COMMISSION IMPLEMENTING REGULATION (EU) 2016/1647

of 13 September 2016

Re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co, Ltd, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), and in particular to Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Article 9 and 14 thereof,

Whereas:

A. **PROCEDURE**

(1) On 23 March 2006, the Commission adopted Regulation (EC) No 553/2006 ([2]) imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') originating in the People's Republic of China ('PRC') and Vietnam ('the provisional Regulation').

(2) By Regulation (EC) No 1472/2006 ([3]) the Council imposed definitive anti-dumping duties ranging from 9,7 % to 16,5 % on imports of certain footwear with uppers of leather, originating in Vietnam and in the PRC for two years ('Council Regulation (EC) No 1472/2006' or 'the contested Regulation').

(3) By Regulation (EC) No 388/2008 ([4]) the Council extended the definitive anti-dumping measures on imports of certain footwear with upper leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.

(4) Further to an expiry review initiated on 3 October 2008 ([5]), the Council further extended the anti-dumping measures for 15 months by Implementing Regulation (EU) No 1294/2009 ([6]), i.e. until 31 March 2011, when the measures expired ('Implementing Regulation (EU) No 1294/2009').

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) Commission Regulation (EC) No 553/2006 of 23 March 2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3).
([3]) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).
([4]) Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not (OJ L 117, 1.5.2008, p. 1).
([5]) OJ C 251, 3.10.2008, p. 21.
([6]) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ L 352, 30.12.2009, p. 1).

(5) Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the applicants') challenged the contested Regulation in the Court of First Instance (now: the General Court). By judgments of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council [2010] ECR II-671 and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council [2010] ECR II-747, the General Court rejected those challenges.

(6) The applicants appealed those judgments. In its judgments of 2 February 2012 in case C-249/10 P Brosmann et al and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes Co. Ltd ('the Brosmann and Aokang judgments'), the Court of Justice set aside those judgments. It held that the General Court erred in law in so far as it held that the Commission was not required to examine requests for market economy treatment ('MET') under Article 2(7)(b) and (c) of the basic Regulation from non-sampled traders (paragraph 36 of the judgment in Case C-249/10 P and paragraph 29 and 32 of the judgment in Case C-247/10 P).

(7) The Court of Justice then gave judgment itself in the matter. It held: '[…] the Commission ought to have examined the substantiated claims submitted to it by the appellants pursuant to Article 2(7)(b) and (c) of the basic regulation for the purpose of claiming MET in the context of the anti-dumping proceeding [which is] the subject of the contested regulation. It must next be found that it cannot be ruled out that such an examination would have led to a definitive anti-dumping duty being imposed on the appellants other than the 16,5 % duty applicable to them pursuant to Article 1(3) of the contested regulation. It is apparent from that provision that a definitive anti-dumping duty of 9,7 % was imposed on the only Chinese trader in the sample which obtained MET. As is apparent from paragraph 38 above, had the Commission found that the market economy conditions prevailed also for the appellants, they ought, when the calculation of an individual dumping margin was not possible, also to have benefited from the same rate' (paragraph 42 of the judgment in Case C-249/10 P and paragraph 36 of the judgment in Case C-247/10 P).

(8) As a consequence, it annulled the contested Regulation, in so far as it relates to the applicants concerned.

(9) In October 2013, the Commission by means of notice published in the *Official Journal of the European Union* ([7]) announced that it had decided to resume the anti-dumping proceeding at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the applicants for the period from 1 April 2004 to 31 March 2005 and invited interested parties to come forward and make themselves known.

(10) In March 2014, the Council, by Council Implementing Decision 2014/149/EU ([8]), rejected a Commission proposal to adopt a Council Implementing Regulation re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd and terminated the proceedings with regard to these producers. The Council took the view that importers having bought shoes from those exporting producers, to whom the relevant customs duties had been reimbursed by the competent national authorities on the basis of Article 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([9]) ('the Community Customs Code'), had acquired legitimate expectations on the basis of Article 1(4) of the contested Regulation, which had rendered the provisions of the Community Customs Code ([10]), and in particular its Article 221, applicable to the collection of the duties.

(11) Three importers of the product concerned, C&J Clark International Ltd ('Clark'), Puma SE ('Puma') and Timberland Europe B.V. ('Timberland') ('the importers concerned') challenged the anti-dumping measures on imports of certain footwear from China and Vietnam invoking the jurisprudence mentioned in recitals (5) to (7) before their national Courts, which referred the matters to the Court of Justice for a preliminary ruling.

([7]) OJ C 295, 11.10.2013, p. 6.

([8]) Council Implementing Decision 2014/149/EU of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd, OJ L 82, 20.3.2014, p. 27.

([9]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

([10]) As from 1 May 2016, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ('UCC') replacing the CCC, entered into force; (OJ L 269, 10.10.2013, p. 1). The substantial provisions at stake here have remained the same.

(12) In the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, the Court of Justice declared Regulations (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 invalid in so far as the European Commission did not examine the MET and individual treatment ('IT') claims submitted by exporting producers in the PRC and Vietnam that were not sampled ('the judgments'), contrary to the requirements laid down in Articles 2(7)(b) and 9(5) of Council Regulation (EC) No 384/96 ([11]).

(13) Regarding the third case C-571/14, Timberland Europe B.V. against Inspecteur van de Belastingdienst, kantoor Rotterdam Rijnmond, the Court of Justice decided on 11 April 2016 to remove the case from the register at the request of the referring national court.

(14) Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Court's judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping, compliance with the Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated. ([12])

(15) According to the case-law of the Court, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred. ([13]) That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ([14]), except if the illegality occurred at the stage of initiation.

(16) Apart from the fact that the Institutions did not examine the MET and IT claims submitted by exporting producers in the PRC and Vietnam that were not sampled, all other findings made in Council Regulations (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 remain valid.

(17) In the present case, the illegality occurred after initiation. Hence, the Commission decided to resume the present anti-dumping proceeding that was still open following the judgments at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005, which was the investigation period in the investigation that led to the imposition of definitive duties mentioned in recitals (1) and (2) ('the original investigation'). The Commission also examined, where appropriate, whether the exporting producers concerned qualified for IT in accordance with 9(5) of the basic Regulation in its form prior to the entry into force of Regulation (EU) No 765/2012 of the European Parliament and of the Council ([15]) (the 'basic Regulation prior to its amendment') ([16]).

(18) By Commission Implementing Regulation (EU) 2016/1395 ([17]), the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark and Puma of certain footwear with uppers of leather originating in the PRC and produced by thirteen Chinese exporting producers that submitted MET and IT claims in the investigation that lead to the imposition of definitive duties ('original investigation') but that had not been sampled during that investigation.

([11]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 6.3.1996, p. 1).

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

([13]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia* v *Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais* v *Commission* [2011] II-1999, paragraph 83.

([14]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85.

([15]) Regulation (EU) No 765/2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 237, 3.9.2012, p. 1).

([16]) According to Article 2 of Regulation (EU) No 765/2012 of the amendments introduced by that amending Regulation only apply to investigations initiated after the entry into force of that Regulation. The present investigation, however, was initiated on 7 July 2005 (OJ C 166, 7.7.2005, p. 14).

([17]) Commission Implementing Regulation (EU) 2016/1395 of 18 August 2016 re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckinghan Shoe Mfg Co., Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 225, 19.8.2016, p. 52).

(19) For imports of Clark, Puma and Timberland from Vietnam the Commission assessed all MET and IT claims provided by the relevant non-sampled exporting producers that submitted such claims in the original investigation.

(20) Regarding imports of Timberland, one of the two Chinese suppliers identified in the case C-571/14, General Shoes Ltd was in fact established in Vietnam and assessed as such in the current exercise. As mentioned below in recital (144) this was later contested by the Federation of the European Sporting Goods Industry ('FESI') that claimed that General Shoes Ltd was in fact a Chinese supplier.

B. IMPLEMENTATION OF THE JUDGMENTS OF THE COURT OF JUSTICE IN JOINED CASES C-659/13 AND C-34/14 FOR IMPORTS FROM VIETNAM

(21) The Commission has the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the parts of the assessment which are not affected by the judgment ([18]).

(22) The present Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to the declaration of invalidity in so far as certain exporting producers from Vietnam are concerned.

(23) All other findings made in the contested Regulation, which were not declared invalid by the Court of Justice, remain valid and are herewith incorporated into the present Regulation.

(24) Therefore, the following recitals are limited to the new assessment necessary in order to comply with the judgments.

(25) The Commission has examined whether MET and IT prevailed for the Vietnamese exporting producers, suppliers of Clark, Puma and Timberland, which submitted MET and/or IT requests in that investigation, during the period from 1 April 2004 to 31 March 2005. The purpose of this determination is to ascertain the extent to which the three importers concerned are entitled to receive a repayment of the anti-dumping duty paid with regard to anti-dumping duties paid on exports of their Vietnamese suppliers which requested MET and/or IT.

(26) Should the analysis reveal that MET or IT was to be granted to the Vietnamese exporting producer whose exports were subject to the anti-dumping duty paid by either of the three importers concerned, an individual duty rate would have to be attributed to the exporting producers concerned and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, namely 10 %, and the individual duty rate calculated for the exporting producer concerned, if any.

(27) Conversely, should the analysis of such MET and IT claims reveal that both MET and IT should be rejected, no repayment of anti-dumping duties can be awarded.

(28) As explained in recital 12, the Court of Justice annulled the contested Regulation and Implementing Regulation (EU) No 1294/2009 with regard to exports of certain footwear from fourteen Vietnamese exporting producers, i.e. Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, ('the exporting producers concerned') to the Union and imported by C&J Clark International Ltd, Puma SE and Timberland Europe B.V., in so far as the Commission did not examine the MET and IT claims submitted by, inter alia, the exporting producers in Vietnam.

([18]) Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147

(29) The Commission has therefore in a first step examined the MET and IT claims of these fourteen exporting producers in order to determine the duty rate applicable to their exports. The assessment showed that the information provided was not sufficient to demonstrate that the exporting producers concerned operated under market economy conditions or that they qualified for individual treatment (see for a detailed explanation below recitals (30) and following).

1. **Assessment of the MET claims**

(30) It is necessary to point out that the burden of proof lies with the producer wishing to claim MET under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, there is no obligation on the Union Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union Institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET and it is for the Union judicature to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgment in Case C-249/10 P and paragraph 24 of the judgment in Case C-247/10 P).

(31) In accordance with Article 2(7)(c) of the basic Regulation all five criteria listed in this Article should be met so that an exporting producer can be granted MET. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the MET request.

(32) None of the exporting producers concerned was able to demonstrate that it met criteria 1 (Business decisions). More specifically, the information provided by eight exporting producers (V1, V2, V4, V7, V8, V9, V13, V14) demonstrated that the State exerted a significant influence in the business decisions. As for the six remaining exporting producers, they failed to provide essential and complete information (e.g. evidence concerning the structure and the capital of the company, evidence concerning domestic sales, evidence concerning the appointment of directors, etc.) to demonstrate that their business decisions were taken in accordance with market signals without significant State interference.

(33) As concerns criterion 2 (Accounting), ten companies (V1, V2, V3, V5, V6, V7, V9, V10, V11, V12) did not meet this criterion as they did not submit a clear set of basic accounting records. The deficiencies observed were the absence of audited accounts or auditor's opinions, severe issues highlighted by auditors in their opinion (such as non-compliance with international accounting standards) and contradictions regarding loans between certain statements made in the MET claim form and the financial statements. For the remaining four companies criterion 2 was not assessed for the reasons set out in recital (31).

(34) Regarding criterion 3 (Assets and 'carry-over'), eight exporting producers (V2, V4, V5, V7, V8, V10, V11, V12) failed to provide complete information (e.g. evidence concerning the assets owned by the company and the land use right, explanation for non-payment of income taxes) to demonstrate that no distortions were carried over from the non-market economy system. For the remaining six companies criterion 3 was not assessed for the reasons set out in recital (31).

(35) For the reasons set out in recital (31), for none of the exporting producers concerned criteria 4 (Bankruptcy and property laws) and 5 (Exchange rate conversions) were assessed.

(36) On the basis of the above, the Commission concluded that none of the fourteen Vietnamese exporting producers concerned should be granted MET and informed the exporting producers concerned accordingly, which were invited to provide comments. No comments were received from any of the fourteen Vietnamese exporting producers concerned.

(37) Therefore, none of the fourteen Vietnamese exporting producers concerned fulfilled all the conditions set out in Article 2(7)(c) of the basic Regulation and MET is, as a result, denied for all of them.

2. **Assessment of the IT claims**

(38) Pursuant to Article 9(5) of the basic Regulation prior to its amendment, where Article 2(7)(a) of the same Regulation applies, an individual duty shall however be specified for the exporters which can demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation prior to its amendment.

(39) As mentioned in recital (30) it is necessary to point out that the burden of proof lies with the producer wishing to claim IT under Article 9(5) of the basic Regulation prior to its amendment. To that end, the first subparagraph of Article 9(5) provides that the claim submitted must be properly substantiated. Accordingly, there is no obligation on the Union Institutions to prove that the exporter does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union Institutions to assess whether the evidence supplied by the exporter concerned is sufficient to show that the criteria laid down in Article 9(5) of the basic Regulation prior to its amendment are fulfilled in order to grant IT.

(40) In accordance with Article 9(5) of the basic Regulation prior to its amendment, exporters should demonstrate on the basis of a properly substantiated claim that all five criteria listed in this Article are met so that they can be granted IT.

(41) Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the IT claim.

(42) The five criteria are the following:

(a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

(b) export prices and quantities, and conditions and terms of sale are freely determined;

(c) the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

(d) exchange rate conversions are carried out at the market rate; and

(e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(43) All fourteen Vietnamese exporting producers that requested MET also claimed IT in the event that they would not be granted MET.

(44) Four exporting producers (Companies V6, V12, V13, V14) failed to meet Criterion 1 (Capital repatriation) since they failed to provided substantiated evidence that repatriation was permitted.

(45) None of the fourteen exporting producers concerned was able to demonstrate that they met Criterion 2 (Export sales and prices freely determined). More specifically, for nine exporting producers (Companies V1, V2, V4, V7, V8, V9, V10, V13, V14) the Articles of Association, Investment Licence or Business Licence stipulated a limitation in output and therefore they failed to demonstrate that business decisions, such as export quantities are made in response to market signals reflecting supply and demand. The remaining exporting producers concerned did not sell on the domestic market and provided no further explanations so that they have not demonstrated that this was not due to State intervention.

(46) As regards Criterion 3 (Company –key management and shares- is sufficiently independent from State interference), it was found that two exporting producers (Companies V2, V8) were partly owned by State-owned shareholders. The majority of the shares of one exporting producer (Company V2) did not belong to private persons as required by Criterion 3. In addition, the board members appointed by the respective State-owned shareholders of both exporting producers were found able to block any decision of their respective boards. Therefore both exporting producers failed to demonstrate that they were sufficiently independent from State interference.

(47) Therefore, none of the fourteen Vietnamese exporting producers concerned fulfilled the conditions set out in Article 9(5) of the basic Regulation prior to its amendment and IT was, as a result, denied to all of them.

(48) The residual anti-dumping duty applicable to Vietnam should therefore be imposed for these exporting producers for the period of application of Council Regulation (EC) No 1472/2006. The period of application of that Regulation was initially from 7 October 2006 until 7 October 2008. Following the initiation of an expiry review, it was prolonged on 30 December 2009 until 31 March 2011. The illegality identified in the judgments is that the Union Institutions failed to establish whether the products produced by the exporting producers concerned should be subject to the residual duty or to an individual duty. On the basis of the illegality identified by the Court, there is no legal ground for completely exempting the products produced by the exporting producers concerned from paying any anti-dumping duty. A new act remedying the illegality identified by the Court therefore only needs to reassess the applicable anti-dumping duty rate, and not the measures themselves.

(49) Since it is concluded that the residual duty should be re-imposed in respect of the exporting producers concerned at the same rate as originally imposed by the contested Regulation and Implementing Regulation (EU) No 1294/2009, no changes are required to Council Regulation (EC) No 388/2008. That Regulation remains valid.

C. **COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE**

(50) The above findings and conclusions were disclosed to the interested parties which were given a time period to comment. FESI and one importer came forward and provided comments. FESI's comments were also filed on behalf of Puma SE and Timberland Europe BV.

Alleged irregularities in the procedure

(51) FESI claimed that there were a number of procedural errors in the current implementation. FESI pointed to the fact that the MET claims of the Chinese exporting producers concerned were already examined and disclosed prior to the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, i.e. on 3 December 2015, as well as the Commission's intention to re-impose a definitive anti-dumping duty on imports of footwear of 16,5 %. These assessments would therefore have been carried out without legal basis and were pre-empting the up-coming judgment of the Court of Justice.

(52) The Commission does not agree with the above statement as it only prepared the implementation of a possible future judgment. Such preparation was to ensure sound administration, for the following reasons: First, it is uncontested that the Commission ought to have examined the MET/IT requests. The only issue that was at stake in the Court proceedings still pending at that time was whether an unrelated importer such as Clark, Puma and Timberland can rely on that illegality. As a result of that yes/no binary choice, the Commission could exceptionally perfectly prepare for the event of a negative judgment on this question. Second, swift implementation was necessary in order to enable national customs authorities to deal quickly with pending requests for reimbursement, and to provide legal certainty for all operators. Any influence on the Court's judgment was excluded, as that judgment concerned a different subject-matter (namely whether importers can rely on the right to have MET/IT claims assessed vested in exporting producers).

(53) FESI further claimed that the Notice on the implementation of the judgment in joined cases C-659/13 and C-34/14 C&J Clark International Limited and Puma SE later published on 17 March 2016 ([19]) could not cure above procedural errors because it did not provide meaningful opportunity for the interested parties to exercise their rights of defence.

(54) FESI moreover claimed that they should have been granted access to the full investigation file of the original investigation and that the names of the relevant exporting producers should not have been anonymised in the disclosure documents.

(55) In conclusions, FESI argued that on the basis of the above procedural mistakes, the Commission violated the basic legal framework of the EU and thus exercised an abuse of its powers.

(56) The Notice on the implementation of the judgment was published in order to increase transparency, in line with the Commission's policy on transparency in trade defence investigations and at the request of the Hearing Officer, following a hearing with one of the parties raising the issue. The Commission continues to take the view that that publication was not, strictly speaking, legally required. In any event, even if it was necessary, *quod non*, to ensure due process and the right to be heard, those requirements have been fulfilled by its publication and the fact of giving all parties the possibility to comment.

(57) Access to the full file of the original investigation has been granted, even though the Commission fails to see how any other information than the MET/IT claims of the exporting producers concerned could possibly be relevant for the present proceedings. The anonymisation of the names of the exporting producers has been necessary in order to ensure that their business-confidential data is protected; however, at their request, interested parties who imported were informed which of the importers were their importers.

(58) For those reasons, any claims regarding procedural irregularities have to be rejected.

Legal basis for the resumption of the anti-dumping proceeding

(59) FESI claimed that there was no legal basis for the current implementation. In particular they claimed that Article 266 TFEU is not applicable on the grounds that the definitive measures on footwear expired on 31 March 2011 and that there are therefore no continued effects ensuing from the illegality of these measures. The parties argued that Article 266 TFEU is not intended to correct retroactively illegalities to expired measures. This view would be reinforced by Articles 263 and 265 TFEU which set time limits for bringing actions against illegal acts of and failure to act on the part of the Union Institutions. The current approach does not have any precedents and the Commission did also not provide any reasoning or prior jurisprudence which would support its interpretation of Article 266 TFEU.

(60) FESI argued further that in this case the investigation cannot be resumed at the very point where the illegality occurred under Article 266 TFEU because the Court of Justice did not merely establish a lack of reasoning but the illegality concerned a core legal provision of the basic Regulation affecting the entire assessment of dumping related to the exporting producers concerned.

(61) FESI claimed further that the retro-active correction of expired measures violates the principle of protection of legitimate expectations. They argued that first, parties would have received assurance that the measures expired

([19]) Notice on the implementation of the judgment in joined cases C-659/13 and C-34/14 C&J Clark International Limited and Puma SE concerning Council Regulation (EC) No 1472/2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ C 101, 17.3.2016, p. 13).

on 31 March 2011 and that given the time elapsed since the original investigation parties were entitled to have justified expectations that the original investigation will not be resumed or reopened. Secondly, the very fact that during the original investigation MET claims were not investigated within the 3 months deadline provided legal certainty to the Vietnamese exporting producers that their MET claims will indeed not be reviewed. In conclusion, the parties claimed that given the long time periods involved, the resumption of the investigation violated the universal principle of prescription or limitation which applied in all legal contexts.

(62) FESI further argued that neither Article 266 TFEU, nor the basic Regulation permit the retroactive re-imposition of the definitive duty of 10 % to imports of the Vietnamese exporting producers concerned.

(63) As regards the claim that the measures in question expired on 31 March 2011, the Commission fails to see why the expiry of the measure would be of any relevance for the possibility for the Commission to adopt a new act to replace the annulled act following a judgment annulling the initial act. According to the case-law referred to in recital (15) above, the administrative procedure should be resumed at the point in time where the illegality occurred.

(64) The anti-dumping proceedings are hence, as a result of the annulment of the act concluding the proceedings, still open. The Commission is under an obligation to close those proceedings, as Article 9 of the basic Regulation provides that an investigation has to be closed by an act of the Commission.

(65) As to the claim concerning retroactivity based on Article 10 of the basic Regulation and Article 10 of the WTO Anti-Dumping Agreement ('WTO ADA'), Article 10(1) of the basic Regulation, which follows the text of Article 10(1) of the WTO ADA, stipulates that provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4) of the basic Regulation, as the case may be, enters into force. In the present case, the anti-dumping duties in question are only applied to products which entered into free circulation after the provisional and the contested (definitive) Regulation taken pursuant to 7(1) and 9(4) of the basic Regulation respectively had entered into force. Retroactivity in the sense of Article 10(1) of the basic Regulation, however, refers only to a situation where the goods were introduced into free circulation before measures were introduced, as can be seen from the very text of that provision as well as from the exception for which Article 10(4) of the basic Regulation provides.

(66) The Commission also observes that there is no retroactivity and violation of legal certainty and legitimate expectations involved in the present case.

(67) As to retroactivity, the case-law of the Court distinguishes, when assessing whether a measure is retroactive, between the application of a new rule to a situation that has become definitive (also referred to as an existing or definitively established legal situation) ([20]), and a situation that started before the entry into force of the new rule, but which is not yet definitive (also referred to as a temporary situation) ([21]).

(68) In the present case, the situation of the imports of the products concerned that occurred during the period of application of Regulation (EC) No 1472/2006 has not yet become definitive, because, as a result of the annulment of the contested Regulation, the anti-dumping duty applicable to them has not yet been definitively established. At the same time, importers of footwear were warned that such a duty may be imposed by the publication of the notice of initiation and the provisional Regulation. It is standing case-law of the Union Courts that operators cannot acquire legitimate expectations until the Institutions have adopted an act closing the administrative procedure, which has become definitive. ([22])

([20]) Case 270/84 *Licata* v *ESC* [1986] ECR 2305, paragraph 31; Case C-60/98 *Butterfly Music* v *CEDEM* [1999] ECR 1-3939, paragraph 24; Case 68/69 *Bundesknappschaft* v *Brock* [1970] ECR 171, paragraph 6; Case 1/73 *Westzucker GmbH* v *Einfuhr und Vorratsstelle für Zucker* [1973] 723, paragraph 5; Case 143/73 *SOPAD* v *FORMA a.o.* [1973] ECR 1433, paragraph 8; Case 96/77 *Bauche* [1978] ECR 383, paragraph 48; Case 125/77 *KoninklijkeScholten-Honig NV* v *Floofdproduktschaap voor Akkerbouwprodukten* [1978] ECR 1991, paragraph 37; Case 40/79 *P* v *Commission* [1981] ECR 361, paragraph 12; Case T-404/05 *Greece* v *Commission* [2008] ECR II-272, paragraph 77; C-334/07 P *Commission* v *Freistaat Sachsen* [2008] ECR 1-9465, paragraph 53.

([21]) Case T-176/01 *Ferrière Nord* v *Commission* [2004] ECR 11-3931, paragraph 139; C-334/07 P *Commission* v *Freistaat Sachsen* [2008] ECR 1-9465, paragraph 53.

([22]) Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 51 to 54; Joined Cases T-116/01 and T-118/01, *P&O European Ferries (Vizcaya) SA* v *Commission* [2003] ECR II-2957, paragraph 205.

(69) The present Regulation constitutes immediate application to the future effects of a situation that is on-going: The duties on footwear have been levied by national customs authorities. As a result of the requests for reimbursement, which have not had been decided in a definitive way, they constitute an on-going situation. The present Regulation sets out the duty rate applicable to those imports, and hence regulates the future effects of an on-going situation.

(70) In any event, even if there was retroactivity in the sense of Union law, quod non, such retroactivity would in any event be justified, for the following reason:

(71) The substantive rules of Union law may apply to the situations existing before their entry into force in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to the them ([23]). In particular, in case C-337/88 Società agricola fattoria alimentare (SAFA) it was held that: '[A]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected' ([24]).

(72) In the present case the purpose is to comply with the obligation of the Commission pursuant to Article 266 TFEU. Since the Court only found an illegality with regards to the determination of the applicable duty rate, and not with regards to the imposition of the measures themselves (that is, with regards to the finding of dumping, injury and Union interest), the exporting producers concerned could not have legitimately expected that no definitive anti-dumping measures would be imposed. Consequently, that imposition, even if it was retroactive, *quod non*, cannot be construed as breaching legitimate expectations.

(73) In addition, with regards to the protection of legal certainty and of legitimate expectations, it is first of all observed that according to the case-law, importers cannot claim the protection of legal certainty and legitimate expectations where they were alerted of an imminent change in the Union's commercial policy. ([25]) In the present case, importers were alerted by the publication of the Notice of Initiation ([26]) and of the provisional Regulation in the *Official Journal of the European Union*, which are both still part of the legal order of the Union, of the risk that the products produced by the exporting producers concerned may become subject to an anti-dumping duty. The exporting producers concerned could therefore not invoke legal certainty and legitimate expectations.

(74) Rather, economic operators were fully aware, when importing footwear from Vietnam, that those imports were subject to a duty. They took that duty into account when setting sales prices and assessing economic risks. They therefore did not acquire legal certainty or legitimate expectations that the imports would be free of a duty, and usually passed on the duty to their customers. It is therefore in the Union interest to set now the applicable duty rate, rather than providing a windfall gain to the importers concerned, which would be enriched without due cause.

(75) There is hence neither violation of the principles of prescription, legal certainty and legitimate expectations, nor of the provisions of the basic Regulation and the WTO ADA.

(76) As regards the claim that the MET determination had to be completed within three months of the initiation, it is recalled that according to the case law, the second subparagraph of Article 2(7)(c) of the basic Regulation does not contain any indication as regards the consequences of the Commission's failure to comply with the three-month period. The General Court therefore takes the view that an MET decision at a later stage does not affect the validity of the Regulation imposing definitive measures as long as applicants have not proved that, if the Commission had not exceeded the three-month period, the Council might have adopted a different Regulation more favourable to their interests than the contested Regulation. ([27]) The Court has furthermore recognized that the Institutions may modify the MET assessment until the adoption of final measures. ([28])

([23]) Case C-34/92 *GruSa Fleisch* v *Hauptzollamt Hamburg-Jonas* [1993] ECR 1-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 *Meridionale Industria Salumi a.δ.* [1981] ECR 2735, paragraph 9 and 10; Case 21/81 *Bout* [1982] ECR 381, paragraph 13; Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR 11-401, paragraphs 53 and 55 to 56; Case T-180/01 *Euroagri v Commission* [2004] ECR II-369, paragraph 36.
([24]) Case C-337/88 *Società agricola fattoria alimentare (SAFA)* [1990] ECR I-1, paragraph 13.
([25]) Case 245/81 *Edeka* v *Germany* [1982] ECR 2746, paragraph 27.
([26]) OJ C 166, 7.7.2005, p. 14.
([27]) Case T-299/05 *Shanghai Excell M&E Enterprise and Shanghai Adeptech Precision* v *Council* [2009] ECR II- 565, paragraph 116 to 146.
([28]) Case C-141/08 P, *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd* v. *Council* [2009] I-9147, paragraph 94 and following.

(77) The above case-law has not been overturned by the Brosmann and Aokang judgments, referred to in recital (6) above. In the Brosmann and Aokang judgments, the Court relies on the obligation for the Commission to carry out the assessment in three months in order to show that the obligation of that assessment exists independently of whether the Commission applies sampling or not. The Court does not pronounce itself on the question what legal consequence it has if the Commission concludes the MET assessment at a later stage of the investigation. The Court only rules that the Institutions could not completely ignore MET claims, but had to assess them the latest when imposing definitive measures. The judgments confirm the case-law quoted in the preceding recital.

(78) In the present case, the exporting producers concerned have not shown that, had the Commission carried out the MET assessment within three months after the initiation of the anti-dumping procedure in 2005, the Council might have adopted a different Regulation more favourable to their interests than the contested Regulation. The claim on time-bar for the assessment of the MET claim is therefore rejected.

(79) It was also claimed that since the illegality occurred at the point of MET assessments, the Commission should have resumed the proceeding to the point prior to the imposition of provisional measures.

(80) In that regard, the Commission observes that provisional measures are not a necessary step of the proceeding, but an autonomous act that ceases its effects with the adoption of definitive measures ([29]). The only essential procedural step prior to the adoption of definitive measures is the initiation. Therefore, that argument is inoperative.

(81) FESI, referring to the judgment of the General Court in case T-2/95, IPS v Council, pointed to the formal difference between an 'investigation' and a 'proceeding' and argued that once a proceeding is terminated, like in the current case, it cannot be resumed anymore.

(82) The Commission fails to see any material difference between the terms 'investigation' and 'proceeding' in the context of the implementation of the judgments at stake. The judgments concern an irregularity with regard to a specific investigation as part of a proceeding which the Commission is under an obligation to remedy as explained in recitals (21) to (29) above. In any event, the judgment in case T-2/95 has to be read in the light of the judgment on appeal in that case.

(83) FESI also claimed that Article 266 TFEU does not allow for a partial implementation of a judgment of the Court of Justice and in the current case the reversal of the burden of proof. Thus, FESI claimed that the Commission wrongly assessed only the MET/IT requests of those exporting producers that were suppliers of importers that filed reimbursements claims. They based their claim on the understanding that the effect of the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE is *erga omnes* and that it cannot be excluded that the results of the current assessment the MET/IT claims has also an impact on the residual duty which is applicable to all Vietnamese exporting producers. They therefore claimed that the Commission should have assessed all MET/IT claims that were provided during the original investigation.

(84) Moreover, FESI disagreed that the burden of proof lies with the producer wishing to claim MET/IT arguing that producers had discharged this burden of proof in 2005 by filing the MET/IT requests during the original investigation. FESI also disagreed that the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE can be implemented by simply assessing the MET/IT requests submitted by the non-sampled exporting producers as the Court of Justice did not specifically outline that the invalidation found is indeed limited to this aspect.

(85) The Commission considers that the implementation of the judgment is only necessary for those exporting producers for which not all import transactions have become definitive. Indeed, once the three year prescription period foreseen in the Community Customs Code has expired, the duty has become definitive, as confirmed in the judgments. Any impact on the residual duty is excluded, because the MET/IT claim for the companies in the sample has been assessed, and the fact of granting MET/IT to one of the companies outside the sample does not affect the residual duty rate.

([29]) Case T-320/13 *Delsolar* v *Commission* [2014] II-0000, paragraphs 40 to 67.

(86) The burden of proof is not limited to filing a request. It concerns the content of the request, which has to demonstrate that all conditions for MET/IT are met.

(87) The only illegality identified in the judgments is the lack of assessment of the MET/IT claims.

Legal basis for the re-imposition of duties

(88) FESI claimed that the Commission should not have applied two different legal regimes, i.e. the basic Regulation prior to its amendment for the assessment of the exporting producers' IT claims on the one hand ([30]), and the current basic Regulation on the other hand ([31]), that incorporated the amendments by Regulation (EU) No 1168/2012 of the European Parliament and the Council ([32]) introducing Comitology procedures in the area of, inter alia, trade defence and thus delegating the decision making to the Commission.

(89) FESI also re-iterated that Article 266 TFEU does not allow for the imposition of anti-dumping duties retroactively which would also be confirmed by the ruling of the Court of Justice in case C-459/98P, IPS v Council and Council Regulation (EC) 1515/2001 ([33]). FESI argued that the Commission has not given any valid justification to deviate from the principle of non-retroactivity and has therefore violated the principle of legitimate expectations.

(90) FESI also argued that re-imposing the definitive anti-dumping measures on imports of the Vietnamese exporting producers concerned by the current implementation constitutes (i) a discrimination of the importers concerned by the current implementation vis-à-vis importers concerned by the implementation of the Brosmann and Aokang judgments referred to in recital (6) above that were reimbursed duties paid on imports of footwear from the five exporting producers concerned by these judgments as well as (ii) a discrimination of the exporting producers concerned by the current implementation vis-à-vis the five exporting producers concerned by the Brosmann and Aokang judgments which were not made subject of any duty following the Council Implementing Decision of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd ([34]).

(91) This discriminatory treatment was claimed to reflect a lack of uniform interpretation and application of EU law which violates the fundamental right of an effective judicial protection.

(92) Regarding the alleged use of different legal regimes, the Commission considers that that follows from the differences in the transition rules contained in the three Regulations amending the basic Regulation at stake.

(93) First, Regulation (EU) No 765/2012 (the so-called 'Fasteners amendment' dealing with IT) provided in its Article 2 that 'it shall apply to all investigations initiated pursuant to Regulation (EC) No 1225/2009 following the entry into force of this Regulation'. As the present investigation was initiated prior to that date, the amendments of that Regulation to the basic Regulation do not apply in the present case.

(94) Second, Regulation (EU) No 1168/2012 (the so-called 'Brosmann amendment' dealing with MET) provided in its Article 2 that 'this Regulation shall apply to all new and to all pending investigations as from 15 December

([30]) OJ L 56, 6.3.1996, p. 1.
([31]) OJ L 343 22.12.2009, p. 51,.
([32]) Regulation (EU) No 1168/2012 of 12 December 2012 of the European Parliament and the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 344, 14.12.2012, p. 1).
([33]) Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (OJ L 201, 26.7.2001, p. 10), recital 6 of the preamble.
([34]) OJ L 82, 20.3.2014, p. 27.

2012'. Therefore, if the Commission had adopted a strict approach, it would not even have been necessary to assess the MET claims of the non-sampled companies any more, as they had lost the right to an MET assessment on 15 December 2012. However, the Commission considers that such treatment would be difficult to reconcile with its obligation to implement the judgments. Regulation (EU) No 1168/2012 does also not seem to introduce a complete ban on analysing MET claims outside the sample, as it authorizes such examination in case of individual treatment. By analogy, that derogation could be said to apply in the present case. In the alternative, the Commission considers that the outcome of applying Regulation (EU) No 1168/2012 to the present case would lead to same outcome, as all MET claims would be automatically rejected, without going through the assessment.

(95) Third, with regard to Comitology, Article 3 of Regulation (EU) No 37/2014 of the European Parliament and of the Council ([35]) provides that the Council shall remain competent for acts where the Commission has adopted an act, consultation has been initiated or the Commission has adopted a proposal. In the present case, no such action had been undertaken with regard to the implementation of the judgment prior to the entry into force of Regulation (EU) No 37/2014.

(96) Regarding the retro-active imposition of the definitive anti-dumping duties reference is made to the considerations outlined above in recitals (67) to (75) where these claims were already addressed extensively.

(97) Regarding the claim on discrimination, the Commission observes that exporting producers and certain importers concerned by the present Regulation enjoy judicial protection in the Union courts against the present Regulation. Other importers enjoy such protection via the national courts and tribunals, which act as judges of ordinary Union law.

(98) The claim of discrimination is equally unfounded. Importers that have imported from Brosmann and the other four exporting producers are in a different factual and legal situation, because their exporting producers decided to challenge the contested Regulation and because they had the paid duties reimbursed, so that they are protected by Article 221(3) of the Community Customs Code. No such challenge, and no such reimbursement have taken place for others. The Commission started to prepare implemenation for the Chinese and Vietnamese exporting producers of Clark, Puma and Timberland. all other non-sampled exporting producers from the PRC and Vietnam and their importers will be treated in the same fashion at a later stage pursuant to the procedure set out in the present Regulation.

(99) FESI also claimed that Article 14 of the basic Regulation cannot serve as a legal basis to interfere in the application of Article 236 of the Community Customs Code, and the operation of Article 236 of the Community Customs Code is independent from any decision taken under the basic Regulation or the Commission's obligations under Article 266 TFEU.

(100) In this context FESI argued that the application of Article 236 of the Community Customs Code falls within the exclusive competence of the national customs authorities under which the latter are obliged to reimburse duties paid that were not legally owed. The parties concerned further argued that Article 236 of the Community Customs Code cannot be made subject to or subsidiary to Article 14 of the basic Regulation because both are secondary legislation and therefore none supersedes the other. In addition, the scope of Article 14 of the basic Regulation concerns special provisions that cover investigations and procedures under the basic Regulation and is not applicable to any other legal instrument such as the Community Customs Code.

(101) The Commission observes that the Community Customs Code does not apply automatically to the imposition of anti-dumping duties, but only by virtue of a reference in the Regulation imposing anti-dumping duties. Pursuant to Article 14 of the basic Regulation, the Commission may decide not to apply certain provisions of that Code, and instead create special rules. Because the Community Customs Code only applies on the basis of a reference in the Council and Commission Implementing Regulations, it does not have, vis-à-vis Article 14 of the basic Regulation, the same rank in the hierarchy of norms, but is subordinated and may be rendered inapplicable or applicable in a different manner. Therefore, this argument is also rejected.

([35]) Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L 18, 21.1.2014, p. 1).

Adequate statement of reasons

(102) FESI further argued that in violation of Article 296 TFEU, the Commission failed to provide adequate statement of reasons and indication of the legal basis on which duties were re-imposed retroactively and therefore the reimbursement of duties denied to the importers concerned by the current implementation.

(103) The alleged lack of adequate reasoning concerned in particular (i) the lack of legal basis for the re-opening of the investigation and the lack of publishing a relevant notice announcing such re-opening; (ii) the only partial implementation of the judgment of the General Court by merely assessing MET/IT claims of those exporting producers where reimbursement claims had been filed by the importers; (iii) the derogation from the principle of non-retroactivity of anti-dumping duties; (iv) the application of the basic Regulation prior to its amendment on 6 September 2012 for the assessment of the exporting producers' IT claims on the one hand and the current basic Regulation as amended by Regulation (EU) No 1168/2012 with regard to the applicable decision making procedures and (v) the lack of response to the legal arguments provided by these parties following the disclosure of the Commission concerning the assessment of the MET claims of the Chinese exporting producers concerned of 15 December 2015.

(104) Concerning the lack of any legal basis to re-open the investigation the Commission recalls the case-law quoted above at recital (15), pursuant to which it may resume the investigation at the very point at which the illegality occurred. That was after initiation. There is no legal obligation for the Commission to publish a notice to re-initiate, to resume or to re-open the proceeding or the investigation. Rather, such is the automatic effect of the judgment which the Institutions then have to implement.

(105) According to the case-law, the legality of an anti-dumping Regulation has to be assessed in the light of the objective norms of Union law, and not of a decisional practice, even where such a practice exists (which is not the case here). ([36]) Hence, the fact that the Commission may have followed in the past in certain cases a different practice cannot create legitimate expectations. That is all the more the case because the previous practice referred to does not correspond to the factual and legal situation of the present case, and differences can be explained by factual and legal differences with the present case.

(106) Those differences are as follows: The illegality identified by the Court does not concern the findings on dumping, injury, and Union interest, and therefore the principle of the imposition of the duty, but only the precise duty rate. The previous annulments relied on by the interested parties, on the contrary, concerned the findings on dumping, injury and Union interest. The Institutions therefore considered it more appropriate to adopt new measures for the future.

(107) In particular, in the present case, there was no need whatsoever to seek additional information from interested parties. Rather, the Commission had to assess information that had been filed with it, but not assessed before the adoption of Regulation (EC) No 1472/2006. In any event, previous practice in other cases does not constitute precise and unconditional assurance for the present case.

(108) Finally, all parties against which the proceeding is directed, i.e. the exporting producers concerned, as well as the parties in the Court cases and the association representing one of those parties, have been informed by the disclosure of the relevant facts on the basis of which the Commission intends to adopt the present MET/IT assessment. Hence, their rights of defence are safeguarded. In that regard, it is to be noted in particular that unrelated importers do not enjoy, in an antidumping proceeding, rights of defence, as those proceedings are not directed against them. ([37])

(109) Regarding the partial implementation of the judgments, the question whether and to what extent the Institutions have to implement a judgment depends on the concrete content of the judgment. In particular, whether or not it

([36]) Case C-138/09 *Todaro* [2010] ECR I-4561.
([37]) Case T-167/94 *Nölle* v *Council and Commission* [1995] II-2589, paragraph 62 and 63.

is possible to confirm the imposition of duties on imports that took place prior to the judgment depends on whether the finding of injurious dumping as such, or only the calculation of the precise duty rate are affected by the illegality identified in the judgment. In the latter situation, which is pertinent here, there is no justification for reimbursing all duties. Rather, it suffices to determine the correct duty rate, and to reimburse any possible difference (whereas it would not be possible to increase the duty rate, as the increased part would constitute retroactive imposition).

(110) Past annulments to which interested parties refer have concerned the finding of dumping, injury and Union interest (either with regard to the establishment of facts, with regard to the assessment of the facts, or with regard to rights of defence).

(111) Those annulments have either been partial or complete.

(112) The Union Courts use the technique of partial annulment where they can conclude themselves on the basis of the facts in the file that the Institutions ought to have granted a certain adjustment or should have used a different method for a certain calculation, which would have resulted in the imposition of a lower duty (but did not put into question the findings of dumping, injury and Union interest). The (lower) duty remains in force both for the time prior to annulment and for the time after annulment ([38]). In order to comply with the judgment, the Institutions re-calculate the duty and amend the Regulation imposing the duty accordingly for the past and for the future. They also instruct national customs authorities to reimburse the difference, where such claims had been made in due time ([39]).

([38]) See for example Case T-221/05 *Huvis* v *Council* [2008] ECR II-124 and Case T-249/06 *Interpipe Nikopolsky* v *Council* [2009] ECR II-303. For the sake of completeness, the following explanations appear useful: In case T-107/08 *ENRC* v *Council*, the General Court found that there was no dumping, or, at the very least, that the dumping margin established would have been lower than that calculated in the contested regulation, and therefore annulled the contested Council Regulation in its entirety (Case T-107/08 *ENRC* v *Council* [2011] ECR II-8051, paragraphs 67 to 70). When the Commission applied the method prescribed by the General Court, it turned out that there was neither dumping nor injury. The Commission therefore refrained from formally resuming the investigation. In the judgment of the Court of Justice in Case C-351/04 *Ikea* (Case C-351/04 *Ikea* [2007] ECR I-7723), the Court of Justice had partially declared invalid the Council Regulation, namely to the extent that the duty had been calculated by relying on the technique of so-called 'zeroing'. The institutions had re-calculated the duty without using zeroing already at an earlier stage, following a ruling of the WTO appellate body, and found that no dumping had occurred, and therefore terminated the investigation without imposing measures (i.e. effectively setting the new duty at zero) (Council Regulation (EC) No 160/2002 of 28 January 2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan, OJ L 26, 30.1.2002, p. 2.). In case T-498/04 *Zheijiang Xinan Chemical Group* v *Council* (Case T-498/04 *Zheijiang Xinan Chemical Group* v *Council* [2009] ECR I-1969), the Council filed an appeal. Therefore, the annulment only took effect on the date at which the Court of Justice handed down its judgment on appeal (Case C-337/09 P *Council* v *Zheijiang Xinan Chemical Group* [2012] ECR I-0000), which was on 19 July 2012. In that judgment, the General Court, confirmed by the Court of Justice, found that the Commission and the Council were obliged to grant market-economy treatment to the applicant, which was the only Chinese company that had exported the product concerned during the investigation period. In that case, contrary to the present case, the Commission and the Council had actually carried out the analysis of the market economy treatment claim and had rejected that request as unfounded. The Union Courts held that — contrary to the view expressed by the Commission and the Council — the claim actually was founded, and therefore normal value had to be calculated on the basis of the data provided by *Zheijiang Xinan Chemical Group*. The Commission would normally have resumed the procedure, in order to propose to the Council to impose a duty for the future. However, in the case at hand, the Commission (Commission Decision 2009/383/EC of 14 May 2009 suspending the definitive anti-dumping duties imposed by Council Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China, OJ L 120, 15.5.2009, p. 20) and the Council (Implementing Regulation of the Council (EU) No 126/2010 of 11 February 2010 extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China, OJ L 40, 13.2.2010, p. 1) had decided in 2009 and 2010 to suspend the anti-dumping duty for the period until the end of its applicability on 30 September 2010, considering that injury was unlikely to resume due to the high profit levels of the Union industry. Hence, there was no need to resume the procedure in view of the imposition of a duty for the future. There was also no scope to resume the procedure in view of a re-imposition for the past: Contrary to the present case, there was no sampling. Indeed, *Zheijiang Xinan Chemical Group* was the only exporting producer that had sales to the Union market in the investigation period. As the Commission and the Council would have been obliged to grant *Zheijiang Xinan Chemical Group* market economy treatment, the Union Courts had annulled the finding of dumping. Case T-348/05 *JSC Kirovo-Chepetsky* v *Council* (Case T-348/05 *JSC Kirovo-Chepetsky* v *Council* [2008] ECR II-159) is a very peculiar case. The Commission had initiated a partial interim review at the request of the Union industry, and had at that occasion broadened the scope of the products concerned, by including a different product. The General Court held that it was not possible to proceed in that manner, but that it was necessary to launch a separate investigation into the product that had been added. On the basis of the general principle of Union law of *res iudicata*, there was no scope for the institutions to resume the partial interim review following the annulment.

([39]) See for example Council Regulation (EC) No 412/2009 of 18 May 2009 amending Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan, OJ L 125, 25.1.2009, p. 1 (compliance with *Huvis*); Council Implementing Regulation (EU) No 540/2012 of 21 June 2012 amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, OJ L 165, 26.6.2012, p. 1 (compliance with *Interpipe Nikopolsky*).

(113) The Union Courts proceed to complete annulment where they cannot establish themselves on the basis of the facts in the file whether or not the Institutions were right in assuming that there was dumping, injury and Union interest, because the Institutions had to re-do part of their investigation. As the Union Courts are not competent for carrying out the investigation at the place of the Commission, they annulled the Regulations imposing definitive duties completely. As a consequence, the Institutions validly established the presence of the three conditions necessary for the imposition of measures only after the judgment annulling the duties. For imports that took place prior to the valid establishment of dumping, injury and Union interest, the imposition of definitive duties is prohibited both by the basic Regulation and by ADA. Therefore, the acts adopted by the Institutions to close those investigations imposed definitive duties only for the future ([40]).

(114) The present case is different from past (partial or complete) annulments in so far, as it does not concern the very presence of dumping, injury and Union interest, but merely the choice of the appropriate duty rate. What is at dispute is therefore not the very principle of imposing a duty, but only the precise amount (in other words: a modality) of the duty. And the adjustment, if any, can only be downwards.

(115) Contrary to the cases of partial annulment in the past discussed above in recital (113), the Court has not been able to decide as to whether a new (reduced) duty rate had to be granted, because that decision requires first an assessment of the MET/IT claim. That task of assessing the MET/IT claim falls within the prerogatives of the Commission. Hence, the Court cannot carry out this part of the investigation at the place of the Commission without overstepping its competences.

(116) Contrary to cases of complete annulment in the past, the findings on dumping, injury, causality and Union interest have not been annulled. Therefore, dumping, injury, causality and Union interest have been validly established at the time of adoption of Regulation (EC) No 1472/2006. Therefore, there is no reason to limit the re-imposition of definitive anti-dumping duties to the future.

(117) The present Regulation does therefore in any event not depart from the decisional practice of the Institutions, even if it was relevant.

(118) Interested parties also argued that the annulment of anti-dumping duties would not entail any unjust enrichment by the importers, as claimed by the Commission, since these importers may have sufferred a decline in sales due to the duty which had been incorporated in the sales price.

(119) In the case-law of the Court of Justice, it is recognized that the repayment of charges which have been unduly levied may be refused where doing so would entail unjust enrichment of the recipients. ([41]) The Commission observes that those interested parties do not contest that the duty has been passed on and do not provide any proof for a decline in sales, and that in any event the case-law on unjust enrichement only takes into pass-on, but not possible secondary effects of pass-on.

(120) Regarding the alleged derogation from the principle of non-retroactivity, reference is made to the recitals (67) to (75) where this was addressed extensively.

([40]) See for example Case C-338/10 *Gruenwald Logistik Services* [2012] ECR I-0000 and the re-imposition of duties by Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 49, 22.2.2013, p. 29). See also the following examples: In case T-158/10 *Dow* v *Council*, the General Court found that there was no likelihood of continuation of dumping (Case T-158/10 *Dow* v *Council* [2012] ECR II-0000, paragraphs 47 and 59). In case T-107/04 *Aluminium Silicon Mill Products* v *Council*, the General Court found that there was no causal link between dumping and injury (Case T-107/04 *Aluminium Silicon Mill Products* v *Council* [2007] ECR II-672, paragraph 116). Pursuant to the general principle of Union law of *res judicata*, the Commission and the Council are bound by the findings of the Union Courts, where those can, on the basis of the facts in front of them, come to a definitive conclusion on dumping, injury, causal link and Union interest. The Commission and the Council can therefore not deviate from the Union Court's findings. In such a situation, the investigation is closed by virtue of the judgment of the Union Courts, which come to the definitive conclusion that the complaint of the Union industry is unfounded in law. Following those two judgments, there was therefore no scope for the Commission and the Council to resume an investigation, which is why no further steps were taken following those judgments.

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

(121) Regarding the alleged application of two different legal frames in the current implementation reference is made to recitals (92) to (95) where this was addressed extensively.

(122) Finally, concerning the comments provided by these parties following the disclosure of the MET assessment of the Vietnamese exporting producers concerned, it is considered that these have been addressed fully in the current Regulation.

Other procedural issues

(123) FESI claimed that the same procedural rights should have granted to the exporting producers concerned by the current implementation than those granted to the sampled exporting producers during the original investigation. They argued that in particular, the Vietnamese exporting producers were not provided any opportunity to complement their MET/IT claim forms via deficiency letters and only desk analysis had been carried out rather than on-spot verification visits. In addition, the Commission did not ensure the due delivery of the disclosure of the assessment of MET/IT requests to the exporting producers concerned as these were only sent to the legal representatives of these companies at the time of the original investigation.

(124) FESI further argued that the exporting producers concerned by this implementation were not provided with the same procedural guarantees than those applied in standard anti-dumping investigations, but stricter standards were applied. The Commission has not taken into account the time lag between the filing of the MET/IT request in the original investigation and the assessment of these claims. In addition, exporting producers, during the original investigation were only provided 15 days in order to fill in the MET/IT requests, instead of the usual 21 days.

(125) FESI also claimed that the Commission applied *de facto* facts available within the meaning of Article 18(1) of the basic Regulation, while the Commission did not comply with the procedural rules set out in Article 18(4) of the basic Regulation.

(126) The Commission observes that nothing in the basic Regulation requires the Commission to give exporting companies claiming MET/IT the possibility to complete lacking factual information. It recalls that according to the case-law, the burden of proof lies with the producer wishing to claim MET/IT under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments in *Brosmann* and *Aokang*, there is no obligation on the Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Commission to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET/IT (see above recital (30)). The right to be heard concerns the opportunity of the party to express its views and the Commission to consider these views.

(127) In that regard, it is recalled that there is no obligation, for the Commission, to request the exporting producer to complement the MET/IT claim. As mentioned in the preceding recital, the Commission may base their assessment on the information submitted by the exporting producer. In any event, the exporting producers concerned have not contested the assessment of their MET/IT claims by the Commission, and they have not identified which documents or which people they have no longer been able to rely upon. The allegation is therefore so abstract that the Institutions cannot take into account those difficulties when carrying out the assessment of the MET/IT claims. As that argument is based on speculation and not supported by precise indications as to which documents and which people are no longer available and as to what the relevance of those documents and people for the assessment of the MET/IT claim is, that argument has to be rebutted.

(128) Regarding Article 18(1) of the basic Regulation, in the current case the Commission accepted the information provided by the exporting producers concerned, it did not reject this information and based its assessment on it. Therefore, the Commission did not apply that article. It follows that there was no need to follow the procedure under Article 18(4) of the Basic Regulation. The procedure under Article 18(4) is followed in cases where the Commission intends to reject certain information provided by the interested party and to use facts available instead.

Manifest errors in the assessment of MET/IT requests

(i) *MET assessment*

(129) Regarding criterion 1 FESI contested the assessment of the Commission with regard to the MET requests of the Vietnamese suppliers and alleged that they were mainly rejected based on the absence of complete information. Regarding criterion 1, FESI argued that the Commission, apart from making no effort to obtain the missing information did also not specify which information would have been necessary to show that there was no significant State interference in the business decisions of the exporting producers concerned. FESI further requested to be provided with more detailed information on the basis of which it was concluded that business decisions of the Vietnamese suppliers were not taken in accordance with market signals without significant State interference. In this regard, FESI recalled that in accordance with criterion 1 of Article 2(7)(c) of the basic Regulation, state interference needs to go beyond mere influence.

(130) Regarding criterion 3, referring the judgment of the Court of Justice in case T-586/14 Xinyi OV v Commission, FESI argued that tax incentives or preferential tax regimes were not indicative for any distortion or non-market economy behaviour.

(131) Regarding criterion 2, FESI observed that the mere absence of audited accounts is not a reason to reject MET claims as even in the Union small companies with a turnover below a certain threshold are not required to have audited accounts.

(132) On this basis, the parties argued that the Commission made a manifest error in the application of Article 2(7)(c) of the basic Regulation and has also not provided adequate reasons for the rejection of the exporting producers' MET requests.

(133) With regard to the missing information concerning criterion 1, reference is made to recital (126) which outlines that there is nothing in the basic Regulation that requires the Commission to give exporting companies claiming MET the possibility to complete lacking factual information and that the burden of proof lies in fact with the exporting producer who wishes to claim MET.

(134) As to the request for more detailed information included in the MET/IT claims of certain Vietnamese suppliers on the basis of which the Commission rejected criterion 1, it is noted that such information was provided to the Commission on a confidential basis as it contained business secrets. This information could therefore not be disclosed as such and only a non confidential summary thereof.

(135) Concerning criterion 3, it is clarified that no tax incentives or preferential tax regimes (if any) were considered as a reason to reject the MET request.

(136) Finally, as regards criterion 2, Article 2(7)(c) of the basic Regulation clearly stipulates that firms must have one set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes. None of the Vietnamese suppliers concerned fulfilled these requirements. As outlined in recital (33) the deficiencies observed were the absence of audited accounts or auditor's opinions, severe issues highlighted by auditors in their opinion (such as non-compliance with international accounting standards) and contradictions regarding loans between certain statements made in the MET claim form and the financial statements.

(137) All claims made by FESI were therefore rejected and the findings laid out in recitals (30) to (37) confirmed.

(ii) *IT assessment*

(138) FESI argued, referring to criterion 2, that the Commission did not show that export sales were not freely determined and that it was up to the Commission to determine whether and how export prices were affected due to State interference.

(139) Moreover, FESI argued that the finding that export sales were not freely determined contradicts the findings of the original investigation related to OEM sales made where it was established that importers such as Puma were conducting its own R & D and raw material sourcing when buying from their suppliers. On this basis, it was claimed that Puma and Timberland had significant control over the production process and specifications and that there was therefore no possibility of State interference.

(140) As already mentioned in recital (39) above the burden of proof lies with the producer wishing to claim IT. As also explained above in recital (47) the exporting producers failed to demonstrate that business decisions were made without State interference. It is also noted that criterion 2 is not referring solely to export prices, but in general to export sales including export prices and quantities and other conditions and terms of sales that should be determined freely without State interference.

(141) In support of its argument that export prices were freely determined FESI referred to recital (269) of the provisional Regulation. However, this recital addressed the re-sale prices of the importers in the Union and cannot therefore be considered as an appropriate basis to establish the reliability of the export prices by the exporting producers. Likewise, the reference to recital (132) of the provisional Regulation and recital (135) of the contested Regulation refers to adjustments made to the normal value when comparing it to the export price and does not allow any conclusions as to whether export sales of the Vietnamese companies were freely determined.

(142) Furthermore, FESI claimed that the Commission has also not explained how it arrived to the conclusion that there would be a risk of circumvention of the antidumping measure if the exporting producers concerned were granted an individual duty rate that would, however be the underlying purpose of the IT criteria.

(143) Regarding the risk of circumvention, this is only one criterion out of five listed in Article 9(5) of the basic Regulation before its amendment. According to this Article all 5 criteria should be shown to be met by the exporting producer. Therefore, failure to meet one or more criteria is sufficient to deny the IT claim without examining whether the other criteria were met.

Suppliers of Timberland

(144) FESI contested the statement in recital (20) above according to which one of Timberland suppliers, General Shoes Limited, was wrongly identified as a Chinese supplier in the application before the national Court whereas the company was established in Vietnam. FESI argued that the Commission should have sought further clarification and alleged that the company was easily identifiable as a Chinese company. It argued that while it was true that the company appeared with a different name in the sampling form and MET/IT claim provided in the original investigation (i.e. as General Footwear Ltd) the different company name in Timberland's application before the national Court (i.e. General Shoes Ltd) would be most likely merely due to a translation error. Therefore the MET/IT request of the Chinese company General Footwear Ltd should have been assessed, while the assessment of the MET/IT request of General Shoes Ltd was a manifest error to the extent the repayment request of Timberland is concerned. Therefore, such assessment has to be justified and corrected.

(145) General Footwear Ltd is part of a company group with related companies in China and Vietnam. Both, a producer in Vietnam and another one in China provided MET/IT claims in the original investigation. In the MET/IT claim of the Chinese company, its name is consistently reported as 'General Footwear Ltd' with an address in China. The producer in Vietnam is reported as 'General Shoes Ltd'. However, the relevant MET/IT claim form is ambiguous whether the company at stake is in fact Chinese or Vietnamese. It was therefore not unreasonable to assume that the company mentioned in the file before the national Court was in fact Vietnamese. In any event, the criteria set out in Article 2(7) of the basic Regulation for MET requests and in Article 9(5) of the basic Regulation before its amendment for IT requests apply equally to Chinese and Vietnamese producers as both PRC and Vietnam are treated as non-market economy countries.

(146) The Vietnamese company General Shoes Ltd was supplier also to other importers than Timberland and its MET/IT request was not merely assessed in the context of the repayment request of Timberland. The MET/IT claim is assessed on the basis of the general conditions under which a company operates and is not limited to specific transactions or specific customers in the Union. Therefore, the outcome of such assessment is applicable to the exporting producer concerned as such and there was therefore no manifest error with regard to Timberlands reimbursement requests.

(147) In any event, it is the Commission's intention to still assess the MET/IT claim of 'General Footwear Ltd' (China). In the spirit of sound administration and in order not to delay unnecessarily the ongoing implementation exercise, this assessment will, however, be subject to separate legal act.

Argument linked to reimbursement claims

(148) One importer acknowledged that none of the exporting producers concerned by the current implementation was its supplier and therefore considered that the conclusions were not relevant to its situation. This party argued that the conclusions of the current implementation cannot therefore constitute a basis for denying its reimbursement requests filed at the national customs. The importer further requested that the MET/IT claims of its suppliers should be investigated on the basis of the documents provided by the relevant Belgian customs authorities to the Commission.

(149) With regard to the above claim, the Commission refers to the Commission Implementing Regulation (EU) 2016/223 ([42]) which sets out the procedure to be followed in this matter. In particular, in accordance with Articles 1 and 2 of that Regulation, the Commission will examine the relevant MET/IT claims as soon as it has received the relevant documentation from the customs authorities.

D. **CONCLUSIONS**

(150) Account taken of the comments made and the analysis thereof it was concluded that the residual anti-dumping duty applicable to Vietnam in respect of the fourteen exporting producers concerned for the period of application of the contested Regulation should be re-imposed.

E. **DISCLOSURE**

(151) The exporting producers concerned and all parties that came forward were informed of the essential facts and considerations on the basis of which it was intended to recommend the reimposition of the definitive anti-dumping duty on imports of the fourteen exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure.

(152) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and

([42]) Commission Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 41, 18.2.2016, p. 3).

footwear with a protective toecap, originating in Vietnam and produced by the exporting producers listed in Annex II to this Regulation and falling within CN codes: 6403 20 00, ex 6403 30 00 ([43]), ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 ([44]) which took place during the period of application of Regulation (EC) No 1472/2006 and Implementing Regulation (EU) 1294/2009. The TARIC codes are listed in the Annex 1 to this Regulation.

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

— 'sports footwear' shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Regulation (EC) No 1719/2005;

— 'footwear involving special technology' shall mean footwear having a CIF price per pair of not less than EUR 7,5 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98;

— 'footwear with a protective toecap' shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules ([45]) and falling within CN codes: ex 6403 30 00 ([46]), ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

— 'slippers and other indoor footwear' shall mean such footwear falling within CN code ex 6405 10 00.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price of the products described in paragraph 1 and manufactured by the exporting producers listed in Annex II to this Regulation shall be 10 %.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 553/2006 shall be definitively collected. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

([43]) By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

([44]) 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.

([45]) The impact resistance shall be measured according to European Norms EN345 or EN346.

([46]) See footnote 43.

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

Done at Brussels, 13 September 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

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

(a) From 7 October 2006:

6403 30 00 39, 6403 30 00 89, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90, 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90, 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(b) From 1 January 2007:

6403 51 05 19, 6403 51 05 99, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90, 6403 51 95 90, 6403 51 99 90, 6403 59 05 19, 6403 59 05 99, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 05 19, 6403 91 05 99, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 05 19, 6403 99 05 99, 6403 99 11 90, 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(c) From 7 September 2007:

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

ANNEX II

List of exporting producers:

Name of the exporting producer
Best Royal Co., Ltd
Lac Cuong Footwear Co., Ltd
Lac Ty Co., Ltd
Saoviet Joint Stock Company (Megastar Joint Stock Company)
VMC Royal Co., Ltd
Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co., Ltd
Fulgent Sun Footwear Co., Ltd
General Shoes Ltd
Golden Star Co., Ltd
Golden Top Company Co., Ltd
Kingmaker Footwear Co., Ltd
Tripos Enterprise Inc.
Vietnam Shoe Majesty Co., Ltd