Commission Regulation (EC) No 52/2009 of 21 January 2009 initiating a 'new exporter' review of Council Regulation (EC) No 1174/2005 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

COMMISSION REGULATION (EC) No 52/2009

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THE COMMISSION 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 11(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. REQUEST FOR A REVIEW

(1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by Crown Equipment (Suzhou) Co. Ltd ('the applicant'), an exporting producer in the People's Republic of China ('the country concerned').

B. PRODUCT

(2) The product under review is hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the People's Republic of China, currently classifiable within CN codes ex 8427 90 00 and ex 8431 20 00. Hand pallet trucks 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. 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 (high lifters); (ii) to stack one pallet above the other (stackers); (iii) to lift the load to a working level (scissor lifts); or (iv) to lift and to weigh the loads (weighing trucks) ('the product concerned').

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 52/2009. (See end of Document for details)*

C. EXISTING MEASURES

(3) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1174/2005[(2)] under which imports into the Community of the product concerned originating in the People's Republic of China, including the product concerned produced by the applicant, are subject to a definitive anti-dumping duty of 46,7 % with the exception of several companies expressly mentioned which are subject to individual duty rates.

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation. It further alleges that it did not export the product concerned to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period') and that it is not related to any of the exporting producers of the product which are subject to the abovementioned anti-dumping measures.

(5) The applicant further alleges that it began exporting the product concerned to the Community after the end of the original investigation period.

E. PROCEDURE

(6) Community producers known to be concerned have been informed of the above application and have been given an opportunity to comment. No comments have been received.

(7) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the basic Regulation. Upon receipt of the claim mentioned below under 8(c), it will be determined whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively whether the applicant fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation. If so, the applicant's individual margin of dumping shall be calculated and, should dumping be found, the level of the duty to which its imports of the product concerned into the Community should be subject shall be determined.

(8) If it is determined that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product concerned from companies not individually mentioned in Article 1(2) of Regulation (EC) No 1174/2005.

(a) **Questionnaires**

In order to obtain the information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) **Collection of information and holding of hearings**

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the parties making them known within the period provided for by the present Regulation.

(c) **Market economy treatment/individual treatment**

In the event that the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, duly substantiated claims must be submitted within the specific time limit set in Article 4(3) of this Regulation. The Commission will send claim forms to the applicant, as well as to the authorities of the People's Republic of China. This claim form may also be used by the applicant to claim individual treatment, i.e. that it meets the criteria laid down in Article 9(5) of the basic Regulation.

(d) **Selection of the market economy country**

In the event that the applicant is not granted market economy treatment but fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation, an appropriate market economy country will be used for the purpose of establishing normal value in respect of the People's Republic of China in accordance with Article 2(7)(a) of the basic Regulation. The Commission proposes using Canada again for this purpose as was done in the investigation which led to the imposition of measures on imports of the product concerned from the People's Republic of China. Interested parties are hereby invited to comment on the appropriateness of this choice within the specific time limit set in Article 4(2) of this Regulation.

Furthermore, in the event that the applicant is granted market economy treatment, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the People's Republic of China which are needed in establishing the normal value, if reliable required data are not available in the People's Republic of China. The Commission proposes using Canada also for this purpose.

F. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

(9) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product concerned which are produced and sold for export to the Community by the applicant. At the same time,

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such imports should be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicant, anti-dumping duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant possible future liabilities cannot be estimated at this stage of the proceeding.

G. TIME LIMITS

(10) In the interest of sound administration, time limits should be stated within which:

(a) interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in recital 8(a) of this Regulation or provide any other information to be taken into account during the investigation;

(b) interested parties may make a written request to be heard by the Commission;

(c) interested parties may comment on the appropriateness of Canada which, in the event that the applicant will not be granted market economy treatment, is proposed as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China;

(d) the applicant should submit a duly substantiated claim for market economy treatment and/or for individual treatment pursuant to Article 9(5) of the basic Regulation.

H. NON-COOPERATION

(11) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(12) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

I. PROCESSING OF PERSONAL DATA

(13) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(3)].

J. HEARING OFFICER