# Council Regulation (EC) No 499/2009 of 11 June 2009 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

## COUNCIL REGULATION (EC) No 499/2009

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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 Community[(1)] (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 1174/2005[(2)] (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 (HPT or product concerned) originating in the People's Republic of China (PRC).

(2) By Regulation (EC) No 684/2008[(3)] 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 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:

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— 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,

— 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 HPT 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 means of Commission Regulation (EC) No 923/2008[4] (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, also by means of 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 out 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 HPT, which, according to information at the disposal of the Commission at the time of initiation, exported HPT to the Community during the period 2005 up to the IP (as defined in recital 10) 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 imports from Thailand slightly decreased but still remained well above the 2005 levels.

### 4. 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 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 the information received from the PRC nor from Community importers allowed the Commission 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 analysing 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 (HPT), normally declared under CN code ex 8427 90 00 and ex 8431 20 00 originating in the PRC. HPT 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. HPT are only designed to raise a load, by pumping the tiller, to a height sufficient

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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, which 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 the 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 which 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 stabilised 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 in 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 to indicate that there was a genuine production of HPT 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 the data referred to in Article 14(6) of the basic Regulation), which was the best evidence available. The information submitted by the Community importers was not considered to be fully reliable for the reasons described in recital 16. In this respect it was established that during the IP the average import price of