



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.8.2006  
COM(2006) 472 final

Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam**

(presented by the Commission)

## 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 certain footwear with uppers of leather originating in the People's Republic of China and Vietnam.

- **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**

There are no existing provisions in the area of the proposal.

- **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 already 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 foresee a general impact assessment but the requirement that the measures should not be contrary to the "Community interest" means that the assessment of the wider impact of the measures forms an integral part of the investigation.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 7 July 2005, the Commission announced by a notice ('notice of initiation'), published in the *Official Journal of the European Union*<sup>1</sup>, the initiation of an anti-dumping proceeding concerning imports into the Community of certain footwear with uppers of leather originating in the People's Republic of China ('PRC') and Vietnam.

The anti-dumping proceeding was initiated following a complaint lodged on 30 May 2005 by the European Confederation of the Footwear industry ('CEC') containing evidence of dumping and of material injury resulting there from.

On 6 April 2006, the Commission imposed, by Regulation (EC) No 553/2006, a provisional anti-dumping duty on the imports into the Community of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam.

The enclosed Commission proposal for a Council Regulation contains the definitive conclusions regarding dumping, injury, causality and Community interest.

Member States were consulted during the Anti-Dumping Committees of 19, 20 and 27 July 2006. 9 Member States were in favour of the proposed course of action and 14 opposed.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* on 6 October 2006 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.

- **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 reason(s).

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

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<sup>1</sup> OJ C 166, 7.7.2005, p. 14.

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, but the basic Regulation limits the level of the duties that may be imposed to that necessary to redress the injury caused by the dumping found.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

### **imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam**

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 (the 'basic Regulation')<sup>2</sup>, as last amended by Regulation (EC) No 2117/2005<sup>3</sup> and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

#### **A. PROCEDURE**

##### **1. Provisional Measures**

- (1) On 23 March 2006, the Commission imposed by Regulation (EC) No 553/2006<sup>4</sup> ('the provisional Regulation') a provisional anti-dumping duty on the imports into the Community of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam ('the countries concerned' or 'the exporting countries'). This Regulation entered into force on 7 April 2006.
- (2) It is recalled that the investigation of dumping covered the period from 1 April 2004 to 31 March 2005 ('investigation period' or 'IP') and that the examination of trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the investigation period ('period considered').

##### **2. Subsequent procedure**

- (3) Following the imposition of a provisional anti-dumping duty on imports of certain footwear with uppers of leather from the countries concerned, all parties received a disclosure of the facts and considerations on which the provisional Regulation was

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<sup>2</sup> OJ L 56, 6.3.1996, p. 1.

<sup>3</sup> OJ L 340, 23.12.2005, p. 17.

<sup>4</sup> OJ L 98, 6.4.2006, p. 3.

based. All parties were granted a period within which they could make representations in relation to these disclosures.

- (4) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.
- (5) The Commission's services further disclosed all the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly. Furthermore, an additional disclosure was provided with regard to a change in the envisaged form of measures.
- (6) Various interested parties reiterated their claim that by not disclosing the name of the complainants, their right of defence was not preserved. This issue was already raised previously (see recital (8) of the provisional Regulation). The matter was reviewed at definitive stage and the following is to be noted: the production volume of the complainants, broken down by countries, was disclosed to those interested parties that made claims regarding standing. Therefore it is considered that their right of defence was adequately preserved. This information was subsequently also made available for inspection to all interested parties.

## **B. PRODUCT CONCERNED AND LIKE PRODUCT**

### **1. Product concerned**

- (7) It is recalled that, as set out in recital (10) of the provisional Regulation, the product concerned by this proceeding, is footwear with uppers of leather or composition leather originating in the PRC and in Vietnam, other than:
  - Sports footwear within the meaning of subheading note 1 to Chapter 64 of the combined nomenclature, i.e. (i) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, and (ii) skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes;
  - slippers and other indoor footwear (falling within CN codes 6403 59 50, 6403 99 50 and ex 6405 10 00);
  - footwear with a protective toecap, i.e. footwear incorporating a protective toecap with an impact resistance of at least 100 joules<sup>5</sup> (falling within CN codes: ex 6403 30 00, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403

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<sup>5</sup> The impact resistance shall be measured according to European Norms EN345 or EN346.

91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00).

- (8) In addition, on the basis of the elements set out in recitals (12) to (27) of the provisional Regulation, it was provisionally concluded that certain high tech sports footwear, i.e. Special Technology Athletic Footwear ('STAF'), should be excluded from this definition.
- (9) Furthermore, it was decided to provisionally treat children's shoes as forming part of the product concerned, although this was subject to further investigation and consideration at the definitive stage.
- (10) The interested parties were invited to comment on those specific issues. Given the comments they provided with respect to the above, and further requests for exclusion of other specific types of footwear, those claims have been analysed in detail below.

### **1.1. Special technology athletic footwear ('STAF')**

- (11) It is recalled that STAF, as defined under recital (13) of the provisional Regulation was excluded from the definition of the product concerned.
- (12) This exclusion was based on the fact that such type of footwear has different basic physical and technical characteristics, is sold via different sales channels, and has a different end use and consumer perception.
- (13) The Community footwear industry contested the exclusion of STAF from the product scope claiming STAF footwear has the same sales channels and consumer perception as the product under investigation. Furthermore, in case STAF footwear should nevertheless be excluded from the product scope of the investigation, it was stressed that the minimum STAF value of 9 € in the current TARIC definition should be brought to a higher level, taking into account the devaluation of the dollar vis-à-vis the Euro, which occurred over the years.
- (14) In reply to these submissions, it is first of all noted that the Community industry did not contest that STAF have different basic physical and technical characteristics. Secondly, as regards sales channels, use, consumer perception and import trends, the Community footwear industry did not put forward any substantiated arguments that could change the findings in recitals (15) to (18) of the provisional Regulation. Furthermore, the claim for an increase of the 9,00 € threshold was not further substantiated by any evidence.
- (15) Several importers requested to lower the minimum value of STAF from 9,00 € to 7,50 € essentially due to changed circumstances in terms of cost reducing production processes.
- (16) These submissions have been analysed with care as well. It is recalled that the 9 € threshold was established in the TARIC nomenclature in 1994, when STAF was introduced in the framework of the quota on footwear originating from China, i.e. 12 years ago. Furthermore, the importers sufficiently substantiated with evidence that new production technologies have led to both a significant cost reduction per STAF

unit and a reduction of waste in material and energy. Combined with higher competition due to an increased offer of STAF production, another price lowering factor, this has indeed impact on price levels as compared to the situation 12 years ago, which cannot be disregarded. A moderate reduction of the STAF threshold of 1,5 € is considered reasonable and necessary to reflect those changes.

- (17) Moreover, various exporters claimed that the STAF definition should be broadened by including all footwear with uppers of leather and with Ethylene-Vinyl Acetate (EVA) soles and/or direct moulding within its scope.
- (18) However, in reply to these submissions, it should be underlined that the use of the EVA moulding technique as such did not clearly distinguish the end product from the product concerned. Moreover, it was explained that the moulding technique, as applied to EVA soles, could also be used for footwear that were clearly not STAF. In addition, no evidence was provided showing that the distinction based on different physical and technical characteristics, different sales channels, use and consumer perception and different import trends would not be appropriate. Finally, the definitions of EVA as proposed by various importers were clearly in contradiction with each other. Therefore, this proposal regarding the definition of STAF was rejected.
- (19) In conclusion, the exclusion of STAF from the definition of the product concerned in the provisional Regulation is confirmed. Furthermore, the minimum value for STAF should be lowered from 9,00 € to 7,50 €. In the absence of further comments, the findings of the provisional Regulation on STAF as set out in recitals (13) to (19) of the provisional Regulation are hereby confirmed. STAF of not less than 7,5 € is therefore definitively excluded from the proceeding.

## **1.2. Children footwear**

- (20) Children's footwear, i.e. footwear with insoles of a length of less than 24 cm, and with a sole and heel combined having a height of 3 cm or less falling within the CN codes: ex 6403 20 00, ex 6403 30 00, 6403 51 11, 6403 51 91, 6403 59 31, 6403 59 91, 6403 91 11, 6403 91 91, 6403 99 31, 6403 99 91 and ex 6405 10 00 was not subject to provisional anti-dumping measures, because provisional findings were not such as to warrant such measures on Community interest grounds.
- (21) In recitals (28) to (31) of the provisional Regulation, no definitive conclusion whether or not to include children's shoes in the definition of the product concerned had been drawn yet. Although some arguments were considered to possibly exclude children's footwear from the product scope of the investigation, these arguments did not allow a definitive conclusion at that stage of the investigation. It was therefore decided to treat children shoes as part of the product concerned pending further investigation and consideration at the definitive stage.
- (22) Following disclosure of the provisional findings, certain interested parties claimed that children's footwear should be excluded from the product scope of the investigation. These claims were based on the assumption that in particular style, design, sales channels and customer service, as addressed in recitals (30) and (31) of the provisional Regulation, clearly divided children's shoes from other types of footwear falling within the scope of the current investigation.



- (23) However, those claims were deemed insufficient to exclude children's footwear from the definition of the product concerned because they were not substantiated with sufficient evidence showing that in this investigation a clear dividing line could be drawn between children's footwear and other footwear types within the scope of the investigation. In fact, to the contrary it was found that the essential physical and technical characteristics of children's footwear which were common to those of the product concerned –a combination of leather uppers with different types of soles to protect the feet- were much more important than any differences (i.e. essentially size). Furthermore, it appeared that styling, design, sales channels and consumer service were not fundamentally different from other footwear types under investigation. Just the mere fact that children's footwear form a distinctive product sub-group within the scope of the product concerned does not warrant the exclusion from the product scope. Indeed, it was found that there is no clear dividing line between children's footwear and the product concerned, but that there is rather a large overlap regarding the definition of the product concerned, notably that it is a device to cover and protect the feet of human beings essentially for walking purposes.
- (24) In its reaction to the disclosure of the provisional Regulation, the Community industry claimed that children's footwear should be part of the product concerned. In particular, evidence was submitted proving that there was still an important production of children's footwear in the Community.
- (25) The submission of the Community industry only confirms the definitive findings. It is therefore definitively concluded that children footwear should be included in the definition of the product concerned.

### **1.3. Other requests for exclusions**

- (26) Several interested parties claimed that certain other types of footwear within these CN codes were too different, in particular in terms of use, to belong to the same category of products. These claims are analysed below.
- (i) 'Hiking', 'climbing' and other outdoor shoes
- (27) Within the meaning of the Combined nomenclature, 'hiking', 'climbing' and other outdoor shoes ('hiking shoes') are not considered as a sporting activity and therefore these shoe types fall outside the definition of STAF footwear as defined in recital (13) of the provisional Regulation. However, certain parties requested that this product be excluded from the scope of the proceeding because (i) the requirements for such hiking shoes are allegedly very similar to STAF specifications, (ii) hiking shoes can allegedly be clearly distinguished from other footwear types in terms of sales channels and consumer perception and (iii) paying more duties on hiking footwear would have allegedly a detrimental effect on this specific market.
- (28) No additional evidence concerning specific technicalities and characteristics of hiking shoes was submitted to change the conclusion of recital (34) of the provisional Regulation which states that, although various types of footwear, f.e. hiking footwear, may indeed have some additional different specific characteristics, the basic characteristics of also this type of footwear remain identical. Furthermore, it was found that 'hiking' shoes are widely produced in the Community and that a clear dividing line between the imported 'hiking shoes' and Community production could

not be drawn. This was also confirmed by the decision to include the same type of footwear in the product scope regarding Council Regulation (EC) No 2155/97<sup>6</sup>. Although hiking shoes may sometimes have specific characteristics, they share the same basic physical and technical characteristics of other footwear covered by the product scope. Furthermore, as regards their use and consumer perception, it was also found that there is a large overlap with other types of footwear covered by the product definition. Accordingly, it is considered that 'hiking shoes' should remain within the scope of the investigation.

(ii) Footwear with mechano-therapeutic applications

- (29) One importer requested the exclusion of certain footwear with mechano-therapeutic applications. Although the product currently falls within CN code 6403 99 93, 6403 99 96 and 6403 99 98, it was claimed that this type of footwear should be excluded from the scope of the proceeding, because it has allegedly different physical and chemical characteristics, different sales channels and different consumer perception as a certified medical product, authorised to be sold as medical devices for mechano-therapeutic applications.
- (30) It was found that this type of footwear should be considered as part of the product concerned. Although this product has a distinctive technology and application which might be applied for medical purposes, these specific features do not clearly and structurally differ from the product concerned. This is underlined by the fact that this type of footwear is also purchased by consumers who purchase it for their convenience, rather than for specific medical reasons, which was even acknowledged in the claim as submitted by the importer.
- (31) For the above reasons it is considered that the claim to exclude footwear with mechano-therapeutic applications should be rejected.

(iii) EVA beach sandals

- (32) EVA beach sandals ('EBS') are shoes the upper of which is limited to a strip of leather material, this upper being attached to both sides of a thick lightweight sole, made of a combination of EVA and other materials. Certain interested parties claimed that such a product should be excluded from the scope of the present investigation since they allegedly have very specific and distinctive basic physical and technical characteristics that make them easy to recognize as beach sandals and, hence, have a different end use and consumer perception than other types of footwear covered by the product definition. Furthermore, it was alleged that the technology applying to EBS had been completely moved out of Europe.
- (33) In this respect it was found that, while EBS indeed have some specific characteristics, they share the same basic physical and technical characteristics of other footwear covered by the product scope. Furthermore, as regards their use and consumer perception, it was also found that there is a large overlap with other types of footwear covered by the product definition, e.g. thongs and clogs. Moreover, sales channels, marketing, fashion etc. were found to be the same as for other types of footwear

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<sup>6</sup> OJ L 289, 1.11.1997, p. 1.

covered by the product definition. In addition, the Community industry submitted evidence showing there is still a significant production of EBS in the EC. Consequently, it is considered that this claim for exclusion should be rejected.

(iv) Pigskin leather shoes

- (34) One interested party claimed that footwear with pigskin leather uppers should be excluded from the scope of the investigation because of alleged quality and price differences and an alleged lack of EC production with such kind of uppers.
- (35) However, a clear distinction between the imported pigskin leather footwear and Community production could not be made, as both show the same basic physical and technical characteristics and use. Furthermore, the sales channels proved to be generally the same which was also reflected in the fact that consumers do not perceive pigskin leather shoes differently. The claim was therefore rejected.

(v) Patented technology footwear

- (36) One interested party claimed that certain patented technology footwear should be excluded from the scope of the investigation, i.e. a technology consisting of a special shock absorbing heel, a cushioning mid-sole and a special technology that increased the flexibility of this type of footwear.
- (37) However, when comparing this footwear type with the product concerned, a clear dividing line could not be drawn with regard to the basic physical and technical characteristics and uses of this type of footwear and the product concerned. While it is acknowledged that a patented technology may contribute to increasing comfort it does not by itself substantially change the characteristics of being footwear for ordinary usage. Moreover, the fact that certain technology is patented is as such not a reason to justify its exclusion from the product scope. Hence, even though it is acknowledged that this product may have special features, it remains in competition with EC production of the product under investigation. Therefore, this claim was rejected.

(vi) Non STAF sports footwear

- (38) Certain interested parties claimed that all types of sports footwear, thus not only STAF and sports footwear within the meaning of subheading note 1 to Chapter 64 of the Combined Nomenclature, should be excluded from the proceeding. These allegations are based on the same claims made for the exclusion of STAF and the alleged shortage of certain non-STAF footwear on the EC market should these types of footwear not be excluded. The latter claim was not substantiated with concrete evidence. Therefore, no new compelling information was submitted to change the conclusion in recital (27) of the provisional Regulation regarding the remaining types of non-STAF footwear. The claim was therefore rejected.

#### **1.4. Conclusion**

- (39) Consequently, the provisional conclusions, modified as set out under B. 1.1. above, are therefore definitively confirmed. For the purposes of this proceeding and in accordance with consistent Community practice, it is therefore considered that all types of the product concerned should be regarded as forming one single product.

## **2. Like product**

- (40) Since no comments were received regarding the like product, the contents and provisional conclusions are hereby confirmed.
- (41) In view of the above, it is definitively concluded that, in accordance with Article 1(4) of the basic Regulation, the product concerned and all corresponding types of footwear with uppers of leather produced and sold in the in the analogue country Brazil, as well as those produced and sold by the Community industry on the Community market are alike.

## **C. SAMPLING**

### **1. Sampling for exporting producers in the PRC and Vietnam**

- (42) Some parties argued that the samples were not representative given the exclusion of STAF and children's shoes.
- (43) As mentioned in recital (61) of the provisional Regulation, the exclusion of the STAF products did not influence significantly the representativeness of the sample. As regard children's shoes, the argument is irrelevant in view of the decision to keep these types of shoes in the scope of the investigation.
- (44) Comments were made with regard to the sample percentages as established in the context of provisional measures. These comments were taken into account. Including children's shoes, it was established that the companies selected in the samples accounted respectively for more than 12 % and more than 15% of the export quantities to the Community of the Chinese and Vietnamese cooperating exporting producers of the product concerned. Consequently, the sample is clearly representative. Reference is also made to the arguments set out in recital (56) below.
- (45) It was also claimed that the selection of the samples was inconsistent with the WTO Anti-dumping Agreement ('ADA'), since certain major exporters were chosen at the expense of the companies with smaller or non existent EC sales, but relatively large domestic sales.
- (46) As already explained in recital (60) of the provisional Regulation, the methodology applied intended to ensure the highest possible representativeness of the samples and to include within the largest representative volume of exports that could reasonably be investigated within the time available, some companies with representative domestic sales. This should allow a calculation of normal value on this basis in case some sampled exporting producers would qualify for Market Economy Treatment ('MET'). The samples were not selected in contradiction with the WTO rules nor with Article 17 of the basic Regulation according to which the sample must be either a statistically valid one or must include the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. Therefore, the above mentioned rules allow the use of sales, domestic and/or for export, as a selection criterion.

- (47) Moreover, it is recalled that as explained in recitals (57) and (58) of the provisional Regulation, the authorities of the countries concerned gave their full agreement to the samples chosen.
- (48) Some interested parties also claimed that agreement on the composition of the sample for the PRC should rather have been sought with the authorities of Hong Kong and Taiwan, given that Chinese producers are largely owned by shareholders in these countries. Therefore, parties in these countries were allegedly concerned by the proceeding.
- (49) This argument had to be rejected. It is the consistent practice of the Community to seek agreement with the authorities of the exporting country and/or the associations of producers in anti-dumping proceedings where sampling techniques are applied, in accordance with Article 17(2) of the basic Regulation. Moreover, in the present case the State authorities of the countries concerned were in close contact with the associations of producers of the countries. Exporting countries in the current proceedings are the PRC and Vietnam. Therefore, the agreement of these authorities on the sample compositions was indeed sought and obtained.
- (50) One non-sampled Vietnamese exporting producer reiterated its comments that since it had duly completed an anti-dumping questionnaire it should have benefited from individual examination. Nevertheless, the fact that a non-sampled party submits an anti-dumping questionnaire reply does not automatically lead to individual examination. Indeed, as it has been explained under recital (64) of the provisional Regulation, in view of the unprecedented size of the samples the Commission concluded that individual examination of additional exporting producers would have been unduly burdensome and would have prevented completion of the investigation in good time.
- (51) Finally, parties claimed that the selection of representative domestic sales in the sample is inappropriate since none of the exporters qualified for MET. This argument was however deemed irrelevant since the decision on MET is taken subsequently to the selection of the sample.
- (52) The claim was therefore rejected and in the absence of any further comments on this issue, it is concluded that the samples were representative.

## **2. Sampling for Community producers**

- (53) Various interested parties claimed a breach of the Article 17 of the basic Regulation, alleging that the sample of Community producers is not representative. This claim is based on the fact that only ten companies were selected in the sample, and that those companies merely represent 10% of the overall production volume of the complainants, and only a minor proportion of the overall Community production - i.e. less than 5% - given that the complainants in this case represent slightly more than 40% of the overall Community production. Moreover it is claimed that certain trends observed for the sampled Community producers are not similar to those observed for the overall complainants, and that the sample would thus not be representative.

- (54) An association of importers also claimed that the sample of Community producers is not statistically valid, and that consequently a negligible proportion of Community producers were subject to verification visits.
- (55) In this respect, it is recalled that Article 17 of the basic Regulation sets out that investigations may be limited to samples which are either statistically valid, or which constitute the largest representative volume of production, sales, or exports which can be reasonably investigated.
- (56) It is clear from the wording of this provision that there is no quantitative indication or threshold as to what constitutes the level of the representative volume. The only indication is that such volume should be limited to what can reasonably be investigated within the time available.
- (57) Due to the specific circumstances of the case, i.e. given that the Community industry is highly fragmented, it is unavoidable that the companies in the sample cover a relatively small portion of the overall Community production. As explained in recital (65) of the provisional Regulation the Commission selected a sample based primarily on the size in terms of production volume, but also took into account the geographical location of producers in order to ensure that the sample be representative in that respect. The number of companies selected in the sample had however to be limited to what could be reasonably investigated within the time available, i.e. ten companies in this case. Given the high degree of fragmentation of the industry, and given that the larger producers were selected in the sample, further increasing the number of companies would in any event not have had a significant impact on the proportion of the sample as compared to the overall Community production. In this context it is further noted, contrary to the allegation made by some parties, that there is no legal obligation to include small and medium sized enterprises as defined by the relevant EC law in the sample as follows from the wording of Article 17(1) of the basic Regulation.
- (58) As explained above, the choice of the sample should be either statistically valid or based on representative volume. Since this second method was chosen in this case, the claim that the sample is not statistically valid was rejected. Likewise, the fact that allegedly some trends observed for the sampled Community producers were not similar to those observed for the overall complainants and that a small proportion of Community producers were subject to verification visits do not constitute legally valid arguments to put the validity of the sample into question.
- (59) For the reasons explained above, the claims made by the various parties were rejected and the legal validity of the sample is hereby confirmed since the sample is representative and was selected in full compliance with Article 17 of the basic Regulation.

## D. DUMPING

### 1. Market economy treatment ('MET')

#### 1.1. General remark

- (60) Certain interested parties claimed that the Commission failed to disclose on an individual basis for each of the non-sampled Chinese and Vietnamese exporters, why they are considered not to be entitled to MET. According to their claim, which they reiterated upon definitive disclosure, the Commission is obliged to make individual determinations with regard to submitted MET claims irrespectively whether an exporter is sampled or not. They considered that the methodology applied deprives the non-sampled companies from their right to an individual assessment and constitutes a violation of Article 2(7)(b) and 2(7)(c) of the basic Regulation.
- (61) However, it is considered that the existing provision on sampling (Article 17 of the basic Regulation), fully encompasses the situation of companies claiming MET. Indeed, whether it be in market economy countries or in economies in transition, exporters are by the nature of the sampling exercise denied individual assessment and the conclusions reached for the sample are extended to them. Article 17 of the basic Regulation sets out a general method to deal with situations where an individual examination is no longer possible due to the high number of companies involved i.e. the use of a representative sample. There is no reason why the sampling method could not equally be applied to the situation where the high number of companies involved includes a high number of companies requesting MET/IT. Like in any other sampling case, a weighted average of all sampled companies is established, regardless of the methodology applied for the dumping calculation in respect of each company as a result of the MET/IT assessment. MET/IT should thus not prevent the application of normal sampling techniques. The key rationale of sampling is to balance administrative necessities to allow a case assessment in due time and within the margin of mandatory deadlines, with an individualised analysis to the best extent possible. Finally, it is recalled that the number of requests for MET in this case was so substantial that an individual examination of the requests – as sometimes done in other cases – was administratively impossible. Therefore, it was considered reasonable to apply equally to all non-sampled companies the weighted average margin resulting from all the companies in the sample with no distinction being made between companies obtaining MET/IT or not. It has also been alleged that the dumping calculation was insufficiently reliable because sampling of MET claims had been used. This claim has to be rejected. First of all, there was no sampling of MET claims but sampling of exporting producers. Secondly, the provisions on sampling are designed to ensure a sufficiently reliable determination as to whether or not there is dumping in a case of a large number of exporting producers. Thirdly, in cases where exporting producers have also submitted MET claims there is no reason to conclude that the use of the routinely applied sampling technique would lead to an insufficiently reliable determination. Indeed, it runs counter the very concept of sampling to argue that because of the fact that (non-sampled) exporters should be classified as either MET or non-MET, a sample of such a population would per se be unrepresentative. As in any other anti-dumping investigation, the individual situation of exporters is never identical. Important differences can exist between producers and sampling can nevertheless be applied. Fourthly, the classification of a company as being non-MET

means only that the normal value cannot be established on the basis of the company's own data but that a viable alternative has to be used. However, to resort to viable alternatives has also to be done in other important areas of the dumping determination, see e.g. Article 2(1) and Article 2(6) of the basic Regulation. Fifthly, the representativity of the sample is further underlined by the fact that the governments of the exporting countries themselves have proposed the vast majority of the companies chosen in the sample. In other words, they themselves have considered these samples as representative for the totality of their exporting producers.

- (62) Some exporting producers from the PRC and Vietnam still argued that the Commission did make individual MET assessments in previous cases where the number of exporting producers was high. In such cases, e.g. “polyester apparel filaments” (Council Regulation (EC) No 1487/2005 of 12 September 2005)<sup>7</sup>, individual MET assessments had been made although for the purpose of the dumping assessment sampling techniques in accordance with Article 17 of the basic Regulation had been used.
- (63) In that regard, however, it is recalled that in the above mentioned case an individual examination of the MET requests was found to be still feasible, while this was not the case in this investigation. Moreover, it is noted that in the above mentioned case, in accordance with the rules on sampling, companies not selected in the sample but awarded MET were given the weighted average margin of companies with MET in the sample, i.e. they were not granted any individual margin but they were granted a weighted average margin found for companies with MET.
- (64) In previous cases where sampling was used and MET was claimed by co-operating exporters, the numbers involved were such as to allow for an individual examination for each claim. In view of the unprecedented number of MET requests received it was not possible to assess each claim individually. Other exporters, outside and inside the sample, re-iterated that they should have been granted MET. To support their claims, some of them submitted their Articles of Associations (AoA) in order to demonstrate that their case was not different from Golden Step, the only company that was awarded MET.
- (65) In this respect it is noted that the sampling provisions of Article 17 of the basic Regulation were applied in this proceeding. Subsequent submissions of non-sampled exporting producers were not examined as, in accordance with Article 17(3) of the basic Regulation, this would have been unduly burdensome and would have prevented completion of the investigation in good time. As regards subsequent claims of sampled companies these are dealt in the relevant paragraphs below dealing with specific points relating to each of the two countries concerned by this proceeding.
- (66) Some of the exporting producers argued that the Commission did not make an assessment on MET within three months after the proceeding was initiated, as provided by Article 2(7)(c) last subparagraph of the basic Regulation.
- (67) Although the MET assessment was made later than three months after the initiation of the case, exporting producers in the sample were provided with separate disclosures on

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<sup>7</sup> OJ L 240, 16.9.2005, p. 1.



their MET status and given full right of defence. Certainly, parties are not negatively affected by any MET determination made before the imposition of provisional measures.

- (68) Some of the exporting producers which already requested individual examination reiterated their request. However, for the reason explained in recital (64) of the provisional Regulation, no individual examination of exporting producers in the PRC nor Vietnam could be granted.
- (69) Consequently, as explained in recitals (53) to (63) of the provisional Regulation, in view of the large number of exporting producers in the PRC and in Vietnam which co-operated, a representative sample was used to establish the duty to be applied to the co-operating exporters not selected in the sample like in all anti-dumping cases.

## **1.2. MET determination regarding exporting producers in the PRC**

- (70) Following the imposition of provisional measures, the twelve Chinese exporting producers selected in the sample and verified on-spot claimed that they should have been granted MET and reiterated the arguments they had previously submitted.
- (71) One out of these twelve companies, namely Golden Step ('GS') also claimed upon provisional disclosure a substantial change further to the examination of its MET claim and provided evidence. It is recalled that GS's MET claim was rejected because it failed to meet criterion 1 of Article 2(7)(c) of the basic Regulation. In particular, the rejection was based on the existence of an export obligation that entailed that GS was not free to determine its sales quantities without significant State interference. However, upon disclosure of the MET findings, GS submitted, within the binding deadlines to provide disclosure comments, evidence demonstrating that it is de facto and de jure not subject to an export sales obligation.
- (72) Duly considering the changed circumstances in case of GS and the fact that the rejection of MET had only been based on GS failing criterion 1, it was decided to review the original decision and to award MET to GS.
- (73) Some producers concerned by the MET rejection argued that the reference to sales restrictions in AoA did not lead to the MET rejection in other anti-dumping proceedings. It should firstly be noted that the MET analysis is made case by case on the basis of the facts submitted and no such alleged contradiction to other recent MET analyses with a comparable set of facts exists. On the contrary, in the case referred to, the exporting producer submitted in due time a changed version of its AoA which did not include sales restrictions and it demonstrated that it was de facto not subject to such sales restrictions.
- (74) Other parties claimed that the rejection of MET to Chinese shoe exporters was not in compliance with WTO rules, notably because exports from China are no longer subject to a state monopoly, as required by the second supplementary provision to Article VI paragraph 1 of Annex 1 to GATT 1994 as a condition for contracting parties to deviate from determining normal value on the basis of normal value data stemming from the export countries.

- (75) When the above mentioned supplementary note was introduced, the PRC, among other countries, was indeed considered to have a state monopoly on exports. Since then consideration has been given to the economic reforms in China which have led to a different treatment of China in trade defence proceedings. Presently, Section 15 of China's Accession Protocol to the WTO makes specific provisions as to how Chinese exports should be treated in trade defence proceedings. The provisions laid down therein indeed allow WTO members to use "a methodology that is not based on a strict comparison with domestic prices or costs in China ... if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product".
- (76) In the case of the other eleven companies part of the sample, it is noted that no new reasons were submitted in due time that would have been apt to alter the decision to reject MET to them.
- (77) In this context it is in particular noted that the submission of changed AoA, no longer containing sales restrictions, of two sampled Chinese exporting producers only subsequent to definitive disclosure was made too late to be taken into consideration, since at that time insufficient time remained for verification in accordance with Article 16(1) of the basic Regulation. In any event, however, the companies concerned failed to meet the MET standard not just because of sales restrictions (criterion 1).
- (78) The other comments of these companies were already addressed in recitals (69) to (77) of the provisional Regulation. Consequently, the findings and conclusion contained therein are hereby confirmed and the decision to reject MET to the eleven companies is maintained.

### **1.3. MET determination regarding exporting producers in Vietnam**

- (79) Following the imposition of provisional measures, seven of the Vietnamese exporting producers selected in the sample claimed that they should have been granted MET and reiterated the arguments they had previously submitted without providing sufficient new evidences. These comments were already addressed in recitals (78) to (90) of the provisional Regulation. Consequently, the findings set out in the aforesaid recitals of the provisional Regulation are hereby confirmed and the decision to reject MET to the eight companies is maintained.
- (80) Two sampled Vietnamese exporting producers claimed that they should have been granted MET since the reasons used in order to grant MET to GS applied to them. According to their understanding they were not granted MET because of (i) the sales restrictions in the business license ('BL') and the AoA and (ii) the existence of a contract between a related firm and a 100% state owned firm. The companies submitted that such circumstances applied also to the Chinese exporting producer GS and therefore the determination with regard to them should have been identical to that of GS.
- (81) It should be noted that, according to the explanations given in recitals (78) to (90) of the provisional Regulation, the two Vietnamese firms were not granted MET because they did not fulfil criteria 1, 2 and 3 of Article 2(7)(c) of the basic Regulation. In this respect it is noted that these two firms hold investment licenses which imposed

quantitative sales restrictions. These restrictions were not removed either during the IP or thereafter. Furthermore, as it is explained under recital (89) of the provisional Regulation, the two companies did not provide an MET claim form for one of their related producers in Vietnam. It was therefore not possible to establish that the group as a whole fulfils all the conditions for MET. The fact that this related firm had a processing contract agreement with a state owned company was not used in the MET determination since the Commission was not in a position to conclude on a non-submitted MET claim form. It is therefore concluded that the actual situation referring to these two Vietnamese exporting producers has no similarity with GS. Hence the arguments put forward had to be rejected.

## **2. Individual treatment ('IT')**

### **2.1. IT regarding exporting producers in the PRC**

- (82) Following the imposition of provisional measures, some of the Chinese exporting producers selected in the sample claimed that they should have been granted IT and reiterated the arguments they had previously submitted, without providing any new evidence in due time. In this context it is in particular noted that the submission of changed AoA, no longer containing sales restrictions, of two sampled Chinese exporting producers was only made subsequent to definitive disclosure. This was too late to be duly verified in accordance with Article 16(1) of the basic Regulation.
- (83) Consequently, for reasons already stated in recital (94) of the provisional Regulation, these claims had to be rejected.
- (84) Other Chinese exporting producers claimed that the refusal to grant IT to Chinese exporting producers constituted a violation of Section 15 of the China-WTO Accession Protocol and respectively of Article 6(10) of the ADA.
- (85) This had to be rejected. First of all the ADA is not directly applicable in the Community. Secondly, Article 6(10) ADA only sets out the general rule of exporters being allotted individual margins. However, where non-market economy conditions apply, derogations from the general rule are equally provided by WTO law, e.g. by the second supplementary provision to Article VI paragraph 1 of Annex 1 to GATT 1994. The situation of Chinese exporters is indeed more specifically addressed by the China-WTO Accession Protocol. However, no obligation to allot individual margins to exporting producers can be derived from Section 15 of that Protocol.
- (86) For the same considerations, parties claimed that Article 9(5) of the basic Regulation, setting out the rules on individual treatment is in conflict with WTO Law.
- (87) This had to be rejected, not only because WTO rules are not directly applicable in the Community but also because they do not preclude the two step methodology of (i) MET and (ii) IT.
- (88) Four Chinese exporters reiterated their claims on individual examination, as referred to in recital (7) of the provisional Regulation. It was argued that where a sample of twelve Chinese companies could be investigated it should be practicable to investigate four more.

- (89) However, for the reasons already stated in recital (64) of the provisional Regulation, these claims were rejected.
- (90) Another exporting producer came forward to request IT after the imposition of provisional measures. That producer had started operation after the end of the original IP. For the same reason as aforementioned, an individual assessment of the merits of this company's claim could not be made. Moreover, it was also found that its AoA contained an export obligation. In addition, it benefited from tax incentives dependent on its exports exceeding a certain proportion of its total sales. In these circumstances, it would not have been possible, in any event, to grant IT to this company.

## **2.2. IT regarding exporting producers in Vietnam**

- (91) Following the imposition of provisional measures, six of the Vietnamese exporting producers selected in the sample claimed that they should have been granted IT.
- (92) The companies which were not granted IT on the basis of Article 9(5)(a) of the basic Regulation, merely reiterated their claim that their export quantities are freely determined. It is recalled that their export sales quantities were fixed in the companies investment licenses and could therefore not be considered as freely determined by the companies since any deviation from the ratio stipulated in their investment license would require beforehand a modification of this latter which would need to be approved by the authorities. Although these exporters claimed that the ratio is freely determined by the company on the basis of economic considerations, it is considered that there is no reason for an export ratio to be stipulated in an investment license thereby explicitly forbidding a company from selling part of its production on the domestic market. In such circumstances, the company concerned is no longer free to decide whether at any time it prefers to sell more on the domestic market than the quantity allowed by its license, since it is subject to a preliminary agreement from the authorities.
- (93) One of the companies which was not granted IT on the basis of Article 9(5)(c) of the basic Regulation claimed that the Commission decision to reject IT was not sufficiently substantiated. However, this company is a 100% State-owned company and consequently the majority of shares do not belong to private persons but to the State which also nominates the management. In addition, this company was found to be related to a company which did not fulfil the requirements for MET nor IT. Given that if different duty rates were to be applied to these two related companies there would be a risk of circumvention of measures and given the consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET or IT, it could therefore not be established that the group as a whole fulfils all the conditions for IT.
- (94) Under these circumstances, the conclusions drawn in recital (97) of the provisional Regulation are confirmed.
- (95) The two last companies did not provide any new evidence.
- (96) Consequently, for the same reason as those explained in the recital (97) of the provisional Regulation, it was considered that the decision to reject IT to the eight Vietnamese companies should be maintained.

(97) As regards IT claims by exporting producers not part of the sample, reference is made to the relevant paragraph above.

### **3. Normal value**

#### **3.1. Determination of the normal value for the exporting producer granted MET**

(98) The normal value determination for the sole exporting producer granted MET should be based on the data it submitted on domestic sales and cost of production. These data were verified at the premises of the company concerned.

(99) As far as the determination of normal value is concerned, the Commission first established, that the exporting producer in question made no domestic sales during the investigation period. Therefore, normal value could not be established on the basis of the relevant exporting producer's domestic prices, as provided by Article 2(1), subparagraph 1, of the basic Regulation. Accordingly, another method had to be applied.

(100) To that end, it was checked whether the prices of other sellers or producers in the PRC could be used pursuant to Article 2(1), subparagraph 2, of the basic Regulation. However, no other exporting producer in the PRC had been awarded MET. Therefore, the use of domestic prices of such exporting producers was not possible.

(101) Given that no domestic prices could be used to establish normal value, a constructed normal value had to be calculated based on the costs of the producer in question. Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported shoe model, adjusted where necessary, a reasonable amount for selling, general and administrative ('SG&A') expenses and a reasonable margin of profit.

(102) Since the exporting producer with MET did not perform any domestic sales and since no other Chinese exporting producer had been awarded MET, SG&A and profit had to be determined on the basis of any other reasonable method pursuant to Article 2(6)(c) of the basic Regulation.

(103) Consequently, the Commission used SG&A and profit rates from Chinese exporting producers that recently obtained MET in other investigations and which had domestic sales in the ordinary course of trade as stipulated by Article 2(2) of the basic Regulation.

(104) The SG&A and profit average rates found in these investigations were compounded on the cost of manufacturing incurred by the exporting producer in question with regard to the exported models.

#### **3.2. Determination of the normal value established in the analogue country**

(105) Some parties argued that it was not appropriate to have chosen Brazil as analogue country allegedly as the sole or main reason on the basis of the representativeness of the domestic sales, in this country compared to alternatively suggested analogue countries.

- (106) First, it should be stressed that the representativeness of the domestic sales is not the sole reason for having chosen Brazil. It is recalled that other factors such as the competition on the Brazilian market, the difference in the costs of production structures including the access to raw materials and the know-how of the Brazilian producers were analysed in the recitals (109) to (123) of the provisional Regulation and led to the same conclusion. Incidentally, the choice of Brazil was found to be even more appropriate given the decision to exclude STAF from the product scope, since contrary to the other countries proposed by the above mentioned parties, the Brazilian companies hardly produce STAF. As regards other factors invoked by interested parties, such as the socio-economic and cultural developments or the labour costs, they were not deemed relevant for determining whether Brazil is an appropriate analogue country. Moreover, in terms of economic development Brazil is not very different from other proposed analogue countries such as Thailand and Indonesia. The choice of Brazil was therefore not deemed unreasonable.
- (107) Moreover, although the sole fact that the domestic sales of the analogue country were below the minimum level of 5% does not necessarily signify that that country would be inappropriate, a figure of less than 2% for domestic sales in the case of the Thai and the Indonesian companies that were proposed by some parties, nevertheless amounts to an indication that those markets are less representative than that of Brazil.
- (108) In addition, the level of the domestic sales, although not the sole reason for having chosen Brazil, was however particularly relevant in this specific case given the large number of different types of shoes which are produced in the countries concerned and which need to be compared to the footwear produced in the analogue country that most closely resembles the footwear produced in the countries concerned.
- (109) Some parties claimed that the use of closely comparable product control numbers ('PCN') used by the Commission to make its preliminary determination would not provide an accurate and fair comparison of export prices with normal values. It is noted that obviously not all PCNs sold by the exporting countries could be matched in Brazil. In these circumstances, to resort to the most closely resembling PCNs for the purpose of making a fair comparison is deemed the most reasonable approach. In addition, adjustments (e.g. children's shoes, leather quality) were made to address material differences in features between the shoes exported by the exporting countries and the closely resembling types sold in Brazil. These features were either not envisaged by the PCN scheme at the early time of its creation or were not fully embodied in the available data submitted by interested parties.
- (110) It is further recalled that all sales of leather footwear by the co-operating Brazilian producers are higher than the total sales of producers willing to co-operate from the proposed other analogue countries of Indonesia, India and Thailand. It was therefore considered that the range of the products manufactured by the Brazilian companies was likely to be larger than those manufactured in the other countries considered. Consequently, the likelihood of finding Brazilian shoe types comparable with Chinese/Vietnamese shoe types was deemed to be more likely.
- (111) Indeed the six Thai companies, the two Indonesian companies and the Indian company respectively reported total sales (i.e. domestic and exports) of less than 8 million pairs (i.e. less than 5% of the exports concerned) while the eight Brazilian companies which cooperated reported total sales of more than 40 million pairs, from which more than 18

million pairs for the sole three companies whose data were used. Under these circumstances, it is obvious that the likelihood of finding models produced by the Brazilian companies comparable to the models sold by the countries concerned is higher than with the Thai, Indian or Indonesian companies.

- (112) One party argued that the range of the Brazilian production is not as wide and diversified as the production of the countries concerned. However, in view of the above, it can be reasonably assumed that the product range of the Brazilian companies which provided the necessary information and whose sales (domestic and export) were found to be 6 to 13 times larger than those reported by the Indian, Indonesian or Thai companies, is wide and diversified.
- (113) Interested parties also referred to an alleged contradiction between recital (108) of the provisional Regulation which stated that “Brazil appeared to be the most reasonable choice in view of the representativeness of its domestic sales which permitted to avoid construction of the normal value and possible numerous adjustments” and recital (123) of the provisional Regulation which concluded that the difference in the quality of the leather used by the companies selected in the sample and the Brazilian producers “is not a reason to reject Brazil as a suitable analogue country as an adjustment for a difference in physical characteristics can be made to take into account any difference in the quality of the leather”.
- (114) However, there is no contradiction since recital (108) of the provisional Regulation only states that the choice of Brazil is more suitable because fewer adjustments will be required than for other potential analogue countries. Furthermore, it is obviously not possible at an early stage of the investigation to know exactly which adjustments will eventually be required in order to make an appropriate comparison. Similarly, such adjustments would probably also have been necessary, had another country been chosen as an analogue country. However, given the insufficient representativeness of the domestic sales of the other countries proposed and given also the likely thin range of their production, it can reasonably be assumed that their normal value would have to be constructed and that more adjustments would have been necessary to make Thai, Indonesian or Indian models comparable to those produced in the countries concerned than it was the case with the Brazilian domestic sales prices.
- (115) As regards the economic development and the income per capita, while they are normally deemed irrelevant, it is recalled as mentioned in recital (115) of the provisional Regulation that on the basis of the World Bank’s main criteria for classifying economies is gross national income per capita, Brazil is classified in the same category as the PRC, Thailand and Indonesia. Moreover, neither labour costs concerning the sampled exporting producers in the PRC nor in Vietnam were as such, compared to the conditions of the sampled producers in Brazil, that this could have warranted an adjustment. It is also noted that nominal differences in costs between the analogue country and the exporting country concerned are not as such relevant. Indeed, as costs and prices are in general not considered as a viable basis for determining normal value in countries falling under Article 2(7) of the basic Regulation, such comparison in fact defeats the purpose of resorting to the methods set out in Article 2(7)(a) of the basic Regulation.
- (116) Some parties argued that Brazil is not an appropriate analogue country due to the alleged subsidies given to the footwear producers in the northern territories. According

to these parties, these subsidies aimed at attracting footwear production to the northern part of Brazil thus affecting the competitiveness of the market.

- (117) First, it should be noted that this allegation was not supported by any evidence.
- (118) In addition, the companies used for the determination of the normal value were not located in the Northern territories but in the South and could therefore not be affected by these alleged subsidies.
- (119) Finally, should these state interventions exist as described by the exporters, that mechanism would only prevent other companies from setting up a factory in the same area but not to sell their product in certain parts of the Brazilian market. The shoe market is certainly neither a local nor a regional market but rather a national and even worldwide market. Therefore, the fact that a company may receive subsidies to set up a factory in a remote area does not prevent competition especially on a market of 7 000 producers. Even though costs might eventually be affected by the alleged state subsidies, these should in all likelihood only have a downward effect on sales prices which would tend to reduce normal value and thus any dumping margins.
- (120) In addition, in view of the reasons provided for in recital (109) of the provisional Regulation and particularly the fact that there are more than 7 000 producers in Brazil, the competition on the Brazilian market was not deemed inappropriate to reject Brazil as an analogue country.
- (121) On the basis of the above and since the claim was not further substantiated, the claim was therefore rejected.
- (122) It was therefore concluded that Brazil was an appropriate analogue country for the purpose of establishing the normal value as already concluded in recital (124) of the provisional Regulation.

### **3.3. Export price**

- (123) In the absence of any comments by interested parties the methodology set out in recitals (128) to (130) of the provisional Regulation is hereby confirmed.
- (124) Some parties argued that the findings should not have been based on export prices of companies in the samples when calculating the country-wide dumping margin. Findings should have rather been based on the country wide export volume (e.g. Eurostat data).
- (125) This had to be rejected. It is recalled that the sampling provisions stipulated under Article 17 of the basic Regulation were applied in this particular proceeding. Therefore only export prices of the sampled companies were used. For sampled companies that did not meet the MET/IT criteria one weighted average dumping margin was calculated. Furthermore, as explained under recital (135) of the provisional Regulation, this weighted average dumping margin applies to co-operating non-sampled companies in accordance with Article 9(6) of the basic Regulation. In addition, as co-operation was high the same dumping margin was applied to all other Chinese exporting producers as well.



### 3.4. Comparison

- (126) Some parties claimed that not all details relevant to conduct the comparison of export prices had been disclosed. In particular, the adjustments made to the normal values determined on the basis of Brazilian data had not been quantified according to these parties.
- (127) Having duly considered all comments received by interested parties and duly revised the files, it was found appropriate to make a correction to the adjustments made on leather costs, as addressed in recital (132) of the provisional Regulation. It was found that the producers in the exporting countries, particularly those in China, were selling leather footwear of higher quality than Brazilian producers did on their domestic market. The difference in the quality of shoes was essentially due to a higher quality of the leather used. The quality difference was also mirrored in the purchase price of the leather used: the leather of the footwear exported from China and Vietnam was more expensive than that used in Brazil to manufacture domestically-sold shoes. For this purpose, the value of leather inputs of analogue country producers were compared to the corresponding values of leather inputs used by Chinese and Vietnamese producers that were part of the sample. It was found that most of the leather used by Chinese and Vietnamese producers had been imported from market economy countries. Therefore, an average including world market prices was used to determine the adjustment. The relevant calculation was made separately for the two exporting countries. The value difference of leather inputs was multiplied by the share of leather in the total cost of production. The subsequent adjustments upwards to the normal value amounted to 21.6% (PRC) and 16.4% (Vietnam).
- (128) Some parties argued that it was not appropriate to make adjustments on the leather quality where it was found that the cost of production in the export countries was distorted due to the fact that all but one of the exporters in those countries had not been granted MET.
- (129) This had to be rejected. It is true that MET was rejected also because state influence was found that impacted on costs/prices. However, as noted above, it was found that leather had been imported from market economy countries.
- (130) Some parties argued that the Commission did not disclose the exact figures on which basis the adjustment was calculated and why the leather adjustment had to be revised after the provisional determination.
- (131) However, the revision on the leather adjustment is explained above. Furthermore, the Commission disclosed to all companies concerned by this proceeding the necessary details underlying the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures.
- (132) Some interested parties claimed that no research and development ('R&D') adjustment should have been applied on the normal value, because similar amounts of R&D were incurred by the Chinese and Vietnamese producers.
- (133) However, it was found that R&D costs incurred by the sampled producers from the countries concerned related only to production R&D, whereas the Brazilian R&D

covered design and samples of new footwear models, i.e. such type of R&D is different and therefore it is considered necessary to keep this adjustment.

- (134) One other party also claimed that an adjustment should be made to take into account that the profit made with sales to original equipment manufacturers ('OEM') generates less profit than other sales.
- (135) However, this allegation was not supported by the findings of the investigation in the Brazilian companies where such difference did not exist. Moreover, any difference between sales to OEM and own brand sales, is already taken into account in the adjustment made to allow for the R&D cost difference. The claim was therefore rejected.
- (136) It is further noted that an adjustment with regard to children's shoes was necessary. None of the Brazilian producers manufactured children's shoes. It can be observed, e.g. by Eurostat import data, that children's shoes are in general cheaper than adults' shoes. This can be ascribed to the smaller size of children's shoes and consequently smaller quantity of raw material required for their production. Consequently, an adjustment was applied on the basis of the proportional price differences between children's and adult's shoes sold by the Community industry. The adjustment amounts to 33.2% on the normal value.
- (137) Some parties claimed that this adjustment has not been adequately explained. Furthermore, it was stated that the only factor justifying the price difference is the difference in sizes and subsequently the amount of raw materials used. Such an assumption was erroneous according to those parties. In this respect it is noted that the adjustment made with regard to children's shoes was fully disclosed to the parties and is set out above. Furthermore, parties that regarded this adjustment erroneous failed to provide any better alternative method that could be used and ensure comparison of export prices and normal values on a fair basis.
- (138) In the absence of further comments the findings in recital (131) to (133) of the provisional Regulation are hereby confirmed.
- (139) Some parties argued that the PCN scheme did not allow for a fair comparison. In particular, parties claimed that the PCN scheme used was too broad and not based on product-specific physical characteristics. According to those parties this allegedly constituted a violation of Article 2(4) of the ADA. It was further argued that general adjustments (on the leather quality) did not provide sufficient compensation for this alleged flaw.
- (140) These arguments had to be rejected. Indeed Article 2(4) of the ADA, as well as Article 2(10) of the basic Regulation, mandates a fair comparison. However, these provisions do not provide any details with regard to the design of PCNs. It is recalled that it is the long-standing practice of the EC to facilitate the comparability between the product concerned and the like product by using PCNs which subdivide the product into types/models according to certain features or technical specifications. In the present case five such elements have been taken into consideration, i.e. style of footwear, type of consumer, type of footwear, material of the outer sole and lining. These elements sufficiently reflect the essential characteristics of the product concerned. Furthermore, it is noted that no legal obligation is set neither by the basic Regulation nor by the

ADA to make use of any PCNs in anti-dumping investigations. In the present case, in line with the principle of a fair comparison, one and the same PCN scheme has been consistently used to classify models of the product concerned manufactured and sold by producers in the Community, the export countries and the analogue country, for the sake of comparing Community prices, export prices and normal values on a fair basis.

- (141) Furthermore, it was found that indeed the leather quality issue, which was not covered by the PCN scheme affected the prices and price comparability of the product concerned. Leather usually makes up for 50% or more of a leather shoe's total cost of production. Depending on the type, quality and quantity of leather used, the leather cost may vary to a significant degree but the cost differences were found to be reflected accordingly in sales prices. For the purposes of comparing normal value with the export prices and for the undercutting/underselling calculations, an appropriate adjustment for differences in the physical characteristics was made in line with Article 2(10)(a) of the basic Regulation.
- (142) Other parties observed huge price differences within certain PCNs, which in their view indicated a flaw in the PCN scheme.
- (143) The price differences could be due to various circumstances like market fluctuations, specific price pressure in case of oversupply etc. and willingness to dump etc. In any event, what matters with regard to the application of the PCN scheme is that is consistently applied for all parties concerned by the case. Price differences can be due to a number of factors, such as fashion trends and market psychology, which do not necessarily put into question the comparability of products within the same PCN. More importantly, the parties failed to identify any better and yet practical methodology to facilitate the comparability. As already noted any price differences due to different leather qualities have been taken into account by making appropriate adjustments. The claim had therefore to be rejected.
- (144) Other parties argued that since it was decided to exclude STAF from the scope of the product concerned this footwear type should have been identified separately by the PCN scheme.
- (145) When in the present case the need arose to exclude STAF from the product concerned scope, a reasonable and consistent methodology was applied vis-à-vis all exporting producers to exclude their respective STAF sales from the scope of the investigation. The intention to exclude STAF from the scope of the product concerned was communicated to all parties concerned long before the provisional disclosure took place. Neither after that communication nor upon disclosure of the provisional findings has any exporting producer submitted revised data which would have allowed a better identification of its STAF sales in its transaction listings. Under these circumstances, the PCN methodology used in order to exclude STAF sales is deemed reasonable and appropriate.

### **3.5. Dumping margins**

#### *3.5.1. General methodology*

- (146) Some interested parties claimed that not distinguishing between co-operating companies and non co-operating companies gives a bonus for non-cooperation.

However, as explained in recital (139) of the provisional Regulation, the level of co-operation was high and consequently, consistent with standard practice, it was considered appropriate to set the dumping margin for any non-cooperating exporting producers at the level of the weighted average dumping margin established for cooperating exporting producers in the sample in the countries concerned. In the absence of comments the general methodology used to establish the dumping margins as described in recitals (134) to (143) of the provisional Regulation is hereby confirmed.

### 3.5.2. *Dumping margins*

#### **a) People's Republic of China**

- The dumping margin for GS is 9.7%, expressed as a percentage of the CIF import price at the Community border;
- The definitive country wide dumping margin, expressed as a percentage of the CIF import price at the Community border is 28,9%.

#### **b) Vietnam**

- The definitive country wide dumping margin, expressed as a percentage of the CIF import price at the Community border is 70.1%.

## **E. INJURY**

### **1. General**

- (147) As at the provisional stage, and in view of the above definitive conclusions concerning the product scope, all figures related to STAF have been excluded from the data analysed below. Following the request of certain exporting producers, it is hereby confirmed that such exclusion has been equally applied to both the imports from the countries concerned and those from the other third countries as well as to the data relating to the Community industry.
- (148) However, given the above definitive conclusion that children's footwear should be included in the scope of the product concerned, the definitive analysis of injury has been made for the totality of the product concerned, i.e. including children's shoes.

### **2. Community production**

- (149) An association of importers reiterated its claim that if the complainants, who they allege merely assemble in the Community footwear components from non-Community sources, are considered being Community producers, then the importers that maintained design, branding, R&D, management and retail activities in the Community should also be considered Community producers.
- (150) This claim was already addressed in the recital (148) of the provisional Regulation where it was concluded that only the companies active in the production/manufacturing in the Community qualify as Community producers. The products traded by the importers are, amongst others, produced in China and Vietnam and do not qualify for EC origin, are subject to import duties, and those operators in the Community therefore cannot be considered Community producers.

(151) In the absence of new information, those conclusions are hereby confirmed, and it is definitively concluded that the producers mentioned in recital (146) of the provisional Regulation constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

### **3. Definition of the Community industry**

(152) The definition of Community industry was questioned by various exporting producers, importers and an association of importers on the grounds that the non-sampled companies did not co-operate during the investigation, e.g. by providing a reply to the sampling questionnaire and that therefore the legal requirement on standing of the complaint was not fulfilled throughout the investigation. For those reasons, they alleged that the 814 complainants could not legally constitute the Community industry.

(153) Reference was also made to various Council Regulations whereby complainant producers who failed to co-operate properly were excluded from the definition of the Community industry.

(154) In this respect, it should be noted that pursuant to Article 4(1) of the basic Regulation, the term Community industry shall be interpreted as referring to Community producers whose collective output of the like products constitutes a major proportion as defined in Article 5(4) of the basic Regulation. Article 5(4) further gives a definition of this major proportion, i.e. that those Community producers expressly supporting the complaint should account for not less than 25% of the total Community production and more than 50% of the total production of the like product produced by that portion of Community producers expressing either support for or opposition to the investigation.

(155) In this specific case, the complainant Community producers represented more than 40% of the Community production, and according to the above legal requirements, they are deemed to constitute the Community industry. In addition no producer opposed the complaint.

(156) It is correct that it is the Institutions usual practice that the complainant Community producers who failed to co-operate satisfactorily during the investigation will normally be excluded from the definition of the Community industry, and that the aforementioned thresholds should also be fulfilled at the time when measures are adopted.

(157) However, in this case, none of the 814 Community producers was found not to co-operate satisfactorily with the investigation. As a matter of fact and as clearly outlined in the notice of initiation, questionnaires were only sent to the sampled Community producers, and replies were received from all of them. Therefore if the non-sampled complainant producers did not submit any reply to the questionnaire for sampled producers, it is simply explained by the fact that they were not requested to do so.

(158) It follows from the very nature of sampling that full injury questionnaires are only sent to the sampled complainant Community producers and, according to the provisions of Article 6(2) of the basic Regulation, only parties receiving a questionnaire should provide a reply. The claims made by the various interested parties were rejected on the basis of the above elements, and the conclusions set out in recital (152) of the

provisional Regulation is confirmed: the 814 complainant Community producers are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation, and they are hereinafter referred to as the 'Community industry'.

#### 4. Community consumption

(159) One exporter questioned the level of the Community consumption, on the basis that it appears to be lower in Europe than in developing countries. This claim was however not further substantiated, and thus rejected. In the absence of other claims, the methodology used for the calculation of the Community consumption is hereby confirmed.

(160) The apparent Community consumption including children's footwear developed as follows:

	2001	2002	2003	2004	IP
Consumption (000 pairs)	718.186	646.843	669.686	699.604	714.158
<i>Index: 2001=100</i>	100	90	93	97	99

*Source: Eurostat, information contained in the complaint.*

(161) This development is comparable to the consumption established at provisional stage, i.e. excluding children's footwear.

#### 5. Imports from the countries concerned

##### 5.1. Cumulative assessment of the effects of the dumped imports concerned

(162) The table below shows the import volumes, market shares and average unit prices of both countries concerned individually, including children's footwear:

##### Import volume and market shares

	2001	2002	2003	2004	IP
PRC (000 pairs)	15.571	14.616	25.810	30.662	63.044
<i>Index: 2001=100</i>	100	94	166	197	405
market shares	2,2%	2,3%	3,9%	4,4%	8,8%
Vietnam (000 pairs)	51.414	59.898	83.334	103.177	102.604
<i>Index: 2001=100</i>	100	117	162	201	200
market shares	7,2%	9,3%	12,4%	14,7%	14,4%

##### Average prices

	2001	2002	2003	2004	IP
PRC €/pair	11,6	11,3	8,6	7,3	7,2
<i>Index: 2001=100</i>	100	97	74	63	62
Vietnam €/pair	11,9	11,2	9,9	9,3	9,2

<i>Index: 2001=100</i>	100	94	83	78	78
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- (163) Certain interested parties claimed that the cumulative assessment is not warranted. This allegation is based on the fact that trends in import volume and prices differ between China and Vietnam. In addition it was claimed that Vietnam is one of the world's poorest countries, benefiting from the Generalised System of Preference ('GSP'), and that it should therefore not be cumulated with China for the injury assessment.
- (164) The first claim was already made previously and duly addressed in the provisional Regulation. More specifically, concerning import trends in terms of volume and prices, the table in recital (160) of the provisional Regulation clearly indicated that those trends followed similar patterns. It is also noted that the inclusion of children's footwear does not alter those trends. In any event, and in addition to those import trends, the provisional Regulation set out in detail the various reasons why the cumulative assessment is appropriate in the light of the conditions of competition between imported and the like Community product. This is for example because imported products are alike in terms of their basic characteristics, interchangeable from the consumer's point of view and distributed via the same distribution channels.
- (165) As concerns Vietnam, there is no provision in the basic Regulation stipulating that one of the countries simultaneously subject to anti-dumping investigations should not be cumulated because of its overall economic situation. More specifically, such an interpretation would also not be in line with the object and purpose of the provisions on cumulation which focus on whether the imports from the various sources compete with each other and the like Community product. In other words, the characteristics of the traded products matter but not the situation of the country from which the imports originate. The situation of the exporting country has to be addressed in conformity with the provisions of Article 15 of the ADA and the basic Regulation but not in the context of cumulation. Therefore, this claim was rejected.
- (166) An association of importers also claimed that the cumulation is not warranted on the grounds that the product mix of the two countries concerned is different. In this respect, it is considered that even though certain differences in product mix may exist between both countries, there is still a significant overlap, and thus it is considered that overall the product concerned originating in China and in Vietnam do overall compete against each other. Reference is also made to the above conclusions that all types of the product concerned should be considered as one single product for the purpose of this proceeding, and that all types of leather footwear produced and sold by the Community industry are alike to those exported from the countries concerned to the Community. This argument was therefore rejected.
- (167) On the basis of the provisional findings set out in recitals (156) to (162) of the provisional Regulation and the above, it is hereby definitively concluded that all conditions of cumulation set out in Article 3(4) of the basic Regulation are met and that accordingly the effect of the dumped imports originating in the countries concerned should be assessed jointly for the purpose of the injury analysis.

## 5.2. Volume, market share and price development of the dumped imports concerned

### a) Volume and prices

- (168) The table below shows the development of the import volume and market shares of the product concerned originating in the countries concerned, including children's footwear.

	2001	2002	2003	2004	IP
Imports (000 pairs)	66.986	74.514	109.144	133.840	165.648
<i>Index: 2001=100</i>	100	111	163	200	247
Market share	9,3%	11,5%	16,3%	19,1%	23,2%

*Source: Eurostat*

- (169) The trends and absolute figures are comparable to those analysed at provisional stage: the import volume more than doubled, and the market share significantly expanded from 9,3% in 2001 to 23,2% during the IP. It should be noted that there is a significant overlap between 2004 and IP (April 2004 to March 2005), and therefore the above table shows that there was an acceleration of imports during the first quarter of 2005. As can be seen from the above table, this is particularly due to the development of the Chinese imports.
- (170) Import prices, including children's footwear, decreased by almost 30% during the period considered, similarly to what was established at provisional stage.

	2001	2002	2003	2004	IP
EUR/pair	11,8	11,2	9,6	8,8	8,5
<i>Index: 2001=100</i>	100	95	81	74	72

*Source: Eurostat*

- (171) Certain importers claimed that the decrease of the import prices is explained by changes in the product-mix. This was however not substantiated and was also not confirmed by the investigation. This claim was therefore rejected.

### b) Comments by the interested parties

- (172) Certain interested claimed a breach of Article 3(2) of the basic Regulation on the grounds that the Commission did not carry out an objective examination of the volume and the prices of the dumped imports. They justified their allegation on the grounds that external factors such as the lifting of the import quota, development of exchange rate, alleged changes in product mix and fashion development have not been taken into consideration when examining import trends.
- (173) Specifically concerning the lifting of the quota, this claim was already addressed in recital (165) of the provisional Regulation. It is acknowledged that the lifting of the quota had exacerbated the import trends to a certain extent. This should however also be seen in the light of the fact that only one of the two countries concerned was directly concerned by this quantitative limitation and that imports from Vietnam also



followed increasing trends, that not all product types covered by this investigation were subject to quota, and finally that the total liberalisation of imports took place as of 1 January 2005, and therefore the IP (April 2004 to March 2005) was only partially affected.

- (174) More generally, Article 3(3) of the basic Regulation provides that the analysis of injury specifically includes the question whether there has been a significant increase of dumped imports, and whether there has been significant price undercutting, or whether the effect of the dumped imports is otherwise to depress prices to a significant degree or to prevent price increases which otherwise would have occurred.
- (175) On this basis, it would appear that the *sedes materiae* of the aforementioned claims is in the context of causation. Moreover, there is no explicit legal requirement in Article 3(3) of the basic Regulation that positive evidence should be given as the reasons why the volume of dumped imports increased, and the corresponding prices decreased. The claim that external factors should be taken into account in the examination of the dumped imports was therefore rejected.

### **5.3. Undercutting**

- (176) Various comments were received with respect to the undercutting calculations. Those claims were analysed in detail, and the necessary amendments to the calculations have been applied where justified and supported by factual evidence.
- (177) It is recalled that at the provisional stage adjustments to the import price were made which reflected the estimated costs that are incurred in the Community by the importers, such as design, selection of raw material etc, and which would otherwise not be reflected in the import price. Various importers requested this adjustment. An estimated adjustment of 15% was applied at the provisional stage.
- (178) The association representing the Community industry however contested such adjustment, and more specifically the level of the adjustment applied. While they conceded that certain costs are indeed incurred at the level of the importers, the association contested the fact that all importers indeed incur such costs. Moreover, they claimed that the level of the adjustment might be justified in the case of STAF importers (incurring high R&D expenses) but, given that such footwear was excluded from the proceeding, the level of the adjustment should be revised downwards.
- (179) This claim has been carefully examined, and the following conclusions were drawn. Firstly as concerns the adjustment in itself, it was requested by many importers and, in principle, not opposed by the Community industry.
- (180) As to the level of the adjustment, it should be noted that although many importers did indeed request such adjustment, only one importer, which was also subject to a verification visit, submitted detailed information in that respect. The other importers of the product concerned could not support the claim that their level of R&D costs reached the level of the adjustment applied at a provisional stage. It should be noted that some importers subject to a verification visit mostly traded STAF. As STAF is now definitively excluded from the product scope, their figures were ultimately not relevant for the purpose of the adjustment.

- (181) At the definitive stage, in the absence of substantiated claims by the vast majority of the importers (irrespective of whether or not subject to a verification visit), the level of the adjustment has been revised downwards, and estimated on the basis of the only substantiated data that was made available during the investigation.
- (182) On the basis of the above the revised undercutting margins found, by country, and expressed as a percentage of the Community industry's prices, are as follows:

<b>Country</b>	<b>Price Undercutting</b>
PRC	On weighted average 13,5%
Vietnam	On weighted average 15,9%

## **6. Peculiarities of the footwear sector in the Community**

- (183) In the provisional Regulation, certain information was given with respect to the peculiarities of the footwear sector in the Community. Various interested parties claimed that such data should not be taken into consideration because they are either not reliable, or that they do not exclusively refer to the situation of the Community industry, thus have no legal basis.
- (184) In this respect, it should be clarified that the information in recitals (169) to (173) of the provisional Regulation was provided only for indicative purposes, in order to provide a better understanding of the Community footwear sector. It should be noted however that the findings concerning injury are made in relation to the Community industry as defined above and that no further reference to this information will be made in the injury analysis.

## **7. Situation of the Community industry**

### **7.1. Preliminary remarks**

- (185) As already mentioned above, the injury analysis at the definitive stage includes data related to children's footwear.
- (186) As mentioned in the recital (175) of the provisional Regulation, and following the usual practice, the injury indicators have been established either at macro-economic level (based on data for the whole Community industry) or at micro-economic levels (based on data of the sampled companies). For the sake of coherence, injury indicators are established exclusively at one of those two levels, but not at both.

### **7.2. Macro-economic indicators**

#### **Production, production capacity and capacity utilisation**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Production (000 pairs)	266.931	218.498	206.246	189.341	175.764
<i>Index: 2001=100</i>	<i>100</i>	<i>82</i>	<i>77</i>	<i>71</i>	<i>66</i>

*Source: information established during the investigation*

- (187) The production volume of the overall Community industry went down from 267 million pairs in 2001 to 176 million pairs during the investigation period. This represents a decrease of more than 30%.
- (188) Although a factory is theoretically designed to achieve a certain production level, this level will strongly depend on the number of workers hired by this factory. Indeed, as explained above, most of the footwear manufacturing process is labour intensive. Under those circumstances, for a stable number of companies, the best way to measure capacity is to examine the level of employment of those companies. Reference is therefore made to the table concerning the development of employment below.
- (189) As employment (and hence capacity) decreased broadly in line with production, capacity utilisation remained by and large unchanged throughout the period.

#### **Sales volume and market share**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Sales (000 pairs)	190.134	150.389	145.087	133.127	126.555
<i>Index: 2001=100</i>	100	79	76	70	67
Market shares	26,5%	23,2%	21,7%	19,0%	17,7%

*Source: information established during the investigation*

- (190) Because production takes place on order, the sales volume of the Community industry followed a decreasing trend similar to the production. The number of pairs sold on the Community market dropped by more than 60 million between 2001 and the IP, i.e. by 33%.
- (191) In terms of market shares, this corresponds to a loss of almost 9 percentage points. The Community industry market shares dropped from 26,5% in 2001 to 17,7% during the IP.

#### **Employment**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Total employees	84.736	69.361	66.425	61.640	57.047
<i>Index: 2001=100</i>	100	82	78	73	67

*Source: information established during the investigation*

- (192) Employment dramatically decreased during the overall period considered. More than 27 000 jobs were lost within the Community industry, representing a decrease of 33% in the IP as compared to the 2001 level.

#### **Productivity**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Productivity	3.150	3.150	3.105	3.072	3.081

<i>Index 2001=100</i>	<i>100</i>	<i>100</i>	<i>99</i>	<i>98</i>	<i>98</i>
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*Source: information established during the investigation*

- (193) Productivity was established by dividing the production volume with the Community industry's workforce, as reported in the above tables. On this basis, the Community industry's productivity remained relatively stable during the period considered.

#### **Growth, magnitude of dumping margin**

- (194) In the absence of any new and substantiated information or argument in this particular respect, recitals (183) and (184) of the provisional Regulation are hereby confirmed.

#### **Recovery from the effects of past dumping or subsidisation**

- (195) It is recalled that anti-dumping measures against imports of certain footwear with uppers of leather or plastics originating in PRC, Indonesia and Thailand were imposed in February 1998. Those measures had an overlapping scope with the products subject to the present investigation. Further to the publication of a notice of impending expiry of those measures, no request for a review was received, and the measures accordingly lapsed in March 2003. In the provisional Regulation, it was considered that in the absence of a review request, the Community industry had, at that time, recovered from the effects of past dumping.

- (196) This was however refuted by the Community industry, on the grounds that the absence of a review request was not motivated by any recovery of the injurious effects of dumping, but rather by the fact that the measures in place were not sufficiently effective. It claimed that, contrary to what was set out in the provisional Regulation, the economic situation of the Community industry could not satisfactorily recover because the measures in place at that time were not sufficiently efficient to remove injury. In addition the imports from the countries concerned by this proceeding became significant in the period 2001 to 2003.

- (197) However, the Community industry did not sufficiently substantiate that it sustained material injury during the period 2001 to 2003 and any alleged ineffectiveness of the earlier measures could have been addressed by an interim review, which was not requested.

- (198) This claim was thus rejected, and the provisional conclusion that the industry recovered from the effects of past dumping is therefore confirmed at this definitive stage, i.e. until 2003 the Community industry did not yet sustain material injury. However, it should be noted that as of 2004 it did.

### **7.3. Micro-economic indicators**

#### **Stocks**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
000 pairs	2.188	2.488	2.603	2.784	2.503
<i>Index: 2001=100</i>	<i>100</i>	<i>114</i>	<i>119</i>	<i>127</i>	<i>114</i>

*Source: verified questionnaire replies*

- (199) As already mentioned, stocks are deemed to have little bearing on the state of the Community footwear industry for the determination of injury since production is to order. In theory, therefore, stocks are not held, and only result from processed orders that have not yet been delivered and/or invoiced. On that basis, the stock level first increase between 2001 and 2004, i.e. by 27%, and then decreased at the end of the IP. This decrease during the IP is also to be seen in the context of the seasonality of the sector. Indeed, it is expected that the level of stock is higher in December than at the end of the first quarter of the year, i.e. in this case the end of the IP.

#### **Sales prices**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
EUR/pair	19,7	19,3	18,5	18,6	18,2
<i>Index: 2001=100</i>	<i>100</i>	<i>98</i>	<i>94</i>	<i>95</i>	<i>92,5</i>

*Source: verified questionnaire replies*

- (200) The average unit sales price continuously declined during the period considered. Overall, the decrease was of 7,5%. The Community industry price depression may seem limited, especially as compared to the decrease of 30% dumped import prices over the period considered. It should however be seen in the context that footwear is produced on order, and therefore new orders are normally accepted only if the corresponding price level allows for, at least, a break even. In this respect, reference is made to the table below showing that, during the IP, the Community industry could not further lower its prices without incurring losses.

#### **Cash flow, profitability and return on investments**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Cash-flow (000€)	13.943	10.756	8.575	10.038	4.722
<i>Index: 2001=100</i>	<i>100</i>	<i>77</i>	<i>61</i>	<i>72</i>	<i>34</i>
% Profit on net turnover	1,6%	1,8%	0,2%	1,8%	0,5%
Return on investments	6,1%	7,3%	1,0%	8,2%	2,3%

*Source: verified questionnaire replies*

- (201) The above return indicators confirm the picture described in recital (190) of the provisional Regulation and show a clear weakening of the financial situation of the companies during the period considered. It is recalled that the overall deterioration was especially marked during the IP and indicates significant adverse developments during the first quarter 2005, i.e. the last quarter of the IP. In fact, the already low level of profitability at the beginning of the period considered further decreased dramatically.
- (202) In the absence of any new substantiated information or argument in this particular respect, recitals (191) to (193) of the provisional Regulation are hereby confirmed.

- (203) The overall level of profit remained at a low level during the overall period considered and emphasizes the financial vulnerability of those SMEs. As detailed below, the level of profit achieved during the period considered, and especially during the investigation period is far below the normal level of profit that the industry could achieve under normal circumstances.

#### **Ability to raise capital**

- (204) The investigation showed that capital requirements of several Community producers have been adversely affected by their difficult financial situation. This is stressed by the development of their individual level of profit and especially the deterioration of their cash flow. As explained above, relatively small and medium sized companies are not always in a position to provide sufficient bank guarantees and may have difficulties to face the significant financial expenses that would result from a precarious financial situation.

#### **Investments**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
'000 EUR	8.836	11.184	6.522	4.403	4.028
<i>Index: 2001=100</i>	<i>100</i>	<i>127</i>	<i>74</i>	<i>50</i>	<i>46</i>

*Source: verified questionnaire replies*

- (205) The trend for investments as established in recital (194) of the provisional Regulation is confirmed by the trends as shown in the above table. The investments consented by the companies decreased by more than 50% between 2001 and the IP. The decrease in investments is to be seen in relation with the deterioration of the financial situation of the Community producers in the sample.

#### **Wages**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>IP</b>
Avg. salaries and wages per person (€)	14.602	15.933	18.021	17.610	17.822
<i>Index: 2001=100</i>	<i>100</i>	<i>109</i>	<i>123</i>	<i>121</i>	<i>122</i>

*Source: verified questionnaire replies*

- (206) The trends of the provisional Regulation in recital (196) with regard to wages are confirmed by the table above. In the absence of any new information those trends are confirmed.

#### **7.4. Claims of the interested parties**

- (207) Several exporting producers claimed that the profit margin of the Community industry was a crucial indicator for the injurious situation of the Community injury. In particular, it was alleged that, as the profit margin used at provisional stage for the purposes of establishing the injury elimination level (i.e. 2% - see recital (284) of the provisional Regulation) was in line with that achieved by some individual companies in the sample, this showed that they were not injured with regard to this indicator.

- (208) This is no longer relevant since, after further analysis, as set out in recital (292), the profit margin was adjusted to 6%, thereby reflecting more appropriately an achievable profit margin for Community footwear producers in the absence of injurious dumping. On this basis, profitability of the Community industry clearly decreased over the period considered and in any event, profitability fell as low as 0.5% in the IP. Moreover, the injury analysis is carried out at the level of the Community industry, or a sample thereof, and thus not individually at the level of the companies included in the definition of the Community industry.
- (209) Various interested parties argued that the indicators used for the injury analysis were not reliable or not appropriate. They alleged that the economic indicators were not verified and not reliable since –in the alleged absence of co-operation– they would not refer to a valid Community industry. As concerned the micro economic indicators, and given the limited size of the sample, they were claimed not to be representative. Finally, reference was made to the different trends observed between injury indicators established at macro- and micro-economic level.
- (210) Firstly, as concerns the fact that the macro-economic indicators were not verified, it is recalled that according to the basic Regulation, verification visits are left to the appreciation of the Commission, and thus there is no legal obligation to always carry out verification visits. Indeed Article 16 of the basic Regulation only sets out that the Commission shall, where it considers it appropriate, carry out verification visits. This claim was therefore rejected. In addition these factors were cross-checked, where possible, with the overall information provided by the relevant national Community footwear associations.
- (211) Secondly, given the above conclusion concerning the definition of the Community industry and the representativity of the sample, the claims related to those elements were also rejected. In addition, as already outlined above, for the sake of coherence only one set of injury indicators is established for the purpose of the definitive conclusions, either macro- or micro-economic indicators. It is finally noted that even if those trends established at provisional stage both at a micro and macro level did not always show precisely the same development, they nevertheless did not show significantly diverging trends either.
- (212) Finally, interested parties also claimed that not all injury factors show injury, and more specifically that at an individual level, no injury can be established for the companies selected in the sample. The first claims have to be rejected on the grounds that, according to the basic Regulation, none of the injury indicators can necessarily give a decisive guidance. As to the fact that the individual situation of certain producers did not point to injury, it is stressed that this is not relevant since, according to Article 3(1) of the basic Regulation, the injury analysis is carried out at the level of the Community industry, or a sample thereof, and thus not at the level of the individual companies included in the definition of the Community industry.

## **8. Conclusion on injury**

- (213) It follows from the above that the provisional conclusion that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation is hereby confirmed.

- (214) More specifically, it is confirmed that at the level of the macro-economic indicators, i.e. at the level of the overall Community industry, the injury mainly materialised in terms of decrease of sales volume and market shares. Since footwear is manufactured on order, this also had a direct negative impact on the production level and employment in the Community.
- (215) Furthermore, it is also confirmed that at the level of the microeconomic elements the situation is largely injurious. For instance, the sampled companies have reached the lowest possible level of profit during 2003, which, however can be partially explained by their relatively pronounced prior investment practice (effect of depreciation on profitability). However, their level of profit decreased subsequently even despite a significant decrease in investment and, in fact, during the IP was at the lowest level over the period considered with the exception of 2003, i.e. far from any acceptable level and in the absence of other explanatory factors, like heavy prior investment, clearly materially injurious. Similarly, the cash flow followed a dangerously declining trend and reached the lowest level during the IP, at a level, which can only be considered as materially injurious. The sampled companies, during the IP, were no longer in a position to decrease their price levels further without incurring losses. In the case of relatively small and medium sized companies, losses cannot be sustained for a significant period without being forced to close down. Overall, although prior to 2004 the situation of the Community industry may only be qualified as injurious, the Community industry since 2004 clearly sustained material injury.

## F. CAUSATION

### 1. Effects of the dumped imports

- (216) The Community industry's market share and that of the countries concerned, including children footwear, developed as follows:

	2001	2002	2003	2004	IP
Countries concerned	9,3%	11,5%	16,3%	19,1%	23,2%
Community industry	26,5%	23,2%	21,7%	19,0%	17,7%

- (217) Certain interested parties challenged the Commission's conclusion that there was a sufficient coincidence in time between the market share increase of the dumped imports, and the decrease of the Community industry's market share. They pointed out that when Chinese and Vietnamese imports obtained their greatest increases in market shares, the Community industry experienced smaller decreases in market share, and vice-versa. It is also claimed that the market share of the complainants has not been taken over by countries concerned, namely by looking at the development of the other third countries market shares development.
- (218) An association of importers further claimed that dumped imports from the countries concerned did not cause any injury to the Community industry given that imported footwear is not competing with Community produced footwear.
- (219) With respect to the coincidence in time, it is considered that in the causation analysis, a perfect correlation between the development of the dumped imports and the situation



of the Community industry is not required. Indeed, it is established and legally recognised practice that, as in the present case, a simple coincidence of increasing dumped imports in significant quantities, which undercut prices of the Community industry, and an increasingly precarious situation of the Community industry is a clear indicator of causation. In the present case, and as clearly established in recitals (203) to (209) of the provisional Regulation, such coincidence in time undeniably occurred. Moreover, the coincidence concerning the shift in market share from 2003 to 2004 is even nearly symmetrical. In addition, the fact that increase of market share of the dumped imports was occasionally over the period considered higher than the loss of market share of the Community industry simply points to the fact that the increase of dumped imports not only happened at the expense of the Community industry but also at the expense of other players in the Community market.

- (220) The claim that imported footwear did not compete with Community produced footwear was also rejected on the basis of the above conclusion concerning the definition of the product concerned and the like produce, i.e. that the footwear imported from the countries concerned competes at all levels, i.e. all ranges and all types, with the footwear produced and sold by the Community industry, and that their sales channels are overall identical. Moreover, the investigation has clearly shown that Community producers and exporters compete for sales on the Community market.
- (221) In the absence of further comments, the conclusions of recital (209) of the provisional Regulation are hereby confirmed: the dumped imports played a determining role in the material injury suffered by the Community industry.

## **2. Effects of other factors**

### **2.1. Comments by the interested parties**

- (222) Following the imposition of the provisional measures, various interested parties claimed that the material injury suffered was caused by other factors. Those parties referred to claims that were already made at an earlier stage, and duly addressed in the provisional Regulation. More specifically, those claims referred to the export performance of the Community industry, the imports from the other third countries, the effect of the lifting of the quota on Chinese exports, the effect of the exchange rate fluctuations, the relocation of the Community producers, and the alleged structural lack of competitiveness of the Community industry. No new elements were however provided, and therefore the main conclusions set out in the provisional Regulation are clarified/expanded, where necessary, below.

### **2.2. Export performance of the Community industry**

- (223) Certain interested parties reiterated their claims that the poor economic situation of the Community footwear industry was due to a deterioration of its export performance.
- (224) In this respect, it is noted that any alleged deterioration of the export performance, if any, does not have any impact on most of the indicators analysed above, such as sales volume, market shares and depression of prices, since those factors have been established at the level of sales in the Community. Production figures were provided on an overall basis since no distinction between goods destined for the Community market and outside the Community can be made. Since footwear is produced to order,

any decrease of sales will necessarily translate into a similar decline in production, and given that the vast majority of the production is intended to be sold on the Community market, the provisional conclusion that the major part of the decrease in production is related to injury suffered on the Community market is confirmed.

- (225) As a matter of fact, during the period considered, the decrease in sales volume on the Community market (-34%) corresponds to the decrease of production during the same period (-33%).
- (226) The claim was therefore rejected, and it is definitively concluded that the export performance of the Community industry did not cause any material injury.

### 2.3. Imports from other third countries

- (227) The imports from third countries, including children's footwear developed as follows:

Market shares	2001	2002	2003	2004	IP	Variance 01/IP (% points)
Romania	5,7%	7,1%	7,5%	7,0%	6,9%	+1,2
India	3,6%	4,5%	4,9%	5,9%	5,7%	+2,1
Indonesia	2,7%	2,4%	2,0%	2,0%	2,0%	-0,7
Brazil	1,2%	1,4%	1,7%	2,2%	2,5%	+1,3
Macao	1,2%	1,7%	2,2%	3,2%	2,4%	+1,2
Thailand	1,0%	1,0%	1,2%	1,3%	1,3%	+0,3
Other countries	9,0%	10,7%	10,9%	12,5%	11,5%	+2,5

Average prices (€/pair)	2001	2002	2003	2004	IP	Variance 2001/IP
Romania	13,8	14,6	14,8	15,0	14,9	+8%
India	11,3	11,3	10,3	10,2	10,2	-10%
Indonesia	11,2	10,4	9,8	8,6	8,7	-23%
Brazil	16,8	15,7	13,5	13,0	12,6	-25%
Macao	12,9	11,5	10,6	10,2	10,5	-18%
Thailand	14,4	12,9	11,8	11,4	11,2	-22%
Other countries	14,8	14,3	13,6	12,4	12,7	-14%

- (228) It should be noted that none of the countries included (in total more than 150 various countries) in the row concerning other countries in the above table accounted for more than 2% of the overall Community imports during the IP.
- (229) Therefore it can be confirmed that individually, none of the countries listed above significantly increased their market shares during the period considered, that the absolute level of their market share remained far below that of the countries concerned, and they also developed differently. As to prices, they should be seen in the light of the above evolution of import volume, and also with the fact that they decreased to a lesser extent as compared to the prices of the countries concerned, but especially their absolute price level during the overall period considered remained, with one exception, on average far above the price level of the dumped imports.

(230) For the above reasons, it is definitively concluded that the imports from other third countries did not materially affect the situation of the Community industry.

#### **2.4. Exchange rate fluctuations**

(231) Various exporting producers and importers reiterated their claims that the injury suffered by the Community industry was caused by the appreciation of the EURO against the USD which led to significant import price decreases.

(232) No new elements were given, and it is therefore referred to recitals (220) to (225) of the provisional Regulation. It is also to be noted that, even if one were to accept that exchange rate fluctuations had an effect on import prices, the volume alone of the imports concerned were of such a magnitude as to cause material injury to the Community industry.

#### **2.5. Lifting of the quota**

(233) No new elements have been put forward in that respect. It should however be noted that given the acceleration of the imports during the last quarter of the IP, this may indeed have exacerbated the injurious effects of those dumped imports.

#### **2.6. Complainants have failed to modernise, are highly fragmented and have high labour costs**

(234) No new elements have been put forward in that respect. It should also be noted that the dumping margins are comparatively high (i.e. even higher than the undercutting margins). In other words, the dumped exports concerned compete with the Community industry not on the level of natural advantages, but on the basis of a practice which is actionable under international trade rules. On a non-dumped level, prices of the imports concerned would have been much higher and the Community industry would have been in a much stronger competitive situation vis-à-vis these imports.

#### **2.7. EC footwear industries re-location of production**

(235) Various exporting producers and an association of importers claimed that the effect of the re-location of EC producers on the situation of the Community industry had not been sufficiently addressed in the provisional Regulation.

(236) They criticised in particular the figures provided in the recital (171) of the provisional Regulation, related to the overall Community footwear sector, on the grounds that those figures include data related to Community producers that have delocalised production. In this respect, reference is made to the above paragraph confirming that the recitals (169) to (173) of the provisional Regulation were given for information only, thus not legally relevant in the context of the definitive conclusions on injury. It is therefore also confirmed that those producers that fully delocalised their production outside the Community are not included in the definition of Community industry, and therefore the extent to which those companies would have also caused injury to the Community industry is analysed together with the impact of the imports from other third countries.

(237) As concerns the case of those companies that partly delocalised their production, i.e. by also purchasing footwear from non-Community sources, it is recalled that the

injury analysis has been made exclusively with respect to data pertaining to their own production in the Community. Therefore, the extent to which such purchases may as well have caused them any injury should also be seen in the light of the analysis of the imports from other third countries.

- (238) Finally, for those companies who increased or commenced imports of parts of footwear (e.g. uppers) in the Community, those imports can not be deemed to have negatively affected most of the injury indicators such as production, sales, profitability etc for the reasons explained above. It is true, as pointed out by some interested parties, that this may have led to a decrease of employment in the Community, but this should also be seen as an act of self defence by companies facing vastly increasing imports at dumped prices on the Community market, thus related to the existence of dumping rather than any self-inflicted injury.

### **3. Conclusion on causation**

- (239) The claims of the interested parties were therefore rejected, and the findings and conclusions of the provisional Regulation confirmed.
- (240) It is therefore definitively concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation, and that given the analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, these other factors as such did not reverse the fact that the material injury assessed must be attributed to the dumped imports.

## **G. COMMUNITY INTEREST**

- (241) It has been analysed whether in light of the comments and/or additional elements provided by the interested parties following the imposition of the provisional Regulation, the provisional conclusion that the Community interest called for intervention to prevent the injurious dumping should be modified.

### **1. Interest of the Community industry**

- (242) Certain importers and exporting producers argued that the imposition of measures would not be in the interest of the Community industry. This is mainly based on the claims that the production of the complainants complement the imports from the countries concerned, that the imposition of anti-dumping measures would cause a major displacement of imports from countries concerned to other third countries, and that finally the injury suffered by the Community industry was not be caused by dumping and that the complainants have lost market shares over many years allegedly due to factors other than dumping.
- (243) It should firstly be noted that the provisional Regulation and the above analysis clearly established the existence of dumping causing injury to the Community industry, which qualifies as of 2004 as material injury sustained due to dumping practices from the countries concerned. It is therefore in principle expected that the removal of the material injury caused by dumping is in the interest of the Community industry.

- (244) The allegation that the production of the complainants merely complements the imports was rejected given the above conclusions that the product concerned competes with the like product produced and sold in the Community. The fact that the Community industry lodged a complaint against imports of the product concerned also suggests that competition take place between Community manufactured products and those imported from the countries concerned.
- (245) The claim concerning any displacement of the imports was already made earlier, and reference is made to the recital (241) of the provisional Regulation where it was concluded that the fact that importers may shift to other supplier countries is certainly not a valid reason for not taking actions against materially injurious dumping, and that it is in any event impossible to anticipate the extent to which such a shift would take place, nor the conditions of those imports, i.e. whether they are dumped or not.
- (246) As regards the last claim, reference is made to the causation analysis above where the impact of the factors other than dumping was examined. In any event it is clear that the decrease of the production volume of the Community footwear industry, thus decline in market share, was accelerated by the emergence of the dumped imports. This obviously has to be the case in the situation of a stable Community consumption.
- (247) In the absence of further substantiated comments, the provisional findings are confirmed, and it is definitively concluded that the imposition of anti-dumping measures would allow the Community industry to recover from the effects of materially injurious dumping found.

## **2. Interest of the other economic operators**

### **2.1. Interest of the consumers**

- (248) As at the provisional stage, no representations were received from consumers' organisations following the publication of the imposition of provisional measures. The provisional conclusion that consumer leather footwear prices would only be marginally affected by the imposition of definitive measures was therefore not challenged by any association representing the interest of the consumers.
- (249) Certain exporting producers claimed that they did not agree with the findings concerning the limited impact of measures on consumers, and that those measures would result in a major increase in household costs.
- (250) Importers also argued that consumer prices would increase as a result of definitive measures, and that this price increase may even reach the percentage of any ad-valorem duty. This claim is based on the allegation that importers usually apply their mark-up to the landed import price, including any duties, and thus they would therefore apply a margin also on the anti-dumping duties, amongst other elements. On the other hand, certain importers have however claimed that they would not be in a position to pass on any duties to consumers, on the grounds that it is the consumers that set the level of prices, and that consumers would therefore not purchase certain footwear if it would exceed a given price.
- (251) First of all, exporting producers do not have standing on Community interest under current rules. Their points have nevertheless been analysed for the sake of argument. It

should be underlined that those parties that did not agree with the Commission's findings concerning the impact of the measures on consumers, did however not submit any specific data or information that could support their claims. Instead, as reported above, they even provided contradictory statements claiming that duties would be either fully passed on to consumers (and even more by applying mark-ups also on the duty) or that it would not be possible at all to pass on any effect of duties. Their claims were therefore not considered sufficient to alter the provisional findings.

- (252) In addition certain exporting producers claimed that the imposition of measures would significantly limit consumers' choice. This is based on the allegation that certain types of leather footwear are only produced in China and Vietnam, that anti-dumping duties would allegedly result in a decision not to produce certain types of footwear and that the Community producers would not have the capacity to supply the Community market with those types.
- (253) These allegations of a reduced choice of footwear were already made earlier and addressed in the recital (246) of the provisional Regulation. In addition, the claim that certain types of footwear would no longer be produced and that the Community producers would not have enough capacity to substitute the alleged shortages is a simple allegation that was not supported by any objective facts or evidence, and was therefore rejected.
- (254) Finally, the exclusion of children's footwear was reconsidered given the arguments given by the Community industry.
- (255) Even though this exclusion was generally welcomed by exporting producers and importers, in the absence of reaction from any consumer organisation, no further evidence or confirmation was received showing that the effect of imposing measures on children footwear would be different than the effect it would have on adult footwear.
- (256) The Community industry, on the other side, challenged the exclusion of children's shoes from the scope of provisional anti-dumping measures and referred to the fact that there has been production of children's footwear in the Community and that injurious dumping has been established for children's footwear.
- (257) The definitive findings with regard to the status of children's shoes in the present proceeding lead to the following conclusion. Firstly, further analysis that lead to the definitive findings demonstrated that children footwear should be included in the definition of the product concerned, i.e. that all types of the product concerned should be regarded as forming one single product, and that therefore in principle anti-dumping measures should apply to the totality of the product concerned. Secondly, the arguments to provisionally exclude children's shoes from the scope of measures on the grounds of Community interest as set out in recitals (250) to (252) of the provisional Regulation, i.e. notably more frequent replacement of children's shoes and, thus, a higher financial impact of anti-dumping measures on the financial situation of an average European family, were reassessed. In this respect, it was established that on average children's shoes import prices are according to Eurostat statistics in general substantially lower than adults' shoes import prices (more than 33%). Consequently, the impact of an ad valorem anti-dumping duty on children's shoes would be proportionally lower. In addition, the definitive findings lead overall to lower

definitive duty levels than the measures at provisional stage. This, again, results in a lower financial impact of measures. Moreover, as already set out in recital (249) of the provisional Regulation it is not considered likely that consumers would bear the full brunt of any measures. No interested party has provided any substantiated evidence which could support a different view. In this context, it is duly noted that consumers' organisations did not comment at all, which suggests that the impact of measures – regardless whether it concerns children's or adults' footwear- are effectively not a real concern for the interests of their constituency. Taking account of the above analysis, it is evident that the definitive exclusion of children's shoes from measures could not be warranted. As a result there is no compelling evidence to prove, when addressing the imposition of definitive measures which remove materially injury caused by dumping practices, that consumer's interests outweigh the interests of the Community industry.

- (258) For those reasons, the claim was accepted and it is hereby confirmed that, given the above, the imposition of definitive measures on the product concerned, including children's footwear, would not be against the overall interest of consumers.

## **2.2. Interest of the distributors/retailers**

- (259) It is recalled that at provisional stage, only a limited number of representations were received from distributors/retailers or organisations of distributors/retailers: one submission was received from a consortium of retailers from one Member State, and questionnaire replies were received from three importers who also have their own distribution network, including two supermarket chains. Only one of those four parties submitted comments following the imposition of provisional measures, and no additional individual distributor or retailer submitted any comment.
- (260) An association of importer that did co-operate in the investigation since the beginning of the procedure challenged the conclusion that only a limited number of representations were received, on the grounds that this association represents companies that are also distributors and retailers in addition to their function of importers. It also claimed that at least two of its members, located in two different Member States have supplied detailed information to the Commission.
- (261) The Commission recognizes that this association represents companies that sometimes also have their own distribution network, and the conclusion regarding the number of representations should indeed be nuanced in that respect. Nevertheless, the primary function of those companies is to import footwear. Essentially, however, no precise and verifiable data, other than provided by the three above mentioned companies, was provided by distributors and retailers to the Commission, in order to assess their economic situation and to what extent they would be financially affected by any measures. And it is mainly only on the basis of such information that the Commission is in a position to carry out a detailed analysis.
- (262) As concerns the alleged co-operation of its two members, it should be clarified that one of them failed to provide a questionnaire reply within the deadlines, and could therefore not be used.
- (263) In its submission, the association provided figures and examples showing what would be the impact of the measures on importers that also have retail activities. Those figures were however made available far beyond the granted deadlines to provide such

data, and seems to refer to only one company – the name of which is not mentioned – which did apparently not co-operate to the investigation. Those figures, that could therefore not be validated, could therefore not be considered.

- (264) The association further claims that due to their financial situation, importers with retail activities will not be in a position to pass on, even partially, any price increase to consumers, and that some retailers, especially those exclusively sourcing from the countries concerned, would not survive the imposition of measures.
- (265) The argument that companies would not be in a position to pass on, at least, partially any cost increase to consumers clearly conflicts with the claims made by various parties, including the submission made by the association of importers, that consumer prices will increase as a result of the imposition of anti-dumping measures. Based on the information gathered during the investigation, and as confirmed by those contradictory statements, it is very likely that, on average, any impact of measures on the import price would at least be partially passed on to consumers. It can naturally not be excluded that certain retailers directly and exclusively importing from the countries concerned would indeed be negatively affected by any measures. It should however be recalled that the Community interest analysis is made on an overall basis, i.e. based on the average situation of the parties in the Community concerned by the proceeding, and it can therefore never be excluded that some individual parties will be indeed be affected differently than the majority. In this respect, reference is made to the recital (275) of the provisional Regulation, where it was recognized that measures may indeed have a possible negative effect on the financial situation of certain importers.
- (266) Finally, the association claimed that the Commission is mistaken in its understanding of the differences between retail channels. In this respect, it claimed that independent retailers are supplied not only by wholesalers in the Community, but also sometimes import themselves. It claimed that retailers in the, Commission sample were all brand retailers and that therefore the Commission's analysis was not appropriate.
- (267) In the absence of detailed information concerning the financial situation of retailers and distributors, the Commission carried out an overall analysis of the sector. The purpose of this analysis was merely to identify the main distribution channels, the structure of those distributors and retailers, in order to examine how they would be affected by measures. It can not be excluded that the specific situation of individual distributors is not exactly reflected in this overall analysis. For information, it is also noted that the description and conclusions drawn within the framework of this investigation also correspond to the findings of the Commission's previous anti-dumping investigation on footwear<sup>8</sup>, and no indications were given that the situation of the footwear distribution sector changed since then.
- (268) More specifically, the provisional Regulation stated in its recital (260) that independent retailers are usually supplied by wholesalers in the Community. From this, it was therefore not excluded that those retailers also have other sources of supply. As concerns the allegation on brand retailers, the Commission did not make use of any sample, but instead analysed all the information that was made available by co-operating parties. In this respect, it should be noted that reference was made in the

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<sup>8</sup> OJ L 60, 28.2.1998, recitals (124) to (134).



provisional Regulation to the absence of co-operation by branded retail chain, i.e. retail chains with a brand name, which is different from retailers of branded footwear, of which indeed one co-operated.

- (269) No further claims was made that would alter the conclusions of the provisional Regulation. The conclusion that the impact of the definitive measures on the importers and distributors is likely to remain limited, as set out in recital (264) of the provisional Regulation, is therefore confirmed.

### **2.3. Interest of the unrelated importers in the Community**

- (270) The comments received by the various interested parties have been carefully analysed to the extent they were duly substantiated, and have been addressed below.
- (271) Certain importers claimed that given their profit margin, which is less than the level of the anti-dumping duty, they would be unable to survive anti-dumping duties, unless they are able to share that additional burden with wholesalers and retailers. It is further claimed that this would not be possible because wholesalers and retailers would not accept any price increase, but rather switch to suppliers that can deliver without anti-dumping duties.
- (272) The fact that the profit margin is lower than the level of the anti-dumping duty is not relevant. Indeed, while the level of the anti-dumping measures is expressed as a percentage of the import price, the profit margin is expressed as a percentage of the turnover, i.e. the selling price. In view of the significant margins applied between purchase and resales, it is evident that the two percentages simply cannot be compared. Concerning the claim that wholesalers and retailers would not accept any price increase, it is again stressed that this is conflicting with the claim by many importers that price increases will be passed on fully to the consumers, thus also distributors, and could therefore not be accepted. In any event, it is indeed true that wholesalers and retailers may indeed switch to suppliers than can deliver without anti-dumping duties, including the Community industry that would thus benefit from measures.
- (273) An association of importers contested the Commission's description of the two categories of importers, submitting that it does not reflect the market reality and that it is the product-mix, sales channels that are relevant for differentiating importers. It further claimed that it is the net margin, and not the mark-up that is relevant when assessing the effect of measures.
- (274) In this respect it should be noted that no sampling was applied, that co-operation from importers was significant and that therefore the Commission was in a position to draw its conclusion on a very detailed factual basis.
- (275) It is conceded that product-mix and sales channels are indeed relevant for the categorisation of importers. In this respect those elements were also duly taken into consideration in the analysis. As a matter of fact, the Commission differentiated between companies active in the high end of the market and the importers active in the lower end of the market, and indeed considered that those two categories of importers have different product mix and sales channels.

- (276) Furthermore, none of the comments given by the association of importers was such as to alter the conclusions that in the case of the importers active on the higher end of the market any ad-valorem duty has a moderate impact as compared to the much higher selling price (thus profit), and that for those active on the lower end of the market the ad-valorem duty would result only in a moderate absolute price increase and that given the level of their average margin of profit they would not be significantly affected by measures.
- (277) The conclusions set out in the recitals (265) to (275) of the provisional Regulation are therefore confirmed. It is therefore definitively confirmed that the imposition of measures is unlikely to have a significant negative impact on the situation of the importers in the Community in general, but also that such imposition may nevertheless have some negative effects on the financial situation of certain individual importers. On balance, however, those negative effects are not expected to have a significant impact on the overall financial situation of the importers.

#### **2.4. Other considerations**

- (278) It has also been argued that measures were not in the Community interest because Vietnam is a developing country which needs to export shoes, because duties on imports from the PRC might imperil good economic relations with this country with a potentially large market, and because workers in Vietnam and the PRC could suffer from such measures.
- (279) In accordance with Article 21(1) of the basic Regulation and in line with consistent practice of the Institutions since the current basic Regulation entered into force, this type of arguments are not part of the Community interest analysis. The Community interest analysis is an economic analysis focussing on the economic impact of taking/not taking anti-dumping measures on operators within the Community. It is not a tool by which anti-dumping investigations can be instrumentalized for general political considerations relating to foreign policy, development policy etc. This is also confirmed by the list of parties which have standing under Article 21 of the basic Regulation. While this list is not exhaustive (in some investigations, suppliers of the raw materials for the product concerned have also made comments and these comments have been taken into account), it follows clearly from the types of parties mentioned that only the economic effects on parties within the Community are at stake in this test. At the same time, the Community interest test is not a cost/benefit analysis in the strict sense. While the various interests are put in balance, they are not weighed against each other in a mathematical equation, not least because of obvious methodological difficulties in quantifying each factor with a reasonable margin of security within the time available, and because there is not just one generally accepted model for a cost-benefit analysis. This is also the reason why Article 21(1) of the basic Regulation stipulates that the need to restore effective competition shall be given special consideration and that measures may not be applied, on the basis of information submitted, where it can clearly be concluded that it is not in the Community interest to apply such measures. In other words, the law accepts that anti-dumping measures have certain negative effects on those parties which are typically not in favour of such measures. Measures would only be considered as not in the interest of the Community, if they had disproportionate effects on the aforementioned parties.

- (280) At the beginning of the investigation and also at provisional stage, the Commission invited all parties to submit information as to the possible effects of taking/not taking measures on them. As explained in detail at the provisional stage, but also in this Regulation, no information has been received which points to such disproportionate effects. There is nothing in the file, which could even remotely confirm the allegation made that the economic impact of duties is such that every Euro which European producers may gain as a result of the duties will equally result in a loss of 8 € for consumer and user industries as claimed by one Member State.
- (281) As far as the argument of taking measures against developing countries is concerned, it is the Community's constant practice to take such actions indiscriminately against developing and developed countries, whenever warranted. With regard to the argument that anti-dumping measures might put into danger good economic relations with the PRC, it should be considered that if this argument was pushed to its logical consequence, the Community's anti-dumping actions would be dependent on whether or not the third country concerned threatens with some negative consequences in the event of taking measures. Moreover, such an approach would be an invitation to the third country to raise the prospect of some negative consequences. Finally, both considerations are not compatible with the notion of a rules-based instrument and a quasi-judicial investigation.
- (282) It was also argued that one Member State was dependent on footwear imports. However, nothing in the file suggests that these imports can only be sourced from the two countries concerned. There are ample sources of supply within the Community and in third countries not concerned. Imports can also continue to be sourced from the PRC and Vietnam and the effect of the duties is not such as to foreclose the market.
- (283) In sum, neither the current law nor the results of the investigation justify not to take anti-dumping action on any of the grounds mentioned at the beginning of this section.

### **3. Conclusion on Community interest**

- (284) The above analysis has taken into account, and addressed where necessary, the comments submitted by the various interested parties. Those did however not alter the conclusions drawn at provisional stage.
- (285) It is therefore definitively confirmed that:
- it is in the interest of the Community industry to impose measures, since those measures are expected to, at least, restrain the high level of imports at dumped prices which proved to have a significant negative impact on the financial situation the Community industry;
  - consumers will not be affected by the effect of anti-dumping measures or, if at all, only to a very marginal extent;
  - the distributors and retailers may see their purchase prices of the product concerned increase, but as compared to their overall costs and situation, they will probably not be significantly affected by measures;

- on average, importers would be in a position to accommodate the imposition of measures, although depending on their specific situation, some may indeed face certain adverse effects, especially those exclusively supplied by footwear from the countries concerned;
- other interests, even if they were to be taken into account, are not as such that they would override the interest of taking anti-dumping measures.

(286) Therefore, and on balance, it is considered that imposing measures, i.e. removing materially injurious dumping, would allow the Community industry to maintain its activity and bring an end to the successive closures and job losses it faced in the last years, and that the adverse effects that the measures may have on certain other economic operators in the Community are not disproportionate as compared to those beneficial effects for the Community industry.

## **H. DEFINITIVE ANTI-DUMPING MEASURES**

(287) In view of the conclusions reached with regard to dumping, resulting injury and Community interest, definitive measures on imports of the product concerned originating in the PRC and in Vietnam should be imposed.

### **1. Injury Elimination Level**

(288) The level of the definitive anti-dumping measures should be sufficient to eliminate the material injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the materially injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports taking into account the existence of a quota regime covering imports from PRC until the end of 2004.

#### **1.1. Underselling**

(289) At provisional stage it was considered that a profit margin of 2% of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of materially injurious dumping, on the grounds that this corresponds to the highest level of profit achieved by the Community industry during the period under examination. This was however strongly contested by the Community industry on the grounds that the economic situation of the Community industry during the whole period considered did not reflect the level of profit that it could achieve in the absence of materially injurious dumping, because prices were already depressed when the industry reached that level of profit, and with that level of profit the industry could not make the necessary investments in order to remain competitive. Lastly, the Community industry claimed that the 2% used was far below the profit margin achieved by importers, and that using a profit level of 10% would be the absolute minimum.

(290) This claim was carefully analysed, and the issue of the determination of profit level to be used for the injury calculation was re-examined.

- (291) Firstly, it should be noted that the level of profit achieved by the importers is not a proper benchmark because of the different nature of those operators, and can therefore not be used as a reference.
- (292) Secondly, with regard to a reasonably achievable profit margin, upon disclosure, substantiated comments were submitted by the Community industry that a profit margin not just of 2% but of 6% on turnover should be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of materially injurious dumping. In this respect the Community industry provided evidence that with regard to footwear not subject to materially injurious dumping it indeed achieved such higher margins. Consequently, the applicable profit margin was reconsidered and adjusted to a 6% level on turnover.
- (293) Some interested parties claimed that it is the Commission's consistent practice to calculate an injury margin only when the Community industry is making losses, or otherwise the level of injury should be limited to the undercutting. This claim was however rejected because the injury margin is regularly established for the purpose of applying the lesser-duty-rule while the undercutting margin is established pursuant to Article 3(3) of the basic Regulation. In this context, the injury margin is relevant if the dumped imports have depressed prices, and this can be the case even if the industry is still profitable.
- (294) Finally, like in the case of the undercutting margin, various comments were received with respect to the injury margin calculations. Those claims were analysed in detail, and where clerical mistakes were identified or certain adjustments could be supported by factual evidence, the necessary amendments to the calculations have been applied.
- (295) The necessary price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of each company composing the Community industry to a break-even point and by adding the above-mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value. This resulted in underselling margins of 23% and 29.5% for PRC and Vietnam respectively.

## **1.2. Particularities of the present proceeding**

- (296) However, as mentioned above, the present proceeding is characterised by distinct and exceptional features, which need to be adequately reflected in the anti-dumping measures. In this respect it is notably important to recall that until January 2005 a substantial part of the product concerned was subject to quantitative restrictions.
- (297) This background calls for a closer consideration of the adequate level of definitive anti-dumping measures to address the particularities of the present case. As a result a more refined methodology for definitive measures had to be considered, notably with a view to the impact of the quantities imported throughout the period considered upon the situation of the Community industry.

- (298) In this respect the existence of the quota covering imports from PRC had a dampening effect and to that extent prevented any material injury being caused to the Community industry as compared to the situation during the IP. This is clearly shown in the injury and causality analysis, notably in recitals (187) seq. and (216) seq.. Indeed, in the case at hand it can be observed that the increase in the volume element of dumped imports had a particularly decisive injurious effect on the Community industry after the lapse of the quota. In fact, the economic indicators concerning the situation of the Community industry in particular deteriorated in the first quarter of 2005 although clear indications of material injury can already be found for the last three quarters of 2004 making up the rest of the IP.
- (299) In line with the lesser duty rule as set out in Article 9(4) of the basic Regulation, due to the particularities of the case at hand, notably the existence of the quota until the end of 2004, special consideration and attention was therefore given to the quantitative element of injurious dumping. It is considered that only imports above a certain volume threshold prior to the lapsing of the quota can cause material injury so that the injury threshold determined on the basis of the results of the IP has to reflect the fact that certain import quantities did not cause such material injury.
- (300) Consequently, the non-materially injurious import quantities had to adequately be reflected in the injury elimination levels.
- (301) In this respect based on Eurostat data the value of total import volumes for the year 2003 from the countries concerned was considered as not yet materially injurious and formed the basis for a proportional adaptation of the injury elimination levels established above. In a second step this total non-materially injurious value amount ('NIV') was allocated to the PRC and Vietnam on the basis of the comparative imports ratio of the product concerned from the countries concerned during the IP. In a further step, these two non-materially injurious amounts were set into proportion to the year 2005 imports for the respective country concerned as the first and most recent full year available which was not subject to quantitative restrictions with regard to the product concerned. Finally, in these proportions the duty levels established for the IP were reduced. This resulted in injury thresholds of 16,5% and 10% for the PRC and Vietnam respectively.
- (302) On the basis of the same methodology the injury threshold for Golden Step remained well above the established dumping margin of 9,7% for this particular company, so that in this case in line with the lesser duty rule as set out in Article 9(4) of the basic Regulation the dumping margin shall set the duty level.
- (303) Upon additional definitive disclosure several interested parties commented upon the course of action outlined above. Some interested parties declared a preference for a delayed duty system ('DDS'), which would have left certain annual volume amounts of imports out of the scope of measures.
- (304) However, it should be noted that for administrative and legal reasons it was deemed inappropriate to implement such DDS.
- (305) Others put the opinion forward that the present case would not warrant a deviation from the standard ad valorem approach based on dumping and underselling margins only.

- (306) It is recalled, as set out above, that in particular the fact that the product concerned originating in the PRC was subject to a quota until 2004 necessitated a special methodology in this particular case to duly take account for non-materially injurious imports. Therefore, this submission had to be rejected as well.
- (307) Other interested parties, in particular both from the PRC and from Vietnam, questioned the methodology to identify and to allocate the NIV. Firstly, it was argued that the basic Regulation generally does not provide for such approach. Secondly, it was claimed that an adjustment of underselling margins based on an NIV would be inappropriate because the NIV is allegedly a volume based element, whereas underselling margins are the result of price-comparisons, i.e. only value based. Thirdly, it was put forward that the economic impact of the NIV should not have been assessed on the basis of imports during 2005 but, instead on the basis of the IP.
- (308) In reply to these submissions it is recalled that the basic Regulation does not set out any specific methodology to establish injury elimination levels. Consequently, no legal provision restricts the analysis to establishing only underselling margins. Instead the legal framework provides for discretion to adopt an injury elimination calculation to the specificities of a particular case, provided the circumstances warrant this.
- (309) Secondly, it is recalled that the NIV data are value based as they are derived from the 2003 import value amount. Consequently such data can clearly be used to adjust underselling margins. A volume element was only applied in the context of the allocation of the NIV to the PRC and to Vietnam by using the respective volume ratio during the IP. Rationale behind this allocation key was to (i) properly reflect the situation during the IP and (ii) to even out distortions due to differences in average per unit values of Chinese and Vietnamese imports. Finally, with regard to the economic impact assessment of the allocated NIV's it was considered to be necessary to refer to the most recent full annual period of imports not subject to a quota regime, i.e. 2005, because the very reason to apply the NIV adjustment essentially to account for the quota peculiarity over the period considered. While it is admitted that as a rule information subsequent to the IP should not be taken into consideration, Article 6(1) of the basic Regulation provides for exceptions as in the case at hand.
- (310) It should further be noted that Vietnam could not be disregarded in the adjustment exercise because the Chinese quota regime indirectly had an impact on imports originating in Vietnam as well and overall lead to the result that the imports from the countries concerned until 2003 were considered to be not materially injurious.
- (311) Some interested parties submitted that this approach would discriminate against Chinese exporters. In this respect concerns were raised with regard to the result of the methodology, i.e. that despite a higher underselling margin for Vietnam (29,5%) as compared to the PRC (23%) this approach leads to overall lower injury elimination levels for Vietnam (10%) as compared to the PRC (16,5%).
- (312) However, the methodology only takes different import trends from the PRC and Vietnam to the EC into due account. The respective Vietnamese import share of the product concerned over the period considered was higher. Consequently, its share of non-materially injurious imports was larger as well. However, this inevitably results in a larger impact of this adjustment methodology on the Vietnamese underselling

margin. Because the methodology only duly reflects factual differences it is not unjustified discriminatory.

- (313) Eventually, several interested parties argued that the time to submit comments on the additional definitive disclosure would have been too short and not in line with Article 20(5) of the basic Regulation.
- (314) In this respect it is noted that (i) due consideration being given to the urgency of the matter and (ii) given that the additional definitive disclosure concerned only one specific and limited aspect of the case at hand it was considered to be necessary, in line with the provisions of the basic Regulation to set a five days deadline instead of the generally applicable ten days disclosure deadline. However, in this context it should further be noted that where a substantiated request for an extension of this deadline was made by interested parties it was granted.

## **2. Undertaking**

- (315) Some parties, exporting producers as well as importers came forward with price undertaking requests. In such cases, an undertaking would have committed the respective exporting producer not to sell below such price level that would have eliminated injurious dumping.
- (316) In the case of importers, these requests were deemed irrelevant because dumping is caused by exporters for which reason the exporter is responsible and in the actual position to eliminate such dumping by appropriate pricing.
- (317) In the case of exporting producers, the requests had to be rejected because they were made by parties that did not obtain market economy treatment. In addition, for a product like shoes which is continuously changing due to fashion, it would be practically impossible to set a non-discriminatory price level that equally eliminates injurious dumping for a huge variety of entirely different models.
- (318) Following the definitive disclosure document one sampled Vietnamese exporting producer came forward with a price undertaking request. Nevertheless, this request had to be rejected for the reasons explained above.
- (319) Other parties expressed a preference for a general minimum price respectively a minimum-price in combination with an ad valorem duty, i.e. duties should apply only to imports below a certain minimum price. This preference has been reiterated by the Chinese authorities and several other interested parties upon the additional definitive disclosure concerning the form of measures.
- (320) Such proposals had to be rejected because a combined duty would have led to an unjustified burden on cheap shoes against the favour of more expensive shoes. It would practically be impossible to identify adequate price categories for a product as diverse as the one under investigation to avoid such unjustified burden. Furthermore, past experience has shown that a minimum price duty is difficult to monitor and may easily lead to circumvention. Therefore, a minimum price solution was considered to be impractical and inadequate.



(321) A number of importers and non sampled Vietnamese exporting producers claimed that the proposed course of action gives no consideration to Vietnam's developing country status. In this respect, it is noted that the purpose of the measures are to objectively address unfair dumping practices that cause injury. The economic or development status of any country concerned by a certain proceeding is not taken into account under Articles 2 and 3 of the basic Regulation as a relevant element when determining dumping and injury. Adjustments under other factors non-specified in the basic Regulation can only be made if it is demonstrated that they affect price comparability. Since the latter was not substantiated by interested parties the aforesaid argument on Vietnam's developing country status had to be rejected.

## 2. Definitive duties

(322) In the light of the foregoing, and in accordance with Article 9(4) of the basic Regulation, it is considered that definitive anti-dumping measures should be imposed on imports originating in PRC and Vietnam at the level of the lowest of the dumping and injury margins, in accordance with the lesser duty rule as refined by the methodology set out above. In this respect for the country wide duty levels the injury elimination levels set the ceiling for the anti-dumping duty.

(323) However, with regard to Golden Step the duty level was established on the basis of its dumping margin, which was lower than the injury elimination level.

(324) On the basis of the above, the proposed definitive duties are as follows:

Country	Company	Anti-dumping duty
PRC	Golden Step	9,7 %
	All other companies	16,5%
Vietnam	All companies	10%

(325) In order to ensure that any risk of false declarations or circumvention of the measures is minimised, a strengthened administrative import surveillance system on the basis of Article 308(d) of Commission Regulation (EC) No 2454/93<sup>9</sup>, will allow earlier information on relevant import trends. Should evidence be found showing that these import trends change significantly this will be urgently investigated by the Commission. In this context it should be clarified that the surveillance of STAF now will cover such footwear above and below a 7,5 € value threshold instead of the original threshold of 9 €

<sup>9</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1). Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap, originating in the People's Republic of China and Vietnam and falling within CN codes: 6403 20 00, ex 6403 30 00, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00<sup>10</sup> (TARIC codes 6403 30 00 39, 6403 30 00 89, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90, 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90, 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80).

2. For the purpose of this Regulation, the following definitions shall apply:

"sports footwear" shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1719/2000<sup>11</sup>;

"footwear involving special technology" shall mean footwear having a CIF price per pair of not less than 7,5 € for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98;

"footwear with a protective toecap" shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules<sup>12</sup> and falling within CN codes: ex 6403 30 00, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39,

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<sup>10</sup> As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

<sup>11</sup> OJ L 286, 28.10.2005, p. 1.

<sup>12</sup> The impact resistance shall be measured according to European Norms EN345 or EN346.

ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

"slippers and other indoor footwear" shall mean such footwear falling within CN code ex 6405 10 10.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price of the products described in paragraph 1 and manufactured by the companies below shall be as follows:

<b>Country</b>	<b>Company</b>	<b>Anti-dumping duty</b>	<b>TARIC Additional code</b>
PRC	Golden Step	9,7 %	A775
	All other companies	16,5%	A999
Vietnam	All companies	10%	-

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

#### *Article 2*

The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EC) No 553/2006 of 27 March 2006 shall be definitively collected at the rate definitively imposed by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

#### *Article 3*

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

Done at Brussels, [...]

*For the Council*  
[...]  
*The President*