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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.4.2008  
COM(2008) 171 final

Proposal for a

### **COUNCIL REGULATION**

**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**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### 1. Context of the proposal

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the investigation which considers the extension of 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.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation and in particular Article 13 thereof.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1472/2006 imposing definitive anti-dumping duties ranging from 9.7% to 16.5% on imports of certain footwear with uppers of leather originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2. Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the opportunity to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3. Legal elements of the proposal

#### • Summary of the proposed action

Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission published, in the *Official Journal of the European Union*, a Regulation of Initiation<sup>1</sup> (the ‘initiating Regulation’) on an ex-officio basis to investigate the alleged circumvention of the anti-dumping measures. The Commission, by means of the initiating Regulation and Article 14(5) of the basic Regulation, also instructed the customs authorities to register imports of certain footwear with uppers of leather consigned from the Macao SAR whether declared as originating in the Macao SAR or not, as from 7 September 2007.

The purpose of this investigation was to examine whether imports of the product concerned are being circumvented by transshipment and/or assembly operations via the Macao SAR.

The investigation showed that these imports were circumventing the measures in place and it is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* by 4 May 2008 at the latest.

#### • Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005.

#### • Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

#### • Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how the financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

#### • Choice of instruments

Proposed instruments: regulation.

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<sup>1</sup> OJ L 234, 06.09.2007, p.3.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4. Budgetary implication

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

**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**

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 <sup>(2)</sup> (the 'basic Regulation'), and in particular Article 13 thereof,

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

Whereas:

### A. PROCEDURE

#### 1. Existing measures and former investigations

- (1) By Regulation (EC) No 1472/2006 <sup>(3)</sup>, (the 'original Regulation'), the Council imposed definitive anti-dumping duties ranging from 9,7 to 16,5 % on imports of footwear with uppers of leather originating in the People's Republic of China ('the original investigation').

#### 2. Ex-Officio Initiation

- (2) In accordance with recital (325) of the original Regulation, the Commission carried out monitoring of imports in order to identify any changes in the pattern of trade which could indicate circumvention of the measures.
- (3) The evidence at the disposal of the Commission indicated that since the imposition of the anti-dumping measures, there had been a change in the pattern of trade, based on transshipment and/or assembly practices, for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures. In addition, the evidence showed that the remedial effects of the existing anti-dumping measures on imports of certain footwear with uppers of leather originating in the PRC

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<sup>2</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>3</sup> OJ L 275, 06.10.2006, p. 1.

were being undermined both in terms of quantity and price. Finally, the evidence indicated that the prices of certain footwear with uppers of leather consigned from the Macao SAR were dumped in relation to the normal value established for the like product during the original investigation.

- (4) Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission published, in the *Official Journal of the European Union*, a Regulation of Initiation<sup>4</sup> (the ‘initiating Regulation’) on an ex-officio basis to investigate the alleged circumvention of the anti-dumping measures. The Commission, by means of the initiating Regulation and Article 14(5) of the basic Regulation, also instructed the customs authorities to register imports of certain footwear with uppers of leather consigned from the Macao SAR whether declared as originating in the Macao SAR or not, as from 7 September 2007.

### 3. Investigation

- (5) The Commission officially advised the authorities of the Macao SAR and the PRC and known manufacturers/exporters in the Macao SAR and the PRC, the importers in the Community known to be concerned and producers of certain footwear with uppers of leather in the Community of the initiation of the investigation. Questionnaires were sent to the exporters/manufacturers in the Macao SAR, to the exporters/producers in the PRC, to the importers in the Community which were known to the Commission from the original investigation and which had made themselves known within the deadlines specified in Article 3 of the initiating Regulation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.
- (6) Eight manufacturers/exporters in the Macao SAR submitted questionnaire replies. Replies to questionnaires were also submitted by 16 unrelated importers in the Community. Other importers also made themselves known but did not complete a questionnaire response.
- (7) The following companies co-operated in the investigation and submitted replies to the questionnaires:

#### ***Macanese manufacturers/exporters:***

- Fabrica de Sapatos Paolina Limitada, Macao
- Feifer Footwear/Ultimate Footwear, Macao
- Fabrica de Sapatos Fairwear, Macao
- Hap Yun Shoes Factory, Macao
- Hong Wan, Macao
- K. Wah Shoes Factory Limited, Macao

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<sup>4</sup> OJ L 234, 06.09.2007, p. 3.

- Fabrica de Sapatos Sunrise, Macao
- Vai Un Footwear Factory, Macao

***Importers in the Community:***

- a+w shoes GmbH & Co. KG, Germany
  - Aasics Europe B.V., The Netherlands
  - Aldo UK Ltd, UK
  - Caprice Schuhproduktion GmbH & Co. KG, Germany
  - Eurohispana De Inversiones, S.A., Spain
  - Firma Handlowa "C.A.M.", Poland
  - Footex International B.V., The Netherlands
  - Heson International B.V., The Netherlands
  - Mexx Shoes B.V., The Netherlands
  - Orion Italiana GmbH & Co. KG, Germany
  - PWH Originals International B.V., The Netherlands
  - Shoe.com GmbH & Co. KG, Germany
  - Wendel GmbH & Co. KG, Germany
  - Wolverine Europe Ltd., UK
  - Wolverine Europe B.V., The Netherlands
  - Wortman KG Internationale Schuproduktionen, Germany
- (8) In addition, 27 producers/exporters in the PRC replied to mini questionnaires regarding trade in footwear via Macao.
- (9) Verification visits were carried out at the premises of the following companies:
- Fabrica de Sapatos Paolina Limitada, Macao
  - Feifer Footwear (Macau)/Ultimate Footwear (Macau), Macao
  - Fabrica de Sapatos Fairwear (Macau) Limitada, Macao
  - Hap Yun Shoes Factory, Macao
  - Hong Wan Factory, Macao
  - Fabrica de Sapatos K. Wah Limitada, Macao



– Vai Un Footwear Factory, Macao

- (10) By visiting 7 companies, over 90% of the production of the co-operating manufacturers was covered.
- (11) Where appropriate, verification visits were also carried out to traders in both the Macao SAR and the Hong Kong SAR, which traded the product concerned for sale to the Community market. Such visits were limited to sales of the product concerned produced by the verified Macanese companies and the authorities of the Hong Kong SAR were informed of these visits.

4. Product concerned and like product

- (12) The product concerned by the possible circumvention is footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap ('certain footwear with uppers of leather') originating in the People's Republic of China, normally declared under CN codes 6403 20 00, ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 (the 'product concerned').
- (13) The product under investigation is footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap consigned from the Macao SAR (the 'product under investigation'), whether declared as originating in Macao SAR or not, normally declared under the same CN codes as the product concerned.
- (14) The investigation showed that footwear exported to the Community from the People's Republic of China and those consigned from the Macao SAR to the Community have the same basic physical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

5. Investigation period

- (15) The investigation period (the 'IP') covered the period from 1 July 2006 to 30 June 2007. Data was collected from 2004 up to the end of the IP to investigate the alleged change in the pattern of trade and the other aspects set out in Article 13 of the basic Regulation.

6. Disclosure

- (16) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:

(i) the extension of the definitive anti-dumping measures imposed by Council Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR;

(ii) not to grant exemptions to the companies having requested them. In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representations subsequent to this disclosure.

(17) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly.

## **B. RESULTS OF THE INVESTIGATION**

### **1. General considerations**

(18) As mentioned above, the analysis of a change in the pattern of trade covered the period from 2004 up to the end of the IP. Data was collected and analysed on the basis of the enlarged Community market ('EU27') as at the date of the initiating Regulation. However, it should be noted that the original measures were imposed on the PRC on the basis of calculations based on the Community market as it existed at that time ('EU25'). Bearing this in mind, the import levels into the two new Member States (Bulgaria and Romania) were analysed and it was clear that these accounted to only a very small percentage of total EU27 imports and that therefore the decision as to which EU market level (EU27 or EU25) should be used as a basis for analysis had no impact on the outcome of the conclusions reached.

### **2. Degree of cooperation and determination of the import volume**

(19) As stated above in recital (6), eight exporters/manufacturers in the Macao SAR cooperated with the investigation by submitting questionnaire replies and all of these companies exported the product concerned to the Community during the IP either directly or indirectly via traders. Based on information supplied by the Macanese authorities, it was clear that at least 15 companies were manufacturing footwear in Macao at the initiation of the investigation. However, the largest manufacturer, which represented around 50% of exports to the Community, did not co-operate and therefore co-operation levels were determined to be below 50%. Furthermore, only 27 exporting producers replied to the Commission's mini questionnaire for producer/exporters in the PRC. During the original investigation it was clear that the number of producers in the PRC was many hundreds. None of the 27 respondents stated that they exported to the Community market via Macao.

(20) As it was clear that the co-operation level for both the Macao SAR and the PRC was not high, the determination of the import volume had to be obtained via statistical sources. This data was cross-checked and confirmed by other statistical sources available to the Commission. This approach was further confirmed by other information received during the investigation which indicated the existence of a number of other non-cooperating exporters/manufacturers in the Macao SAR and the PRC which exported the product concerned to the Community during the IP.

### **3. Methodology**

- (21) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was done by analysing whether there was a change in the pattern of trade between third countries and the Community, if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty, if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product, and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.
- (22) The practice, process or work referred to above includes, *inter alia*, the consignment of the product subject to measures via the Macao SAR and the assembly of parts by an assembly operation in the Macao SAR. For this purpose, the existence of assembly operations was determined in accordance with Article 13(2) of the basic Regulation.
- (23) In this regard, it is noted that eight manufacturing companies in Macao submitted questionnaire responses. The seven largest manufacturers were verified on spot and all eight responses were used as a basis for the calculation of the following aspects of the investigation mentioned at Article 13 of the basic Regulation:
- a) the value of the parts used in the assembly operations;
  - b) the value added in terms of cost of manufacturing (COM);
  - c) dumping using the normal value from the previous investigation;
  - d) the determination of when the companies started manufacturing, or whether operations substantially increased, since the imposition of measures;
  - e) the assessment of whether the imported products had, in terms of quantities and/or prices, undermined the remedial effects of the measures in force.
- (24) As regards a) and b) above, cost information from the Macanese manufacturers including their purchases from Chinese suppliers was used. As none of the Chinese suppliers involved received MET status in the original investigation, the question arose whether the cost information relating to the Chinese suppliers could be used. In the original investigation, where it was found that Chinese costs were unreliable because no MET status was granted, costs from an analogue country (Brazil) were used as a replacement. In respect of this investigation, calculations were made using both Chinese and analogue country data from the original investigation.
- (25) Where a particular company did not supply a full questionnaire response, findings relating to a) to e) above as necessary were based on facts available in accordance with Article 18 of the basic Regulation. Where this was necessary, the relevant manufacturer/exporter was informed by means of, *inter alia*, a disclosure and given an opportunity to comment.
- (26) Bearing in mind that the statistical evidence collected in this investigation did not differentiate amongst the types of footwear concerned, the tests mentioned at recital (23) above were assessed on the basis of data received from the co-operating Macanese manufacturers/exporters.

- (27) To assess whether the imported products from the Macao SAR had, in terms of quantities and/or prices, undermined the remedial effects of the measures in force, the sales quantities and prices of the eight co-operating manufacturers were compared to the injury elimination level established for Community producers in the original investigation.
- (28) In accordance with Article 13(1) and (2) of the basic Regulation, it was examined whether there was evidence of dumping in relation to the normal value previously established for like or similar products. In this regard, export prices of the co-operating manufacturers in the Macao SAR during the IP were compared with the normal value established in the investigation leading to the imposition of the definitive measures for the like product. In the original investigation normal value was established on the basis of prices or constructed value in Brazil, which was found to be an appropriate market economy analogue country for the PRC. For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability.
- (29) In accordance with Article 2(11) and (12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original investigation and the weighted average export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier, duty unpaid.

#### **4. Change in the pattern of trade**

- (30) Imports from China have reduced since the imposition of provisional measures in the original investigation by Commission Regulation (EC) No 553/2006<sup>5</sup>. By contrast, imports from the Macao SAR have increased enormously. This change in trade pattern is most accurately expressed in this investigation by analysing sales volumes in the period April to December of the years 2005, 2006 and 2007 because measures were originally imposed in April 2006 and footwear is a product with seasonal variations.

##### The PRC

Period	Volume exported to the EU
April to December 2005	around 142 million pairs
April to December 2006	around 66 million pairs
April to December 2007	around 70 million pairs (extrapolation based on available data)

##### The Macao SAR

Period	Volume exported to the EU
April to December 2005	around 0.5 million pairs

<sup>5</sup> OJ L 98, 06.04.2006, p.3.

April to December 2006	around 8.0 million pairs
April to December 2007	around 8.5 million pairs (extrapolation based on available data)

*Source - statistical data (Taric) available to the Commission covering only the product concerned (figures rounded for reasons of confidentiality)*

- (31) It is clear from the above figures that imports from the PRC fell substantially in the last nine months of 2007 and 2006 as compared to 2005. In contrast, imports from the Macao SAR increased substantially over the same time periods. These findings support the allegation that goods have been consigned from China via the Macao SAR to the Community.
- (32) The Commission carried out cross-checking of this data to other available statistical sources which revealed similar trends.
- (33) The Commission also used Macanese import and export statistics for shoe parts which showed that:

Period	Volume imported to the Macao SAR from the PRC
April to December 2005	around 30 tonnes
April to December 2006	around 900 tonnes
April to December 2007	around 800 tonnes (extrapolation based on available data)

In contrast, the volume of exports of such shoe parts during the above 3 periods was negligible.

*Source – Macao Economic Services Database*

- (34) The above findings show that the importation of shoe parts increased by a massive amount after the imposition of the provisional measures in April 2006 and provides evidence that a large assembly operation was being set up in the Macao SAR after the imposition of those measures.
- (35) The Commission also used Macanese import and export statistics for **finished footwear** which showed that:

Period	Volume imported to the Macao SAR from the PRC
April to December 2005	0.04 million pairs
April to December 2006	4.5 million pairs
April to December 2007	5.1 million pairs (extrapolation based on

	available data)
Period	Volume exported to the EU from the Macao SAR
April to December 2005	0.3 million pairs
April to December 2006	10.8 million pairs
April to December 2007	8.2 million pairs (extrapolation based on available data)

*Source – Macao Economic Services Database*

- (36) The above findings show that the importation of footwear from the PRC to the Macao SAR and the exportation of the same footwear from the Macao SAR to the EU increased by a massive amount after the imposition of the provisional measures in April 2006. This provides evidence that large-scale transshipment operations were performed via the Macao SAR after the imposition of those measures.
- (37) The overall decrease of Chinese exports to the Community and the parallel increase of exports from the Macao SAR after the imposition of the provisional measures constitute a change in the pattern of trade between the above mentioned countries.

## **5. Circumvention via Assembly Operations**

- (38) In addition to the evidence used above at recital (37), circumvention via assembly operations was assessed using data supplied by the co-operating Macanese exporters/producers.

### **5.1. The Value of Parts Test (Article 13.2 (b))**

- (39) For all eight co-operating Macanese exporters the vast majority of the raw materials were supplied from Chinese suppliers. These raw materials were not simply leather, plastics etc. but complete uppers, outsoles, insoles, laces, shoe-boxes and other accessories. In some cases, even glue was sourced from these Chinese suppliers. This was evidenced by copies of raw materials invoices seen on spot together with a physical inspection of the production lines and stocks of raw materials.
- (40) None of the Chinese companies which supplied the eight Macanese manufacturers received MET status in the original investigation and the question therefore arose whether the purchase data from the Chinese suppliers could be used. In the original investigation, where it was found that Chinese costs were unreliable because no MET status was granted, costs from an analogue country (Brazil) were used as a replacement. In respect of this investigation, calculations were made using both Chinese and analogue country data.
- (41) As regards the calculation using the cost data of the Macanese manufacturers, including the actual purchase costs from their Chinese suppliers, a limited amount of very minor materials were sourced locally in Macao but these did not amount to more than 2% of the total value of the assembled parts.

- (42) As regards the calculation using the analogue country data in Brazil, a very similar result was obtained although, as the Brazilian raw material costs were slightly higher than the actual Chinese data, the percentage of total raw material costs sourced in the Macao SAR was even lower.
- (43) It was therefore concluded that more than 60% of the total value of the raw materials of the assembled product were sourced from the PRC.

## **5.2. The Value Added Test of the Cost of Manufacturing ('COM') (Article 13.2 (b))**

- (44) This test was assessed using data supplied by the eight co-operating Macanese manufacturers. For all the companies it was clear that the vast majority of the value added in the COM was carried out in the PRC rather than in the Macao SAR. The sourcing from the PRC was in all cases of the parts which were so far advanced that the assembly in Macao related to machinery and labour for glueing and finishing of the footwear.
- (45) For each company a calculation was performed to assess the value added in terms of COM in Macao. Such data was obtained from the accounting records held by each company. However, some companies operated only on the basis of processing fees and were unaware of the value of the processing carried out in the PRC by their suppliers. In such cases, it was possible to estimate this value using information relating to raw materials obtained from the PRC and the export price of the goods from Macao excluding profit and SGA costs. This test was carried out through examination of copies of raw materials invoices, accounting records of other COM items seen on spot, export invoices together with a physical inspection of the production lines and stocks of raw materials.
- (46) None of the Chinese companies which supplied the eight Macanese manufacturers received MET status in the original investigation and therefore the question arose whether the purchases from the Chinese suppliers could be used. In the original investigation, where it was found that Chinese costs were unreliable because no MET status was granted, costs from an analogue country (Brazil) were used as a replacement. In respect of this investigation, calculations were made using both Chinese and analogue country data.
- (47) As regards the calculation using the cost data of the Macanese manufacturers, including the actual purchase costs from their Chinese suppliers, calculations showed that the COM of the assembly operations in Macao amounted to between 6 and 18% depending on the company and the weighted average was 9.5%. As regards the calculation using the analogue country data in Brazil, a very similar result was obtained although as the Brazilian COM costs were slightly higher than the actual Chinese data, the percentage of COM costs sourced in the Macao SAR was even lower.
- (48) One co-operating importer argued that the Macanese manufacturers were not breaching the test concerning 25% value added of the manufacturing cost. They claimed that, as the Macanese manufacturers had Certificates of Origin for their footwear exports, they were not circumventing the measures in place. However, whether the Macanese manufacturers offer Certificates of Origin with their exports is

not at issue. Compliance with the rules of origin does not exclude the possibility of circumvention.

- (49) It was concluded based on recitals (44) to (48) that the value added to the parts brought in, during the assembly operation, did not exceed 25% of the value of the cost of manufacturing.

### **5.3. Increase in Production since the Opening of the Original Investigation (Article 13(2)(a))**

- (50) The original investigation relating to this product was initiated on 7 July 2005. It was therefore necessary to establish if production increased since that date. This test was assessed using purchase invoices of raw materials, production records and sales invoices of finished goods of the eight co-operating Macanese exporters.
- (51) For three companies, it was clear that the footwear production at the company had been set up since July 2005.
- (52) For all remaining companies, a substantial increase in production was established when comparing 2005 production volumes to those of the IP. These increases averaged over 100%. It was therefore concluded that there was a substantial increase in production since the original case was opened in July 2005.
- (53) The legal representatives for several co-operating importers claimed that their customers (retailers) preferred footwear made in Macao than those made in the PRC because they were made to higher production standards and used a better quality of raw materials. They also claimed that intellectual property theft was a concern in the PRC. The importers claim that this is one reason why they source from the Macao SAR. However, none of these claims has been substantiated by the co-operating manufacturers in the Macao SAR. Indeed, none of the co-operators had major production facilities and simply assembled parts sourced from the PRC. The investigation further showed that in terms of raw material quality and production standards, the footwear sourced in the Macao SAR was identical to that sourced in the PRC. In respect of intellectual property rights, this allegation was also unsubstantiated and could not explain why concerns over this issue had led to such a sudden increase in production in the Macao SAR as explained above. The investigation concluded that the reason for such an increase in production was the imposition of anti-dumping measures on footwear from the PRC.
- (54) Another importer claimed that the existence of manufacturing facilities in the Macao SAR prior to the imposition of measures in the PRC shows that there is an economic justification for the imports from the Macao SAR. However, the investigation showed that prior to the imposition of measures concerning imports from the PRC, the level of manufacturing activity in the Macao SAR was very low. Indeed, as the above findings show, there was a massive increase in footwear manufacturing activity since the measures were imposed. This was caused by new companies being formed and pre-existing companies increasing and/or restarting production.

### **6. Circumvention via Transshipment**



- (55) As none of the 27 Chinese exporters which co-operated in the investigation declared that they performed shoe business via Macao, the Commission analysed statistical data in order to examine whether transshipment via Macao occurred.
- (56) The change in the pattern of trade described above at recitals (30) to (37) supports the allegation of circumvention via transshipment. In particular, the trade in finished footwear set out in recital (35) shows that the product concerned, which was exported to the Community market from the PRC, was being consigned through the Macao SAR.
- (57) Bearing in mind that the population of the Macao SAR numbered only around 0.5 million persons during the IP, it cannot be claimed that the 4.5 million pairs of shoes imported from the PRC in 2006 could be consumed in Macao. On the contrary, the export statistics show that a large proportion of such footwear was re-exported to the Community market. The volume exported in the IP from Macao to the Community was in fact higher than 4.5 million pairs (around 10 million pairs). This increase can be explained by the conversion of shoe parts into finished footwear.
- (58) The investigation did not uncover any justification other than the imposition of the measures for such practices.
- (59) In conclusion, the investigation has shown that large-scale transshipment operations were performed via the Macao SAR after the imposition of the anti-dumping measures on footwear originating in the PRC.

#### **7. Dumping Test (Article 13(1))**

- (60) In accordance with Article 2(11) and (12) of the basic Regulation, a comparison of the weighted average normal value as established in the original investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier duty unpaid, showed dumping of the imports of the product concerned consigned from the Macao SAR.
- (61) The methodology for this test is described at recitals (21) to (29). The dumping margin for the co-operating companies ranged from 8% - 57%. In the absence of cooperation for transshipping operations, a calculation of dumping was performed on the basis of available statistical sources, confirming significant dumping levels.
- (62) One co-operating importer claimed that imports from Macao were not dumped and contested the methodology of using normal value from the original investigation. However, it must be pointed out that the methodology employed is the one set out in Article 13(1) of the basic Regulation.

#### **8. Undermining of the remedial effect of the anti-dumping duty (Article 13(1))**

- (63) The trade flow analysis at recitals (30) to (37) shows a change in the pattern of Community imports, which occurred since the original investigation was opened. It was therefore examined whether this change in the pattern of trade undermined the remedial effects of the anti-dumping measures imposed in the original investigation.
- (64) In terms of quantities, recital (35) above shows an increase in footwear exports to the Community market of around 10 million pairs in the period of April to December

2006 and 2007 as compared to the same period in 2005. In the original investigation the Community market was established at 714 million pairs which mean that the imports account for around 1.5% of consumption. Furthermore, as CIF import prices averaged over 10 Euros per pair, the imports from the Macao SAR totalled over 100 million Euros. The imports from the Macao SAR must therefore be deemed to be material and significant.

- (65) With regard to dumped prices of the product consigned from the Macao SAR, it was found that they were, on average, well below the injury elimination level established for Community producers in the original investigation.
- (66) Therefore, it was concluded that the imports from the Macao SAR of the product concerned undermined the remedial effects of the duty in terms of prices and quantities.

### **C. CONCLUSIONS**

- (67) The present investigation was characterised by a high level of non-cooperation in the PRC, whereas co-operation in the Macao SAR, whilst not high, was deemed adequate to provide a representative basis for the assessment of trade consigned from the Macao SAR by means of assemblers. As regards the allegations of transshipment via the Macao SAR (without assembly), no companies cooperated with the investigation leaving the Commission to rely, *inter alia*, on statistical information.
- (68) The investigation showed that there is clear circumvention of the measures on the product concerned from the PRC within the meaning of Article 13(1) and (2) of the basic Regulation via the Macao SAR. In view of the above, the existing anti-dumping measures imposed on imports of the product concerned originating in the PRC should be extended to the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not.
- (69) The measures to be extended should be those established in Article 1(3) of the original Regulation for 'all other companies'.
- (70) In accordance with Article 14(5) of the basic Regulation, which provides that any extended measures should apply to imports which entered the Community under registration imposed by the initiating Regulation, duties should be collected on those registered imports of the product concerned consigned from the Macao SAR.

### **D. REQUESTS FOR EXEMPTION**

- (71) None of the eight companies in the Macao SAR which submitted a questionnaire reply requested an exemption in accordance with Article 13(4) of the basic Regulation.
- (72) However, it should be noted that all of the eight companies carried out very similar limited assembly functions and sourced all of their main raw materials in the PRC. As all these companies consequently failed each of the circumvention tests outlined in Article 13 (1) and (2) of the basic Regulation, no such exemptions would therefore have been granted even if they had been requested.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The definitive anti-dumping duty applicable to "all other companies" imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather or composition leather as defined in Article 1 of Council Regulation (EC) No 1472/2006 originating in the People's Republic of China, is hereby extended to certain footwear with uppers of leather or composition leather as defined in Article 1 of Council Regulation (EC) No 1472/2006 falling within CN codes :

Ex 6403 20 00, ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00

consigned from the Macao SAR whether declared as originating in the Macao SAR or not. The TARIC codes for imports consigned from the Macao SAR are listed in the Annex of this Regulation.

2. The duties extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Commission Regulation (EC) No 1028/2007 and Articles 13(3) and 14(5) of Council Regulation (EC) No 384/96.

3. The provisions in force concerning customs duties shall apply.

*Article 2*

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 2 of Commission Regulation (EC) No 1028/2007.

*Article 3*

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

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

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

## **ANNEX**

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1 of Council Regulation (EC) 1472/2006, consigned from Macao, whether originating in Macao or not

CN code	TARIC code Consigned from Macao
6403 20 00	20
6403 51 05	15
6403 51 05	95
6403 59 05	15
6403 59 05	95
6403 91 05	15
6403 91 05	95
6403 99 05	15
6403 99 05	95
6403 51 11	91
6403 51 15	91
6403 51 19	91
6403 51 91	91
6403 51 95	91
6403 51 99	91
6403 59 11	91
6403 59 31	91
6403 59 35	91
6403 59 39	91
6403 59 91	91
6403 59 95	91

6403 59 99	91
6403 91 11	95
6403 91 13	95
6403 91 16	95
6403 91 18	95
6403 91 91	95
6403 91 93	95
6403 91 96	95
6403 91 98	95
6403 99 11	91
6403 99 31	91
6403 99 33	91
6403 99 36	91
6403 99 38	91
6403 99 91	95
6403 99 93	25
6403 99 93	95
6403 99 96	25
6403 99 96	95
6403 99 98	25
6403 99 98	95
6405 10 00	81