Council Regulation (EC) No 451/2007 of 23 April 2007 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 451/2007

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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 originating in the People's Republic of China ('PRC').

2. *Ex officio* initiation of a review

(2) On the basis of information at the Commission's disposal following certain changes after the original investigation in the structure of one Chinese exporting producer which was not granted market economy treatment in that investigation, namely Ningbo Ruyi Joint Stock Co., Ltd. ('Ningbo Ruyi'), it appeared that market economy conditions prevailed for this company. In effect, there was sufficient *prima facie* evidence suggesting that Ningbo Ruyi fulfilled the criteria of Article 2(7)(c) of the basic Regulation. In this context, the circumstances on the basis of which the existing measures were established were considered to have changed and these changes seemed to be of a lasting nature.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation, the Commission published a notice ('notice of initiation')[(3)] and commenced an investigation on its own initiative, limited in scope to determine whether

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Ningbo Ruyi operates under market economy conditions and, if so, to determine whether its individual dumping margin and duty rate should be based on its own costs/ domestic prices.

3. Parties concerned by the investigation

(4) The Commission officially advised Ningbo Ruyi and its related importer Jungheinrich AG, as well as the representatives of the exporting country and the Community industry of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(5) The Commission also sent a claim form for market economy treatment ('MET') and a questionnaire to Ningbo Ruyi and received replies within the deadlines set for that purpose. The Commission sought all the information it deemed necessary for the determination of MET and dumping, analysed the information provided and carried out verification visits at the premises of the related companies:

— Ningbo Ruyi Joint Stock Co., Ltd, Ninghai,

— Ruyi Industries (Hong Kong) Co., Ltd. ('Ruyi Hong Kong'), Hangzhou,

— Jungheinrich Lift Trucks (Shanghai) Co., Ltd. ('Jungheinrich Shanghai'), Shanghai.

4. Review investigation period

(6) The investigation of dumping covered the period from 1 April 2005 to 31 March 2006 ('review investigation period' or 'RIP').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(7) The definition of the product concerned corresponds to the one that was used in the original investigation mentioned under recital (1). The product concerned is hand pallet trucks ('HPT'), 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, currently classifiable within CN codes ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 10 and 8431 20 00 10).

2. Like product

(8) The current review has shown that the HPT produced in the PRC by Ningbo Ruyi 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

(9) 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 producers

which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards ('IAS') and are applied for all purposes,

— no distortions carried over from the non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(10) Ningbo Ruyi requested MET pursuant to Article 2(7)(b) of the basic Regulation. It is the Community's consistent practice to examine whether a group of related companies involved in the production and/or sale of the product concerned as a whole fulfils the conditions for MET. According to Ningbo Ruyi, there was only one such related company in the PRC — Jungheinrich Shanghai. Ningbo Ruyi replied to the MET claim form within the given deadline.

(11) In the course of the investigation, the Community industry claimed that there seemed to be various companies related to Ningbo Ruyi which were not duly disclosed by the company in the information submitted to the Commission, including in the audited financial statements. According to the Community industry, the non-disclosure of related companies in financial statements is a breach of IAS 24 (Related Party Disclosures) and it requested the Commission to verify this issue.

(12) It was found during the verification visits that there were related companies which were not disclosed in the audited financial statements (breach of IAS 24) or in the replies to the MET claim form and to the questionnaire. In this respect, it is worth noting that both the MET claim form and the questionnaire requested Ningbo Ruyi to describe its worldwide corporate structure and affiliations, including parent companies, subsidiaries or other related companies, whether or not involved in the production and/or sale of the product concerned. Furthermore, Ningbo Ruyi was requested to submit a MET claim form for each subsidiary or other related company in the PRC which was a producer and/or exporter of HPT and to provide details about all other related companies.

(13) According to Ningbo Ruyi's Auditor's Report and Financial Statements for the year ended 31 December 2005 ('Report 2005') and the replies to the MET form and the questionnaire, Ningbo Ruyi only had three related companies in the RIP: Jungheinrich AG, Jungheinrich Shanghai and Ruyi Hong Kong. The investigation, however, showed that the Chinese shareholders of Ningbo Ruyi have also controlling shareholdings in Ningbo CFA Co., Ltd. ('Ningbo CFA') and Ningbo Free Trade Zone Ruyi International Trading Co., Ltd. ('NFTZ').

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(14) There are also other companies owned by relatives of the Chinese shareholders of Ningbo Ruyi: CFA Tools Co., Ltd. ('CFA Tools'), a company incorporated in Hong Kong, and Zhejiang Tianyou Import & Export Co., Ltd. ('Tianyou').

(15) All the abovementioned companies not disclosed by Ningbo Ruyi are thus related to Ningbo Ruyi for the purposes of the current review. Three of them were traders of HPT in the RIP and all have a business licence allowing them to trade HPT. They seem to have exported mainly to countries outside the Community. At least three quarters of the sales volumes reported by Ningbo Ruyi as domestic sales were in fact export sales channelled through non-disclosed domestic related customers and unrelated customers.

(16) Finally, the nature of the transactions between Ningbo Ruyi and Ningbo Jinmao Import & Export Co., Ltd. ('Ningbo Jinmao'), which was reported as a related company in the original investigation (Ningbo Ruyi sold its shareholding in November 2003), is an indication that the two companies still have close links in the HPT business. Ningbo Jinmao bought more than half of the HPT reported by Ningbo Ruyi as domestic sales in the RIP and then resold a significant quantity to NFTZ, which exported them. NFTZ did not buy any HPT directly from Ningbo Ruyi. The fact that Ningbo Jinmao is one of Ningbo Ruyi's main customers and sells a large quantity of its purchases to NFTZ shows that Ningbo Ruyi knew or should have known that most sales to Ningbo Jinmao could not be domestic sales as NFTZ, a related company, was exporting the products bought by Ningbo Jinmao.

(17) Some time after the on-the-spot verification visit, Ningbo Ruyi submitted some new information concerning the MET status of certain of these non-disclosed related companies arguing that a MET determination for the whole group could still be made. This was on the grounds that the non-disclosure was not intentional and because the involvement of these related parties with sales of the product under investigation was not significant. For the same reasons, Ningbo Ruyi's partner, Jungheinrich AG, also argued that this new information should be considered and MET granted.

(18) Whether or not there was any intent to impede the investigation by the timely non-disclosure of related parties, the fact is that questionnaire responses were substantially incomplete to a degree which made it impossible to verify the existence or otherwise of market economy conditions for the Ningbo Ruyi group during the verification visits which were carried out in the PRC. With no verification visits possible at the premises of the non-disclosed related parties, the extent to which the Ningbo Ruyi group was involved with HPT can only remain a matter of conjecture.

(19) In any event, Ningbo Ruyi's failure to disclose in its financial statements all its related parties is a breach of IAS 24. The objective of IAS 24 is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties. In the framework of an anti-dumping investigation, such disclosure is necessary to allow