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**ANTIDUMPING 17
COMER 64**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL IMPLEMENTING REGULATION (EU) No .../2014

of...

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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, and in particular Article 266 thereof,

Having regard to Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Article 9 and 14 (3) thereof,

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

¹ OJ L 343, 22.12.2009, p. 51.

Whereas:

A. PROCEDURE

- (1) On 23 March 2006, the Commission adopted Commission Regulation (EC) No 553/2006¹ ('the provisional Regulation'), which imposed 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.
- (2) By Council Regulation (EC) No 1472/2006² ('the contested Regulation'), 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 .
- (3) By Council Regulation (EC) No 388/2008³, the Council extended the definitive anti-dumping measures on imports of certain footwear with upper leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.

¹ Commission Regulation (EC) No 553/2006 of 23 March 2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3).

² 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).

³ 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 (OJ L 117, 1.5.2008, p. 1).

- (4) Further to an expiry review initiated on 3 October 2008¹, the Council further extended the anti-dumping measures for 15 months by Council Implementing Regulation (EU) No 1294/2009², that is until 31 March 2011, when the measures expired.
- (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 (which has since become the General Court). By judgments of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council³ and in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council⁴ ('the judgments of the General Court'), the General Court rejected those challenges.

¹ OJ C 251, 3.10.2008, p. 21.

² 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).

³ [2010] ECR II-671.

⁴ [2010] ECR II-747.

- (6) The exporting producers concerned appealed those judgments. In its judgments of 2 February 2012 in case C-249/10 P *Brosmann et al*¹ and of 15 November 2012 in case C-247/10P *Zhejiang Aokang Shoes Co. Ltd*² ('the judgments'), the Court of Justice of the European Union ('the Court') set aside 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 judgment in *Case C-249/10 P* and paragraph 29 and 32 of the judgment in *Case C-247/10 P*).
- (7) As regards the substantive issues, the Court 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[of the judgment in *Case C-249/10 P*], 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."³

¹ [2012] ECR 00000.

² [2012] ECR 00000.

³ *Case C-249/10 P*, paragraph 42; see also *Case C-247/10 P*, paragraph 36.

- (8) As a consequence, the Court annulled the contested Regulation, in so far as it related 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 a Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated.¹
- (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.² 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 order³, except if the illegality occurred at the stage of initiation.

¹ Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28.

² 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.

³ 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.

- (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, by letter, 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 of the European Union*¹.

¹ OJ C 295, 11.10.2013, p. 6.

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

- (15) The 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 judgment¹.
- (16) This Implementing Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to its annulment in so far as the exporting producers are concerned.
- (17) All other findings made in the contested Regulation, which were not annulled by the General Court, remain valid and are herewith incorporated into this Implementing 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.

¹ Case C-458/98 P.

- (20) The Institutions have therefore analysed the MET claims. The assessment has shown that the information provided was not sufficient to demonstrate that the exporting producers concerned operated under market economy conditions (see for a detailed explanation 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 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 Court of Justice of the European Union to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgment in [Case C-249/10 P](#) and paragraph 24 of the judgment 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 to provide such information and informed 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 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 criterion 1 (Business decisions), the official document "Certificate of Approval" of the company referred 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. 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 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 had 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), company 4 failed to provide the Articles of Association and the required copies of contracts. For criteria 2 (Accounting) and 3 (Assets and 'carry over'), 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. However, 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, those producers 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 re-imposed for the exporting producers concerned for the period of application of the contested Regulation. 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 on 30 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 enrichment, 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 the contested Regulation, no changes are required to Regulation (EC) No 388/2008 or to 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 argue, 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 had 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 claim that that defect could not be remedied any more. They also consider that in any event, as a result of the violation of the three months deadline, all sampled companies that had requested MET should be treated as if they had been granted MET, and that the Institutions therefore are 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 is not possible for the Institutions to resume that proceeding from the point where the illegality occurred. Rather, they consider that the Institutions are under an 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 contrary to 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 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 allegedly coming 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 regulation that was more favourable to their interests than the contested Regulation.¹ The Court has furthermore recognised that the Institutions may modify the MET assessment until the adoption of final measures.²
- (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 deal with the question what legal consequences that arise if the Commission concludes the MET assessment at a later stage of the investigation. The Court only has ruled that the Institutions could not completely ignore MET claims, but had to assess them at the latest when imposing definitive measures.

¹ Case T-299/05 *Shanghai Exceli M&E Enterprise and Shanghai Adeptech Precision v Council* [2009] ECR II- 565 ('Shanghai Excell'), paragraphs 116 to 146.

² Case C-141/08 P, *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v Council*, paragraph 94 and following.

- (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 regulation that was 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 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 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 Articles 7(1) and 9(4) of the basic Regulation respectively had entered into force.

- (55) In addition, it is also considered that the imposition of the anti-dumping duties does not result in any infringement of the general principles of Union law, such as protection of legal certainty and 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.¹ In the present case, traders were alerted by the publication in the *Official Journal of the European Union* of the notice of initiation and of the provisional Regulation, 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 Union law on protection of legal certainty and legitimate expectations.

¹ Case 245/81 *Edeka v Germany* [1982] ECR 2746, paragraph 27.

- (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 rule to a situation that has become definitive (also referred to as an existing or definitively established legal situation)¹, 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).²
- (58) In the present case, the situation of the imports of the products concerned that occurred during the period of application of the contested Regulation has not yet become definitive, because, as a result of the annulment of the same 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. According to the case-law operators cannot acquire legitimate expectations until the Institutions have adopted an act closing the administrative procedure, which has become definitive.³

¹ Case 270/84 *Licata v ESC* [1986] ECR 2305, paragraph 31; Case C-60/98 *Butterfly Music v CEDEM* [1999] ECR I-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] ECR 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 *Koninklijke Scholten-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 II-272, paragraph 77; C-334/07 P *Commission v Freistaat Sachsen* [2008] ECR I-9465, paragraph 53.

² Case T-176/01 *Ferrière Nord v Commission* [2004] ECR II-3931, paragraph 139; C-334/07 P *Commission v Freistaat Sachsen* [2008] ECR I-9465, paragraph 53.

³ 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 them¹. In particular, in *Case T-180/01 Euroagri v Commission*² 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.³
- (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 regard 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.

¹ *Case C-34/92 GruSa Fleisch v Hauptzollamt Hamburg-Jonas* [1993] ECR I-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 *Meridionale Industria Salumi a.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 II-401, paragraphs 53 and 55 to 56.

² [2004] ECR II-369, paragraphs 36 to 37.

³ See also, *Case C-337/88 Società agricola fattoria alimentare (SAFA)* [1990] ECR I-1, paragraph 13.

- (62) The right to effective judicial remedy is not violated either. The exporting producers concerned can contest the legality of this Implementing Regulation in the Court of Justice of the European Union.
- (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 in recital (39). The argument that the annulled duties never existed because the judgment 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, it is recognised that the repayment of charges which have been unduly levied may be refused where doing so would entail unjust enrichment of the recipients.¹ The argument of the parties is therefore dismissed.

¹ Case 199/82 *San Giorgio* [1983] ECR 3595, paragraph 13.

4. Comments of interested parties after disclosure

- (65) After disclosure, some interested parties reiterated that the Court had annulled the contested 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 judgment.
- (66) With regard to the repayment of the anti-dumping duties, the Commission services have instructed national customs authorities by note of 31 May 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 infringements 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 recitals (9) to (11) and (52) to (53). The fact that the measures imposed by 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 judgment would depend on the duration of the proceedings before the Court of Justice of the European Union.

- (69) Second, they argue that the exporting producers concerned had challenged not only the rejection of the MET claims, but also the finding of dumping. Furthermore, they read the judgments 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 had 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 judgment has been rebutted in recitals (49) to (51). The reference to the three-month deadline in the judgments 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 judgments 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 Case 458/98 P. They point out in particular that the Commission published notices of re-opening of the investigation in the *Official Journal of the European Union* and proposed new measures to the Council to be adopted for the future.
- (72) The facts of the present case are, however, different from those underlying previous annulments. As explained in recitals (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*¹. Those annulments were partial; they left part of the duty in place. The reason for this was that the General Court itself could decide 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 in 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 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 the 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 judgments 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 of the European Union* not immediately after the annulments, but only more than a year after the first judgment had been handed down. Furthermore, they argue that the general principle of Union law of protection of legal certainty precludes a Union act from taking effect as from a date prior its publication.

¹ [2009] ECR II-00383.

- (75) It has been explained in recitals (54) to (59) that the imposition of anti-dumping duties in this Implementing 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 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 expectations¹. In any event, the allegedly late publication in the *Official Journal of the European Union* did not constitute a notice on the resumption of the procedure, but a notice inviting interested parties to come forward. It has been published for the reasons set out in recital (14), and cannot create legitimate expectations either.
- (78) With regard to the general principle of Union law of the protection of legal certainty, it has been set out 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.

¹ 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 and T-17/05 *France v Commission* [2009] ECR II-4315, paragraph 261.

- (79) Fifth, interested parties also reiterated their argument on the absence of 'unjust enrichment of the importers', which has been rebutted 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 constitute an unreasonable burden on importers in the Union without providing any benefit for the Union industry as a whole. That argument overlooks the fact that this Implementing 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 Court of Justice of the European Union 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 after the judgment and that therefore they had been no information concerning the intended implementation in time.

- (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 from coming forward, and some have indeed done so and were 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 handed down is without impact on the legality of this Implementing Regulation, as all interested parties were requested 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 can no 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 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 rejected.
- (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 Article 9.1 of ADA.

- (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, 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) 2913/1992¹ ('the Community Customs Code') stipulates that communication of the amount of duty is not to 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 collection of anti-dumping duties. Neither the Community Customs Code itself nor the basic Regulation contains a provision that would render the Community Customs Code applicable to the collection 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 collection of the duties.

¹ Council Regulation (EEC) 2913/1992 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

- (89) Therefore, this Implementing 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 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 in recitals (60) and (61) and (76) to (80), does not run counter to 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 recital (66)).
- (91) For those reasons, independent rules on time bar, different from those referred to in 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 ...*.

* OJ: Please insert date: two years after the entry into force of this Implementing 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 make 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 Molenbergnatie¹. Interested parties also argued that an implementing act such as a Council Regulation 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.

¹ [2006] ECR I-02049

(94) As set out in recital (88), the Community Customs Code is not automatically applicable to the collection 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 on 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 and 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 this Implementing Regulation. The arguments are therefore rejected.

(95) One interested party argued that the two-year deadline for the communication to the debtor of the duty amount, mentioned in recital (92), should be applied in the context of Article 221(3) second 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) second 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 Regulation (EC) No 388/2008 or 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 have 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 30 00¹, 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 10 00² for the period of application of Regulation (EC) No 1472/2006. The TARIC codes are listed in the Annex to this Implementing Regulation.

¹ 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.

² 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.

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

- 'sports footwear' means footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1719/2005¹;
- 'footwear involving special technology' means 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 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;

¹ 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).

- 'footwear with a protective toecap' means footwear incorporating a protective toecap with an impact resistance of at least 100 joules¹ and falling within CN codes: ex 6403 30 00², 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' means 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 %.

¹ The impact resistance shall be measured according to European Norms EN345 or EN346.
² 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.

4. The provisions in force concerning customs duties shall apply, with the exception of the time limit provided for in the first sentence of Article 221(3) of Regulation (EEC) 2913/1992. 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 ...*.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 553/2006 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.

Done at ...,

For the Council

The President

* OJ: Please insert date: two years after the entry into force of this Implementing Regulation.

ANNEX

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1

(a) From 7 October 2006:

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

(b) From 1 January 2007:

6403 51 05 19, 6403 51 05 99, 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 05 19, 6403 59 05 99, 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 05 19,
6403 91 05 99, 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 05 19, 6403 99 05 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

(c) From 7 September 2007:

6403 20 00 20, 6403 20 00 80, 6403 51 05 15, 6403 51 05 18, 6403 51 05 95, 6403 51 05 98,
6403 51 11 91, 6403 51 11 99, 6403 51 15 91, 6403 51 15 99, 6403 51 19 91, 6403 51 19 99,
6403 51 91 91, 6403 51 91 99, 6403 51 95 91, 6403 51 95 99, 6403 51 99 91, 6403 51 99 99,
6403 59 05 15, 6403 59 05 18, 6403 59 05 95, 6403 59 05 98, 6403 59 11 91, 6403 59 11 99,
6403 59 31 91, 6403 59 31 99, 6403 59 35 91, 6403 59 35 99, 6403 59 39 91, 6403 59 39 99,
6403 59 91 91, 6403 59 91 99, 6403 59 95 91, 6403 59 95 99, 6403 59 99 91, 6403 59 99 99,
6403 91 05 15, 6403 91 05 18, 6403 91 05 95, 6403 91 05 98, 6403 91 11 95, 6403 91 11 98,
6403 91 13 95, 6403 91 13 98, 6403 91 16 95, 6403 91 16 98, 6403 91 18 95, 6403 91 18 98,
6403 91 91 95, 6403 91 91 98, 6403 91 93 95, 6403 91 93 98, 6403 91 96 95, 6403 91 96 98,
6403 91 98 95, 6403 91 98 98, 6403 99 05 15, 6403 99 05 18, 6403 99 05 95, 6403 99 05 98,
6403 99 11 91, 6403 99 11 99, 6403 99 31 91, 6403 99 31 99, 6403 99 33 91, 6403 99 33 99,
6403 99 36 91, 6403 99 36 99, 6403 99 38 91, 6403 99 38 99, 6403 99 91 95, 6403 99 91 98,
6403 99 93 25, 6403 99 93 28, 6403 99 93 95, 6403 99 93 98, 6403 99 96 25, 6403 99 96 28,
6403 99 96 95, 6403 99 96 98, 6403 99 98 25, 6403 99 98 28, 6403 99 98 95, 6403 99 98 98,
6405 10 00 81 and 6405 10 00 89.
