Commission Regulation (EU) No 32/2014 of 14 January 2014 initiating a 'new exporter' review of 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 as amended by Council Implementing Regulation (EU) No 372/2013, repealing the duty with regard to imports of one exporter in this country and making such imports subject to registration

COMMISSION REGULATION (EU) No 32/2014

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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 ('the basic Regulation')[(1)] and in particular Article 11(4) thereof,

After having consulted the Advisory Committee in accordance with Articles 11(4) and 14(5) of the basic Regulation,

Whereas:

A. **REQUEST**

(1) The European Commission ('the Commission') has received a request for a 'new exporter' review under Article 11(4) of the basic Regulation.

(2) 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 People's Republic of China ('the country concerned').

B. **PRODUCT**

(3) The product under review 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 00 19) and originating in the People's Republic of China.

C. **EXISTING MEASURES**

(4) The measures currently in force are a definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 1008/2011[(2)] as amended by Council

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 32/2014. (See end of Document for details)*

Implementing Regulation (EU) No 372/2013[3], under which imports into the Union of the product under review, including the product produced by the applicant, are subject to a definitive anti-dumping duty of 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[4].

D. GROUNDS

(5) The applicant claims that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation.

(6) It further claims that it did not export the product under review to the Union during the investigation period on which the anti-dumping measures were based, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period').

(7) Furthermore, the applicant claims that it is not related to any of the exporting producers of the product under review which are subject to the above-mentioned anti-dumping measures.

(8) The applicant further claims that it has begun exporting the product under review to the Union after the end of the original investigation period.

E. PROCEDURE

(9) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the basic Regulation, with a view to determine the applicant's individual margin of dumping and, should dumping be found, the level of the duty to which its imports of the product under review into the Union shall be subject. Upon receipt of the claim for market economy treatment, it will be determined whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation.

(10) If it is determined 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.

(a) *Questionnaires*

(11) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) *Collection of information and holding of hearings*

(12) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

(13) Union producers known to be concerned have been informed of the request for a review and have been given an opportunity to comment.

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(14) Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

(c) *Market economy treatment*

(15) If the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, duly substantiated claims must be submitted within the specific time limit set in Article 4 of this Regulation. The Commission will send a claim form to the applicant, as well as to the authorities of the People's Republic of China.

(d) *Selection of the market economy country*

(16) If the applicant is not granted market economy treatment, an appropriate market economy country will be used for the purpose of establishing normal value for the People's Republic of China in accordance with Article 2(7)(a) of the basic Regulation. The Commission envisages using Brazil for this purpose as was done in the investigation which led to the imposition of measures on imports from the People's Republic of China. Interested parties are invited to comment on the appropriateness of this choice within the specific time limit set in Article 4 of this Regulation.

(17) If the applicant is granted market economy treatment but reliable required data are not available in the People's Republic of China, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market-economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the People's Republic of China which are needed in establishing the normal value. The Commission envisages using Brazil also for this purpose.

F. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

(18) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product under review which are produced and sold for export to the Union by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicant, anti-dumping duties can be levied from the date of the registration of these imports. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the investigation.

G. TIME LIMITS

(19) 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 any information to be taken into account during the investigation,

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

— interested parties may comment on the appropriateness of the use of Brazil as explained in recitals 16 and 17 above,

— the applicant should submit a duly substantiated claim for market economy treatment.

(20) 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 indicated in Article 4 of this Regulation.

H. NON-COOPERATION

(21) 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.

(22) If an interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

(23) 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.

(24) Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

I. SCHEDULE OF THE INVESTIGATION

(25) The investigation will be concluded, pursuant to Article 11(5) of the basic Regulation, within nine months of the date of the publication of this Regulation in the *Official Journal of the European Union*.

J. PROCESSING OF PERSONAL DATA

(26) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)].

K. HEARING OFFICER

(27) Interested parties may request the intervention of the Hearing Officer of the Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be