COMMISSION REGULATION (EEC) No 3798/90

of 21 December 1990

imposing a provisional anti-dumping duty on imports of espadrilles originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community, [1] and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. PROCEDURE

(1) In July 1989 a complaint was lodged in writing with the Commission by the French National Footwear Industry Federation, the Spanish Footwear Industry Federation and Etchandy Portugal (the sole Portuguese producer) on behalf of producers accounting for the bulk of Community production of espadrilles (beach slippers).

The complaint contained evidence of dumping and resultant injury which was considered sufficient to warrant the initiation of a proceeding.

The Commission accordingly announced, in a notice published in the *Official Journal of the European Communities*, [2] the initiation of an anti-dumping proceeding concerning imports into the Community of beach slippers falling within CN codes ex 6404 19 90 or 6405 20 99, originating in the People's Republic of China,

(2) The Commission officially notified the exporters and importers known to be concerned, the representatives of the exporting country and the complainants.

It requested the parties concerned to reply to the questionnaires which had been sent to them and gave them the opportunity to make known their views in writing and to request a hearing.

(3) Most of the complainant Community producers replied to the questionnaires, made known their views in writing and requested a hearing, which the Commission granted.

The complaint indicated that there might be small-scale production of beach slippers in Greece. Following discussions with the Hellenic Association of Footwear Manufacturers and Exporters, a questionnaire was sent to a Greek producer but no reply was received by the Commission from that producer nor from any other Greek producer. The view was accordingly taken that it was not possible to confirm the existence of any Greek production of the product in question.

(4) Three Chinese exporters (the Zhejiang Arts and Crafts Import and Export Corporation, the Fujian Footwear and Headgear Corporation and the Shanghai Arts and Crafts Import and Export Corporation) replied to the questionnaires within the time prescribed. In addition, the principal organization in the People's Republic of China with responsibility for trade in footwear, the China Chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts, hereinafter referred to as the 'Chinese Chamber of Commerce', made known in writing the views of Chinese exporters taken as a whole. That organization likewise sought a hearing and this was granted by the Commission.

It became apparent in the course of the investigation that the three Chinese exporters which cooperated accounted for approximately one quarter of the exports of beach slippers from the People's Republic of China to the Community and that no information was available regarding exports by other Chinese exporters.

Since the People's Republic of China is not a market economy country within the meaning of Article 2 (5) of Regulation (EEC) No 2423/88 and since the comments made by the Chinese exporters were submitted en bloc and not all the Chinese exporters were identified, the Commission took the view that, for the purposes of the proceeding, all the Chinese exports should be taken into account collectively.

(5) The Commission sent questionnaires to the eighty importers listed in the complaint. It became clear that, firstly, eight of them had not imported beach slippers from the People's Republic of China, at least not during the reference period, and, secondly, eight others had changed their address and could not be contacted.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 314, 14. 12. 1989, p. 15.

In addition, five importers, of which the Commission was not aware when the proceeding commenced, made themselves known to the Commission within the period specified in the notice of initiation.

Of the sixty-nine importers thus contacted and who could have cooperated, only two sent the Commission complete replies to the questionnaires within the periods stipulated or granted.

Lastly, three importers' associations made their views known in writing and requested and were granted hearings.

(6) As a result, in the case of those parties which failed to reply or which failed to make representations in any other way, findings were made, pursuant to Article 7 (7) (b) of Regulation (EEC) No 2423/88, on the basis of the facts available, that is to say, in this case, the information obtained from the complainant and the official statistics of the Community.

(7) The Commission sought and verified all the information it considered necessary for a preliminary determination of dumping and resultant injury as regards those parties which agreed to cooperate. To that end, it carried out on-the-spot checks at the premises of the following:

(a) *Community producers*

— Berasategui, Hendaye, France
— Ets Callian, St Paul les Dax, France
— Ets Caussèque, Monte-de-Marsan, France
— Ets Etchandy, Mauléon, Frane
— Manufacture Luzienne, Urrugne, France
— Pée Laborde, Aramits, France
— Ets Tauzin, Mauléon, France
— Calzados Puerta SA, Arnedo, Spain
— Dosega SA, Arnedo, Spain
— Etchandy Portugal, Covilha, Portugal (since the accounting documents relating to this producer had been transferred, for the purposes of the investigation, to the registered office of its parent company in France, the relevant checks were carried out at the same time as those that were carried out at the premises of the French producer in question, Ets Etchandy, Mauléon).

(b) *Community importers*

— Netter et Cie, Paris, France
— Moritz L. Chrambach GmbH & Co. Hamburg, Germany

(8) The dumping investigation covered the period 1 January to 31 December 1988. This period was selected because most of the producers and a number of the Community importers were small firms. The Commission accordingly considered that it was reasonable that the reference period should coincide with the last full accounting year, since the finalized and audited results for that year were the most recent available when the companies concerned were required to complete the questionnaires.

B. THE PRODUCT IN QUESTION, LIKE PRODUCTS AND THE COMMUNITY INDUSTRY

(a) product in question

(9) The products which are the subject of the notice initiating the proceeding are beach slippers with plaited fibre soles, whether or not strengthened with rubber or plastics over a variable surface, falling within CN codes ex 6404 19 90 or ex 6405 20 99.

Beach slippers are classified within one or other of those two CN codes according to the respective percentage of rope or rubber (or plastics) which constitutes the surface of the outer sole in contact with the ground:

— up to 50 % rubber (or plastics); in this case the slippers fall within CN code ex 6405 20 99, hereinafter referred to as 'Type A';
— more than 50 % and up to 100 % rubber (or plastics); in this case the slippers fall within CN code ex 6404 19 90, hereinafter referred to as 'Type B'.

(10) The investigation showed that these two CN codes, the purpose of which is to enable a distinction to be made when applying the customs tariff on the basis of the criterion indicated above, corresponded, in fact, to basically three types of slipper:

— those with a sole coated at three points, all belonging to Type A,
— those with a 'grid' sole, which can be either Type A or Type B,
— those with a fully coated sole, which all belong to Type B.

The investigation covered beach slippers of these three types with a sole of uniform thickness not exceeding 2,5 cm.

In so far as all these products have the same basic physical or technical characteristics and are used for the same purpose, the Commission took the view that all beach slippers constituted the product in question in this Regulation, irrespective of the amount of coating on the sole, on condition that the sole was of uniform thickness not exceeding 2,5 cm.

(b) **Like products**

(11) With regard to the definition of like products, the Commission established that there were no significant physical differences between the slippers exported to the Community by the Chinese exporters and the corresponding products sold by Community producers.

In this regard, the argument put by the China Chamber of Commerce and by the Community importers' associations, that the beach slippers produced in China were not comparable from the standpoint of quality to those manufactured in the Community could not be accepted.

The Commission found that the differences claimed (essentially the quality of the fabric of the upper and the quality of the fibre used to manufacture the sole), firstly, were not discernible in every case and, secondly, where they could be discerned, were so minimal as not to affect the basic characteristics of the product or the purpose for which it is intended.

In addition, the Commission was able to confirm that the Chinese beach slippers were sold on an entirely competitive basis with Community slippers, as witnessed by the fact that in the majority of selling outlets Chinese products and Community products are sold together.

On these bases, the Commission took the view that, firstly, beach slippers produced in the Community, taken as a whole, and, secondly, beach slippers exported from the People's Republic of China to the Community, taken as a whole, are like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(c) **Community industry**

(12) The Commission found that the producers on whose behalf the complaint was lodged, which cooperated with the Commission and which manufactured beach slippers during the investigation period, accounted for the bulk of Community production of like products during that period.

As a result, the Commission took the view that they constitute the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. **DUMPING**

(a) **Normal value**

(13) In order to establish that imports of beach slippers originating in the People's Republic of China were being dumped, the Commission was obliged to take into account the fact that China is not a market economy country and, accordingly, to base its calculations on the normal value of the product in question in a market economy country. To that end, the complainant had proposed a price which corresponded to an offer from a producer in Uruguay.

That proposal had been regarded as acceptable in the context of the complaint and in order to initiate the investigation but the said reference to an offer could not be regarded as adequate for the purposes of establishing the normal value.

(14) The Commission accordingly carried out a survey of the various third country producers of beach slippers that might provide a suitable reference and found that:

— there had been some very small-scale production in Tunisia and in Israel, although no evidence was available as to whether it was continuing;

— production had recently commenced in Bangladesh but it appeared to be too recent to provide a suitable reference for the purposes of this investigation;

— there had been sizeable production of beach slippers in South America for almost a century. They were produced by SA Fábrica Uruguaya de Alpargatas, Montevideo, Uruguay and Industria Chilena de Alpargatas SA ('Inchal'), Santiago, Chile, which had agreed to cooperate with the Commission. A second Chilean producer had stated that it was unable to cooperate on practical grounds.

(15) The Commission carried out investigations at the premises of the two abovementioned South American producers and found that:

— the Uruguayan producer was a fully integrated company, i.e. it manufactured the braid for the soles and the cotton fabric for the uppers itself, produced approximately 1,4 million pairs of beach slippers a year but did not vulcanize the soles (unlike the Chinese and Community producers). This producer's manufacturing process was efficient, modern and cost effective;

— the Chilean producer which had agreed to cooperate with the Commission was a recently-established company and its production had not yet attained a level that enabled it to operate under economically optimum conditions. As a result, its costs and prices were higher than those of the Uruguyan producer. On the other hand, it possessed efficient plant with which it vulcanized the soles.

The Commission accordingly took the view that it was reasonable to establish the normal value on the basis of the information obtained and verified at the premises of the Uruguayan producer and to make a suitable adjustment to take account of the cost of vulcanization.

(16) In establishing the normal value in Uruguay, the Commission took account of the fact that on the market of Uruguay imported beach slippers are subject to a system of 'reference prices' which are intended to protect the local industry from cheap imports.

In so far as that system might influence the domestic selling prices of the Uruguayan producer and since its exports to both North and South America were negligible compared with its total production, it appeared necessary to calculate the normal value on the basis of the constructed value of the like product in Uruguay. The constructed value was determined by adding the cost of production of the beach slippers and a reasonable margin of profit.

The cost of production was calculated by adding together all costs, both fixed and variable, relating to :

— materials,

— manufacture, in the country of origin, of medium-sized beach slippers (corresponding to ladies' sizes, which generally constitute most of the trade).

To those costs were added selling and administrative expenses and other overheads, which were determined by reference to the sales of beach slippers made by the Uruguayan producer on its domestic market during the investigation period. Those costs, unlike the profit margin, could not be influenced by the system of reference prices in force in Uruguay in regard to imported products.

(17) For all calculations, the effects of inflation in Uruguay were neutralized by the system used by the company which consisted of drawing up accounts using 'ajustes para inflación operativa' fixed by the Uruguayan authorities.

(18) The Commission took the view that the profit margin had to be sufficient to ensure a minimum return on sales at different marketing stages, including sales to wholesalers. The Commission took the view that a minimum return must mean a level of profit which :

— enabled the producer in question to make such investments as were essential to maintaining its plant at the high level of technical efficiency which they had already attained at the time of the on-the-spot investigation ;

— ensured an acceptable return on the capital invested.

Under those conditions, the profit margin was established at 7 % of the constructed normal value.

(19) With regard to quality, the Commission found that the beach slippers manufactured in Uruguay were generally stronger than the Chinese like product but, on the other hand, they were not always as elaborate (lack of inner soles, lack of embroidery, that were usually to be found in the case of the articles imported from China). In these circumstances the view was take that there was a balance between the value attaching to the said characteristics and that, therefore, no upward or downward adjustment was warranted on account of differences in quality.

(20) The costs of vulcanization were calculated from the information obtained during the investigation carried out at the premises of the Community producers and in the course of the investigation carried out in Chile. It appeared that the costs of the Chilean producer were the lowest. Therefore, the costs of that producer, limited to the cost of materials and production costs, established on the basis of a weighted average for the 'Type A' and 'Type B' beach slippers, plus the same 7 % profit margin, were added to the constructed value established in Uruguay.

(21) The representatives of the China Chamber of Commerce and the importers' associations objected to the choice of reference country on the ground that the beach slippers originating in Uruguay were not exported to the Community. They suggested that Bangladesh should be used as the reference country and, to that end, proposed that the normal value be based on an offer and a purchase from that country, which took place in 1990.

The Commission considers that the argument put forward is not valid since the normal value must be as close as possible to prices prevailing in the reference country. Therefore, the fact that Uruguay did not export beach slippers to the Community is irrelevant.

With regard to Bangladesh, as stated at point 14 above, according to the information obtained by the Commission, its production is too recent to constitute a suitable reference within the context of this investigation.

(22) As a result, the Commission concluded that it was appropriate and reasonable to establish the normal value on the basis of the constructed value in Uruguay, adjusted so as to take account of all the differences affecting price comparability and particularly with regard to the physical characteristics, adding the costs involved in vulcanizing the soles.

(b) **Export prices**

(23) Export prices were established on the basis of the prices actually paid or payable for products exported to the Community.

In this regard, the Commission established that the prices indicated by the two importers which cooperated in the investigation could not be regarded, on their own, as significant because of the small quantities involved (only about 3 % of total imports).

The Commission accordingly considered that, in order to determine the export prices of the beach slippers, it was appropriate to calculate a weighted average of the prices payable as stated by the Chinese exporters (which made no distinction between the 'Type A' and the 'Type B' slippers) and the prices paid as indicated by the importers which cooperated in the investigation.

Although the volume of beach slippers thus taken into account represents only about 30 % of total imports, the said data was preferred to the figures shown in the official statistics of the Community in so far as the latter combine the data relating to beach slippers with that relating to other footwear which cannot be regarded as like products.

In addition, the Commission took the view that establishing a weighted average that was valid for both types of beach slipper was a suitable and reasonable method since most of the available data made no distinction between 'Type A' and 'Type B' slippers. As far as sizes were concerned, the invoices examined at the premises of the importers which cooperated showed that most of the trade was in medium-sized slippers and that the said data was, accordingly, compatible with that obtained in order to establish the normal value.

D. COMPARISON

(24) In its comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, of differences affecting price comparability.

The comparison was made at the ex-works stage on an overall basis for the whole of the reference period. The necessary adjustments were made :

— in the case of the normal value, on the basis of the data obtained in the course of the investigation in Uruguay relating, *inter alia,* to inland transport, the costs of insurance, handling and packaging, financing costs and selling expenses ;

— in the case of the export prices, and in the absence of data from the Chinese exporters, on the basis of the data available relating, *inter alia,* to freight rates, insurance, handling, inland transport and packaging costs, financing costs and selling expenses.

E. DUMPING MARGIN

(25) The preliminary examination of the facts shows that exports of beach slippers effected by the Chinese exporters are being dumped. The dumping margin is equal to the difference between the normal value established for medium-sized beach slippers and the price on export to the Community, and amounts, on a weighted average basis, to 93,3 % of the free at frontier value at the Community frontier of imports of the product in question originating in the People's Republic of China, for the Chinese exporters taken as a whole.

F. INJURY

(a) **Volume and price of imports**

(i) *Volume of dumped imports*

(26) As indicated above (at points 9 and 23) there is no specific CN code for beach slippers (hence the 'ex' headings). Eurostats therefore aggregate beach slippers with other footwear and the resultant data must be qualified. With the assistance of the Member States, these statistics were rectified and it was possible to bring them more in line with the actual level of beach slipper imports. In addition,

the China Chamber of Commerce communicated to the Commission the Chinese export statistics with which it was possible to confirm, at least in part, the rectifications made.

(27) On the basis of the raw data shown in the Eurostats, imports originating in the People's Republic of China more than doubled between 1985 and 1988 (rising from 29,25 million pairs in 1985 to 35,98 million pairs in 1986, 69,21 million pairs in 1987 and 68,83 million pairs in 1988).

The rectified Eurostats figures, which are available for 1986, 1987 and 1988 only, also show that imports from China increased substantially, but slightly less so, from 28,56 million pairs in 1986 to 59,27 million pairs in 1987 and 56,34 million pairs in 1988.

The latter figures are partially confirmed by the Chinese export statistics which show that Chinese deliveries rose from 21,89 million pairs in 1985 to 28,19 million pairs in 1986, 54,30 million pairs in 1987 and 36,85 million pairs in 1988.

The only significant discrepancy between the Chinese statistics and the rectified Eurostats figures relates to 1987 and 1988. The reason for this may lie in the interval between the shipments (in 1987) and the collection of data relating to imports into the Community (in 1988). However, this discrepancy does not call in question the general trend brought to light.

The Commission therefore considers that a reasonable estimate of the increase in volume of imports of beach slippers originating in the People's Republic of China is as follows :

— for the period 1985-88 : approximately 70 % (on the basis of the statistics supplied by the Chinese Chamber of Commerce) ;

— for the period 1986-88 : approximately 65 % (midway between the percentage resulting from the export figures of the People's Republic of China and that resulting from the rectified Eurostats figures).

In both cases the rate of increase is substantial.

(ii) *Volume of imports originating in other third countries*

(28) Eurostats indicated that products falling within CN codes 6404 19 90 and 6405 20 99, originating in other third countries, were imported into the Community between 1985 and 1988.

According to the information obtained by the Commission, the quantities in question do not generally relate to sales of beach slippers but mainly to supplies of other footwear (for example, slippers with rubber soles).

On this basis China can be considered as by far the major if not strictly speaking the solethird country supplying beach slippers to the Community. The Commission therefore felt that other third countries were responsible for such small quantities (as can be seen from French statistics which draw a distinction between 'beach slippers' and 'other footwear') that they can be disregarded.

The Commission therefore considered that a reasonable basis for calculating total sales of the product in question on the Community market was to add up Chinese imports and Community producers' sales.

(iii) *Market share of dumped imports*

(29) On the basis indicated in the above paragraph, it transpires that the Chinese exporters' market share has risen substantially, from 64 % in 1985 to 84 % in 1988.

This increase of over 30 % in the Chinese exporters' market share between 1985 and 1988 must also be looked at in the light of the increase of over 50 % in Community consumption in the same period.

(iv) *Prices*

(30) During the investigation it became clear that a distinction should be drawn between two types of beach slippers, sold on the Community market at very different prices :

(a) the traditional or standard beach slipper (with an upper made of plain canvas or with simple woven or printed decorations such as coloured patterns or stripes), accounting for over 90 % of Community production and an even higher percentage of Community consumption ;

(b) a more elaborate product, hereafter called 'fancy beach slippers' (with an upper made of a special weave and/or made of a more special fabric than cotton canvas, which may also have decorations such as laces, elastic or inset or embroidered patterns) accounting for less than 10 % of Community production and an even smaller percentage of Community consumption.

Although the Chinese exporters' representatives admitted that they also supplied the Community market with fancy beach slippers, they said that the market share was minimal (which did not justify their being taken into account in calculating the margin of dumping, besides which the Chinese exporters had provided no precise information about them). The Commission therefore decided that for price comparison purposes, sales of fancy beach slippers by Community producers should be disregarded.

(31) During the period 1985 to 1988 Chinese exporters taken overall reduced their selling prices by about 35 %.

(32) To calculate the differences in selling prices in the Community between beach slippers from China and those produced in the Community, the Commission compared the average price of products imported from China (free at Community frontier, cleared through customs) and the weighted average price of standard beach slippers sold to wholesalers by Community producers. This method was deemed appropriate as Chinese exporters sell to importers who act as wholesalers on the market.

This comparison showed that the Community producers had been unable to follow the prices set by the Chinese exporters since price undercutting during the reference period had reached 181 %.

(b) **Other economic factors to be considered**

(i) *Production*

(33) The Commission found that Community production of beach slippers had developed as follows: using the index 1985 = 100 as a basis, production reached 94 in 1986, 103 in 1987 and 67 in 1988. These figures, based solely on the production figures of those beach slipper manufacturers still in business at the time of the investigation, reveal:

— a temporary improvement in production in 1987, owing to an increase in demand, followed by a major drop in 1988;

— a drop of about 30 % between 1985 and 1988.

(ii) *Capacity utilization*

(34) The complaint indicated that the concept of production capacity could not be applied to the sector in question. During on-the-spot checks of Community producers it emerged, however, that capacities could be reasonably established.

(35) Overall, Community producers still in business at the time of the investigation, slightly increased their production capacity between 1985 and 1988, because of improvements in installations or, in a few cases, because of purchasing machines from other Community producers who had shut down.

Calculated on the basis of the capacity actually available each year from 1985-88, Community producers' rate of capacity utilization fell steadily between 1985 and 1988, from 71 % in 1985 to 64 % in 1986, 67 % in 1987 and 43 % in 1988.

(iii) *Stocks*

(36) As beach slippers are seasonal products, generally sold to wholesalers and retailers at the beginning of the year, the Commission saw nothing unusual in stocks being generally high at the end of each accounting year and felt that the size of these stocks should therefore not be taken into consideration.

(iv) *Sales*

(37) Community producers' sales on the Community market were as follows: using the index 1985 = 100 as a basis, sales went from 98 in 1986 to 105 in 1987 and 72 in 1988. This trend (a fall of 28 % between 1985 and 1988) concerns only those manufacturers still in business at the time of the investigation. The overall loss would therefore be both greater and steadier (40 % between 1985 and 1988) if the sales of producers who went out of business during the period 1985-88 were also taken into consideration.

(v) *Market share*

(38) Calculated on the same basis as for China, Community producers' market share fell from 36 % to 29 % in 1986, 17 % in 1987 and 16 % during the reference period, while the volume of transactions in the Community rose between 1984 and 1988.

(vi) *Prices*

(39) Having seen their market share fall steadily between 1985 and 1988, Community producers gave up trying to match the prices charged by the Chinese exporters in order to avoid suffering irreversible financial losses.

They did, however, try to make standard beach slippers more attractive (for example by developing new fabrics). As a result of these efforts, they managed to maintain or slightly increase their prices during the period 1985-88.

(40) Using the index 1985 = 100 as a basis, the price of standard beach slippers was 106 in 1986, 102 in 1987 and 106 in 1988. This increase was very moderate considering the rise in the price of raw materials during the same period.

(vii) *Profits*

(41) The Commission found that the financial results achieved by Community industry, which overall showed a very slight profit between 1985 and 1987, had seriously deteriorated in 1988, a year in which the sector suffered losses. These losses were caused by the major drop in sales sustained during the reference period.

(viii) *Activity and employment*

(42) The complaint referred to the closure of several firms and claimed that these shut-downs were a source of injury.

(43) With regard to the employment situation of producers still in business at the time of the investigation, the Commission found that the staff they employed had been cut by over 20 % during the period 1985-88, and they had also been obliged to introduce occasional short-time working.

The Commission is of the opinion that even if some of these staff cuts are linked with improved productivity, they are to a large extent due to the fall in production and sales.

(c) **Conclusion**

(44) On the basis of the information examined the Commission is of the opinion that the Community industry is in a very bad state, mainly because of the considerable drop in production and in the rate of capacity utilization and the significant reduction in the volume of sales and market share.

Although it has managed to maintain its price levels, the Community industry has suffered losses and is therefore sustaining major injury.

G. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS

(45) The Commission examined the extent to which the injury to the Community industry had been caused by the effects of dumping. It emerged that the drop in the Community industry's market shares and profit margins had coincided with the increase in the volume of imports of beach slippers from China. Since prices are an important factor in sales of these products, the considerable price undercutting by the Chinese products had a direct effect on the Community industry's volume of sales.

(46) With regard to the closures referred to at point 42, the Commission considers that shut-downs which took place between 1985 and 1988 are not strictly speaking linked with the market situation created by imports of Chinese beach slippers. Although information available is incomplete it appears that an equally significant factor in the closures was the restructuring and modernization of the sector in the 1980s.

The Commission is, however, of the opinion that the job losses incurred by producers who remained in business were due, at least partially, to the drop in their sales, which itself can be attributed to massive imports of Chinese beach slippers sold at dumped prices.

(47) Only the Chinese exporters gained by the increase in consumption seen in the Community from 1985 to 1988 because of the prices at which they sold their beach slippers. At the same time Community producers' sales volume and market share diminished which meant that they were not only prevented from taking advantage of the expansion of the market but they also lost market shares that they had held for several years.

(48) Imports of beach slippers from other third countries are unlikely to be responsible for the injury sustained by the Community industry as the volume of imports is marginal, of no comparison with the quantities exported by China, and has virtually no effect on the market.

(49) The Chinese Chamber of Commerce and Community importers' associations claimed that another cause of injury lay in the competition exerted by certain substitute products, sales of which rose during the period 1985-88.

In this connection the Commission would point out that the consumption of beach slippers not only did not drop but on the contrary increased in the period 1985-88.

In these circumstances the Commission cannot reasonably accept the argument whereby the increase in sales of other footwear, possible substitutes for beach slippers, but not like products, had caused injury to the Community beach slipper industry.

In any event, the Commission considers that even if part of the injury suffered by the Community industry could be attributed to substitute products, the dumping found would still be responsible for injury, which is itself considerable.

(50) No likely cause of the injury, other than the dumped imports, has been put forward.

(51) The Commission therefore concludes that the serious injury sustained by the Community industry was caused by dumped imports of beach slippers originating in the People's Republic of China.

H. COMMUNITY INTEREST

(52) The purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

With regard to this proceeding, the Commission considers that without measures to correct the effects of dumped Chinese imports, those firms still producing beach slippers may be forced to shut down completely. It is worth underlining that the firms in question are generally sound and competitive following a decade of radical restructuring and modernization.

The Commission feels that it would not be in the Community's interest to abandon a structurally sound industry at a time when, faced by unfair competition, it is sustaining serious injury which is jeopardizing its short-term viability.

(53) The importers' associations put forward two main arguments with regard to Community interest.

The first was that maintaining a source of low-priced supplies was in the consumers' interest.

The strength of this argument is called in to question by the Commission's findings according to which the benefits of low-priced imports were not necessarily passed on to the final consumers but often went no further than the traders themselves.

It should also be borne in mind that the recent price advantages that consumers have occasionally enjoyed are the result of unfair commercial practices and there is no justification for allowing them to continue.

The price of Chinese beach slippers has fallen dramatically over the last few years and the slight increase brought about by anti-dumping measures will at most bring prices up to their previous level. In any event, Chinese products will remain a lot cheaper than those produced in the Community and they will not be prevented access to the Community market.

The measures in question will not, therefore, prevent imports from playing their beneficial role for consumers. On the contrary such measures should result in increased production and capacity utilization by the Community industry which, as a result of lower costs, will be able to limit its price increases or even reduce its selling prices.

(54) The second argument put forward by the importers was that Community producers did not have the capacity to satisfy market demand.

The Commission would point out that this capacity was reduced, at least in part, because of unfair imports.

This capacity can therefore be boosted if distortions of competition caused by unfair commercial practices are eliminated.

(55) In assessing Community interest, the Commission also took account of the fact that beach slippers originating in China are subject to regional quantitative limits. The Commission considered that neither Community law nor international rules prevented the imposition of anti-dumping duties where regional quantitative limits existed, provided that it was established that injury had been caused despite these restrictions.

The Commission noted that the quantitative limits in question, which concerned the French, Spanish and United Kingdom markets, had had a limited effect and had made no impact on prices, nor had any effect on unfair commercial practices in the rest of the Community, which is a major market for the products in question.

(56) In the light of the above, the Commission concluded that it was in the Community interest to adopt measures to eliminate the injury caused to Community production by imports of beach slippers originating in the People's Republic of China.

In order to prevent further injury being caused before the end of the proceeding, the measures should take the form of a provisional anti-dumping duty.

I. PROVISIONAL DUTY

(a) Level of duty

(57) In order to determine the level of the provisional duty the Commission took account of the margin of dumping and the amount of duty needed to eliminate the injury.

To this end it compared the weighted average selling price of Chinese beach slippers during the reference period (on a free-at-Community frontier basis, plus customs duties and clearance charges) with the average weighted production cost of standard beach slippers produced during the same period by Community manufacturers which had been the subject of on-the-spot checks, plus a reasonable profit margin.

7 % of the target price thus established was considered a reasonable profit margin, which appeared to be the minimum needed to allow a beach slipper producer to keep his plant working in acceptable technical conditions and give him a rate of return on invested capital close to that generally required in the sector in question.

On this basis the Commission found a considerable price difference. Expressed as a percentage of the free-at-Community frontier price, not cleared through customs, this price difference amounted to 221 %.

It therefore transpires that the margin of dumping established, also expressed as a percentage of the free-at-Community-frontier price, not cleared through customs, is much lower than the percentage needed to eliminate the injury.

The anti-dumping duty to be imposed should therefore correspond to the margin of dumping established.

(b) Form of duty

(58) In the light of the economic structure of the exporters and price variations for very similar models, the Commission considers that the duty should take the form of a variable duty equal to the difference between price per pair net, free at Community frontier, not cleared through customs, and a floor price established on the basis of the normal value, which had originally been set for average sizes. However, in order to avoid :

— creating a disadvantage for smaller sizes,

— imposing complicated calculations on importers and the authorities in charge of control and recovery,

this normal value was lowered to the level of the smallest sizes, namely ECU 1,15 per pair, free at Community frontier, not cleared through customs. This minimum price of ECU 1,15 will therefore constitute the basis for calculating the variable duty and will apply to all sizes.

J. FINAL PROVISIONS

(59) In the interests of proper management, a reasonable period should be fixed within which concerned parties may make known their views in writing and request a hearing from the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of espadrilles (beach slippers) originating in the People's Republic of China falling within CN codes ex 6404 19 90 (Taric code 6404 19 90 * 10) and ex 6405 20 99 (Taric code 6405 20 99 * 10).

2. The amount of the duty shall be equal to the difference between the sum of ECU 1,15 per pair and the price per pair net, free at Community frontier, not cleared through customs.

The free-at-Community-frontier price shall be net if the effective conditions of payment are such that payment is made in the 30 days following the date of arrival of the goods in the customs territory of the Community. It shall be reduced by 1 % for each extra month's delay in payment.

3. For the purposes of this Regulation footwear with plaited fibre soles, whether or not strengthened with rubber or plastics over a variable surface, with a sole of uniform thickness not exceeding 2,5 cm, shall be considered as beach slippers.

4. The provisions in force with regard to customs duties shall apply.

5. The release for free circulation in the Community of the goods mentioned in paragraph 1 shall be conditional on the deposit of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, concerned parties may make known their point of view in writing and request a hearing from the Commission within one month of this Regulation entering into force.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88, it shall apply for four months unless the Council adopts definitive measures before the expiry of this period.

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

Done at Brussels, 21 December 1990.

For the Commission

Frans ANDRIESSEN

Vice-President