2 %	9,1 %
Volume of imports from Ukraine	228 125	134 423	156 809	158 265	174 020
<i>Index (2011 = 100)</i>	100	59	69	69	76
Market share	2,9 %	2,0 %	2,1 %	2,2 %	2,4 %
Volume of imports from the India	87 071	58 993	68 136	101 873	138 038
<i>Index (2011 = 100)</i>	100	68	78	117	159
Market share	1,1 %	0,9 %	0,9 %	1,4 %	1,9 %
Volume of imports from Iran	2 343	1 271	521	82 072	70 782
<i>Index (2011 = 100)</i>	100	54	22	3 503	3 021
Market share	0,0 %	0,0 %	0,0 %	1,1 %	1,0 %

Source: Eurostat.

- (177) Imports from the countries concerned constitute the vast majority of all imports in the Union. Other imports decreased by – 24 % during the period considered; i.e. more than the decrease in Union free market consumption. The market share of such imports has thus decreased from 10,9 % in 2011 to 9,1 % in the investigation period.
- (178) Numerous interested parties argued that the effects of imports from third countries have been allegedly underestimated, namely in terms of their performance and growth rates. In particular, the Russian authorities and the Russian producers considered that the complainant undervalued the factor of growing imports from other countries, especially from India and Ukraine. One interested party highlighted that imports of cold-rolled flat steel products from Iran and Ukraine were made at prices even lower than that of imports from the PRC and Russia, and together they account for 12,3 % of total imports into the Union.
- (179) First, at the current time there is no evidence that imports from India, Iran or Ukraine would be dumped on the Union market.

- (180) Moreover, based on figures available through Eurostat, and calculated consumption on the Union market, the market share of the aforementioned imports is low. Although the market share of imports from India, Iran and Ukraine together increased from 4,1 % in 2011 to 5,4 % in the investigation period, their individual market shares ranged between 1 % and 2,4 % only. Such import sources are thus unlikely to have had the impact alleged by interested parties and do not break the causal link.
- (181) Nevertheless, the Commission will be closely monitoring the evolution of the market situation and may, if necessary, take appropriate measures to tackle dumping from the aforementioned countries.

5.2.5. Export sales performance of the Union industry

- (182) The volume of exports of the Union producers developed over the period considered as follows:

Table 18

Export performance

	2011	2012	2013	2014	IP
Export volume to unrelated customers	767 756	784 562	755 574	766 223	799 362
<i>Index (2011 = 100)</i>	100	102	98	100	104
Average price (EUR/t)	639	606	565	553	557
<i>Index (2011 = 100)</i>	100	95	88	87	87

Source: Verified questionnaire reply of Eurofer and sampled Union producers.

- (183) The volume of exports to unrelated customers remained stable between 2011 and 2014 before increasing by 4 % in the investigation period. As far as prices are concerned, they dropped significantly by – 13 % over the period considered; i.e. less than the price on the Union market (– 19 %).
- (184) A party stated that the increasing export sales show the competitiveness of the EU-origin cold-rolled flat steel products on the global market and illustrates that the complainants are performing well.
- (185) However, any increase in export sales should be seen as a self-defence measure by Union producers looking for profitable niches in export markets so as to maintain sufficient capacity utilisation and safeguard jobs in the Union. The increase is also related to the fact that certain Union producers are global players that need to follow their customers when they invest in new markets before local subsidiaries take over the supply to such customers.
- (186) In this respect it is noted that exports to unrelated customers remained stable between 2011 and 2014, and only started to increase in the investigation period (+ 4 %). Such increased exports mainly concerned specific markets, such as the United States, the PRC and Algeria, and mainly consist in high added value and specialties products, for which the Union industry has a competitive advantage in terms of quality and reliability of supply. By contrast, according to Eurofer, exports towards countries which are more commodities-oriented decreased.
- (187) Based on data in the complaint, one interested party also alleged that the increasing export quantities were sold at a loss and therefore had a negative impact on the profitability of the Union industry as a whole. This allegation is ill-founded. As mentioned above, the increase in export sales to unrelated customers took place mostly in the

investigation period. It is also noted that export sales accounted for not more than 12 % to 14 % of total sales to unrelated customers and that export prices decreased less than prices in the Union and were significantly higher than those at the end of the period considered.

5.2.6. Capacity issues affecting the Union steel industry

- (188) Some interested parties claimed that structural problems of the Union steel industry such as overcapacity have been the cause of injury to the Union industry. In the same vein, the Russian authorities noted that according to the OECD publication 'Excess capacity in the global steel industry and the implications of new investment projects' (2014), excess capacity is hurting the global steel industry, resulting, among others, in low prices.
- (189) However, the Union industry undertook steps to tackle any potential excess in its overall steel capacity and output so as to adapt to the recent market developments. Based on OECD data ⁽¹⁾, steel capacity is expected to increase worldwide, except for the Union. Table 9 above shows that the capacity of the Union industry decreased by 3 % over the period considered. On the contrary, the production capacity of most of the cooperating exporting producers in the countries concerned increased over the same period.

5.2.7. Imports by the Union industry

- (190) The Russian producers argued that complainants' imports from the PRC and Russia strongly suggest self-inflicted injury and that complainants cannot be allowed to take advantage of the situation rendered by their own hands.
- (191) In this regard, the complainants claim to be integrated steel groups with trading arms that operate independently from the producing mills. Trading arms, free to purchase their cold-rolled flat steel products needs from multiple sources, were occasionally confronted with a roaring pressure from customers to obtain the cheapest material possible and, allegedly, compelled to source a very limited part of their needs from imports, including from the PRC and Russia, so as to secure and maintain their commercial relationships. This issue was already acknowledged in the complaint as regards some of the Union producers.
- (192) However, it cannot reasonably be held that the injury suffered by the Union industry was self-inflicted due to these imports. Such imports were made by only some of the Union producers, represent low volumes (between 0-5 % of the sales of the complainants, made by trading arms of the Union producers) and were made as a matter of temporary self-defence as a reaction against low-priced dumped imports from the PRC and Russia.

5.2.8. The existence of previously applicable agreement on trade in certain steel products between Russia and the Union

- (193) The Russian authorities referred to the previously applicable Union-Russia trade agreements in the steel sector to assert that 'the volume of Russian imports set under the said Agreement was considered non-injurious and (the current) volume remains in line with the volume under the Agreement'. Similarly, Russian producers contend that the quotas included in these subsequent agreements were deemed non-injurious and that the safeguard mechanism provided for in the agreements was never sought, much less implemented.
- (194) These claims are however unfounded. On the one hand, information on file shows that the quotas were too high further to the economic crisis due to the fact that they had not been revised. The agreements in question, which date back to October 1997, were frequently negotiated (e.g. in the context of the Union enlargements) but the quotas were never substantially adjusted downwards in order to take into account new market developments. Moreover, the relevant quotas covered a much broader product range than cold-rolled flat steel products, including downstream products. The full quotas were never foreseen for cold-rolled flat steel products only.
- (195) The reasons why Russian imports are now more a problem for the Union market than in the past is simply based on the fact that the substantial increase in imports from Russia, coupled with the low, dumped prices are now disturbing the Union market to an extent that cannot be compared to the periods before.

⁽¹⁾ <http://www.oecd-ilibrary.org/docserver/download/5js65x46nxhj.pdf?expires=1450430707&id=id&accname=guest&checksum=E0DE6D6E5A5D07EAEFAFF9326A72404>

5.2.9. Non-complainants are potentially causing injury to the Union industry

- (196) Certain interested parties claimed that non-complainants were not incurring any injury and that they were actually potentially causing injury to the Union industry. They stated that the Union industry is divided into successful forward-thinking producers (i.e. the non-complainants) and others (the complainants). They argued that the predicament of the complainants cannot be attributed to Russian imports since the non-complainants, representing 24 % of Union production of cold-rolled flat steel products, vastly outperform the complainants with respect to a number of injury indicators.
- (197) These allegations are unfounded. First of all, it is a core principle of any trade defence proceeding that the participation to said proceeding is made on a voluntary basis. Secondly, some of the injury findings are based on sampled Union producers, which are representative of the entire Union industry in light of Section 1.5.1.
- (198) Thirdly, while it is true that non-complaining producers appear to have increased their production levels, this should be seen in light of the fact that certain of these producing mills are also producers active in the downstream sector, such as hot-dip galvanised cold-rolled flat steel. Higher production volumes do not necessarily imply higher profitability and a better position on the Union market. To the contrary, this may hint towards the fact that these producing mills have preferred to focus their activities on more niche, high added value products, rather than competing with dumped Chinese and Russian exports on the cold-rolled flat steel products market.
- (199) Fourthly, complaining producers accounted for 89 % of the total production of Union mills, excluding re-rollers, in the Union during the investigation period. As a result, the complaining mills are significantly representative of the Union industry as a whole and the fact, whether established or not, that certain producers in the Union are managing to perform better on the Union market may be the result of a variety of factors that does not cast doubt as to the fact that, as a general manner, the Union industry is suffering from dumped imports. Fifthly, in terms of sales, although non-complaining producers may have performed slightly better, although stagnating, than the complaining producers, the trend reversed starting 2014.
- (200) In addition, information on the file suggests that re-rollers are also under the same downward price pressure on the Union market and their situation is comparable to that of the Union integrated mills.
- (201) To conclude, it appears that non-complaining producers did not outperform the complaining producers and that their situation, especially in light of their share of the Union production, is not such as to break the causal link between the dumped imports and the injury incurred by the Union industry as a whole.

5.3. CONCLUSION ON CAUSATION

- (202) A causal link was provisionally established between the injury suffered by the Union producers and the dumped imports from the countries concerned.
- (203) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The other identified factors such as the economic crisis, the allegation that the Union industry is not sufficiently competitive and/or efficient, the imports from third countries, the role of non-complainants, the export sales performance of the Union producers or the overcapacity of the Union industry, were provisionally not found to break the causal link, even considering their possible combined effect. The crisis and the decrease in consumption as well as the rationalisation of the Union industry may have somewhat contributed to the injury, but in the absence of ever decreasing prices of dumped imports, the situation of the Union industry would certainly not have been affected to such a significant extent. In particular, sales prices would not have dropped to such low levels and better profitability would have been achieved.
- (204) On the basis of the above, the Commission concluded at this stage that the material injury to the Union industry was caused by the dumped imports from the countries concerned and that the other factors, considered individually or collectively, did not break the causal link.

6. UNION INTEREST

- (205) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

6.1. INTEREST OF THE UNION INDUSTRY

- (206) The Union industry is located in 17 Member States (United Kingdom, France, Germany, Slovak Republic, Italy, Slovenia, Luxembourg, Greece, Belgium, Poland, the Netherlands, Austria, Finland, Sweden, Portugal, Hungary and Spain), and employs directly ca. 20 000 employees in relation to cold-rolled flat steel products.
- (207) Thirteen producers cooperated during the investigation. None of the known producers opposed the initiation of the investigation. As shown above when analysing the injury indicators, the whole Union industry experienced a deterioration of its situation and was negatively affected by the dumped imports.
- (208) It is expected that the imposition of provisional anti-dumping duties will restore fair trade conditions on the Union market, putting an end to the price depression and enabling the Union industry to recover. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. The Union industry has suffered material injury caused by the dumped imports from the countries concerned. It is recalled that most of the injury indicators showed a negative trend during the period considered. In particular, injury indicators related to the financial performance of the sampled Union producers, such as profitability and return on investment, were seriously affected. It is therefore important that prices be restored to a non-dumped or at least a non-injurious level in order to allow all various producers to operate on the Union market under fair trade circumstances. In the absence of measures, a further deterioration of the Union industry's economic situation appears very likely. A bad performance on the cold-rolled flat steel products segment would impact the downstream and upstream segments of many Union producers as capacity utilisation on these segments is closely linked to the production of the product investigated.
- (209) It is therefore provisionally concluded that the imposition of anti-dumping duties would be in the interest of the Union industry. Any imposition of anti-dumping measures would allow the Union industry to recover from the effects of injurious dumping found.

6.2. INTEREST OF UNRELATED IMPORTERS

- (210) As indicated in recital 12, only one company out of the four sampled provided a questionnaire reply. Further, the investigation revealed that out of the 13 companies that had come forward at sampling stage, none of them qualified as a pure unrelated importer. Indeed, most of the parties initially contacted were in fact (groups of) steel service centres, generally with relationships either with the Union industry or parties in the countries concerned. The Commission sought further cooperation from more unrelated importers at a later stage but no unrelated importer which had come forward at the sampling stage was eventually willing to provide the Commission with a questionnaire reply.
- (211) The investigation showed that an increase in prices derived from measures, if any, would not have a direct impact on unrelated importers. In principle, there is no evidence that importers or steel service centres might be unable to pass on price increases to their customers. In addition they can also import from other countries not subject to this investigation.
- (212) An Italian association representing 32 Italian service centres stated that imports are necessary for companies active in the distribution sector because diversifying the sources of supply guarantees secure and reliable supplies to their clients. This is allegedly a concern since Italian cold-rolled flat steel producers made investments in galvanising lines (i.e. reduced sales of cold-rolled flat steel products onto the Union free market) and had some production and shipments issues with cold-rolled flat steel products, which provoked uncertainty in the Italian national market.

- (213) In this regard it is noted that duties should contribute to continuous security of supply for the distributors' clients. Without duties, some of the cold-rolled flat steel producers in the Union might have to close down/reduce their cold-rolled flat steel production activities and leave many Union users with limited sources of supply. Moreover the level of measures will lead to a level playing field but still allow for imports from the countries concerned (at fair prices) and other sources.
- (214) Last, a group of cooperating steel service centres indicated to be favourable to measures in the short-medium run as a means to help Union mills.
- (215) In view of the above, it is provisionally concluded that the imposition of measures will not have significant negative effects on the interest of the Union importers.

6.3. INTEREST OF USERS

- (216) The main end-user industries for cold-rolled flat steel products are automotive, household appliances (white goods), construction and a large variety of industrial goods. Large users (such as belonging to the automotive or household appliance sectors) did not cooperate in the proceeding.
- (217) Only three users in Latvia with imports from Russia cooperated with the investigation. Duties affecting Russian cold-rolled flat steel products might have some impact at least on one of them. But due to their size and specific activities, these users cannot be considered to be representative of the impact of duties on Union cold-rolled flat steel products users as a whole.
- (218) According to a submission of an Italian association representing 32 Italian service centres, measures would trigger more delocalisation of major users in industrial groups from Italy and it referred to Electrolux and Whirlpool. Allegedly, the delocalisation process had started some time ago, hurts Italy's overall economy and has negative social implications resulting from the loss of jobs.
- (219) Even if it cannot be contested that duties can in the abstract affect users negatively in terms of higher purchase prices, nothing on the file supports that for Italian users cold-rolled flat steel products costs are so significant (as compared to total costs) to affect profitability and trigger delocalisation of major industrial groups. The level of duties proposed cannot be deemed prohibitive either. In addition, nothing confirms whether users in non-Italian markets might be or will be experiencing the same as what is alleged for the Italian ones — according to the abovementioned Italian association, the specificities of the Italian market are manifold.
- (220) A few parties submitted that measures will prevent Union downstream industries from having access to reasonably priced products. Two Latvian users, a small Portuguese and a small Polish importer added that only some Russian producers with which they had historical relationships sell certain product types and that, overall, the interests of smaller business in the Union were neglected (as compared those of the Union steel producers).
- (221) These allegations are rejected. As concerns the second point, the interests of smaller businesses in the Union have been considered in light of the information available. Even if it cannot be contested that duties can in the abstract affect users negatively in terms of higher purchase prices, nothing on file supports that cold-rolled flat steel products costs are so significant (as compared to total costs) for them. In addition increased costs might be (partly) passed on. The level of duties proposed cannot be deemed unreasonably high either.
- (222) Further, cold-rolled flat steel products are a commodity produced not only in several Union countries but also in numerous countries that are already exporting to the Union at reasonable prices. Therefore the fear of limited access to reasonably priced products and the unavailability of very specific grades seem ill-founded.
- (223) In view of the above, it is provisionally concluded that the imposition of measures would not have any disproportionate negative impact on users.

6.4. OTHER INTERESTS

- (224) One interested party submitted that measures will slow down the recovery of many key industries, negatively affect innovation, economic growth and jobs, and lead to a decrease in demand and consumer welfare.
- (225) This allegation, which was not further substantiated, is rejected. Steel industry holds a strategic place in the Union in terms of economic growth, innovation and employment. Consequently, measures helping the Union industry are expected to boost innovation, growth and jobs in the Union as a whole.
- (226) In light of the weight of complainants as compared to total Union cold-rolled flat steel production and the significant market share of the Union industry, some interested parties indicated to fear reduced competition in the Union market, the creation of dominant firms and a risk of oligopoly by Union producers.
- (227) No parties provided any evidence for these allegations. The claim is therefore rejected. Competition will undoubtedly continue on the Union market, through the presence of numerous EU and non-EU market players and prices as an important factor of competitiveness. Measures at the level proposed should not annul imports from the countries concerned. Imports, including those from the countries currently associated with dumping practices, will be in the position to freely compete in the Union market at fair prices.
- (228) In one interested party's view, measures are likely to impact negatively parties representing much larger and broader interests than those of the complainants. Allegedly, downstream industries account for many times more jobs than the 'vague figures identified seemingly arbitrarily by the complainants'. However, as no quantification of such an impact or employment figures were provided, the allegations could not be cross-checked. The same happened with the claim regarding an impact on consumers, made in a very open way by the cooperating Russian producers. The Commission thus carried out the Union interest analysis on the basis of the elements on file which could be reasonably investigated and quantified.

6.5. CONCLUSION ON UNION INTEREST

- (229) In view of the above, it is provisionally concluded that the imposition of measures would contribute to the recovery of the Union industry and allow for specific investments and R & D to better equip cold-rolled flat steel products producers in the Union for the future and boost their competitiveness.
- (230) The Union industry underwent already significant restructuring in the (recent) past. If there are no duties, some of the Union cold-rolled flat steel producers might have to close down/reduce their cold-rolled flat steel products activities, dismiss hundreds of employees and leave many Union users with limited sources of supply.
- (231) The impact of measures on the few other parties in the Union that came forward cannot be deemed substantive. Nothing on file shows that the potential impact on other actors (that did not come forward) can outweigh the positive effect of measures on the Union industry. Measures are deemed to be beneficial to the upstream industries such as suppliers of raw materials and machinery producers, which do not (or to a limited extent) supply producers in the countries concerned. The imposition of measures at the proposed level only has a limited impact on the prices of the supply chain and the performance of users. The level of measures will lead to a level playing field but still allow for imports from the countries concerned, at fair prices. End-users and consumers are expected to benefit from a fair competitive market, including a local source of supply fully able to service their needs and requests via more qualitative products thanks to R & D and technology improvements. Price will continue to be a major determinant, but on a fair basis.
- (232) On balance, the Commission concludes at this stage of the investigation that there are no compelling reasons that it is not in the Union interest to impose provisional measures on imports of cold-rolled flat steel products originating in the countries concerned.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (233) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

- (234) The findings cannot be undermined by the allegations made by Chinese parties that the PRC was targeted at this point in time by the complainants because, should the PRC be treated as a market economy country as of the end of 2016, dumping margins would in principle be lower from then onwards. This allegation is rejected. Indeed, irrespective of these considerations, the investigation has confirmed that dumped imports of the product concerned from China are currently causing material injury to the Union industry.

7.1. INJURY ELIMINATION LEVEL (INJURY MARGIN)

- (235) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (236) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. With the exception of the year 2011, the profitability of the Union industry was negative during the whole period considered. Moreover, throughout the period considered there was a significant presence, on the Union market, of low priced imports from the countries concerned.
- (237) The complainant requested the Commission, in the complaint, to use 10-15 % (range given for confidentiality reasons) of turnover as reasonable non-injurious profit margin, which it claimed was the average profit before tax on sales earned by two representative complainant Union producers in 2010. However, this claim was not sufficiently substantiated.
- (238) In previous investigations regarding similar products — certain seamless pipes and tubes of stainless steel ⁽¹⁾, certain welded tubes and pipes of iron or non-alloy steel ⁽²⁾ or GOES ⁽³⁾, it was considered that a profit margin of 5 % could be regarded as an appropriate level that the Union industry could be expected to obtain in the absence of injurious dumping. Cold-rolled flat steel products are similar in many respects to the products mentioned above — iron ore, coking coal, certain alloys are major parts of their cost of production and they go through similar processes (furnace, rolling operation). A profit margin of 5 % appeared also reasonable in the eyes of Russian producers. For these reasons it has been provisionally considered that a 5 % profitability margin is reasonable also for the cold-rolled flat steel manufacturing sector.
- (239) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by adding the above-mentioned profit margin of 5 % to the cost of production of the sampled Union producers during the investigation period.
- (240) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the countries concerned, duly adjusted for importation costs and customs duties, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

7.2. PROVISIONAL MEASURES

- (241) Provisional anti-dumping measures should be imposed on imports of the product concerned originating in the countries concerned, in accordance with the lesser duty rule provided for in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.

⁽¹⁾ OJ L 336, 20.12.2011, p. 6.

⁽²⁾ OJ L 343, 19.12.2008, p. 1.

⁽³⁾ OJ L 284, 30.10.2015, p. 109.

- (242) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

(%)

Country	Company	Dumping margin	Injury margin	Provisional duty
PRC	Angang group	59,1	13,8	13,8
	Shougang group	52,7	16,0	16,0
	Other cooperating companies	56,9	14,5	14,5
	All other companies	59,1	16,0	16,0
Russia	MMK Magnitogorsk	19,8	21,9	19,8
	PAO Severstal	25,4	27,2	25,4
	OJSC Novolipetsk Steel	26,2	28,1	26,2
	All other companies	26,2	28,1	26,2

- (243) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the countries concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (244) A company may request the application of these individual anti-dumping duty rates if it changes the name of its entity or sets up a new production or sales entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information, including: modification in the company's activities linked to production; domestic and export sales associated with, for example, the name change or the change in the production and sales entities. The Commission will update the list of companies with individual anti-dumping duties, if justified.
- (245) To minimise the risks of circumvention due to a difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (246) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

8. REGISTRATION

- (247) As mentioned above in recital 3, the Commission made imports of the product concerned originating in and consigned from the PRC and Russia subject to registration by Commission Implementing Regulation (EU) 2015/2325. This was in view of the possible retroactive application of the anti-dumping measures under Article 10(4) of the basic Regulation. The registration of imports should cease. No decision on a possible retroactive application of anti-dumping measures can be taken at this stage of the proceeding.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1049 Brussels, Belgium.

9. FINAL PROVISIONS

- (248) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (249) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced), currently falling within CN ex 7209 15 00 (TARIC code 7209 15 00 90), 7209 16 90, 7209 17 90, 7209 18 91, ex 7209 18 99 (TARIC code 7209 18 99 90), ex 7209 25 00 (TARIC code 7209 25 00 90), 7209 26 90, 7209 27 90, 7209 28 90, 7211 23 30, ex 7211 23 80 (TARIC codes 7211 23 80 19, 7211 23 80 95 and 7211 23 80 99), ex 7211 29 00 (TARIC codes 7211 29 00 19 and 7211 29 00 99), 7225 50 80 and 7226 92 00 and originating in the People's Republic of China and the Russian Federation.

The following product types are excluded from the definition of the product concerned:

- flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, not further worked than cold-rolled, whether or not in coils, of all thickness, electrical,
- flat-rolled products of iron or non-alloy steel, of all width, cold-rolled (cold-reduced), not clad, plated or coated, in coils, of a thickness of less than 0,35 mm, annealed (known as 'black plates'),
- flat-rolled products of other alloy steel, of all width, of silicon-electrical steel, and
- flat-rolled products of alloy steel, not further worked than cold-rolled (cold-reduced), of high-speed steel.

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Provisional duty rate (%)	TARIC Additional Code
PRC	Angang Steel Company Limited, <i>Anshan</i>	13,8	C097
	Tianjin Angang Tiantie Cold Rolled Sheets Co. Ltd, Tianjin	13,8	C098
	Other cooperating companies listed in the Annex	14,5	
	All other companies	16,0	C999
Russia	Magnitogorsk Iron & Steel Works OJSC, Magnitogorsk	19,8	C099
	PAO Severstal, Cherepovets	25,4	C100
	All other companies	26,2	C999

3. The application of the individual duty rate specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, 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, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the (country concerned). I declare that the information provided in this invoice is complete and correct'. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.
4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:
 - (a) request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
 - (b) submit their written comments to the Commission; and
 - (c) request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EC) No 1225/2009 may comment on the application of the provisional measures.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2015/2325.
2. Data collected regarding products which were entered not more than 90 days prior to the date of entry into force of this Regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 February 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

CHINESE COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Country	Name	TARIC additional code
PRC	Hebei Iron and Steel Co., Ltd, Shijiazhuang	C103
PRC	Handan Iron & Steel Group Han-Bao Co., Ltd, Handan	C104
PRC	Baoshan Iron & Steel Co., Ltd, Shanghai	C105
PRC	Shanghai Meishan Iron & Steel Co., Ltd, Nanjing	C106
PRC	BX Steel POSCO Cold Rolled Sheet Co., Ltd, Benxi	C107
PRC	Bengang Steel Plates Co., Ltd, Benxi	C108
PRC	WISCO International Economic & Trading Co. Ltd, Wuhan	C109
PRC	Maanshan Iron & Steel Co., Ltd, Maanshan	C110
PRC	Tianjin Rolling-one Steel Co., Ltd, Tianjin	C111
PRC	Zhangjiagang Yangtze River Cold Rolled Sheet Co., Ltd, Zhangjiagang	C112
PRC	Inner Mongolia Baotou Steel Union Co., Ltd, Baotou City	C113

COMMISSION IMPLEMENTING REGULATION (EU) 2016/182**of 11 February 2016****renewing the approval of the active substance pyraflufen-ethyl in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 20(1) thereof,

Whereas:

- (1) The approval of the active substance pyraflufen-ethyl, as set out in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽²⁾, expires on 30 June 2016.
- (2) An application for the renewal of the inclusion of pyraflufen-ethyl in Annex I to Council Directive 91/414/EEC ⁽³⁾ was submitted in accordance with Article 4 of Commission Regulation (EU) No 1141/2010 ⁽⁴⁾ within the time period provided for in that Article.
- (3) The applicant submitted the supplementary dossiers required in accordance with Article 9 of Regulation (EU) No 1141/2010. The application was found to be complete by the rapporteur Member State.
- (4) The rapporteur Member State prepared a renewal assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority (hereinafter 'the Authority') and the Commission on 10 January 2014.
- (5) The Authority communicated the renewal assessment report to the applicant and to the Member States for comments and forwarded the comments received to the Commission. The Authority also made the supplementary summary dossier available to the public.
- (6) On 22 January 2015 ⁽⁵⁾ the Authority communicated to the Commission its conclusion on whether pyraflufen-ethyl can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009. The Commission presented the draft review report for pyraflufen-ethyl to the Standing Committee on Plants, Animals, Food and Feed on 13 July 2015.
- (7) It has been established with respect to one or more representative uses of at least one plant protection product containing the active substance that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied. Those approval criteria are therefore deemed to be satisfied.
- (8) The risk assessment for the renewal of the approval of pyraflufen-ethyl is based on a limited number of representative uses, which however do not restrict the uses for which plant protection products containing pyraflufen-ethyl may be authorised. It is therefore appropriate not to maintain the restriction to uses as a herbicide.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Regulation (EU) No 1141/2010 of 7 December 2010 laying down the procedure for the renewal of the inclusion of a second group of active substances in Annex I to Council Directive 91/414/EEC and establishing the list of those substances (OJ L 322, 8.12.2010, p. 10).

⁽⁵⁾ EFSA Journal 2015;13(2):4001. Available online: www.efsa.europa.eu

- (9) It is therefore appropriate to renew the approval of pyraflufen-ethyl.
- (10) In accordance with Article 20(3) of Regulation (EC) No 1107/2009, in conjunction with Article 13(4) thereof, the Annex to Implementing Regulation (EU) No 540/2011 should be amended accordingly.
- (11) Commission Implementing Regulation (EU) 2015/1885 ⁽¹⁾ extended the expiry date of pyraflufen-ethyl to 30 June 2016 in order to allow the renewal process to be completed before the expiry of the approval of that substance. Given that a decision on renewal has been taken ahead of this extended expiry date, this Regulation shall apply from 1 April 2016.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Renewal of the approval of active substance

The approval of the active substance pyraflufen-ethyl is renewed as set out in Annex I.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and date of application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 April 2016.

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

⁽¹⁾ Commission Implementing Regulation (EU) 2015/1885 of 20 October 2015 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances 2,4-D, acibenzolar-s-methyl, amitrole, bentazone, cyhalofop butyl, diquat, esfenvalerate, famoxadone, flumioxazine, DPX KE 459 (flupyrsulfuron-methyl), glyphosate, iprovalicarb, isoproturon, lambda-cyhalothrin, metalaxyl-M, metsulfuron methyl, picolinafen, prosulfuron, pymetrozine, pyraflufen-ethyl, thiabendazole, thifensulfuron-methyl and triasulfuron (OJ L 276, 21.10.2015, p. 48).

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
pyraflufen-ethyl CAS No 129630-19-9 CIPAC No 605.202	ethyl [2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxy]acetate	≥ 956 g/kg	1 April 2016	31 March 2031	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on pyraflufen-ethyl, and in particular Appendices I and II thereof, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of aquatic organisms, — the protection of non-target terrestrial plants. Conditions of use shall include risk mitigation measures, where appropriate.

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

The Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

- (1) in Part A, entry 24 on pyraflufen-ethyl is deleted;
 (2) in Part B, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Date of approval	Expiration of approval	Specific provisions
'95	pyraflufen-ethyl CAS No 129630-19-9 CIPAC No 605.202	ethyl [2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxy]acetate	≥ 956 g/kg	1 April 2016	31 March 2031	For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on pyraflufen-ethyl, and in particular Appendices I and II thereof, shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of aquatic organisms, — the protection of non-target terrestrial plants. Conditions of use shall include risk mitigation measures, where appropriate.'

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/183**of 11 February 2016****amending Implementing Regulation (EU) No 686/2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of the active substances whose approval expires by 31 December 2018 at the latest****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 19, thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 686/2012 ⁽²⁾ allocates, for the purposes of the renewal procedures, the evaluation of active substances whose approval expires by 31 December 2018 at the latest to the Member States, naming for each active substance a rapporteur and a co-rapporteur. It is appropriate to allocate the evaluation of active substances whose approval expires by 31 December 2021 at the latest.
- (2) That allocation should be made in such a way that a balance is achieved as regards the distribution of the responsibilities and the work between Member States.
- (3) Implementing Regulation (EU) No 686/2012 should therefore be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 686/2012 is amended as follows:

- (1) The title is replaced by the following:

‘Commission Implementing Regulation (EU) No 686/2012 of 26 July 2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of active substances’.

- (2) The Annex to Implementing Regulation (EU) No 686/2012 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 686/2012 of 26 July 2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of the active substances whose approval expires by 31 December 2018 at the latest (OJ L 200, 27.7.2012, p. 5).

Article 2

This Regulation shall enter into force on the twentieth 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 JUNKER

ANNEX

The Annex to Implementing Regulation (EU) No 686/2012 is amended as follows:

- (1) The word 'ANNEX' is replaced by the following:

'ANNEX

PART A

Allocation of the evaluation of active substances whose approval expires by 31 December 2018 at the latest'

- (2) The following Part B is added:

'PART B

Allocation of the evaluation of active substances whose approval expires after 31 December 2018 and not later than 31 December 2021

Active substance	Rapporteur Member State	Co-rapporteur Member State
1-Decanol	PL	IT
1-Naphthylacetamide (1-NAD)	HU	FR
1-Naphthylacetic acid (1-NAA)	HU	FR
2,5-Dichlorobenzoic acid methylester	FR	AT
2-Phenylphenol (incl. sodium salt orthophenyl phenol)	ES	EL
6-Benzyladenine	SE	NL
8-Hydroxyquinoline incl. oxyquinoleine	ES	NL
Abamectin (aka avermectin)	AT	MT
Acetic acid	AT	NL
Acclonifen	NL	NO
Acrinathrin	FR	ES
Aluminium ammonium sulphate	IE	UK
Aluminium phosphide	AT	EE
Aluminium silicate (aka kaolin)	EL	FR
Aluminium sulphate	NL	CZ
Azimsulfuron	EL	FR
Azoxystrobin	UK	NO
<i>Bacillus thuringiensis</i> subsp. <i>Aizawai</i> strain ABTS-1857	NL	DE
<i>Bacillus thuringiensis</i> subsp. <i>Aizawai</i> strain GC-91	NL	DE

Active substance	Rapporteur Member State	Co-rapporteur Member State
<i>Bacillus thuringiensis</i> subsp. <i>Israeliensis</i> (serotype H-14) strain AM65-52	SE	ES
<i>Bacillus thuringiensis</i> subsp. <i>Kurstaki</i> strain ABTS 351	DK	NL
<i>Bacillus thuringiensis</i> subsp. <i>Kurstaki</i> strain EG 2348	DK	NL
<i>Bacillus thuringiensis</i> subsp. <i>Kurstaki</i> strain PB 54	DK	NL
<i>Bacillus thuringiensis</i> subsp. <i>Kurstaki</i> strain SA 11	DK	NL
<i>Bacillus thuringiensis</i> subsp. <i>Kurstaki</i> strain SA12	DK	NL
<i>Bacillus thuringiensis</i> subsp. <i>Tenebrionis</i> strain NB 176 (TM 14 1)	IT	DE
<i>Beauveria bassiana</i> strain ATCC 74040	DE	NL
<i>Beauveria bassiana</i> strain GH4	DE	NL
Benfluralin	NO	NL
Bensulfuron	IT	ES
Bifenthrin	BE	HU
Bispyribac	IT	PT
Blood meal	AT	LT
Bromadiolone	IT	RO
Bromuconazole	BE	CZ
Bupirimate	NL	UK
Buprofezin	IT	AT
Calcium carbide	EE	CZ
Calcium carbonate	ES	HU
Calcium phosphide	AT	DE
Carbetamide	UK	FR
Carbon dioxide	FR	AT
Carboxin	HR	LV
Chlormequat	UK	IT
Chlorsulfuron	PL	EL
Clethodim	SE	LT

Active substance	Rapporteur Member State	Co-rapporteur Member State
Cycloxydim	NL	DK
<i>Cydia pomonella</i> Granulovirus (CpGV)	DE	NL
Cyflufenamid	DE	AT
Cymoxanil	LT	FI
Cyproconazole	IE	EE
Cyromazine	ES	IT
Dazomet	BG	NL
Denathonium benzoate	IT	PL
Diclofop	PT	FR
Diethofencarb	BE	ES
Difenacoum	IT	PT
Dimethachlor	HR	AT
Dithianon	AT	EL
Dodemorph	NL	IT
Dodine	ES	DE
Epoxiconazole	UK	PL
Ethylene	NL	UK
Etofenprox	SK	IT
Etridiazole	NL	ES
Extract from tea tree	PL	BG
Fat distillation residues	CZ	FR
Fatty acids C7 to C20 (Pelargonic acid (CAS 112-05-0)) Fatty acids C7-C18 and C18 unsaturated potassium salts (CAS 67701-09-1) (Capric acid (CAS 334-48-5); Caprylic acid (CAS 124-07-2); Lauric acid (CAS 143-07-7); Oleic acid (CAS 112-80-1)) Fatty acids C8-C10 methyl esters (CAS 85566-26-3) (Methyl octanoate (CAS 111-11-5); Methyl decanoate (CAS 110-42-9))	EL	AT
FEN 560 (Fenugreek seed powder)	IT	FR
Fenazaquin	DE	PL

Active substance	Rapporteur Member State	Co-rapporteur Member State
Fenbuconazole	SI	UK
Fenoxycarb	NL	EL
Fenpropimorph	LV	SI
Fenpyroximate	AT	DK
Flonicamid (IKI-220)	FI	SE
Fluazifop-P	FR	IT
Fluazinam	AT	DK
Fluometuron	EL	BG
Fluopicolide	UK	ES
Fluquinconazole	UK	SK
Flurochloridone	AT	HR
Fluroxypyr	SE	SI
Flutolanil	NL	UK
Flutriafol	SK	UK
Fuberidazole	UK	FI
Garlic extract	IE	UK
Gibberellic acid	SI	SK
Gibberellin	SI	SK
Haloxyp-P (Haloxyp-R)	HU	CZ
Heptamaloxyloglucan	FR	ES
Hexythiazox	FI	SE
Hydrolysed proteins	ES	EL
Hymexazol	AT	SE
Imazalil (aka enilconazole)	NL	BE
Imidacloprid	DE	NL
Indolylbutyric acid	EL	CY
Iron sulphate	HU	PL

Active substance	Rapporteur Member State	Co-rapporteur Member State
Isoxaben	AT	FI
Kieselgur (diatomaceous earth)	AT	EL
Kresoxim-methyl	SE	FR
<i>Lecanicillium muscarium</i> (formerly <i>Verticillium lecanii</i>) strain Ve6	NL	FR
Lime sulphur (calcium polysulphid)	CZ	NL
Limestone	CZ	SK
Lufenuron	ES	HU
Magnesium phosphide	AT	EE
Malathion	CZ	BG
Margosa extract (azadirachtin source — Mitsui)	DE	ES
Margosa extract (azadirachtin source — SIPCAM)	DE	ES
Margosa extract (azadirachtin source — Trifolio)	DE	ES
Mepiquat	FI	EE
Metalaxyl	EL	PL
Metaldehyde	PL	DE
Metamitron	DK	LV
<i>Metarhizium anisopliae</i> var. <i>anisopliae</i> strain BIPESCO 5	NL	FR
<i>Metarhizium anisopliae</i> var. <i>anisopliae</i> strain F52	NL	FR
Metazachlor	NL	UK
Methomyl	BG	RO
Methyl nonyl ketone	NL	BE
Metosulam	NO	BE
Myclobutanil	UK	ES
Napropamide	SI	HR
Oryzalin	NL	FR
Oxyfluorfen	ES	HU

Active substance	Rapporteur Member State	Co-rapporteur Member State
Paclobutrazol	UK	RO
Paraffin oil/(CAS 64742-46-7)	EL	FR
Paraffin oil/(CAS 72623-86-0)	EL	FR
Paraffin oil/(CAS 8042-47-5)	EL	FR
Paraffin oil/(CAS 97862-82-3)	EL	FR
Penconazole	NO	DE
Pencycuron	LV	PL
Penoxsulam	IT	PL
Pepper	UK	IE
<i>Phlebiopsis gigantea</i> FOC PG 410.3	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG B20/5	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG B22/SP1190/3.2	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG B22/SP1287/3.1	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG BU 3	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG BU 4	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG SH 1	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG SP log 5	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG SP log 6	EE	FR
<i>Phlebiopsis gigantea</i> FOC PG97/1062/116/1.1	EE	FR
<i>Phlebiopsis gigantea</i> VRA 1835	EE	FR
<i>Phlebiopsis gigantea</i> VRA 1984	EE	FR
<i>Phlebiopsis gigantea</i> VRA 1985	EE	FR
<i>Phlebiopsis gigantea</i> VRA 1986	EE	FR
Plant oils/Citronella oil	FR	UK
Plant oils/Clove oil	ES	IT
Plant oils/Spear mint oil	SE	NL
Plant oils/Rape seed oil	NL	FI

Active substance	Rapporteur Member State	Co-rapporteur Member State
Potassium hydrogen carbonate	NL	EL
Prochloraz	BE	DE
Profoxydim	ES	EL
Prohexadione	FR	IE
Propaquizafop	UK	EE
Proquinazid	SE	LT
Putrescine (1,4-Diaminobutane))	ES	AT
Pyrethrins	IT	DE
Pyridaben	CZ	BE
<i>Pythium oligandrum</i> M1	SE	HU
Quartz sand	LV	RO
Quinmerac	EE	FI
Quizalofop-P	HR	UK
Quizalofop-P-ethyl	FI	UK
Quizalofop-P-tefuryl	HR	UK
Repellents by smell of animal or plant origin/fish oil	CZ	FR
Repellents by smell of animal or plant origin/sheep fat	CZ	FR
Repellents by smell of animal or plant origin/tall oil crude	CZ	SK
Repellents by smell of animal or plant origin/tall oil pitch	CZ	EL
Sea-algae extract (formerly sea-algae extract and seaweeds)	BE	IT
Sintofen (aka Cintofen)	CZ	FR
Sodium 5-nitroguaiacolate	NL	EL
Sodium aluminium silicate	HU	AT
Sodium hypochlorite	IE	UK
Sodium o-nitrophenolate	NL	EL
Sodium p-nitrophenolate	NL	EL

Active substance	Rapporteur Member State	Co-rapporteur Member State
Spirodiclofen	AT	NL
Spiroxamine	AT	EE
Straight Chain Lepidopteran Pheromones (E)-11-Tetradecen-1-yl acetate (E)-5-Decen-1-ol (E)-5-Decen-1-yl acetate (E)-8-Dodecen-1-yl acetate (E,E)-7,9-Dodecadien-1-yl acetate (E,E)-8,10-Dodecadien-1-ol (E,Z)-2,13-Octadecadien-1-yl acetate (E,Z)-7,9-Dodecadien-1-yl acetate (E,Z)-8-Dodecen-1-yl acetate (Z)-11-Hexadecen-1-ol (Z)-11-Hexadecen-1-yl acetate (Z)-11-Hexadecenal (Z)-11-Tetradecen-1-yl acetate (Z)-13-Octadecenal (Z)-7-Tetradecenal (Z)-8-Dodecen-1-ol (Z)-8-Dodecen-1-yl acetate (Z)-9-Dodecen-1-yl acetate (Z)-9-Hexadecenal (Z)-9-Tetradecen-1-yl acetate (Z,E)-7,11-Hexadecadien-1-yl acetate (Z,E)-9,12-Tetradecadien-1-yl acetate (Z,Z)-7,11-Hexadecadien-1-yl acetate Dodecan-1-ol Tetradecan-1-ol (Z)-8-Dodecenyl Acetate; Dodecan-1-yl Acetate (Z)-9-Dodecenyl Acetate; Dodecan-1-yl Acetate (7E, 9Z)-Dodecadienyl Acetate; (7E, 9E)-Dodecadienyl Acetate (7Z, 11Z)-Hexadecadien-1-yl Acetate; (7Z, 11E)-Hexadecadien-1-yl Acetate (Z)-9-hexadecenal; (Z)-11-hexadecenal; (Z)-13-octadecenal E-5-Decen-1-yl Acetate; E-5-Decen-1-ol (E/Z)-8-Dodecenyl Acetate; (Z)-8-Dodecenol (Z)-11-Hexadecenal; (Z)-11-Hexadecen-1-yl Acetate (E/Z)- 9-Dodecen-1- yl-acetate E8, E10 — Dodecadien-1-ol + Tetradecyl Acetate E7,E/Z9-Dodecadienylacetate (E7,E/Z9-12Ac) and n-Dodecylacetate (12Ac) (E,Z,Z)-3,8,11-Tetradecatrien-1-yl acetate and (E,Z)-3,8-Tetradecadien-1-yl acetate (Z,Z,Z,Z)-7,13,16,19-Docosatetraen-1-yl isobutyrate	IT	FR

Active substance	Rapporteur Member State	Co-rapporteur Member State
<i>Streptomyces</i> K61 (formerly <i>S. griseoviridis</i>)	EE	FR
Sulcotrione	DE	ES
Sulfuryl fluoride	AT	IE
Sulphur	FR	SI
tau-Fluvalinate	DK	DE
Tebuconazole	UK	DK
Tebufenozide	ES	DE
Tebufenpyrad	FR	BE
Teflubenzuron	SE	IT
Tefluthrin	HU	DK
Terbuthylazine	ES	HR
Tetraconazole	FR	DE
Tralkoxydim	ES	PT
Triadimenol	ES	LV
Tri-allate	UK	CZ
Triazoxide	DE	SK
<i>Trichoderma asperellum</i> (formerly <i>T. harzianum</i>) strain ICC012	SE	FR
<i>Trichoderma asperellum</i> (formerly <i>T. harzianum</i>) strain T25	SE	FR
<i>Trichoderma asperellum</i> (formerly <i>T. harzianum</i>) strain TV1	SE	FR
<i>Trichoderma atroviride</i> (formerly <i>T. harzianum</i>) strain IMI 206040	SE	IT
<i>Trichoderma atroviride</i> (formerly <i>T. harzianum</i>) strain T11	SE	IT
<i>Trichoderma gamsii</i> (formerly <i>T. viride</i>) strain ICC080	SE	IT
<i>Trichoderma harzianum</i> strain ITEM 908	SE	NL
<i>Trichoderma harzianum</i> strain T-22	SE	NL
<i>Trichoderma polysporum</i> strain IMI 206039	SE	NL

Active substance	Rapporteur Member State	Co-rapporteur Member State
Triflumizole	NL	BE
Triflumuron	IT	HU
Triflusulfuron	FR	DK
Trimethylamine hydrochloride	BG	ES
Urea	UK	FI
<i>Verticillium albo-atrum</i> (formerly <i>Verticillium dahliae</i>) strain WCS850	SE	NL
zeta-Cypermethrin	AT	DE
Zinc phosphide	AT	DE'

COMMISSION IMPLEMENTING REGULATION (EU) 2016/184**of 11 February 2016**

extending the definitive countervailing duty imposed by Council Implementing Regulation (EU) No 1239/2013 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 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 23(4) thereof,

Whereas:

1. PROCEDURE**1.1. Existing measures**

- (1) By Implementing Regulation (EU) No 1239/2013 ⁽²⁾, ('the original Regulation'), the Council imposed a definitive countervailing duty of 11,5 % 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 to 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 originating from the PRC but consigned from Malaysia and Taiwan continue to be subsidised.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 66).

- (6) Having determined, after having informed the Member States, that sufficient *prima facie* evidence existed for the initiation of an investigation pursuant to Article 23 of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2015/832 ⁽¹⁾ (‘the initiating Regulation’). Pursuant to Articles 23(4) and 24(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; 28 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 23(6) 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 that 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 23(6) 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. 53.

- 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 subsidisation.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (14) In accordance with Article 23(3) 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 the imported like product and/or parts thereof still benefit from the subsidy.

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, 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 2(c) 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 24(6) of the basic Regulation ('Article 24(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 28(1) of the basic Regulation was found to be warranted for the reasons explained below in recital 84 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 23(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 in recital 84 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 ongoing.
- (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 questionnaire replies.
- (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 23(3) 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 81 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 countervailing 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 subsidisation

- (68) As set out in Implementing Regulation (EU) No 1239/2013, Chinese exporting producers were found to benefit from a number of subsidy schemes granted by the Government of the PRC as well as regional and local governments in the PRC. Subsequently, prima facie evidence showed that the producers of the product concerned in the PRC are likely to continue to benefit from a number of subsidies. Therefore, on 5 December 2015 an expiry review was initiated ⁽¹⁾. No exporting producer from the PRC, or any other interested party, provided any evidence to the contrary. It is therefore concluded that the imported product under investigation still benefits from the subsidy schemes.

2.8. Undermining of the remedial effect of the countervailing duty

- (69) 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 24(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.
- (70) 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

⁽¹⁾ OJ L 325, 5.12.2013, p. 66.

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.

- (71) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed significant underselling.
- (72) 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

- (73) Given the above, it was concluded that the definitive countervailing 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.
- (74) In accordance with Article 23(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.
- (75) The measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) No 1239/2013 for 'All other companies', which is a definitive countervailing duty of 11,5 % applicable to the net, free-at-Union-frontier price, before duty.
- (76) In accordance with Articles 23(3) and 24(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

- (77) 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 23(6) 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.
- (78) Twenty-eight groups of companies or companies in Taiwan that 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 23(6) 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.
- (79) 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 28(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 28 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 28 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 107.

- (80) 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.
- (81) 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.
- (82) These two companies in Taiwan did not provide any additional clarifications in reply to the Article 28(4) letter, as they did not reply at all (see above recital 81).
- (83) For the reasons set out above in recitals 81 and 82 as well as in view of the findings 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 23(6) of the basic regulation.
- (84) For the following three Malaysian companies, as explained below, use was made of facts available in accordance with Article 28(1) of the Basic Regulation for the following reasons.
- (85) 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.
- (86) In its reply to the Article 28(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.
- (87) 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.
- (88) Therefore, the explanations provided by the company in reply to the Article 28(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.

- (89) 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 85 to 88 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 23(6) of the basic Regulation.
- (90) 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.
- (91) This company claimed, in their reply to the Article 28(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.
- (92) 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 90 and 91 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 23(6) of the basic Regulation.
- (93) 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 of both the Chinese and Taiwanese companies appear to be the same, both in terms of layout 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.
- (94) 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.

⁽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.

- (95) The Malaysian company replied to the Article 28(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 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.
- (96) 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 criticised the Commission for not having disclosed the internet video referred to in recital 93 and the information received from the customs authorities of a Member State referred to in recital 94. The company also argued that it was not related to the Chinese company and that it had not hidden their brand usage authorisation 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.
- (97) 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.
- (98) The elements mentioned in recital 93 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 28 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 minimise, 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 4 years. None of the elements mentioned above in recital 93, 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.
- (99) Article 23(6) 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.
- (100) 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 93. 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.
- (101) 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.

- (102) First, the statement of the company that all goods mentioned in recital 96 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.
- (103) 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.
- (104) 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.
- (105) Therefore in accordance with Article 28(1) of the basic Regulation, findings with regard to this company were based on facts available.
- (106) 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 93 to 105 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 23(6) of the basic Regulation.
- (107) 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 28(1) request*, were however sufficient to grant this company an exemption, as it provided the information requested which could be verified by the Commission.
- (108) *The remaining five Malaysian and 21 Taiwanese exporting producers, including the company referred to in recital 107, 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 23(6) of the basic Regulation.*
- (109) 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.
- (110) 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 countervailing duty pursuant to Article 20 and Article 23(6) 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.

- (111) 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.
- (112) 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.
- (113) 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 countervailing duty.

5. DISCLOSURE

- (114) 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.
- (115) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Council Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive countervailing duty applicable to 'all other companies' imposed by Article 1(2) of Implementing Regulation (EU) No 1239/2013 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

Country	Company	TARIC additional code
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 Implementing Regulation (EU) 2015/832 and Articles 23(4) and 24(5) of Regulation (EC) No 597/2009, 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 23(6) of Regulation (EC) No 597/2009, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Implementing Regulation (EU) No 1239/2013, 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 Implementing Regulation (EU) 2015/832.

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

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>	<i>100</i>	<i>417</i>	<i>717</i>	<i>883</i>
<i>Index Modules</i>	<i>100</i>	<i>847</i>	<i>1 120</i>	<i>867</i>
<i>Index Total</i>	<i>100</i>	<i>724</i>	<i>1 005</i>	<i>871</i>

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 JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/186**of 11 February 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day 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,
On behalf of the President,*

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	EG	253,6
	IL	236,2
	MA	89,8
	TR	113,0
	ZZ	173,2
0707 00 05	MA	85,0
	TR	181,9
	ZZ	133,5
0709 91 00	EG	194,3
	ZZ	194,3
0709 93 10	MA	38,0
	TR	156,9
	ZZ	97,5
0805 10 20	BR	63,2
	EG	47,9
	IL	96,2
	MA	63,0
	TN	50,2
	TR	60,2
	ZZ	63,5
	ZZ	63,5
0805 20 10	IL	124,2
	MA	86,9
	ZZ	105,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	69,8
	IL	136,7
	JM	156,4
	MA	115,0
	TR	52,2
	ZZ	106,0
	ZZ	106,0
	ZZ	106,9
0805 50 10	TR	112,0
	ZZ	109,5
	ZZ	109,5
0808 10 80	CA	138,9
	CL	92,5
	US	155,5
	ZZ	129,0

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0808 30 90	CL	180,1
	CN	86,8
	TR	81,0
	ZA	98,2
	ZZ	111,5

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

DECISION (EU) 2016/187 OF THE EUROPEAN CENTRAL BANK

of 11 December 2015

amending Decision ECB/2013/1 laying down the framework for a public key infrastructure for the European System of Central Banks (ECB/2015/46)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.1 in conjunction with Article 3.1, Article 5, Article 12.3 and Articles 16 to 24 and 34 thereof,

Whereas:

- (1) Regulation (EU) No 910/2014 of the European Parliament and of the Council ⁽¹⁾ has repealed Directive 1999/93/EC of the European Parliament and of the Council ⁽²⁾ with effect from 1 July 2016. Therefore, it is appropriate to refer to Regulation (EU) No 910/2014 in Decision ECB/2013/1 ⁽³⁾.
- (2) Information concerning the ESCB-PKI certification authority, including its identity and its technical components, as set out in the Annex to Decision ECB/2013/1, needs to be updated.
- (3) Therefore, Decision ECB/2013/1 should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision ECB/2013/1 is amended as follows:

- (1) in Article 1, point 10 is replaced by the following:

‘10. “ESCB-PKI certification authority” means the entity, trusted by users, to issue, manage, revoke and renew ESCB-PKI certificates in accordance with the ESCB/SSM certificate acceptance framework;’

- (2) in Article 4, paragraph 4 is replaced by the following:

‘4. The ESCB-PKI certification practice statement is a set of rules governing the life cycle of electronic certificates, from the initial request to the subscription end or revocation, as well as the relationships between the certificate applicant or subscriber, the ESCB-PKI certification authority and the relying parties. It covers certificates falling under the scope of Directive 1999/93/EC and Regulation (EU) No 910/2014 of the European Parliament and of the

⁽¹⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

⁽²⁾ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

⁽³⁾ Decision ECB/2013/1 of the European Central Bank of 11 January 2013 laying down the framework for a public key infrastructure for the European System of Central Banks (OJ L 74, 16.3.2013, p. 30).

Council (*) and certificates falling outside their scope. It also sets out the roles and responsibilities of all parties and establishes the procedures concerning issuing and managing certificates. It is annexed to the Level 2 — Level 3 Agreement.

(*) Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).;

(3) in Article 10, the introductory statement and point (a) of paragraph 1 are replaced by the following:

‘1. Unless they prove that they have not acted negligently, the Eurosystem central banks shall be liable in accordance with their functions and responsibilities in the ESCB-PKI for any damage caused to a user who reasonably relies on a qualified certificate, as defined in Directive 1999/93/EC and Regulation (EU) No 910/2014, as regards:

(a) the accuracy at the time of issuance of all the information contained in a qualified certificate, and the question of whether the certificate contains all the details prescribed for a qualified certificate as defined in Directive 1999/93/EC and Regulation (EU) No 910/2014;;

(4) the Annex is replaced by the Annex to this Decision.

Article 2

Entry into force

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 11 December 2015.

The President of the ECB
Mario DRAGHI

ANNEX

‘ANNEX

Information concerning the ESCB-PKI certification authority, including its identity, and its technical components

The ESCB-PKI certification authority is identified in its certificate as the issuer and its private key is used to sign certificates. The ESCB-PKI certification authority is in charge of:

- (i) issuing private and public key certificates;
- (ii) issuing revocation lists;
- (iii) generating key pairs associated with specific certificates, e.g. those that require key recovery;
- (iv) maintaining overall responsibility for the ESCB-PKI and ensuring that all the requirements necessary to operate it are met.

The ESCB-PKI certification authority includes all individuals, policies, procedures and computer systems entrusted with issuing electronic certificates and assigning them to the certificate subscribers.

The ESCB-PKI certification authority includes two technical components:

- **The Root ESCB-PKI certification authority:** This certification authority, at the first level, only issues certificates for itself and its subordinate certification authorities. It is only in operation when carrying out its own narrowly-defined responsibilities. Its most significant data are:

- a) SHA-1 certificate ⁽¹⁾:

Distinguished name	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Serial number	596F AC4C 218C 21BC 4E00 6B42 A164 46DD
Distinguished name of issuer	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Validity period	From 21-06-2011 11:58:26 to 21-06-2041 11:58:26
Message digest (SHA-1)	CEFE 6C32 E850 994A 09EA 1A77 0C60 3D90 ADC9 9192
Message Digest (SHA-256)	C919 CF49 C024 7E50 2E0C C3C9 81E0 FB88 A013 AA2B 15C9 5142 F491 BDE7 E403 E3FB
Cryptographic algorithms	SHA-1/RSA 4096

- b) SHA-256 certificate:

Distinguished name	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Serial number	4431 9C5F 91E8 162F 4E00 73F6 6AB8 71D8

⁽¹⁾ This certificate will be used only in systems that do not support higher algorithms.

Distinguished name of Issuer	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Validity period	From 21-06-2011 12:35:34 to 21-06-2041 12:35:34
Message digest (SHA-1)	3663 2FBA FB19 BDBC A202 3994 1926 ED48 4D72 DD4B
Message Digest (SHA-256)	7963 2A97 1D12 A889 9724 BB35 C37B 51D2 3E21 4DF9 20C3 2450 093E 0EA7 49FB AAEB
Cryptographic algorithms	SHA-256/RSA 4096

- **The Online ESCB-PKI certification authority:** This certification authority, at the second level, is subordinate to the Root ESCB-PKI certification authority. It is responsible for issuing ESCB-PKI certificates for users. Its most significant data are:

a) SHA-1 certificate ⁽¹⁾:

Distinguished name	CN= ESCB-PKI ONLINE CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Serial number	2C13 E18F FDB5 91CE 4E9 550B B5A3 F59C
Distinguished name of issuer	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Validity period	From 22-07-2011 12:46:35 to 22-07-2026 12:46:35
Message digest (SHA-1)	D316 026C D2CF 1A8C 4AA3 8C29 EE3D 591E 4286 AD08
Message Digest (SHA-256)	4B18 7644 BF79 4F83 D000 999D 7927 433F 75F3 CFB1 643A 6D0F 8A25 9435 BE86 1B7A
Cryptographic algorithms	SHA-1/RSA 4096

b) SHA-256 certificate:

Distinguished name	CN= ESCB-PKI ONLINE CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Serial number	660C 9B12 9A0A 6C21 5509 38DD 54A0 ED2D
Distinguished name of Issuer	CN=ESCB-PKI ROOT CA, O=EUROPEAN SYSTEM OF CENTRAL BANKS, C=EU
Validity period	From 22-07-2011 12:46:35 to 22-07-2026 12:46:35
Message digest (SHA-1)	E976 D216 4A5F 62DA C058 6BE0 EC10 EF24 36B8 12AC
Message Digest (SHA-256)	1335 26DC 99E9 CC36 62F8 F5FA 2006 3005 BA90 E663 2BF3 4F18 A84B A39B 5FAA 5700
Cryptographic algorithms	SHA-256/RSA 4096 ¹

⁽¹⁾ This certificate will be used only in systems that do not support higher algorithms.

DECISION (EU) 2016/188 OF THE EUROPEAN CENTRAL BANK**of 11 December 2015****on the access and use of SSM electronic applications, systems, platforms and services by the European Central Bank and the national competent authorities of the Single Supervisory Mechanism (ECB/2015/47)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34 thereof,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 6(1) in conjunction with Article 6(7) thereof,

Having regard to the proposal from the Supervisory Board and in consultation with the national competent authorities,

Whereas:

- (1) For the performance of the specific tasks concerning policies relating to the prudential supervision of credit institutions, as conferred on the European Central Bank (ECB) by Regulation (EU) No 1024/2013, the ECB uses the European System of Central Banks (ESCB) and Eurosystem electronic applications, systems, platforms and services, as well as the new electronic applications, systems, platforms and services specific for carrying out the tasks entrusted to the ECB pursuant to Regulation (EU) No 1024/2013 on the basis of Article 127(6) of the Treaty and Article 25.2 of the Statute of the European System of Central Banks and of the European Central Bank.
- (2) It is necessary for the smooth, effective and consistent functioning of the Single Supervisory Mechanism (SSM) that practical arrangements for the cooperation between the ECB and the national competent authorities (NCAs) within the SSM include arrangements for the use of such electronic applications, systems, platforms and services that are necessary for the fulfilment of their responsibilities under Regulation (EU) No 1024/2013.
- (3) The public key infrastructure for the European System of Central Banks (hereinafter the 'ESCB-PKI') was established in Decision ECB/2013/1 ⁽²⁾. Pursuant to Article 3(1) of Decision ECB/2013/1, ESCB and Eurosystem electronic applications, systems, platforms and services with medium or above medium criticality should only be accessed and used if a user has been authenticated by means of an electronic certificate issued and managed by a certification authority accepted by the ESCB in accordance with the ESCB/SSM certificate acceptance framework, or by the ESCB-PKI certification authority or by certification authorities accepted by the ESCB for TARGET2 and TARGET2 Securities for those two applications.
- (4) The Governing Council has identified a need for advanced information security services, such as strong authentication, electronic signatures and encryption, through the use of electronic certificates for the electronic applications, systems, platforms and services that are necessary for the fulfilment of the ECB's and NCAs' responsibilities, as competent authorities within the SSM, under Regulation (EU) No 1024/2013. Hence, certificates issued by the ESCB-PKI may be used to access and use electronic applications, systems, platforms and services used for the functioning of the SSM.
- (5) The ECB and the NCAs of the SSM may decide to use certificates and services provided by the ESCB-PKI to access and use SSM electronic applications, systems, platforms and services,

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Decision ECB/2013/1 of the European Central Bank of 11 January 2013 laying down the framework for a public key infrastructure for the European System of Central Banks (OJ L 74, 16.3.2013, p. 30).

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision:

1. 'national competent authority' (NCA) means a national competent authority designated by a participating Member State in accordance with Article 2(2) of Regulation (EU) No 1024/2013. This meaning is without prejudice to arrangements under national law that assign certain supervisory tasks to a national central bank (NCB) that is not designated as an NCA. With regard to such arrangements, a reference to an NCA in this Decision shall also refer to the NCB in respect of the supervisory tasks assigned to it by national law;
2. 'competent authority' means either an NCA or the ECB;
3. 'ESCB and Eurosystem electronic applications, systems, platforms and services', 'certificate' or 'electronic certificate', 'ESCB-PKI certification authority', 'registration authority', 'user', 'Eurosystem central bank', and 'relying party' have the meanings defined in Article 1 of Decision ECB/2013/1;
4. 'SSM electronic applications, systems, platforms and services' means electronic applications, systems, platforms and services that are used for the fulfilment of the ECB's and NCAs' responsibilities under Regulation (EU) No 1024/2013;
5. 'ESCB/SSM certificate acceptance framework' means the criteria established by the ESCB Information Technology Committee to identify the certification authorities, both internal and external to the ESCB, which can be trusted in relation to ESCB and Eurosystem electronic applications, systems, platforms and services and in relation to SSM electronic applications, systems, platforms and services.

Article 2

Use of and access to SSM electronic applications, systems, platforms and services

1. SSM electronic applications, systems, platforms and services with medium or above medium criticality shall only be accessed and used if a user has been authenticated by means of an electronic certificate issued and managed by a certification authority accepted in accordance with the ESCB/SSM certificate acceptance framework, including by the ESCB-PKI certification authority.
2. The ESCB-PKI certification authority shall issue electronic certificates and provide other certification services to the competent authorities participating in the ESCB-PKI pursuant to Article 3 for their certificate subscribers and for the certificate subscribers of third parties working with them to enable them to securely access and use SSM electronic applications, systems, platforms and services.
3. A relying party may rely upon such certificates under the conditions laid down in Article 8 of Decision ECB/2013/1.

Article 3

Participation of the competent authorities in relation to the ESCB-PKI

1. A competent authority may decide to use ESCB-PKI services in order to access and use SSM electronic applications, systems, platforms and services and/or may act for that purpose as registration authority for its internal users as well as for third party users, under the same conditions as those applying to Eurosystem central banks.

2. The participating competent authority shall be subject to the obligations set out in Articles 6, 7 and 12 of Decision ECB/2013/1 and shall submit a declaration to the Governing Council by which it confirms its participation and compliance with the obligations laid down in the Level 2 — Level 3 Agreement referred to in Article 4(2) of that Decision.

Article 4

Entry into force

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 11 December 2015.

The President of the ECB

Mario DRAGHI

