



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate H – Trade Defence

Unit Trade H4 – Investigations III. Monitoring of Implementation

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ANNEX -GENERAL DISCLOSURE DOCUMENT

Anti-dumping and countervailing measures on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China – proposal to withdraw the undertaking for three exporting producers

The Commission, in the framework of its monitoring activities regarding the undertaking, carried out verification of information submitted and relevant to the fulfilment of the undertaking by the exporting producers. The findings listed below address the problems identified for:

- a. CSI Solar Power (China) Inc., Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co. Ltd together with their related company in the European Union jointly covered by the TARIC additional code: B805 ('Canadian Solar');
- b. ET Solar Industry Limited and ET Energy Co. Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B819 ('ET Solar'); and
- c. Renesola Zhejiang Ltd and Renesola Jiangsu Ltd together with their related companies in the European Union, jointly covered by the TARIC additional code: B921 ('ReneSola'),

which **require withdrawing of the acceptance of the undertaking** for these three exporting producers.

A. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(i) Canadian Solar

Canadian Solar provided certain benefits to several customers, which were not listed in their quarterly reports submitted to the Commission pursuant to the undertaking. The Commission analysed these non-reported benefits and concluded that Canadian Solar has breached its reporting obligation under the undertaking.

Further analysis of these non-reported benefits has led to the conclusion that Canadian Solar also breached its obligation to respect the MIP, as deducting these benefits from the sales price in the transactions with the customers concerned decreased these prices below the MIP.

Canadian Solar conducted also parallel sales of modules covered and not covered by the undertaking to the same customers. This was done through parallel sales, on a large scale, of the modules imported before (from multiple sources) and after entry into force of the undertaking. These sales exceeded substantially the marginal percentage limit of total sales to the same customer authorised by the undertaking. Thereby, Canadian Solar has breached that limit.

In addition, the Commission analysed the implications of this pattern of trade and concluded that there is a high risk of cross-compensation where the products covered¹ and not covered by the undertaking are sold to the same customers in such quantities.

Canadian Solar also uses in its business model one original equipment manufacturer ('OEM') to assemble modules in a third country using cells from another third country. This OEM in a third country is not subject to the undertaking. Hence its production falls outside the scope of the monitoring by the Commission. The Commission analysed the implications of this pattern of trade on the practicability of the undertaking. The Commission concluded that, although limited in scope, this OEM in its present form renders the monitoring of Canadian Solar's undertaking impracticable.

(ii) ET Solar

ET Solar sold the products covered by the undertaking as a part of sales of complete solar parks. None of the sales of modules into the solar parks was listed in the quarterly reports submitted to the Commission pursuant to the undertaking. ET Solar was obliged under the undertaking to report those sales. When selling a solar park, ET Solar was selling a bundle of goods and services: the modules installed in the park, the remaining equipment necessary for the park, and the service of building the park and connecting it to the grid.

Furthermore, the sale of complete solar parks constitutes a parallel sale of the products covered and the products and services not covered by the undertaking to the same customers. These sales exceeded substantially the marginal percentage limit of total sales to the same customer authorised by the undertaking. Thereby, ET Solar has breached that limit.

In addition, the Commission analysed the implications of this pattern of trade and concluded that there is a high risk of cross-compensation where the products covered, and products and services not covered by the undertaking are sold to the same customers in such quantities. Moreover, ET Solar is not able to demonstrate that the MIP is respected in the sales of complete solar parks, as there is no sales price per se for the modules as the customer pays only a total price for the installation and no further reliable breakdown of the price for the modules, other equipment and services was provided.

Finally, the Commission analysed the implications of this pattern of trade and also concluded that this renders the monitoring of ET Solar's undertaking impracticable.

(iii) ReneSola

ReneSola's business model, besides using its own production capacities in the PRC, relies on an extensive network of unrelated OEMs in third countries and in the Union to assemble modules. These OEMs use cells of various origins, including cells originating in or consigned from the PRC. Those cells are imported, in a number of cases, through related companies located in different third countries. These OEMs in third countries and in the Union are not subject to the undertaking. They hence fall outside the scope of the monitoring by the Commission. The Commission analysed the implications of this pattern of trade and concluded that it renders the monitoring of ReneSola's undertaking impracticable.

Furthermore, ReneSola provided in its quarterly reports submitted to the Commission pursuant to the undertaking misleading information about transactions to a related importer

¹ That is modules and cells originating in or consigned from the People's Republic of China, normally declared within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('products covered').

in the Union. The related importer's transactions records inspected on the spot do not match the export sales reported to the Commission by ReneSola under the undertaking. Further verification established that ReneSola has not reported the cancellations or modifications of a large number of shipments to this related importer. The Commission analysed these inconsistencies between ReneSola's undertaking reports and actual sales transactions and concluded that ReneSola has breached its reporting obligation under the undertaking.

(iv) Conclusions

The findings of breaches of the undertaking and its impracticability established for Canadian Solar, ET Solar and ReneSola justify the withdrawal of the acceptances of the undertaking for these three exporting producers pursuant to Articles 8(7) and 8(9) of the basic anti-dumping Regulation, Articles 13(7) and 13(9) of the basic anti-subsidy Regulation, and pursuant to the terms of the undertaking

In addition, the Commission analysed the implications of actions by Canadian Solar, ET Solar and ReneSola listed above on their relationships of trust established with the Commission at the acceptance of the undertaking. The Commission concluded that the combination of these actions harmed the relationship of trust with these three exporting producers. Therefore, this accumulation of breaches also justifies the withdrawal of acceptances of the undertaking for these three exporting producers pursuant to the terms of the undertaking.

B. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING

The undertaking stipulates that any breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission shall assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME').

The Commission has accordingly assessed the impact of the breaches by Canadian Solar, ET Solar and ReneSola on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

The responsibility for those breaches lies alone with the three exporting producers in question; the monitoring and the verifications have not revealed any systematic breaches by a major number of exporting producers or the CCCME.

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

C. WRITTEN SUBMISSIONS AND HEARINGS

Canadian Solar, ET Solar, ReneSola, and the CCCME are granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation. Any other party may also comment on this disclosure.