COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.10.1997
COM(97) 498 final

Proposal for a

COUNCIL REGULATION (EC)

imposing a definitive anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) The Commission, by Regulation (EC) No 165/97[1] , imposed provisional anti-dumping duties on imports into the Community of certain footwear with textile uppers originating in the People's Republic of China and Indonesia.

(2) Certain interested parties, Community producers, exporters, as well as importers submitted comments in writing. Those parties who so requested were granted an opportunity to be heard by the Commission. The Commission considered all the views expressed before drawing its final conclusions.

(3) The Commission accepted the claim by one Indonesian exporter regarding the omission in the dumping calculation of a factor affecting price comparability, and consequently revised downwards its calculations of normal value and dumping for both Indonesia and for China since Indonesia was used as the analogue country for the purpose of calculating normal value in respect of China.

(4) In addition, following the submissions received and a further analysis of the data available, the Commission considered that the adjustment used at provisional stage to take into account the difference of level of trade between the CIF imports and the Community producers' delivered sales in the calculation of the injury elimination levels ought to increased.

[1] OJ No L 29, 31.1.1997, p.3.

(5) Subsequent to the imposition of provisional measures, the Commission further examined matters deemed relevant in analysing the issue of Community interest. Having examined a wide variety of aspects and the various interests involved, no compelling reasons have come into light which would lead to the conclusion that the imposition of definitive measures would not be in the interest of the Community.

(6) In the light of the above, the Commission confirmed its provisional conclusions to the effect that the footwear concerned originating in Indonesia and the People's Republic of China was being dumped in the Community and was causing material injury to the Community industry, and concluded that it is in the Community interest to take protective measures in the form of definitive anti-dumping duties and to collect definitively the provisional duties at the duty rate definitively imposed.

(7) The adjustments in the calculations presented above affect the provisional findings, to the effect that the individual duty rates for the cooperating Indonesian companies are reduced to a range from 0% to 14.1%, as well as the residual injury elimination levels which amount to 15.4% for Indonesia and 61.2% for the People's Republic of China.

(8) In accordance with Article 9 of Council Regulation (EC) No 384/96, the Commission therefore proposes that the Council impose definitive anti-dumping duties on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia. In the light of the extent of the injury, it is also recommended that the Council collect the provisional anti-dumping duties to the extent of the amount of the definitive duties imposed.

COUNCIL REGULATION (EC) No /97

of .....

imposing a definitive anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[1] and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 165/97[2] (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of certain footwear with textile uppers falling within Combined Nomenclature (CN) codes 6404 19 10 and ex 6404 19 90 originating in the People's Republic of China and Indonesia.

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1 OJ No L 56, 6.3.1996, p. 1 Regulation as amended by Regulation (EC) No 2331/96 (OJ No L 317, 6.12.1996, p. 1).

2 OJ No L 29, 31.1.1997, p.3.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

(3) Those parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered, and, where deemed appropriate, taken into account in the Commission's definitive findings.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(7) For the purpose of its preliminary findings, the Commission considered "non-sports" footwear with outer soles of rubber or plastics and uppers of textile materials, intended for use either indoor or outdoor (falling within CN codes 6404 19 10 and ex 6404 19 90), as one single category of products. In this regard, certain interested parties claimed that slippers and outdoor footwear were too different, in particular in terms of use, to belong to the same category of products.

(8) In this respect, it is worth recalling that most light outdoor shoes of the kind under consideration can replace slippers (they can be and are used indoors) and are therefore in direct competition with slippers. Accordingly, it is confirmed that slippers and outdoor footwear of the kind under consideration should be regarded as one single category of products.

(9) Making reference to the exclusion, at provisional stage, of certain types of footwear sometimes known as "espadrilles", several interested parties have requested, on various grounds, the further exclusion of certain allegedly very specific products from the scope of the proceeding. These claims are analysed below.

a) Neoprene shoes

(10) Several importers requested the exclusion of certain types of footwear sometimes known as "diving boots", made of neoprene and used for certain water sports such as diving. Indeed, neoprene is a material which is generally strengthened with a textile coating when used for manufacturing footwear, with the result that the constituent material of the upper having the greatest external surface area is the textile material, and thus the footwear concerned classifiable under the CN heading 6404. In addition, since certain water sports, such as diving, are not considered expressly as a "sporting activity" within the meaning of the Combined Nomenclature, the neoprene shoes concerned were, it was claimed, classifiable under CN code 6404 19 90, although such a specific product would not belong to the single category of products under consideration.

(11) Having investigated this issue in more detail the Commission found that the neoprene shoes in question are sold in water sport equipment stores and not in footwear stores and clearly belong to a distinct market. Their physical characteristics and the use which they are intended for, make them, in the consumer's perception, a clearly distinct product from those belonging to the single category of "non-sports footwear with textile uppers" under consideration.

(12) Asked to react on this issue, the representatives of the complaining Community industry raised no objections but indicated that, should an exclusion be granted, their main concern would be that the description of the footwear concerned be sufficiently precise in order to avoid any circumvention of duties.

(13) For all the above reasons and in consideration of the fact that the footwear concerned is clearly identifiable by the customs authorities, it is considered that the neoprene shoes sometimes known as "diving boots" or "water sports boots" should be excluded from the scope of the proceeding.

b) "Trekking shoes"

(14) Within the meaning of the Combined Nomenclature "trekking" is not considered as a sporting activity and therefore trekking shoes with textile uppers generally fall within CN code 6404 19 90. Certain parties requested that this product be excluded from the scope of the proceeding, on two grounds. The first ground was based on the fact that the product in question would be sold at a high, non dumped, price. Moreover, certain importers claimed that they could have legitimately expected that trekking shoes would not be subjected to measures because the Spanish version of the notice of initiation[3] had translated, in the list of exclusions contained therein, the words "cross-country ski footwear" by "botas de senderismo", the Spanish equivalent of "trekking shoes".

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3 OJ No C 45, 22.2.1995, p. 2.

(15) As to the first ground, it has to be noted that the information made available by cooperating exporters and used by the Commission for the investigation of dumping did not confirm the absence of dumping on this type of footwear.

(16) As regards the second ground, i.e. the allegedly legitimate expectation of certain importers that trekking shoes would not be subjected to measures (stemming from the fact that the Spanish version of the notice of initiation had mis-translated the words "cross-country ski footwear"), this argument cannot be accepted for the following reasons:

Reference should first be made to the Court of Justice's jurisprudence (Anklagemyndigheden vs. Schumacher and others, Judgement of 27 October 1981, case 250/80), according to which it is appropriate, where provisions are affected by a disparity between various language versions, to place them within the context of the totality of the Community rules concerned and to interpret them with particular regard to their objectives.

It has been a long standing approach of Community institutions to set up a closed list of so-called "sporting activities" within the framework of the Combined Nomenclature. More precisely, it was quite clear that the wording of the notice of initiation was a mere quotation of the provisions of subheading note 1 (b) of Chapter 64 of the Combined Nomenclature, in the Spanish version of which the words "ski-boots and cross-country ski footwear" are translated by the words "calzado para esquiar" and not by the words "botas de esquí, senderismo".

(17) Finally, it has to be stressed that the footwear with textile uppers of the type called "trekking shoes" is widely produced in the EC, was aimed by the complaint and clearly fell within the scope of the investigation. Indeed, most of these products may also be used, and are actually used, for other purposes than the "technical" one which they are supposed to be intended for, which confirms their belonging to the single category of product under consideration.

Accordingly, it is considered that the so-called "trekking shoes" should remain within the scope of the proceeding.

c) Medical shoes

(18) Orthopaedic shoes, i.e. intended to correct a *specific and permanent* disability or physical abnormality, belong to chapter 90 of the Combined Nomenclature and are not covered by the present investigation. The product, falling within CN code 6404 19 90, for which an exclusion was claimed is a medical footwear of the type sold in chemists' stores, not per pair but per "foot", and which is not specifically adapted to a given person but is intended for anybody having for instance a sprained or broken ankle. This claim was made on the grounds that such a specific product could not belong to the single category of products under consideration.

(19) It is clear that the medical shoes in question belong to a different market (they are not sold in footwear stores but by chemists). In addition, they are marketed in a very specific way (per "foot" and not per pair, and in specific shapes in order to fit a plaster rather than a foot), which makes them, in the consumer's perception, a clearly distinct product from those belonging to the single category of product under consideration.

(20) Asked to react on this issue, the representatives of the complaining Community industry argued that some production of medical footwear exists in the Community but did not oppose the conclusion that the shoes in question were sufficiently specific, in terms of physical characteristics and uses, for them to fall outside the single category of "non-sports footwear with textile uppers" under consideration.

(21) For all the above reasons (and in consideration of the fact that such a specific product is clearly identifiable by the customs authorities), it is considered that the medical footwear of the type sold in chemists' stores, not per pair but per "foot", should be excluded from the scope of the proceeding.

d) "Disposable" slippers

(22) The party having claimed the exclusion of "disposable" slippers explained that the footwear in question, which is imported at a very low unit price, is generally not sold to final consumers but given away (e.g. by certain hotels to their guests or certain airlines to their passengers). These circumstances were claimed to result in the footwear concerned to fall outside the single category of products under consideration.

(23) Asked to comment on this issue, the representatives of the complaining Community industry argued that the concept of "disposable" (or "not for sale") was rather subjective and that the footwear in question was clearly, in terms of physical characteristics and uses, a slipper belonging to the single category of products under consideration.

(24) The footwear in question has indeed physical characteristics, application and uses which do not differ from those of other slippers. While at importers' level the so-called disposable slipper seems to belong to a distinct market (the claim was made by a company dealing with "inflight and hotel service products", and not by a footwear distributor), the situation is much less clear at consumer's level since the product in question is purely and simply interchangeable with a slipper of the type under consideration.

(25) For the above reasons, it is considered that the so-called disposable slippers should remain within the scope of the proceeding.

2. Like product

a) Arguments based on the existence of different production methods

(26) The question of vulcanised footwear, already raised at provisional stage (see recital 18 of the provisional duty Regulation), has again been addressed by certain interested parties. In particular, allegations were reiterated that the Community industry did not produce in sufficient quantities shoes with vulcanised soles and that its production is rather concentrated on injection moulding. The results of the further examination carried out are the following.

(27) Whilst it is clear that the vulcanisation process is different to that of injection moulding, it should be recalled that the main relevant criteria in the determination of the "like product" are based on the general technical or physical characteristics and the use or functions of products and not the method used for their production. In this context, minor differences resulting from different production processes are generally disregarded.

(28) As to the technical arguments raised by various parties, namely the fact that vulcanisation means *rubber* while injection means inter alia *PVC*, thus differences of access to the raw material, visual differences (PVC is more "shiny" than rubber) and smell (rubber has a typical smell but PVC has none) and different dissolving and melting properties, it cannot be denied that differences in nature exist between the chemical and physical reactions taking place during the manufacturing process of these types of footwear. However, it should be kept in mind that *synthetic* rubber is generally used in the manufacture of footwear. Thus the raw materials involved in these processes, i.e. synthetic rubber and PVC, are all petrochemical derivatives, manufactured wherever one is able to manage the industrial process concerned (e.g. Europe, USA, Middle East).

Synthetic rubber is indeed available in all parts of the world, one of the main applications being the tyre industry. The argument of better access to raw materials for producers of vulcanised footwear in developing countries cannot therefore be considered as relevant, as this may make the manufacturing process more cost effective but has no impact on the fact that the product concerned is alike the Community product. It should also be noted that, to differentiate the shoes in question, the parties had to invoke criteria which go far beyond usual criteria corresponding to normal use: If PVC, unlike rubber, does indeed melt, it is above 80°C, well above normal conditions during use. Similarly, customers would not, under normal conditions, perform a dissolving test before buying.

(29) As regards the alleged decline in the production of vulcanised footwear in the Community, it has to be stressed that this aspect was raised by certain importers at a very advanced stage of the proceeding. However, the evidence so far received shows that this production process is still used in the Community (for instance in Spain where a number of producers have declared that they could still produce a total of 22 million pairs/year of this type of shoe) and that there are numerous producers in the Community willing and able to produce vulcanised footwear.

The investigation has also shown that, contrary to allegations made by a number of parties, vulcanised footwear imported from the People's Republic of China and Indonesia is sometimes sold as a branded product, packed in a cardboard box and sold in specialised shoe shops whilst Community produced injection moulded footwear can be sold as a non-branded product, in plastic bags and in discount stores.

(30) The conclusion to be drawn from the above is that notwithstanding technical differences in the manufacturing process used, vulcanised footwear is in direct competition with injection moulded footwear. Indeed, these types of footwear are so similar in all respects that the average consumer would not be able to differentiate them.

There is thus no reason to consider that vulcanised footwear produced in the People's Republic of China and Indonesia and exported to the Community is not a like product to injection moulded footwear produced in the Community, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

b) Arguments based on the alleged existence of different "product segments"

(31) Certain parties have reiterated that imported and Community produced footwear belong to different product segments which do not compete with each other. They claimed that footwear, imported at a price higher than the average, would not be alike, within the meaning of Article 1(4) of the Basic Regulation, to footwear imported below or at the average price.

(32) This issue has been the source of repeated and seemingly contradictory statements by importers, some of them claiming that they import low quality footwear that they simply could not find in the Community, while others claimed that they order in the People's Republic of China or in Indonesia sophisticated products manufactured in accordance with their own specifications, design and sometimes raw materials.

This contradiction simply shows that the People's Republic of China and Indonesia are in fact capable of producing, do indeed produce, and export to the Community, the full range of products on offer in the market. This is not apparent from import statistics because the average prices are driven by the bulk of imports which is indeed made of low-priced footwear. The imports in question and the products manufactured by the Community industry are therefore alike within the meaning of Article 1(4) of the Basic Regulation.

c) Conclusion

(33) In the light of the above, it is confirmed that footwear subject to this proceeding produced in the People's Republic of China and Indonesia and exported to the Community is a like product to footwear produced in the Community within the meaning of Article 1(4) of the Basic Regulation. Similarly, footwear subject to the current investigation produced in Indonesia is a like product to the footwear produced and exported from the People's Republic of China to the Community.

D. DUMPING

1. Indonesia

(a) Normal value

(34) The Indonesian exporters contested the Commission's use, in constructing normal value, of a profit margin established on the basis of one company's profitable domestic sales of a product other than the product concerned, in this case footwear with leather or plastic uppers. They alleged that this profit margin was excessive and not representative of the industry.

In addition, as the profit margin had been used in the construction of normal value for all companies in the sample for Indonesia, the normal values and by extension the dumping margins were allegedly excessive and unfair. They contended that the use of the profit margin of 7% deemed acceptable by the Commission in the case of the Community industry should have been used.

(35) This argument could not be accepted. Firstly, Article 2 (6) (b) of the Basic Regulation provides that where there are no domestic sales of the product concerned, the SG&A and profit used in the construction of normal value can be established on the basis of the actual amounts applicable to production and sales of the same general category of products for the exporter or producer in question in the domestic market of the country of origin. This was the methodology applied in the case of the company referred to at recital 34 of the present Regulation.

In the case of two of the sampled companies which had neither domestic sales of the product concerned nor of the same general category of product, normal value had to be established in accordance with Article 2 (6) (c) of the Basic Regulation i.e. any other reasonable method. It was held that in the circumstances of this investigation the most reasonable method was to use the SG&A and profit found for the company referred to at recital 34 of the present Regulation.

Secondly, the 7% profit margin used in the calculation of a non-injurious price for the Community industry is the minimum that the Commission considers necessary to remove the injury suffered by the Community industry and has thus nothing to do with the profit margin used in the construction of normal value, which has to be based on the actual profit achieved on the Indonesian market. In this regard, it should be noted that the European Court of Justice has consistently indicated that preference should be given to the use of actual profit margins in the construction of normal value.

(36) One of the Indonesian companies included in the sample contended that in calculating its normal values, the Commission should have used the cost estimates which they had submitted during the on the spot verification. In this context, it should be pointed out that the company concerned did not have a cost accounting system, and had only cost estimates which had been used to make price offers to potential customers. The latter were the costs reported in their response to the questionnaire.

This claim had to be rejected since the company was unable to demonstrate the correctness of the cost estimates. Furthermore, for some of the models, no information at all regarding cost was available. Moreover, no information beyond direct material cost was available for any of the models. Therefore, the approach adopted in the provisional duty Regulation, i.e. to recalculate costs by reallocating the total cost of sales, exclusive of SG&A and profit, over the models concerned using the turnover in the company's own accounts is confirmed, as this was deemed to be the most appropriate method for establishing the costs of each model of footwear.

(b) Export price

(37) In the absence of any comments on the establishment of export prices the provisional determinations are hereby confirmed.

(c) Comparison

(38) The Indonesian exporter whose profitable domestic sales were used in the construction of normal value for Indonesia and referred to in recital 34 of the present Regulation claimed that the Commission omitted to take account of a factor affecting price comparability as provided for in Article 2 (10) of the Basic Regulation by not granting an allowance to normal value for credit costs. As the Commission established that this adjustment was indeed omitted, it has now reviewed its calculations accordingly. As the SG&A of this company was used in the construction of normal value for the other Indonesian companies in the sample, a reduction of their normal value was also required to reflect the allowance granted. All dumping calculations have been adjusted accordingly.

(39) The company referred to at recital 36 of the present Regulation contended that the dumping margin had been created by averaging the costs of individual models and the application of an artificially high profit margin in the construction of normal value. It claimed that the use of averaging meant that normal values were inflated and all low priced exports dumped. It further contended that the use of the individual normal values it had submitted and the application of a reasonable profit would have led to a finding of no dumping.

In view of the circumstances outlined in recital 36 of the present Regulation, the Commission considered that, in order to arrive at a reasonably accurate calculation of costs it had no alternative other than to recalculate the costs using the company's own accounting records and to reallocate the total cost of sales, exclusive of SG&A and profit, over the models concerned.

(d) Dumping margins

(40) The methodologies used to calculate definitive dumping margins are the same as those used for the calculation of the provisional dumping margins. However, dumping margins have been amended in order to take account of the allowance to normal value now granted as described in recital 38 of the present Regulation.

(i) Cooperating companies in the sample

(41) The margins thus established and expressed as a percentage of the cif price at Community frontier are the following:

- P.T. Dragon	4.0%
- P.T. Emperor Footwear	0.0%
- P.T. Sindoll Pratama	24.9%.

(ii) Cooperating producers/exporters not investigated

(42) In view of the above changes in the dumping margins of the cooperating companies in the sample, the margin established for the two cooperating companies not investigated, expressed as a percentage of the cif price at Community frontier, is now definitively established at 14.2%.

(iii) Residual dumping margin

(43) In view of the above changes in the dumping margins of the cooperating companies in the sample, the margin established for definitive determinations, expressed as a percentage of the cif price at Community frontier, is now 39.7%.

2. People's Republic of China

(a) Individual treatment

(44) The Chinese exporters argued that the Commission did not sufficiently motivate its rejection of the requests for individual treatment by the cooperating Chinese exporters. They insisted that individual treatment be granted for definitive determinations.

It should be reiterated that it is the Commission's policy to calculate a country-wide duty for non-market economy countries except in those cases where companies can demonstrate independence from the State. However, none of the companies concerned were able to adequately demonstrate such independence since they all had links to the Chinese State, either directly or via Provincial or municipal authorities. In the absence of any further information on this issue, the provisional findings with regard to the non-acceptance of the requests for individual treatment are hereby confirmed.

(b) Normal value

(45) The Chinese exporters alleged that they received insufficient information by the Commission regarding the Indonesian shoes used for comparison with the exported Chinese models. They alleged, in particular, that insufficient information was disclosed to them concerning raw materials used and production processes employed in the production of the Indonesian shoes to enable them to claim adjustments for differences in physical characteristics.

In this regard, it should be pointed out that, in an effort to come up with the fairest model comparison, the Commission made repeated efforts to get information from the Chinese exporters concerning the design and make up of, and material used in, the models which they exported to the Community. Despite this, the Chinese exporters only supplied very partial information. Accordingly, the Commission had to make its assessment of comparability on the basis of the information available and as was the case for provisional measures, the Indonesian models used were those found to be similar or, in the absence of similar models, those most closely resembling the Chinese models exported to the Community by the Chinese companies in the sample. All the information upon which the comparison was based was made available to the Chinese exporters.

(c) Export price

(46) In the absence of any comments on the establishment of export prices the provisional determinations are hereby confirmed.

(d) Comparison

(47) Since Indonesia was the analogue country used to establish the normal value for the People's Republic of China, the single margin for the People's Republic of China was also adjusted downwards to reflect the granting of the allowance for credit costs, to Indonesian normal values referred to in recitals 38 and 40 of the present Regulation.

(e) Dumping margin

(48) The Chinese exporters questioned, in some instances, the Commission's comparison of weighted average normal values to Chinese export prices of individual export transactions to the Community. They claimed that export prices did not sufficiently differ amongst different purchasers, regions or time periods and that consequently, in accordance with Article 2 (11) of the Basic Regulation, both export price and normal value should be compared on a weighted average basis. Having reviewed its calculations, the Commission found that the differences in prices were small and that for the purposes of definitive determinations weighted average normal values should indeed be compared with weighted average export prices.

On that basis, the single dumping margin calculated for the People's Republic of China, expressed as a percentage of the cif price at Community frontier, was found to be 133.2%.

E. COMMUNITY INDUSTRY

(49) Certain parties have reiterated and expanded their allegations according to which the Commission would have failed to establish the representative nature of the Community industry providing evidence of injury. This was based on the alleged non reliability of the "total Community production" figure used and entailed a criticism of the sampling technique applied by the Commission. The justification of the "anonymous treatment" granted to certain Community producers was also questioned.

1. Total Community production

(50) It has to be recalled that the level of support for the complaint was checked before initiation. The total estimated EC production volume of the like product, on which the standing of the 68 complaining Community producers was assessed, was subsequently re-examined (in respect of 1991 until 1994) at the premises of national footwear federations and confirmed to be accurate.

Moreover, it has to be stressed that the "total production" figure of the like product, on which the standing was assessed, was set at the maximum possible production in the Community. Indeed, due to the lack of reliable data, no examination could be carried out in order to determine, in accordance with the provisions of Article 4 (1) (a) of the Basic Regulation, whether the production volume of certain non-complaining producers should have been excluded from the "total production" figure, on the grounds that their core business would be importing rather than producing within the EC.

Such would-be Community producers, of which some are known to have made considerable imports, are also known to produce in the EC a relatively large number of pairs. Had sufficient information in this respect been made available, it is likely that part of this Community-produced volume would have been excluded from the total production figure. Conversely, the "core business" test was carried out vis-à-vis the 28 companies in the "first group" as defined at recital 6 of the provisional duty Regulation and all were found (as explained at recital 55 of the provisional duty Regulation) to have their core business in the Community.

(51) The representative nature of the investigated Community industry, assessed in a reasonable way and on the basis of fully accurate figures, is therefore confirmed.

2. Sampling

(52) In this respect, it has to be recalled that given the very large number of potential parties to the proceeding, the notice of initiation of the present proceeding explicitly mentioned the fact that the investigation could be conducted by means of sampling. As a result, from the beginning of the investigation, cooperation was sought (via national federations) from a limited number of Community producers selected amongst the 68 companies supporting the complaint.

Meaningful replies were received from 28 producers, amongst which, for verification purposes, 9 were selected and their replies subjected to in depth on-spot verifications (this latter group of producers is referred to as "the verification sample" in the provisional duty Regulation).

The 28 companies in the first group do account for slightly more than 25% of Community output of the like product, thus qualifying, in the absence of declared opposition to the complaint, as the Community industry. This should be viewed as an exceptional circumstance, stemming from the fact that the first group was originally set up with a view to (inter alia) accounting for more than 25% of output. This, however, is not required by the Basic Regulation, and should be considered as an additional check on the representativity of the Community industry, instead of the fulfilment of a legal requirement.

(53) Concerning the representativity of the investigated Community industry, it has to be stressed that the injury findings were based on verified information collected from various appropriate sources, all representative of the Community industry:

• Production, sales, market share and employment in the Community were established at the level of each national footwear federation and thus cover the entire Community production of the like product. This fact clearly contradicts the allegation made by an interested party further to the final disclosure and according to which figures relating to the Italian footwear federation had been omitted when overall injury indicators were established;

• General trends concerning prices, costs and profitability were established at the level of the 28 cooperating producers in the first group;

• Undercutting and underselling exercises were carried out on the basis of fully verified price and cost data collected from the 9 companies in the verification sample, which are representative in terms of size and product range as well as located in major producing Member States.

3. Anonymous treatment of the 9 companies in the verification sample

(54) Certain parties have reiterated and expanded their allegations according to which the Commission would have granted without any justification an "anonymous treatment" to the 9 companies in the verification sample. These parties have claimed that complaining domestic industries should be prepared to face any kind of "commercial retaliation" and have requested that at least the names of the 28 companies in the first group be disclosed.

(55) In this respect, it has to be stressed again that the anonymous treatment at stake was granted because the threat exerted went far beyond what would be for importers the normal exercise of their freedom of sourcing and what could be considered as "normal" in commercial relations. The limited protection so granted was moreover considered particularly appropriate in the context of a sampling exercise, where a few selected companies are particularly exposed although they represent, and act for the benefit of, a much larger group.

(56) As regards the 28 companies in the first group, the company names on the non-confidential questionnaire responses had in general been replaced by an identification symbol and most national footwear federations (which transmitted the answers) had listed separately the names of the companies having replied, without of course disclosing the correspondence between the identification symbols and the names in the list. It should thus be stressed that all interested parties have had access to the non-confidential data provided by both the 28 producers in the first group and, in a separate file, to the verified and confirmed data of the 9 companies in the verification sample.

(57) Given that the questionnaire responses of the 28 companies in the first group as well as the lists established by federations had been made accessible to all parties before the Commission became aware of the above pressures, it was considered that the files in question, which permitted the identification of 22 (out of 28) companies, could not be made anonymous ex post and should thus continue to be accessible in an unaltered form. Under these circumstances, it was considered appropriate to include, in the final disclosure sent to all parties, the list of the 28 companies in the first group, whilst the name of the 9 companies in the verification sample was kept undisclosed.

F. INJURY

1. Cumulative assessment of the effects of the dumped imports

(58) Certain parties have claimed that the impact of Indonesian and Chinese imports should not be cumulatively assessed. In particular, it has been alleged that two conditions, which ought to be fulfilled to make cumulation possible, were not met:

(59) Firstly, it has been argued that in order to determine, for the purpose of applying Article 3 (4) of the Basic Regulation, whether the margin of dumping established in relation to the imports from each country (for which cumulation with others is considered) was more than *de minimis*, the Institutions should not take account of residual margins but should rather rely on the margins found for cooperating exporters. This assertion cannot be accepted, in particular in consideration of the low level of cooperation obtained from Indonesian exporters. In addition, it is also worth noting that the margins of dumping established in respect of two Indonesian cooperating exporters (out of three selected in the sample) were more than *de minimis*.

(60) Secondly, it has been argued that certain differences in conditions of competition (allegedly evidenced by average import prices per pair, said to be markedly higher in the case of Indonesia when compared to the People's Republic of China) were such as to make cumulation unwarranted. In this respect, although the alleged differences are somewhat confirmed at Eurostat level, it was considered that:

- these differences are not such as to allow a clear distinction to be made between the Indonesian and Chinese pricing policies, (in particular when the average prices of both Indonesia and the People's Republic of China are compared to that of the other third countries supplying the Community market, which are much higher than the average prices of both countries under investigation);

- a detailed examination of the available information shows that imports from Indonesia, as well as those from the People's Republic of China, cover the full range of prices; and

- on the basis of the information available, the most plausible explanation of the existing difference is a slightly different product mix rather than a clearly different pricing policy.

(61) Accordingly, the provisional findings in this respect (as set out at recitals 64 to 69 of the provisional duty Regulation) should be confirmed.

2. General injury factors

(62) Since no new representations were made by any interested parties as regards the provisional assessment of general injury factors (such as, *inter alia*, consumption on the Community market, production, sales, profitability and employment of the Community industry), no re-examination of the findings concerned was undertaken.

3. Undercutting calculation

(63) It has been alleged that undercutting was not always practised, if at all, at the level indicated in the provisional duty Regulation. Certain parties have shown during the hearings samples of allegedly comparable models where imported ones (generally manufactured in accordance with the importer's own specifications and design) were more expensive than Community-produced ones.

Although these statements may be true in some particular cases, it has to be stressed that they were not confirmed on a broader basis by the investigation into both the exporters' prices for certain models and Eurostat prices. In these circumstances, the Commission considered it appropriate, for the purpose of establishing definitive findings, to continue to rely exclusively on the detailed and/or global information collected (and verified to the maximum extent possible) in the course of the investigation, on the basis of which the existence of price undercutting has been positively established.

(64) It has been claimed that the adjustment for differences in level of trade was insufficient and ought to be revised. In particular, evidence was provided showing that the 13% adjustment granted at provisional stage to take account of differences in level of trade between importers and Community producers' clients, only covered intra EC transport and other ancillary costs.

A further analysis was carried out, concentrating on the importers for which corroborated data relating to this adjustment had been provided, i.e. the five cooperating importers named in the provisional duty Regulation. These importers had been the subject of a verification visit and together represented 14.8% of the import volume concerned during the investigation period.

It could be verified that three of them had not sourced the product concerned in a significant way from Community producers during the investigation period, but had rather the same customers as the Community producers. It was therefore concluded that, to be compared in a fair way, import prices had to be adjusted for the costs incurred between the importation and the point when the products actually reached the customers, and for a reasonable profit. For this purpose, all costs which could be allocated to the product concerned were taken into account, with the exception of those which appeared to be part of the production costs (such as raw materials provided by the importer to the producer in the exporting country) and thus to have been included in the customs value of the goods as reported in Eurostat.

Conversely, two of the five importers appeared to be customers of the Community producers, and thus only their costs from CIF to delivered duty paid at their warehouse level (DDP) were taken into account, as this corresponded to the level of trade where the Community producers' prices and costs had been established.

For each importer, the relation between the average import price for the product concerned and the costs mentioned above was examined. It resulted from this analysis that, to adjust the CIF price to a level of trade comparable to that of the Community producers' deliveries, two elements had to be taken into account. Indeed, although a part of the costs can be considered as proportional to the value of the goods, an adequate adjustment was found to require also a fixed amount per pair, to reflect the costs incurred inevitably by any importation, independently from the goods' value.

(65) On the basis of the evidence examined it was found that, in order to be compared in a fair way to the Community producers' prices and costs, the CIF import price for the product concerned had to be adjusted 20% upwards and then increased by an amount of 0.2 ECU per pair, plus the normal customs duty rate.

(66) Calculations have been amended accordingly, resulting in the confirmation of the existence of the undercutting practices established in the provisional duty Regulation. On a category-by-category basis as for the cooperating exporters subject to a provisional anti-dumping duty, average undercutting margins, expressed as a percentage of the Community industry's prices, were found to be in excess of 10% for Indonesia and 30% for the People's Republic of China.

4. Conclusion on injury

(67) In the light of the above and in the absence of other arguments, it is confirmed that, as was established in recital (84) of the provisional duty Regulation, the Community industry has suffered material injury within the meaning of Article 3 of the Basic Regulation.

G. CAUSATION

(68) Most exporters and importers raised again the case of imports from Vietnam as being a cause of the injury suffered by the Community industry. In this respect, it has to be stressed that at the time of the lodging of the complaint Vietnam's known share of the market was relatively limited. The increase which took place afterwards was already noticeable during the investigation period, where the market share held by the products originating in Vietnam was, however, much more limited than that of Chinese products. It follows from the above that the effects of Vietnamese imports could not have broken the causal link established between the imports subject to the current investigation and the injury suffered by the Community industry.

(69) Since no other potential cause of injury has been put forward with substantiated evidence, the provisional findings in this respect as set out at recitals 85 to 95 of the provisional duty Regulation are therefore confirmed.

H. COMMUNITY INTEREST

1. Impact on consumers

(70) Although no representations have been received either from consumers or consumer organisations following the publication of the provisional duty Regulation, some parties have argued that anti-dumping measures would seriously affect the Community consumers and, among these, in particular those with the lowest income.

This argument concerning the foreseeable impact of measures on the consumers' buying price has been examined in detail. The results of this examination are as follows:

(a) Impact in absolute terms

(71) Firstly, as far as footwear prices to distributors are concerned, it is likely that the Community industry, with a 29% market share and a 4.82 ECU per pair average price, would not be able to increase its prices above the 4.4% necessary to reach the reasonable profit as defined in the provisional duty Regulation (recital 106) without running the risk of worsening its current strong downward trend in terms of market share. In addition, imports from countries not concerned by this proceeding represent 21.4% of the market for the product concerned and it is expected that producers in these third countries will not be willing or able to command significant price increases.

As for Indonesia, it should be recalled that the injury elimination level foreseen for this country is considerably lower than for the People's Republic of China, the average price of the imports being 2.34 ECU per pair. The market share of footwear originating in the People's Republic of China being 39.9%, (with an average price of 1.65 ECU per pair) and in view of the duty rate proposed, the average maximum foreseeable impact of the measures proposed on the market of the footwear concerned as a whole amounts to 0.5 ECU per pair.

Thus, only if distribution chooses to keep its margins unchanged and charges the entirety of its increased costs to the consumers, would the latter have in turn to pay the corresponding amount of 0.5 ECU per pair. Since the average per head consumption of the footwear concerned in the Community is below one pair per person per year, the impact of the proposed measures for the consumer remains clearly marginal.

(b) Impact in relative terms, effect of price on consumption

(72) In relative terms, the basis of the calculations was the average price of the footwear concerned at delivered-warehouse distributor level, namely 3.6 ECU per pair, which takes into account, for the imports, the adjustment for differences in level of trade referred to in recital 65 of the present Regulation. Using the lowest mark-up found among the distribution channels analysed below, i.e. 125%, it is estimated that the average price for the consumer of the product concerned is above 8.1 ECU per pair. As a consequence, the impact on the consumer price of fully reflected duties would be below 6.2%.

This percentage should, as explained above, be examined in light both of the absolute value of the increase (0.5 ECU per pair) and the general evolution of prices. Indeed, over the four years examined, and due to the penetration of the dumped imports, the average market price at delivered-warehouse distributor level decreased in nominal terms, this decrease being of more than 11% when corrected from the general inflation rate.

(73) It should be added that, even if consumers do compare the prices which are simultaneously offered in different shops, they are generally less sensitive, as regards the product under investigation, to developments in the general level of prices. Indeed, the above mentioned decrease in prices did not influence the global consumption of the product concerned in the same proportion (as would have had happened if consumers had reacted on a "constant budget" basis).

This can be explained by a certain saturation which can be observed for products which are consistently sold at such low prices that consumers are unlikely to react to a limited overall change in the level of prices. Even if the pattern of consumption is not necessarily symmetric in the short term, it is doubtful that, everything else being equal, the full reflection of the duty, i.e. a maximum price increase of 6.2%, will cause a relative contraction in demand of more than 1.6 %.

(74) In the absence of any other element or reaction from consumer organisations, it was therefore concluded that the impact of the proposed measures on the consumer of the footwear concerned was likely to be minimal.

2. Impact on the distribution

(a) Impact on the distribution as a whole

(75) It has been argued that the imposition of measures would have a strong negative impact on the importers. More globally, diverging views have been expressed on the situation of the whole distribution chain which, it has been argued, was an activity with a far greater significance in the Community than the footwear production, in terms of both turnover and employment.

It should be recalled first that, by nature, on a given geographic territory, distribution will have a higher turnover than the manufacturing companies it buys from, by the mechanical effect of its distribution margin. Secondly, the employment figures for the footwear distribution in general, where all types of footwear are sold, cannot be compared with those of the Community production of the product concerned only, which were disclosed in the provisional duty Regulation (recital 81).

However, the importance of the distribution companies for the footwear sector in general and this analysis in particular has to be stressed, notably in consideration of the value added by these companies. In examining the possible impact of the measures on the distribution, care was taken to clearly differentiate general considerations, having an indirect bearing on the product concerned, and considerations specific to the product concerned.

As consumers do not buy shoes in significant quantities outside the Community, negative consequences of anti-dumping duties for the distribution as a whole could only result from a significant reduction of consumption and therefore of turnover, or a downward pressure on distribution margins to precisely minimise an increase in consumer prices (and a decrease in consumption).

As explained above, in light of the foreseeable impact of possible measures on the consumers of the product concerned, it can be considered as highly unlikely that consumption of the product concerned would drop significantly, even if the distribution sector were not to reduce its current margins.

Taken as a whole, it can therefore be concluded that the effects of possible measures on the distribution, limited for the sake of argument to that of the product concerned, will be very limited. Care was however taken to analyse this conclusion in light of the structure of footwear distribution in the Community.

(b) Structure of the footwear distribution in the Community

(76) Among the footwear distribution in the EC, four different channels of sale to the end customer are generally identified. These are the branded chains, the independent retailers, the non-specialised supermarkets, and, as a fourth category, the other types of generally non-specialised distribution (clothing and general stores for example).

(i) The independent retailers

(77) The traditional distribution channel consists of independent retailers, generally buying from wholesalers. In the evolution of the distribution however, wholesalers tend to disappear as retailers enter into a closer relationship with a more limited number of producers, or tend to group in purchase associations while keeping their independence.

As far as the retailers themselves are concerned, they face an adverse competitive situation due to both their individual lack of price control on suppliers and the high margins they require to cover the fairly high costs of the city centres (150% to 200%). In fact, they have lost ground in a certain number of Member States to more recent forms of distribution falling within the other three categories, in particular the branded chains.

However, as a consequence of their strong presence in some other Member States and their situation at the upper end of the market where they maintain a continuous commercial relationship with their customers, it should be noted that they are still, at least in terms of value added and employment (over 250 000 persons), the most important distribution channel in the Community, although probably not the first one in terms of market share (in volume).

(ii) The branded chains

(78) These chains, sometimes involved into a production activity in the Community, are generally the property of one or two large companies in each country, owning several brands and operating on the whole market range. They operate out-of-town super or discount stores, which can resist, because of their sales volume, prices and specialisation, the non-specialised supermarkets' pressure.

The branded chains also sell through in-town shops replacing the independent retailers with less costly, standardised shops corresponding to the need, for a part of the customers' purchases, to have a more adequate buying environment than discount halls. Different brands are allocated different market segments, to the effect that when two companies are present on the market, or even among the same company, upmarket brands suffer. Due to their purchasing power, their access to world supply (they import on their own account) and the relatively low margins they operate with, generally around 25% of the cost of sales for the central trading arm and 100% on average for the shops, they are able during their period of introduction on the market to rapidly gain market share and obtain growth rates in excess of 5% per year.

(iii) The non-specialised supermarkets

(79) Important in terms of volume, but less in terms of value on the total footwear market due to the low average price of their sales, non-specialised supermarkets have a strong influence at the lower end of the market. Although they sometimes buy directly from suppliers located outside the Community, they usually rely on specialised importers for their imports, which constitute an important part of their footwear sales. Their traditional mark-up is around 100%, but it can range from around 60% on promotional operations to over 130% on some Community productions. Due to the supplementary step of the importer and the fixed part of the costs incurred, imports from the countries concerned through this sales channel usually reach the end-customer at a price 3 times higher than the CIF level.

(iv) Other sales channels

(80) Other channels of sale, such as mail order companies or garment stores, gained a significance in certain Member States but not such as for a given type to have acquired an importance on a Community-wide basis. In certain Member States, specialised mail-order firms have a cost structure similar to the branded chains. Community-wide apparel chains of "small" shops also introduce footwear in their stores as a fashion branded item, generally with higher margins than on their usual articles. Due to the fashion aspect of these sales, they constitute competition for the branded chains, generally less marked however than the one due to large general city centre stores.

(c) Specific impact of the proposed measures on the various sales channels

(81) As regards the independent retailers, which still constitute the largest source of employment in the Community footwear distribution, the general conclusion presented in recital 75 of the present Regulation is strengthened by the fact that they usually have a low proportion of their supplies of the product concerned originating in Indonesia or the People's Republic of China. It should be added that they are grouped in a confederation representing 8 Member States on a representative level, and that no submission opposing the possible imposition of anti-dumping measures was received from this source or any other.

(82) The companies owning branded chains have for their part contested the need for the imposition of anti-dumping duties. Although the general conclusion is also applicable to them, the fact that some of them rely more than the independent retailers on the dumped imports for the supply of the product concerned explains why, within the distribution, they could fear a negative effect of the measures on their comparative competitive situation.

The direct effect of possible measures on the financial situation of these companies will be negligible if the amount of the duty were to be fully passed on to the consumer. Indirect financial effects could only be expected if, due to this price increase, consumers would reduce their purchases of the product concerned. However, should this happen, it would only be to a limited extent, even if the 1.6% average given in recital 73 was slightly exceeded in the branded chains.

Moreover, the product concerned is never sold separately in specialised shops and due to its particularly low prices, represents less than 10% of the turnover of the companies operating branded chains and having cooperated. In this perspective, even a small contraction in the demand for the product concerned, which appears unlikely, would have a negligible impact on the companies as a whole, in particular if the demand is at least partly reoriented to footwear with a higher price, with a likely higher margin in absolute terms.

(83) As far as non specialised supermarkets or other non-specialised stores are concerned, in view of the even more limited extent to which their sales rely on the product concerned, their situation should not be affected by the imposition of measures even in the case of the market evolution envisaged above.

(84) The situation of the importers supplying these non-specialised distribution channels was examined, as they imported in some cases a more important portion of their turnover from the countries concerned than their clients. These companies are generally run with a very limited and flexible structure allowing them to sell only when the trading margin they foresee covers the costs incurred. Their expertise on the market and their ability to design and sell are not affected by the country of origin of the goods. The anti-dumping measures having an impact on the footwear distribution as a whole, these importers will be able to benefit from any market situation, and continue to supply their clients with Chinese or Indonesian imports, or any non-dumped product, as well as Community-produced ones.

(85) In conclusion, it could not be established that the imposition of anti-dumping measures on the footwear concerned would be such as to affect significantly the financial situation of either the footwear distribution as a whole or of a part of it.

3 Impact on the Community industry and its suppliers

(86) The argument according to which the measures would have no positive effect on the situation of the Community industry due to the shift of supply to other third countries has been presented again. It has been argued moreover that the situation of the textile footwear industry in this respect was comparable to that of the synthetic handbags manufacturers and that accordingly the Council should also in the present case refrain from taking measures[4].

[4] See recitals 105 and 106 of Council Regulation (EC) No. 1567/97 (OJ No L208, 2.8.1997, p.31.)

Shift of supply between various countries has been an important factor on the footwear market for a number of years. In this regard, it should be noted that the Community industry has been able, by its automation and rationalisation, to partly compensate, by its own increase in exports, for the constant change of country from which varying volumes were imported in the Community. This could however not be the case for the massive surge in dumped imports from the two countries concerned in the present proceeding. As far as the alleged parallelism between the present proceeding and the synthetic handbags case is concerned, it should be stressed that the significant market share still held by the complainant Community industry in this case, the nature of the capital holders in most exporting companies, as well as the important industrial investment necessary to produce footwear, clearly exclude any reasonable and meaningful comparison between the two industries. The Council cannot accept therefore that for the sake of consistency, it should refrain from taking measures in the present case.

(87) It has been argued again that, should measures be imposed, this would have negative consequences on the footwear machine manufacturers which would be limited in their sales to Indonesia and the People's Republic of China.

As far as the machine suppliers are concerned, it should be noted that the Community industry is clearly investing in automation, and in the injection process in particular. This automation is linked with investments in machines and in moulds produced in the Community, which continue to create a virtuous circle of technological improvement. No evidence has been received on the other hand showing that exporters in Indonesia or the People's Republic of China are main clients of the Community equipment manufacturers.

(88) No new evidence having been submitted in respect of these arguments, the conclusions presented in recitals 99 and 104 of the provisional duty Regulation are accordingly confirmed.

4. Quantitative restrictions on slippers

(89) It has again been claimed that slippers should not be subjected to anti-dumping measures because they are already, if Chinese, subjected to an effective quota.

As regards the principle, it has to be recalled that following an anti-dumping investigation which has shown that measures are warranted (with a view to remedying a price-related injury), the imposition of such measures should be considered without reference to the existence of any quantitative restrictions which may be applicable to the products in question. In addition, it should be recalled that more than 75% of the footwear concerned by this investigation is not subject to any quantitative restrictions.

5. Conclusion concerning Community interest

(90) As a conclusion, and having examined all the various interests involved, it is considered that there are no compelling reasons not to take action against the dumped imports in question. The conclusions set out in recital 105 of the provisional duty Regulation are therefore confirmed.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

(a) General considerations

(91) It should be recalled that the calculations used to establish the injury elimination level at the provisional stage were based on two different sets of price comparisons. As far as the cooperating exporters were concerned, the prices of the most exported models were compared to the Community industry's corresponding non-injurious prices on the basis of a grouping into 16 so-called families of footwear. For the vast majority of imports, however, in the absence of cooperation from any exporters, the injury elimination level had to be calculated on an average basis for the CN codes concerned, this approach having been called the category-by-category comparison.

(92) It has been argued that, in performing these comparisons, the Commission failed to take into account the alleged differences between vulcanised and injected footwear. Further to what has been explained at recitals 26 to 30 of the present Regulation, it is considered that there are no global differences between vulcanised and injected footwear which are such as to significantly affect global price comparisons.

Indeed, the difference in the manufacturing processes used for the production of the soles of two comparable models does not induce a different consumer perception. As far as the cooperating exporters are concerned, in the case where imported vulcanised models were compared to Community-produced injected footwear because these were the most similar models found, the exporters were given the opportunity to comment on the basis of the documents and non-confidential files available to them, and none of them contested the comparison made.

(93) Exporters from the People's Republic of China claimed that the descriptive elements of the Community produced models used for comparison purposes were insufficient. In this respect, it should be recalled that the exporters were provided with copies of the non-confidential files where photographs of the Community-produced models used as a reference in each family were provided. This was done in addition to the written explanations given and the calculation sheets included in the disclosure.

(94) Following the claim made by importers, and in order to perform the price comparisons in the calculation of the injury elimination level, CIF import prices were adjusted to the duty-paid, customer-delivered price level by using the adjustment methodology used for the undercutting assessment, as presented at recital 65 of the present Regulation.

(95) Some importers argued that the calculations of the residual duty rates could not be understood in the form they were presented in the disclosure of the essential facts and considerations on the basis of which provisional measures were imposed. This was, at least for a part, due to the fact that the Community producers' non-injurious prices were not given in the disclosure.

It was subsequently decided that these average non-injurious prices for the footwear concerned, which resulted from calculations involving several Community producers, could be disclosed to facilitate the understanding of the price comparisons, without risking a breach of confidentiality. The provisional calculations being however affected by the change in the level of trade adjustment presented above, disclosure of details concerning the provisional calculations could not be regarded as of major interest. As a consequence, detailed explanations on the injury elimination level, including all figures and charts, were given in the final disclosure sent to the parties.

(96) It was argued by certain importers that, even if it could be admitted that injurious dumping in respect of footwear with an import price below three US dollars was taking place, this was not the case for more sophisticated footwear. The latter category, according to the importers in question, should be attributed a 0% injury elimination level.

In this respect, it should be recalled that, although huge volumes are indeed imported below 2.5 ECU (equivalent to 3 US dollars), these imports covered, in the sample of the importers' transactions examined, only 48% of the value of the imports concerned. The fact that a majority of the import turnover was above the alleged price break shows that, in reality, the imports of the product concerned, though made at extremely low prices when compared to what they would be if normal competitive conditions prevailed, are spread over a continuous price scale.

Moreover, the non-injurious price levels established for the investigated Community producers were also both below and above the alleged price break, adjusted to the appropriate customer-delivered level (3.7 ECU), depending on the shoe type. In the absence of any other evidence relating to this aspect of the market, this claim should therefore be rejected.

(97) No other remarks having been submitted, the general injury elimination level methodology, as established in recitals 106 to 112 of the provisional duty Regulation, are therefore confirmed.

The change in the level of trade adjustment, however, affects the provisional findings, as set out below.

(b) Indonesia

(98) In conformity with the methodology set out in the provisional duty Regulation, the revised injury elimination levels for the cooperating companies in the sample for Indonesia, expressed as a percentage of the CIF import price, ranged from 0 to 31.5%, with an average to be applied to cooperating companies outside the sample of 14.1%. By the same token, the revised residual margin, established on the basis of Eurostat statistics, was found to be 15.4%.

(c) People's Republic of China

(99) In accordance with the methodology set out in the provisional duty Regulation, the revised single injury elimination level for the People's Republic of China was found to be 61.2%.

2. Duty

(100) One of the cooperating Indonesian companies not included in the sample objected to the fact that it had been attributed a duty based on the weighted average dumping margin found for the sample.

This argument could not be accepted since Article 9(6) of the Basic Regulation provides that, where the Commission has limited its examination in accordance with Article 17, any anti-dumping duty imposed on cooperating companies not included in the sample shall not exceed the weighted average margin of dumping established for the parties in the sample. Moreover, it will be recalled from recital 23 of the provisional duty Regulation that the Indonesian companies concerned had agreed to this methodology.

(101) Since the residual injury elimination level for Indonesia and the People's Republic of China, as well as the individual level for PT Sindoll Pratama, is lower than the corresponding dumping margins, the anti-dumping duty should be based on these levels. For the other cooperating exporters in Indonesia, the anti-dumping duty should be based on the dumping margins established above.

(102) The anti-dumping duty rates, applicable to the net, free at Community frontier price before duty should therefore be as follows:

Country	Manufacturer and exporter	Rate of duty
PEOPLE'S REPUBLIC OF CHINA	All companies	61.2%
INDONESIA	PT Dragon	4.0%
	PT Emperor Footwear Indonesia	0%
	PT Sindoll Pratama	0%
	PT Bosaeng Jaya	14.1%
	PT Volmacarol	14.1%
	All other companies	15.4%

J. COLLECTION OF THE PROVISIONAL DUTIES

(103) In view of the magnitude of the dumping margins found for the exporting producers and countries, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 165/97 should be definitively collected at the rate of the duty definitively imposed. However, the amounts for which it can be established, to the satisfaction of the customs authorities, that they related to imports of shoes excluded from the scope of the present proceeding, as described under Article 1 (3) (b) and (c) of the present Regulation, should be released in their totality.

K. NEW EXPORTING PRODUCERS

(104) Pursuant to Article 11(4) of the Basic Regulation, a new exporter's review to determine individual dumping margins cannot be initiated in this proceeding with regard to Indonesia as sampling was used in the original investigation. However, in order to ensure equal treatment between any new exporting producers and the companies cooperating in this investigation, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporting producers which would otherwise be entitled to a review pursuant to Article 11(4),

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear falling within CN code 6404 19 10 and, with the exceptions described below, of footwear falling within CN code ex 6404 19 90 (Taric code 6404 19 90 * 90), originating in the People's Republic of China and Indonesia.

2. The rate of the definitive anti-dumping duty on the basis of the net, free-at-Community-frontier price, before duty, shall be:

Country	Products manufactured by	rate of duty (%)	Taric Additional Codes
People's Republic of China	All companies	61.2%	-
Indonesia	All companies with the exception of:	15.4%	8900
	P.T. Dragon	4.0%	8941
	P.T. Emperor Footwear Indonesia	0.0%	8942
	P.T. Sindoll Pratama	0.0%	8942
	P.T. Bosaeng Jaya	14.1%	8943
	P.T. Volmacarol	14.1%	8943

3. The duty shall not apply to:

a) shoes sometimes known as "espadrilles", which, for the purpose of the present Regulation, are shoes with canvas uppers and unheeled plaited fibre soles, whether or not strengthened with rubber or plastics over a variable surface, which are not thicker than 2.5 cm (Taric code 6404 19 90 * 10);

b) shoes sometimes known as "diving boots" or "water sports boots", which, for the purpose of the present Regulation, are shoes with an upper made of neoprene, whether laminated on one or both sides with textile material, where the neoprene thickness is of 2.5mm or more, covering the entirety of the foot, with an abrasion-resistant sole , and designed for certain water sports such as diving (Taric code 6404 19 90 * 20);

c) shoes sometimes known as "medical shoes", which, for the purpose of the present Regulation, are shoes which, although not manufactured according to the individual medical need of one person, are designed for easing the recovery during or after a therapy or a medical operation, as for example shoes to walk while having a plastered or banded foot. These shoes do not cover the foot entirely and have a wide opening which enables even a banded foot to fit inside. They are sold not per pair, but individually, and show at the same time more than one of the following characteristics:

- The closing device can be adjusted to the bandage or plaster size
- Special internal soles or pads can be inserted for medical purposes
- The design of the sole is such that it prevents certain harmful contacts from the foot with the ground, but at the same time bans a non medical use of the shoe
- The design is functional and does not use decorations or other fashionable accessories

(Taric code 6404 19 90 * 30);

4. Where any Indonesian party provides sufficient evidence to the Commission that it did not export the goods described in paragraph 1 during the investigation period, that it is not related to any exporter or producer subject to the measures imposed by this Regulation and that it has exported the goods concerned after the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community, then the Council, acting by simple majority on a proposal submitted by the Commission, after consulting the Advisory Committee, may amend paragraph 2 by attributing that party the duty applicable to cooperating exporting producers not in the sample, i.e.14.1%.

5. Unless otherwise specified, the provisions in force concerning duties and other customs practices shall apply.

Article 2

1. The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 165/97 shall be definitively collected at the rate of the duty definitively imposed, with the exception of the amounts for which it can be established, to the satisfaction of the customs authorities, that they related to imports of shoes described under Article 1 (3) (b) or (c), which shall be integrally released.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels,

For the Council

The President

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