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

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THE COUNCIL OF THE EUROPEAN UNION,

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 9(4) and 11 paragraphs (2), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), by Regulation (EC) No 1174/2005[(2)], imposed, a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts currently falling within CN code ex 8427 90 00 and ex 8431 20 00 originating in the People's Republic of China ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty ranging between 7,6 % and 46,7 %.

(2) The Council, following an *ex officio* product scope interim review, by Regulation (EC) No 684/2008[(3)], clarified the product scope of the original investigation.

(3) Following an *ex officio* anti-circumvention investigation of the anti-dumping measures, the Council, by Regulation (EC) No 499/2009[(4)], extended the definitive anti-dumping duty applicable to 'all other companies' imposed by Regulation (EC) No 1174/2005 to hand pallet trucks and their essential parts consigned from Thailand whether declared as originating in Thailand or not.

2. **Request for an expiry review**

(4) Following the publication of a notice of impending expiry[5] of the definitive anti-dumping measures in force, the Commission received on 21 April 2010 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by two Union producers: BT Products AB and Lifter SRL ('the applicants') representing a major proportion, in this case almost the total Union production of hand pallet trucks and their essential parts.

(5) The request was 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.

3. **Initiation of an expiry review**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 20 July 2010, by a notice published in the *Official Journal of the European Union*[6] ('the Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation**

4.1. *Investigation period*

(7) The investigation of continuation or recurrence of dumping covered the period from 1 July 2009 to 30 June 2010 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2007 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the investigation*

(8) The Commission officially advised the applicants, exporting producers, importers, users known to be concerned, and the representatives of the exporting country of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

(9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) In view of the apparent large number of unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information

requested in the Notice of initiation. However, no unrelated importers came forward to cooperate. Sampling was therefore not necessary.

(11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from the two groups of Union producers which are the applicants. None of the known exporting producers in the People's Republic of China (PRC) cooperated in the review. None of the importers came forward during the sampling exercise and no other importers or users supplied the Commission with any information or made themselves known in the course of the investigation.

(12) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

Union producers

— Lifter SRL, Casole d'Elsa, Italy,

— BT Products AB, Mjölby, Sweden.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(13) The product concerned by this review is the same as the one in the original investigation and clarified by the product scope interim review, namely hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the PRC, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00. 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).

(14) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold on the domestic market in the PRC, as well as those manufactured and sold in the EU by the Union producers, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(15) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. **Preliminary remarks**

(16) Nineteen known Chinese exporting producers were contacted upon initiation. Only one company, Crown Equipment (Suzhou), initially came forward and agreed to be included in the sample, but withdrew its cooperation subsequently. Consequently, none of the exporting producers in the PRC cooperated with the investigation and findings on the likelihood of continuation or recurrence of dumping had to be based on facts available, in particular information submitted by the applicants, including information in the review request, Eurostat data, as well as official export statistics of the PRC.

2. **Dumping of imports during the RIP**

2.1. *Analogue country*

(17) In accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the price or constructed normal value obtained in an appropriate market economy third country (the analogue country), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(18) In the original investigation, Canada served as an analogue country for the purposes of establishing normal value. Given that production in Canada had ceased, Brazil was envisaged as analogue country in the notice of initiation of the present review. However, none of the known Brazilian exporting producers agreed to cooperate. Alternatively, cooperation was sought from 27 Indian producers and two Taiwanese producers, but similarly no cooperation could be obtained. Interested parties have not put forward any other suggestions for an analogue country.

(19) One non-cooperating exporter claimed that the Commission did not demonstrate that the use of analogue country data was impossible in the current case. The suggestions given by the company have been checked. In some cases companies proposed by the non-cooperting exporter appeared not to be a producer of the product concerned. The company also suggested that Vietnam could have been used as an analogue country. However, Vietnam could not be taken into account because it is not considered as a market economy country. As explained in recitals 17 and 18 above, the Commission contacted a large number of companies in three potential analogue countries: Brazil, India and Taiwan. Despite these efforts no cooperation was obtained. Without any analogue country cooperation, in compliance with Article 2(7)(a) of the basic Regulation, the normal value had to be based on the price actually paid or payable in the European Union for the like product, duly adjusted if necessary to include a reasonable profit margin. Therefore the claim had to be rejected.

2.2. *Normal value*

(20) In view of lack of cooperation from an analogue country in the present review, the price actually paid or payable in the Union for the like product duly adjusted if necessary to include a reasonable profit margin, was used as a basis to establish normal value. The same methodology was used for both the company that received MET in the original investigation as well as for the companies not granted MET in the original investigation.

2.3. *Export price*

(21) In view of the fact that no cooperation was obtained from the Chinese exporting producers, the export price was established on the basis of facts available. Different sources of information were consulted in order to establish the export price: Eurostat data, offers of Chinese exporting producers as submitted by the applicants and export invoices collected from Member States' customs authorities.

2.4. *Comparison*

(22) The weighted average normal value was compared with the weighted average export price, on an ex-works basis, at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors affecting price and price comparability were taken into account. Adjustments were made for ocean and domestic freight in the exporting country, as well as insurance.

2.5. *Dumping margin*

(23) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price. This comparison showed the existence of significant dumping during the RIP ranging from 97 % to 224 %. The significant difference in dumping margins is due to the different data used for establishing the export price.

3. **Development of imports should measures be repealed**

(24) Further to the analysis of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was investigated. Given the fact that no exporting producer in the PRC cooperated in this investigation, the conclusions below rely on facts available in accordance with Article 18 of the basic Regulation, namely information provided in the review request as well as data provided by the applicants, Eurostat data and official export statistics of the PRC.

(25) In this respect, the following elements were analysed: development of imports from the PRC, spare capacity of the exporters and attractiveness of the Union market, Chinese domestic prices and export prices to third countries.

3.1. *Development of imports from the PRC*

(26) The Chinese exporting producers continued to supply significant volumes of hand pallet trucks to the Union market following the imposition of the measures in