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

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

THE COUNCIL OF THE EUROPEAN UNION,

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 Article 9(4) and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

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

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 372/2013. (See end of Document for details)*

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.

2. **Initiation of a partial interim review**

(5) During the expiry review the European Commission ('Commission') noticed a change in the competition landscape on the Union market as of the imposition of the measures. Indeed, the Chinese exporting producer with the lowest duty rate — who was granted market economy treatment ('MET') in the original investigation — was able to virtually take over a very big part of the Union market and increased significantly its share of imports in the Union. The Commission also had doubts with regard to the original MET determination in view of prima facie evidence of distortions on the steel market in the PRC. In this context, the circumstances on the basis of which the existing measures were established were considered to have changed and those changes seemed to be of a lasting nature.

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 14 February 2012 in the *Official Journal of the European Union*[6] ('the Notice of initiation'), the *ex-officio* initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation limited in scope to the examination of dumping in respect of Chinese exporting producers.

3. **Review investigation period**

(7) The investigation of the level of dumping covered the period from 1 January to 31 December 2011 ('the review investigation period' or 'the RIP').

4. **Parties concerned**

(8) The Commission officially advised exporting producers, unrelated importers known to be concerned, the authorities of the PRC and the Union industry of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

(9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) In view of the potentially large number of exporting producers and unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the review and to provide the Commission with information requested in the Notice of initiation. Two exporting producers and eight unrelated importers came forward to cooperate. Sampling was therefore not necessary for both exporting producers and unrelated importers.

***Changes to legislation:** There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 372/2013. (See end of Document for details)*

(11) The Commission sent questionnaires and MET claim forms to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from one Chinese exporting producer, Zhejiang Noblelift Equipment Joint Stock Co. Ltd ('Noblelift'), and from three unrelated importers.

(12) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of Noblelift in Changxing, PRC.

(13) In light of the need to establish a normal value for the exporting producer in the PRC to which MET was not granted, a verification at the premises of the following producer in Brazil, which was used as an analogue country, took place:

— Paletrans Equipamentos Ltda, Cravinhos, São Paulo ('Paletrans').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned by this review is the same as the one in the original investigation and clarified by the product scope interim review, namely hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the PRC, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00. For the purpose of this Regulation, hand pallet trucks are 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).

2. Like product

(15) The investigation confirmed that the product concerned and the product manufactured and sold on the domestic market in the PRC, the product manufactured and sold in the analogue country, Brazil, and the product manufactured and sold in the Union by the Union producers have the same basic physical and technical characteristics as well as the same uses.

(16) Those products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(a) *Market economy treatment ('MET')*

(17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value is determined in

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 372/2013. (See end of Document for details)*

accordance with paragraphs 1 to 6 of that Article for those producers which were found to meet the criteria laid down in point (c) of Article 2(7) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. For ease of reference only, these criteria are set out in a summarised form as follows:

— business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee legal certainty and stability,

— exchange rate conversions are carried out at market rates.

(18) Noblelift, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the deadlines given.

(19) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.

(20) The investigation established that the prices paid by Noblelift in the RIP for Chinese hot-rolled carbon steel, a main raw material accounting for about 25 % of the cost of a finished product, were significantly distorted as they stood approximately between 24 % and 31 % below international prices over the same period. The international prices were based on statistics for the Union and North American markets from the *Steel Business Briefing*[7] as well as from *Comext* import prices. On that basis it was found that Chinese steel prices clearly did not reflect market values. Moreover, there is an established practice of State interference in the market of raw materials. The China 12th five-year plan (2011-15) for the Iron and Steel sector contains a series of measures which demonstrate that steel companies have no possibility other than to act in line with the Chinese Government instructions due to the firm control the Chinese State has. It is thus concluded that Noblelift does not fulfil the requirements of the first criterion of MET.

(21) Furthermore, in the financial year 2010, a related company gave Noblelift a bank guarantee for two loans representing a significant proportion of that related company's and Noblelift's total assets. The guarantees were disclosed neither in Noblelift's financial statements nor in the related company's accounts. This is not in line with IAS 24 (Related Party Disclosures) and the auditor had no reservation on this practice. The disclosure of related party transactions in the financial statements is important because it draws attention to possible effects on the financial position of a company. In this case, the non-disclosure of significant commitments such as the guarantees in question does not allow a proper assessment of the company's operations

and in particular the risks and opportunities the company is facing. Therefore, it is considered that the company's accounting records have not been properly audited in line with international accounting standards and, thus, it does not fulfil the requirements of the second criterion.

(22) Finally, Noblelift received State benefits in the form of preferential income tax as well as grants which distort its financial situation and, thus, it does not fulfil the requirements of the third criterion.

(23) The exporting producer concerned and the Union industry were given an opportunity to comment on the above findings.

(24) Following the disclosure of the MET findings, Noblelift requested more details with regard to the calculation of the international market price for steel. The company argued that distortions in raw material prices should be dealt with by adjusting the normal value in the dumping calculation rather than by denying MET. However, Article 2(7)(c) of the basic Regulation is very clear and requires that 'costs of major inputs substantially reflect market values'. Hence, any adjustment in the dumping calculations in order to address the distorted input costs would render Article 2(7)(c) largely meaningless. The comments could therefore not alter the above findings.

(25) Following the disclosure of the final findings, Noblelift reiterated its arguments. It stated firstly that the Commission failed to disclose the details, i.e. all the data used for the calculation of differences in raw material prices.

(26) In this respect, it is noted first and foremost that the sources of data for the comparisons of steel prices have been indicated by the Commission on several occasions. The Commission repeated the explanations provided earlier in the proceeding that the prices based on the Steel Business Briefing were copyright protected as the service is available on subscription. Consequently, the Commission is legally prevented from publicly disclosing those data directly but the database is otherwise available and can be accessed with payment of the appropriate fee. Nevertheless, in order to ensure a balance between the protection of intellectual property rights and the protection of the rights of defence, the data used was verified by the Hearing Officer of the Directorate-General for External Trade, who confirmed the calculation of the price difference and communicated the result of his verification to Noblelift.

(27) It is further noted that the Steel Business Briefing describes exactly the methodology used (dimensions, thickness, width, point in transport). Those parameters are general and are a guide which is also indicative of the level of detail in price comparisons of raw materials which aim at establishing whether costs of major inputs substantially reflect market values. The Commission has used European and North American prices as reference.

(28) Noblelift further claimed that in the original investigation, differences between domestic steel prices in the PRC and international steel prices were not considered as a factor preventing the company from meeting the first MET criterion. As stated in recital 22 of Commission Regulation (EC) No 128/2005[8] of 27 January