II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 372/2013

of 22 April 2013

amending Implementing Regulation (EU) No 1008/2011 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

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 9(4) and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

(1) In July 2005, by Regulation (EC) No 1174/2005 ([2]), the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China ('the PRC'). The measures consisted of an *ad valorem* anti-dumping duty ranging between 7,6 % and 46,7 %.

(2) In July 2008, by Regulation (EC) No 684/2008 ([3]), the Council, following a product scope interim review, clarified the product scope of the original investigation.

(3) In June 2009, by Regulation (EC) No 499/2009 ([4]), the Council, following an anti-circumvention investigation, extended the definitive anti-dumping duty applicable to 'all other companies' imposed by Regulation (EC) No 1174/2005 to hand pallet trucks and their essential parts consigned from Thailand whether declared as originating in Thailand or not.

(4) In October 2011, by Implementing Regulation (EU) No 1008/2011 ([5]), the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the PRC following an expiry review pursuant to Article 11(2) of the basic Regulation. The extended duty as mentioned in recital 3 above was also maintained by Implementing Regulation (EU) No 1008/2011.

2. Initiation of a partial interim review

(5) During the expiry review the European Commission ('Commission') noticed a change in the competition landscape on the Union market as of the imposition of the measures. Indeed, the Chinese exporting producer with the lowest duty rate — who was granted market economy treatment ('MET') in the original investigation — was able to virtually take over a very big part of the Union market and increased significantly its share of imports in the Union. The Commission also had doubts with regard to the original MET determination in view of prima facie evidence of distortions on the steel market in the PRC. In this context, the circumstances on the basis of which the existing measures were established were considered to have changed and those changes seemed to be of a lasting nature.

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 14 February 2012 in the *Official Journal of the European Union* ([6]) ('the Notice of initiation'), the *ex-officio* initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation limited in scope to the examination of dumping in respect of Chinese exporting producers.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 189, 21.7.2005, p. 1.
([3]) OJ L 192, 19.7.2008, p. 1.
([4]) OJ L 151, 16.6.2009, p. 1.
([5]) OJ L 268, 13.10.2011, p. 1.
([6]) OJ C 41, 14.2.2012, p. 14.

3. **Review investigation period**

(7) The investigation of the level of dumping covered the period from 1 January to 31 December 2011 ('the review investigation period' or 'the RIP').

4. **Parties concerned**

(8) The Commission officially advised exporting producers, unrelated importers known to be concerned, the authorities of the PRC and the Union industry of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

(9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) In view of the potentially large number of exporting producers and unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the review and to provide the Commission with information requested in the Notice of initiation. Two exporting producers and eight unrelated importers came forward to cooperate. Sampling was therefore not necessary for both exporting producers and unrelated importers.

(11) The Commission sent questionnaires and MET claim forms to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from one Chinese exporting producer, Zhejiang Noblelift Equipment Joint Stock Co. Ltd ('Noblelift'), and from three unrelated importers.

(12) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of Noblelift in Changxing, PRC.

(13) In light of the need to establish a normal value for the exporting producer in the PRC to which MET was not granted, a verification at the premises of the following producer in Brazil, which was used as an analogue country, took place:

— Paletrans Equipamentos Ltda, Cravinhos, São Paulo ('Paletrans').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned by this review is the same as the one in the original investigation and clarified by the product scope interim review, namely hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the PRC, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00. For the purpose of this Regulation, hand pallet trucks are trucks with wheels supporting lifting fork arms for handling pallets, designed to be manually pushed, pulled and steered, on smooth, level, hard surfaces, by a pedestrian operator using an articulated tiller. The hand pallet trucks are only designed to raise a load, by pumping the tiller, to a height sufficient for transporting and do not have any other additional functions or uses such as for example: (i) to move and to lift the loads in order to place them higher or assist in storage of loads (highlifters); (ii) to stack one pallet above the other (stackers); (iii) to lift the load to a working level (scissorlifts); or (iv) to lift and to weigh the loads (weighing trucks).

2. **Like product**

(15) The investigation confirmed that the product concerned and the product manufactured and sold on the domestic market in the PRC, the product manufactured and sold in the analogue country, Brazil, and the product manufactured and sold in the Union by the Union producers have the same basic physical and technical characteristics as well as the same uses.

(16) Those products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

(a) *Market economy treatment ('MET')*

(17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value is determined in accordance with paragraphs 1 to 6 of that Article for those producers which were found to meet the criteria laid down in point (c) of Article 2(7) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. For ease of reference only, these criteria are set out in a summarised form as follows:

— business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee legal certainty and stability,

— exchange rate conversions are carried out at market rates.

(18) Noblelift, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the deadlines given.

(19) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.

(20) The investigation established that the prices paid by Noblelift in the RIP for Chinese hot-rolled carbon steel, a main raw material accounting for about 25 % of the cost of a finished product, were significantly distorted as they stood approximately between 24 % and 31 % below international prices over the same period. The international prices were based on statistics for the Union and North American markets from the *Steel Business Briefing* ([1]) as well as from *Comext* import prices. On that basis it was found that Chinese steel prices clearly did not reflect market values. Moreover, there is an established practice of State interference in the market of raw materials. The China 12th five-year plan (2011-15) for the Iron and Steel sector contains a series of measures which demonstrate that steel companies have no possibility other than to act in line with the Chinese Government instructions due to the firm control the Chinese State has. It is thus concluded that Noblelift does not fulfil the requirements of the first criterion of MET.

(21) Furthermore, in the financial year 2010, a related company gave Noblelift a bank guarantee for two loans representing a significant proportion of that related company's and Noblelift's total assets. The guarantees were disclosed neither in Noblelift's financial statements nor in the related company's accounts. This is not in line with IAS 24 (Related Party Disclosures) and the auditor had no reservation on this practice. The disclosure of related party transactions in the financial statements is important because it draws attention to possible effects on the financial position of a company. In this case, the non-disclosure of significant commitments such as the guarantees in question does not allow a proper assessment of the company's operations and in particular the risks and opportunities the company is facing. Therefore, it is considered that the company's accounting records have not been properly audited in line with international accounting standards and, thus, it does not fulfil the requirements of the second criterion.

(22) Finally, Noblelift received State benefits in the form of preferential income tax as well as grants which distort its financial situation and, thus, it does not fulfil the requirements of the third criterion.

([1]) http://www.steelbb.com/steelprices/

(23) The exporting producer concerned and the Union industry were given an opportunity to comment on the above findings.

(24) Following the disclosure of the MET findings, Noblelift requested more details with regard to the calculation of the international market price for steel. The company argued that distortions in raw material prices should be dealt with by adjusting the normal value in the dumping calculation rather than by denying MET. However, Article 2(7)(c) of the basic Regulation is very clear and requires that 'costs of major inputs substantially reflect market values'. Hence, any adjustment in the dumping calculations in order to address the distorted input costs would render Article 2(7)(c) largely meaningless. The comments could therefore not alter the above findings.

(25) Following the disclosure of the final findings, Noblelift reiterated its arguments. It stated firstly that the Commission failed to disclose the details, i.e. all the data used for the calculation of differences in raw material prices.

(26) In this respect, it is noted first and foremost that the sources of data for the comparisons of steel prices have been indicated by the Commission on several occasions. The Commission repeated the explanations provided earlier in the proceeding that the prices based on the Steel Business Briefing were copyright protected as the service is available on subscription. Consequently, the Commission is legally prevented from publicly disclosing those data directly but the database is otherwise available and can be accessed with payment of the appropriate fee. Nevertheless, in order to ensure a balance between the protection of intellectual property rights and the protection of the rights of defence, the data used was verified by the Hearing Officer of the Directorate-General for External Trade, who confirmed the calculation of the price difference and communicated the result of his verification to Noblelift.

(27) It is further noted that the Steel Business Briefing describes exactly the methodology used (dimensions, thickness, width, point in transport). Those parameters are general and are a guide which is also indicative of the level of detail in price comparisons of raw materials which aim at establishing whether costs of major inputs substantially reflect market values. The Commission has used European and North American prices as reference.

(28) Noblelift further claimed that in the original investigation, differences between domestic steel prices in the PRC and international steel prices were not considered as a factor preventing the company from meeting the first MET criterion. As stated in recital 22 of Commission

Regulation (EC) No 128/2005 [1] of 27 January 2005 imposing a provisional anti-dumping duty in the framework of the original investigation, '*For all four companies, it was established (…) that costs and prices reflected market values*'. Indeed, the original investigation did not establish a substantial price difference between raw materials procured locally in the PRC and those purchased at international prices. However, this conclusion cannot prevent the institutions from finding a price difference in a later investigation should the circumstances be different and there is a price difference. As indicated in recital 76 below the circumstances have significantly changed since 2004 (time of the original investigation) and 2011 (the IP of the review at hand), i.e. in a period of seven years. In this regard, and in particular during the expiry review investigation in 2010, prima facie evidence of price distortions in the steel market in the PRC, due to State interference, were collected. This also constituted one of the reasons which led to the *ex-officio* initiation of the current review and indeed was confirmed in the current investigation (see recital 20 above).

(29) Next, Noblelift reiterated its comments concerning the non-material impact of loan guarantees or the negligible impact of state benefits. In this respect, it is noted that Article 2(7)(c) of the basic Regulation is clear and does not refer to material impact on financial results ('firms have one set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes'). In any case, as stated above in recital 21, the non-disclosure of significant commitments such as the loan guarantees in question does not allow a proper assessment of the company's operations and in particular the risks and opportunities the company is facing. As far as state benefits are concerned, the Commission has already replied to the party in the course of the investigation that those benefits represented amounts exceeding 10 million RMB. The claims could thus not be accepted.

(30) Finally, Noblelift argued that the investigation should have been terminated due to violation of the three-month deadline for the MET determination as specified in Article 2(7)(c) the basic Regulation. In this respect, reference is made to an amendment introduced by Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [2] and the retroactive effects thereof. Further, it is noted that the MET determination was made more than three months after the beginning of the investigation due to the procedural aspects and time constraints of the investigation. Indeed, the increased complexity of issues raised in the context of MET assessments has shown that the three-month deadline was virtually impossible to adhere to. It is noted however that the timing of the determination did not have an impact on the outcome.

(31) Consequently, it is concluded that the comments suggesting that MET should be granted are not justified.

(32) In view of the above and pursuant to Article 2(7)(c) of the basic Regulation, it is determined not to grant MET to Noblelift.

(b) *Normal value*

Analogue country

(33) According to Article 2(7)(a) of the basic Regulation, for non-market economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the price or constructed value in an analogue country.

(34) In the original investigation, Canada served as an analogue country for the purposes of establishing a normal value. Given that production in Canada had ceased, Brazil was envisaged as an analogue country in the Notice of initiation of the present review.

(35) Two exporting producers and an importer objected to the proposal to use Brazil as an analogue country. The arguments against the choice of Brazil were that there was a low degree of competition on the Brazilian market for hand pallet trucks due to the very small number of domestic producers and, thus, sales prices, profits as well as production costs in Brazil are inflated. The exporting producers in question suggested India, Malaysia or Taiwan as appropriate analogue countries.

(36) Following those comments, the Commission contacted 38 Indian, 3 Taiwanese, 2 Malaysian and 2 Brazilian known producers of hand pallet trucks by sending them the relevant questionnaire. Cooperation could be obtained from only one producer in Brazil: Paletrans.

(37) Following the disclosure of the final findings and the Commission's proposal, parties reiterated their comments that Brazil was not an appropriate choice of analogue country due to the lack of competition on the Brazilian market. Parties alleged that the cooperating analogue country producer enjoyed a monopolistic position on the Brazilian market reinforced by high import duties. Other comments related to deficiencies in the non-confidential questionnaire reply of the analogue country producer. Finally, it was claimed that

[1] OJ L 25, 28.1.2005, p. 16.
[2] OJ L 344, 14.12.2012, p. 1.

adjustments should be made to account for differences between the analogue country producer and the exporting producer in the country concerned.

(38) As concerns the suitability of Brazil as an analogue country, it has to be pointed out that while the analogue country producer is the main producer on the Brazilian market, it does not monopolise that market. There is competition with at least two local producers and a significant level of imports, and the profit margin of the analogue country producer has been found to be consistent with an open market.

(39) As stated in recital 36 above, following comments at the early stage of the proceeding against the use of Brazil as an analogue country, the Commission contacted 45 producers in four different countries, including the companies suggested by Noblelift. Despite repeated contacts by telephone and e-mail with these companies, only one producer from Brazil submitted the requested information and cooperated with the investigation.

(40) With regard to the alleged deficiencies it has to be noted that only one producer in the analogue country cooperated with the investigation. Such a situation is not uncommon, but poses difficulties with regard to the disclosure of data. Given frequent difficulties in obtaining cooperation from analogue country producers, the Commission has to guarantee a high level of protection of confidential information. In the current case, the presentation of non-confidential data created some misunderstandings concerning alleged deficiencies but they were clarified with the parties. In particular, one party claimed that deficiencies in the reply of the analogue country producer should disqualify Brazil as an analogue country and the investigation should be terminated since the Commission cannot establish the normal value. In this respect it is noted that in the current investigation the Commission did have all the necessary information to perform a dumping calculation.

(41) Consequently, the claims concerning the suitability of Brazil as an analogue country could not be accepted.

(42) With regard to the claims for adjustments, it is noted that the level of trade differences between the Brazilian producer and the Chinese exporting producer has been accounted for by means of a level of trade adjustment (see recital 59 below).

(43) Finally, one party claimed that an adjustment should be made to account for an allegedly distorting effect of the 14 % import duty in the analogue country. This claim cannot be accepted as no link can be established between an import duty as such and the price level on the domestic market.

(44) Consequently, Brazil is considered an appropriate analogue country since there is sufficient competition with at least two producers and a significant level of imports.

Determination of normal value

(45) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether Paletrans' domestic sales of the like product to independent customers were representative. In this respect, it was found that the total volume of such sales was equal to at least 5 % of the total volume of Noblelift's export sales to the Union.

(46) The Commission subsequently examined whether there are types of the like product sold domestically by Paletrans that were sufficiently comparable in terms of functions and materials used to the types sold by Noblelift for export to the Union. The investigation established that a number of types sold domestically by Paletrans were sufficiently comparable with the types exported by Noblelift to the Union.

(47) The Commission subsequently examined for the analogue country producer whether each comparable type of the like product sold domestically could be considered as being sold in the ordinary course of trade. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the RIP.

(48) Where the sales volume of a 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 that type, and where the weighted average sales price of that type was equal to or higher than the cost of production, normal value was based on the actual domestic price. This was the case for all comparable types and the normal value was calculated as a weighted average of the prices of all domestic sales of each comparable type made during the RIP.

(49) For non-comparable types the normal value could be constructed in accordance with Article 2(3) of the basic Regulation by adding to the manufacturing cost, adjusted where necessary, a reasonable percentage for domestic selling, general and administrative expenses and a reasonable margin for domestic profit. The selling, general and administrative expenses and the profit were based on actual data pertaining to production and sales, in the ordinary course of trade, for the like product, by the producer in the analogue country. It should be noted that the price constructed on that basis was subject to the adjustments described in recital 59, in particular to

take account of the difference in level of trade between export sales by Noblelift and the domestic sales of the analogue country producer.

(50) The sole cooperating exporting producer claimed that the Commission performed dumping calculations on the basis of 'truncated PCNs' and that no explanations were provided concerning the parameters used for conducting the comparison.

(51) According to Article 2(11) of the basic Regulation the dumping margin is normally established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions subject to the relevant provisions governing fair comparison.

(52) With regard to the fair comparison, it has to be noted that the product control number is a tool used in the investigation in order to structure and organise the substantial amounts of very detailed data submitted by the companies. It is an aid to conduct a more detailed analysis of different product characteristics within the category of the product concerned and the like product.

(53) The Commission has collected information in relation to a number of parameters (chassis material, chassis painted, lift capacity, type of hydraulic system, working length, fork, width over forks, steering wheel material, load wheel material, load wheel type, brake type) but in order to take into consideration all export transactions it was considered reasonable and it was found possible to base the comparison in this case on certain of those parameters that constitute the most pertinent characteristics (chassis material, chassis painted, steering wheel material, load wheel material, load wheel type).

(54) Therefore, the comparison was based on the most pertinent characteristics in order to increase the matching and to ensure a fair comparison. It has to be stressed that the Commission did not disregard any information. However, it is not uncommon that certain parameters used in the product control number have a lesser weight and that specific parameters more than others form a better basis for fair comparison. No products have been disregarded from the comparison on the basis of physical differences or for any other reasons, nor have any new product types been created. On the contrary, all sales were included in the comparison. While it was acknowledged that other parameters had some impact on prices, it was found more appropriate that the calculations should be based on the five most relevant parameters as this led to the highest level of matching.

(55) As far as procedural aspects of the comparison are concerned, it has to be noted that the exporting producer was provided with full opportunity to comment on the calculations performed in this case. Full details of the calculations have been disclosed and redisclosed.

(56) Consequently, the foregoing claims had to be rejected.

(c) *Export price*

(57) All export sales to the Union of the Chinese exporting producer were made directly to independent customers in the Union. Therefore, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(58) One party claimed that the export sales of chassis and hydraulics should have been included in the calculation. That claim has been accepted.

(d) *Comparison*

(59) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affected prices and price comparability. For this purpose, due allowance in the form of adjustments was made, where applicable and justified, for differences in level of trade (estimated price difference for sales to different type of customers in the domestic market of the analogue country), transport (comprising inland freight cost in the exporting country and ocean freight for transportation to the Union), insurance (ocean insurance cost), handling, loading and ancillary costs, commissions (paid for export sales), bank charges (paid for export sales), credit costs (based on the agreed payment terms and the prevailing interest rate) and packing costs (cost of packing materials used).

(60) Following a claim from the sole cooperating exporting producer, an adjustment for the differences in thickness of steel used by the producer in the analogue country and the exporting producer in the country concerned was made to the normal value, as it was found reasonable. The adjustment was based on the difference in thickness in proportion to the contribution of steel to the price of the like product sold in Brazil by the analogue country producer. This led to a change in the dumping margin (see recital 73 below). Following an

additional disclosure (inviting comments on the steel thickness adjustment), one party contested that adjustment as lacking factual basis. It also pointed out that the exporting producer's non-confidential submissions seeking the adjustment were deficient thereby violating other parties' rights of defence. The Commission verified the data on file on which the steel thickness adjustment was based and confirmed that it was warranted.

(61) The sole cooperating exporter presented claims for several other adjustments due to differences in efficiency and productivity, claiming, inter alia, that the producer in the analogue country was less productive (has a lower output per worker) and had higher consumption of raw materials per unit.

(62) It has to be noted at the outset that while differences in efficiency or productivity might exist between companies, the guiding principle is to ensure comparability between export prices and normal value, which does not require that the circumstances of an analogue country producer and an exporting producer in a non-market economy country are completely aligned. Indeed, only differences for factors affecting prices and price comparability between an analogue country producer and an exporting producer in a non-market economy country warrant an adjustment.

(63) Nevertheless, it has to be pointed out that the investigation did not reveal any circumstances which would suggest that the producer in the analogue country did not have a reasonably efficient production process.

(64) As far as cost factors are concerned (e.g. productivity), those should not be picked and assessed individually. Rather, a comprehensive analysis would be needed to assess whether advantages in relation to one cost factor (e.g. productivity) are possibly compensated by disadvantages in others. Indeed, a lower use of labour is often the result of a higher level of automation, which in turn leads to higher costs in other areas (depreciation, capital, financing, manufacturing overheads). Only a comprehensive analysis could reveal all differences in cost factors and demonstrate whether prices and price comparability are affected, thereby justifying an adjustment. The claims cannot therefore be accepted.

(65) In addition to the foregoing, the claims for adjustment for a per-unit energy difference and for a per-unit depreciation and manufacturing overheads difference were unsubstantiated. In particular, in relation to energy efficiency it was not explained what elements in the production process make the Brazilian producer inefficient as compared to the sole cooperating exporting producer. The amount of the adjustment was based on a ratio of labour cost difference per unit (based on productivity difference) related to the share of labour cost in total cost. The link between such ratio and energy efficiency and depreciation and manufacturing overheads difference had not been explained and was not understandable. The claims are thus rejected.

(66) One party also claimed that adjustments should be made for parameters, inter alia, such as lift capacity and fork. In this respect, reference is made to comments concerning the parameters of comparison (see recital 50 above) where it is noted that a comparison is based on the most relevant parameters to ensure the highest level of matching. In any case the claims were not substantiated.

(67) Another claim was that adjustment should be made due to the fact that the exporting producer uses patented technology. This claim has not been further substantiated. Notably, the exporting producer failed to quantify the adjustment. The only piece of information provided was a document which was stated to be the patent. In a later submission the adjustment was partially quantified but without any supporting evidence. Therefore, the claim could not be accepted.

(68) Furthermore, the claim for adjustment for difference in efficiency in use of raw materials has been covered by the adjustment for thickness of steel (see recital 60 above), as the use of different steel thickness might lead to a lower overall consumption of steel.

(69) Finally, the exporting producer stated that it sold via a sales channel, in particular non-branded products on an OEM (Original Equipment Manufacturer) basis, different from that of the producer in the analogue country. Accordingly, a claim for an adjustment reflecting this difference was put forward. As specified above (recital 59), a level of trade adjustment was made. It was based on an estimated price difference for sales to different types of customers, including OEM sales, in the domestic market of the analogue country. For confidentiality reasons the extent of this adjustment could not be disclosed as it would reveal the normal value based on data of the sole analogue country producer. It was therefore concluded that the differences for which the adjustment was claimed have already been accounted for.

(70) Nevertheless, it has to be pointed out that the exporting producer failed to quantify the adjustment claimed. It stated merely that a 40 % adjustment had been granted in another proceeding. An adjustment granted in another proceeding (hence specific to the particular circumstances of another proceeding) cannot serve as such as a benchmark for quantifying an adjustment in the current case.

(71) Following the additional disclosure (inviting comments on the steel thickness adjustment), the exporting producer presented additional claims for adjustments (unrelated to the steel thickness adjustment): adjustment for coating, handle, and steel prices in Brazil.

(72) It is noted first and foremost that the claims were submitted after the deadline for comments and were thus formally inadmissible. In any case the claims were either not quantified or not substantiated. The company neither provided evidence for its claims nor did it explain how the extent of different adjustments had been or should be calculated.

(e) *Dumping margin*

(73) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the product concerned. The dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 70,8 %.

(74) As regards the dumping margins for all exporting producers in the original investigation other than Noblelift, they ranged from 28,5 % to 46,7 %. Given that in the current review only Noblelift cooperated and that the cooperation could be considered high since the vast majority of Chinese exports were those of Noblelift, the Commission revised the country-wide dumping margin for all other exporters as well. Consequently, the residual dumping margin should be set at the same level as that of Noblelift, i.e. 70,8 %.

(75) One party claimed that the country-wide duty should not be set at the level of the sole cooperating exporting producer's dumping margin as there is no evidence that the vast majority of imports were those of that sole cooperating exporter. In this respect, it has been confirmed that according to statistical data the vast majority of imports from the PRC were those of the sole cooperating exporting producer. The claim has been therefore rejected.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

(76) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(77) In this regard the original investigation did not establish a substantial price difference between prices of raw materials procured locally in the PRC by the Chinese exporting producers (including Noblelift) and those at international markets. The circumstances have significantly changed between 2004 (time of the original investigation) and 2011 (the RIP) where the price of hot-rolled steel, the main raw material, stood between 24 % and 31 % below international prices. They did not reflect market values as a result of price distortions in the steel market in the PRC (see recital 20 above). Indeed, the Chinese steel market changed significantly within these seven years and the PRC has shifted in the meantime from a net steel importing country to a sizeable steel producer and exporter worldwide, which fact could reasonably be considered to be of a lasting nature.

(78) In addition, Chinese high-tech enterprises including Noblelift are receiving State benefits in the form of preferential income tax (15 %) since 2008. In the investigation period of the original investigation, the companies were subject to the standard rate of 25 %. This changed circumstance could also reasonably be considered to be of a lasting nature.

(79) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

(80) In light of the results of this review investigation and since the new dumping margin of 70,8 % is lower than the injury elimination level established in the original investigation (see recitals 120 to 123 of Regulation (EC) No 128/2005), it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned both from Noblelift and from all other exporting producers to 70,8 %.

(81) One party claimed that the newly established dumping margin should not have been compared with the injury elimination level established in the original investigation. Rather, an injury elimination level should be established in every investigation, even in a partial review limited to dumping. According to that party, the current practice whereby injury is not assessed, constitutes a breach of the lesser duty rule. The party also claimed that a full interim review should have been opened.

(82) In this respect it is noted that since the Commission initiated a partial interim review limited to dumping, injury could not be reassessed in this framework. According to Article 11(3) of the basic Regulation the continued imposition of measures may be reviewed, where warranted, on the initiative of the Commission. Hence, there is no obligation for the Commission to initiate an *ex-officio* interim review covering both dumping and injury, and in any event it should be warranted. In this case, the information and evidence at the Commission's disposal was sufficient for the initiation of an interim review limited to dumping. Moreover, if injury is always to be assessed in interim reviews the possibility of having a partial interim review limited to dumping as provided for in Article 11(3) of the basic Regulation would be devoid of meaning. The claim has

therefore to be rejected. Nevertheless it is recalled that the interested party in question has the possibility to request a partial review of injury pursuant to Article 11(3) of the basic Regulation.

(83) The lesser duty rule has been fully respected and the newly established dumping margin was indeed compared with the injury elimination level established in the original investigation (the latest injury finding).

(84) One party claimed that a minimum import price would be better suited in the current case. Alternatively, a fixed duty should be imposed.

(85) In this respect it is noted that neither the minimum import price nor the fixed duty are suitable for products which exist in a multitude of individual types with varying prices, which are also subject to continuous changes and upgrades. A multitude of duty levels would be very difficult to administer. An additional limitation of the current case is that the minimum import price would have to be based on the normal value (since the duty is based on dumping), which is based on confidential data of one company in an analogue country market. The claims are thus rejected.

(86) The exporting producer expressed interest in an undertaking within the statutory deadlines. However, no formal offer was submitted and thus the Commission was not in a position to consider it further.

(87) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to amend the duty rates applicable to exporting producers and were given the opportunity to comment.

(88) The oral and written comments submitted by the parties were considered.

(89) It is noted that pursuant to Article 1(3) of Implementing Regulation (EU) No 1008/2011, the 70,8 % anti-dumping duty imposed to 'all other companies' by this Regulation applies to hand pallet trucks and their essential parts, as defined in Article 1(1) of Implementing Regulation (EU) No 1008/2011, consigned from Thailand whether declared as originating in Thailand or not,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Implementing Regulation (EU) No 1008/2011, is replaced by the following:

'2. The rate of the definitive anti-dumping duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1 and produced by the companies listed bellow shall be as follows:

Company	Rate of duty (%)	TARIC additional code
Zhejiang Noblelift Equipment Joint Stock Co. Ltd, 58, Jing Yi Road, Economy Development Zone, Changxing, Zhejiang Province, 313100, PRC	70,8	A603
All other companies	70,8	A999'

Article 2

This Regulation shall enter into force on the day following 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 Luxembourg, 22 April 2013.

For the Council

The President

S. COVENEY