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

COUNCIL IMPLEMENTING REGULATION (EU) No 1294/2009

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning the European Union,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the 'basic Regulation') and in particular Articles 9(4) and 11(2) thereof,

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

Whereas:

A. **PROCEDURE**

1. MEASURES IN FORCE

(1) On 5 October 2006, the Council, by Regulation (EC) No 1472/2006[(2)] (the 'original Regulation'), imposed a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China ('PRC' or 'China') and Vietnam (the 'countries concerned'). The established duty levels were ranging from 9,7 % to 16,5 % in case of the PRC and 10 % in case of Vietnam. Measures were imposed for a period of two years. The investigation that led to these measures will be referred to as the 'original investigation'.

(2) By Regulation (EC) No 388/2008[(3)] (the 'extending Regulation'), the Council extended the anti definitive anti-dumping duty 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. The extension followed an anti-circumvention investigation carried out pursuant to Article 13(3) of the basic Regulation.

2. PRESENT INVESTIGATION

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1294/2009. (See end of Document for details)*

2.1. **Request for review**

(3) The request was lodged by the European Confederation of the Footwear Industry (CEC, 'the applicant'), on behalf of producers representing a major proportion, in this case more than 35 %, of the total Union production of certain footwear with uppers of leather.

(4) In the framework of the standing test several national associations of footwear producers in Member States expressed their views vis-à-vis the opening of the expiry review and requested that their names be kept confidential for fear that their member companies could face retaliation from some customers. Some other parties questioned why the names and the positions of the opposing and supporting associations have been kept confidential. The Commission asked the associations explicitly again whether they could agree to a disclosure of their name and position. Four associations agreed to disclose their names and positions, whereas the others opposed, referring once more to their fear for retaliation against their member companies. The Commission took the view that there indeed was a significant possibility of retaliation in the form of lost sales for these producers and accepted that names should not be disclosed.

(5) Some parties argued that the Commission should not have initiated an expiry review investigation as Article 3 of the original Regulation states that it shall be in force for a period of 2 years as of its entry into force. Recital 326 of the original Regulation, however, explains that, notwithstanding the shorter duration of the measures, the rules of Article 11 of the basic Regulation will apply mutatis mutandis. In line with this recital, the text of the notice of impending expiry[(4)] stated that the measures would expire on 7 October 2008 unless a review was initiated in accordance with the rules of Article 11(2) of the basic Regulation. Since an expiry review of the anti-dumping measures has indeed been initiated, the anti-dumping measures remain in force pending this review.

(6) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

2.2. **Initiation**

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, by a Notice of initiation published in the *Official Journal of the European Union*[(5)] on 3 October 2008 (the 'Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

(8) The investigation of likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 up to the end of the RIP (the 'period considered'). Reference was also made where appropriate to the year 2005 and to the investigation period used in the original

investigation which covered the period from 01 April 2004 to 31 March 2005 (‘original investigation period’ or ‘OIP’).

3. PARTIES CONCERNED BY THIS INVESTIGATION

(9) The Commission officially advised the applicant, the Union producers mentioned in the request, any other known Union producers, known importers and their associations, known retailers/distributors and their associations, known consumer organisations, the known exporting producers in the countries concerned as well as their associations and the authorities of the countries concerned of the initiation of the expiry review.

(10) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the Notice of initiation.

(11) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

4. SAMPLING

(12) In view of the large number of exporting producers in the countries concerned, of Union producers and of importers involved in the investigation, the application of sampling was envisaged in the Notice of initiation in accordance with Article 17 of the basic Regulation.

(13) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and representatives acting on their behalf, Union producers and importers were requested to make themselves known and to provide information as specified in the Notice of initiation.

4.1. **Sampling for exporting producers in the People's Republic of China and Vietnam**

4.1.1. *The People's Republic of China*

(14) A total of 58 companies or groups of related companies (‘groups’) in the PRC came forward and provided the requested information within the given deadline. These 58 companies or groups produced and/or exported the product concerned to the Union market during the investigation period and expressed a wish to be included in the sample. They were regarded as cooperating companies and were considered for inclusion in the sample. The level of cooperation from the PRC, i.e. the percentage of exports to the Union by the Chinese cooperating companies as compared to all Chinese exports to the Union, was around 22 %.

(15) The sample was selected in agreement with the Chinese authorities, on the basis of export volumes and geographical spread of the cooperating companies. The seven sampled companies represented around 56 % of the exports to the Union of the 58 cooperating companies, and 13 % of the total exports to the Union from the PRC. They all replied to the questionnaires within the given deadlines.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1294/2009. (See end of Document for details)*

(16) Certain non-sampled Chinese exporters claimed that since they had not been selected to be in the sample, they were not in a position to defend their interests. However, it is part of the principle of sampling that a representative number of exporting producers is selected and that the results of the assessment of this sample can be regarded as representative also for other cooperating exporters. It is further noted that all interested parties were able to participate in the investigation and to submit their views. This argument was therefore rejected.

4.1.2. *Vietnam*

(17) A total of 51 companies or groups in Vietnam came forward and provided the requested information within the given deadline. These 51 companies or groups produced and/or exported the product concerned to the Union market during the investigation period and expressed a wish to be included in the sample. They were regarded as cooperating companies and were considered for inclusion in the sample. The level of cooperation from Vietnam, i.e. the percentage of exports to the Union by the Vietnamese cooperating companies as compared to all Vietnamese exports to the Union, was around 82 %.

(18) The sample was selected in agreement with the Vietnamese authorities, on the basis of export volumes. The three sampled companies represented around 27 % of the Union exports of the 51 cooperating companies, and 22 % of the total Union exports from Vietnam. They all replied to the questionnaires within the given deadlines.

4.2. **Sampling of Union producers**

(19) The procedure to obtain the information necessary for the selection of the sample of Union producers was as follows. The CEC acting on behalf of all complainants confirmed that all complaining producers were ready to cooperate and participate in the sampling exercise. Given the detailed and extensive information available on file (emanating i.a. from the complaint, standing exercise, and CEC submissions), it was not necessary to send a sampling form to individual complaining producers. In addition, the Notice of initiation invited any producer to make itself known should it wish to cooperate in the proceeding. In addition to the complainants, a further five companies made themselves known after initiation and requested to be included in the sampling exercise. All of these were sent sample forms requesting information already at hand for the complainants. Only two of the five companies supplied sample returns. These two companies were however not retained as they were excluded from the definition of the Union industry (see recital 198).

(20) Union production of the product concerned is largely concentrated in three Member States holding around 2/3 of all production. The rest is spread over the remaining Member States. As seen in recitals 202 and onwards, the Union producers business models are characterised by differences mainly in product/quality range, distribution channels and whether clustering of activities and subcontracting parts of the manufacturing process within or outside the Union takes place.

(21) On the basis of the information obtained, the Commission selected a sample based on the largest representative volumes of production and sales within the Union which could be investigated within the time available. However, as detailed above, this is not an entirely homogenous industry and in order to assess representativeness of the selected companies, the producers' geographical spread amongst Member States[(6)], as well as the segment to which their products belong were also taken into consideration. As a result 8 companies operating in four member States were selected. The selected companies also represent all the major business models present in the Union, in terms of how the product is manufactured, of how the product is distributed, and of product specialisation. Regarding product specialisation, the companies selected included production across all major price segments (low range, mid range, high range) as well as across all gender and age segments (ladies, men, unisex, children footwear). Regarding product distribution, the companies selected included all major levels of distribution (to wholesalers, to retailers, as well as direct retailing). Regarding production, the companies selected included full in-house manufacturing in all key stages of the production process as well as companies which had outsourced parts of such manufacturing process (both in and outside the Union).

(22) The 8 producers selected in the sample were thus considered to be representative of the overall producers in the Union, and represented 8,2 % of the production of the complaining Union producers and 3,1 % of the total Union production. Pursuant to Article 17(2) of the basic Regulation, CEC was consulted on the selection of the sample and did not raise any objections.

(23) The investigation revealed that one of the sampled Union producers progressively discontinued production in the Union during the RIP, taking its full manufacturing activity outside the Union. It should be noted that the weight of the company was not such as to have any significant impact, at least from a quantitative point of view, on the situation of the sampled companies as a whole—including their representativeness. The quantitative findings on injury would not have been materially different should this company have been excluded. In this context, and given that (i) it had produced in the Union during the RIP, and that (ii) it subcontracts large part of the production, a business model which, according to many parties, is important in the Union, it was decided not to formally exclude this company from the sample. This further ensures that, qualitatively, the sample represents as adequately as possible the reality of the sector. Furthermore, considering that an expiry review requires an analysis of continuation/recurrence of injury, this may help in better predicting how the situation on the Union market could develop if the measures were not continued. However, evidently only data pertaining to its activity as Union producer were used.

(24) The Union institutions have considered whether, given that the Union production and sales of this company during the RIP were found to be lower than initially reported at sample stage, the Union industry's production and sales as a whole should have been reduced similarly—i.e., the resulting impact on the sample should be transposed to the entire population. However, it was found that the error appears to have been made in good faith by this company who mistakenly counted outsourcing to a