

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

- Article 1 (1) A definitive countervailing duty is hereby imposed on imports...
- Article 2 (1) Imports declared for release into free circulation for products...
- Article 3 The companies from which undertakings are accepted by the Commission...
- Article 4 Registration of imports resulting from Regulation (EU) No 182/2013 making...
- Article 5 This Regulation shall enter into force on the day following...
Signature

ANNEX 1

ANNEX 2

The following elements shall be indicated in the Commercial Invoice...
The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'....

ANNEX 3

EXPORT UNDERTAKING CERTIFICATE

The following elements shall be indicated in the Export Undertaking...
The name, address, fax and telephone number of the China...

ANNEX 4

The following elements shall be indicated in the Commercial Invoice...
The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO ANTI-DUMPING AND...

Changes to legislation: There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1239/2013. (See end of Document for details)

- (1) OJ L 188, 18.7.2009, p. 93.
- (2) OJ C 340, 8.11.2012, p. 13.
- (3) OJ C 269, 6.9.2012, p. 5.
- (4) Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ L 152, 5. 6.2013, p. 5).
- (5) Commission Regulation (EU) No 182/2013 of 1 March 2013 making imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China subject to registration (OJ L 61, 5.3.2013, p. 2).
- (6) See page 214 of this Official Journal.
- (7) Appellate Body Report, *European Communities — Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001.
- (8) Case T-401/06 *Brosmann Footwear (HK) Ltd and others vs Council*; Case T-314/06 *Whirlpool Europe vs Council*.
- (9) *Footwear with uppers of leather originating in the People's Republic of China and Vietnam*, Commission Regulation (EC) No. 553/2006 of 23 March 2006 (prov.); Council Regulation (EC) No. 1472/2006 of 5 October 2006 (def.).
- (10) Case T-401/06, *Brosmann Footwear (HK) Ltd. vs Council of the European Union*, para 133.
- (11) Case T-401/06, *Brosmann Footwear (HK) Ltd. vs Council of the European Union*, para 135.
- (12) Chapter 10, Section 1, of the 12th 5-Year Plan: ‘*In the new energy industry, focus on the development of... .. solar energy utilisation, photovoltaic and photo-thermal power generation*’.
- (13) Section III.ii.1 of the 12th Five-year Plan for the Solar Photovoltaic Industry.
- (14) Section III.iii.1 of the 12th Five-year Plan for the Solar Photovoltaic Industry.
- (15) Section III.ii.3 of the 12th Five-year Plan for the Solar Photovoltaic Industry.
- (16) Section VI.i of the 12th Five-year Plan for the Solar Photovoltaic Industry.
- (17) Chapter Orientation and Priorities of Industrial Restructuring, Article 5 of the Decision No 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (18) Chapter III, Article 17 of the Decision No 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (19) Articles 7.1 and 7.3 of the State Council Decision of 10 October 2010 to encourage development of 7 new strategic industries.
- (20) Section VII, Chapters 1 and 5 of the National Outline for the Medium and Long-term Science and Technology Development (2006-2020).
- (21) Article 18 of the Law of the PRC on Scientific and Technological Progress.
- (22) *Ibid.*
- (23) Article 34 of the Law of the PRC on Scientific and Technological Progress.
- (24) With the exception of certain state-owned financial institutions.
- (25) National Outline for Medium and Long-term Science and Technology Development (2006-2020); Catalogue of Chinese High-Tech Products for Export; Export list of High- and New-tech products; Law of the PRC on Scientific and Technological Progress (Order N.82 of the President of the PRC); Provisional Regulations on Management of National Science and Technology Plan and Provisional Measure on Management of National Science and Technology Plan Project.
- (26) E.g. National Outline for Medium and Long –term Science and Technology Development (2006-2020) identifies the Solar industry as key field and foresees to ‘*give the first place to policy*

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- finance*’ or ‘*encourage financial institutions to grant preferential credit support to major national scientific and technological industrialisation projects*’ or suggests some preferential tax policies which were indeed used by the sample exporting producers. Catalogue of Chinese High-Tech Products for Exports and Export list of High and New-Tech Products are also highly relevant for the PV industry since most of the sampled exporting producers are holders of the certificate of High and New Technology Enterprise. As for the Law of the PRC on Scientific and Technological Progress it, *inter alia*, instructs the Policy-oriented financial institutions to give priority to the High — and new-technology industries (where PV industry also belongs). Provisional Regulations on Management of National Science and Technology Plan and Provisional Measure on management of national science and technology plan project are also both directly involved in the organisation and functioning of some PV projects.
- (27) E.g. China Bohai Bank, Guangdong Development Bank, Huishang Bank, Bank of Shanghai, Shenzhen Development Bank.
- (28) Commission pre-verification letter of 25 March 2013, page 7: ‘The Commission will seek explanations concerning the information requested in Appendix A of the questionnaire. The questions raised during verification will cover points a) to r) of the Appendix A’. Point g) of the Appendix A: List each shareholder of the bank/financial institution who owned at least 1 % of the shares or of the value of the company and list the activities of these shareholders in Excel table Appendix A-1.
- (29) Article 33 of *Law of the PRC on Regulation of and Supervision over the Banking Industry*: The banking regulatory authority shall, in light of the need for performing its duties, have the power to require the financial institutions of the banking industry to submit, in accordance with relevant regulations, their balance sheets, profit statements, other financial accounting statements, statistical reports and information concerning business operations and management, as well as the audit reports prepared by certified public accountants.
- (30) Commission deficiency letter of 30 January 2013, question C-III-A.A.
- (31) Not filled in by the Bank of China, but by the GOC on its behalf.
- (32) The verification visit was originally scheduled from 15 to 19 April 2013.
- (33) Preamble of the *Constitution of the Communist Party of China*.
- (34) Document WT/DS379/AB/R, 11 March 2011.
- (35) Para 317 of the AB report.
- (36) Para 290 of the AB report.
- (37) Para 297 of the AB report.
- (38) http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000204417.PDF
- (39) Document WT/TPR/S/230 p. 79, April 2010.
- (40) Document WT/TPR/S/264 p.122, July 2012.
- (41) *Ibid.*
- (42) Article 15 of the Article of Association of China Development Bank (CDB) states that the business purpose of the CDB is *inter alia* ‘to serve for middle- and long-term development strategy of the national economy’. Further the Financial Statements of CDB for the financial year 2011 state ‘The Bank and its subsidiaries (together, the “Group”) are dedicated to the mission of strengthening the competitiveness of China and improving the living standards of its people in support of the State’s key medium to long-term strategies and policies, through their medium- to long-term lending, investment, securities and leasing activities’ and ‘In response to the call of the State to encourage domestic enterprises to “Go Global”’ and ‘In response to the call of the State to encourage domestic enterprises to “Go Global”, the Group also engages in a wide range of activities focused on international cooperation’.
- (43) Deutsche Bank Research, China’s Banking Sector: Ripe for the next stage, 7 December 2006.
- (44) China Trade Policy Review WT/TPR/S/264, p. 122, recital 98.
- (45) China 2030 Building a modern, harmonious, and creative society, The World Bank and Development Research Center of the State Council, the PRC, pages 28-29, 125.

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- (46) OECD Economic Surveys: China 2010, p. 55 ‘the primary purpose of the PBoC's lending rate floor and deposit rate ceiling is to safeguard the profitability of the predominantly state-owned banking sector. By progressively widening the margin between benchmark lending and deposit rates, the PBoC has effectively pushed some of the cost of bank restructuring onto Chinese borrowers and savers, though it narrowed that gap in 2008-09. However, the benchmark rates weaken the incentive for commercial banks to price risk appropriately and stifle competition in the banking sector’.
- (47) Information retrieved from the 2006 Deutsch Bank Research on China's banking sector, pages 3-4.
- (48) Information retrieved from the China Monetary Report Quarter Two, 2010 of the Monetary Policy Analysis Group of the People's Bank of China, dated 5 August 2010, page 10.
- (49) Information submitted by the GOC, information retrieved from the Articles of Association and Annual Reports of certain banks and information retrieved from internet (e.g. <http://www.fas.org/sgp/crs/row/R42380.pdf>).
- (50) Recital 169 of the Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 (OJ L 73, 15.3.2013, p. 16).
- (51) Law of the PRC on Commercial Banks (Article 34).
- (52) Decision No 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (53) Law of the PRC on Scientific and Technological Progress (Order No 82).
- (54) IMF Working Paper, ‘Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?’, WP/06/71, March 2006, (see pages 3-4, 13, 18-20).
- (55) IMF Working Paper, ‘Interest Rate Liberalization in China’, WP/09/171, August 2009, (see pages 3-4, 21-23).
- (56) IMF Country Report, PRC: 2010 Article IV Consultation, No 10/238, July 2010, (see pages 22, 24 and 28-29).
- (57) OECD 2010 Economic Survey of China, February 2010, (see Chapter 3, pages 71, 73-81, 97).
- (58) OECD China's Financial Sector Reforms, Economic Department Working Paper No. 747, ECO/WKP (2010) 3, 1 February 2010, (see pages 2, 8-15, 36).
- (59) See finding on public bodies in paragraph recital 53.
- (60) Article VII of the *State Council Decision of 10 October 2010 to encourage development of 7 new strategic industries*.
- (61) *National Outline for Medium and Long-term Science and Technology Development (2006-2020)*, Section III, chapter 1.
- (62) *Law of the PRC on Scientific and Technological Progress (Order N.82 of the President of the PRC)*, Article 18.
- (63) *Law of the PRC on Scientific and Technological Progress (Order N.82 of the President of the PRC)*, Article 34.
- (64) Article 34 of the Commercial Banking Law.
- (65) Document WT/TPR/S/264 p. 122, July 2012.
- (66) Law of the PRC on Commercial Banks (Article 34).
- (67) Decision No 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment.
- (68) Law of the PRC on Scientific and Technological Progress (Order No 82).
- (69) <http://english.caixin.com/2012-04-19/100381773.html>
- (70) The Chinese banking regulator (CBRC) decided that the Commercial Banks in China can buy CDB bonds (this applies to CDB bonds only) and assign zero-risk weighting to these assets. This effectively means that the banks are not required to set any capital against these assets as a risk precaution when they hold these bonds which has an impact on the bank's access to capital and provides access to cheap money. The yields on CDB bonds are usually higher than the benchmark deposit rates but lower than the lending rate and the result is that Chinese commercial banks can

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make money with buying risk-free CDB bonds. This being the steady source of income, the banks can afford to borrow to certain industries at preferential rates because they will compensate the lost profits via the described mechanism.

- (71) Report of the Panel, European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft, WT/DS316/R (30/06/2010), paras. 7.735-7.738.
- (72) http://www.gov.cn/ldhd/2009-05/27/content_1326023.htm
- (73) Appellate Body report *US — Anti-Dumping and Countervailing Duties (China)*, para. 317.
- (74) Appellate Body report *US — Anti-Dumping and Countervailing Duties (China)*, para. 318.
- (75) Sources: http://en.wikipedia.org/wiki/China_Export_%26_Credit_Insurance_Corporation and <http://uk.reuters.com/article/2011/05/26/china-cic-sinosure-idUKL3E7GQ10720110526>
- (76) http://www.gov.cn/ldhd/2009-05/27/content_1326023.htm
- (77) <http://www.stewartlaw.com/Article/ViewArticle/608>, Stewart and Stewart, *How trade rules can help level the export financing playing field: New developments and a path forward for 2013: 'Sinasure, China's official export credit insurance agency, operates at a significant cumulative loss to the government, indicating its support is also highly subsidized' and 'A review of Sinasure's annual reports from 2002 through 2011 reveals a cumulative operating loss of RMB 3.3 billion'*.
- (78) Source: http://en.wikipedia.org/wiki/US-Exim_Bank
- (79) Recital 116 of the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the PRC (OJ L 128, 14.5.2011 p.18).
- (80) Recital 226 of the Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a definitive anti-subsidy duty on imports of certain organic coated steel products originating in the PRC (OJ L 73, 15.3.2013, p. 16).
- (81) Announcement on Bid Invitation for Assignment of Yangzhou Urban State-owned Construction Land for Industrial Use with Land Use Right (Plot Numbers 2008G017, 2008G018 and 2008G019, Yangzhou Municipal Land Resources Bureau, 30 January 2008.
- (82) Notice on transferring of state-owned Land Use Right (2009-02) in Tianwei issued by Baoding City Land Bureau, Article 7.
- (83) Implementing Regulation (EU) No 215/2013, recital 116.
- (84) George E. Peterson, Land leasing and land sale as an infrastructure-financing option, World Bank Policy Research Working Paper 4043, at 7 November 2006, IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.
- (85) IMF Working Paper (WP/12/100), An End to China's Imbalances, April 2012, p. 12.
- (86) AB Report Mexico-Rice, paras. 289 and 293. Panel Report, China-GOES, paras. 7.296 and 7.302
- (87) The statistics of the banks were requested under section III.A.A of the initial questionnaire, page 4 of the Annex 1 to the deficiency letter and page 7 of the pre-verification letter
- (88) Appellate Body report *US-Anti-dumping and Countervailing Duties (China)*, para. 356.
- (89) Please kindly provide the information as already requested in the questionnaire, in any event at least those where the GOC has direct or indirect shareholdership.
- (90) The 12th Five-year Plan for the Solar Photovoltaic Industry, Preface
- (91) The 12th five year plan for national economic and social development of the People's Republic of China, Part XVI and Chapter 61
- (92) Appellate Body Report, *US-Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*
- (93) Appellate Body Report, *US-Hot-Rolled Steel*, para. 99
- (94) Panel Report, *US-Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 16.9
- (95) Panel Report, *EC-Salmon*, para. 7.358

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- (96) Article 29 of the Council Regulation (EC) No 597/2009 of 11 June 2009, [OJ L 188, 18.7.2009](#)
- (97) Article 32 of the CCP Constitution
- (98) Article 19 of the Companies Law of the People's Republic of China, http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21898292.htm
- (99) *EC-Aircraft* panel Para 7.743
- (100) <http://www.chinaafricarealstory.com/2011/08/china-development-banks-3-billion-line.html>, ‘The terms of the CDB line of credit differ in its two instalments. The first tranche of \$1.5 billion will have a 20yr maturity including a 5yr grace period. The interest rate will be 6 month LIBOR (London Inter-Bank Offered Rate) plus a margin of 2.95 %, with a commitment fee of 1 % and an upfront fee of 0.25 %. The terms of the second \$1.5bn tranche are 15yr maturity including a 5yr grace period, interest rate of 6 month LIBOR plus a margin of 2.28 %, and probably the same fees’
- (101) Panel Report, *US — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 10.187
- (102) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC ([OJ L 140, 5.6.2009, p.16](#)).
- (103) European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels.
- (104) Regulation (EU) No 513/2013.
- (105) [OJ L 343, 22.12.2009, p.51](#).
- (106) Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ([OJ L 209, 3.8.2013, p. 26](#)).
- (107) Council Regulation (EC) No 597/2009 of 11 June 2009; [OJ L 188, 18.7.2009, p. 93](#).

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