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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.5.2009
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Proposal for a

COUNCIL REGULATION

extending the definitive anti-dumping duty 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 to imports of the same product consigned from Thailand, whether declared as originating in Thailand or not

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 investigation which considers the extension of the definitive anti-dumping measures imposed by Council Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts (HPT) originating in the People's Republic of China to imports of the same product consigned from Thailand (whether declared as originating in Thailand or not).

- **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 and in particular Article 13 thereof.

- **Existing provisions in the area of the proposal**

The measures currently in force are imposed by Council Regulation (EC) No 1174/2005 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China. By Regulation (EC) No 684/2008 the Council clarified the product scope of the original investigation.

- **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 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 20 September 2008, the Commission initiated, by Commission Regulation No 923/2008, an investigation against Thailand concerning the possible circumvention 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, by imports of HPT consigned from Thailand (whether declared as originating in Thailand or not).

Following the imposition of the aforesaid AD measures, *prima facie* evidence suggested that there was a change in the pattern of trade in HPT between China, Thailand and the EC, and in particular a surge of imports of HPT from Thailand. Coinciding with this situation, evidence at the Commission's disposal suggested that imports of essential parts for HPT from China into Thailand increased sharply between the imposition of the AD measures and 2007. At the same time, there appeared to be a significant amount of assembly operations of Chinese essential parts for HPT in Thailand, a business practice that did not seem to have any economic justification, and a significant increase of exports of HPT from Thailand to the EC.

The anti-circumvention investigation showed an increase of exports from Thailand for which there is no other reasonable explanation than the existence of circumvention practises. Apart from one exporting producer in China, who simply reported its export sales from the China to the EC and some minor sales from China to Thailand, no other party, either in Thailand or China, replied to the requested questionnaires. Thus, no information was obtained, which would provide significant due cause or economic justification to explain the above-stated change of trade pattern.

The investigation concluded that the imports from Thailand were circumventing the measures in place and it is therefore proposed that the Council adopts the attached proposal for a Regulation extending the existing anti-dumping measures to the same product consigned from Thailand, whether declared as originating in Thailand or not. The relevant Council Regulation should be published in the *Official Journal of the European Union* no later than 19 June 2009.

- **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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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 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

- (1) By Regulation (EC) No 1174/2005² (the 'original Regulation'), following an investigation (the 'original investigation'), 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 ('HPT' or 'product concerned').
- (2) By Regulation (EC) No 684/2008³ the Council clarified the product scope of the original investigation.

2. Ex-Officio Initiation

- (3) Following the original investigation, evidence at the disposal of the Commission indicated that the anti-dumping measures on imports of HPT originating in the People's Republic of China ('PRC') are being circumvented by means of assembly operations in Thailand of HPT (the 'product under investigation').
- (4) In concrete terms the *prima facie* evidence at the Commission's disposal indicated that:
 - a significant change in the pattern of trade involving exports from the PRC and Thailand to the Community has taken place following the imposition of measures on the product concerned, and there was insufficient due cause or justification other than the imposition of the duty for such a change,
 - this change in the pattern of trade appeared to stem from assembly operations in Thailand of HPT,

¹ OJ L 56, 6.3.1996, p. 1.

² OJ L 189, 21.7.2005, p. 1.

³ OJ L 192, 19.7.2008, p. 1.

- - the remedial effects of the existing anti-dumping measures on the product concerned were being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation from Thailand appeared to have replaced imports of the product concerned. In addition, there was sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures,
 - - the prices of HPT were dumped in relation to the normal value previously established for the product concerned.
- (5) Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission, on an ex-officio basis, initiated an investigation, by Commission Regulation (EC) No 923/2008⁴ (the 'initiating Regulation') in order to investigate the apparent circumvention of the anti-dumping measures. Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of HPT consigned from Thailand, whether declared as originating in Thailand or not, as from 21 September 2008.

3. Investigation

- (6) The Commission officially advised the authorities of the PRC and Thailand, the producers/exporters in the PRC and Thailand, the importers in the Community known to be concerned and the Community industry of the initiation of the investigation. Questionnaires were sent to known producers/exporters in the PRC and in Thailand as well as to the importers in the Community known to the Commission from the original investigation and to parties that had made themselves known within the deadlines specified in Article 3 of the initiating Regulation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being made on the basis of the facts available.
- (7) No replies to the questionnaires were received from exporters/producers in Thailand, nor did the Commission receive any comments from the Thai authorities. Only one Thai exporter/producer of the product under investigation, who, according to information at the disposal of the Commission at the time of initiation, exported the product under investigation to the Community during the period 2005 up to the IP (as defined in recital (10) below) and had assembly operations of HPT in Thailand, submitted that it has ceased to exist as from April 2008.
- (8) One Chinese exporting producer replied to the questionnaire by declaring its export sales to the EC as well as some very minor exports of the product concerned to Thailand. No comments were received from the Chinese authorities.
- (9) Finally, nine Community importers submitted questionnaire replies reporting their imports from China and Thailand. In general, from their replies it is concluded that there was an increase of imports from Thailand and a sudden decrease of the imports from the PRC in 2006, the year after definitive anti-dumping duties came into force. In the following years, the imports from the PRC increased again while at the same time

⁴ OJ L 252, 20.9.2008, p. 3.

imports from Thailand slightly decreased but still remained well above the 2005 levels.

5. Investigation period

- (10) The investigation period covered the period from 1 September 2007 to 31 August 2008 (the 'IP'). Data were collected from 2005 up to the end of the IP to investigate the alleged change in the pattern of trade and the other aspects set out in Article 13 of the basic Regulation.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation/methodology

- (11) As mentioned above in recital (7), no producers/exporters of HPT in Thailand cooperated in the investigation and provided the necessary data. Thus, the Commission was not in a position to verify directly at the source the nature of the imports consigned from Thailand. Accordingly, findings in respect of HPT consigned from Thailand to the Community had to be made on the basis of the facts available in accordance with Article 18 of the basic Regulation. In this context it is noted that neither did the information received from the PRC nor from Community importers allowed to determine the nature of these imports.
- (12) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was done by analyzing whether there was a change in the pattern of trade between third countries and the Community, whether the change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty, whether there was evidence of injury or that the remedial effects of the duty were being undermined in terms of prices and/or quantities of the like product, and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2. Product concerned and like product

- (13) The product concerned is hand pallet trucks and their essential parts, i.e. chassis and hydraulics, normally declared under CN code ex 8427 90 00 and ex 8431 20 00 originating in the PRC. 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 (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).
- (14) The product under investigation is hand pallet trucks (having the same definition as the product concerned) and their essential parts, i.e. chassis and hydraulics, consigned from Thailand (the 'product under investigation') whether declared as originating in Thailand or not, normally declared under the same CN codes as the product concerned.
- (15) From the information available, it was concluded that HPT exported to the Community from the PRC and those consigned from Thailand to the Community have the same basic physical characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. Change in the pattern of trade between third countries and the Community

- (16) Due to the non-cooperation of any Thai company, the volume and value of Thai exports of the product concerned to the Community were determined on the basis of the information available, which in this case was statistical data collected by Member States and compiled by the Commission pursuant to Article 14(6) of the basic Regulation, and Eurostat data. As regards the data provided in the replies of the Community importers, the investigation established that the number of Thai exports reported by the Community importers represented only a very minor, part of the total Thai exports of HPT during the IP, namely less than 5%. Under these circumstances it was considered that the statistical data at the Commission's disposal portrays more accurately the situation with respect to the volume and value of Thai exports than the limited information made available by Community importers.
- (17) Following the imposition of the anti-dumping measures imports of HPT from Thailand increased from 7.458 trucks in 2005 to 64.706 trucks in 2007 and decreased to 42.056 trucks during the IP.
- (18) With respect to China imports of HPT to the EC increased from 240.639 trucks in 2005 to 538.271 in 2007 and 584.786 during the IP. According to the available information, this increase is mainly attributed to increased exports of the sole Chinese exporting producer that has the lowest anti-dumping duty rate. Indeed, Chinese exports from this particular party represent the overwhelming percentage of the increase of imports into the EC of HPT from the PRC between 2005 and the end of the IP.
- (19) Account taken of the above situation, it is concluded that there was a change in pattern of trade between the EC, the PRC and Thailand. Imports from the PRC continued to increase but this is directly attributed to the export performance of one of the Chinese exporting producers who cooperated with the original investigation and was attributed the lowest anti-dumping duty. On the other hand, imports from Thailand increased by 868% from 2005 to 2007 and stabilized during the IP to an increase of 564% with respect to 2005.
- (20) In sum, the trade pattern found, although showing persistence in exports from the PRC also shows a significant increase of exports from Thailand. The persistence or continued increase, albeit much smaller between 2007 and the IP than that found in the original investigation, of exports from the PRC, can be explained by noting that the overwhelming majority of the exports come from the Chinese company with the lowest anti-dumping duty rate. The pattern relating to Thailand, on the other hand, could only be explained as the result of actions aiming at the circumvention of measures.

4. Insufficient due cause or economic justification

- (21) The imports into the Community from Thailand started to rise during the period in which the Community conducted its original investigation. It is recalled that the authorities in Thailand as well as potential Thai producers/exporters were informed of the current investigation. However no evidence was received that could explain this significant increase nor in fact did any Thai company cooperate with the investigation by submitting the necessary questionnaire replies. In this respect it should be highlighted that as mentioned under recital (7) information at the Commission's disposal at the time of initiation seemed to suggest that there is a significant amount of assembly operations of HPT in Thailand. On the other hand, no evidence was received

that there was a genuine production of the product under investigation in Thailand. On the basis of the available information, it is therefore concluded that, in the absence of any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation, the change in the pattern of trade stemmed from the imposition of the anti-dumping duty on HPT originating in the PRC.

5. Undermining of the remedial effects of the anti-dumping duty (Article 13(1))

- (22) The investigation established that imports from Thailand undermined the remedial effects of the anti-dumping duty both in terms of quantities and prices.
- (23) It is recalled that the change in trade flows took the form of an extraordinary increase of imports from Thailand. This undermined first the remedial effects of the anti-dumping measures in terms of the quantities imported into the Community market. Indeed, should Community imports have taken place from the PRC instead of Thailand, it is more than likely that the quantities imported would have been much lower than those imported from Thailand, in view of the fact that there would have been a need to pay, *inter alia*, the anti-dumping duty ranging from 7,6% to 46,7%.
- (24) Second, with respect to prices of the product concerned consigned from Thailand, in the absence of cooperation, it was necessary to refer to Eurostat data (which were confirmed by 14(6) data), which was the best evidence available. The information submitted by the Community importers was not considered fully reliable for the reasons described under recital (16). In this respect it was established that during the IP the average import price of Thai exports to the Community was significantly below the injury elimination level of Community prices established in the original investigation. In more concrete terms, the average import price of Thai exports to the Community was found to be 48,9% lower than the injury elimination level of Community prices established in the original investigation. Hence, the remedial effects of the duty imposed in terms of prices are undermined.
- (25) It is therefore concluded that the imports of the product concerned from Thailand undermine the remedial effects of the duty both in terms of quantities and prices.

6. Dumping test (Article 13(1))

- (26) As explained in recitals (7) and (16), given the absence of cooperation, in order to determine whether evidence of dumping could be found with respect to the exports of the product concerned to the Community from Thailand during the IP, Eurostat data at CN level were used pursuant to Article 18 of the basic Regulation as the basis for establishing export prices to the EC.
- (27) In accordance with Article 13(1) of the basic Regulation, these export prices were compared with the normal value previously established, in this case the weighted average normal value established in the original investigation.
- (28) In the absence of cooperation and pursuant to Article 18 of the basic Regulation, for the purpose of comparing the export price and normal value, it was considered appropriate to assume that the product mix of the goods observed during the present investigation was the same as in the original investigation.
- (29) In accordance with Article 2(11) and 2(12) of the basic Regulation, a comparison of the weighted average normal value as established during the original investigation and the weighted average of the export prices during the present investigation's IP, as established by Eurostat data, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, revealed a significant dumping margin, i.e. 22,5%.

- (30) Given the dumping margin involved, and the fact that there is no evidence pointing to a significant change in the product mix of exports, it is considered that dumping exists in relation to the normal value established in the original investigation.

C. MEASURES

- (31) In view of the findings above it is concluded that circumvention has taken place within the meaning of Article 13(1) of the basic Regulation. In accordance with Article 13(1) first sentence of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC should therefore be extended to imports of the same product consigned from Thailand, whether declared as originating in Thailand or not.
- (32) The measure to be extended should be the one established in Article 1(2) of the original Regulation for the non-cooperating parties, i.e. 'all other companies'. Consequently, for the purpose of the present Regulation the rate of the anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, shall be 46,7%.
- (33) In accordance with Article 14(5) of the basic Regulation, which provides that any extended measure may apply to imports which entered the Community under registration imposed by the initiating Regulation, duties should be collected on those registered imports of HPT consigned from Thailand.

D. REQUESTS FOR EXEMPTION

- (34) It is recalled that during the present investigation no Thai exporter/producer of HPT to the Community was found to exist in Thailand or made itself known to the Commission and cooperated with the proceeding. Notwithstanding the above, any Thai exporter/producer deemed to be concerned which would consider lodging a request for an exemption from the extended anti-dumping duty pursuant to Article 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of, for instance, the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. The request would have to be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to production and sales.

E. DISCLOSURE

- (35) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the definitive anti-dumping duty in force and were given the opportunity to comment and to be heard. No comments which were of a nature to change the above conclusions were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, as defined in Article 1 of Regulation (EC) No 1174/2005, as amended by Regulation (EC) No 684/2008, originating in the People's

Republic of China, is hereby extended to hand pallet trucks and their essential parts, i.e. chassis and hydraulics, as defined in Article 1 of Regulation (EC) No 1174/2005, as amended by Regulation (EC) No 684/2008, falling within CN code ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 11 and 8431 20 00 11), consigned from Thailand whether declared as originating in Thailand or not.

2. The duties extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Commission Regulation (EC) No 923/2008⁵ and Articles 13(3) and 14(5) of Regulation (EC) No 384/96.
3. The provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 04/090
B-1040 Brussels
Fax (32-2) 295 65 05

2. In accordance with Article 13(4) of Regulation (EC) No 384/96, the Commission, after consulting the Advisory Committee, may authorize by decision, the exemption of imports which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 1174/2005 from the duty extended by Article 1.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 923/2008.

Article 4

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels

For the Council
The President

⁵ OJ L 252, 20.9.2008, p. 3.