COMMISSION REGULATION (EC) No 923/2008

of 12 September 2008

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1174/2005, as amended by Council Regulation (EC) No 684/2008, on imports of hand pallet trucks and their essential parts originating in the People's Republic of China by imports of hand pallet trucks and their essential parts consigned from Thailand, whether declared as originating in Thailand or not and making such imports subject to registration

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 (the basic Regulation) ([1]) and in particular Articles 13(3), 14(3) and 14(5) thereof,

Whereas:

The Commission has decided, pursuant to Article 13(3) of Regulation (EC) No 384/96 (the basic Regulation) to investigate on its own initiative the possible circumvention of the anti-dumping measures imposed on imports of hand pallet trucks and their essential parts originating in the People's Republic of China.

A. PRODUCT

The product concerned by the possible circumvention is hand pallet trucks and their essential parts, i.e. chassis and hydraulics, originating in the People's Republic of China, normally declared under 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 (scissorlifts); or (iv) to lift and to weigh the loads (weighing trucks) ('the product concerned').

The product under investigation is hand pallet trucks and their essential parts, as defined in the above paragraph, consigned from Thailand ('the product under investigation') normally declared under the same codes as the product concerned.

([1]) OJ L 56, 6.3.1996, p. 1.

B. EXISTING MEASURES

The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Regulation (EC) No 1174/2005 ([2]), as amended by Regulation (EC) No 684/2008 ([3]).

C. GROUNDS

The Commission has at its disposal sufficient prima facie evidence that the anti-dumping measures on imports of hand pallet trucks and their essential parts originating in the People's Republic of China are being circumvented by means of assembly operations in Thailand of the product under investigation.

The prima facie evidence at the Commission's disposal is as follows:

— a significant change in the pattern of trade involving exports from the People's Republic of China and Thailand to the Community has taken place following the imposition of measures on the product concerned, and there is insufficient due cause or justification other than the imposition of the duty for such a change,

— this change in the pattern of trade appears to stem from assembly operations in Thailand of hand pallet trucks and their essential parts,

— furthermore, the evidence points to the fact that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation from Thailand appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures,

— finally, the Commission has sufficient prima facie evidence at its disposal that the prices of hand pallet trucks and their essential parts are dumped in relation to the normal value previously established for the hand pallet trucks and their essential parts.

([2]) OJ L 189, 21.7.2005, p. 1.
([3]) OJ L 192, 19.7.2008, p. 1.

Should circumvention practices covered by Article 13 of the basic Regulation, other than the ones mentioned above, be identified in the course of the investigation, the investigation may cover these practices also.

D. **PROCEDURE**

In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of hand pallet trucks and their essential parts consigned from Thailand, whether declared as originating in Thailand or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) **Questionnaires**

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Thailand, to the importers and to the associations of importers in the Community which cooperated in the investigation that led to the existing measures and to the authorities of the People's Republic of China and Thailand. Information, as appropriate, may also be sought from the Community industry as well as from the exporters/producers in the People's Republic of China.

In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation and, if necessary, request a questionnaire within the time limit set in Article 3(1), given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

The authorities of the People's Republic of China and Thailand will be notified of the initiation of the investigation.

(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 and show that there are particular reasons why they should be heard.

(c) **Exemption of registration of imports or measures**

In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

Since the possible circumvention takes place outside the Community, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers of the product under investigation that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

E. **REGISTRATION**

Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports.

F. **TIME LIMITS**

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

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Thailand may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the parties making themselves known within the time limits mentioned in Article 3 of this Regulation.

G. **NON-COOPERATION**

Where an interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

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

H. **PROCESSING OF PERSONAL DATA**

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 [1].

I. **HEARING OFFICER**

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of the Directorate-General for Trade (Trade DG). He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this investigation, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of Trade DG (http://ec.europa.eu/trade),

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community of hand pallet trucks and their essential parts, i.e. chassis and hydraulics, consigned from Thailand whether originating in Thailand or not and falling within CN code ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 11 and 8431 20 00 11), are circumventing the measures imposed by Regulation (EC) No 1174/2005, as amended by Regulation (EC) No 684/2008. 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 (scissorlifts); or (iv) to lift and to weigh the loads (weighing trucks).

Article 2

The customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96, to take the appropriate steps to register the imports identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the anti-dumping duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Producers in the Thailand requesting exemption from registration of imports or measures should submit a request duly supported by evidence within the same 40-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 40-day time limit.

5. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for exemption from registration of imports or measures must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' [2] and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 04/090
B-1040 Brussels
Fax (32-2) 295 65 05.

[1] OJ L 8, 12.1.2001, p. 1.

[2] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

Article 4

This Regulation shall enter into force on the day following 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, 12 September 2008.

For the Commission
Peter MANDELSON
Member of the Commission