COMMISSION REGULATION (EC) No 1028/2007

of 5 September 2007

initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China by imports of certain footwear with uppers of leather consigned from Macao SAR, whether declared as originating in Macao SAR or not, and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (the basic Regulation) [1], and in particular Articles 13(3), 14(3) and 14(5) thereof,

After having consulted the Advisory Committee,

Whereas the Commission has decided, pursuant to Article 13(3) of the basic Regulation to investigate on its own initiative the possible circumvention of the anti-dumping measures imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China.

A. PRODUCT

(1) The product concerned by the possible circumvention is footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap (certain footwear with uppers of leather) originating in the People's Republic of China, normally declared under CN codes 6403 20 00, ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 [2] (the product concerned). These codes are given for information only.

(2) The product under investigation is footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap consigned from Macao SAR (the product under investigation) normally declared under the same codes as the product concerned.

B. EXISTING MEASURES

(3) The measures currently in force and possibly being circumvented are antidumping measures imposed by Council Regulation (EC) No 1472/2006 [3].

C. GROUNDS

(4) The Commission has at its disposal sufficient *prima facie* evidence that the anti-dumping measures on imports of the product concerned are being circumvented by means of the transhipment via Macao SAR and/or by assembly in Macao SAR of the product under investigation.

(5) The evidence is as follows:

— the request shows that a significant change in the pattern of trade involving exports from the People's Republic of China and Macao SAR to the Community has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change,

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

[3] OJ L 275, 6.10.2006, p. 1.

— this change in the pattern of trade appears to stem from the transhipment of certain footwear with uppers of leather originating in the People's Republic of China via Macao SAR and/or assembly in Macao SAR of certain footwear with uppers of leather,

— furthermore, the evidence points to the fact that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increase in imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures,

— finally, the Commission has sufficient *prima facie* evidence at its disposal that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.

(6) Should circumvention practices via Macao SAR covered by Article 13 of the basic Regulation, other than transhipment and assembly, be identified in the course of the investigation, the investigation may cover these practices also.

D. **PROCEDURE**

(7) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13 of the basic Regulation and to make imports of the product under investigation, whether declared as originating in Macao SAR or not, subject to registration, in accordance with Article 14(5) of the basic Regulation.

(a) **Questionnaires**

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Macao SAR, to the importers and to the associations of importers in the Community which cooperated in the investigation that led to the existing measures and to the authorities of the People's Republic of China and Macao SAR. Information, as appropriate, may also be sought from the Community industry.

(9) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(10) The authorities of the People's Republic of China and Macao SAR will be notified of the initiation of the investigation.

(b) **Collection of information and holding of hearings**

(11) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) **Exemption of imports from registration or measures**

(12) In accordance with Article 13(4) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if such importation does not constitute circumvention.

(13) Since the possible circumvention takes place outside the Community, exemptions may be granted, in accordance with Article 13(4) of the basic Regulation, to producers in Macao SAR of certain footwear with uppers of leather that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Articles 13(1) and 13(2) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

E. **REGISTRATION**

(14) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Macao SAR.

F. **TIME LIMITS**

(15) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Macao SAR may request exemption of imports from registration or measures,

— interested parties may make a written request to be heard by the Commission.

(16) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

G. **NON-COOPERATION**

(17) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(18) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

H. **PROCESSING OF PERSONAL DATA**

(19) Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [1],

[1] OJ L 8, 12.1.2001, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3) of Regulation (EC) No 384/96, in order to determine if imports into the Community of footwear with uppers of leather or composition leather as defined in Article 1 of Council Regulation (EC) No 1472/2006, consigned from Macao SAR, whether originating in Macao SAR or not, are circumventing the measures imposed by the latter Regulation. The TARIC codes for imports from Macao SAR are listed in the Annex of this Regulation.

Article 2

The Customs authorities are hereby directed, pursuant to Article 13(3) and Article 14(5) of Regulation (EC) No 384/96 of 22 December 1995, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct Customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption from registration and having been found not to be circumventing the anti-dumping duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days of the date of publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Producers in Macao SAR requesting exemption of imports from registration or measures should submit a request duly supported by evidence within the same 40-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 40-day time limit.

5. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for exemption of imports from registration or measures must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as '*Limited*' [1] and in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled '*For inspection by interested parties*'.

Commission address for correspondence:
European Commission
Directorate-General for Trade
Directorate H
Office: J-79 4/22
B-1049 Brussels
Fax (32-2) 295 65 05.

Article 4

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

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

Done at Brussels, 5 September 2007.

For the Commission
Peter MANDELSON
Member of the Commission

[1] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

ANNEX

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1 of Council Regulation (EC) No 1472/2006, consigned from Macao SAR, whether originating in Macao SAR or not

CN code	TARIC code Consigned from Macao SAR
6403 20 00	20
6403 51 05	15
6403 51 05	95
6403 59 05	15
6403 59 05	95
6403 91 05	15
6403 91 05	95
6403 99 05	15
6403 99 05	95
6403 51 11	91
6403 51 15	91
6403 51 19	91
6403 51 91	91
6403 51 95	91
6403 51 99	91
6403 59 11	91
6403 59 31	91
6403 59 35	91
6403 59 39	91
6403 59 91	91
6403 59 95	91
6403 59 99	91
6403 91 11	95
6403 91 13	95
6403 91 16	95
6403 91 18	95
6403 91 91	95
6403 91 93	95
6403 91 96	95
6403 91 98	95
6403 99 11	91
6403 99 31	91
6403 99 33	91

CN code	TARIC code Consigned from Macao SAR
6403 99 36	91
6403 99 38	91
6403 99 91	95
6403 99 93	25
6403 99 93	95
6403 99 96	25
6403 99 96	95
6403 99 98	25
6403 99 98	95
6405 10 00	81