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COUNCIL REGULATION (EC) No 467/98

of 23 February 1998

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

(OJ L 60, 28.2.1998, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 114, 16.4.1998, p. 32 (467/98)

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COUNCIL REGULATION (EC) No 467/98

of 23 February 1998

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

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(4) thereof,

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

Whereas:

A. **PROCEDURE**

(1) On 22 February 1995, the Commission announced by means of a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain footwear with uppers of leather or plastics originating in the People's Republic of China, Indonesia and Thailand and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Confederation of the Footwear Industry (CEC) on behalf of national footwear federations whose complainant members (188 in total) accounted for a major proportion (namely 53 %) of the Community production of the footwear subject to this investigation. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially notified the exporters and importers known to be concerned and their representative associations, as well as the representatives of the exporting countries involved, of the initiation of the proceeding. All parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(4) The authorities of the exporting countries concerned as well as a number of exporters, Community importers, their representative associations and trade associations made their views known in writing. All parties who so requested within the time limit were granted a hearing.

(5) In view of the large number of Community producers which were party to the complaint, and in conformity with Article 17 of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), it was considered appropriate to limit the investigation to a number of these producers which could reasonably be investigated within the time available. In this context, the questionnaires used to collect data and thus permit an evaluation of any injury to the Community industry, were addressed to the national producers' federation in the Community and to 89 of the 188 Community producers expressly supporting the complaint. Of these 89 Community producers, 87 submitted complete and meaningful replies. For verification purposes, given the difficulty in carrying out detailed on-the-spot investigations in respect of the abovementioned 87 Community producers (hereinafter referred to as 'the first group'), 15 of those Community producers (hereinafter referred to as 'the verification sample') were selected and their responses subjected to in-depth, on-the-spot verifications.

(6) The Commission also sent questionnaires to the following:

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ C 45, 22. 2. 1995, p. 2.

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— the Chinese, Indonesian and Thai producers/exporters listed in the complaint,

— the Hong Kong exporters listed in the complaint,

— the authorities of the exporting countries concerned,

— the exporters who, while not listed in the complaint, made themselves known and requested a questionnaire.

In total, 13 replies to the questionnaire were received from producers/exporters in Indonesia, 17 from producers/exporters in the People's Republic of China and three from producers/exporters in Thailand.

(7) In view of this number of replies, 33 in total, the Commission proposed, in accordance with Article 17 of the Basic Regulation, to limit its investigation to a reasonable number of cooperating producers/exporters representing the largest representative volume of production which could reasonably be investigated within the time available. Agreement was reached with the cooperating producers/exporters on the selection of a sample of four producers/exporters from the People's Republic of China and seven from Indonesia. Given that, in total, only three producers/exporters from Thailand cooperated, all three were investigated.

(8) In addition, the Commission sent questionnaires to all known importers. Replies were received from 14 such importers.

(9) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping and injury, and carried out investigations at the premises of the following companies:

(10) (a) *Community producers*

The verification sample referred to in recital 5 consisted of a total of 15 Community producers situated in France, Italy, Portugal, Spain and the United Kingdom, which are all Member States with a significant production of the footwear under investigation. Together these Member States accounted for 89 % of total Community production of the product in question in 1994, i.e. the investigation period as defined in recital 13.

The 15 Community producers in the verification sample requested that their identities be kept confidential on the grounds that some of them had been threatened with commercial retaliation by certain customers who where at the same time importers and major retailers in the Community. The investigation confirmed that certain Community producers had been subjected to severe commercial pressure to stop cooperating in the investigation and to withdraw their support for the complaint. Accordingly, it was considered appropriate not to disclose the names of these 15 Community producers.

The representatives of certain exporters and importers have criticised the granting of such anonymity on the grounds that complaining domestic industries should be prepared to face any kind of 'commercial retaliation'. In this respect, it has to be stressed that the anonymous treatment was granted because the threat exerted went far beyond 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 Community producers are particularly exposed as they represent, and act for the benefit of, a much larger group. The identities of the 87 Community producers in the first group were, however, disclosed to the parties having so requested.

(b) *Unrelated importers/distributors*

— Atlex SA, Rouen (F),

— British Shoe Corporation Ltd, Leicester (UK),

— Chasseurop SA, Le Havre (F),

— Groupe André SA, Paris (F),

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— Intermedium BV, Hoofddorp (NL).

(c) *Related importer*

— Nick's Sports and Leisure Footwear Ltd, Warrington (UK).

(d) *Exporters/producers in Indonesia*

— PT Dragon,

— PT Emperor Footwear Indonesia,

— PT Fortune Mate,

— PT Golden Adishoes,

— PT Indosepamas Anggun/PT Primashoes Ciptakreasi,

— PT Kingherlindo.

(e) *Exporters/producers in Thailand*

— Bangkok Rubber,

— CK Shoes,

— PSR Footwear.

(f) *Exporter in Hong Kong*

— Grosby (China) Ltd.

(11) 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. They were also granted a period within which to make representations subsequent to the disclosure.

(12) The parties' representations were considered, and the Commission altered its conclusions where appropriate.

(13) The investigation of dumping covered the period from 1 January 1994 to 31 December 1994 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period from 1991 to the investigation period. In addition, for the purpose of the additional examination referred to in recitals 138 to 143, certain developments occurred in 1995 and 1996 which were also taken into account.

The geographical scope of the investigation was the Community as constituted at the time of initiation of the proceeding, that is to say all 15 Member States.

(14) Owing to the volume and complexity of the information gathered from many different sources and, in particular, in the light of the numerous types of footwear covered by the investigation and the need to carry out an additional examination to evaluate the effects of the Community-wide quota imposed in the course of the investigation period on imports of the footwear concerned originating in the People's Republic of China, the investigation exceeded the normal duration provided for in Article 6(9) of the Basic Regulation. Pursuant to Article 24 of the Basic Regulation this investigation is indeed not subject to the mandatory time limits provided for in Article 6(9).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product under consideration

(15) The product under consideration in this proceeding is 'non-sports' footwear, not covering the ankle, with insoles of a length of 24 cm or more:

— with outer soles of rubber, plastics or composition leather and uppers of leather, falling within CN codes ex 6403 99 93 (if not identifiable as men's or women's footwear), ex 6403 99 96 (if for men) and ex 6403 99 98 (if for women),

— with outer soles of rubber or plastics and uppers of plastics, for women (falling within CN code ex 6402 99 98).

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It should be noted that no footwear for use in sporting activities, with a single or multi-layer non injected moulded sole, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers, which can be classified for customs purposes in all the abovementioned CN codes, is covered by this proceeding.

(16) For practical purposes and in order to appropriately gather and handle the data collected, each of the above mentioned CN codes was considered as one 'category'. Four categories were thus formulated as follows:

Category 1: CN code ex 6403 99 93 (i.e. 'unisex' adults — leather uppers)

Category 2: CN code ex 6403 99 96 (i.e. men's — leather uppers)

Category 3: CN code ex 6403 99 98 (i.e. womens's — leather uppers)

Category 4: CN code ex 6402 99 98 (i.e. women's — plastic uppers)

(17) Although the footwear falling within any of the above categories can cover a wide range of styles and types, as well as be produced by different production methods, their essential characteristics, their uses and consumer perception thereof remain basically the same. Therefore, for the purposes of this proceeding and in accordance with consistent Community practice, they were regarded as forming one product.

2. **Like product**

(18) As regards the footwear produced and sold domestically in Indonesia and Thailand, where such sales had taken place and information in that respect had been made available, the investigation showed that such products were either alike in all respects to, or closely resembling, those exported to the Community from the countries in question.

(19) Similarly, footwear subject to the current investigation produced in Indonesia and exported to the Community was considered to be a like product to the footwear produced and exported from the People's Republic of China to the Community. This is particularly relevant in the light of the fact that Indonesia has been used as the analogue country for the determinaton of normal value for the People's Republic of China as set out in recitals 42 and 43.

(20) The investigation also established that the footwear produced in the Community and that imported from the three countries concerned were similar as far as their overall design, general characteristics and uses are concerned. While there may be some minor differences between the product imported from the countries concerned and the Community production, these diffferences do not affect the substantial characteristics, properties, perception and uses of the product.

(21) In this respect, certain parties have claimed that imported and Community-produced footwear belong to different product segments which do not compete with each other. They argued 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.

(22) The 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, Indonesia or Thailand sophisticated products manufactured in accordance with their own specifications, design and sometimes raw materials. This contradiction shows that the People's Republic of China, Indonesia and Thailand are in fact capable of producing, and do indeed produce and export to the Community, the full range of products on offer on the market. The argument that footwear imported from the three countries concerned and that produced in the Community belong to different product segments cannot therefore be accepted.

(23) Accordingly, footwear subject to this proceeding produced in the People's Republic of China, Indonesia and Thailand and exported to the Community was considered to be a like product to footwear

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produced in the Community within the meaning of Article 1(4) of the Basic Regulation.

C. **DUMPING**

1. **General**

(24) It has been the consistent practice of the Community Institutions (hereinafter referred to as the 'Institutions') to consider related producers/exporters, or producers/exporters within the same group, as one economic entity and to establish a single dumping margin (and, where appropriate, a single duty) for those producers/exporters. This practice has been adhered to in this proceeding. Calculating individual dumping margins and antidumping duty rates in such circumstances might encourage circumvention of any anti-dumping measures by enabling related producers/exporters to channel their exports to the Community through the related producer/exporter (or the producer/exporter within the same group) with the lowest duty.

2. **Indonesia**

(a) *Sampling*

(25) As mentioned in recital 7, sampling as provided for in Article 17 of the Basic Regulation was used and seven Indonesian producers/exporters were selected as the sample, in agreement with the cooperating producers/exporters.

(26) In accordance with Article 9(6) of the Basic Regulation it was agreed with the other Indonesian producers/exporters which cooperated with the investigation but which were not included in the sample, that they would be attributed the weighted average dumping margin established for the producers/exporters in the sample.

(27) The producers/exporters selected in the sample and which fully cooperated with the investigation were informed that they would be given their own dumping margin (and, where appropriate, their own individual duty rate).

(b) *Normal value*

(28) In order to establish normal value for each of the seven Indonesian producers/exporters in the sample, it was first determined whether the total domestic sales of the footwear concerned by each producer were representative when compared to their total sales of the footwear concerned exported to the Community. In accordance with Article 2(2) of the Basic Regulation, domestics sales are normally considered representative when the total domestic sales volume of the like product sold by each producer represents at least 5 % of its sales volume of the product under consideration exported to the Community. A further representativity test was then carried out on a model by model basis.

(29) Only one of the cooperating Indonesian producers/exporters in the sample had sufficient domestic sales of two models of the like product in the ordinary course of trade in the investigation period within the meaning of Article 2(2) and (4) of the Basic Regulation to enable normal value to be calculated on such a basis. Given that all these sales were profitable, normal value was therefore calculated on the basis of the prices paid or payable on the domestic market for all these sales. Normal value for this company's other models was constructed, in accordance with Article 2(3) and (6) of the Basic Regulation, by adding to their manufacturing costs, the selling, general and administrative expenses (hereinafter referred to as 'SG&A') and profit found for the two models referred to immediately above.

(30) The other six Indonesian producers/exporters in the sample did not have sufficient domestic sales of the footwear concerned during the investigation period within the meaning of Article 2(2) of the Basic Regulation. It was therefore considered appropriate to construct normal value on the basis of Article 2(3) of the Basic Regulation by adding to the manufacturing cost of each model exported to the Community a reasonable amount for SG&A and for profit. In this respect, it was considered, in accordance with Article 2(6)(a) of the Basic Regulation, that the amounts of SG&A and profit of the

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producer/exporter which did have sufficient domestic sales (see preceding recital) should be used to construct normal value for the six other Indonesian producers/exporters in the sample.

(31) One producer/exporter which had agreed to be included in the sample, did not provide costs by model, despite several requests to do so. Since it was therefore impossible to calculate domestic profitability and constructed normal values for this producer/exporter, facts available as set out in recital 41 were applied in establishing the dumping margin for this producer/exporter in accordance with Article 18 of the Basic Regulation.

(c) *Export price*

(32) Exports for six of the seven producers/exporters included in the sample were made directly to independent importers in the Community. The export prices of these producers/exporters were established by reference to the prices paid or payable for the footwear sold, in accordance with Article 2(8) of the Basic Regulation. The export price of one Indonesian producer/exporter included in the sample, which sold via a related company in Taiwan, had to be adjusted (see recital 36).

(d) *Comparison*

(33) For the purpose of ensuring a fair comparison between normal value and the export prices of the producers/exporters in the sample, due allowance in the form of adjustments was made in accordance with Article 2(10) of the Basic Regulation for differences affecting price comparability, whenever these were claimed and duly justified. In consequence, adjustments were made, where appropriate, for differences in transport, insurance, handling, loading and ancillary costs, credit costs, bank charges, guarantees/warranties and levels of trade.

(34) In the case of one of the Indonesian producers/ exporters in the sample, a level of trade allowance was claimed. The producer/exporter contended that such an allowance was warranted because its export sales to the Community were made in large quantities to distributors and wholesalers, whilst its domestic sales were allegedly made in small quantities to retailers and traders. Upon further examination during the on-the-spot investigation, it was established that the domestic purchasers were in fact also distributors and wholesalers. Consequently, this claim was rejected, since normal value and export price were at the same level of trade and no adjustment was therefore required or warranted.

(35) An allowance was also claimed by two of the Indonesian producers/ exporters in the sample as their export sales were, in contrast with their domestic sales, allegedly made on an OEM brand basis. This was verified in detail by the Commission during the on-the-spot investigations and it was clearly established that, for export sales, there were distinct sales channels with consistently lower prices for OEM customers. Since the difference in level of trade for OEM customers could not be quantified because of the absence of the same sales channels on the domestic market in Indonesia, a special adjustment has been granted, in accordance with Article 2(10)(d)(ii) of the Basic Regulation, by deducting from the own brand constructed normal values, an amount corresponding to 10 % of the gross profit margin.

(36) One Indonesian producer/exporter sold footwear for export to the Community through a related trading company located in Taiwan. It has been determined that because of the relationship between the two companies, the prices charged by the producing company to the trading company are not reliable. To establish a reliable export price to the Community from Indonesia, the price charged from Taiwan to the Community was adjusted to an ex-Indonesia level. As the related trader's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 5 %, based on information supplied by the company itself, was therefore deducted from the prices charged by the related company to independent customers in the Community. This figure was considered reasonable given the degree of the related trader's involvement in the selling activities of the exporter. No information was provided which would indicate that the use of this

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figure is inappropriate. Thus, the export prices were adjusted accordingly.

(e) *Dumping margins*

(37) To calculate the dumping margin of each Indonesian producer/exporter in the sample, a comparison was made between weighted average normal values and the weighted average export prices of the producers/exporters, since it was clearly established that there was no pattern of export prices which varied significantly between either different purchasers, regions or time periods, in accordance with Article 2(11) of the Basic Regulation.

(38) The comparison showed the existence of dumping of the footwear concerned during the investigation period by all of the producers/exporters included in the sample. Because of the relationship between P.T. Indosepamas Anggun and P.T. Primashoes Ciptakreasi, these producers/exporters were treated as one company and a single margin calculated therefore, in accordance with the Institutions' established practice as set out in recital 24.

The individual dumping margins for these producers/exporters, thus established and expressed as a percentage of the CIF price at Community frontier are:

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— PT Dragon: 5,9 %

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— PT Emperor Footwear: 2,0 %

— PT Fortune Mate: 14,9 %

— PT Golden Adishoes: 18,6 %

— PT Indosepamans Anggun/P.T. Primashoes Ciptakreasi: 12,7 %

(39) The dumping margin for the cooperating producers/exporters which were not selected was based on the weighted average margin of the individual dumping margins established for each producer/exporter in the sample, with the exception of the producer/exporter referred to in recital 31 (P.T. Kingherlindo) for which facts available were applied. This company's dumping margin was disregarded in establishing the weighted average margin for the sample in accordance with Article 9(6) of the Basic Regulation. The dumping margin thus established and expressed as a percentage of the CIF price at Community frontier was 12,3 %. The producers/exporters to which this margin applies are:

— PT Bosaeng Jaya

— PT Karet Murni Jelita

— PT Koryo International

— PT Lintas Adhikrida

— PT Universal Wisesa

— PT Volmacarol

(40) For those producers/exporters in Indonesia which neither replied to the Commission's questionnaire nor made themselves known, the dumping margin, has in accordance with Article 18 of the Basic Regulation, been determined on the basis of the facts available. In view of the unusually high degree of non-cooperation in this case on the part of Indonesian producers/exporters (more than 74 %), the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to base the residual dumping margin on the highest margin of dumping alleged in the complaint, i.e. 50 %.

(41) In determining the dumping margin for the producer/exporter referred to in recital 31 (P.T. Kingherlindo), it was considered that the partial cooperation it had shown should be distinguished from the total non-cooperation of the producers/exporters referred to in recital 40. Accordingly, it was decided that the margin calculated for this producer/exporter should be lower than the margin calculated for the non-cooperating producers/exporters. Its margin was therefore based

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on the arithmetic average of the residual margin and the weighted average margin calculated for the sample, i.e. 31,1 %.

3. **People's Republic of China**

(a) *Choice of analogue country*

(42) In accordance with Article 2(7) of the Basic Regulation, normal value was based on data collected from producers in a market economy country (the 'analogue country').

(43) In the complaint, Thailand was proposed as the most appropriate analogue country. However, the choice of this country was opposed by a number of importers as well as the Chinese producers/exporters on the grounds that the levels of economic development in the People's Republic of China and Thailand were dissimilar. Two trade bodies, the Foreign Trade Association (FTA) and the Federation of the European Sporting Goods Industry (FESI) put forward Indonesia, as did the Chinese producers/exporters. A number of other countries were also proposed at various stages of the proceeding by certain interested parties without, however, providing evidence justifying why any one of these countries should be given preference over another.

Having examined the information available in respect of all the countries suggested, it was finally considered that, in accordance with Article 2(7) of the Basic Regulation, Indonesia was a reasonable choice of analogue country as there appeared to be a large number of suppliers in that market and a certain degree of similarity between the production processes employed there and in the People's Republic of China. Furthermore, no significant differences were apparent as regards the access to raw materials. In addition, sales on the Indonesian domestic market were also representative when compared to exports from the People's Republic of China to the Community. Moreover, Indonesia had been proposed by the Chinese producers/exporters themselves and no objection was raised by the Community producers on the Commission's intention in this respect.

(b) *Individual treatment*

(44) In accordance with Article 9(5) of the Basic Regulation, it is the Institutions' policy to calculate country-wide dumping margins for non market-economy countries, except for those producers/exporters who can demonstrate that they should be granted individual treatment, i.e. that their export prices should be established separately and their dumping margin be calculated individually.

(45) All of the Chinese producers/exporters which replied to the Commission's questionnaire requested individual treatment. In examining the merits of these claims, the Commission sought to verify whether the producers/exporters which cooperated in this proceeding enjoyed a degree of legal and factual independence from the State, comparable to that which would prevail in a market economy country and which would justify a departure from the principle of determining a single country-wide dumping margin. To this end, detailed questions regarding the ownership, management, control, determination of commercial and business policies were addressed to the producers/exporters. None of the responding producers/exporters, with the sole exception of Grosby (China) Limited, were able to show, to the satisfaction of the Commission, that their operations were sufficiently independent from the Chinese authorities to qualify for individual treatment. Their requests were consequently rejected and the producers/exporters informed accordingly.

(46) Grosby (China) Limited was a legal entity incorporated under Hong Kong law but manufacturing the like product in a production facility in the People's Republic of China. No legal entity existed in the People's Republic of China but the capital goods physically present there were included as assets in the accounts of the Hong Kong company.

The Commission carried out on-the-spot verifications at the premises of the company in Hong Kong in order to examine the circumstances under which it operated and its relations with the Chinese State. In particular the company concerned was able to show, to the satisfaction of the Commission, that the management and control of the factory, both in terms of production and marketing, was clearly in their hands

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and that their operations were sufficiently independent from the Chinese Authorities. It was also established that the export prices to the Community and the marketing policies were determined by the Hong Kong company without any interference from the Chinese State.

In view of the above, it was considered possible to grant individual treatment to Grosby (China) Limited and, consequently, to calculate a separate dumping margin as an exception to the principle of calculating country-wide dumping margins in respect of non market-economy countries as required by Article 9(5) of the Basic Regulation.

(c) *Country-wide dumping margin for the People's Republic of China*

(47) In total, 17 exporters in the People's Republic of China replied to the Commission's questionnaire. The producers/exporters concerned however represented only 14,3 % of total exports from the People's Republic of China and it was consequently decided, in view of the particularly high level of non-cooperation, to establish the margin of dumping for the People's Republic of China on the basis of Article 18 of the Basic Regulation, i.e. on the basis of the facts available.

In order to calculate the single country-wide margin of dumping for the People's Republic of China, the Commission first calculated, the dumping margin of the 16 cooperating producers/exporters to which individual treatment was not granted (see (i) below). Secondly, the Commission established the dumping margin for the non-cooperating producers/exporters (see (ii) below).

The country-wide dumping margin for the People's Republic of China was then calculated as the average of these two dumping margins (see (iii) below).

(i) Dumping margin for cooperating producers/exporters

Sampling

(48) As mentioned in recital 7, sampling, as provided for in Article 17f the Basic Regulation, was used in respect of the 17 cooperating producers/exporters in the People's Republic of China. Four producers/exporters were selected, in agreement with the cooperating producers/exporters concerned.

However, as one of these producers/exporters, Grosby (China) Limited, was subsequently granted individual treatment, it was removed from this sample (see recital 46).

Accordingly, the three remaining producers/exporters included in the sample for the People's Republic of China are:

— Fujian Footwear and Headgear Import & Export Corporation,

— Zhejiang Animal By-Products Import & Export Corporation,

— Zhangjiang Yitai.

Normal value

(49) Normal value for the Chinese producers/exporters included in the sample was calculated on the basis of the domestic prices in Indonesia and on constructed normal values established for the producers/exporters included in the sample for Indonesia, in accordance with Article 2(7) of the Basic Regulation.

It should be noted that the three Chinese producers/exporters concerned had been requested to give detailed specifications of the footwear exported to the Community. Only limited information was provided by the producers/exporters and the Commission consequently had to establish, on the basis of the facts available, which Indonesian models were identical or, in the absence of identical models, those Indonesian models which most closely resembled the Chinese models exported to the Community. On this basis, the Commission was able to find comparable models for models representing 34,7 % of the total exports from the three producers/exporters concerned. For these models, the normal values established for the purpose of determining the Indonesian dumping margins could therefore be used.

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(50) For those Chinese exported models for which there was no like domestically sold Indonesian model, the constructed value was established by adding a reasonable amount for SG&A expenses and profit to the manufacturing cost of comparable exported Indonesian models. The SG&A and profit margin were established on the basis described in recitals 29 and 30.

Export price — calculation of export price

(51) The investigation showed that the exports of the three Chinese producers/exporters in the sample were made directly to independent customers in the Community. It was, therefore, possible to establish export prices on the basis of prices actually paid or payable, in accordance with Article 2(8) of the Basic Regulation.

Comparison

(52) For the purpose of ensuring a fair comparison between normal value and the export prices of the producers/exporters in the sample, allowance in the form of adjustments was made in accordance with Article 2(10) of the Basic Regulation for duly justified differences affecting price comparability. Consequently, adjustments were made for differences in physical characteristics, transport, insurance, handling, loading and ancillary costs, packing and credit costs.

Dumping margin

(53) The Commission first calculated a dumping margin for each of the three producers/exporters in the sample. For this purpose, the Commission made a comparison between normal value at ex-works level and the export prices of the cooperating Chinese producers/exporters at FOB level, ex-Chinese frontier. This comparison was based on the weighted average selling price of each model of footwear manufactured by the producers/exporters in the sample and exported to the Community during the investigation period for which a comparable model of footwear could be found.

(54) In the absence of any significant variations in export prices either by region, purchaser or time period, the normal value was compared with the export price on a weighted average basis in accordance with Article 2(11) of the Basic Regulation.

The comparison showed the existence of dumping of the footwear concerned originating in the People's Republic of China and exported by the producers/exporters in the sample to the Community during the investigation period. The weighted average dumping margin, expressed as a percentage of the CIF Community frontier price, amounts to 45,2 %.

(ii) Dumping margin for non-cooperating producers/exporters

(55) The dumping margin for the non-cooperating producers/exporters was established on the basis of the facts available in accordance with Article 18 of the Basic Regulation. In this particular case, given the unusually high level of non-cooperation and in the absence of other reliable information from independent sources, the most appropriate facts available have been considered to be the highest dumping margin alleged in the complaint. The dumping margin established on this basis was 50 % of the CIF Community frontier price.

(iii) Country-wide dumping margin for the People's Republic of China

(56) As indicated in recital 47, a single dumping margin was calculated for the People's Republic of China by using the weighted average of the margins established for the cooperating producers/exporters (i.e. 45,2 %, see recital 54) and the non-cooperating producers/exporters (i.e. 50 %, see recital 55).

The dumping margin thus established for all producers/exporters in the People's Republic of China, except Grosby (China) Limited, expressed as a percentage of the CIF Community frontier price, was 47,6 %.

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(d) *Dumping margin for Grosby (China) Limited*

(i) Normal value

(57) As far as Grosby (China) Limited was concerned, it should be noted that normal value was calculated in the same way as that of the other cooperating producers/exporters in the People's Republic of China, i.e. on the basis of prices or constructed values of comparable models produced in the analogue country, i.e. Indonesia.

(ii) Export price

(58) Since Grosby (China) Limited made its export sales via a related importer, Nick's Sports and Leisure Footwear Ltd (UK), the export price was constructed pursuant to Article 2(9) of the Basic Regulation, i.e. on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price, at the Community frontier level. A profit margin of 5 % was used since this was the profit margin found for the independent importer which had the most similar trading structure to that of Nick's Sports and Leisure Footwear Ltd (UK) and had been the subject of an on-the-spot verification visit.

(iii) Comparison

(59) For the purpose of ensuring a fair comparison between normal value and export price, an allowance in the form of adjustments was made, in accordance with Article 2(10) of the Basic Regulation for differences in transport and insurance.

(iv) Dumping margin

(60) In the absence of any significant variations in export prices either by region, purchases or time period, the normal value was compared with the export price on a weighted average basis, in accordance with Article 2(11) of the Basic Regulation. On this basis, the dumping margin for Grosby (China) Limited was found to be 1,3 %.

4. **Thailand**

(i) Dumping margin for cooperating producers/exporters

(a) *Normal value*

(61) In order to establish normal value for each of the three cooperating Thai producers/exporters, it was first determined whether the total domestic sales of the footwear concerned by each producer/exporter were representative when compared to their total sales of the footwear concerned exported to the Community. In accordance with Article 2(2) of the Basic Regulation, domestic sales are normally considered representative when the total domestic sales volume of the like product sold by each producer represents at least 5 % of its sales volume of the product under consideration exported to the Community.

(62) None of the producers/exporters had sufficient domestic sales of the footwear concerned during the investigation period within the meaning of Article 2(2) of the Basic Regulation. It was consequently considered appropriate to construct normal value on the basis of Article 2(3) of the Basic Regulation by adding to the manufacturing cost of each model exported to the Community a reasonable amount for SG&A and for profit. Two of the producers/exporters were related and one of these two related producers/exporters sold sports shoes and sports wear, i.e. the same general category of products, on the Thai domestic market. The SG&A and profit for these two producers/exporters was established by reference to the domestic sales of these products in accordance with Article 2(6)(b) of the Basic Regulation. In the absence of any domestic sales of the product concerned, or the same general category of products by the third cooperating Thai producer/exporter, their SG&A and profit was, in accordance with Article 2(6)(c) established on any other reasonable basis, in this case the SG&A and

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profit established for the other two cooperating producers/exporters referred to immediately above.

(63) One of the three cooperating Thai producers/exporters produced and exported shoes partly made from raw materials which it obtained free of charge from its customers in the Community. Because the prices of the raw materials were not divulged to the producer/exporter, it was unable to report them in its manufacturing costs. As the producer/exporter had no domestic sales, normal value had to be constructed. In the absence of full information on raw material costs the Commission constructed normal value by using the available company's manufacturing costs and the SG&A and profit as established in the preceding recital. Since both the constructed value and the export price reported by this producer/exporter excluded the same raw material costs, both were directly comparable.

(b) *Export price*

(64) The investigation showed that, except in the case referred to in recital 67, exports were made directly to independent customers in the Community. Export prices were consequently established on the basis of the prices actually paid or payable.

(c) *Comparison*

(65) For the purpose of ensuring a fair comparison between normal value and the export prices of the producers/exporters, due allowance in the form of adjustments was made in accordance with Article 2(10) of the Basic Regulation for differences affecting price comparability, whenever these were claimed and duly justified. In consequence, adjustments were made, where appropriate, for differences in transport, insurance, handling, loading and ancillary costs, credit costs, bank charges, guarantees/warranties and levels of trade.

(66) An allowance was also claimed by one of the Thai producers/exporters as their export sales were, in contrast to their domestic sales, allegedly made on an OEM brand basis. During the investigation it was clearly established that export sales were made at a different level of trade than domestic sales. An allowance was consequently granted by deducting from the own brand constructed normal values, an amount corresponding to 10 % of the gross profit margin in accordance with Article 2(10)(d)(ii) of the Basic Regulation.

(67) One Thai producer/exporter sold footwear for export to the Community through a related trading company located in the USA. It has been determined that because of the relationship between the two companies, the prices charged by the Thai producing company to the US company were not reliable. To establish a reliable export price to the Community from Thailand, the price charged to the Community was adjusted to an ex-Thailand level. As the related company's functions can be considered similar to those of a trader acting on a commission basis, an adjustment of 5 % was deducted from the prices charged by the related company to independent customers in the Community. This figure was considered reasonable given the degree of the related trader's involvement in the selling activities of the exporter. No information was provided which would indicate that this figure is inappropriate. Thus, the export prices were adjusted accordingly.

(d) *Dumping margins*

(68) To calculate the dumping margin of each cooperating Thai producer/exporter, the Commission made, in accordance with Article 2(11) of the Basic Regulation, a comparison between weighted average normal values and the weighted average export prices of the producers/exporters since it was clearly established that there was no pattern of export prices which varied significantly between different purchasers, regions or time periods.

(69) The comparison showed the existence of dumping of the footwear concerned during the investigation period by one of the three cooperating producers/exporters. The margin thus established and expressed as a percentage of the CIF price at Community frontier is:

— CK Shoes: 1,4 %

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The investigation revealed that the two other cooperating Thai producers/exporters were related, one producer/exporter holding shares of the other. In addition, shares of one of these producers/exporters were held by a company in the USA. Both producers/exporters exported the product concerned to the Community during the investigation period.

Although these producers/exporters maintained separate production facilities only one dumping margin was calculated therefor in line with the Institutions' established practice as set out in recital 24.

The margin thus established was:

— PSR Footwear/Bangkok Rubber Company: 0 %.

(ii) Dumping margin for non-cooperating producers/exporters

(70) For those producers in Thailand which neither replied to the Commission's questionnaire nor made themselves known, the dumping margin has, in accordance with Article 18 of the Basic Regulation, been determined on the basis of the facts available. In view of the unusually high degree of non-cooperation in this case on the part of Thai producers/exporters (99 %), the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to base the residual dumping margin on the highest margin of dumping alleged in the complaint, i.e. 50 %.

D. COMMUNITY INDUSTRY

(71) As mentioned in recital 5, in view of the large number of Community producers which were party to the complaint, it was considered appropriate to collect data concerning the Community industry from three sources, namely the national producers' federations in the Community, the 87 Community producers in the first group and the 15 Community producers in the verification sample. Injury indicators were then considered at the most appropriate level (i.e. on the widest basis for general indicators and on a narrower basis for those which could only be collected from individual companies).

Accordingly:

— 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,

— General trends concerning prices, costs and profitability were established at the level of the 87 Community producers in the first group, which were selected with a view to covering, in as balanced a way as possible, the four categories of product under consideration, as well as reflecting the various company sizes and production structures in the main producer Member States,

— Price undercutting and injury-elimination level calculations were carried out on the basis of fully verified price and cost data collected from the 15 Community producers in the verification sample, which are representative in terms of size and product range as well as location (they are all located in the major producing Member States).

(72) Certain parties have claimed that the above methodology was deficient on the grounds that it would depart from the provisions of both Articles 5(4) and 4(1) of the Basic Regulation, according to which the representative nature of the investigated Community industry would have necessarily to be established on the basis of the 'major proportion' test, and thus any evidence of injury would have to be based on data provided by producers representing at least 25 % of total Community production of the like product. In particular, it was argued that the 'total Community production' figure used for assessing the representativity of the 188 complaining Community producers would not be reliable.

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The sampling exercise carried out by the Commission was also questioned on the alleged grounds that the decision to resort to sampling was taken at an advanced stage, in response to an insufficient cooperation from the complaining industry during the initial stages of the investigaiton.

1. **Total Community production**

(73) It should first be stressed that the level of support for the complaint was established before initiation of the investigation. During the course of the investigation it was established that the 188 complaining Community producers continued to represent more than 25 % of total Community output (namely 53 %). Therefore, the complaining Community producers represent a major proportion of total Community output of the like product within the meaning of Article 4(1) of the Basic Regulation.

Morevoer, it has also to be stressed that the 'total Community production' figure of the like product was set at the maximum possible level. Indeed, due to the lack of reliable data, no examination could be carried out in order to determine whether, in accordance with the provisions of Article 4(1)(a) of the Basic Regulation, 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 Community.

Such would-be Community producers, some of which are known to have made considerable imports, are also known to produce relatively large quantities in the Community. Had sufficient, information in this respect been made available, it is likely that part of this 'total Community production' would have been excluded. Such reduction would have increased the share of Community production of the complaining Community producers. Conversely, the investigation established that out of the 188 complaining Community producers, 87 (i.e. the Community producers in the 'first group' as defined at recital 5 were neither related to any producers/exporters nor themselves significantly importing the product covered by this investigation.

2. **Sampling**

(74) 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 this proceeding explicity mentioned the fact that the investigation could be conducted by means of sampling. As a result, from the initial stages of the investigation, cooperation was sought (via national federations) from 89 Community producers selected amongst the 188 Community producers supporting the complaint.

Meaningful replies were received from 87 producers (referred to as 'the first group' in recital 5), from which, for verification purposes, 15 were selected and their replies subjected to in-depth on-the-spot verifications (this latter group of producters is referred to as 'the verification sample' in recital 5).

It should be noted that the provisions of the Basic Regulation do not require in the case of sampling that relevant data be collected from Community producers representing a major proportion of total Community production as defined in Articles 4(1) and 5(4) of the Basic Regulation. Rather, Article 17(1) of the Basic Regulation provides for the possibility of collecting data from a sample which is representative of the Community industry. The very purpose of such sampling provisions is to allow for a situation in which the share of production represented by such sampled Community producers could, depending on the circumstances, be substantially less than 25 % of total Community production.

In any event, the 87 Community producers in the first group alone were found to account for 25,7 % of Community output of the like product, thus qualifying, in the absence of declared opposition to the complaint, as the Community industry.

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3. **Conclusion**

(75) In the light of the above, it is concluded that the representative nature of the investigated Community industry was assessed in a reasonable way and in conformity with the relevant provisions of the Basic Regulation.

E. **INJURY**

1. **General remark**

(76) To the extent possible, all Eurostat figures used in the calculations detailled below (relating to import volumes, values and thus prices per pair) were corrected on the basis of data available (provided by the Taric database), in order to exclude footwear involving special technology (none of which, as explained in recital 15, is covered by this proceeding).

2. **Consumption in the Community**

(77) In calculating the total Community consumption of footwear subject to this investigation, the following data were added together:

— the total sales volume in the Community of all Community producers of the product concerned (using information obtained from the Community footwear producers' national federations in combination with data for exports outside the Community as per Eurostat), and

— the total imports into the Community of the product concerned from third countries including the People's Republic of China, Indonesia and Thailand.

On this basis, Community consumption of the product concerned was found to have declined from 327 million pairs in 1991 to 307 million pairs in the investigation period, a decrease of approximately 6 %.

3. **Volume and market share of dumped imports during the investigation period**

(78) The total volume of imports for the footwear subject to the present investigation originating in the People's Republic of China was 28,6 million pairs in the investigation period.

The total volume of imports for the product concerned originating in Indonesia stood at 15,9 million pairs in the investigation period whilst the corresponding figure for Thailand was 11,8 million pairs.

Calculated on the basis of Community consumption (see preceding recital), the share of the Community market held, during the investigation period, by Chinese imports was 9,3 % whilst that of Indonesia was 5,2 % and Thailand 3,9 %.

4. **Cumulation**

(79) In accordance with Article 3(4) of the Basic Regulation, an examination was made as to whether or not the effect of the dumped imports from the three countries concerned should be assessed cumulatively.

As can be seen from the preceding recital, the individual volume of imports from the People's Republic of China and Indonesia and their market shares in the Community (9,3 % and 5,2 % respectively) were not negligible during the investigation period. Furthermore, dumping margins which were more than *de minimis* were established for both countries (see recitals 56 and 38 to 41).

Similarly, although not as large as that of the other two countries concerned by this investigation and in spite of a slight decline over the period 1991 to 1994, the Thai market share in the Community was 3,9 %, i.e. more than *de minimis,* as was the residual dumping margin of 50 % established for this country (see recital 70).

(80) The investigation also showed that the conditions of competition on the Community market for the footwear imported from the People's Republic of China, Indonesia and Thailand are similar. Indeed, the Chinese, Indonesian, Thai and Community products are:

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— interchangeable from the consumer's point of view,

— offered for sale in the same geographical areas of the Community,

— sold through the same distribution channels,

— simultaneously present on the Community market,

— generally aimed at the same segment of the Community footwear market (i.e. the low to lower-middle priced part of the market).

In addition, the Chinese, Indonesian and Thai products are sold at prices found to undercut the Community industry's prices (see recital 86).

(81) On this basis, it is considered that cumulation is warranted and, accordingly, the effect of the dumped imports from all three countries should be assessed jointly for the purpose of injury analysis.

5. **Cumulated volume, cumulated market share and developments of dumped imports**

(82) The total volume of imports from the People's Republic of China, Indonesia and Thailand taken together rose from 38,6 million pairs in 1991 to 56,3 million pairs during the investigation period, a significant increase of more than 45 %. This corresponds to an increase in combined market share from 11,8 % in 1991 to 18,4 % during the investigation period.

6. **Prices of dumped imports and undercutting**

(83) Given the different product mixes which can occur within each of the four CN codes in question (see recital 17), any general examination of the evolution of the import prices of dumped imports between 1991 and 1994 using only the corresponding categories of footwear should be viewed with caution. To this end, using information received from importers and importers' organisations, the investigation showed that there had been a gradual shift to more sophisticated, up-market types of footwear being imported, with a corresponding overall increase in import prices.

(84) As regards price undercutting, comparisons were first made on a category-by-category basis between the CIF import price (as reported by Eurostat, after correction in order to exclude footwear involving special technology as explained in recital 76), adjusted to duty paid, customer-delivered levels and the selling prices in the Community of the Community producers at the same level of trade (i.e. to distributors/wholesalers).

A second undercutting exercise was also carried out by selecting those Chinese, Indonesian and Thai models exported to the Community in the greatest volumes by the three Thai cooperating producers/exporters and the Chinese and Indonesian producers/exporters in the dumping samples (grouped into 17 representative so-called 'families' of footwear, for example; men's lace-up town shoes) and comparing their adjusted, customer-delivered price levels within the Community to those of identical or comparable models produced by the Community producers in the verification sample.

(85) In adjusting import prices to the duty paid, customer-delivered level, account was taken of the normal duty rate or the duty rate applicable under the GSP (as appropriate), as well as a margin for all unloading, transport and other ancillary costs incurred specifically in relation with the imports, together with the profits achieved by the importers. On the basis of the evidence examined in respect of the product concerned 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 2 % upwards, reflecting the variable costs incurred, and then increased by an amount of ECU 0,96 per pair, reflecting the average fixed amount of costs incurred, plus the customs duty.

(86) The two methods used to determine undercutting described in recital 84 resulted in the establishment of average undercutting margins (expressed as a percentage of the Community industry's prices) in excess of 25 % for the People's Republic of China and of 10 % for both Indonesia and Thailand.

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7. **Conclusion concerning the volume of dumped imports and their effect on prices in the Community**

(87) As has been shown above, there was a significant increase of more than 45 % in the combined volume of dumped imports from the three countries in question between 1991 and the investigation period. Consumption, however, declined by about 6 % over the same time scale.

Even though certain increases in import prices which reflected the evolution of the product-mix where observed over the four year period under examination, these prices were nevertheless at highly dumped levels which significantly undercut the prices of the Community producers.

8. **Situation of the Community industry**

Preliminary remark

(88) As concerns the type of data given below, it should be noted that not all economic factors collected at the level of individual Community producers in the first group and the verification sample were found to have a bearing on the state of the Community footwear industry for the determination of injury. For example, because production takes place to order, stocks were usually not held and consequently were found to have very little meaning in the injury analysis, as was the case with capacity and capacity utilisation (since idle capacity cannot be strictly allocated only to the like product). Thus, in accordance with Article 3(5) of the Basic Regulation, in the analysis of the situation of the Community industry, only those economic factors which were found to have a bearing on the state of this particular industry were taken into consideration.

Production

(89) The information received from the national federations showed that production in the Community fell from approximately 259 million pairs in 1991 to 224 millions pairs in the investigation period, a drop of 14 %.

Sales volume

(90) The data obtained from the national federations and Eurostat showed a massive decline in sales volume of 22 % between 1991 and the investigation period (calculated using total production in the Community minus exports outside the Community).

Turnover

(91) The decline in sales value of the product concerned was found to be 16 % between 1991 and the investigation period. Such a decline, although less marked than in terms of volume, was nevertheless significant.

Market share

(92) On the basis of consumption figures as determined in recital 77 and using data obtained from national federations and Eurostat, it was found that the market share of the Community producers on the Community market went down from 64,5 % in 1991 to 53,3 % during the investigation period.

Prices of the Community producers

(93) As explained in recital 83 concerning the prices of imports, it is considered that given the different product mixes which can occur within each of the four CN codes in question, any general examination of the evolution of the import prices of dumped imports between 1991 and 1994 using only the categories of footwear should be viewed with caution. This also applies when analysing on this aggregate level data relating to the Community industry.

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On a category basis, the investigation did, however, show certain trends in the Community producers' prices since it was found that only the Community producers' weighted average selling price of the product belonging to category 1 ('unisex' footwear) went up by a significant amount between 1991 and the investigation period. This price increase is likely to result from the fact that this category includes a very large proportion of fashion footwear, very popular with young people, which have been very much in demand during recent years.

On the other hand, the prices of the products belonging to the other categories either remained stable or only went up slightly, but in any case this increase has been below the average level of inflation for the period under consideration and does not reflect the increase in the production costs. The conclusion can therefore be drawn that prices have been suppressed.

Profitability

(94) The profitability (in relation to turnover) on sales in the Community of the like product for the Community produces in the first group increased slightly from + 6,8 % in 1991 to + 7,3 % during the investigation period. The Community producers in the verification sample also confirmed this relatively stable trend with margins going up from + 8,1 % to + 8,2 %. The Community producers' capacity to maintain their profitability in the face of the abovementioned price suppression is the result of a considerable effort of rationalisation and cost reduction on the part of the surviving Community producers.

More importantly, the cost structure of this particular industry explains the fact that its operating businesses are either profitable or disappear. Indeed, with direct expenses (raw materials and labour etc.) representing up to 80 % of the cost of a shoe, footwear is only made to order, after a direct costing showing a sufficient profit for each order. In this situation, no company can show losses for more than a few months without being forced to close down. This explains why the Community producers in the first group and the verification sample were, on average, not loss making.

This cost structure together with the increasing leverage of a number of large retailers-importers who are able to select and change their source of supply for any order on the sole basis of price (in the case of the People's Republic of China, Indonesia and Thailand dumped prices) are key elements and explain the extreme vulnerability of this labour intensive industry which has no means, over an extended period of time, to resist sustained pressure from low-priced, dumped imports.

Community industry had therefore no choice but to try to maintain profitability at the expense of market share. This was still feasible and profitability remained stable at around 7 % over the period covered since, despite a fall of more than 11 percentage points in their market share since 1991, the Community producers still held 53 % of the Community market in 1994.

Employment and company closures

(95) In the light of the above, the analysis of employment developments and company closures appeared to be particularly relevant. Information received from the national federations showed that employment in the sector producing the footwear under investigation declined from about 127 250 people in 1991 to 114 000 people in the investigation period, a drop of approximately 10 %.

As concerns the number of Community producers manufacturing the footwear subject to the current investigation which ceased production between 1991 and 1994, details of the closure of 67 factories in seven Member States (Belgium, France, Italy, the Netherlands, Portugal, Spain and the United Kingdom) were received from national producers' federations. Given that some Member States do not keep detailed statistics for very small companies, the true figure on company closures may have been much higher.

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9. **Conclusions on injury**

(96) All of the economic indicators mentioned above, based on information supplied by the national footwear producers federations clearly show that the Community producers' situation has deteriorated between 1991 and the investigation period (i.e. as regards production, sales volume, market share, employment and company closures).

(97) Figures from individual companies (such as those relating to profitability), examined at the end of the injury analysis period, relate to 'survivors' and thus the most resilient producers. It follows that such data understate the level of injury as a whole as far as the entire Community production of the footwear under investigation is concerned. It is only when the global situation is examined that the disapperarance of producers, the reduction in production, sales and employment and thus the full extent of the injury becomes evident.

In addition, any apparent 'well-being' of the Community producers belonging to the first group or the verification sample may also have come about due to their taking over part of the market share previously held by the Community producers which went out of business during the four year period under examination. These Community producers have also been obliged to shift their production towards certain types of footwear which, up until the present time, have been less subject to the pressure exerted by dumped imports (e.g. fashion footwear which has formed one of the 'niches' on the market).

In this respect, it has been claimed by a number of interested parties that the Community producers have very successfully engaged in a strategy of specialisation in up-market fashion products. The result of this is alleged to be that the Community producers no longer have the capacity to make large volumes of low-cost product of the type produced in the exporting countries concerned by this proceeding. It is true, that, given the advantages of their geographical proximity to the Community markets and their ability to make quick delivery to meet rising, and very often short-lived, consumer demand for fashion footwear, it is to this sector that many of the Community producers have retreated with all or part of their output. Some producers have had to relinquish altogether production of less fashionable, cheaper and less value-added but high volume lines to the imports from outside the Community, whilst others have tried to produce a mixture of fashion footwear and high volume, 'classic' lines. These 'classic' lines are indeed the only ones generating the volumes required for maintaining an industrial and commercial structure of a viable size.

(98) It was therefore concluded that, overall, the Community producers of the footwear under investigation have suffered injury which is sufficient for it to be classified as material.

F. CAUSATION

(99) In accordance with Article 3 of the Basic Regulation, it was examined whether the material injury suffered by the Community industry was caused by the Chinese, Indonesian and Thai dumped imports, or whether other factors had caused or contributed to that injury.

1. **Effect of the dumped imports**

(100) In examining the effects of the dumped imports, it has to be borne in mind that, because of the nature of the products concerned and the leverage of certain large distributors, the Community footwear market is, at least at wholesale level, transparent and price sensitive. Moreover, as mentioned in recital 80, the imports of dumped products from the countries concerned are affecting mainly the lower to lower-middle end of the market, which is generally recognised as being the most sensitive to price variations and, consequently, the segment where sales at low prices have inevitably substitution effects.

In addition, it should be recalled that the footwear subject to this proceeding which is produced in the Community and the equivalent footwear imported from the People's Republic of China, Indonesia and Thailand are in direct competition with each other since they are sold through the same sales channels and there are very often, for the consumer, few perceptible or significant differences in quality between the imported products and the products produced in the Community.

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(101) In this context it was found that the increasing volume and market share of those imports, in conjunction with the significant undercutting found, coincided with the loss of market share and general decline of the Community industry.

It was accordingly concluded that the low-priced, dumped imports from the countries concerned are linked to the deteriorating situation of the Community industry.

2. **Effect of other factors**

(102) Consideration has also been given to the question of whether factors other than the dumped imports from the People's Republic of China, Indonesia and Thailand might have caused, or contributed to, the material injury suffered by the Community industry in order to ensure that any injury caused by other factors is not attributed to the dumped imports.

(a) *Imports from other third countries*

(103) The question whether imports from countries other than the three currently under investigation may have contributed to the material injury suffered by the Community industry was first examined. In this respect, particular reference was made by certain interested parties to imports into the Community from Vietnam. Eurostat data showed (after correction in order to exclude footwear involving special technology as explained in recital 76) that the volume of imports in the Community of the products concerned from Vietnam increased very significantly from approximately 30 000 pairs in 1991 to 15,9 million pairs in 1994.

Given the surge in the volume of imports from Vietnam, it cannot be denied that these imports may also have had a detrimental effect on the situation of the Community industry. However, as concerns the prices of these imports, given the lack of information on the product mix, it was not possible to establish reasonable data upon which conclusions could be drawn. It was therefore considered that the evidence produced to date concerning the pricing of Vietnamese exports to the Community was insufficient to warrant extending the scope of the current investigation to Vietnam.

(104) Moreover, it should be noted that the Community market share of all third countries including Vietnam, but excluding the People's Republic of China, Indonesia and Thailand, increased by 12 % between 1991 and 1994, whereas the market share of the three countries concerned by this investigation increased more substantially, i.e. by 46 %, during the same period.

(105) It is therefore concluded that, even if imports from other third countries may have contributed to the injury suffered by the Community industry, their impact cannot be considered as such as having broken the causal link between the dumped imports from the three countries concerned and the material injury suffered by the Community industry.

(b) *Intra-Community competition*

(106) It has been argued by several interested parties that there was significant internal competition in the Community between producers in Italy, Portugal and Spain and producers in the other Member States and it was for this reason that certain Community producers found themselves in an adverse economic situation. The competitive evaluations of some Member States' currencies and the Commission's decision not to allow the payment of State aid to the Italian footwear industry [1] on the ground, *inter alia*, of its good health, have also been cited as further indication that any injury the Community industry might have suffered has been largely self-inflicted.

(107) In addressing the above arguments, however, a distinction should be made between fair competition and unfair competition and it should be recalled that, within the framework of a single market, there are mechanisms to ensure that competition between Community producers remains fair.

[1] Commision Decision 96/542/EC (OJ L 231, 12. 9. 1996, p. 23).

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In addition, in the assessment of the injury suffered by the Community industry, the situation of the Community producers of the products in question in all Member States where these types of footwear are produced in significant quantities has been considered. The results of this assessment reflect the situation of the Community industry as a whole. Accordingly, the aggregated data used for the injury assessment would compensate for internal differences, if any, in the Community industry's performance. In this respect, it is, for instance, worth noting that if internal competition had been the only driving force on the market, the Community industry's market share would not have experienced a decline from 64,5 % in 1991 to 53,3 % in 1994 as the loss of market share by some would have been the gain of the others.

The investigation has shown that the diminishing production, market share, and employment of producers in some Member States have in no way been compensated by an improvement of the situation of producers in other Member States, as a number of interested parties have argued.

It must also be stressed that the Commission's decision not to allow the granting of a State aid to the Italian footwear industry was based on an assessment of this industry as a whole, as opposed to the segment of the market concerned by the present investigation. Furthermore, this decision was based on the impact that such a measure might have had on the functioning of the internal market and specifically acknowledges, *inter alia*, the difficult situation of employment in this sector in all Member States.

(108) Further to the final disclosure, certain interested parties have argued that, in view of the fact that certain Community producers reported strongly negative developments in recent years while others maintained their turnover, the injury suffered by the Community industry might result from disparities in the quality of the companies' management, and not from the impact of the dumped imports concerned.

(109) In this respect, it should be stressed that, due to differences in their product range, it is normal that not all companies are as acutely confronted with the competition from the low-priced, dumped imports. It is also normal that, in a competitive market, some companies perform better than others and it its precisely the number of Community producers which ensures that competition exists. Moreover, no evidence of mismanagement (relating for instance to investment or employment policies) was found in the course of the investigation. As stated above, internal competition cannot, in particular, be the cause of the overall decrease in market share of the Community industry and therefore considered as a factor breaking the causal link between the dumped imports and the injury suffered by the Community industry.

(c) *Recourse to subcontracting of labour intensive operations*

(110) In addition, it was also argued that a number of Community producers have transferred some of their more labour intensive operations to third countries with low labour costs, thereby contributing to the overall injury suffered by the Community industry, particularly with regard to employment. In this regard, it is considered that the fact that some producers have had to resort to such a course of action, which is a defensive step taken in order to keep costs at levels which enable them to compete with the low-priced imports, is additional evidence of the pressure exerted by the dumped imports.

3. **Conclusions on causation**

(111) Although certain factors other than dumped imports from the countries concerned may have contributed to the injury suffered by the Community industry, it is nevertheless concluded that a causal link exists between low-priced, dumped imports from the People's Republic of China, Indonesia and Thailand, taken in isolation, and the material injury suffered by the Community industry. This conclusion is based on the various elements set out above and in particular the level of price undercutting, the significant market share gained by these countries (and the corresponding loss in market share suffered by the Community industry) and the huge increase in the quantities concerned which resulted in a great number of producers situated in

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the Community being forced to close. This conclusion is moreover strengthened by the fact that the overall efficiency of the Community footwear industry producing the products concerned is not in question, as evidenced, *inter alia*, by the achievements of the Community producers on export markets outside the Community (exports in volume by the Community industry indeed rose by 25 % between 1991 and 1994).

G. **COMMUNITY INTEREST**

(112) On the basis of all evidence submitted, an examination was made of whether, despite the conclusion on dumping and injury caused thereby, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 21(1) of the Basic Regulation, the impact of possible measures for all parties concerned as well as the consequences of not taking measures were examined.

In making such an appreciation, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition was given special consideration.

1. **Impact on the Community industry and its suppliers**

(a) *Interest of the Community industry*

(113) Without measures to correct the effect of the dumped Chinese, Indonesian and Thai imports, it is considered inevitable that the position of the Community producers would further deteriorate. More Community producers, and finally the Community industry as a whole, would begin to incur financial losses, with the result that there would be further factory closures and considerable job losses in addition to those resulting from rationalisation and technological improvements. It should also be borne in mind that if fewer producers are present on the Community market, competition may be reduced commensurately.

(114) Certain interested parties argued that, given the mobility of the footwear industry world-wide, antidumping measures against the People's Republic of China, Indonesia and Thailand would have no positive effect on the situation of the Community industry owing to a likely shift of supply to other cheap labour third countries such as Bangladesh, India or Vietnam. It has been argued moreover that the situation of the industry producing footwear with uppers of leather or plastics was comparable in this respect to that of the synthetic handbags manufacturers and that accordingly the Council should also in the present case refrain from taking measures [1].

(115) 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 for the importers' constant search of countries with the lowest labour costs. This could however not be the case in the face of the surge in dumped imports from the three countries concerned by this proceeding. As far as the alleged parallelism between the present proceeding and the synthetic handbags case is concerned, it should be stressed that the substantial 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.

In addition, the fact that producers/exporters could transfer their production facilities to other countries in order to avoid payment of anti-dumping duties is not, in itself, a sufficient reason for the Council not to impose measures in a case where exports have been found to have been dumped on the Community market and to have caused material injury to the Community industry. Were such a situation to arise, the Community industry could lodge a complaint requesting, for

[1] See recitals 105 and 106 of Council Regulation (EC) No 1567/97 (OJ L 208, 2. 8. 1997, p. 31).

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instance, the initiation of an anti-dumping proceeding against such imports or the initiation of circumvention investigation in accordance with Article 13 of the Basic Regulation.

(116) It was further argued that if measures were to be imposed, Chinese, Indonesian and Thai producers/exporters would switch to the production of those types of footwear where the Community producers have a technological and fashion-related advantage, thereby causing further injury to the Community industry.

Leaving aside the fact that this type of argument cannot lead to the conclusion that the Council should refrain from adopting measures in the presence of injurious dumping, there is nothing to suggest that, even in the absence of measures, producers/exporters in the abovementioned countries will not, in the future, decide to expand the range of footwear which they manufacture and export. Indeed, a number of submissions by importers pointed out that a trend towards higher quality imported goods, with correspondingly higher prices had been observed. As has been mentioned previously, this trend had already started before the investigation period.

(b) *Interest of companies supplying the Community industry (with raw materials and machinery)*

(117) It has been a notable feature of this investigation that the Community producers (and their raw material or component suppliers etc.) in many Member States tend to be grouped together geographically. The closure of one factory can therefore have an adverse knock-on effect on other companies in the area in particular with regard to employment.

(118) It has been argued that, should measures be imposed, this would jeopardise Community footwear machinery producers' sales to the People's Republic of China, Indonesia and Thailand.

As far as the suppliers of footwear production machinery are concerned, no evidence has been received showing that producers/exporters in the People's Republic of China, Indonesia or Thailand are the main or most important clients of the Community equipment manufacturers.

In any event, it should be noted that the Community industry is clearly investing in automation, and in the injection process in particular. This automation, which contributes to the technological improvement of the footwear manufacturing process in the Community, is linked with investments in machines and moulds produced in the Community.

2. **Impact on consumers**

(119) Although no representations were received from consumer organisations following the publication of the notice of initiation of this proceeding, some parties have argued that anti-dumping measures would seriously affect Community consumers, particularly 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, which as been based on the information available, are as follows:

(a) *Impact in absolute terms*

(120) Firstly, as far as footwear prices to distributors are concerned, it is likely that, given the level of competition and the number of suppliers either in the Community (where the Community industry still has a 53,3 % market share), or in third countries not concerned by this proceeding (imports from which total a 28,3 % market share), these suppliers would not be able to significantly increase their prices without running the risk of losing market share.

As for Indonesia and Thailand, it should be borne in mind that the injury-elimination levels established for these countries are considerably lower than for the People's Republic of China, their average import price being during the investigation period ECU 6,97 and ECU 7,16 per pair respectively. Given that the market share of footwear originating in the People's Republic of China is 9,3 %, (with an average price of ECU 5,47 per pair during the investigation period) and

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in view of the duty level proposed, the average maximum foreseeable impact of the measures proposed on the price of the footwear concerned as a whole amounts to ECU 0,4 per pair.

Thus, consumers would only have to pay an additional amount of ECU 0,4 per pair if distributors decide to keep their margins unchanged and pass the increased costs on to the consumer. Since the average consumption of the footwear concerned in the Community is below one pair per person per year, the impact of the proposed measures on the average consumer's annual budget would be clearly marginal.

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

(121) In relative terms, the basis of the calculations was the average price of the footwear concerned at delivered-warehouse distributor level, namely ECU 13,5 per pair, which takes into account, for the imports, the adjustment for differences in level of trade referred to in recital 85 of this 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 ECU 30 per pair, including all costs and duties incurred between importation and sale to the final customer. As a consequence, the impact of the anti-dumping duties on the price to the consumer would amount to approximately 1,3 %.

This percentage should, as explained above, be examined in the light both of the absolute value of the increase (ECU 0,4 per pair) and the general evolution of prices over the injury investigation period. 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 absolute terms, this decrease being of more than 10 % when adjusted in order to take into consideration the general inflation rate.

(122) 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 abovementioned decrease in prices did not prevent the global consumption of the product concerned decreasing by 6 %.

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. It is therefore doubtful that the full reflection of the duty, i.e. a maximum price increase of 1,3 %, will have any significant impact on the current trends of demand on the Community market.

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

3. **Impact on distribution**

(a) *Impact on distribution as a whole*

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

It should first be pointed out that, by its very nature, for a given quantity of footwear, the distribution chain will have a higher turnover than the manufacturing companies it buys from, simply by virtue of its distribution margin. Secondly, the employement figures for footwear distribution in general, which include sales of all types of footwear, cannot be compared with those of the Community production of the product concerned only.

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As final consumers in the Community do not buy shoes in significant quantites outside the Community, negative consequences of antidumping duties for distribution as a whole could only result from a significant reduction of consumption and therefore of turnover, or a downward pressure on distribution margins in order to minimise an increase in consumer prices and a decrease in consumption.

As explained above, in the 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 as a result of anti-dumping measures, even if the distribution sector were to maintain its current margins.

Taken as a whole, it can therefore be concluded that the effects of possible measures on the distribution chain will be very limited. Care was however taken to make an in-depth analysis in the light of the structure of footwear distribution in the Community.

(b) *Structure of footwear distribution in the Community*

(125) Footwear distribution in the Community comprises four different channels of sale to the end customer: branded retail chains, independent retailers, non-specialised supermarkets and other types of generally non-specialised distribution, for example clothing stores.

(i) Independent retailers

(126) The traditional distribution channel consists of independent retailers, generally buying from wholesalers. In the evolution of 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 purchasing associations while retaining 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 of between 150 % to 200 % that are required to cover the fairly high costs of operating in urban, often upmarket, areas. 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 and 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 independent retailers 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 largest one in terms of market share in volume.

(ii) Branded retail chains

(127) These chains, which are sometimes also involved in production in the Community, are generally owned by one or two large companies in each country, which in turn own several brands and operate across the whole market range. They operate from out-of-town super or discount stores, which, because of their sales volume, prices and specialisation, can resist the non-specialised supermarkets' pressure.

The branded retail chains also sell through town centre shops replacing the independent retailers with less costly, standardised premises which accommodate the need, on the part of some customers, for an alternative retail buying environment to discount stores. Due to their leverage, their access to world supply since they import on their own account and the relatively low margins with which they operate, generally around 25 % of the cost of sales for the central trading arm and 100 % on average for the shops, branded retail chains are able to gain market share rapidly once they enter a market and to achieve growth rates in excess of 5 % per year.

(iii) Non-specialised supermarkets

(128) 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

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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 products. Due to the additional level of the importer and the fixed part of the costs incurred, imports from the countries concerned through this sales channel usually reach the consumer at a price which is three times higher than the CIF level.

(iv) Other sales channels

(129) Other sales channels, such as mail order companies or garment stores, have gained significance in certain Member States but none of these has individually acquired 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 accessory, generally with higher margins than on their usual clothing articles. Due to the fashion aspect of these sales, they are in competition with the branded chains, although to a lesser extent than the large general city centre stores.

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

(130) As regards the independent retailers, which still constitute the largest source of employment in Community footwear distribution, the general conclusion presented in recital 124 is strengthened by the fact that a low proportion of their supplies of the product concerned usually originates in the People's Republic of China, Indonesia or Thailand. It should be added that they are grouped in a confederation representing eight 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 on their behalf.

(131) The companies owning branded chains have contested the need for the imposition of antidumping duties. Although the general conclusion is also applicable to them, the fact that some of them rely on the dumped imports for the supply of the product concerned more than the independent retailers explains why, within the distribution chain, 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 would be negligible if the amount of the duty were to be fully passed on to the consumer. Indirect adverse financial effects could only be expected if, due to this price increase, consumers were to significantly reduce their purchases of the product concerned. However, should this happen, it would only be to a limited extent, as explained in recital 122.

Moreover, the product concerned is never the sole source of revenue for these specialised shops and, due to its particularly low prices, represents less than 12 % of the turnover of the cooperating companies operating branded chains. 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 re-oriented to footwear with a higher price, with probably a higher margin in absolute terms.

(132) 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.

(133) The situation of the importers supplying these non-specialised distribution channels was examined, as the portion of their turnover based on products imported from the countries concerned was found to be significant. 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

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impact on footwear distribution as a whole, these importers will be able to benefit from any market situation, and continue to supply their clients with Chinese, Indonesian or Thai imports, or any non-dumped products, as well as Community-produced ones.

(134) 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 chain as a whole or of a part of it.

4. **Conclusion concerning Community interest**

(135) Having examined all the various interests involved, it is considered that positive reasons exist for taking measures and that there are no compelling reasons not to take action against the dumped imports in question. Indeed, leaving the Community industry without adequate protection against the injurious dumping would add to the difficulties of this industry and could lead to its disappearance or relocation outside the Community. The limited price increase resulting for consumers from the imposition of antidumping measures can by no means be considered to be of the same magnitude as the cost of the total disappearance of a major Community industry.

Finally, in view of, *inter alia*, the time which has elapsed since the completion of the investigation of dumping and injury, it is considered appropriate that definitive anti-dumping duties on the imports of the product concerned be directly imposed, i.e. without resorting to the intermediate step of provisional duties.

H. **DEFINITIVE DUTY**

1. **Simultaneous application of anti-dumping measures and quantitative restrictions**

(a) *Legal aspects*

(136) Certain interested parties argued that no antidumping measures should be imposed on imports of the products subject to the present investigation originating in the People's Republic of China since they are already subject to a Community-wide quantitative quota imposed by Council Regulation (EC) No 519/94 [1], i.e. during the investigation period.

(137) The Community Institutions cannot subscribe to this point of view which, they consider, is based on an incorrect interpretation of the rationale of Regulation (EC) No 519/94. That Regulation introduced a new trade regime which led to the abolition of some 4 617 national restrictions provided for under the previous regime *vis-à-vis* non-market economy countries, almost all of which concerned the People's Republic of China. These restrictions were replaced by Community quotas for seven Chinese products and Community surveillance for 26 other products.

Overall, these autonomous quotas, restricted to a few particularly sensitive products, cannot be considered as an exception to some hypothetical liberal trading regime with the People's Republic of China but are part of the means of achieving the goal of a more liberal and, above all, more uniform trading regime with the People's Republic of China, while any action under the Basic Regulation is directed against injurious dumping.

Accordingly, the injury which the imposition of anti-dumping measures would attempt to remedy has not been addressed by means of another commercial defence instrument. Therefore, following an anti-dumping investigation which has shown that measures are warranted with a view to remedying injurious dumping, the imposition of such measures may be considered, irrespective of the existence of any quantitative restrictions which may be applicable to the products in question. This conclusion had however to be subjected to a further analysis, from an economic angle.

[1] OJ L 67, 10. 3. 1994, p. 89.

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(b) *Economic aspects (impact of the quotas on import trends)*

(138) Data available when preliminary findings were established (restricted to 1995) showed that, after the end of the investigation period, import volume from the People's Republic of China had decreased significantly, while prices appeared to have increased.

These circumstances were considered as sufficiently exceptional to warrant an additional examination, on the basis of the most recent data available, of the trends in imports which occurred after the investigation period. During the time needed to carry out this additional examination, it was considered appropriate not to impose any provisional measures.

(139) In order to examine the import trends for the product concerned in the two years following the imposition of the quota, consideration was given to some methodological points:

First, since the quota is allocated on an annual basis and for calendar years, estimates on the basis of partial data corresponding to only some months of 1996 were considered as insufficiently accurate. Accordingly, the analysis detailed below was carried out on the basis of full-year data concerning both 1995 and 1996 and could only be completed when such data were available for 1996.

Secondly, Regulation (EC) No 519/94, as amended, while imposing quantitative restrictions on certain footwear falling within the same nomenclature subheadings as those concerned by the present proceeding, excluded from these restrictions footwear involving 'special technology', which is by definition sold at least at ECU 9 (originally ECU 12) per pair at CIF level. As explained in recital 15, footwear intended for the same use and with the same characteristics as footwear involving special technology, but irrespective of its price, was excluded from the present anti-dumping investigation.

(140) For the years 1995 and 1996, footwear involving special technology was excluded from the total imports reported under the CN codes concerned, on the basis of TARIC data, in order to establish the import volumes and values for the product concerned. In the absence of complete TARIC statistics before 1995, corrections were made for previous years, taking that year as a reference. When comparing figures concerning imports from the People's Republic of China in 1995 and 1996 with those referring to the years prior to the imposition of the quota, two conclusions can be drawn:

As foreseen, the quota had an obvious impact on import volumes from the People's Republic of China, which declined most noticeably between 1994 and 1995 from 28,6 to 16,1 million pairs. In more detail, import volumes decreased for all four categories of the product concerned, corresponding to the four CN codes, between 1994 and 1995. However, the volumes imported increased again between 1995 and 1996, where they reached 19,1 million pairs.

Furthermore, and more significantly in the context of an anti-dumping proceeding, prices were not found to have increased as a consequence of the implementation of the quota. Although one could have expected prices to rise in parallel to the decrease in import volumes imposed by the quota, no such thing happened. Indeed, the average import price remained stable following the imposition of the quota, ranging from ECU 5,75 per pair in 1993, peak year for the volumes, to ECU 5,69 per pair in 1996. For none of the four categories concerned could a change in the trend of the import price from the People's Republic of China be observed. It should also be noted that, of the exporting countries concerned, the Chinese price levels are, by far, the lowest.

(141) Within the four CN codes analysed, it could not be established either that a progressive shift to footwear involving special technology, which was excluded from the investigation and highly priced, had taken place, which could have explained the stagnation of the import price for the remaining products. Indeed, the proportion of footwear involving special technology in the total imports of the codes concerned remained stable between 1995 and 1996 both in volume and value terms.

(142) As far as Thailand and Indonesia are concerned, no significant change in the overall trends of their imports and of the competitive conditions

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on the market could be established which would contradict the findings detailed in recitals 78 to 87.

(143) In the light of the above, it has been concluded that the impact on import trends of the quantitative restrictions applicable to imports of the footwear concerned originating in the People's Republic of China is not such as to justify a global reconsideration of the conclusion that, in the present case, anti-dumping measures are warranted. However, as explained below, it is considered appropriate that, for the determination of the form for the measures, the above described trends be taken into account.

2. **Injury elimination level**

(a) *Methodology*

(144) In accordance with Article 9(4) of the Basic Regulation, an examination was carried out with a view to determining the level of duty which would be adequate to remove the injury suffered by the Community industry as a consequence of dumping.

Accordingly, it was considered that the export price of dumped imports should be increased to a non-injurious price level corresponding to the Community industry's cost of production and a reasonable profit (hereinafter referred to as the 'non-injurious price'). As far as the cost of production is concerned, it was considered appropriate to take as a reference the cost of production of the Community producers in the verification sample.

As far as the profit margin is concerned, it was considered that a margin of 7 % on turnover could be regarded as an appropriate minimum, taking into account the need for long-term investment and, more particularly, the amount which the Community industry itself was able to maintain as a minimum during the four year period under examination (1991-1994), at the expense of its market share.

(145) As explained in recital 16, at the outset of the investigation it was considered appropriate to divide the product in question into categories, and perform price comparisons on the basis of these categories. However, as mentioned in recital 84, during the course of the investigation it appeared that, as far as the cooperating producers/exporters were concerned, greater certainty in the product matching could be achieved by using an even more detailed product split. To this end, the most exported models of the Chinese and Indonesian producers/exporters in the samples and the most exported models of the cooperating Thai producers/exporters were selected and separated into 17 families of footwear.

In order to calculate the injury-elimination margin, the CIF import price, adjusted to duty paid, customer-delivered levels was compared to the non-injurious price of the Community producers at the same level of trade. Given the high level of non-cooperation from all three countries concerned, this calculation was carried out on a category-by-category basis and, only for cooperating producers/exporters, on a family-by-family basis whenever the greater precision conferred a benefit to them for their cooperation. It should be noted that import prices were adjusted to the duty paid, customer-delivered level by using the adjustment methodology used for the undercutting assessment, as set out at recital 85.

(b) *People's Republic of China*

(146) Since the dumping margin established for Grosby (China) Limited was *de minimis* (1,3 %) and should thus result in any definitive anti-dumping duty for this company to be set at 0 %, no injury-elimination level calculation was carried out for Grosby (China) Limited.

(147) As far as other exports from the People's Republic of China are concerned, the residual injury-elimination margin was found to be 46,0 %, which is lower than the established dumping margin and should therefore, in accordance with Article 9(4) of the Basic Regulation, constitute the basis for the definitive anti-dumping duty for all other imports originating in the People's Republic of China.

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(c) *Indonesia*

(148) Individual injury-elimination margins for cooperating producers/exporters in the sample for Indonesia, expressed as a percentage of CIF price, were found to range from 0 % to 99,5 %, with an average to be applied to the cooperating producers/exporters outside the sample of 33,6 %.

For the producers/exporters in the sample, these margins were found to be, in all cases except two (PT Golden Adishoes and PT Indosepamas Anggun/P.T. Primashoes Ciptakreasi), higher than the respective dumping margins established. In accordance with Article 9(4) of the Basic Regulation, the level of the definitive anti-dumping duty for all cooperating producers/exporters in Indonesia should therefore be based on the dumping margins established, with the exception of:

— PT Golden Adishoes, whose injury-elimination margin, lower than its dumping margin, was found to be nil and should thus result in any definitive anti-dumping duty for this company being set at 0 %,
and

— PT Indosepamas Anggun/PT Primashoes Ciptakreasi, whose common injury-elimination margin (2,6 %) was lower than their dumping margin and should thus constitute the basis for the definitive anti-dumping duty applicable to both producers/exporters as explained in recital 24.

(149) As regards the producer/exporter referred to in recital 31 (PT Kingherlindo) for which facts available had to be applied, it was also considered in this context that the partial cooperation it had shown would have to be distinguished from the total non-cooperation of those producers in Indonesia which neither replied to the Commission's questionnaire nor made themselves known. However, since a calculation based on the same methodology as the one used for dumping calculations (see recital 40) would have resulted in the injury-elimination margin applicable to the company to amount to 26,9 %, i.e. to be higher than the one found for non-cooperating producers/exporters, it was considered appropriate to align PT Kingherlindo's injury-elimination margin on the residual injury-elimination margin, which, as explained in the following recital, amounted to 20,3 %.

(150) The injury-elimination margin for non-cooperating producers/exporters in Indonesia was found to be 20,3 % and therefore lower than the residual dumping margin of 50 % established for this country. Accordingly, the residual anti-dumping duty for imports originating in Indonesia should be established on the basis of this injury-elimination margin.

(d) *Thailand*

(151) Since the dumping margins established for the three cooperating Thai producers/exporters (namely CK Shoes and PSR Footwear/Bangkok Rubber Company) were found to be either nil or *de minimis* and should thus result in any definitive anti-dumping duties for these producers/exporters being set at 0 %, no injury-elimination level calculations were carried out for producers/exporters concerned.

(152) For Thai non-cooperating producers/exporters, the injury-elimination margin was found to be 24,7 %, i.e. lower than the residual dumping margin of 50 % established for this country. Accordingly, the residual anti-dumping duty for imports originating in Thailand should be established on the basis of this injury-elimination margin.

3. **Form of definitive duties**

(153) On the basis of the analysis detailed in recitals 138 to 143, it appeared that while the imposition of the quota had the obvious desired effect of limiting import volumes of the product concerned originating in the People's Republic of China and thus the cumulated volumes originating in the three countries concerned, it had no apparent effect on the prices of the imports in question, which can therefore be assumed to have remained injurious. This effect arises mainly from the concentration of imports on the low to lower-middle end of the range.

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(154) In these circumstances, it was considered that an *ad-valorem* duty would disproportionately affect relatively expensive footwear, while having a lesser effect on the low to lower-middle end sector. Conversely, a variable duty, based on a minimum price, would precisely target the injurious price element left unremedied by the quota. Accordingly, it was considered that the definitive antidumping duty should take the form of a variable duty based on a minimum price.

Such a measure will indeed encourage price increases relating to the bulk of imports, which are concentrated at the low to lower-middle end sector. The expected price increase will thus take place in the product range most affected by the dumped imports, while at the same time minimising the effect on the price of the least injurious imports of more sophisticated footwear. Therefore, while the quota has obviously created a safety net against sudden and potentially injurious surges in imports of the product concerned, a variable duty appears to be particularly appropriate as a complementary safety net against the injurious prices of these imports.

(155) As far as the level of the minimum price is concerned, the following considerations were taken into account:

On the Community industry side, it was considered that the effects of the proposed measures should allow the average import price, when adjusted to the delivered importer warehouse level (in accordance with the methodology presented in recital 85), to be equal to the average non-injurious price established for the calculation of the injury elimination level for the product concerned as explained in recitals 144 and 145, which amounted, on a weighted average basis for the four categories concerned, to ECU 9,6 per pair on a delivered basis.

(156) As regards the imported products and their price breakdown, Eurostat information on both import volumes and average prices was analysed in greater detail in the light of data relating to individual export transactions provided by cooperating producers/exporters and importers. On this basis it was established that, by setting the minimum price at ECU 5,7 per pair on a CIF basis, the price breakdown of imports would be changed to the effect that the foreseeable average import price for products originating in the People's Republic of China would be ECU 7,5 per pair at CIF level, equivalent to the non injurious price of ECU 9,6 per pair at a delivered-warehouse-importer level.

Indeed, both in volume and value terms, a majority of the total imports and a part of the imports in each category took place under the proposed minimum price. The increase in the price of these predominant imports resulting from the imposition of the variable duty is thus expected to have a strong influence on the average foreseeable import price. In doing this analysis, care was taken to ensure that the effect of the quotas on the import volumes, as presented in recital 140, be reflected in an appropriate way.

(157) The data available in relation with products originating in Indonesia and Thailand were for certain categories too limited to be considered as representative of the total imports from these countries. However, the general conclusions presented in the preceding recital could be confirmed to the effect that some imports originating in these countries did in fact take place during the investigation period below the level foreseen for the minimum price. It could also be confirmed that the setting of the minimum price at ECU 5,7 per pair for Indonesia and Thailand would, in line with the conclusions drawn in recitals 150 and 152, ensure that imports be made, on average, at non-injurious price levels.

(158) As regards producers/exporters for which individual duty rates were foreseen, it is considered that the duty applicable should be the one based on the minimum price, if such a duty is lower than the one resulting from their individual *ad valorem* duty rate.

For all those producers/exporters for which a dumping margin of less than 2 %, i.e. *de minimis,* was established, no duty shall apply thereto in accordance with Article 9(3) of the Basic Regulation.

(159) Further to the final disclosure, certain interested parties, while opposing any measures, have questioned the appropriateness of a duty based on a single minimum price applicable to all four categories of

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footwear concerned and claimed that, in order to reflect price differences, at least two different minimum prices, one for the category of footwear with uppers of plastics, the other for the three categories of footwear with leather uppers, should be set. Conversely, in the knowledge of the above claim, other interested parties have beforehand opposed any split mainly on the ground that it would result in an increase of the minimum price applicable to footwear with leather uppers.

(160) It cannot be denied in this respect that average import prices relating to footwear with uppers of plastics are lower than those relating to footwear with leather uppers. However, it should be stressed that imports of both types also spread over wide and overlapping price ranges. Moreover, they are one like product and it is often beyond the consumer's perception capacity to differentiate plastic material from leather. In this context, it can be expected that the measure will have a very limited impact, if any, on the usual hierarchy of prices amongst the four footwear categories concerned. It is therefore considered that a variable duty based on a single minimum price constitute an appropriate and reasonable way to obtain the expected average price increase for all footwear categories concerned.

(161) The representatives of the complaining Community industry expressed concern about the remedial effect one could expect from an antidumping duty based on a minimum price in the case of imports which are spread over a wide price range. They accordingly requested that an *ad valorem* duty be considered instead.

(162) The Council cannot agree with this line of reasoning and confirm that the various considerations detailed in recitals 153 to 157 should have an influence on the form of the measures and will be appropriately taken into account by the setting up of a variable anti-dumping duty based on a minimum price. Such a measure will indeed not lead to the automatic collection of a duty but should nevertheless result, for imports originating in the three countries concerned, in average price increases which are consistent with the conclusions of the injury-elimination level calculations.

(163) The definitive anti-dumping duty should therefore be calculated as follows:

(a) People's Republic of China: for all producers/exporters, with the exception of Grosby (China) Limited, for which a *de minimis* dumping margin was found, the duty should be equal to the difference between the minimum price of ECU 5,7 per pair and the net, free at Community frontier, before duty, price per pair.

(b) Indonesia: for all producers/exporters, with the exception of P.T. Golden Adishoes, whose exports were found to have been sold at prices above the injury-elimination level, the duty should be equal to the difference between the minimum price of ECU 5,7 per pair and the net, free at Community frontier, before duty, price per pair.

For the following cooperating Indonesian producers/exporters, the duty should be equal to the following rates or to the difference between the minimum price of ECU 5,7 per pair and the net, free at Community frontier, before duty, price per pair, whichever is the lowest:

PT Emperor Footwear	2,0 %
PT Indosepamas Anggun	2,6 %
PT Primashoes Ciptakreasi	2,6 %
PT Dragon	5,9 %
PT Fortune Mate	14,9 %
PT Bosaeng Jaya	12,3 %
PT Karet Murni Jelita	12,3 %
PT Koryo International	12,3 %
PT Lintas Adhikrida	12,3 %
PT Universal Wisesa	12,3 %
PT Volmacarol	12,3 %
PT Kingherlindo	20,3 %

▼B

(c) Thailand: for all producers/exporters, with the exception of Bangkok Rubber, CK Shoes and PSR Footwear, for which no or *de minimis* dumping margins were found, the duty should be equal to the difference between the minimum price of ECU 5,7 per pair and the net, free at Community frontier, before duty, price per pair.

I. NEW EXPORTING PRODUCERS

(164) 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 producers/exporters cooperating in this investigation but not selected in the sample, it is considered that provision should be made for the weighted average, *ad valorem,* duty rate (12,3 %) applicable, as an alternative to the variable duty, to the latter producers/ exporters to be applicable 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 codes ex 6402 99 98 (TARIC code 6402 99 98*90), ex 6403 99 93 (TARIC code 6403 99 93*90), ex 6403 99 96 (TARIC code 6403 99 96*90) and ex 6403 99 98 (TARIC code 6403 99 98*90), originating in the People's Republic of China, Indonesia and Thailand, except as regards the footwear described in paragraph 3.

2. The definitive anti-dumping duty shall be:

Country	Products manufactured by	Variable or *ad valorem* duty	TARIC Additional Codes
People's Republic of China	All producers/exporters	Equal to the difference between a minimum price of ECU 5,7 per pair and the net, free at Community frontier price per pair, before duty	8900
	with the exception of:		
	Grosby (China) Limited	0 %	8759

▼B

Country	Products manufactured by	Variable or *ad valorem* duty	TARIC Additional Codes
Indonesia	All producers/exporters	Equal to the difference between a minimum price of ECU 5,7 per pair and the net, free at Community frontier price per pair, before duty	8900
	with the exception of:		
	PT Golden Adishoes	0 %	8759
	and of the following producers/exporters:	Equal to the following rates or to the difference between a minimum price of ECU 5,7 per pair and the net, free at Community frontier price per pair, before duty whichever is the lowest:	
	PT Emperor Footwear	2,0 %	8760
	PT Indosepamas Anggun	2,6 %	8761
	PT Primashoes Ciptakreasi	2,6 %	8761
	PT Dragon	5,9 %	8763
	PT Fortune Mate	14,9 %	8764
	PT Bosaeng Jaya	12,3 %	8765
	PT Karet Murni Jelita	12,3 %	8765
	PT Koryo International	12,3 %	8765
	PT Lintas Adhikrida	12,3 %	8765
	PT Universal Wisesa	12,3 %	8765
	PT Volmacarol	12,3 %	8765
	PT Kingherlindo	20,3 %	8762
Thailand	All producers/exporters	Equal to the difference between a minimum price of ECU 5,7 per pair and the net, free at Community frontier price per pair, before duty	8900
	with the exception of:		
	Bangkok Rubber	0 %	8766
	CK Shoes	0 %	8766
	PSR Footwear	0 %	8766

3. The duty shall not apply to footwear for use in sporting activities, with a single or multilayer moulded, not injected sole, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers (TARIC codes 6402 99 98*11 and 6402 99 98*19, 6403 99 93*11 and 6403 99 93*19, 6403 99 96*11 and 6403 99 96*19 and 6403 99 98*11 and 6403 99 98*19).

4. Where any Indonesian party provides sufficient evidence to the Commission that it did not export the goods described in paragraph 1 to the Community 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 to the Community 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, as an alternative to the variable duty, the *ad valorem* duty rate applicable to cooperating exporting producers not in the sample, i.e. 12,3 %.

▼B

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

Article 2

This Regulation shall enter into force on the day following that of 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.