COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.8.2009
COM(2009) 437 final

Proposal for a

**COUNCIL REGULATION**

**Terminating the 'new exporter' review of Regulation (EC) No 1174/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China, re-imposing the duty with regard to imports from one exporter in this country and terminating the registration of these imports**

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of hand pallet trucks and their essential parts originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No. 1174/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China. Council Regulation (EC) No. 684/2008 clarified the scope of the anti-dumping measures imposed by Council Regulation (EC) No 1174/2005.

- **Consistency with other policies and objectives of the Union**

Not applicable.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

## 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 21 January 2009 the Commission initiated a 'new exporter' review of Council Regulation (EC) No 1174/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China, repealed the duty with regard to imports from one exporter in this country and made these imports subject to registration. The company concerned is Crown Equipment (Suzhou) Company Limited ('the applicant').

On 22 May 2009 the applicant withdrew its request for a review. Upon consideration of whether it would be warranted to continue the investigation *ex officio*, it was concluded that the review should be terminated. In view of the above, the duty applicable to 'all other companies' imposed by Regulation (EC) No 1174/2005 should be re-imposed on the applicant.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the Official Journal of the European Union by 21 October 2009 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 and in particular article 11 (4) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

## 4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

# COUNCIL REGULATION

## Terminating the 'new exporter' review of Regulation (EC) No 1174/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China, re-imposing the duty with regard to imports from one exporter in this country and terminating the registration of these imports

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(4) 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 Council imposed a definitive anti-dumping duty and definitively collected the provisional duty imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China. For the four companies with individual duties, the duties in force range from 7.6% to 39.9%. The duty applicable to 'all other companies' is 46.7%. Council Regulation (EC) No. 684/2008[3] clarified the scope of the anti-dumping measures imposed by Council Regulation (EC) No 1174/2005.

2. CURRENT INVESTIGATION

2.1. Request for review

(2) The Commission received a request for a 'new exporter' review of Regulation (EC) No 1174/2005, pursuant to Article 11(4) of the basic Regulation from one exporting producer of hand pallet trucks and their essential parts originating in the People's Republic of China.

(3) The request was lodged by Crown Equipment (Suzhou) Company Limited ('Crown Suzhou' or 'the applicant').

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1 OJ L 56, 6.3.1996, p. 1.
2 OJ L 189, 21.7.2005, p. 1.
3 OJ L 192, 19.7.2008, p. 1

(4) The applicant alleged that it operated under market economy conditions and that it did not export the product concerned to the European Community during the period of investigation on which the anti-dumping measures were based i.e. 1 April 2003 to 31 March 2004 (the 'original investigation period') and that it was not related to any of the exporting producers of the product concerned which are subject to the measures in force. Furthermore, it claimed that it had started to export hand pallet trucks and their essential parts to the Community after the end of the original investigation period.

2.2. Initiation of a 'new exporter' review

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a new exporter review in accordance with Article 11(4) of the basic Regulation and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 52/2009[4] a review of Regulation (EC) No 1174/2005 with regard to the applicant ('the review').

(6) Pursuant to Article 2 of Commission Regulation (EC) No 52/2009, the anti-dumping duty of 46.7% imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts produced by the applicant was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

2.3. Product concerned

(7) The 'product concerned' is the same as that set out in Council Regulation (EC) No 1174/2005 as amended by Regulation (EC) No 684/2008, being hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the People's Republic of China, currently falling 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 (highlifters); (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).

2.4. Parties concerned

(8) The Commission officially advised the applicant, representatives of the Community industry and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views know in writing and to request a hearing within the time limit set in Regulation (EC) No 52/2009.

(9) The Commission services also sent a market economy treatment ('MET') claim form and a questionnaire to the applicant and received the replies within the deadlines set for that purpose.

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[4] OJ L 17, 22.1.2009, p. 19.

2.5. Review investigation period

(10) The investigation of dumping covered the period from 1 January 2008 to 31 December 2008.

3. WITHDRAWAL OF THE REQUEST FOR A NEW EXPORTER REVIEW

(11) By letter to the Commission dated 22 May 2009, Crown Suzhou formally withdrew its request for a 'new exporter' review under Article 11(4) of the basic Regulation.

(12) It was considered whether it would be warranted to continue the investigation *ex officio*. The Commission considered that the termination of the investigation would not affect the anti-dumping measure in force, that the duty rate applicable to 'all other companies' would be re-imposed retroactively on Crown Suzhou and that such termination would not be against the Community interest. On this basis, the investigation should be terminated.

(13) Interested parties were informed of the intention to terminate the investigation and re-impose a definitive anti-dumping duty on imports of the product concerned produced and sold for export to the Community by Crown Suzhou and were given the opportunity to comment. However, no comments which could alter this decision were received.

(14) It was therefore concluded that imports into the Community of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the People's Republic of China, currently falling within CN codes ex 8427 90 00 and ex 8431 20 00 and produced and sold for export to the Community by Crown Suzhou should be subject to the country-wide duty applicable to 'all other companies' (46.7%) imposed by Council Regulation (EC) No 1174/2005 and that that rate of duty should therefore be re-imposed.

4. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(15) In the light of the above findings, the anti-dumping duty applicable to Crown Suzhou shall be levied retroactively, from the date of entry into force of Commission Regulation (EC) No 52/2009, on imports of the product concerned which have been made subject to registration pursuant to Article 3 of that Regulation.

5. DURATION OF THE MEASURES

(16) This review does not affect the date on which the measures imposed by Council Regulation (EC) No 1174/2005 will expire pursuant to Article 11(2) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The new exporter review initiated by Regulation (EC) No 52/2009 is hereby terminated and the anti-dumping duty applicable according to Article 1 of Regulation (EC) No 1174/2005 to 'all other companies' (TARIC additional code A999) in the

People's Republic of China is hereby imposed on imports identified in Article 1 of Regulation (EC) No 52/2009.

2. The anti-dumping duty applicable according to Article 1 of Council Regulation (EC) No 1174/2005 to 'all other companies' in the People's Republic of China is hereby levied with effect from 23 January 2009 on imports of hand pallet trucks and their essential parts which have been registered pursuant to Article 3 of Commission Regulation (EC) No 52/2009.

3. The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EC) No 52/2009.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*
*The President*