COUNCIL OF THE EUROPEAN UNION

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ANTIDUMPING 15
COMER 62

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 February 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 87 final
Subject:	Proposal for a COUNCIL IMPLEMENTING REGULATION re-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 produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd

Delegations will find attached document COM(2014) 87 final.

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Proposal for a

COUNCIL IMPLEMENTING REGULATION

Re-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 produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd

{SWD(2014) 46 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns compliance with the judgments of the Court of Justice of the European Union ('the Court of Justice') of 2 February 2012 in case C-249/10 P Brosmann et al and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes Co. Ltd.

Existing provisions in the area of the proposal

Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[1] ('the basic Regulation')

Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam[2]

Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not[3]

Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96[4]

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

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

Collection and use of expertise

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1 OJ L 343, 22.12.2009, p. 51.

2 OJ L 275, 6.10.2006, p. 1.

3 OJ L 117, 1.5.2008, p. 1.

4 OJ L 352, 30.12.2009, p. 1.

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 provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

In its judgments of 2 February 2012 in case C-249/10 P Brosmann et al and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes Co. Ltd, the Court of Justice of the European Union ('the Court') annulled Council Regulation (EC) No 1472/2006 of 5 October 2006 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 Regulation') . The Regulation was annulled in so far as it relates to Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the exporting producers concerned').

In the respective judgments the Court stated that the Union institutions should have examined and decided upon the requests for market economy treatment ('MET') lodged by the exporting producers concerned.

Article 266 of the Treaty on the functioning of the European Union provides that the institutions must take the necessary measures to comply with the Court's judgments.

In order to comply with that obligation, the Commission decided to investigate the point affected by the illegality and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005.

The enclosed Commission proposal for a Council Implementing Regulation imposing a definitive anti-dumping duty on the exporting producers concerned for the period covered by Council Regulation (EC) No 1472/2006 (7 April 2006 to 7 October 2009), is made after the interested parties have been given sufficient time to provide comments to the final disclosure document of 22 November 2013.

It is proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* as soon as possible.

Legal basis

Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and Article 266 TFEU.

Subsidiarity principle

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

Proportionality principle

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

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

Choice of instruments

Proposed instruments: Council Implementing Regulation.

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

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

2014/0044 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

Re-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 produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'),

Having regard to Article 266 TFEU,

Having regard to Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[5] ('the basic Regulation'), and in particular Article 9 and 14 (3) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas

A. PROCEDURE

(1) On 23 March 2006, the Commission adopted Regulation (EC) No 553/2006 imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') originating in the People's Republic of China ('PRC') and Vietnam ('the provisional Regulation')[6].

(2) By Council Regulation (EC) No 1472/2006[7] the Council imposed definitive anti-dumping duties ranging from 9.7 % to 16.5 % on imports of certain footwear with uppers of leather, originating in Vietnam and in the PRC for two years ('Council Regulation (EC) No 1472/2006' or 'the contested Regulation').

(3) By Regulation (EC) No 388/2008[8] the Council extended the definitive anti-dumping measures on imports of certain footwear with upper leather originating in the PRC to

5 OJ L 343, 22.12.2009, p. 51.

6 OJ L 98, 6.4.2006, p. 3.

7 Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1)

8 Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of

imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.

(4) Further to an expiry review initiated on 3 October 2008[9], the Council further extended the anti-dumping measures for 15 months by Council Implementing Regulation (EU) No 1294/2009[10], i.e. until 31 March 2011, when the measures expired ('Council Regulation (EC) No. 1294/2009').

(5) Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the exporting producers concerned') challenged the contested Regulation in the Court of First Instance (now: the General Court). By judgements of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council [2010] ECR II-671 and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council [2010] ECR II-747 ('the judgments of the General Court'), the General Court rejected those challenges.

(6) The exporting producers concerned appealed those judgements. In its judgments of 2 February 2012 in case C-249/10 P Brosmann et al and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes Co. Ltd ('the judgments'), the Court of Justice of the European Union ('the Court') quashed the judgments of the General Court. It held that the General Court erred in law in so far as it held that the Commission was not required to examine requests for market economy treatment ('MET') under Article 2(7)(b) and (c) of the basic Regulation from non-sampled traders (paragraph 36 of the judgement in Case C-249/10 P and paragraph 29 and 32 of the judgement in Case C-247/10 P).

(7) The Court then gave judgement itself in the matter. It held: "[…] the Commission ought to have examined the substantiated claims submitted to it by the appellants pursuant to Article 2(7)(b) and (c) of the basic regulation for the purpose of claiming MET in the context of the anti-dumping proceeding [which is] the subject of the contested regulation. It must next be found that it cannot be ruled out that such an examination would have led to a definitive anti-dumping duty being imposed on the appellants other than the 16.5% duty applicable to them pursuant to Article 1(3) of the contested regulation. It is apparent from that provision that a definitive anti-dumping duty of 9.7% was imposed on the only Chinese trader in the sample which obtained MET. As is apparent from paragraph 38 above, had the Commission found that the market economy conditions prevailed also for the appellants, they ought, when the calculation of an individual dumping margin was not possible, also to have benefited from the same rate" (paragraph 42 of the judgement in Case C-249/10 P and paragraph 36 of the judgement in Case C-247/10 P).

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leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not (OJ L 117, 1.5.2008, p. 1)

9 OJ C 251, 3.10.2008, p. 21.

10 Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ L 352, 30.12.2009, p. 1)

(8) As a consequence, it annulled the contested Regulation, in so far as it relates to the exporting producers concerned.

(9) Article 266 of the Treaty on the Functioning of the European Union (TFEU) provides that the Institutions must take the necessary measures to comply with the Court's judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping, compliance with the Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated.[11]

(10) According to the case-law of the Court, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred.[12] That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order[13], except if the illegality occurred at the stage of initiation.

(11) In the present case, the illegality occurred after initiation. Hence, the Commission decided to resume the present anti-dumping proceeding that was still open at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005.

(12) The Institutions therefore have examined those requests for MET, which relate to the period from 1 April 2004 to 31 March 2005 which was the investigating period ('the IP').

(13) The exporting producers concerned were invited to cooperate. They were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the respective letters.

(14) Since the anti-dumping proceeding leading to the adoption of the contested Regulation was carried out in 2005-2006, the Commission was not sure that it had the correct contact details of potentially interested parties. Therefore, the Commission invited all potentially interested parties to indicate whether they wished to receive disclosure pursuant to Article 20 of the basic Regulation by means of a notice published in the Official Journal[14].

B. REPLACEMENT OF THE CONTESTED REGULATION BY A NEW ACT IN ORDER TO COMPLY WITH THE JUDGMENTS

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11 Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic* v *Commission* [1988] ECR 2181, paragraphs 27 and 28.

12 Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia* v *Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais* v *Commission* [2011] II-0000, paragraph 83.

13 Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85.

14 OJ C 295, 11.10.2013, p.6

(15) The Community Institutions have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the parts of the assessment which are not affected by the Judgment[15].

(16) The present Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to the annulment in so far as the exporting producers are concerned.

(17) All other findings made in the contested Regulation, which were not annuled by the General Court, remain valid and are herewith incorporated into the present Regulation.

(18) Therefore, the following recitals are limited to the new assessment necessary in order to comply with the judgments.

1. Examination of the MET claims

(19) The reason for the annulment of the contested Regulation in respect of the exporting producers concerned was that the Institutions ought to have examined the substantiated MET claims submitted to it by the exporting producers concerned pursuant to Article 2(7)(b) and (c) of the basic Regulation.

(20) The Institutions have therefore analyzed the MET claims. The assessment showed that the information provided was not sufficient to demonstrate that the exporting producers concerned operated under market economy conditions (see for a detailed explanation below recitals (23) and following).

(21) It is necessary to point out that the burden of proof lies with the producer wishing to claim MET under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, there is no obligation on the EU institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the EU institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic regulation are fulfilled in order to grant it MET and it is for the EU judicature to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgement in Case C-249/10 P and paragraph 24 of the judgement in Case C-247/10 P).

(22) The Commission, despite the fact that the burden of proof is on the producers concerned, nevertheless gave the exporting producers concerned the possibility to provide additional information. None of the exporters concerned provided the additional information requested, not even after being reminded and warned about the consequences of not providing that information.

(23) The investigation showed that one exporting producer, located in Hong Kong (company 1), was related to another exporting producer concerned (company 2) during the original IP. Their MET requests were therefore assessed together. Company 2 failed to address the deficiencies identified by the Commission; on the basis of the information at its disposal, the Commission concluded that company 1 and company 2

[15] Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147.

failed to demonstrate that they operated under market economy conditions as laid down in Article 2(7)(c) of the basic Regulation, for the following reasons.

(24) As regards the criterion 1 (Business decisions), the official document ”Certificate of Approval” of the company refered to a quantitative limitation of the production of the product concerned and the obligation to sell for exports only. The Articles of Association mentioned in several chapters the obligation to report to the local authorities, in particular in relation to the sales price determination and foreign exchange operations. The MET form stated that the company had long term loans, unsecured, bearing no interests and having no fixed terms of repayment. The criteria 2 (Accounting) and 3 (Assets and 'carry over') were not fulfilled since external audit reports and capital verification reports were not provided.

(25) Another also Hong Kong based exporting producer concerned (company 3) was found to be related to producers of the product concerned in the PRC. Company 3 was therefore asked to submit MET claim forms for its related producers in the PRC. No information was submitted. It was concluded that Company 3 failed to provide sufficient evidence demonstrating that its related producers operated under market economy conditions as required under Article 2(7)(c) of the basic Regulation. Therefore, company 3 could not be granted MET.

(26) The MET claim submitted by company 4 contained many documents and annexes only in Chinese, without any translation into English. In addition, it failed to provide information allowing for assessment of its compliance with criteria 1 (Business decisions), 2 (Accounting) and 3 (Assets and 'carry over') as laid down in Article 2(7)(c) of the basic Regulation.

(27) As regards criterion 1 (Business decision), it failed to provide the Articles of Association and the required copies of contracts. For criteria 2 and 3, translations of the audited accounts into English were not provided. It also failed to explain as requested why the company had no sales on the domestic market during the IP. The capital verification reports were not provided. Moreover, supporting documents showing the different steps in the field of business decision and costs, like negotiations with big suppliers and examples of labour contracts, were not provided as requested.

(28) The MET claim submitted by Company 5 failed to demonstrate that the company operated under market economy conditions, as it did not provide the information necessary to assess its compliance with criteria 1 (Business decisions), 2 (Accounting) and 3 (Assets and ‘carry over’).

(29) More specifically, as regards criterion 1, Company 5 failed to submit MET claims for five other related companies belonging to the group and which appear to have sold the product concerned. As regards criterion 2, Company 5 failed to provide audited accounts for the year 2003 and the audit reports for 2002 and 2004 contain comments casting doubts on the reliability of the relevant financial accounts. Finally, Company 5 failed to provide the Capital Verification Report and information as to when and under which conditions the production equipment had been obtained.

(30) The first subparagraph of Article 2(7) (c) provides that the claim submitted by a producer claiming MET must contain sufficient evidence, as laid down in that

provision, that the producer operates under market economy conditions. The MET claims did not contain such evidence.

(31) The Commission furthermore, without being legally obliged to do so, sent deficiency letters to the exporting producers concerned, but to no avail.

(32) On that basis, the Commission informed the exporting producers concerned about its intention to deny MET and gave them an opportunity to comment.

(33) At the oral hearing and in their written observations, the exporting producers concerned have not contested the assessment of their MET claims by the Commission.

(34) It is concluded that none of the exporting producers concerned fulfilled all the conditions set out in Article 2(7)(c) of the basic Regulation and MET is, as a result, denied for all of them.

(35) It is recalled that the Court held that if the Institutions found that the market economy conditions prevailed for the exporting producers concerned, they ought to have benefited from the same rate as the company in the sample that was granted MET.

(36) However, since MET is denied for all exporting producers concerned as a result of the findings in the resumed investigation, none of the exporting producers concerned should benefit from the individual duty rate of the sampled company that was granted MET.

(37) The residual anti-dumping duty applicable to the PRC should be therefore imposed for the exporting producers concerned for the period of application of Council Regulation (EC) No 1472/2006. The period of application of that Regulation was initially from 7 October 2006 until 7 October 2008. Following the initiation of an expiry review, it was prolonged on30 December 2009 until 31 March 2011. The illegality identified in the judgments is that the Institutions failed to establish whether the products produced by the exporting producers concerned should be subject to the residual duty or to the duty of the company in the sample that was granted MET.

(38) On the basis of the illegality identified by the Court, there is no legal ground for completely exempting the products produced by the exporting producers concerned from paying any anti-dumping duty. A new act remedying the illegality identified by the Court therefore only needs to reassess the applicable anti-dumping duty rate, and not the measures themselves.

(39) Should the Institutions refrain from re-imposing the duties at the appropriate level, that would trigger unjust enrichement, as imports of the product produced by the exporting producers concerned took place under the assumption that the appropriate duty would be levied. The duty was therefore factored in when deciding on the sales price for the products concerned.

(40) Since it is concluded that the residual duty should be re-imposed in respect of the exporting producers concerned at the same rate as originally imposed by Council Regulation (EC) No 1472/2006, no changes are required to Council Regulation (EC) No 388/2008 and Council Implementing Regulation (EU) No 1294/2009. Those regulations remain valid for the exporting producers concerned.

2. Comments of interested parties

(41) The exporting producers concerned argue, first, that it was exceedingly difficult, if not impossible to provide the additional information requested by the Commission, covering the period 1 April 2004 to 31 March 2005.

(42) They argued, second, that the Court not only annulled the contested Regulation because of the failure of the Institutions to examine their requests for MET at all, but also because the Institutions failed to make the MET determination of non-sampled and sampled companies within three months of initiation of the investigation, as stipulated in Article 2(7)(b) of the basic Regulation. The parties claimed that that defect could not be remedied any more. They consider that in any event, as a result of the violation of the three months deadline, also all sampled companies that had requested MET should be treated as if they had been granted MET, and that the Institutions therefore were under an obligation to recalculate the average dumping margin for companies having obtained MET.

(43) They argue, third, that the anti-dumping proceeding had been concluded at the expiry of the anti-dumping measures on 31 March 2011, and that it therefore was not possible for the Institutions to resume that proceeding from the point where the illegality occurred. Rather, they consider that the Institutions are under the obligation to start a new investigation covering not only the MET claims, but also the existence of dumping, injury and Union interest.

(44) They argue, fourth, that the proposed way of complying with the judgments would lead to a retroactive imposition of the anti-dumping duties. That, in turn, would be against the principle of legal certainty, the right to effective judicial remedy and Article 10(1) of the basic Regulation.

(45) They claim, fifth, that the Institutions cannot limit themselves to the assessment of the requests for MET presented by the exporting producers concerned. Rather, they consider that the Institutions need to assess all requests for MET presented by non-sampled companies. Not doing so would violate the principle of non-discrimination.

(46) Finally, the parties contest the argument that the absence of re-imposition would result in unjust enrichment. It was argued that since the annulled anti-dumping duties never existed for the exporters concerned, not imposing them would not lead to an unjust enrichment of the affected operators.

3. Analysis of comments

(47) In response to the first claim, the Institutions recall that according to the case-law, the burden of proof lies with the producer wishing to claim MET under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments (see above recital (21), there is no obligation on the Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic regulation are fulfilled in order to grant it MET.

(48) Hence, the Institutions could simply have rejected the request for MET on the basis that the requests did not contain sufficient evidence that the producer operates under market economy conditions. The fact that the Institutions decided to give the exporting producers concerned the possibility to complement their requests can therefore not be criticised for coming allegedly late.

(49) As regards the second claim that the MET determination had to be completed within three months of the initiation, it is recalled that according to the case law, the second subparagraph of Article 2(7)(c) of the basic Regulation does not contain any indication as regards the consequences of the Commission's failure to comply with the three-month period. The General Court therefore takes the view that an MET decision at a later stage does not affect the validity of the Regulation imposing definitive measures as long as applicants have not proved that, if the Commission had not exceeded the three-month period, the Council might have adopted a different regulation more favourable to their interests than the contested regulation.[16] The Court has furthermore recognized that the Institutions may modify the MET assessment until the adoption of final measures.[17]

(50) That case-law has not been overturned by the judgments. In the judgments, the Court relies on the obligation for the Commission to carry out the assessment in three months in order to show that the obligation of that assessment exists independently of whether the Commission applies sampling or not. The Court does not pronounce itself on the question what legal consequence it has if the Commission concludes the MET assessment at a later stage of the investigation. The Court only rules that the Institutions could not completely ignore MET claims, but had to assess them the latest when imposing definitive measures.

(51) In the present case, the exporting producers concerned have not shown that, had the Commission carried out the MET assessment within three months after the initiation of the anti-dumping procedure in 2005, the Council might have adopted a different regulation more favourable to their interests than the contested regulation. The second claim is therefore rejected.

(52) As regards the third claim, namely that the measures in question expired on 31 March 2011, the Institutions fail to see why the expiry of the measure would be of any relevance for the possibility for the Council to adopt a new act to replace the annulled act.

(53) As explained above in recitals (9) to (11), the anti-dumping proceedings are, as a result of the annulment of the act concluding the proceedings, still open. The Institutions are under an obligation to close those proceedings, as the basic Regulation provides that an investigation has to be closed by an act of the Institutions. .

(54) As for the fourth argument, Article 10 (1) of the basic Regulation, which takes over the text of Article 10 (1) of the WTO Antidumping Agreement (‘ADA’), stipulates that provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant

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[16] Case T-299/05 Shanghai Exceli M&E Enterprise and Shanghai Adeptech Precision v Council [2009] ECR II- 565 ('Shanghai Excell'), paragraph 116 to 146.

[17] Case C-141/08 P, Foshan Shunde Yongjian Housewares & Hardware Co. Ltd, v. Council, paragraph 94 and following.

to Article 7(1) or 9(4) of the basic Regulation, as the case may be, enters into force. In the present case, the anti-dumping duties in question are only applied to products which entered into free circulation after the provisional and the contested (definitive) Regulation taken pursuant to 7 (1) and 9 (4) of the basic Regulation respectively had entered into force.

(55) In additon, it is also considered that the imposition of the anti-dumping duties does not result in violation of the general principles of Union law, such as protection of legal certainty, of legitimate expectations and the right to effective judicial remedy for the following reasons.

(56) With regards to the protection of legal certainty and of legitimate expectations, it is first of all observed that according to the case-law, traders cannot claim the protection of legal certainty and legitimate expectations where they were alerted of an imminent change in the Union's commercial policy.[18] In the present case, traders were alerted by the publication of the notice of initiation and of the provisional Regulation in the Official Journal, which are both still part of the legal order of the Union, of the risk that the products produced by the exporting producers concerned may become subject to an anti-dumping duty. The exporting producers concerned could therefore not rely on the general principles of the Union's law of protection of legal certainty and legitimate expectations.

(57) Second, it is important to underline that the imposition of definitive measures is not retroactive. The case-law of the Court distinguishes in that regard between the application of a new role to a situation that has become definitive (also referred to as an existing or definitively established legal situation)[19], and a situation that started before the entry into force of the new rule, but which is not yet definitive (also referred to as a temporary situation)[20].

(58) In the present case, the situation of the imports of the products concerned that occurred during the period of application of Council Regulation (EC) No 1472/2006 has not yet become definitive, because, as a result of the annulment of the contested Regulation, the anti-dumping duty applicable to them has not yet been definitively established. At the same time, traders were warned that such a duty may be imposed by the publication of the notice of initiation and the provisional Regulation. It is standing case-law of the Union Courts that operators cannot acquire legitimate expectations until the Institutions have adopted an act closing the administrative procedure, which has become definitive.[21]

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18 Case 245/81 Edeka v Germany [1982] ECR 2746, paragraph 27.

19 Case 270/84 Licata v ESC [1986] ECR 2305, paragraph 31 Case C-60/98 Butterfly Music v CEDEM [1999] ECR 1-3939, paragraph 24; Case 68/69 Bundesknappschaft v Brock [1970] ECR 171, paragraph 6; Case 1/73 Westzucker GmbH v Einfuhrund Vorratsstelle für Zucker [1973] 723, paragraph 5; Case 143/73 SOPAD v FORMA a.o. [1973] ECR 1433, paragraph 8; Case 96/77 Bauche [1978] ECR 383, paragraph 48; Case 125/77 KoninklijkeScholten-Honig NV e.a. v Floofdproduktschaap voor Akkerbouwprodukten [1978] ECR 1991, paragraph 37; Case 40/79 P v Commission [1981] ECR 361, paragraph 12; Case T-404/05 Greece v Commission [2008] ECR 11-272, paragraph 77; C-334/07 P Commission v Freistaat Sachsen [2008] ECR 1-9465, paragraph 53.

20 Case T-176/01 Ferrière Nord v Commission [2004] ECR 11-3931, paragraph 139; C-334/07 P Commission v Freistaat Sachsen [2008] ECR 1-9465, paragraph 53.

21 Case C-169/95 Spain v Commission [1997] ECR I-135, paragraph 51 to 54; Joined Cases T-116/01 and T-118/01, P&O European Ferries (Vizcaya) SA [2003] ECR II-2957, paragraph 205.

(59) Therefore the imposition of the anti-dumping duties is not retroactive.

(60) Furthermore, even if the imposition of the duties was retroactive, quod non, the substantive rules of Union law may apply to the situations existing before their entry into force in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to the them[22]. In particular, in case T-180/01 *Euroagri* v *Commission*[23] it was held that: *[A]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected* [24].

(61) In the present case the purpose is to comply with the obligation of the Institutions pursuant to Article 266 TFEU. Since the Court only found an illegality with regards to the determination of the applicable duty rate, and not with regards to the imposition of the measures themselves (that is, with regards to the finding of dumping, injury and Union interest), the exporting producers concerned could not have legitimately expected that no definitive anti-dumping measures would be imposed. Consequently, that imposition, even if it was retroactive, quod non, cannot be construed as breaching legitimate expectations.

(62) The right to effective judicial remedy is not violated either. The exporting producers concerned can contest the legality of the present Regulation in the Union Courts.

(63) As regards the fifth argument, it has to be noted that the exporting producers concerned are in a different legal position than the other non-sampled companies which have filed a request for MET but which have not challenged the contested Regulation in the Court. With regards to the latter, the contested Regulation has become definitive.

(64) Finally, if the Institutions were not to propose any measures, this would lead to unjust enrichment, for the reasons explained above in recital (39). The argument that the annulled duties never existed because the judgement removes the contested Regulation with retroactive effect from the legal order of the Union overlooks the fact that traders were warned of the risk of an imposition of duties by the notice of initiation and the provisional Regulation, and that pricing decisions for the products produced by the exporting producers concerned were taken at a point in time when the definitive duty was in place. In the case-law of the Court of Justice, it is recognized that the repayment of charges which have been unduly levied may be refused where doing so would entail unjust enrichment of the recipients.[25] The argument of the parties is therefore dismissed.

4. Comments of interested parties after disclosure

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22 Case C-34/92 GruSa Fleisch v Hauptzollamt Hamburg-Jonas [1993] ECR 1-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 Meridionale Industria Salumi α.δ. [1981] ECR 2735, paragraph 9 and 10; Case 21/81 Bout [1982] ECR 381, paragraph 13; case T-42/96 Eyckeler & Malt v Commission [1998] ECR 11-401, paragraphs 53 and 55 to 56;

23 [2004] ECR II-369, paragraphs 36 to 37.

24 See also, Case C-337/88 Società agricola fattoria alimentare (SAFA) [1990] ECR I-1, paragraph 13.

25 Case 199/82 San Giorgio [1983] ECR 3595, paragraph 13.

(65) After disclosure, some interested parties reiterated that the Court had annulled the Regulation in its entirety as regards the exporting producers concerned. They took the view that the Institutions were obliged, on the basis of Article 266 TFEU, to repay anti-dumping duties collected on the basis of the contested Regulation, insofar as they concerned products produced by the exporting producers concerned, and that the Institutions had the possibility, but not the obligation, to adopt a new act, provided that the new act does not violate Union law and is not affected by the same irregularities as those identified by the Court in its judgement.

(66) With regard to the repayment of the anti-dumping duties, the Commission services have instructed national customs authorities by note of 31 Mai 2012 to honour such requests for repayment, but to inform importers at the same time that it cannot be ruled out that the Commission may propose to the Council to re-impose duties on the relevant importations. That information had the express purpose of avoiding the creation of legitimate expectations.

(67) With regard to the adoption of a new act replacing the annulled act, it is recalled that in the context of administrative procedures such as anti-dumping procedures, the Institutions are under an obligation to close an open investigation by a definitive act (see above recitals (9), (10) and (53)). The adoption of a definitive act closing the open procedure is therefore not a possibility, but an obligation on the Institutions. It goes without saying that any new act has to comply with Union law and remedy the illegality identified by the Court. With regard to violations of Union law, the interested parties argued, first, that there is no legal basis for resuming the investigation at the point where the illegality occurred. They point to the fact that the anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') from the exporters concerned had expired in March 2011. In their view, it is contrary to both Union and WTO law to "resurrect a dead anti-dumping duty".

(68) The interested parties overlook the fact that as a consequence of the annulment, the anti-dumping procedure which had led to the adoption of the contested Regulation is still open with regard to the exporting producers concerned (see above recitals (9) to (11) and (52) to (53). The fact that the measures imposed by Council Regulation (EC) No. 1294/2009 had expired in 2011, that is before the Court rendered the judgments, is without any importance in that regard. Otherwise, the measures the Institutions are required to take in order to comply with a Court judgement would depend on the duration of the proceedings before the Union Courts.

(69) Second, they argue that the exporting producers concerned had challenged in the Court not only the rejection of the MET claims, but also the finding of dumping. Furthermore, they read the judgements as saying that the contested Regulation was annulled not because the Institutions failed to assess the MET claim prior to the adoption of the contested Regulation, but because the Commission failed to do so within three months. In their view, it follows from that that the Institutions had also not validly assessed the MET claims of the sampled companies, and therefore had not validly found dumping. One interested party goes even further and suggests that the Institutions should have assessed, when complying with the judgment, also all MET claims made by other, non-sampled companies.

(70) That interpretation of the judgement has been rebutted above in recitals (49) to (51) . The reference to the three-month deadline in the judgements is a textual argument to

show that all MET claims have to be assessed, even in case of sampling. Nowhere in the judgments does the Court overturn the earlier case-law on the lack of sanction for the violation of the three-month deadline. The fact that the Court exercised judicial economy by not examining six of the nine pleas against the judgements of the General Court means that the exporting producers concerned may raise those pleas again in case they decide to bring new proceedings. The Commission and the Council can rely, when complying with the judgments, on the findings of the General Court rejecting those arguments, as they have not been invalidated by the Court. Finally, there is no need to examine the MET claims of other non-sampled companies at this point in time, as the contested Regulation has become definitive vis-à-vis those other non-sampled companies.

(71) Third, interested parties argued that the Institutions deviated from their normal practice of complying with judgments annulling definitive anti-dumping measures, including what the Institutions had done following the judgment of the Court in *Industrie des Poudres Spheriques ('IPS')*[26]. They point out in particular that the Commission published notices of re-opening of the investigation in the Official Journal and proposed new measures to the Council to be adopted for the future.

(72) The facts of the present case are, however, different from previous annulments. As explained above in recital (38) and (61), the illegality identified by the Court does not concern the findings on dumping, injury, and Union interest, and therefore the principle of the imposition of the duty, but only the precise duty rate. The previous annulments relied on by the interested parties, on the contrary, concerned the findings on dumping, injury and Union interest. The institutions therefore considered it more appropriate to adopt new measures for the future.

(73) One interested party also relies on the annulments in Case T-221/05 Huvis v Council and in Case T-249/06 Interpipe Nikopolsky v Council. Those annulments were partial; they left part of the duty in place. The reason was that the General Court could decide itself on the appropriate level of the duty, as it held that an adjustment had to be done in a certain way. In the present case, on the contrary, the Court found that it could not decide on the place of the Commission and the Council whether the exporting producers concerned should be granted MET. That decision could only be taken on the basis of an assessment of their claims, which falls within the competence of the Commission and the Council. The fact that the Court did not rule itself on the question as to whether or not the exporting producers concerned should be granted MET also shows that the violation of the three month deadline does not automatically lead to granting of MET, as certain interested parties claim.

(74) Fourth, interested parties also reiterated that the imposition of anti-dumping duties on footwear imports from the exporting concerned would be retroactive and therefore violate Article 10 of the basic Regulation and Article 10 of ADA. They argued that the allegedly retroactive imposition would also violate legitimate expectations. Those legitimate expectations would have been created by the judgements respectively by the fact that the Commission deviated from its previous practice by publishing a notice on the resumption of the procedure in the Official Journal not immediately after the annulments, but only more than a year after the first judgement had been handed down. Furthermore, they argue that the general principle of the Union's law of the

[26] Case 458/98 P, Industrie des Poudres Spheriques v Council of 3 October 2000

protection of legal certainty precludes a Union act from taking effect as from a date prior its publication.

(75) It has been explained in recitals (54) to (59) that the imposition of anti-dumping duties in the present Regulation is not retroactive.

(76) The judgments cannot have created legitimate expectations, as they explain that the Commission and the Council need to establish at which rate the duty shall be set (see above recital (7)).

(77) With regards to the notice, the Institutions observe first of all, that there is no obligation to publish such a notice in the first place, as the Institutions resume the procedure from the point at which the illegality occurred, and the Notice of initiation remains part of the Union legal order. Secondly, the alleged legitimate expectations would be based on a period of silence. However, according to the case-law, the absence of an action of the Institutions cannot create legitimate expectations[27]. In any event, the allegedly late publication in the Official Journal did not constitute a notice on the resumption of the procedure, but a notice inviting interesting parties to come forward. It has been published for the reasons set out above in recital (14), and cannot create legitimate expectations either.

(78) With regards to the general principle of the Union's law of the protection of legal certainty, it has been set out above in recital (60) that a Union measure may take effect from a point in time before its publication where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected, which is the case in the present case.

(79) Fifth, interested parties also reiterated their argument on the absence of 'unjust enrichment of the importers', which has been rebutted above in recital (64).

(80) Sixth, interested parties also argued that the proposed implementation would violate the Union interest principle as laid down in Article 21 of the basic Regulation since the imposition of duties would be an unreasonable burden on importers in the Union without providing any benefit for the Union industry as a whole. That argument overlooks that the present Regulation concerns imports of the product concerned that have taken place during the period of application of the contested Regulation, and not future imports. With regard to those imports during the period of application of the contested Regulation, the Institutions have established the Union interest in recitals (241) to (286) of the contested Regulation. No illegality has been identified by the Union Courts with regard to those recitals.

(81) Seventh, interested parties also argued that not all interested parties had been able to defend their rights, but only those that could prove that they had been registered as such in the original investigation. In their view, the proposed duties will have an impact also on companies that were not registered as interested parties in the original investigation. In addition, they argued that the Institutions did not publish any notice immediately upon the Court judgment and that therefore they had been no information concerning the intended implementation in time.

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[27] Joined Cases C-183/02 P and C-187/02 P Demesa and Territorio Histórico de Álava v Commission [2004] ECR I-10609, paragraph 44; Joined Cases T-427/04 andt T-17/05 France v Commission [2009]_ECR II-4315, paragraph 261.

(82) As the Institutions have resumed the procedure at the point in time where the illegality occurred, it is normal that the Institutions have addressed the Notice to those parties that are interested parties in that procedure. In addition, nothing prevented other interested parties to come forward, and some have indeed done so and where considered as interested parties from the point in time onwards in which they came forward. The fact that the Notice was published only more than a year after the first of the two judgments was rendered is without impact on the legality of the present Regulation, as all interested parties were informed in time to make their views known.

(83) Eighth, the exporting producers concerned have argued that their rights of defence were violated due to the fact that the Commission has assessed their MET claims only in 2012/2013, and not in 2005/2006. They claim that had that assessment taken place in 2005/2006, they could have provided certain information which they cannot longer provide, because documents have been destroyed and/or because people have moved to other jobs.

(84) In that regard, it is recalled that there is no obligation, for the Commission, to request the exporting producer to complement the MET claim. The Commission and the Council may base their assessment on the information submitted by the exporting producer (see above recitals (21), (22) and (31)). Furthermore, the exporting producers concerned have not contested the assessment of their MET claims by the Commission, and they have not identified which documents or which people they have no longer been able to rely upon. The allegation is therefore so abstract that the Institutions cannot take into account those difficulties when carrying out the assessment of the MET claims. As that argument is based on speculation and not supported by precise indications as to which documents and which people are no longer available and as to what the relevance of those documents and people for the assessment of the MET claim is, that argument has to be rebutted.

(85) The interested parties argued that the proposed implementation would violate Article II (1)(b) of GATT 1994 since the Institutions proposed imposing retroactively an anti-dumping duty on footwear imports from the exporters concerned for which the anti-dumping measures had already expired. In addition, the interested parties argued that, since there are no legally applicable anti-dumping measures in place on the imports concerned, the proposed implementation is in violation of Articles 10, 5.1 and 5.6 of ADA. Under these Articles, the Institutions may re-impose definitive anti-dumping duties following the initiation of a new investigation and a new decision in the sense of ADA Article 9.1.

(86) Those arguments rest on the view that the Institutions were prevented from resuming the procedure at the point at which the illegality occurred and that the imposition of duties would be retroactive. For the reasons set out above, that view is wrong. It is therefore not necessary to address in more detail the arguments put forward on an alleged violation of WTO rules.

5. Article 221 of the Community Customs Code

(87) Article 221 of Council Regulation (EEC) 2913/1992 of 12 October 1992 establishing the Community Customs Code[28] stipulates that communication of the amount of duty

[28] OJ L 302, 19.10.1992, p. 1.

shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. The application may render impossible the implementation of the judgments in all cases where national customs authorities and/or judges have accepted the illegality of national customs communications that were based on the contested Regulation and concerned products produced by the exporting producers concerned. In such situations, the national customs authorities must be in a position to communicate the amount of duty later than three years from the date on which the customs debt was incurred.

(88) Contrary to the view held by interested parties, Article 221 of the Community Customs Code is not automatically applicable to the perception of anti-dumping duties. Neither the Community Customs Code itself nor the basic Regulation contains a provision that would render applicable the Community Customs Code to the perception of anti-dumping duties. Pursuant to Article 14(1) of the basic Regulation, it is the Regulation imposing the duty which has to specify form, rate and other criteria of the perception of the duties.

(89) Therefore, the present Regulation does not provide for the applicability of Article 221 of the Community Customs Code, but sets out independent rules for time bar. Those independent rules are justified as follows: for the reasons set out above in recitals (54) to (59) and (66), the proposed re-imposition of duties does not have retroactive effect, and in any event, for the reasons set out above in recitals (60) and (61) and (76) to (80), does not run counter the general principles of Union law of the protection of legal certainty and legitimate expectations.

(90) In addition, an initial communication of the amount of duty did take place within the three-year period. Following the judgments, it has however become necessary to re-assess whether the customs debt should be reduced as a consequence of the assessment of the MET claims of the exporting producers concerned. As there was, pending that assessment, no legal ground for keeping the customs duty paid, the Commission had instructed national customs authorities to honour such requests for repayment, but to inform importers at the same time that it cannot be ruled out that the Commission may propose to the Council to re-impose duties on the relevant importations (see above recital (66)).

(91) For those reasons, independent rules on time bar, different from Article 221 of the Community Customs Code, are justified.

(92) Nevertheless, in order to ensure legal certainty and to reflect the particular circumstances of the present case, it is considered appropriate to provide that communication to the debtor of the amount of duty shall take place no later than two years after the entry into force of the present Regulation.

(93) Interested parties argued that the Institutions cannot derogate from Article 221 of the Community Customs Code on the basis of Article 14(3) of the basic Regulation. They consider that the basic Regulation only confers competence to impose anti-dumping duties, but not to edict rules on the collection and recovery of anti-dumping duties. Those latter rules would have to be set exclusively by the Community Customs Code. They rely on the ruling of the Court in Case C-201/04 *Molenbergnatie*. Interested parties also argued that an implementing act such as Council Regulations imposing anti-dumping measures cannot derogate from legislative acts such as the Community

Customs Code. Finally, parties argued that derogating from Article 221 of the CCC would undermine legal certainty since it is settled case law that upon expiry of the limitation period the legally owed duty is no longer recoverable.

(94) As set out above in recital (88), the Community Customs Code is not automatically applicable to the perception of anti-dumping duties, but only where and to the extent that the Regulation imposing the duties provides for its applicability. The argument has to be rejected as unfounded for that reason. In any event, Article 14 of the basic Regulation, which is a legislative act that constitutes a *lex specialis* to the Community Customs Code, confers wide-ranging powers to the Council to deviate from the Community Customs Code. Pursuant to Article 14 (1) of the basic Regulation Member States shall collect the duties in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Contrary to the view expressed by interested parties, Article 14 of the basic Regulation covers also the collection of duties, and not only the imposition. Article 14 (3) of the basic Regulation provides that the Council may adopt "special provisions"; the example given of a common definition of the concept of origin illustrates that such special provisions may derogate, inter alia, from the Community Customs Code. In *Molenbergnatie*, Article 221 of the Community Customs Code was applicable precisely because the Regulation imposing anti-dumping duties did not derogate from it. Furthermore, it is obvious that any derogation has to be justified by the Institutions, and needs to preserve the spirit underlying Article 221 of the Community Customs Code, namely legal certainty, as is the case in the present Regulation. The arguments are therefore rebutted.

(95) One interested party argued that the two-year deadline for the communication to the debtor of the duty amount, mentioned in recital (92) above, should be applied in the context of Article 221(3) 2nd sentence of the Community Customs Code, which foresees an extension of the three year period to collect the duty by the Customs authorities in case of criminal behaviour. Furthermore, the interested party argued that the same extension should be applied to the three year deadline foreseen for the importers to request duty refunds under Article 236 of the Customs Code. The Institutions see no ground for acceding to those requests. The exception to the three-year rule provided for by Article 221(3) 2nd sentence of the Community Customs Code is not broad enough to allow for the effective compliance with the judgments. There is no justification for extending the deadline for importers that have imported the product concerned from the exporting producers concerned and failed to contest their customs debt in time.

6. Conclusion

(96) Account taken of the comments made and the analysis thereof it was concluded that the residual anti-dumping duty applicable to the PRC in respect of the exporting producers concerned for the period of application of the contested Regulation should be re-imposed.

(97) As explained in recital (40) no changes are required to Council Regulation (EC) No 388/2008 and Council Implementing Regulation (EU) No 1294/2009 which remain valid for the exporting producers concerned.

C. DISCLOSURE

(98) The exporting producers concerned and all parties that came forward were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of the definitive anti-dumping duty on the exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure and a number of interested parties has made use of this possibility. A hearing with the hearing officer has also taken place in that context.

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 produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd (TARIC additional code B999) and falling within CN codes: 6403 20 00, ex 6403 30 00[29], 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[30] for the period of application of Council Regulation (EC) No 1472/2006. The TARIC codes are listed in the Annex to this Regulation.

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 1719/2005[31];

   – ‘footwear involving special technology’ shall mean footwear having a CIF price per pair of not less than EUR 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 neutralise impact, or materials

[29] By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p.1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

[30] 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.

[31] OJ L 286, 28.10.2005, p. 1.

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 (1) and falling within CN codes: ex 6403 30 00[32], 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;

– 'slippers and other indoor footwear' shall mean such footwear falling within CN code ex 6405 10 00.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price of the products described in paragraph 1 and manufactured by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd shall be 16.5%.

4. The provisions in force concerning customs duties shall apply, with the exception of Article 221 of Council Regulation (EEC) 2913/1992 of 12 October 1992 establishing the Community Customs Code[33]. Communication to the debtor of the amount of duty may take place more than three years after the customs debt was incurred, but no later than two years after the entry into force of this Regulation.

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. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

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

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32 By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p.1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

33 OJ L 302, 19.10.1992, p. 1.

Done at Brussels,

For the Council
The President