Commission Implementing Regulation (EU) 2017/2232 of 4 December 2017 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by certain exporting producers in the People's Republic of China and Vietnam and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14

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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(4) and 14(1) and (3) thereof,

Whereas:

A. **PROCEDURE**

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

(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 ('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 uppers of 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').

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(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* and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 *Zhejiang Aokang Shoes and Wenzhou Taima Shoes* v *Council* 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 Footwear (HK) and Others* v *Council* and of 15 November 2012 in case C-247/10 P *Zhejiang Aokang Shoes* v *Council* ('the Brosmann and Aokang judgments'), the Court of Justice set aside those judgments. It held that the GeneralCourt 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 that '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 a 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. That notice 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 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

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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 Regulation (EEC) No 2913/1992 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, 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.

(12) On 4 February 2016, in the Joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE[(10)], the Court of Justice declared Regulation (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 Case C-571/14 Timberland Europe, 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

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sampled, all other findings made in Regulation (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 ('investigation period'). The Commission also examined, where appropriate, whether the exporting producers concerned qualified for IT in accordance with 9(5) of Council Regulation (EC) No 1225/2009[(15)] (the 'basic Regulation prior to its amendment')[(16)].

(18) By Implementing Regulation (EU) 2016/1395[(17)], the Commission reimposed 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 have submitted MET and IT claims but that had not been sampled.

(19) By Implementing Regulation (EU) 2016/1647[(18)], the Commission reimposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark, Puma and Timberland of certain footwear with uppers of leather originating in Vietnam and produced by certain Vietnamese exporting producers that had submitted MET and IT claims, but had not been sampled.

(20) By Implementing Regulation (EU) 2016/1731[(19)], the Commission reimposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Puma and Timberland of certain footwear with uppers of leather originating in the People's Republic of China and produced by one exporting producer in Vietnam and by two exporting producers in the PRC that submitted MET and IT claims, but had not been sampled.

(21) The validity of Regulation (EU) 2016/1395, Regulation (EU) 2016/1647 and Regulation (EU) 2016/1731 has been challenged by Puma and Timberland at the General Court in Cases T-781/16 *Puma and Others* v *Commission* and T-782/16 *Timberland Europe* v *Commission*. Furthermore, the validity of Regulation (EU) 2016/1395 has also been challenged at the General Court by Clark in Cases T-790/16 *C & J Clark International* v *Commission* and T-861/16 *C & J Clark International* v *Commission*.

(22) In view of the implementation of the judgment in Joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE mentioned in recital 12, the Commission adopted on 17 February 2016 Implementing Regulation (EU) 2016/223 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[(20)]. In Article 1 of that regulation, the Commission instructed national customs authorities to forward all requests for reimbursement of the definitive anti-dumping duties paid on imports of footwear originating in China and Vietnam made by importers

based on Article 236 of the Community Customs Code and based on the fact that a non-sampled exporting producer had requested MET or IT in the investigation that lead to the imposition of the definitive measures by Regulation (EC) No 1472/2006 ('original investigation'). The Commission shall assess the relevant MET or IT claim and reimpose the appropriate duty rate. On this basis the national customs authorities should subsequently decide on the request for repayment and remission of the anti-dumping duties.

(23) Following a notification from the French customs authorities in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the Commission identified two Chinese exporting producers that provided MET and IT claims in the original investigation but that had not been sampled. Another exporting producer was identified that was supplier of Deichmann, a German importer that contested the payment of duties. Consequently, the Commission analysed the MET and IT claim form from these three Chinese exporting producers.

(24) As a result of the above, by Implementing Regulation (EU) 2016/2257[(21)], the Commission reimposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports certain footwear with uppers of leather originating in the People's Republic of China and produced by three exporting producers that had submitted MET and IT claims but that had not been sampled.

(25) In accordance with Article 1 of Implementing Regulation (EU) 2016/223, the UK, Belgian ('BE'), and Swedish ('SE') customs authorities notified the Commission reimbursement claims of importers on 12 July 2016 (UK), 13 July 2016 (BE) and 26 July 2016 (SE). As a result of these notifications, the Commission analysed MET and IT claims from nineteen exporting producers and, by Regulation (EU) 2017/423[(22)], reimposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports certain footwear with uppers of leather originating in the PRC and Vietnam and produced by these nineteen exporting producers.

(26) During the above investigation, through comments made by several interested parties following disclosure, five additional companies/company groups were identified that had either themselves or via a related Chinese or Vietnamese exporting producer submitted a MET and IT claim form during the original investigation, but that were not sampled and that had not been assessed in any previous implementation exercise. These companies were listed in Annex VI to Regulation (EU) 2017/423 and were part of four company groups.

(27) On this basis, the Commission identified four company groups comprising together seven individual companies that were Chinese or Vietnamese exporting producers that were not sampled in the original investigation and assessed the MET and IT claim forms that these companies had submitted during the original investigation. As a result, by Implementing Regulation (EU) 2017/1982[(23)], the Commission reimposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports certain footwear with uppers of leather originating in the People's Republic