Commission Regulation (EC) No 128/2005 of 27 January 2005 imposing a provisional anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China

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THE COMMISION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 29 April 2004, the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of hand pallet trucks and their essential parts originating in the People's Republic of China (PRC).

(2) The proceeding was initiated as a result of a complaint lodged in March 2004 by four Community producers representing a major proportion, in this case more than 60 %, of the total Community production of hand pallet trucks and their essential parts, i.e. chassis and hydraulics (the applicants). The complaint contained evidence of dumping of the said product and of material injury resulting thereof, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the applicant Community producers, other Community producers, the exporting producers, importers and users known to be concerned and the representatives of the PRC of the initiation of the proceeding. Given the large number of known exporting producers in the PRC, sampling for the determination of dumping was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. However, only four Chinese exporting producers cooperated with the investigation and, therefore, it was decided that sampling was not necessary. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) A number of exporting producers in the PRC, Community producers, importers, users, as well as an association of importers made their views known in

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writing. All parties who so requested within the above time limit, and indicated that there were particular reasons why they should be heard, were granted a hearing.

(5) The Commission sought information, by means of questionnaires and market economy and individual treatment claim forms sent to all known parties as appropriate. The information received was verified to the extent possible and to the extent deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. In this regard, the Commission received complete questionnaire responses, and claim forms where applicable, from the following companies:

(a) *Producers in the Community*

— Bolzoni-Auramo SpA, Piacenza, Italy,

— BT Products AB, Mjölby, Sweden,

— Franz Kahl GmbH, Lauterbach, Germany,

— Pramac Lifter SpA, Casole d'Elsa, Italy;

(b) *Exporting producers in the People's Republic of China*

— Ningbo Liftstar Material Transport Equipment Factory, Ningbo,

— Ningbo N.F.T.Z. E-P Equipment Co. Ltd, Hangzhou (exporter related to Ningbo Liftstar Material Equipment Factory),

— Ningbo Ruyi Joint Stock Co. Ltd, Ninghai,

— Ningbo Tailong Machinery Co. Ltd, Ninghai,

— Zhejiang Noblelift Equipment Joint Stock Co. Ltd, Changxing;

(c) *Importers/traders in the Community*

— Chadwick Materials Handling Ltd, Corsham, United Kingdom,

— European Handling Equipment, Halesowen, United Kingdom,

— Gigant Arbetsplats AB, Alingsås, Sweden,

— Hu-Lift s.l., Barcelona, Spain,

— Jungheinrich AG, Hamburg, Germany,

— Mangrinox SA, Athens, Greece,

— Manutan International SA, Paris, France,

— Lagertechnik Fischer GmbH, Dinslaken, Germany,

— Levante SRL, Ostiglia, Italy,

— Linde AG, Aschaffenburg, Germany,

— RAPID Transportgeräte GmbH, Beckum, Germany,

— Teknion Ltd, Lancashire, United Kingdom,

— TVH Handling Equipment N.V., Gullegem, Belgium;

(d) *Users*

— Aldi Einkauf GmdH & Co. OHG, Essen, Germany,

— M. Uno Trading SpA, Imola, Italy.

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(6) Verification visits were carried out in the premises of all cooperating exporting producers in the PRC and all Community producers.

(7) In light of the need to establish a normal value for exporting producers in the PRC to which MET was not granted, a verification at the premises of the following producer in Canada, which was used as an analogue country, took place:

— Lift Rite Inc., Brampton, Ontario.

(8) The investigation of dumping and injury covered the period from 1 April 2003 to 31 March 2004 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2000 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. General

(9) Hand pallet trucks are used for the handling of goods and material normally placed on pallets. They are not self-propelled, i.e. they are pushed and pulled by man power. Hand pallet trucks consist of four main parts: chassis (which is made of steel), hydraulics, handle, and wheels. The essential parts are the chassis, where the pallet is placed on, and the hydraulics which allows the geared lifting of the load.

2. The product concerned

(10) 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. the chassis and the hydraulics, originating in the PRC (the product concerned), 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 a brake. However, all different types have the same basic physical characteristics and uses. Consequently, all existing types are considered as one product for the purposes of this investigation.

(11) During the investigation, some interested parties submitted comments as regards the definition of the product concerned. These parties claimed that the chassis and hydraulics should not be included within the scope of the product concerned, because (a) chassis' and hydraulics' markets are different from the hand pallet truck's market; (b) companies producing hand pallet trucks and chassis and/or hydraulics are different, in particular, Chinese exporting producers do not export chassis and hydraulics to the Community and (c) both chassis and hydraulics are also used for other products than only hand pallet trucks.

(12) As regards the argument that there are different markets for chassis and hydraulics, it is noted that no evidence demonstrating the existence of separate markets for these parts for users has been submitted to the Commission. On the contrary, comments of all parties indicate that the producers of hand pallet trucks also produce

the essential parts and, in certain cases, deliver these as spare parts for their own trucks. It is very difficult, if not impossible, to fit any chassis or hydraulics of one producer to a hand pallet truck of another producer. Producers normally would supply essential parts to the customers buying their products.

(13) As regards the second argument concerning producers for chassis and hydraulics, it is noted that the verified information received from the exporting producers shows that all the exporting producers subject to the present investigation produce themselves the chassis and most of them also produce the hydraulics. Although there may exist independent producers of such parts, their production is tailor-made for producers of hand pallet trucks and this is the reason why these parts are seldom sold on the open market. Furthermore, the investigation has shown that such parts have been exported to the Community by certain of the cooperating exporting producers. Therefore, the evidence on the record indicates that the second argument should also be rejected.

(14) As regards the third argument that chassis and hydraulics are also used in other products, it is noted that the products given as examples by the interested parties are clearly different to hand pallet trucks, not only in their physical characteristics but also in their use. Even if these products also have hydraulic systems and steel chassis, these are of different size, shape or lifting capacity than the ones used in hand pallet trucks and would thus not fall under the product concerned as defined above. Therefore, on the basis of the information available and as set out above, it appears highly unlikely that the hydraulics and/or chassis of hand pallet trucks could be integrated as such in other products.

(15) Consequently, the comments of the interested parties were analysed, but they did not justify changing the provisional conclusion on the product concerned as set out in recital 10.

3. Like product

(16) No differences were found between the product concerned and the hand pallet trucks and their essential parts produced and sold on the domestic market of Canada, the analogue country. Indeed, these hand pallet trucks and their essential parts have the same basic physical characteristics and uses as those exported to the Community.

(17) Likewise, no differences were found between the product concerned and the hand pallet trucks and their essential parts produced by the complainants and sold on the Community market. They both share the same physical characteristics and uses.

(18) Consequently, hand pallet trucks and their essential parts sold on the domestic market of Canada, as well as hand pallet trucks and their essential parts produced and sold in the Community are considered as alike to the product concerned within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market economy treatment (MET)

(19) 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. 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, and without significant State interference;
2. accounting records are independently audited, in line with international accounting standards 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.

(20) Four Chinese producers 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.

(21) The Commission sought all information deemed necessary and verified all information submitted in the MET applications at the premises of the companies in question.

(22) For all four companies it was established that, overall, their decisions regarding prices and costs were made without significant state interference, within the meaning of Article 2(7)(c) and that costs and prices reflected market values. Their production costs and financial situation were not subject to significant distortions carried over from the former non-market economy system, there were bankruptcy and property laws guaranteeing legal certainty and stability and the exchange rate conversions were carried out at the market rate. However, none of the four companies fulfilled criterion 2, concerning the existence of independently audited accounts which are in line with international accounting standards (IAS). The companies were found to be in breach of one or several of the following standards: IAS 1, IAS 2, IAS 8, IAS 16, IAS 21, IAS 32 and IAS 36. Consequently, it was concluded that none of the following four companies fulfilled the conditions set out in Article 2(7)(c) of the basic Regulation:

— Ningbo Liftstar Material Equipment Factory, Ningbo,
— Ningbo Ruyi Joint Stock Co. Ltd, Ninghai,
— Ningbo Tailong Machinery Co. Ltd, Ninghai,
— Zhejiang Noblelift Equipment Joint Stock Co. Ltd, Changxing.

(23) The exporting producers concerned and the Community industry were given an opportunity to comment on the above findings.