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

COMMISSION IMPLEMENTING REGULATION (EU) 2018/260

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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[(1)] (‘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[(2)] 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[(3)] 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[(4)] 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.

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(4) In October 2011, by Implementing Regulation (EU) No 1008/2011[(5)], 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[(6)], 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.

(6) In September 2014, by Implementing Regulation (EU) No 946/2014[(7)], 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[(8)] 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[(9)], 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

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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’).

(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[10] (‘the initiating Regulation’).

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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.

(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,