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

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)[(1)], 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[(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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 946/2014. (See end of Document for details)*

(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[6] 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 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 begun 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[7].

(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 20 019) 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.

(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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 946/2014. (See end of Document for details)*

(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 Euroepan 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 essentail 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[8] 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[9] 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.

(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

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 946/2014. (See end of Document for details)*

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 opporunity 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 referece 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[(10)]. 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