Commission Implementing Regulation (EU) 2015/2346 of 15 December 2015 initiating an investigation concerning the possible circumvention of anti-dumping measures 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 by imports of slightly modified hand pallet trucks originating in the People's Republic of China, and making such imports subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2346

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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[(1)] (‘the basic Regulation’), and in particular Articles 13(3) and 14(5) thereof,

After having informed the Member States,

Whereas:

A. **REQUEST**

(1) The European Commission (‘the Commission’) has 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 People's Republic of China by imports of slightly modified hand pallet trucks originating in the People's Republic of China, and to make such imports subject to registration.

(2) The request was lodged on 4 November 2015 by BT Products AS, Lifter SRL and PR Industrial SRL, Union producers of hand pallet trucks.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is 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 (TARIC codes 8427 90 00 19 and 8431 20 00 19). For the purpose of this Regulation, hand pallet trucks shall be trucks with wheels supporting lifting fork arms for handling pallets,

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/2346. (See end of Document for details)*

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').

(4) The product under investigation is the same as that defined in the previous recital, but presented at import with a so-called 'weight indication system' consisting of a weighing mechanism not integrated in the chassis having a margin of error equal to or exceeding 1 % of the load, currently falling within the same CN codes as the product concerned but falling within a different TARIC codes (i.e. 8427 90 00 90 and 8431 20 00 90 until the entry into force of this Regulation) and originating in the People's Republic of China ('the product under investigation').

C. EXISTING MEASURES

(5) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 1008/2011[(2)] 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[(3)] ('the existing measures').

D. GROUNDS

(6) The request contains sufficient *prima facie* evidence that the anti-dumping measures on imports of hand pallet trucks originating in the People's Republic of China are being circumvented by means of practices, processes or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty.

(7) The *prima facie* evidence submitted is as follows:

(8) The request demonstrates that *prima facie* a significant change in the pattern of trade involving exports from the People's Republic of China to the Union has taken place following the increase of the definitive anti-dumping duty on the product concerned by Implementing Regulation (EU) No 372/2013, without sufficient due cause or economic justification for such a change other than the imposition of the duty.

(9) This change appears to stem from the importation of the product under investigation into the Union. The request contains sufficient *prima facie* evidence that the product under investigation has the same essential characteristics and uses as the product concerned. According to the *prima facie* evidence in the request, the weight indicating system that is presented with the product under investigation at importation is an inexpensive mechanism that does not give accurate weight readings due to having a margin of error equal to or exceeding 1 % of the load and may be easily removed and discarded after importation as it is not integrated in the chassis. Therefore, the weight indicating system at stake does not alter the essential characteristics and uses

of the product concerned, neither transforms the product concerned into 'weighting trucks' as the latter have different essential characteristics and uses. However, the investigation covers any practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty.

(10) Furthermore, the request contains sufficient *prima facie* evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient *prima facie* evidence that imports of the product under investigation are made at prices below the non-injurious price established in the investigation that led to the existing measures.

(11) Finally, the request contains sufficient *prima facie* evidence that the prices of the product under investigation are dumped in relation to the normal value previously established.

E. PROCEDURE

(12) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the product under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) Questionnaires

(13) In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the known exporters/producers and to the known associations of exporters/producers in the People's Republic of China, to the known importers and to the known associations of importers in the Union and to the authorities of the People's Republic of China. Information, as appropriate, may also be sought from the Union industry.

(14) In any event, all interested parties should contact the Commission, but not later than the time limit set in Article 3 of this Regulation, and request a questionnaire within the time limit set in Article 3, first subparagraph, of this Regulation, given that the time limit set in Article 3, second subparagraph, of this Regulation applies to all interested parties.

(15) The authorities of the People's Republic of China will be notified of the initiation of the investigation.

(b) Collection of information and holding of hearings

(16) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) Exemption from registration of imports or measures

(17) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(18) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the product under investigation in the People's Republic of China that can show that they are not related[(4)] to any producer subject to the measures[(5)] and that are found not to be engaged in circumvention practices as defined in Article 13(1) and (2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3, third subparagraph, of this Regulation.

F. REGISTRATION

(19) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

G. TIME LIMITS

(20) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in the People's Republic of China may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

(21) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits laid down in Article 3 of this Regulation.

H. NON-COOPERATION

(22) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(23) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

(24) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.