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

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, 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').

([1]) OJ L 343, 22.12.2009, p. 51.

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 ([1]) 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 ([2]) ('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.

([1]) Council Implementing Regulation (EU) No 1008/2011 of 10 October 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 extended to imports of hand pallet trucks and their essential parts consigned from Thailand, whether declared as originating in Thailand or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 268, 13.10.2011, p. 1).

([2]) 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 (OJ L 112, 24.4.2013, p. 1).

(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 ([1]) to any producer subject to the measures ([2]) 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.

([1]) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half-blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

([2]) However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the People's Republic of China, an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

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.

(25) 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**

(26) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date the date of entry into force of this Regulation.

J. **PROCESSING OF PERSONAL DATA**

(27) 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 ([1]).

K. **HEARING OFFICER**

(28) Interested parties may request the intervention of the Hearing Officer in trade proceedings. 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 heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

([1]) 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 (OJ L 8, 12.1.2001, p. 1).

(29) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered.

(30) For further information and contact details interested parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website: http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009, in order to determine if imports into the Union of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, 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, 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 30 and 8431 20 00 50) are circumventing the measures imposed by Implementing Regulation (EU) No 1008/2011, as amended by Implementing Regulation (EU) No 372/2013.

Article 2

The Customs authorities shall, pursuant to Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption from registration and having been found to fulfil the conditions for an exemption to be granted.

Article 3

Questionnaires must be requested from the Commission within 15 days from the date of entry into force of this Regulation.

Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of entry into force of this Regulation, unless otherwise specified.

Producers in the People's Republic of China requesting exemption from registration of imports or measures must submit a request duly supported by evidence within the same 37-day time limit.

Interested parties may also apply to be heard by the Commission within the same 37-day time limit.

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.

All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ([1]).

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of Regulation (EC) No 1225/2009, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1040 Brussels
BELGIUM
Email: TRADE-HPT-R637-CIRCUMVENTION@ec.europa.eu

Article 4

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 15 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

([1]) A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).