Council Regulation (EC) No 684/2008 of 17 July 2008 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

COUNCIL REGULATION (EC) No 684/2008

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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 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:

1. MEASURES IN FORCE

(1) By Regulation (EC) No 1174/2005[(2)] (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, 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 684/2008. (See end of Document for details)*

(3) Having determined, after consulting the Advisory Committee, that sufficient 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*[3] 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 brakes.

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 were 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 cooperating 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, were 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 interchangeability.

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 brakes. 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 10 times).

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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 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 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 compliment to other load handling devices, such as forklifts. 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. Interchangeability

(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 tracks 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.