

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/260****of 21 February 2018****terminating the investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 1008/2011, as amended by Implementing Regulation (EU) No 372/2013, on imports of hand pallet trucks and their essential parts originating in the People's Republic of China by imports consigned from Vietnam, whether declared as originating in Vietnam or not**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Articles 13(3) and 14(5) thereof,

Whereas:

**1. PROCEDURE****1.1. Previous investigations and existing 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 ('hand pallet trucks') originating in the People's Republic of China ('the PRC' or 'China'). The measures consisted of an *ad valorem* anti-dumping duty ranging between 7,6 % and 46,7 % ('the original measures').
- (2) In July 2008, by Regulation (EC) No 684/2008 <sup>(3)</sup> the Council, following an *ex officio* partial interim review under Article 11(3) of the basic Regulation, clarified the scope of the measures and excluded certain products, high lifters, stackers, scissor lifts and weighing trucks, that were found to be distinct from hand pallet trucks due to their characteristics and specific functions and end-uses, from the original anti-dumping measures.
- (3) In June 2009, by Regulation (EC) No 499/2009 <sup>(4)</sup> the Council, following an anti-circumvention investigation under Article 13 of the basic Regulation, extended the definitive anti-dumping duty applicable to 'all other companies' imposed by Regulation (EC) No 1174/2005 to hand pallet trucks 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, following an expiry review pursuant to Article 11(2) of the basic Regulation, imposed a definitive anti-dumping duty on imports of hand pallet trucks originating in the PRC.
- (5) In April 2013, by Implementing Regulation (EU) No 372/2013 <sup>(6)</sup>, the Council, following an interim review pursuant to Article 11(3) of the basic Regulation, amended Regulation (EU) No 1008/2011, and imposed a duty rate of 70,8 % applicable to all imports into the Union of hand pallet trucks originating in the PRC.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<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).

- (6) In September 2014, by Implementing Regulation (EU) No 946/2014 <sup>(1)</sup>, the European Commission (‘the Commission’), following a new exporter review pursuant to Article 11(4) of the basic Regulation, amended Regulation (EU) No 1008/2011, imposing an individual duty rate of 54,1 % on imports of hand pallet trucks from Ningbo Logitrans Handling Equipment Co.
- (7) In August 2016, by Implementing Regulation (EU) 2016/1346 <sup>(2)</sup> the Commission, following an anti-circumvention investigation under Article 13 of the basic Regulation, extended the definitive anti-dumping duties in force to imports of slightly modified hand pallet trucks incorporating a weight indication system not integrated in the chassis (the forks) originating in the PRC.
- (8) In November 2017, by Implementing Regulation (EU) 2017/2206 <sup>(3)</sup>, the Commission, following a second expiry review pursuant to Article 11(2) of the basic Regulation, imposed a definitive anti-dumping duty on imports of hand pallet trucks originating in the PRC.
- (9) The measures currently in force are a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the PRC consisting of an *ad valorem* duty established at 70,8 %.

### 1.2. Request

- (10) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on hand pallet trucks and their essential parts originating in the PRC by imports consigned from Vietnam, whether declared as originating in Vietnam or not, and to make such imports subject to registration.
- (11) The request was lodged on 6 June 2017 by two Union producers of hand pallet trucks and their essential parts, Toyota Material Handling Manufacturing Sweden AB and PR Industrial S.r.l. (‘the applicants’).
- (12) The request contained sufficient *prima facie* evidence on a change in the pattern of trade between the Union, the PRC and Vietnam which appeared to stem from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty, namely the consignment of the product concerned via Vietnam to the Union after having undergone assembly operations in Vietnam. The request contained sufficient *prima facie* evidence showing that such assembly operations constituted circumvention as Chinese parts constituted above 60 % of the total value of the assembled product and the value added during the assembly operation was lower than 25 % of the manufacturing cost.
- (13) Furthermore, the request contained sufficient *prima facie* evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures both in terms of quantities and prices and that the prices of the product under investigation were dumped in relation to the normal value previously established for the product concerned.

### 1.3. Product concerned and product under investigation

- (14) The product subject to this investigation is hand pallet trucks and their essential parts, i.e. chassis and hydraulics, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00, originating in the People’s Republic of China. For the purpose of this Regulation, hand pallet trucks shall be 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) (‘the product concerned’).

<sup>(1)</sup> 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 (OJ L 265, 5.9.2014, p. 7).

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/1346 of 8 August 2016 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 1008/2011, as amended by Council Implementing Regulation (EU) No 372/2013, on imports of hand pallet trucks and their essential parts originating in the People’s Republic of China to imports of slightly modified hand pallet trucks originating in the People’s Republic of China (OJ L 214, 9.8.2016, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2017/2206 of 29 November 2017 imposing a definitive anti-dumping duty on hand pallet trucks and their essential parts originating in the People’s Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 314, 30.11.2017, p. 12).

- (15) The product under investigation is the same product as that defined above but consigned from Vietnam, whether declared as originating in Vietnam or not, currently falling within the same CN codes as the product concerned ('the product under investigation').
- (16) The investigation showed that the hand pallet trucks and their essential parts, as defined above, exported from the PRC to the Union and those consigned from Vietnam have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

#### 1.4. Initiation

- (17) Having determined, after having informed the Member States, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission decided to investigate the possible circumvention of the anti-dumping measures imposed on imports of hand pallet trucks and their essential parts originating in China and to make imports of hand pallet trucks and their essential parts consigned from Vietnam, whether declared as originating in Vietnam or not, subject to registration.
- (18) The investigation was initiated by Commission Implementing Regulation (EU) 2017/1348 <sup>(1)</sup> ('the initiating Regulation').

#### 1.5. Investigation period and reporting period

- (19) The investigation period covered the period from 1 January 2011 to 30 June 2017 ('the investigation period'). Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade following the imposition of the measures as well as following the increase of the definitive anti-dumping duty by Implementing Regulation (EU) No 372/2013 and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the reporting period from 1 July 2016 to 30 June 2017 ('the reporting period') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

#### 1.6. Investigation

- (20) The Commission officially informed the authorities of the PRC and Vietnam, the exporting producers and traders in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and Vietnam known to the Commission or which made themselves known within the deadlines specified in recital 15 of the initiating Regulation. Questionnaires were also sent to importers in the Union.
- (21) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.
- (22) Three companies in Vietnam, one of which had not started producing hand pallet trucks in the investigation period, and four unrelated importers made themselves known.
- (23) Two Vietnamese companies submitted a questionnaire reply and requested an exemption from the possible extension of the measures, in accordance with Article 13(4) of the basic Regulation.
- (24) Four unrelated importers in the Union provided questionnaire replies.

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<sup>(1)</sup> Commission Implementing Regulation (EU) 2017/1348 of 19 July 2017 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 1008/2011, as amended by Implementing Regulation (EU) No 372/2013, on imports of hand pallet trucks and their essential parts originating in the People's Republic of China by imports consigned from Vietnam, whether declared as originating in Vietnam or not, and making such imports subject to registration (OJ L 188, 20.7.2017, p. 1).

(25) Verification visits were carried out at the premises of the following companies in Vietnam:

- Vietmachine Producing and Trading Co., Ltd, and
- D&D Technologies Co., Ltd.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

(26) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed successively in order to assess possible circumvention:

- whether there was a change in the pattern of trade between the PRC and the Union,
- if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
- if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and
- whether there is evidence of dumping in relation to the normal values previously established for the product concerned.

(27) In the present investigation, since the *prima facie* evidence provided by the applicants in the request pointed to assembly operations in Vietnam, the Commission more specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:

- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, and
- whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

(28) The information on export sales submitted by the two Vietnamese companies could be reconciled to the data available in the Comext database <sup>(1)</sup> on the imports of the product under investigation from Vietnam. It was therefore considered that these companies were the sole exporters of the product under investigation from Vietnam to the Union during the reporting period.

### 2.2. Condition of Article 13(2)(a): Start or substantial increase of operations

(29) For both companies, the sales volume to the Union market has constantly increased between 2013, when the definitive anti-dumping duty was increased to 70,8 % by Implementing Regulation (EU) No 372/2013, and the reporting period. Both companies more than tripled their sales volume to the Union market during this period. Before 2013, the volume exported by these companies to the Union market was negligible or absent. In parallel, the Chinese exports to the Union market of the product under investigation significantly fell by 65 %. It was therefore concluded that there was a change in the pattern of trade between the Union and the PRC on the one hand and the Union and Vietnam on the other hand and that therefore the condition set out in Article 13(2)(a) of the basic Regulation was met.

### 2.3. Conditions of Article 13(2)(b): criteria of 60 % and 25 %

(30) In accordance with Article 13(2)(b) of the basic Regulation, in order to establish circumvention, the Commission had to verify that the parts used in the assembly operation from the countries subject to the measures constituted 60 % or more of the total value of the parts of the assembled product and that the value added to the parts brought in was not greater than 25 % of the manufacturing cost.

<sup>(1)</sup> Comext is a database on foreign trade statistics managed by Eurostat.

(i) *First criterion: 60 % of the total value of the parts constituting the assembled product*

- (31) For both cooperating companies it was found that the parts from the country subject to measures did not constitute 60 % or more of the total value of the parts of the assembled products.
- (32) Consequently, the assembly operations carried out by the cooperating Vietnamese companies cannot be considered as circumvention within the meaning of Article 13(2) of the basic Regulation.

(ii) *Second criterion: 25 % of the value added to the parts brought in*

- (33) As the investigation showed that the 60 % criterion was not met and the assembly operation cannot be considered as circumvention within the meaning of Article 13(2) of the basic Regulation, it was not considered necessary to examine this criterion.

#### **2.4. Conditions of Article 13(2)(c): undermining of the remedial effects of the duty and evidence of dumping**

- (34) As the investigation showed that the 60 % criterion was not met and the assembly operation cannot be considered as circumvention within the meaning of Article 13(2) of the basic Regulation, it was not considered necessary to examine these aspects.
- (35) Since the two investigated companies represent 100 % of the Vietnamese imports during the reporting period it could not be established that measures in force with regard to China are being circumvented by imports consigned from Vietnam.

### **3. TERMINATION OF THE INVESTIGATION**

- (36) In view of the findings mentioned in recitals 30 to 32, the current anti-circumvention investigation should be terminated. The registration of imports of hand pallet trucks and their essential parts consigned from Vietnam, whether declared as originating in Vietnam or not, introduced by the Initiating Regulation should therefore be discontinued, and that Regulation should be repealed.
- (37) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to terminate the investigation and were given the opportunity to comment. The comments received were not of a nature to change the above conclusions.
- (38) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The investigation initiated by Implementing Regulation (EU) 2017/1348 in order to determine if imports into the Union of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the People's Republic of China, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00 and consigned from Vietnam, whether declared as originating in Vietnam or not (TARIC codes 8427 90 00 13 and 8431 20 00 13) are circumventing the measures imposed by Implementing Regulation (EU) No 1008/2011, as amended by Implementing Regulation (EU) No 372/2013, is hereby terminated.

#### *Article 2*

Customs authorities shall discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2017/1348.

*Article 3*

Implementing Regulation (EU) 2017/1348 is hereby repealed.

*Article 4*

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

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

Done at Brussels, 21 February 2018.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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