# 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 uppers of leather originating in the People's Republic of China and Vietnam

## COUNCIL REGULATION (EC) No 1472/2006

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## 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. PROVISIONAL MEASURES

(1) On 23 March 2006, the Commission imposed by Regulation (EC) No 553/2006[(2)] ('the provisional Regulation') a provisional anti-dumping duty on the imports into the Community of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam ('the countries concerned' or 'the exporting countries'). This Regulation entered into force on 7 April 2006.

(2) It is recalled that the investigation of dumping covered the period from 1 April 2004 to 31 March 2005 ('investigation period' or 'IP') and that the examination of trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the investigation period ('period considered').

2. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of certain footwear with uppers of leather from the countries concerned, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

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(4) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) The Commission's services further disclosed all the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly. Furthermore, an additional disclosure was provided with regard to a change in the envisaged form of measures.

(6) Various interested parties reiterated their claim that by not disclosing the name of the complainants, their right of defence was not preserved. This issue was already raised previously (see recital 8 of the provisional Regulation). The matter was reviewed at definitive stage and the following is to be noted: the production volume of the complainants, broken down by countries, was disclosed to those interested parties that made claims regarding standing. Therefore it is considered that their right of defence was adequately preserved. This information was subsequently also made available for inspection to all interested parties.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

(7) It is recalled that, as set out in recital 10 of the provisional Regulation, the product concerned by this proceeding, is footwear with uppers of leather or composition leather originating in the PRC and in Vietnam, other than:

— sports footwear within the meaning of subheading note 1 to Chapter 64 of the combined nomenclature, i.e. (i) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like, and (ii) skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes,

— slippers and other indoor footwear (falling within CN codes 6403 59 50, 6403 99 50 and ex 6405 10 00),

— footwear with a protective toecap, i.e. footwear incorporating a protective toecap with an impact resistance of at least 100 joules[3] (falling within CN codes: ex 6403 30 00, 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).

(8) In addition, on the basis of the elements set out in recitals 12 to 27 of the provisional Regulation, it was provisionally concluded that certain high tech sports footwear, i.e. Special Technology Athletic Footwear ('STAF'), should be excluded from this definition.

(9) Furthermore, it was decided to provisionally treat children's shoes as forming part of the product concerned, although this was subject to further investigation and consideration at the definitive stage.

(10) The interested parties were invited to comment on those specific issues. Given the comments they provided with respect to the above, and further requests for exclusion of other specific types of footwear, those claims have been analysed in detail below.

1.1. Special technology athletic footwear ('STAF')

(11) It is recalled that STAF, as defined under recital 13 of the provisional Regulation was excluded from the definition of the product concerned.

(12) This exclusion was based on the fact that such type of footwear has different basic physical and technical characteristics, is sold via different sales channels, and has a different end use and consumer perception.

(13) The Community footwear industry contested the exclusion of STAF from the product scope claiming STAF footwear has the same sales channels and consumer perception as the product under investigation. Furthermore, in case STAF footwear should nevertheless be excluded from the product scope of the investigation, it was stressed that the minimum STAF value of EUR 9 in the current TARIC definition should be brought to a higher level, taking into account the devaluation of the dollar vis-à-vis the Euro, which occurred over the years.

(14) In reply to these submissions, it is first of all noted that the Community industry did not contest that STAF have different basic physical and technical characteristics. Secondly, as regards sales channels, use, consumer perception and import trends, the Community footwear industry did not put forward any substantiated arguments that could change the findings in recitals 15 to 18 of the provisional Regulation. Furthermore, the claim for an increase of the EUR 9,00 threshold was not further substantiated by any evidence.

(15) Several importers requested to lower the minimum value of STAF from EUR 9,00 to EUR 7,50 essentially due to changed circumstances in terms of cost reducing production processes.

(16) These submissions have been analysed with care as well. It is recalled that the EUR 9 threshold was established in the TARIC nomenclature in 1994, when STAF was introduced in the framework of the quota on footwear originating from China, i.e. 12 years ago. Furthermore, the importers sufficiently substantiated with evidence that new production technologies have led to both a significant cost reduction per STAF unit and a reduction of waste in material and energy. Combined with higher competition

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due to an increased offer of STAF production, another price lowering factor, this has indeed impact on price levels as compared to the situation 12 years ago, which cannot be disregarded. A moderate reduction of the STAF threshold of EUR 1,5 is considered reasonable and necessary to reflect those changes.

(17) Moreover, various exporters claimed that the STAF definition should be broadened by including all footwear with uppers of leather and with Ethylene-Vinyl Acetate (EVA) soles and/or direct moulding within its scope.

(18) However, in reply to these submissions, it should be underlined that the use of the EVA moulding technique as such did not clearly distinguish the end product from the product concerned. Moreover, it was explained that the moulding technique, as applied to EVA soles, could also be used for footwear that were clearly not STAF. In addition, no evidence was provided showing that the distinction based on different physical and technical characteristics, different sales channels, use and consumer perception and different import trends would not be appropriate. Finally, the definitions of EVA as proposed by various importers were clearly in contradiction with each other. Therefore, this proposal regarding the definition of STAF was rejected.

(19) In conclusion, the exclusion of STAF from the definition of the product concerned in the provisional Regulation is confirmed. Furthermore, the minimum value for STAF should be lowered from EUR 9,00 to EUR 7,50. In the absence of further comments, the findings of the provisional Regulation on STAF as set out in recitals 13 to 19 of the provisional Regulation are hereby confirmed. STAF of not less than EUR 7,5 is therefore definitively excluded from the proceeding.

1.2. Children footwear

(20) Children's footwear, i.e. footwear with insoles of a length of less than 24 cm, and with a sole and heel combined having a height of 3 cm or less falling within the CN codes: ex 6403 20 00, ex 6403 30 00, 6403 51 11, 6403 51 91, 6403 59 31, 6403 59 91, 6403 91 11, 6403 91 91, 6403 99 31, 6403 99 91 and ex 6405 10 00 was not subject to provisional anti-dumping measures, because provisional findings were not such as to warrant such measures on Community interest grounds.

(21) In recitals 28 to 31 of the provisional Regulation, no definitive conclusion whether or not to include children's shoes in the definition of the product concerned had been drawn yet. Although some arguments were considered to possibly exclude children's footwear from the product scope of the investigation, these arguments did not allow a definitive conclusion at that stage of the investigation. It was therefore decided to treat children shoes as part of the product concerned pending further investigation and consideration at the definitive stage.

(22) Following disclosure of the provisional findings, certain interested parties claimed that children's footwear should be excluded from the product scope of the investigation. These claims were based on the assumption that in particular style, design, sales channels and customer service, as addressed in recitals 30 and 31 of the

provisional Regulation, clearly divided children's shoes from other types of footwear falling within the scope of the current investigation.

(23) However, those claims were deemed insufficient to exclude children's footwear from the definition of the product concerned because they were not substantiated with sufficient evidence showing that in this investigation a clear dividing line could be drawn between children's footwear and other footwear types within the scope of the investigation. In fact, to the contrary it was found that the essential physical and technical characteristics of children's footwear which were common to those of the product concerned — a combination of leather uppers with different types of soles to protect the feet — were much more important than any differences (i.e. essentially size). Furthermore, it appeared that styling, design, sales channels and consumer service were not fundamentally different from other footwear types under investigation. Just the mere fact that children's footwear form a distinctive product sub-group within the scope of the product concerned does not warrant the exclusion from the product scope. Indeed, it was found that there is no clear dividing line between children's footwear and the product concerned, but that there is rather a large overlap regarding the definition of the product concerned, notably that it is a device to cover and protect the feet of human beings essentially for walking purposes.

(24) In its reaction to the disclosure of the provisional Regulation, the Community industry claimed that children's footwear should be part of the product concerned. In particular, evidence was submitted proving that there was still an important production of children's footwear in the Community.

(25) The submission of the Community industry only confirms the definitive findings. It is therefore definitively concluded that children footwear should be included in the definition of the product concerned.

1.3. Other requests for exclusions

(26) Several interested parties claimed that certain other types of footwear within these CN codes were too different, in particular in terms of use, to belong to the same category of products. These claims are analysed below.

(i) ‘Hiking’, ‘climbing’ and other outdoor shoes

(27) Within the meaning of the Combined nomenclature, ‘hiking’, ‘climbing’ and other outdoor shoes (‘hiking shoes’) are not considered as a sporting activity and therefore these shoe types fall outside the definition of STAF footwear as defined in recital 13 of the provisional Regulation. However, certain parties requested that this product be excluded from the scope of the proceeding because (i) the requirements for such hiking shoes are allegedly very similar to STAF specifications, (ii) hiking shoes can allegedly be clearly distinguished from other footwear types in terms of sales channels and consumer perception and (iii) paying more duties on hiking footwear would have allegedly a detrimental effect on this specific market.

(28) No additional evidence concerning specific technicalities and characteristics of hiking shoes was submitted to change the conclusion of recital 34 of the