

**COMMISSION IMPLEMENTING REGULATION (EU) No 946/2014****of 4 September 2014****amending Council 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 'new exporter' review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009**

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 (the basic Regulation) <sup>(1)</sup>, and in particular Article 11(4) thereof,

Whereas:

**1. PROCEDURE****1.1. Previous investigations and existing anti-dumping measures**

- (1) In July 2005, by Regulation (EC) No 1174/2005 <sup>(2)</sup> 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 <sup>(3)</sup> 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 <sup>(4)</sup> 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 <sup>(5)</sup>, 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.
- (5) The measures currently in force are an anti-dumping duty imposed by Council Implementing Regulation (EU) No 1008/2011 following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (the expiry review investigation) as amended by Council Implementing Regulation (EU) No 372/2013 <sup>(6)</sup> following an interim review pursuant to Article 11(3) of the basic Regulation (the interim review investigation). The duty rate on imports into the Union of hand pallet trucks and their essential parts originating in the People's

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> Council Regulation (EC) No 1174/2005 of 18 July 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China (OJ L 189, 21.7.2005, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 684/2008 of 17 July 2008 clarifying the scope of the anti-dumping measures imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China (OJ L 192, 19.7.2008, p. 1).

<sup>(4)</sup> Council Regulation (EC) No 499/2009 of 11 June 2009 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China to imports of the same product consigned from Thailand, whether declared as originating in Thailand or not (OJ L 151, 16.6.2009, p. 1).

<sup>(5)</sup> Council Implementing Regulation (EU) No 1008/2011 of 10 October 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 as extended to imports of hand pallet trucks and their essential parts consigned from Thailand, whether declared as originating in Thailand or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 268, 13.10.2011, p. 1).

<sup>(6)</sup> 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 (OJ L 112, 24.4.2013, p. 1).

Republic of China ('the country concerned' or 'the PRC') is currently 70,8 %. The measures are also applicable to imports of hand pallet trucks and their essential parts consigned from Thailand whether declared as originating in Thailand or not pursuant to Council Regulation (EC) No 499/2009 following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation.

### 1.2. Request for a review

- (6) The European Commission (the Commission) received a request for a 'new exporter' review under Article 11(4) of the basic Regulation. The request was lodged on 3 May 2013 by Ningbo Logitrans Handling Equipment Co., Ltd (the applicant), an exporting producer of hand pallet trucks and their essential parts in the PRC.
- (7) The applicant claimed that it operated under market economy conditions as defined in Article 2(7)(c) of the basic Regulation.
- (8) It further claimed that it did not export hand pallet trucks and their essential parts to the Union during the investigation period on which the anti-dumping measures were based, namely from 1 April 2003 to 31 March 2004 ('the investigation period of original investigation'). It claimed that it did not export the product concerned also during the investigation period of the subsequent interim review investigation, namely from 1 January 2011 to 31 December 2011.
- (9) Furthermore, the applicant claimed that it was not related to any of the exporting producers of hand pallet trucks and their essential parts which were subject to the above-mentioned anti-dumping measures.
- (10) The applicant further claimed that it began exporting the hand pallet trucks and their essential parts to the Union after the end of the original investigation period and the investigation period of the subsequent interim review investigation.

### 1.3. Initiation of a new exporter review

- (11) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Union industry concerned was given the opportunity to comment, the Commission initiated a review in accordance with Article 11(4) of the basic Regulation by Commission Regulation (EU) No 32/2014 <sup>(1)</sup>.
- (12) Pursuant to Article 2 of Regulation (EU) No 32/2014, the anti-dumping duty imposed by Council Implementing Regulation (EU) No 1008/2011 as amended by Council Implementing Regulation (EU) No 372/2013 was repealed with regard to imports of hand pallet trucks and their essential parts produced and sold for exports to the Union by the applicant. Simultaneously, pursuant to Article 3 of Regulation (EU) No 32/2014, customs authorities were directed to take appropriate steps to register such imports.
- (13) Regulation (EU) No 32/2014 determined that if the investigation would show that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable under Article 1(2) of Implementing Regulation (EU) No 1008/2011 as amended by Implementing Regulation (EU) No 372/2013.

### 1.4. Product concerned

- (14) The product concerned is hand pallet trucks and their essential parts, i.e. chassis and hydraulics, currently falling within CN codes ex 8427 90 00 (TARIC codes 8427 90 00 11 and 8427 90 00 19) and ex 8431 20 00 (TARIC codes 8431 20 00 11 and 8431 20 00 19) and originating in the PRC (the product concerned).

### 1.5. Parties concerned

- (15) The Commission officially advised the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

<sup>(1)</sup> Commission Regulation (EU) No 32/2014 of 14 January 2014 initiating a 'new exporter' review of Council 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 as amended by Council Implementing Regulation (EU) No 372/2013, repealing the duty with regard to imports of one exporter in this country and making such imports subject to registration (OJ L 10, 15.1.2014, p. 11).

- (16) The Commission sought and verified all the information it deemed necessary for the determination of the new exporter status, market economy conditions and dumping. The Commission sent a market economy treatment claim form and a questionnaire to the applicant and its related companies and received a reply within the deadlines set for that purpose. Verification visits were carried out at the premises of the applicant and the related company in Denmark, Logitrans A/S.

#### 1.6. Review investigation period

- (17) The review investigation period for the determination of dumping covered the period from 1 July 2012 to 31 December 2013 (review investigation period).

### 2. INVESTIGATION

#### 2.1. New exporter qualification

- (18) The investigation confirmed that the applicant did not export the product concerned during both the investigation period of the original investigation, namely from 1 April 2003 to 31 March 2004, and the investigation period of the subsequent interim review, namely from 1 January to 31 December 2011, and that it started to export to the Union after these periods.
- (19) The applicant was furthermore able to demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.
- (20) Accordingly, it is confirmed that the applicant should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation, and thus an individual margin should be determined for it.

#### 2.2. Market Economy Treatment (MET)

- (21) 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 that Regulation and could therefore be granted MET.
- (22) The applicant is a privately owned company, wholly owned by a company whose direct shareholders are companies in the European Union. Daily business decisions are taken by the executive director who is a citizen of the European Union and also a member of the board of directors. Major business decisions are taken by board of shareholders. There was neither the presence of any State related official, nor any other State interference by the PRC in the decision making.
- (23) Next, the main input for manufacturing hand pallet trucks and their essential parts in the case of the applicant were semi-finished metal parts from hot rolled carbon steel purchased from various suppliers in the PRC, that is to say already processed into parts hot rolled carbon steel.
- (24) Based on publicly available information <sup>(1)</sup> it was established that the prices of the processed metal parts paid by the applicant were sufficiently high to reflect steel prices on the international market and the added value for the processing of the hot rolled steel into semi-finished metal parts. As a result, the distortion of unprocessed steel prices in the PRC established during the interim review investigation <sup>(2)</sup> was not found to be carried over in the prices of the processed metal parts paid by the applicant in this case.
- (25) On the basis of the above, it was thus concluded that the applicant demonstrated that it fulfilled criterion 1 under Article 2(7)(c) of the basic Regulation.
- (26) In the next place, the applicant had one clear set of basic accounting records which were independently audited in line with international accounting standards and are applied for all purposes. It was thus concluded that the applicant demonstrated that it fulfilled criterion 2 under Article 2(7)(c) of the basic Regulation.

<sup>(1)</sup> Worldsteelprices.com — by Management Engineering & Production Services (MEPS) International Ltd

<sup>(2)</sup> The interim review investigation found that steel prices paid by the cooperating exporting producer in the PRC were significantly distorted and that they did not correspond to international prices, see recital 20 of Regulation (EU) No 372/2013.

- (27) In the next place, the applicant did not have any loans from Chinese financial institutions nor any loans that were not granted under market conditions as regards guarantees, interest rate and other conditions. There were no indications of any other distortions or advantages related to the location or premises or any other State interference in the operation of the applicant. Neither was the applicant considered as a high tech company so that it could potentially receive any State benefit in that capacity. It was thus concluded that the applicant demonstrated that it fulfilled criterion 3 under Article 2(7)(c) of the basic Regulation.
- (28) In the next place, the applicant was found to be subject to the relevant Chinese bankruptcy and property laws, the application of which is designed to guarantee legal certainty and stability for the operation of firms. There were no indications that these laws would not be applicable and implemented for the applicant. It was thus concluded that the applicant demonstrated that it fulfilled criterion 4 under Article 2(7)(c) of the basic Regulation.
- (29) Last, the investigation did not reveal any restrictions concerning the use and conversion of foreign currency. The applicant's foreign exchange transactions were conducted according to market rates and it was able to freely dispose of the usage of its own funds. It was thus concluded that the applicant demonstrated that it fulfilled criterion 5 under Article 2(7)(c) of the basic Regulation.
- (30) On the basis of the above findings, it was concluded that the applicant could be granted MET so that its normal value would be determined in accordance with Article 2(1) to (6) of the basic Regulation.
- (31) The Commission disclosed the results of the MET analysis to the applicant, the authorities of the PRC and the Union industry and gave them the opportunity to provide comments.
- (32) The Union industry claimed that the international steel price based on publicly available information (see recital 24 above) is not a suitable basis for comparison since the prices paid by smaller operators in the steel market would be at least 20 % above the international reference prices. The Union industry further claimed that the price paid for processed metal parts used in the production of hand pallet trucks in the Union would be far above the prices paid by the applicant which in itself would indicate that the price paid by the applicant for such parts would be distorted.
- (33) International reference prices were also used as a basis of comparison in the interim review investigation and no adjustments were made to these prices <sup>(1)</sup>. Indeed, as any premium paid over the international reference prices would depend on individual factors specific to each operator in the market, there is no objective basis to make a general adjustment for an alleged mark up. The claim that international reference prices should be adjusted was therefore rejected.
- (34) As regards the price paid for processed metal parts used in the production of hand pallet trucks in the Union, the supporting evidence submitted by the Union industry could not demonstrate that the price paid by the applicant for such parts would be distorted. This was because, as described in recital 33 above, any premium paid over the international reference prices would depend on individual factors specific to each operator in the market, hence there is no objective basis to make a general adjustment for an alleged mark up. Moreover, the evidence submitted showed a significant number of other factors affecting the price of such metal parts apart from the steel prices which did not allow any conclusion as to the appropriate level of such parts which could be used as a benchmark. Therefore, the argument that prices paid for processed metal parts in the Union would indicate that the price paid by the applicant for such parts would be distorted was rejected.
- (35) The Union industry also argued that the prices of steel in the PRC are subsidised and generally distorted and that this fact in itself would be sufficient to consider prices of further processed metal parts in the PRC also to be distorted.
- (36) According to the jurisprudence of the General Court whilst the Commission can rely on macroeconomic considerations such as raw material price distortions at industry/sector level, the MET determination must be made individually for each company, that is to say assessing whether the prices paid by the individual company for its input reflect market values <sup>(2)</sup>. Furthermore, it was also clarified that the Commission may compare the Chinese domestic average prices of the raw material, with the average international prices in order to determine whether MET should be granted on this ground <sup>(3)</sup>.

<sup>(1)</sup> See recitals 20 to 28 of Implementing Regulation (EU) No 372/2013.

<sup>(2)</sup> Judgment of the General Court of 10 October 2012 in case T-150/09 Ningbo Yonghong Fasteners v Council/Judgment of 10 October 2012 (§ 117).

<sup>(3)</sup> Judgment of the General Court of 10 October in case T-150/09 Ningbo Yonghong Fasteners v Council (§§ 81-95).

- (37) As explained in recital 24 it was established that the observed price distortions in the market of unprocessed steel in the PRC were not found to be carried over in the prices of the processed metal parts paid by the applicant. This approach is in line with the jurisprudence as it considers the individual situation of the applicant and the argument of the Union industry in this regard was therefore rejected.
- (38) Finally, the Union industry claimed that attributing an individual anti-dumping margin to the applicant would constitute a high risk of circumvention as the applicant already purchased hand pallet trucks from another supplier in the PRC and re-exported them to the Union.
- (39) The claim for an increased risk of circumvention was not supported by any evidence. In particular, the applicant was found not to be related to the supplier in question or to any other supplier in the PRC. The investigation did therefore not confirm any increased risk of circumvention in this specific case. Finally, the risk of circumvention *per se* is not a criterion mentioned in Article 2(7)(c) of the basic Regulation and it is therefore not relevant in the determination whether a company qualifies for MET. Consequently, this argument was rejected.
- (40) Following disclosure, the Union industry reiterated its arguments that steel prices based on publicly available information were not a suitable basis for comparison since the prices paid by smaller operators in the steel market would be above the international reference prices and also above the prices paid by the companies that were subject to the interim review investigation mentioned in recital 24 above. The Union industry also claimed that the price comparison made by the Commission referred to in recital 24 did not properly take into consideration the processing cost of the metal parts.
- (41) The claims made by the Union industry were however not supported by any further evidence. Therefore, it was considered that these comments were merely reiteration of the earlier arguments already addressed in recitals 32 to 37 above and they were rejected.

### 2.3. Dumping

#### *Normal value*

- (42) The Commission first examined whether the applicant's total domestic sales volume of the like product to independent customers on the domestic market was representative, namely whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Union during the review investigation period in accordance with Article 2(2) of the basic Regulation. The Commission found that the overall sales of the like product on the domestic market were not representative as they were below the 5 % threshold.
- (43) Since there were no representative domestic sales volume, the Commission constructed normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (44) Normal value was constructed by adding to the average cost of production during the review investigation period the weighted average selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by the applicant on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.

#### *Export price*

- (45) The applicant exported hand pallet trucks but also their essential parts (hydraulics) which are also product concerned. Exports of hydraulics were of relatively low value and volume during the review investigation period. In addition, the hydraulics were not resold to independent customers by the related company in the Union. Instead, they were used exclusively for the production of hand pallet trucks by the related company in the Union which then sold the finished product (hand pallet trucks) on the Union market. Consequently, there was no resale price for hydraulics. Moreover, since the present review concerns only one company, there was no other data available on the basis of which a resale price of hydraulics could be reasonably established. In light of that, no export price was established for the hydraulics. In agreement with the applicant, the export price established for the hand pallet trucks was considered to be representative for the essential parts, and it was thus used.
- (46) Export sales were made via the related importer in the Union who resold the product further to independent customers in the Union. Therefore, the export price was established in accordance with Article 2(9) of the basic

Regulation on the basis of the price at which the imported product was first resold to independent customers in the Union by deducting all costs, incurred between importation and re-sale (SG&A) and a reasonable profit margin. Actual SG&A of the related importer were used. As regards the reasonable profit margin, in the absence of any other information available, an estimated profit margin of 5 % was used.

- (47) Following disclosure the applicant contested the level of the SG&A related to the sales of the product concerned established during the investigation claiming that higher costs incurred when selling other products should not be attributed to the product concerned. This claim contradicted the verified data. The applicant was also not able to provide an alternative cost allocation, nor any evidence that would support its claim which was therefore rejected.
- (48) Following disclosure, the applicant claimed that despite the relationship between the exporter and the related importer in the Union, the export prices were at arm's length and they should not be considered unreliable. Therefore, the applicant considered that the export price should be established in accordance with the Article 2(8) of the basic Regulation as the price paid by the related importer.
- (49) The evidence provided by the applicant did not support the claim that the price was established at arm's length. Thus, the transfer price between the related companies was not at a level to allow the related importer to make a reasonable profit in the Union. The Commission therefore concluded that the internal transfer price did not reflect the appropriate market value of the product concerned and this claim was rejected.
- (50) Alternatively, also following disclosure the applicant claimed that the anti-dumping duties paid were duly reflected in resale prices and the subsequent selling prices in the Union and, therefore, when constructing the export price the amount for anti-dumping duties paid should not be deducted in line with Article 11(10) of the basic Regulation.
- (51) The evidence provided by the applicant could not, however, demonstrate that the anti-dumping duties were duly reflected in resale prices and the subsequent selling prices in the Union. The evidence suggested a very minimal increase that even occurred after the investigation period. Therefore, this claim was rejected.

#### *Comparison*

- (52) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments were made for freight, packing expenses and import charges, including the custom duties (4 %) and anti-dumping duties (46,7 % and 70,8 %, imposed by Implementing Regulation (EU) No 1008/2011 and amended by Implementing Regulation (EU) No 372/2013 respectively) directly on the export price in all cases where demonstrated for differences affecting price comparability. The aforementioned freight and packing expenses are, in accordance with the Article 19 of the basic Regulation, considered as confidential information. However, this information was verified by the Commission and it was found not to deviate from the usual levels.
- (53) Following disclosure the applicant made a claim for a level of trade adjustment based on an alleged difference between sales on the domestic market and on the export market. The applicant claimed that sales on the domestic market were all made to end-users while sales in the Union were made to dealers or importers. The applicant claimed that a special adjustment should be made under Article 2(10)(d)(ii) of the basic Regulation.
- (54) The applicant provided no new or additional information to support its claim. On the basis of the information collected and verified during the investigation it could not be established that the discounts to dealers and importers were linked to a difference in sales functions. Therefore, it could not be demonstrated that the alleged difference in the level of trade had an impact on the sales prices and affected price comparability. On this basis, the claim was rejected.

#### *Dumping margin*

- (55) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value with the weighted average of export price as established above.

- (56) The comparison showed existence of dumping at a level of 54,1 %, expressed as a percentage of the Cost, Insurance and Freight (CIF) Union-frontier price, duty unpaid.

### 3. AMENDMENT OF THE MEASURES BEING REVIEWED

- (57) The dumping margin as established was below the country-wide injury elimination level which was established for the PRC in the original investigation referred to in recital 1 above. A duty based on the dumping margin should therefore be imposed on imports of hand pallet trucks and their essential parts produced by Ningbo Logitrans Handling Equipment Co., Ltd and Implementing Regulation (EU) No 372/2013 should be amended accordingly.

### 4. REGISTRATION

- (58) In the light of the above findings, the anti-dumping duty as established should be levied retroactively on imports of the product concerned which were made subject to registration pursuant to Article 3 of Regulation (EU) No 32/2014.

### 5. DISCLOSURE AND DURATION OF THE MEASURES

- (59) The parties concerned were informed of the essential facts and considerations on the basis of which it was intended to impose on imports hand pallet trucks and their essential parts from the applicant an amended anti-dumping duty and to levy this duty retroactively on imports made subject to registration. Their comments were considered and taken into account were appropriate.
- (60) This review does not affect the date on which the measures imposed by Implementing Regulation (EU) No 1008/2011 as amended by Implementing Regulation (EU) No 372/2013 will expire pursuant to Article 11(2) of the basic Regulation.
- (61) 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. In Article 1 of Council Implementing Regulation (EU) No 372/2013, which replaces Article 1(2) of Council Implementing Regulation (EU) No 1008/2011, the following shall be inserted into the table regarding the People's Republic of China:

Company	Rate of duty (%)	TARIC additional code
Ningbo Logitrans Handling Equipment Co., Ltd	54,1 %	A070

2. The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Regulation (EU) No 32/2014.

The customs authorities are hereby directed to cease the registration of imports of the product concerned produced by Ningbo Logitrans Handling Equipment Co., Ltd

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

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, 4 September 2014.

*For the Commission*  
*The President*  
José Manuel BARROSO

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