COMMISSION REGULATION (EC) No 165/97

of 28 January 1997

imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as amended by Regulation (EC) No 2331/96 [2], and in particular Articles 7 and 23 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 22 February 1995, the Commission announced by means of a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain footwear with textile uppers originating in the People's Republic of China and Indonesia and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Confederation of the Footwear Industry (CEC) on behalf of national footwear federations whose members account for a major proportion of the Community production of the footwear subject to this investigation. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(3) In view of the large number of producers in this industry in the Community, it was considered appropriate in this case to examine in detail the degree of support for, or opposition to, the complaint, in accordance with Article 5 (4) of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation') before initiating any investigation. That examination showed clear support for the complaint with the companies concerned accounting for some 54 % of total estimated Community production of the footwear in question.

(4) The Commission officially notified the exporters and importers known to be concerned and their representative associations, as well as the representatives of the exporting countries involved, of the initiation of the proceeding. All parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice of initiation.

(5) The authorities of the exporting countries concerned as well as a number of exporters, Community importers, their representative associations and trade associations made their views known in writing. All parties who so requested within the time-limit were granted a hearing.

(6) In view of the large number of Community producers which were party to the complaint, and in conformity with Article 17 of the Basic Regulation, it was considered appropriate to limit the investigation to a number of those producers which could reasonably be investigated within the time available. In that context, the questionnaires serving to collect data and thus permit an evaluation of any injury to the Community industry, were addressed only to the national producers' federations in the Community and to 28 of the 68 companies expressly supporting the complaint. For verification purposes, given the difficulty in carrying out detailed on-the-spot investigations in respect of the abovementioned 28 companies (hereinafter referred to as 'the first group'), nine of those companies (hereinafter referred to as 'the verification sample') were selected and their responses subjected to in-depth, on-the-spot verifications.

(7) The Commission also sent questionnaires to the following:

— the Indonesian and Chinese producers/exporters listed in the complaint,

— the Hong Kong exporters listed in the complaint,

— the competent authorities of the exporting countries concerned,

— exporters who, while not listed in the complaint, made themselves known and requested a questionnaire within the deadline set in the Notice of initiation.

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No C 45, 22. 2. 1995, p. 2.

In total, five replies to the questionnaire were received from producers/exporters in Indonesia and 30 from producers/exporters in the People's Republic of China.

(8) In view of this number of replies, 35 in total, the Commission proposed, in accordance with Article 17 of the Basic Regulation, to limit its investigation to a reasonable number of cooperating exporters. Agreement was reached with the cooperating exporters' legal representatives on the selection of a sample of three companies from the People's Republic of China and three from Indonesia.

(9) In addition, the Commission sent questionnaires to all known importers. Replies were received from 17 such importers.

(10) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping and injury, and carried out investigations at the premises of the following companies:

(a) *Community producers*

The verification sample referred to in (6) consisted of a total of nine companies situated in France, Portugal, Spain and the United Kingdom, which are all Member States with a large production of the footwear under investigation. Together those Member States accounted for 81 % of total Community production of the product in question in 1994.

The nine abovementioned companies requested that their identities be kept confidential on the grounds that some of them had been threatened with commercial retaliation by certain customers who were at the same time importers and major retailers in the Community. The investigation confirmed that certain Community producers had been subjected to severe commercial pressure to stop cooperating and to withdraw their support for the complaint and it has therefore been considered appropriate not to disclose the names of those nine companies.

(b) *Importers/distributors*

— Groupe André SA, Paris (F),
— Chausseurop SA, Le Havre (F),
— Atlex SA, Rouen (F),
— Intermedium BV, Hoofddorp (NL),
— British Shoe Corporation Ltd, Leicester (UK).

(c) *Exporters/producers in Indonesia*

— PT Dragon,
— PT Sindoll Pratama,
— PT Emperor Footwear Indonesia.

(11) The dumping investigation covered the period from 1 January 1994 to 31 December 1994 (hereinafter referred to as 'the investigation period'). The geographical scope of the investigation over this period was the Community as constituted at the time of initiation of the proceeding, that is to say all 15 Member States.

(12) Owing to the volume and complexity of the information gathered from many different sources and, in particular in the light of the numerous types of footwear covered by the investigation, it exceeded the normal duration provided for in Article 6 (9) of Council Regulation (EC) No 3283/94 [1] under which the present proceeding was initiated.

B. PRODUCTS UNDER CONSIDERATION AND LIKE PRODUCTS

1. Description of the product under consideration

(13) The product under investigation in this proceeding is footwear with outer soles of rubber or plastics and uppers of textile materials, falling within CN codes 6404 19 10 and ex 6404 19 90. It should be noted that the above do not include footwear which is designed for a sporting activity, such as tennis shoes, basketball shoes, gym shoes, training shoes and the like falling within CN code 6404 11 00.

(14) It should also be noted that certain types of footwear sometimes known as 'espadrilles', that is shoes with canvas uppers and unheeled plaited fibre soles not thicker than 2,5 cm and strengthened with rubber or plastics over a variable surface, were already subject to anti-dumping measures and were excluded from the current investigation.

(15) Given the wide range of footwear that can be classified under each of the two CN codes in question, it was decided at the beginning of this investigation that it would be appropriate to divide the product in question into 'categories' and, for working purposes, to gather and handle the data collected on the basis of those categories.

To this end, four different categories were formulated as follows:

Category A: slippers and other indoor footwear with outer soles of rubber or plastics and uppers of textile materials, with in-soles of a length of less than 24 cm (that is, generally speaking for children),

[1] OJ No L 349, 31. 12. 1994, p. 1.

Category B: slippers and other indoor footwear with outer soles of rubber or plastics and uppers of textile materials, with in-soles of a length of 24 cm or more (that is, generally speaking for adults),

Category C: outdoor footwear with outer soles of rubber or plastics and uppers of textile materials, with in-soles of a length of less than 24 cm (that is, generally speaking for children),

Category D: outdoor footwear with outer soles of rubber or plastics and uppers of textile materials, with in-soles of a length of 24 cm or more (that is, generally speaking for adults).

(16) Although the footwear falling within any of the above categories can cover a wide range of styles and types, as well as different production methods, their essential characteristics, their uses and consumer perception thereof remain basically the same. Therefore, for the purposes of the present proceeding and in accordance with the consistent Community practice, they are regarded as one single product.

2. Like product

(17) As to the footwear produced by the Community industry and sold on the Community market, the investigation established that a range of different styles and types existed. However, it was concluded that they all had the same general characteristics and uses.

(18) Certain interested parties claimed that the Community producers did not have the capability to manufacture large volumes of the type of product imported from the countries concerned and that there was therefore no like product produced in the Community. In order to demonstrate this point, one major importer/retailer sought written quotations from a number of Community producers for a potentially large order of shoes with textile uppers and vulcanized soles. Copies of a number of negative replies which, according to this importer/retailer, proved that this product could not be made in the Community were forwarded to the Commission.

It should be recalled that the main criteria to be applied in the determination of the 'like product' are based on the general technical or physical characteristics, the use or functions and finally, the consumer's perception of products, and not the method used for their production. In this context, whilst the vulcanization process is somewhat different to that of injection moulding, the minor differences resulting from the different production processes do not detract from the fact that both the imported products and the Community-produced ones can be considered to be interchangeable as regards their application, use and consumer perception thereof, and thus to be competing with each other. In this case, products imported from third countries, with similar characteristics and having the same uses, compete on price with a variety of Community-produced goods. It has to be stressed in this context that the Commission received evidence that the vulcanization process still remains in use in the Community.

(19) Having investigated further the particular allegation made by the importer/retailer concerned, the Commission discovered that the information provided was incomplete. The company in question had in fact omitted to send the Commission a number of other replies from Community producers who stated that they were producing the type of footwear requested, and that they were both willing and able to supply the product subject to the importer's enquiry. The Community producers manufactured samples and provided quotations for the potential order. The argument put forward by the importer/retailer concerning the incapacity of the Community producers to manufacture the like product using a particular method was therefore rejected.

(20) Accordingly, footwear subject to this proceeding produced in the People's Republic of China and in Indonesia and exported to the Community is considered to be a like product to footwear produced in the Community within the meaning of Article 1 (4) of the Basic Regulation.

(21) Similarly, footwear subject to the current investigation produced in Indonesia was considered to be a like product to the footwear produced and exported from the People's Republic of China to the Community. This is particularly relevant in the light of the fact that Indonesia has been used as the analogue country for the calculation of normal value for the People's Republic of China as set out in (40) and (41).

C. DUMPING

1. Indonesia

(a) *Sampling*

(22) As mentioned in (8), the Commission used sampling techniques as provided for in Article 17 of the Basic Regulation and selected three companies to be used as the sample for Indonesia.

(23) It was agreed with the other Indonesian companies which cooperated with the Commission's investigation but were not included in the sample that they would be attributed the weighted average dumping margin established for the companies in the sample.

(24) The companies in the sample which fully cooperated with the investigation were informed that they would be given individual dumping margins and duty rates.

(b) *Normal value*

(25) In order to establish normal value for each of the three Indonesian companies in the sample, the Commission first determined whether the total domestic sales of the footwear concerned by each producer were representative when compared to their total sales of the footwear concerned to the Community. In accordance with Article 2 (2) of the Basic Regulation, domestic sales are normally considered representative when the total domestic sales volume of the like product for each producer represents at least 5 % of its sales volume of the product under consideration exported to the Community.

(26) It was established that none of the three companies in the sample had sufficient domestic sales of the footwear concerned during the investigation period within the meaning of Article 2 (2) of the Basic Regulation to enable normal value to be calculated on the basis of prices paid on the domestic market. Accordingly, it was considered appropriate to construct normal value for the Indonesian companies in the sample on the basis of Article 2 (3) of the Basic Regulation by adding to the production cost of each model exported to the Community a reasonable amount for selling, general and administrative expenses (hereinafter referred to as 'SG&A') and for profit.

(27) The investigation revealed that one of the companies sold substantial quantities of the same general category of product on the domestic market in the investigation period, in this case footwear with plastic uppers, a type of footwear not subject to this proceeding. In the case of this company, SG&A and profit were determined in accordance with Article 2 (6) (b) of the Basic Regulation on the basis of the actual amounts found in respect of its own production and sales in Indonesia of footwear with plastic uppers.

(28) In the absence of domestic sales of either the like product or the same general category of product by the two other companies in the sample, the SG&A and profit used in the construction of normal value for these companies were established in accordance with Article 2 (6) (c), that is to say any other reasonable basis, in this case by reference to the actual amounts found for the company referred to in (27).

(c) *Export price*

(29) Since exports of the footwear concerned from Indonesia were made to independent customers in the Community, the export price was established in accordance with Article 2 (8) of the Basic Regulation, that is on the basis of export prices actually paid or payable.

(d) *Comparison*

(30) For the purpose of ensuring a fair comparison between normal value and the export prices of the companies in the sample, due allowance in the form of adjustments was made in accordance with Article 2 (10) of the Basic Regulation for differences affecting price comparability, whenever these were claimed and duly justified. In consequence, adjustments were made, where appropriate, for differences in physical characteristics, transport, insurance, handling, loading and ancillary costs, packing, credit costs, bank charges and guarantees/warranties.

(31) In the case of one of the Indonesian companies in the sample, a level-of-trade allowance was claimed. The company contended that such an allowance was warranted because its export sales to the Community were made in large quantities to distributors and wholesalers, whilst its domestic sales of footwear with plastic uppers, upon which the SG&A used in the construction of normal value was based, were allegedly made in small quantities to retailers and traders. Upon further examination during the on-the-spot investigation, it was established that the domestic purchasers of footwear with plastic uppers were in fact also distributors and wholesalers. Consequently, this claim was rejected, since normal value and export price were at the same level of trade and no adjustment was therefore required or warranted.

(e) *Dumping margins*

(32) To calculate the dumping margin of each Indonesian company in the sample, the Commission made a comparison between weighted average normal values and the weighted average export

prices of the exporters, except in those cases where there was a pattern of export prices which varied significantly between different purchasers, regions and/or periods. In such cases, export prices had to be compared on a transaction-by-transaction basis to weighted average normal values, in accordance with Article 2 (11) of the Basic Regulation.

(33) The comparison showed the existence of dumping of the footwear concerned during the investigation period by two of the three companies in the sample. The provisional dumping margins for those companies as thus established and expressed as a percentage of the cif price at Community frontier are:

— PT Dragon 5,5 %,

— PT Emperor Footwear Indonesia 0,0 %,

— PT Sindoll Pratama 28,5 %.

(34) The dumping margin for the two cooperating companies which were not selected was based on the weighted average established for the sample. The average dumping margin for the sample was established as a weighted average margin of the dumping margins established for each company in the sample. The 'zero' dumping margin calculated for the third company was disregarded in accordance with Article 9 (6) of the Basic Regulation. The provisional dumping margin as thus established and expressed as a percentage of the cif price at Community frontier was 15,4 %.

The two companies which will be subject to the average of the sample are:

— PT Bosaeng Jaya,

— PT Volmacarol.

(35) For those producers in Indonesia which neither replied to the Commission's questionnaire nor made themselves known, the provisional dumping margin has, in accordance with Article 18 of the Basic Regulation, been determined on the basis of the facts available. In view, however, of the unusually high degree of non-cooperation in this case on the part of Indonesian exporters and in order to avoid rewarding non-cooperation, the Commission considered it appropriate provisionally to base the residual dumping margin on the average of the highest dumped transaction found for each of the three companies selected in the sample. The margin thus established was 53 %.

2. People's Republic of China

(a) *Sampling*

(36) As mentioned in (8), sampling techniques as provided for in Article 17 of the Basic Regulation were used in respect of the People's Republic of China. Three companies were selected in agreement with the legal representatives of the cooperating companies concerned.

(37) It was agreed that the dumping margin for the cooperating Chinese companies not included in the sample would be established using as a basis the weighted average dumping margin established for the three companies in the sample.

(38) The dumping margin calculated for non-cooperating companies would be established on the basis of the facts available, in accordance with Article 18 of the Basic Regulation.

(39) Since the People's Republic of China is a non-market economy country, a single dumping margin would be calculated using the weighted average of the margins established for the cooperating and non-cooperating exporters.

(b) *Normal value — choice af analogue country*

(40) In accordance with Article 2 (7) of the Basic Regulation, normal value was base on data collected from producers in a market economy country (the 'analogue country').

(41) With regard to the choice of analogue country, Thailand was proposed in the complaint. However, that was opposed by a number of importers and the Chinese exporters on the grounds that the levels of economic development in the People's Republic of China and in Thailand were dissimilar. Two trade bodies, the Foreign Trade Association (FTA) and the Federation of the European Sporting Goods Industry (FESI) put forward Indonesia, as did the Chinese exporters. Bangladesh, India, Pakistan and Vietnam were also proposed at various stages of the proceeding by certain interested parties without, however, providing evidence justifying why any of those countries shoud be given preference to another.

Having examined the limited information available in respect of all the countries suggested, the Commission finally considered that, in accordance with Article 2 (7) of the Basic Regulation, Indonesia was a reasonable choice of analogue country since there appeared to be a large number of suppliers in that market and a certain degree of similarity between the production processes employed there and in the People's Republic of China. Furthermore, no significant differences were apparent as regards access to raw materials. Moreover, Indonesia had been proposed by the Chinese producers and no objection was raised by the Community producers.

(c) *Normal value — calculation of normal value*

(42) The investigation established that there were either no or insufficient domestic sales of the product concerned by the cooperating companies in the analogue country, Indonesia, within the meaning of Article 2 (3) of the Basic Regulation. Therefore, in accordance with Article 2 (7) of the Basic Regulation, in the absence of domestic sales in Indonesia, normal value for the Chinese exporters included in the sample was calculated using constructed normal values, established on a model-by-model basis, for the Indonesian companies included in the sample.

(43) As mentioned in (26), (27) an (28), the constructed value was established by adding a reasonable amount for SG&A and profit to the manufacturing cost of each model. In this respect, it should be noted that the Indonesian models used were those found, on the basis of the information provided to the Commission, to be similar to or, in the absence of similar models, those most closely resembling the Chinese models exported to the Community by the Chinese companies in the sample.

(d) *Export price — calculation of export price*

(44) The Commission's investigation showed that the exports of the three Chinese companies in the sample were made directly to independent customers in the Community. It was, therefore, possible to establish export prices on the basis of prices actually paid or payable.

(e) *Comparison*

(45) For the purpose of ensuring a fair comparison between normal value and the export prices of the companies in the sample, allowance in the form of adjustments was made in accordance with Article 2 (10) of the Basic Regulation for duly justified differences affecting price comparability. Consequently, adjustments were made for differences in physical characteristics, transport, insurance, handling, loading and ancillary costs, packing and credit costs.

(f) *Dumping margin*

(i) Cooperating companies

(46) As mentioned in (51), in order to calculate a single dumping margin for the People's Republic of China, the Commission first considered it necessary to calculate a dumping margin for each of the three companies in the sample. For this purpose, the Commission made a comparison between normal value at ex-works level and the export prices of the cooperating Chinese exporters at fob level. That comparison was based on the weighted average selling price of each footwear model manufactured by the companies in the sample and exported to the Community during the investigation period.

(47) In cases where there were significant variations in export prices by regions, purchasers or periods and where use of a weighted average export price would not reflect the full degree of dumping being practised, the constructed normal value for a particular Indonesian model was compared with the export price of the comparable Chinese model on a transaction-by-transaction basis in accordance with Article 2 (11) of the Basic Regulation.

(48) The comparison showed the existence of dumping of the footwear concerned originating in the People's Republic of China and exported by the companies in the sample to the Community during the investigation period. The dumping margin for all 300 cooperating exporters was established using the weighted average of the dumping margins established for the three companies in the sample, expressed as a percentage of the cif Community frontier price.

(ii) Non-cooperating companies

(49) The dumping margin for the non-cooperating companies was established on the basis of the facts available, in accordance with Article 18 of the Basic Regulation. In this particular case, the most appropriate facts available have been provisionally considered to be the highest dumped transaction found for each of the three companies in the sample. The dumping margin thus established on an arithmetical average basis was then expressed as a percentage of the cif Community frontier price.

(iii) Single dumping margin — China

(50) All of the Chinese exporters which replied to the Commission's questionnaire requested individual treatment with regard to their export prices and, therefore, the establishment of individual dumping margins. In examining the merits of those claims, the Commission sought to verify whether the exporters which cooperated in this proceeding enjoyed a degree of independence comparable to that which would prevail in a market economy country and which would justify a departure from the principle set out in Article 9 (5) of the Basic Regulation, that is determination of a single countrywide duty for exports originating in non-market economy countries. To this end, detailed questions regarding ownership, management, control and determination of commercial and business policies were addressed to the exporters. None of the responding companies were able to show, to the satisfaction of the Commission, that their operations were sufficiently independent from the Chinese authorities to qualify for individual treatment. Their requests were consequently rejected and the companies informed accordingly.

(51) As indicated in (39), a single dumping margin was calculated for the People's Republic of China by using the weighted average of the margins established for the cooperating exporters (established using the weighted average of the dumping margins established for the three companies in the sample) and the non-cooperating exporters (established in accordance with Article 18 of the Basic Regulation on the basis of the facts available, that is to say, the average of the highest dumped transactions found for each of the three companies in the sample).

(52) A feature of this investigation has been the extremely high level of non-cooperation by exporters in the People's Republic of China. Given the wide range of footwear types at different prices which can be imported under the two Combined Nomenclature codes concerned by the present proceeding mentioned in (15), it was considered appropriate in this particular case to establish the dumping margin on the basis of the methodology described in (49).

(53) As mentioned in (50), individual treatment was not granted to any of the cooperating Chinese exporters. Therefore, the Commission, in accordance with Article 9 (5) of the Basic Regulation, calculated a single dumping margin for the People's Republic of China using the weighted average of the margins established for the cooperating and non-cooperating exporters. The provisional dumping margin thus established for all exporters in the People's Republic of China, expressed as a percentage of the cif Community frontier price, was 138,7 %.

D. COMMUNITY INDUSTRY

1. The complainant producers

(54) The investigation confirmed that the determination set out in recital (3) was correct and, accordingly, the Commission considers that, for the purposes of this proceeding, the complainant companies constitute the Community industry within the meaning of Article 4 (1) and Article 5 (4) of the Basic Regulation.

2. Application of Article 4 (1) (a): Definition of the 'Community industry'

(55) During the course of the investigation it became apparent that a Community producer in the first group, as defined in (6), was also importing the dumped product from the countries subject to the present proceeding. In those circumstances, the Commission examined whether, in the light of Article 4 (1) (a) of the Basic Regulation, that company should be excluded from the definition of the Community industry.

In this respect it should be recalled that Article 4 (1) (a) does not provide for the automatic exclusion of producers which themselves import the dumped product, but rather obliges the Community institutions to examine on a case-by-case basis whether the exclusion of any producer in such a situation is warranted.

For the purpose of carrying out that examination, it appeared appropriate to determine whether that company was primarily a producer with an additional activity based on imports, merely supplementing its Community production, or whether it was an importer with relatively limited additional production in the Community. Such an approach seemed to be both reasonable and consistent with the practice of the Community and the case-law of the Court of Justice [1].

The investigation showed that the imports of dumped products from the countries concerned accounted for less than 25 % of the turnover of the company in question. It is therefore the opinion of the Commission that the main core of business for the company was production of footwear in the Community and that it was not shielded from the dumping practices. Therefore, for the purposes of Article 4 (1) and Article 5 (4) of the Basic Regulation, that company was considered, along with the other cooperating producers, as forming the Community industry.

E. INJURY

1. Preliminary remarks

(56) For the purpose of establishing injury in the present proceeding, the Commission analysed data relating to the period 1991 to 1994.

(57) As concerns the type of data given below, it should be noted that not all economic factors collected at the level of individual companies in the first group and the verification sample were found to have a bearing on the state of the Community footwear industry for the deterimination of injury. For example, because production takes place to order, stocks were not usually held and they were consequently found to be of little significance in the injury analysis, as was also the case with capacity and capacity utilization (since idle capacity cannot be allocated only to the like product). Thus,

[1] Cases 171/87, 172/87 and 174/87 to 179/87 *Canon and Others* v. *Council* [1992] ECR I-1237 *et seq.* 'Japanese photocopiers'.

in accordance with Article 3 (5) of the Basic Regulation, the Commission, in its analysis of the situation of the Community industry, took into consideration only those economic factors which were found to have a bearing on the state of this particular industry.

2. Methodology used for the collection of data

(58) As mentioned in recital (6), in view of the large number of companies which were party to the complaint, and in accordance with Article 17 of the Basic Regulation, the Commission considered it appropriate to limit the collection of data for the determination of injury to:

— the national producers' federations in the Community, and

— a reasonable number of companies representing the largest volume of production which could be investigated within the time available (that is the 28 companies in the first group, selected from the 68 companies which supported the complaint).

(59) In selecting those 28 companies, care was taken to ensure that they were representative of the Community industry as a whole, in that they:

— covered, in as balanced a way as possible, the four categories of product under consideration,

— reflected the various company sizes and production structures, and

— were also representative of the main producing Member States.

(60) Data were collected from the national footwear producers' federations, using their expert knowledge of their local market and from the 28 companies in the first group as defined in (6). Injury indicators were then considered at the most appropriate level, that is:

— at Community level, for more general data such as consumption in the Community, production, sales volume and employment,

— at the level of the first group of companies, for trends concerning price and cost-related data, including profitability.

(61) The 28 companies in the first group from which cooperation was sought and obtained represent 25,6 % of total estimated Community production of the like product.

3. Total consumption on the Community market

(62) In calculating the total Community consumption of footwear covered by the present investigation, the Commission took into account the combined totals of:

— the sales volume in the Community of all Community producers of the products concerned, on the basis of information obtained from the Community footwear producers' national federations, in combination with Eurostat data for their exports outside the Community,

— the imports into the Community of the products concerned from the People's Republic of China and from Indonesia,

— the imports into the Community of the products concerned from all other third countries.

(63) On that basis, the Commission found that Community consumption of the products concerned rose by 10 million pairs from 314 million in 1991 to 324 million in the investigation period, an increase of approximately 3 %.

4. Cumulative assessment of the effects of the dumped imports

(64) In accordance with Article 3 (4) of the Basic Regulation, the Commission examined whether the cumulation of the imports from the two countries concerned in the present anti-dumping proceeding was warranted.

(65) In 1994, the total volume of dumped imports of footwear subject to this investigation originating in the People's Republic of China stood at 129,5 million pairs. The total volume of dumped imports for the products concerned originating in Indonesia was 31,5 million pairs during the same period.

(66) The market share in the Community of dumped Chinese imports stood at 39,9 % in 1994. The market share for Indonesia stood at 9,7 % for the same period. In neither case, therefore, was there any question of imports being regarded as negligible.

(67) Moreover, as has been shown above, substantial dumping margins were established for both countries during the course of the investigation.

(68) The investigation also showed that the conditions of competition on the Community market for the footwear imported from the People's Republic of China and from Indonesia were similar and that there were no significant differences in quality between the Chinese and Indonesian product. Indeed, they were interchangeable from the consumer's point of view, offered for sale at low prices in the same geographical areas of the Community, sold through the same distribution channels, simultaneously present on the Community market and generally aimed at the same segment of the Community footwear market (that is the low to lower-middle end of the market).

(69) On this basis, the Commission considered that cumulation was warranted and, accordingly, the effect of the dumped imports from the two countries was assessed jointly for the purpose of injury analysis.

5. Cumulated volume and market share of dumped imports

(70) The total volume of imports from the People's Republic of China and from Indonesia taken together increased from 106,5 million pairs in 1991 to 161 million pairs during 1994, an increase of approximately 50 %. That corresponds to an increase in combined market share from 33,9 % in 1991 to approximately 50 % in 1994.

6. Prices of dumped imports and undercutting

(71) Using information received from importers and importers' organizations, the investigation showed that, within the same general categories described in (15), there had been a gradual shift in imports to more sophisticated, up-market types of footwear, with a corresponding overall increase in import prices between 1991 and 1994.

(72) To calculate price undercutting, comparisons were first made on a category-by-category basis between the cif import price (obtained from Eurostat) for each of the exporting countries concerned, adjusted to duty paid, customer-delivered levels, and the selling prices on the Community market obtained by the Community producers in the verification sample at the same level of trade, that is to distributors/wholesalers.

On a category-by-category basis, when expressed as a percentage of the Community producers' selling prices, these comparisons showed significant undercutting margins of up to 47 % in the case of the People's Republic of China and up to 25 % for Indonesia.

(73) However, a second undercutting exercise was carried out by selecting those Chinese and Indonesian models exported to the Community in the greatest volumes by the cooperating companies in the dumping sample. These models were grouped into 16 so-called 'families' of footwear (for example, slippers for adults with open heels, summer sandals for women, children's lace-up shoes with canvas uppers). It should be noted that these 'families' are more narrowly defined than the 'categories' described in (15) and allow for greater precision in the analysis. The customer-delivered prices of these 'families' within the Community were compared to the customer-delivered prices of identical or comparable models produced by the Community producers in the injury verification sample, as referred to in (6).

These comparisons showed even more significant undercutting margins of up to 63 % in the case of the People's Republic of China and up to 51 % for Indonesia.

7. Situation of the Community industry

Production

(74) Information provided by the national footwear manufacturers' federations has shown that production of the products in question in the Community fell from 141,5 million pairs in 1991 to 112,8 million pairs in 1994, a drop of some 20 %.

Sales volume

(75) A decline of 27 % in sales volume in the Community of the product concerned was observed between 1991 and 1994. This was established by deducting exports to third countries from total Community production, obtained from the above-mentioned federations.

Turnover

(76) The Commission also established, on the basis of information provided by the national federations and the cooperating Community producers, that the total turnover of the products concerned declined by 26 % between 1991 and 1994.

Market share

(77) Using data obtained from national federations and Eurostat, the Commission established that the market share held by Community producers on the Community market went down from 41,5 % in 1991 to 29,3 % in 1994.

Prices of the Community producers

(78) The investigation showed that the Community producers' average overall selling price of slippers and other indoor footwear with textile uppers (Categories A and B) declined slightly between 1991 and 1994. Such a situation over a four-year period does not reflect the average level of inflation nor the increase in production costs.

With regard to outdoor footwear with textile uppers subject to the present investigation (Categories C and D), the Commission established that the average price of footwear in these categories had risen between 1991 and 1994. Further examination corroborated by information received from a number of parties, including Community producers as well as importers, showed, however, that this price rise was due to a change in the product mix, the Community producers being increasingly forced to abandon production of lower-priced models.

Profitability

(79) The Commission found that the overall profitability (based on turnover) of companies in the first group declined progressively from 8,2 % in 1991 to 2,6 % in 1994 in respect of the products subject to the investigation. The profit margins of the companies in the verification sample confirmed this downward trend.

(80) In this respect, the make-up of the Community footwear industry has to be taken into consideration, given that it is comprised of a very large number of small and medium-sized enterprises involved in manufacturing footwear almost exclusively to order, with prices based on a direct-costing showing a profit for each model. Indeed, with direct expenses, that is raw materials and direct labour, representing up to 80 % of the cost of a shoe, it was found that none of those companies could incur losses for more than a few months without being forced to close down due to a lack of cash. Furthermore, a large number of closures have indeed occurred during the period covered (see (82)).

This cost structure is a key element in the present investigation and explains the extreme vulnerability of this labour-intensive industry, which has no means to resist pressure from low-priced, dumped imports even over a relatively limited period of time.

Employment and company closures

(81) Information received from the national federations showed that employment in the sector producing the footwear in question declined from some 30 000 people in 1991 to 23 600 people in the investigation period, a drop of 25 %.

(82) As concerns the number of companies manufacturing the footwear in question which ceased production between 1991 and 1994, details of the closure of 28 factories in seven Member States (Belgium, Spain, Finland, Italy, the Netherlands, Portugal and the United Kingdom) were received from national producers federations.

8. Conclusions on injury

(83) In conjunction with the conclusions drawn in (80) in respect of the volume of imports and their potential effects on prices in the Community, all of the economic indicators mentioned above, based on information supplied by the national footwear producers' federations as well as individual companies, clearly show that the Community producers' situation deteriorated substantially between 1991 and 1994 in respect of the product concerned. As has been demonstrated, the Community industry as a whole suffered a decline in: production, sales volume and turnover, market share, profitability and employment; the substantial number of company closures also has to be taken into account.

(84) It is therefore the view of the Commission that the Community industry manufacturing the footwear in question has suffered injury which can be considered as material within the meaning of Article 3 of the Basic Regulation.

F. CAUSATION

1. Introduction

(85) In accordance with Article 3 (7) of the Basic Regulation, the Commission examined whether the material injury suffered by the Community industry was caused by the Chinese and Indonesian dumped imports, or whether other factors had caused or contributed to that injury.

As mentioned in (68), the imports of dumped products from the countries concerned are affecting mainly the lower to lower-middle end of the market, which is generally recognized as being the most sensitive to price variations. In this respect, it should be recalled that the footwear subject to the present proceeding which is produced in the Community and the equivalent footwear imported from the People's Republic of China and from Indonesia are in direct competition with each other since there are very often, for the consumer few perceptible or significant differences in quality between the imported products and the products manufactured in the Community.

2. Effect of the dumped imports

(86) In examining the effects of the dumped imports, it has to be borne in mind that, because of the nature of the products concerned and the multiplicity of distribution channels, the Community footwear market is transparent and price sensitive. In this

context is was found that the increasing volume and market share of those imports, in conjunction with the significant undercutting found, coincided with the loss of market share and deteriorating financial situation of the Community industry.

(87) Although prices appear to have increased for certain types of the products concerned originating in the People's Republic of China and in Indonesia between 1991 and 1994 due to the upgrading of the product mix, the dumped imports nevertheless continued to undercut substantially the Community industry's prices and thus exerted price pressure.

(88) Accordingly, it is the conclusion of the Commission that the low-priced, dumped imports from the countries concerned can be clearly linked to the deteriorating situation of the Community industry.

3. **Effect of other factors**

(a) *Imports from other third countries*

(89) Consideration has also been given to the question of whether factors other than the dumped imports from the People's Republic of China and from Indonesia might have caused, or contributed to, the material injury suffered by the Community industry and in particular whether imports from third countries other than the two currently under investigation may have contributed to this situation.

(90) In this respect, the Commission's attention was drawn by certain interested parties to imports into the Community from Vietnam. Eurostat data showed that the volume of imports of the products concerned from Vietnam increased significantly from some 1,2 million pairs in 1991 to 20,5 million pairs in 1994. As concerns the prices of these imports, given the lack of information on the product mix, it is not possible to establish reasonable data upon which conclusions could be drawn. To date, however, insufficient evidence has been produced concerning the pricing of Vietnamese exports to the Community to warrant the scope of the current investigation being extended to Vietnam.

(91) Moreover, it should be noted that the Community market share of all third countries including Vietnam, but excluding the People's Republic of China and Indonesia, actually dropped from 24,6 % to 21,1 % between 1991 and 1994. It can therefore be concluded that imports from countries other than those concerned by this proceeding cannot be considered as a significant cause, if at all, of the injury suffered by the Community industry.

(b) *Internal competition*

(92) It has been argued by several interested parties that there was significant internal competition in the Community between producers in Spain, Portugal and Italy and producers in the other Member States and it was for this reason that certain companies found themselves in an adverse economic situation. It has also been argued that this situation caused marked differences between Member States as regards the performance and results of their footwear producers.

The Commission is aware that, by virtue of comparative advantages for cost factors such as labour in some Member States, certain manufacturers are able to produce footwear more cheaply than in other Member States and, therefore, to sell at lower prices. Such a situation has, of course, an effect on the financial situation of producers with higher costs. That factor, combined with the effect of certain currency exchange rate fluctuations during the period under analysis, may also have been amongst the causes of some companies' difficulties and certain other companies' somewhat improved financial results.

(93) In addressing the above arguments, however, a distinction should be made between fair competition and unfair competition and it should be recalled that, within the framework of a single market, there are mechanisms to ensure that competition between Community producers remains equitable.

In addition, in the assessment of the injury suffered by the Community industry, the situation of the Community producers of the products in question in major producing Member States has been considered. The results of this assessment reflect the situation of the Community industry as a whole. Accordingly, the aggregated data used for the injury assessment compensate for any internal differences in the Community industry's performance. If internal competition had been the only driving force on the market, the Community industry's market share would not have experienced a decline from 41,5 % in 1991 to 29,3 % in 1994.

(94) It was also argued that a number of Community producers have transferred some of their more labour-intensive operations to third countries with low labour costs, thereby contributing to the overall injury suffered by the Community industry, particularly with regard to employment. In this regard, it is the opinion of the Commission that the fact that some producers have had to resort to such a course of action was a defensive step taken in order to reduce costs in an attempt to compete with dumped imports and is additional evidence of the pressure exerted by the dumped imports.

4. Conclusions on causation

(95) Although certain factors other than dumped imports from the countries concerned may have contributed to the injury suffered by the Community industry, it is nevertheless the conclusion of the Commission that low-priced, dumped imports from the People's Republic of China and from Indonesia have, taken in isolation, caused material injury to the Community industry. This conclusion is based on the various elements set out above and in particular the level of price undercutting and the huge increase in dumped imports which led to those countries gaining almost half of the Community market. That resulted in declining profitability on the part of the Community industry and a great number of company closures at a time when consumption in the Community was increasing and imports from other third countries declining.

G. COMMUNITY INTEREST

1. General considerations

(96) The Commission examined, on the basis of all evidence submitted, whether, despite the conclusion on dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 21 (1) of the Basic Regulation, the Commission considered the impact of possible measures for all parties involved in the proceeding and also the consequences of not taking provisional measures.

In making such an appreciation, the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition was given special consideration.

2. Interest of the Community industry

(97) Without measures to correct the effect of the dumped Chinese and Indonesian imports, it is considered that the position of the Community producers will further deteriorate and the existence of the Community industry as a whole may ultimately be at risk. It is also the Commission's view that if fewer producers are present on the Community market, competition may be reduced commensurately.

(98) On the basis of the facts established, it is reasonable to conclude that if the dumped imports are allowed to continue, there will be further factory closures and considerable job losses in addition to those which have already occurred.

3. Interest of other Community industries

(99) A number of importers argued that if measures were imposed, they would adversely affect other Community industries such as those exporting machinery used for the manufacture of footwear to the People's Republic of China and to Indonesia.

It should be pointed out that no evidence to this effect has been provided to the Commission nor have Community manufacturers of such equipment made themselves known. Moreover, there is no reason to believe that footwear producers in the exporting countries are bigger users of Community-produced equipment for the manufacture of footwear than the Community industry itself. It follows, therefore, that if the Community footwear industry is able to maintain or regain its market share under conditions of free and fair competition, this would also be to the benefit of the Community producers of machinery used for making footwear.

(100) In respect of company closures, it has been a notable feature of this investigation that the Community footwear producers and their upstream suppliers in many Member States tend to be grouped together geographically, often in areas already suffering from industrial decline. The closure of one factory can therefore have a serious knock-on effect for other companies, notably those supplying raw materials, in those areas.

4. Interest of importers/retailers

(101) Several importers and importer/retailers argued in general terms that the imposition of anti-dumping measures would have an adverse effect on their businesses, particularly with regard to employment. The Commission has paid particular attention to the effects that the imposition of measures might have in this regard and careful consideration has been given to the potential effects on employment for all the parties concerned, that is to say, not only for the Community producers but also their raw material or component suppliers as well as importers and retailers.

Whilst no concrete evidence has been provided that the imposition of measures would result in job losses for the import or retail sectors, the Commission believes that any reduction in employment in companies or retailing (although the retail sector is less likely to be affected than importers) the footwear in question would be more than compensated by jobs being saved both in the manufacturing sector, which the investigation has shown to have been badly affected, and in the abovementioned upstream industries.

5. Impact on consumers

(102) If anti-dumping measures were imposed in this case and the duties passed on to the consumer, it has been argued that this would adversely affect those consumers with limited incomes who are obliged to buy footwear at the lower end of the scale.

Whilst it is true that anti-dumping duties would have to be borne somewhere between the importer and the final consumer, it should be remembered that such duties are levied on the cif import price and, accordingly, their impact on retail prices would be significantly less. Indeed, given the very substantial margins, of over 100 % on average, usually achieved between importation and retail sale, it could be expected that the consumer need not bear anything like the full brunt of the duty. In this respect, a number of large retailers have contended that they have already reduced their own margins in order to respond to consumer expectations. No evidence of this has, however, been provided.

(103) The Commission also considers that the effect of the duties on prices is likely to be tempered by the fact that the Community industry, with a 29 % market share, would not be able to increase its prices above a certain limited level, without the risk of strengthening the current downward trend of its market share. In addition, imports from countries not concerned by this proceeding represent 21 % of the market, and it is expected that these producers will not be willing or able to command price increases. Accordingly, price increases on the market as a whole, if any, are likely to be modest.

6. Other arguments concerning Community interest

(104) Certain interested parties have argued that, given the ability of the footwear industry worldwide to shift supply, any measures would be ineffective and the only foreseeable result of an anti-dumping duty against the People's Republic of China and against Indonesia would be a shift in supply to other cheap-labour countries such as Bangladesh, India or Vietnam.

In this respect, the Commission points out that the existence of other sources of supply cannot be a reason to expose the Community industry to further injurious dumped imports.

In addition, it is considered that the fact that the exporters could transfer their production facilities to such countries outside the Community in order to avoid payment of anti-dumping duties is also not, in itself, a sufficient reason for the Community institutions not to impose measures in a case where exports from particular third countries have been found to have been dumped on the Community market and to have caused material injury to the Community industry. Were such a situation to arise, the Community industry concerned would have the possibility to resort to the use of the legal means at its disposal in order to counter any injurious dumping or circumvention of anti-dumping measures.

7. Conclusion concerning Community interest

(105) Having examined all the various interests involved, the Commission considers that there are no compelling reasons not to take action against the dumped imports in question.

Indeed, leaving the Community industry without adequate protection against the injurious dumping found would add to the difficulties of the industry and could lead to its disappearance or relocation outside the Community.

H. PROVISIONAL DUTY

1. Injury-elimination level

(a) *Preliminary remarks*

(106) In accordance with Article 7 (2) of the Basic Regulation, the Commission examined the level of duty which would be adequate to remove the injury suffered by the Community industry as a consequence of dumping.

Accordingly, it was considered that the export price of dumped imports should be compared to a price level which would allow the Community industry to cover its costs and achieve a reasonable profit (hereinafter referred to as the 'non-injurious price').

In this respect, the investigation established that a profit margin of 7 % on turnover could be regarded as an appropriate minimum, taking account of the fact that such a profit rate could be achieved before the surge of dumped imports, of the need for long-term investment, and, more particularly, of the return which the Community industry could reasonably expect in the absence of injurious dumping.

(107) As explained in (15), at the outset of the investigation the Commission considered it appropriate to divide the product in question into categories, and perform price comparisons on the basis of these categories. However, as mentioned in (73), during

the course of the investigation it appeared that, as far as the cooperating exporters were concerned, greater certainty in the product matching could be achieved by using an even more detailed product split. To this end, the most exported models of the cooperating Chinese and Indonesian exporters in the sample were selected and separated into 16 families of footwear.

(108) Accordingly, in order to calculate the injury-elimination level, the cif import price, adjusted to duty-paid, customer-delivered levels was compared to the non-injurious price of the Community producers at the same level of trade, on a corresponding category-by-category and family-by-family basis. It should be noted that import prices were adjusted to the duty-paid, customer-delivered level by taking account of the normal duty rate or the duty rate applicable under the GSP (as appropriate), as well as an amount for the average gross margin established on the basis of verified information provided by unrelated importers.

(109) For the purpose of establishing the non-injurious prices of the Community industry, it was considered appropriate to take as a reference the cost of production of the Community producers in the verification sample.

(b) *Indonesia*

(110) As explained in (73) and (107), the comparison between cooperating Indonesian exporters' prices for the relevant families, on the one hand, and the Community producers' non-injurious price for comparable footwear grouped into the same representative families, on the other, appeared appropriate from the point of view of product matching. In the case of the cooperating exporters, this method was used whenever the greater precision conferred a benefit to them for their cooperation. Their individual injury-elimination margins were thus calculated on this basis. As a result, injury-elimination margins for cooperating companies in the sample for Indonesia, expressed as a percentage of cif price, ranged from 0 % to 72,3 %, with an average to be applied to the cooperating companies outside the sample of 32,4 %. For the companies in the sample, these margins were found to be, in all cases except one, higher than the respective dumping margins established. In accordance with Article 7 (2) of the Basic Regulation, the level of the provisional anti-dumping duty for all cooperating companies in Indonesia, except one, should therefore be based on the dumping margins established.

(111) In line with the principle that non-cooperation should not be rewarded, the Commission considered it appropriate to calculate the injury-elimination margin for non-cooperating exporters in Indonesia on the basis of Eurostat import statistics grouped into categories, since that was the only reliable source of general information. A comparison was therefore made between those prices and the profit-yielding prices of the Community producers for the corresponding categories. On that basis, the injury-elimination margin for non-cooperating exporters in Indonesia was found to be 36,5 % and therefore lower than the residual dumping margin established. Accordingly, the residual anti-dumping duty for imports originating in Indonesia should be established at this level.

(c) *People's Republic of China*

(112) As far as exports from the People's Republic of China are concerned, it should be recalled that no individual treatment was granted to any of the cooperating exporters. It was therefore necessary to calculate a single injury-elimination margin for the People's Republic of China on the basis of, on the one hand, the weighted average of the injury-elimination margins calculated for the cooperating exporters and, on the other hand, the injury-elimination margin established for the non-cooperating exporters. It should be noted that these margins were established using the same methodologies as those described in (110) and (111) for Indonesia, given that the level of non-cooperation was also very high for the People's Republic of China. As a result, the injury-elimination margin for the People's Republic of China was found to be 94,1 %, which is lower than the dumping margin and should therefore, in accordance with Article 7 (2) of the Basic Regulation, constitute the basis for the provisional anti-dumping duty for all imports originating in the People's Republic of China.

2. Correlation between anti-dumping measures and quantitative quotas

(113) Certain interested parties argued that anti-dumping measures could not be imposed on imports of the products falling within Categories A and B originating in the People's Republic of China since they were already subject to a Community-wide quantitative quota imposed by Council Regulation (EC) No 519/94 [1], as last amended by Regulation (EC) No 1897/96 [2].

[1] OJ No L 67, 10. 3. 1994, p. 89.
[2] OJ No L 250, 2. 10. 1996, p. 1.

(114) The Commission cannot subscribe to this point of view which it considers to be based on an incorrect interpretation of the rationale of the abovementioned Regulation. That Regulation introduced a new trade regime which led to the abolition of some 4 617 national restrictions provided for under the previous regime *vis-à-vis* non-market economy countries, almost all of which concerned the People's Republic of China. These restrictions were replaced by Community quotas for seven Chinese products and Community surveillance for 26 other products.

Those autonomous quotas are part of the means of achieving the goal of a more liberal and, above all, more uniform trading regime with the People's Republic of China.

Accordingly, the injury which the imposition of anti-dumping measures would attempt to remedy has not already been addressed by means of another commercial defence instrument. Therefore, following an anti-dumping investigation which has shown that measures are warranted, the imposition of such measures is appropriate, irrespective of the existence of the quotas in question.

It should be recalled, finally, that more than 75 % of the footwear concerned by this investigation is not subject to the quotas.

I. FINAL PROVISIONS

(115) In the interest of a sound administration, a period should be fixed during which the interested parties may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measure which the Commission may propose.

(116) Given the number of interested parties involved in the present proceeding, the examination of the facts is likely to be time-consuming. The Commission has therefore informed the exporters known to be concerned of its intention to propose that the provisional duty apply for a period of nine months and those exporters have raised no objections,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of footwear falling within CN code 6404 19 10 and, with the exception of the shoes described in paragraph 3 sometimes known as 'espadrilles', footwear falling within CN code ex 6404 19 90 (Taric code 6404 19 90*90), originating in the People's Republic of China and in Indonesia.

2. The rate of the provisional anti-dumping duty on the basis of the net, free-at-Community-frontier price, before duty, shall be:

Country	Product manufacturer	Rate of duty (%)	Taric Additional Codes
PEOPLE'S REPUBLIC OF CHINA	All companies	94,1 %	—
INDONESIA	All companies with the exception of:	36,5 %	8900
	PT Dragon	5,5 %	8941
	PT Emperor Footwear Indonesia	0,0 %	8942
	PT Sindoll Pratama	0,0 %	8942
	PT Bosaeng Jaya	15,4 %	8943
	PT Volmacarol	15,4 %	8943

3. For the purpose of paragraph 1, shoes sometimes known as 'espadrilles' are shoes with canvas uppers and unheeled plaited fibre soles, whether or not strengthened with rubber or plastics over a variable surface, which are not thicker than 2,5 cm.

4. Unless otherwise specified, the provisions in force concerning duties and other customs practices shall apply.

5. The release of the products referred to in paragraph 1 for free circulation in the Community shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Articles 20 and 21 of Regulation (EC) No 384/96, the parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month after the entry into force of this Regulation.

Article 3

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

Subject to Articles 7, 9, 10 and 14 of Regulation (EC) No 384/96, Article 1 of this Regulation shall apply for a period of nine months unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 28 January 1997.

For the Commission

Leon BRITTAN

Vice-President