

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of hand pallet trucks and their essential parts originating in the People's Republic of China

(2010/C 196/08)

Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-dumping measures in force on imports of hand pallet trucks and their essential parts originating in the People's Republic of China ('country concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽²⁾ ('the basic Regulation').

1. Request for review

The request was lodged on 21 April 2010 by two Union producers, BT Products AB and Lifter S.r.l., 'the applicants', representing a major proportion, in this case more than 50 % of the Union production of hand pallet trucks and their essential parts.

2. Product

The product under review 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. Hand pallet trucks are defined as 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 (high lifters); (ii) to stack one pallet above the other (stackers); (iii) to lift the load to a working level (scissor lifts); or (iv) to lift and to weigh the loads (weighing trucks) ('the product concerned').

3. Existing measures

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1174/2005 ⁽³⁾ as amended by Council Regulation (EC) No 684/2008 ⁽⁴⁾.

⁽¹⁾ OJ C 70, 19.3.2010, p. 29.

⁽²⁾ OJ L 343, 22.12.2009, p. 51.

⁽³⁾ OJ L 189, 21.7.2005, p. 1.

⁽⁴⁾ OJ L 192, 19.7.2008, p. 1.

4. Grounds for the review

The request is based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

In view of the provisions of Article 2(7) of the basic Regulation, the applicants established normal value for the exporting producers from the country concerned which were not granted market economy treatment during the investigation leading to the measures in force on the basis of a constructed normal value in an appropriate market economy country, which is mentioned in point 5.1(d) of this notice. For the exporting producers from the country concerned which were granted market economy treatment during the investigation leading to the measures in force, the applicants established normal value on the basis of sales prices in the country concerned. The allegation of continuation of dumping is based on a comparison of normal value, as set out in the preceding sentences, with the export prices of the product concerned when sold for export to the Union.

On this basis, the dumping margins calculated are significant.

The applicants further allege the likelihood of continuation of injurious dumping. In this respect, the applicants present evidence that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to existence of unused capacity in the country concerned.

In addition, the applicants allege that imports of the product concerned from the country concerned have continued to cause injury to the Union industry due to their increase in market share and low prices and that should the measures be allowed to expire, the further increase of imports at dumped prices from the country concerned would likely lead to a continuation of material injury to the Union industry.

5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates reviews in accordance with Article 11(2) of the basic Regulation.

5.1. Procedure for the determination of dumping and injury

The investigation will determine whether the expiry review of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

(i) Sampling for exporters/producers in the People's Republic of China

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the turnover in local currency and the volume in units of the product concerned sold for export to the Union during the investigation period 1 July 2009 until 30 June 2010 for each of the 27 Member States separately and in total,
- the turnover in local currency and the volume in units of the product concerned sold on the domestic market during the investigation period 1 July 2009 until 30 June 2010,
- the turnover in local currency and the volume in units for the product concerned sold to other third countries during the investigation period 1 July 2009 until 30 June 2010,
- the precise activities of the company worldwide with regard to the product concerned,
- the names and the precise activities of all related companies⁽⁵⁾ involved in the production and/or sales (export and/or domestic) of the product concerned,

⁽⁵⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the People's Republic of China, and any known associations of exporters/producers.

(ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the precise activities of the company with regard to the product concerned,
- the volume in units and value in euro of imports into and resales made in the Union market during the investigation period 1 July 2009 until 30 June 2010 of the imported product concerned originating in the People's Republic of China,
- the names and the precise activities of all related companies⁽⁶⁾ involved in the production and/or sales of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

⁽⁶⁾ See footnote 5.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(iii) *Final selection of the samples*

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the Union industry and to any known association of producers in the Union, to the sampled exporters/producers in the People's Republic of China and to any known association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting country concerned.

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

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

(d) *Selection of the market economy country*

In the previous investigation Canada was used as an appropriate market economy country for the purpose of establishing normal value in respect of the People's Republic of

China. Given that production in Canada appears to currently have ceased, the Commission envisages using Brazil for this purpose. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in point 6(c).

5.2. Procedure for the assessment of Union interest

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a recurrence or continuation of dumping and injury is confirmed, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Union interest. For this reason the Commission may send questionnaires to the known Union industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting out the particular reasons why they should be heard, within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits

(a) *General time limits*

(i) *For parties to request a questionnaire*

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire as soon as possible, but no later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

(ii) *For parties to make themselves known, to submit questionnaire replies and any other information*

All 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 and submit questionnaire replies or any other information within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. 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 aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in point 6(b)(iii).

(iii) Hearings

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

(b) Specific time limit in respect of sampling

(i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample, unless otherwise specified.

(c) Specific time limit for the selection of the market economy country

Parties to the investigation may wish to comment on the appropriateness of Brazil which, as mentioned in point 5.1(d), is envisaged as a market economy country for the purpose of establishing normal value in respect of People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽⁷⁾ and, in accordance with Article 19(2) of the basic Regulation,

⁽⁷⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/092
1049 Bruxelles/Brussel
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8. Non-cooperation

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.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

10. Possibility to request a review under Article 11(3) of the basic Regulation

As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

11. Processing of personal data

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 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 ⁽⁸⁾.

12. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of the Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of the Directorate-General for Trade (<http://ec.europa.eu/trade>).

⁽⁸⁾ OJ L 8, 12.1.2001, p. 1.