Council Regulation (EC) No 188/2009 of 9 March 2009 terminating the 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

COUNCIL REGULATION (EC) No 188/2009

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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 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 1174/2005[(2)] 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 original investigation used as investigation period the period from 1 April 2003 to 31 March 2004.

(2) By Regulation (EC) No 684/2008[(3)] the Council clarified the product scope of the original investigation.

2. Request for a review

(3) This partial interim review was initiated on the basis of a request lodged, and information provided, by Yale (Hangzhou) Industrial Products Co. Ltd (Yale), an exporter from the PRC. The information indicated that the circumstances on the basis of which measures were established with respect to Yale have changed and that these changes are of a lasting nature. In particular Yale provided prima facie evidence showing that it meets the criteria for market economy treatment and that a comparison of normal value based on its own costs and export prices to the Community would lead to a dumping margin significantly lower than the current level of the measures. Therefore the continued imposition of measures at the existing level, which were based

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on the level of dumping previously established, appeared to be no longer necessary to offset dumping.

3. Review investigation

(4) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published in the *Official Journal of the European Union*[4] the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of dumping as far as Yale is concerned.

(5) The investigation period of dumping covered the period from 1 October 2006 to 30 September 2007 (review investigation period or RIP).

(6) The Commission officially advised Yale, as well as the representatives of the PRC (country concerned), and the Community industry, as defined in the original investigation, of the initiation of the review. 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.

(7) The Commission sent questionnaires to Yale, to the Community industry producers known to be concerned, to known producers of HPT in Canada which was chosen as analogue country in the original investigation and to known producers of HPT in India and Malaysia, which were mentioned during the original investigation as possible alternative analogue countries. The Commission also sent a claim form for market economy treatment (MET) to Yale.

(8) Replies to the questionnaires, as well as comments and information, were received from Yale and one Community industry producer.

(9) The Commission sought and verified all information deemed necessary for the determination of MET and dumping, analysed the information provided and carried out verification visits at the following companies:

— Yale (Hangzhou) Industrial Products Co Ltd, Hangzhou, PRC,

— Yale Industrial Products GmbH, Velbert, Germany.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(10) The definition of the product concerned corresponds to the one that was used in the original investigation, as clarified by Regulation (EC) No 684/2008. The product concerned is 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, falling within CN code ex 8427 90 00 and ex 8431 20 00. For the purposes of the Regulation imposing the definitive anti-dumping duty mentioned under recital 1, hand pallet trucks are 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).

2. Like product

(11) The current review has shown that the HPT produced in the PRC by Yale and sold on the Chinese market have the same basic physical characteristics and the same uses as those exported to the Community. Therefore, these products are considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

C. RESULTS OF THE INVESTIGATION

1. Market economy treatment (MET)

(12) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

1. business decisions and costs are made in response to market conditions, without significant State interference, and costs reflect market values;

2. firms have one clear set of accounting records which are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(13) Yale requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines.

(14) The Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the company in question.

(15) Yale did not show that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation. The company did not fulfil criteria 1 and 2.

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(16) As far as criterion 1 is concerned it was established on the spot that the company's Articles of Association (AoA) contained explicit domestic sales restrictions, namely the company was obliged to sell 100 % of its products to overseas markets. Yale argued that those restrictions never played any role in substance as it had some minor domestic sales during the RIP. Nevertheless, the company was not in a position to present concrete evidence demonstrating that it was de facto and de jure not subject to the aforesaid restriction stipulated by its AoA. Furthermore, evidence of State influence on the company's decisions with regard to export sales was established on spot. It was revealed that since 2002 Yale benefits from a 50 % tax cut on its income tax rate. This tax cut is derived from the relevant implementing rules of the income tax law for enterprises with foreign investment and foreign enterprises. The rules stipulate that export oriented foreign invested enterprises, like Yale, with export sales that amount to 70 % or more of the total sales for the year are entitled to 50 % tax cuts after the period of enterprise income tax reductions has expired. It can be seen from the above that Yale does not take its business decisions with respect to its export sales only in the light of market signals reflecting supply and demand. The company is subject to significant State influence consisting of the award of certain tax benefits on the explicit condition that it takes certain business decisions with respect to its domestic and export sales. Account taken of all the above, it was consequently concluded that the company has not shown that it fulfils criterion 1.

(17) As far as criterion 2 is concerned it was established on the spot that fundamental International Accounting Standards principles were disregarded (i.e. accrual principle, exchange rates conversion policies, lack of fair representation of the financial position and use of accounts prepared only for the purposes of the investigation) both in the accounts and in their audit, which put into question the reliability of the company's accounts. Consequently, it was concluded that the company has not shown that it fulfils criterion 2.

(18) Yale and the Community industry were given an opportunity to comment on the above findings. No specific comments with respect to the above findings were made by Yale whereas one Community industry producer submitted some general comments.

(19) On the basis of the above, it was concluded that Yale has not shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

2. Individual treatment (IT)

(20) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and can thus be granted IT.

(21) Yale also claimed IT in the event that it would not be granted MET.

(22) On the basis of the information available, it was established that the company did not fulfil the requirements foreseen in Article 9(5) of the basic Regulation. In