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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.6.2008
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Proposal for a

COUNCIL REGULATION

**clarifying the scope of the anti-dumping measures imposed by Regulation (EC) No
1174/2005 on imports of hand pallet trucks and their essential parts originating in the
People's Republic of China**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of hand pallet trucks and their essential parts originating in the People's Republic of China, following an *ex officio* partial interim review pursuant to Article 11(3) of the basic Regulation.

- General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- Existing provisions in the area of the proposal

There are no existing provisions in the area of the proposal.

- Consistency with other policies and objectives of the Union

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- Consultation of interested parties

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- Collection and use of expertise

There was no need for external expertise.

- Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

On 7 August 2007, the Commission initiated an *ex officio* partial interim 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 imposed by Council Regulation

(EC) No 1174/2005 of 18 July 2005.

The information at the Commission's disposal indicated that certain products, so-called highlifters, stackers, scissorlifts and weighing trucks, which could allegedly fall under the product scope, appeared to be distinct from hand pallet trucks and their essential parts, i.e. chassis and hydraulics, *inter alia* due to their specific functions (lifting, stacking or weighing of loads) and end uses.

The review investigation showed that in order to fulfil these functions, there are differences in the strength and construction of the hydraulics and chassis. The aforementioned features underline the differences in use. It was also found that there is no inter-changeability between these products and hand pallet trucks.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to define more precisely hand pallet trucks and clarify that highlifters, stackers, scissorlifts and weighing trucks differ from hand pallet trucks and their essential parts and, thus, do not fall within the product scope subject to anti-dumping measures. It is also proposed to reimburse upon request any anti-dumping duties unduly collected.

- Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- Choice of instruments

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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clarifying the scope of the anti-dumping measures imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 1174/2005² ('the original Regulation') the Council imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts ('HPT') originating in the People's Republic of China ('PRC'). The investigation that led to the aforesaid Regulation used as investigation period the period from 1 April 2003 to 31 March 2004 (the 'original investigation').

2. PRESENT INVESTIGATION

2.1. Procedure

- (2) This partial interim review was initiated on the Commission's own initiative. The information at the Commission's disposal indicated that certain products, so-called highlifters, stackers, scissorlifts and weighing trucks ('HSSWT'), which could allegedly fall under the product scope, appeared to be distinct from hand pallet trucks and their essential parts, i.e. chassis and hydraulics, *inter alia* due to their specific functions (lifting, stacking or weighing of loads) and end uses. In order to fulfil these functions, there appeared to be differences in the strength and construction of the hydraulics and chassis. The aforementioned features underlined the differences in use – and there appeared to be no inter-changeability between these products and hand pallet trucks. Therefore, it was considered appropriate to review the case as far as a clarification of the scope of the product is concerned, with the conclusion thereon possibly having retroactive effect as of the date of the imposition of the relevant anti-dumping measures.
- (3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 189, 21.7.2005, p. 1 .

by a notice published in the Official Journal of the European Union³ the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of the product scope.

2.2. Review investigation

- (4) The Commission officially advised the authorities of the PRC ('country concerned'), and all other parties known to be concerned, i.e. exporting producers in the country concerned, users and importers in the Community and producers in the Community, of the initiation of the partial review investigation. Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) The Commission sent questionnaires to all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation.
- (6) In view of the scope of the partial review, no investigation period was set for the purpose of this partial review. The information received in the questionnaire replies covered the period from 2003 to 2006 ('period considered'), i.e. it covered also the investigation period of the original investigation. For the period considered, information concerning sales/purchases volume and value, production volume and capacity for HPT and HSSWT was requested. In addition, the parties concerned were asked to comment on any differences or similarities between HPT and HSSWT with respect to their production process, technical characteristics, end-uses, interchangeability etc.
- (7) Sufficiently complete questionnaire replies were received from two Chinese exporting producers of HPT/HSSWT, four Community producers of HPT or HSSWT, one user and 14 importers of HPT/HSSWT in the Community.
- (8) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there is a need for clarification/amendment of the scope of the existing anti-dumping measures and carried out investigations at the premises of the following companies :
 - BT Products AB, Mjölby, Sweden,
 - Franz Kahl GmbH, Lauterbach, Germany,
 - RAVAS Europe B.V., Zaltbommel, The Netherlands.

2.3. Product concerned

- (9) The product concerned is, as uniformly defined in the original Regulation, hand pallet trucks, not self propelled, used for the handling of materials normally placed on pallets, and their essential parts, i.e. chassis and hydraulics, originating in the PRC, normally declared within CN codes ex 8427 90 00 and ex 8431 20 00. There are different types of hand pallet trucks and their essential parts depending mainly on the lift capacity, length of the forks, type of steel used for the chassis, type of hydraulics, type of wheels and existence of brake.

³ OJ C 184, 7.8.2007, p. 11

2.4. Findings

- (10) It is recalled that the original investigation covered hand pallet trucks and their essential parts, i.e. chassis and hydraulics which are used for handling and moving manually loads normally placed on pallets. By definition, HPT need to be pushed and pulled by man power. Therefore, HPT provide a mechanism allowing the user to manually lift the load just enough to move it from a place to another.
- (11) HSSWT, which allegedly have been classified as product concerned subject to the anti-dumping measures by some national customs authorities, can be self propelled or moved manually. They are used to move and to lift the loads in order to place them higher, assist in storage of loads (highlifters), to stack one pallet above the other (stackers), to lift the load to a working level (scissorlifts) or to lift and to weigh the loads (weighing trucks).
- (12) Only HPT as defined under recital (10) above where considered as the product concerned investigated under the original Regulation. It is pertinent to note that for the purposes of the original investigation the Commission has never requested from co-operating parties to provide information on HSSWT and has not verified any information on HSSWT. Thus, all data and information presented under the original Regulation and the results of the original investigation, including the imposition of the definitive anti-dumping measures where purely based on HPT.
- (13) Account taken of the situation described under recital (2) and in order to establish whether HSSWT are distinct from HPT, both HSSWT and HPT were examined with respect to their physical and technical characteristics, their production process, their typical end-uses and their inter-changeability.

2.4.1. *Physical and technical characteristics of HPT/HSSWT*

- (14) There are different types of HPT and their essential parts, i.e. hydraulics and chassis, depending mainly on the lift capacity, length of the forks, type of steel used for the chassis, type of hydraulics, type of wheels and existence of brake. These different types have, however, the same basic physical characteristics and uses and they were therefore all considered as the product concerned in the original investigation.
- (15) The review investigation has shown that HSSWT share some of the HPT characteristics, e.g. they have chassis with forks and a hydraulics system. However, they have additional functions for lifting the load higher, stacking, operating as work table/level or weighing the load, which require clearly more advanced or additional technical components. In order to fulfil the aforesaid specific HSSWT functions, the requirements in the strength and construction of forks, chassis and hydraulics are different than for HPT. In addition, in order to fulfil these additional functions, HSSWT are significantly more expensive than HPT (up to ten times).

2.4.2. *Production process*

- (16) It was established by the review investigation that there are significant differences in the production process of HPT and HSSWT since the latter need additional components and thus different production steps compared with HPT. Indeed, the review investigation revealed that in highlifters and stackers the frame of the chassis needs to be significantly higher and the hydraulic system different to enable lifting the load higher whereas in weighing trucks, a weighing scale is incorporated in the chassis with the latter having a totally different forks structure compared to HPT.

2.4.3. *Typical end-uses of HPT / HSSWT*

- (17) HPT are widely used in load handling activities, in distribution and warehousing of goods. They are used both in the manufacturing industries as well as in retail shops. HPT are designed to be manually pushed, pulled and steered, on smooth, level, hard surface, 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 the load, for example in distribution vehicles, warehouses, manufacturing sites, or even inside retail sales shops. The typical maximum lifting capacity of HPT is around 210 millimetres. In addition, HPT are commonly considered as necessary complement to other load handling devices, such as fork lifts. No specific training is needed to use HPT.
- (18) The review investigation has shown that HSSWT are mainly used by the same users as HPT, however, their uses are different, e.g. lifting the load higher, stacking the load, functioning as work level or weighing the load. Due to their specific characteristics and uses, HSSWT are not as widely used as HPT. This is why their sales volume is around one tenth of HPT sales in the EC market. In addition, unlike HPT, the use of HSSWT requires specific training.

2.4.4. *Inter-changeability*

- (19) The review investigation has shown that HSSWT have significantly more specific uses than HPT. Indeed, highlifters/stackers are used to lift the load higher, to assist in storage of loads, to stack one pallet above the other, scissorlifts are used to lift the load to a working level and weighing trucks to weigh the load.
- (20) To some very limited extent some types of HSSWT (e.g. weighing trucks) can lift and move the load as HPT. However, replacing HPT with HSSWT does not make any practical or economic sense because HPT are easier to use for only lifting and moving the load and HSSWT are significantly more expensive than HPT and require specific training in using them. In addition in some cases permanent use of HSSWT instead of HPT can destroy the main functions of HSSWT, e.g. in the case of weighing trucks where the weighing scale device is so delicate that it would be defected from the moment of the weighing truck is used for lifting and moving loads.
- (21) On the other hand it was established during the review investigation that HPT can not be used to replace HSSWT. The functions of the latter refer to a specific and distinguished market with different requirements and end-user needs and perceptions.
- (22) The Commission also examined whether the essential parts, i.e. chassis and hydraulics, of HPT and HSSWT are interchangeable. In this respect, the review investigation has shown that both chassis and hydraulics are not interchangeable between HPT and HSSWT due to their different construction and characteristics.

2.5. **Conclusion on the product scope**

- (23) The review investigation has established that due to different and additional technical characteristics, different end-uses and different production process, HSSWT do not fall within the product scope of HPT and their essential parts which are subject to the anti-dumping measures in force. This was the reason why the Commission did not considered HSSWT as part of the product scope of the original investigation.
- (24) It is therefore considered appropriate to clarify that HSSWT differ from HPT and their essential parts and do not fall within the product scope subject to anti-dumping measures.
- (25) Interested parties were informed of the above conclusions.

- (26) One party claimed that HSSWT and HPT should be regarded as one technical entity but the information on file does not warrant such a conclusion. All the remaining parties that submitted representations accepted the findings of the Commission.
- (27) Given the above, it is considered appropriate to amend the original Regulation to clarify the product definition.
- (28) Since the present review investigation is limited to the clarification of the product scope and since HSSWT were not covered by the original investigation and the consequent anti-dumping measure, it is considered appropriate that the findings be applied from the date of the entry into force of the original Regulation, including any imports subject to provisional duties between 29 January 2005 and 21 July 2005. The Commission has not found any overriding reason preventing the application of such retroactive provision.
- (29) Consequently, for goods not covered by Article 1(1) of Regulation (EC) No 1174/2005 as amended by this Regulation, the definitive anti-dumping duty paid or entered in the accounts pursuant to Article 1(1) of Regulation (EC) No 1174/2005 and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation should be repaid or remitted.
- (30) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.
- (31) This review does not affect the date on which Regulation (EC) No 1174/2005 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 1174/2005 is hereby replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, falling within CN code ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10), originating in the People's Republic of China. 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 surface, 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).'

Article 2

For goods not covered by Article 1(1) of Regulation (EC) 1174/2005 as amended by this Regulation, the definitive anti-dumping duties paid or entered into account pursuant to Article 1(1) of Regulation (EC) No 1174/2005 in its initial version and the provisional anti-dumping duties definitively collected pursuant to Article 2 of the same Regulation shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. In duly justified cases, the time limit of 3 years provided in Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁴ shall be extended for a period of one year.

Article 3

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

It shall apply from 22 July 2005.

Done at Brussels, [...]

For the Council
The President
[...]

⁴ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).