I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2155/97

of 29 October 1997

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 165/97 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of certain footwear with textile uppers falling within Combined Nomenclature (CN) codes 6404 19 10 and ex 6404 19 90 originating in the People's Republic of China and Indonesia.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

(3) Those parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered, and, where deemed appropriate, taken into account in the Commission's definitive findings.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(7) For the purpose of its preliminary findings, the Commission considered 'non-sports' footwear with outer soles of rubber or plastics and uppers of textile materials, intended for use either indoors or outdoors (falling within CN codes 6404 19 10 and ex 6404 19 90), as one single category of products. In this regard, certain interested parties claimed that slippers and outdoor footwear were too different, in particular in terms of use, to belong to the same category of products.

In particular, the parties concerned have stressed that an assessment of whether indoor and outdoor footwear can be regarded as one single category of products should entail that a twofold 'interchange-

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 29, 31. 1. 1997, p. 3.

ability test' be carried out: firstly whether an outdoor shoe can replace an indoor shoe, secondly whether an indoor shoe can replace an outdoor shoe.

(8) As regards the first question, it is worth noting that some light outdoor shoes of the kind under consideration can replace slippers for indoor use. Conversely, slippers, due to their usual flimsiness, do not appear to be suitable for most outdoor uses. This also appears to be confirmed by the consumers' perception of both products. It has therefore to be concluded that the second 'interchangeability test', i.e. whether an indoor shoe can replace an outdoor shoe, is not satisfied and accordingly that slippers and outdoor footwear of the kind under consideration cannot be regarded as one single category of products. Such a conclusion also meant that the results of the investigation would have to distinguish between slippers and outdoor footwear.

Informed of this conclusion, the representatives of the complaining Community industry, while indicating that they did not fully share the above views, did not oppose the withdrawal of slippers from the proceeding.

(9) Referring to the exclusion, at the provisional stage, of certain types of footwear sometimes known as 'espadrilles', several interested parties have requested, on various grounds, the further exclusion of certain allegedly very specific products from the scope of the proceeding. These claims are analysed below.

(a) *Neoprene shoes*

(10) Several importers requested the exclusion of certain types of footwear sometimes known as 'diving boots', made of neoprene and used for certain water sports such as diving. Indeed, neoprene is a material which is generally strengthened with a textile coating when used for manufacturing footwear, with the result that the constituent material of the upper having the greatest external surface area is the textile material, and thus the footwear concerned is classifiable under the CN heading 6404. In addition, since certain water sports, such as diving, are not considered expressly as a 'sporting activity' within the meaning of the Combined Nomenclature, the neoprene shoes concerned were, it was claimed, classifiable under CN code 6404 19 90, although such a specific product would not belong to the single category of products under consideration.

(11) Having investigated this issue in more detail the Commission found that the neoprene shoes in question are sold in water sport equipment stores and not in footwear stores and clearly belong to a distinct market. Their physical characteristics and the use which they are intended for, make them, in the consumer's perception, a clearly distinct product from those belonging to the single category of 'non-sports footwear with textile uppers' under consideration.

(12) Asked to react on this issue, the representatives of the complaining Community industry raised no objections but indicated that, should an exclusion be granted, their main concern would be that the description of the footwear concerned be sufficiently precise in order to avoid any circumvention of duties.

(13) For all the above reasons and in consideration of the fact that the footwear concerned is clearly indentifiable by the customs authorities, it is considered that the neoprene shoes sometimes known as 'diving boots' or 'water sports boots' should be excluded from the scope of the proceeding.

(b) *'Trekking shoes'*

(14) Within the meaning of the Combined Nomenclature, 'trekking' is not considered as a sporting activity and therefore trekking shoes with textile uppers generally fall within CN code 6404 19 90. Certain parties requested that this product be excluded from the scope of the proceeding, on two grounds. The first ground was based on the fact that the product in question was sold at a high, non-dumped, price. Moreover, certain importers claimed that they could have legitimately expected that trekking shoes would not be subjected to measures because the Spanish version of the notice of initiation [1] had translated, in the list of exclusions contained therein, the words 'cross-country ski footwear' by 'botas de senderismo', the Spanish equivalent of 'trekking shoes'.

(15) As to the first ground, it has to be noted that the information made available by the cooperating exporters and used by the Commission for the investigation of dumping did not confirm the absence of dumping on this type of footwear.

[1] OJ C 45, 22. 2. 1995, p. 2.

(16) As regards the second ground, i.e. the allegedly legitimate expectation of certain importers that trekking shoes would not be subjected to measures (stemming from the fact that the Spanish version of the notice of initation had mistranslated the words 'cross-country ski footwear'), this argument cannot be accepted for the following reasons:

Reference should first be made to the Court of Justice's case-law (Case 250/80, Anklagemyndigheden v. Schumacher and others, Judgment of 27 October 1981) [1], according to which it is appropriate, where there is a disparity between various language versions of provisions, to interpret them in their context and with particular regard to their objectives.

It has been a long standing approach of Community institutions to set up a closed list of so-called 'sporting activities' within the framework of the Combined Nomenclature. More specifically, it was quite clear that the wording of the notice of initiation was a mere quotation of the provisions of subheading note 1 (b) of Chapter 64 of the Combined Nomenclature, in the Spanish version of which the words 'ski-boots and cross-country ski footwear' are translated by the words 'calzado para esquiar' and not by the words 'botas de esquí, senderismo'.

(17) Finally, it must be stressed that footwear with textile uppers of the type called 'trekking shoes' is widely produced in the Community, was within the scope of the complaint and clearly fell within the scope of the investigation. Indeed, most of these products may also be used, and are actually used, for other purposes than the 'technical' one which they are supposed to be intended for, which confirms their belonging to the single category of product under consideration.

Accordingly, it is considered that so-called 'trekking shoes' should remain within the scope of the proceeding.

(c) *Medical shoes*

(18) Orthopaedic shoes, i.e. shoes intended to correct a specific and permanent disability or physical abnormality, belong to Chapter 90 of the Combined Nomenclature and are not covered by the present investigation. The product, falling within CN code 6404 19 90, for which an exclusion was claimed is a medical footwear of the type sold in chemists' stores, not per pair but per 'foot', and which is not specifically adapted to a given person but is intended for anybody having for instance a sprained or broken ankle. This claim was made on the grounds that such a specific product could not belong to the single category of products under consideration.

(19) It is clear that the medical shoes in question belong to a different market (they are not sold in footwear stores but by chemists). In addition, they are marketed in a very specific way (per 'foot' and not per pair, and in specific shapes in order to fit a plaster rather than a foot), which makes them, in the consumer's perception, a clearly distinct product from those belonging to the single category of product under consideration.

(20) Asked to react on this issue, the representatives of the complaining Community industry argued that some production of medical footwear exists in the Community but did not oppose the conclusion that the shoes in question were sufficiently specific, in terms of physical characteristics and uses, for them to fall outside the single category of 'non-sports footwear with textile uppers' under consideration.

(21) For all the above reasons (and in consideration of the fact that such a specific product is clearly identifiable by the customs authorities), it is considered that medical footwear of the type sold in chemists' stores, not per pair but per 'foot', should be excluded from the scope of the proceeding.

(d) *'Beach shoes'*

(22) 'Beach shoes' are shoes the upper of which is limited to a strip of textile material, this upper being attached to both sides of a thick, lightweight alveolar plastic, sole. Certain interested parties claimed that such a product should be excluded from the scope of the present proceeding on the ground that it is a product which is too specific to belong to the single category of products under consideration. It was also claimed that such a product is no longer produced in the Community.

(23) Asked to comment on this issue, the representatives of the complaining Community industry conceded that, whilst production of such footwear still exists in the Community, it is nevertheless of marginal importance. Moreover, the representatives of the Community industry agreed that, provided that such an exemption is limited to a product which cannot be used for walking beyond areas such as a beach or swimming pool, and given that it can be distinguished from other types of footwear, it could be excluded from the scope of the present proceeding.

[1] [1981] ECR p. 2465.

(24) For the above reasons, it is considered that so-called 'beach shoes' should be excluded from the scope of the proceeding.

2. Like product

(a) *Arguments based on the existence of different production methods*

(25) The question of vulcanized footwear, already raised at the provisional stage (see recital 18 of the provisional duty Regulation), has again been addressed by certain interested parties. In particular, allegations were reiterated that the Community industry did not produce shoes with vulcanized soles in sufficient quantities and that its production is rather concentrated on injection moulding. The results of the further examination carried out are as follows.

(26) Whilst it is clear that the vulcanization process is different to that of injection moulding, it should be recalled that the main relevant criteria in the determination of the 'like product' are based on the general technical or physical characteristics and the use or functions of products and not the method used for their production. In this context, minor differences resulting from different production processes are generally disregarded.

(27) As to the technical arguments raised by various parties, namely the fact that vulcanization means rubber while injection means *inter alia* PVC, thus differences of access to the raw material, visual differences (PVC is 'shinier' than rubber) and smell (rubber has a typical smell but PVC has none) and different dissolving and melting properties, it cannot be denied that there are differences between the chemical and physical reactions which take place during the manufacturing process of these types of footwear. However, it should be kept in mind that synthetic rubber is generally used in the manufacture of vulcanized footwear. Thus, irrespective of the production process, the raw materials involved in these processes, i.e. synthetic rubber and PVC, are all petrochemical derivatives.

(28) Synthetic rubber is indeed available in all parts of the world, one of the main applications being the tyre industry. The argument that producers of vulcanized footwear in developing countries enjoy better access to the raw materials cannot therefore be considered as relevant; this may make the manufacturing process more cost effective but it has no impact on the fact that the product concerned is alike to the Community product. It should also be noted that, to differentiate the shoes in question, the parties had to invoke criteria which go far beyond the usual criteria. If PVC, unlike rubber, does indeed melt, it only does so above 80 °C, well above the temperatures that might be encountered under normal conditions of use. Similarly, customers would not, under normal conditions, perform a dissolving test before buying.

(29) As regards the alleged decline in the production of vulcanized footwear in the Community, it has to be stressed that this argument was raised by certain importers only at a very advanced stage of the proceeding. However, the evidence received shows that this production process is still used in the Community (for instance in Spain where a number of producers have declared that they could still produce a total of 22 million pairs/year of this type of shoe) and that there are numerous producers in the Community willing and able to produce vulcanized footwear.

The investigation has also shown that, contrary to allegations made by a number of parties, vulcanized footwear imported from the People's Republic of China and Indonesia is sometimes sold as a branded product, packed in a cardboard box and sold in specialized shoe shops whilst Community produced injection moulded footwear can be sold as a non-branded product, in plastic bags and in discount stores.

(30) The conclusion to be drawn from the above is that notwithstanding technical differences in the manufacturing process used, vulcanized footwear is in direct competition with injection moulded footwear. Indeed, these types of footwear are so similar in all respects that the average consumer would not be able to differentiate them.

There is thus no reason to consider that vulcanized footwear produced in the People's Republic of China and Indonesia and exported to the Community is not a like product to injection moulded footwear produced in the Community, within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').

(b) *Arguments based on the alleged existence of different 'product segments'*

(31) Certain parties have reiterated that imported and Community produced footwear belong to different product segments which do not compete with each other. They claimed that footwear, imported at a

price higher than the average, would not be alike, within the meaning of Article 1 (4) of the Basic Regulation, to footwear imported below or at the average price.

(32) This issue has been the source of repeated and seemingly contradictory statements by importers, some of them claiming that they import low quality footwear that they simply could not find in the Community, while claimed that they order in the People's Republic of China or in Indonesia sophisticated products manufactured in accordance with their own specifications, design and sometimes raw materials.

This contradiction simply shows that the People's Republic of China and Indonesia are in fact capable of producing, and do indeed produce and export to the Community, the full range of products on offer in the market. This is not apparent from import statistics because the average prices are driven by the bulk of imports which indeed comprises low-priced footwear. The imports in question and the products manufactured by the Community industry are therefore alike within the meaning of Article 1 (4) of the Basic Regulation.

(c) *Conclusion*

(33) In the light of the above, it is confirmed that footwear subject to this proceeding produced in the People's Republic of China and Indonesia and exported to the Community is a like product to footwear produced in the Community within the meaning of Article 1 (4) of the Basic Regulation. Similarly, footwear subject to the current investigation produced in Indonesia is a like product to the footwear produced and exported from the People's Republic of China to the Community.

D. DUMPING

1. Indonesia

(a) *Normal value*

(34) The Indonesian exporters contested the Commission's use, in constructing normal value, of a profit margin established on the basis of one company's profitable domestic sales of a product other than the product concerned, in this case footwear with leather or plastic uppers. They alleged that this profit margin was excessive and not representative of the industry.

In addition, as the profit margin had been used in the construction of normal value for all companies in the sample for Indonesia, the normal values and by extension the dumping margins were allegedly excessive and unfair. They contended that the use of the profit margin of 7 % deemed acceptable by the Commission in the case of the Community industry should have been used.

(35) This argument could not be accepted. Firstly, Article 2 (6) (b) of the Basic Regulation provides that where there are no domestic sales of the product concerned, the selling, general and administrative costs (SG&A) and profit used in the construction of normal value can be established on the basis of the actual amounts applicable to production and sales of the same general category of products for the exporter or producer in question in the domestic market of the country of origin. This was the methodology applied in the case of the company referred to at recital 34 of this Regulation.

In the case of two of the sampled companies which had neither domestic sales of the product concerned nor of the same general category of product, normal value had to be established in accordance with Article 2 (6) (c) of the Basic Regulation, i.e. any other reasonable method. It was held that in the circumstances of this investigation the most reasonable method was to use the SG&A and profit found for the company referred to at recital 34 of this Regulation.

Secondly, the 7 % profit margin used in the calculation of a non-injurious price for the Community industry is the minimum that the Commission considers necessary to remove the injury suffered by the Community industry and has thus nothing to do with the profit margin used in the construction of normal value, which has to be based on the actual profit achieved on the Indonesian market. In this regard, it should be noted that the Court of Justice of the European Communities has consistently indicated that preference should be given to the use of actual profit margins in the construction of normal value.

(36) One of the Indonesian companies included in the sample contended that in calculating its normal values, the Commission should have used the cost estimates which they had submitted during the on-the-spot verification. In this context, it shoud be pointed out that the company concerned did not have a cost accounting system, and had only cost estimates which had been used to make price offers to potential customers. The latter were the costs reported in their response to the questionnaire.

This claim had to be rejected since the company was unable to demonstrate the correctness of the cost estimates. Furthermore, for some of the models, no information at all regarding cost was available. Moreover, no information beyond direct material cost was available for any of the models. Therefore, the approach adopted in the provisional duty Regulation, i.e. to recalculate costs by reallocating the total cost of sales, exclusive of SG&A and profit, over the models concerned using the turnover in the company's own accounts is confirmed, as this was deemed to be the most appropriate method for establishing the costs of each model of footwear.

(b) *Export price*

(37) In the absence of any comments on the establishment of export prices the provisional determinations are hereby confirmed.

(c) *Comparison*

(38) The Indonesian exporter whose profitable domestic sales were used in the construction of normal value for Indonesia and referred to in recital 34 of this Regulation claimed that the Commission omitted to take account of a factor affecting price comparability as provided for in Article 2 (10) of the Basic Regulation by not granting an allowance to normal value for credit costs. As the Commission established that this adjustment was indeed omitted, it has now reviewed its calculations accordingly. As the SG&A of this company was used in the construction of normal value for the other Indonesian companies in the sample, a reduction of their normal value was also required to reflect the allowance granted. All dumping calculations have been adjusted accordingly.

(39) The company referred to at recital 36 of this Regulation contended that the dumping margin had been created by averaging the costs of individual models and the application of an artificially high profit margin in the construction of normal value. It claimed that the use of averaging meant that normal values were inflated and all low priced exports dumped. It further contended that the use of the individual normal values it had submitted and the application of a reasonable profit would have led to a finding of no dumping.

In view of the circumstances outlined in recital 36 of this Regulation, the Commission considered that, in order to arrive at a reasonably accurate calculation of costs it had no alternative other than to recalculate the costs using the company's own accounting records and to reallocate the total cost of sales, exclusive of SG&A and profit, over the models concerned.

(d) *Dumping margins*

(40) The methodologies used to calculate definitive dumping margins are the same as those used for the calculation of the provisional dumping margins. However, dumping margins have been amended in order to take account of the allowance to normal value now granted as described in recital 38 of this Regulation.

(i) Cooperating companies in the sample

(41) The margins thus established and expressed as a percentage of the cif price at Community frontier are the following:

— PT Dragon: 4,0 %,

— PT Emperor Footwear: 0,0 %,

— PT Sindoll Pratama: 24,9%.

(ii) Cooperating producers/exporters not investigated

(42) In view of the above changes in the dumping margins of the cooperating companies in the sample, the margin established for the two cooperating companies not investigated, expressed as a percentage of the cif price at Community frontier, is now definitively established at 14,2 %.

(iii) Residual dumping margin

(43) In view of the above changes in the dumping margins of the cooperating companies in the sample, due account being given to the restriction in the product coverage mentioned in recital 8, the margin established for definitive determinations, expressed as a percentage of the cif price at Community frontier, is now 39,7 %.

2. People's Republic of China

(a) *Individual treatment*

(44) The Chinese exporters argued that the Commission did not sufficiently motivate its rejection of the requests for individual treatment by the cooperating Chinese exporters. They insisted that individual treatment be granted for definitive determinations.

It should be reiterated that it is the Commission's policy to calculate a country-wide duty for non-market economy countries except in those cases where companies can demonstrate independence from the State. However, none of the companies concerned were able to adequately demonstrate such independence since they all had links to the Chinese State, either directly or via provincial or municipal authorities. In the absence of any further information on this issue, the provisional findings with regard to the non-acceptance of the requests for individual treatment are hereby confirmed.

(b) *Normal value*

(45) The Chinese exporters alleged that they received insufficient information from the Commission regarding the Indonesian shoes used for comparison with the exported Chinese models. They alleged, in particular, that insufficient information was disclosed to them concerning raw materials used and production processes employed in the production of the Indonesian shoes to enable them to claim adjustments for differences in physical characteristics.

In this regard, it should be pointed out that, in an effort to come up with the fairest model comparison, the Commission made repeated efforts to get information from the Chinese exporters concerning the design and make up of, and material used in, the models which they exported to the Community. Despite this, the Chinese exporters only supplied very partial information. Accordingly, the Commission had to make its assessment of comparability on the basis of the information available and as was the case for provisional measures, the Indonesian models used were those found to be similar or, in the absence of similar models, those most closely resembling the Chinese models exported to the Community by the Chinese models in the sample. All the information upon which the comparison was based was made available to the Chinese exporters.

(c) *Export price*

(46) In the absence of any comments on the establishment of export prices the provisional determinations are hereby confirmed.

(d) *Comparison*

(47) Since Indonesia was the analogue country used to establish the normal value for the People's Republic of China, the single margin for the People's Republic of China was also adjusted downwards to reflect the granting of the allowance for credit costs, to Indonesian normal values referred to in recitals 38 and 40 of this Regulation.

(e) *Dumping margin*

(48) The Chinese exporters questioned, in some instances, the Commission's comparison of weighted average normal values to Chinese export prices of individual export transactions to the Community. They claimed that export prices did not sufficiently differ amongst different purchasers, regions or time periods and that consequently, in accordance with Article 2 (11) of the Basic Regulation, both export price and normal value should be compared on a weighted average basis. Having reviewed its calculations, the Commission found that the differences in prices were small and that for the purposes of definitive determinations weighted average normal values should indeed be compared with weighted average export prices.

On that basis, with due account being given to the restriction in the product coverage mentioned in recital 8, the single dumping margin calculated for the People's Republic of China, expressed as a percentage of the cif price at Community frontier, was found to be 133,2 %.

E. COMMUNITY INDUSTRY

(49) Certain parties have reiterated and expanded their allegations that the Commission has failed to establish the representative nature of the Community industry providing evidence of injury. This was based on the alleged non-reliability of the 'total Community production' figure used and entailed a criticism of the sampling technique applied by the Commission. The justification of the 'anonymous treatment' granted to certain Community producers was also questioned.

1. Total Community production

(50) It should be recalled that the level of support for the complaint was checked before initiation. The total estimated Community production volume of the like product on which the standing of the 68 complaining Community producers was asssessed, was subsequently re-examined (in respect of 1991 until 1994) at the premises of national footwear federations and confirmed to be accurate.

Moreover, it has to be stressed that the 'total production' figure on the like product on which the standing was assessed was set at the maximum possible production in the Community. Indeed, due to the lack of reliable data, no examination could be carried out in order to determine, in accordance with the provisions of Article 4 (1) (a) of

the Basic Regulation, whether the production volume of certain non-complaining producers should have been excluded from the 'total production' figure, on the grounds that their core business was importing rather than producing within the Community.

Such would-be Community producers, of which some are known to have made considerable imports, are also known to produce a relatively large number of pairs in the Community. Had sufficient information in this respect been made available, it is likely that part of this Community-produced volume would have been excluded from the total production figure. Conversely, the 'core business' test was carried out *vis-à-vis* the 28 companies in the 'first group' as defined at recital 6 of the provisional duty Regulation and all were found (as explained at recital 55 of the provisional duty Regulation) to have their core business in the Community.

(51) The representative nature of the investigated Community industry, assessed in a reasonable way and on the basis of fully accurate figures, is therefore confirmed.

2. **Sampling**

(a) *Initial investigation*

(52) In this respect, it should be recalled that given the very large number of potential parties to the proceeding, the notice of initiation of the present proceeding mentioned that the investigation might have recourse to sampling. As a result, from the beginning of the investigation, cooperation was sought (via national federations) from a limited number of Community producers selected amongst the 68 companies supporting the complaint.

Meaningful replies were received from 28 producers, amongst which, for verification purposes, 9 were selected and their replies subjected to in-depth on-the-spot verifications (this latter group of producers is referred to as 'the verification sample' in the provisional duty Regulation).

The 28 companies in the first group do account for slightly more than 25 % of Community output of the like product, thus qualifying, in the absence of declared opposition to the complaint, as the Community industry.

(b) *Subsequent developments*

(53) As has been mentioned in recital 8 of this Regulation, it was decided to restrict the scope of the present proceeding to footwear intended for outdoor use and to exclude slippers. A separate examination of information relating exclusively to outdoor footwear covered by the present proceeding was thus deemed necessary. This examination has shown that 17 out of the abovementioned 28 Community producers in the first group and 8 out of the 9 Community producers in the verification sample produce footwear intended for outdoor use. It was established that, in line with the criteria used in assessing the representativity of the first group (see recital 59 of the provision duty Regulation), the 17 producers mentioned are equally representative of the Community industry producing outdoor footwear. The fact that these 17 Community producers were found to represent 22,3 % of Community output of the like product, the definition of which had been restricted in the course of the present investigation, does not alter the abovementioned conclusion on the representativity of the Community industry.

Indeed, in a situation such as the present, where the number of Community producers is such as to justify recourse to sampling, it is almost inevitable that the sample selected, whilst being representative of the Community industry, will not reach the 25 % threshold.

(54) Concerning the representativity of the investigated Community industry, it has to be stressed that the injury findings were based on verified information collected from various appropriate sources, all representative of the Community industry:

— production, sales, market share and employment in the Community were established at the level of each national footwear federation and thus cover the entire Community production of the like product. This fact clearly contradicts the allegation made by an interested party further to the final disclosure according to which figures relating to the Italian footwear federation had been omitted when overall injury indicators were established,

— general trends concerning prices, costs and profitability were established at the level of the cooperating producers in the first group,

— undercutting and underselling exercises were carried out on the basis of fully verified price and cost data collected from the companies in the verification sample, which are representative in terms of size and product range as well as located in major producing Member States.

3. Anonymous treatment of the companies in the verification sample

(55) Certain parties have reiterated and expanded their allegations that the Commission was unjustified in granting 'anonymous treatment' to the companies in the verification sample. These parties have claimed that complaining domestic industries should be prepared to face any kind of 'commercial retaliation' and have requested that at least the names of the companies in the first group be disclosed.

(56) In this respect, it has to be stressed again that the anonymous treatment was granted because the threat exerted went far beyond what could be considered as 'normal' in commercial relations. The limited protection so granted was moreover considered particularly appropriate in the context of a sampling exercise, where a few selected companies are particularly exposed, although they represent, and act for the benefit of, a much larger group.

(57) As regards the companies in the first group, the company names on the non-confidential questionnaire responses were generally replaced by an identification symbol and most national footwear federations (which transmitted the answers) listed separately the names of the companies having replied, without of course disclosing the correspondence between the identification symbols and the names in the list. It should thus be stressed that all interested parties have had access to the non-confidential data provided by both the producers in the first group and, in a separate file, to the verified and confirmed data of the companies in the verification sample.

(58) Given that the questionnaire responses of the companies in the first group as well as the lists established by federations was made accessible to all parties before the Commission became aware of the above pressures, it was considered that the files in question, which permitted the identification of most companies, could not be made anonymous *ex post* and should thus continue to be accessible in an unaltered form. Under these circumstances, it was considered appropriate to include, in the final disclosure sent to all parties, the list of companies in the first group, whilst the name of the companies in the verification sample was kept undisclosed.

F. INJURY

1. Cumulative assessment of the effects of the dumped imports

(59) Certain parties have claimed that the impact of Indonesian and Chinese imports should not be cumulatively assessed. In particular, it has been alleged that two conditions, which ought to be fulfilled to make cumulation possible, were not met.

(60) Firstly, it has been argued that in order to determine, for the purpose of applying Article 3 (4) of the Basic Regulation, whether the margin of dumping established in relation to the imports from each country (for which cumulation with others is considered) was more than *de minimis*, the Institutions should not take account of residual margins but should rather rely on the margins found for cooperating exporters. This assertion cannot be accepted, in particular in consideration of the low level of cooperation obtained from Indonesian exporters. In addition, it is also worth noting that the margins of dumping established in respect of two Indonesian cooperating exporters (out of three selected in the sample) were more than *de minimis*.

(61) Secondly, it has been argued that certain differences in conditions of competition (allegedly evidenced by average import prices per pair, said to be markedly higher in the case of Indonesia when compared to the People's Republic of China) were such as to make cumulation unwarranted. In this respect, although the alleged differences are somewhat confirmed at Eurostat level, it was considered that:

— these differences are not such as to allow a clear distinction to be made between the Indonesian and Chinese pricing policies, (in particular when the average prices of both Indonesia and the People's Republic of China are compared to the average price of the other third countries supplying the Community market, which is much higher than the average prices of both countries under investigation),

— a detailed examination of the available information shows that imports from Indonesia, as well as those from the People's Republic of China, cover the full range of prices, and

— on the basis of the information available, the most plausible explanation of the existing difference is a slightly different product mix rather than a clearly different pricing policy.

(62) Further to the exclusion of slippers from the single category of products under consideration, the conclusions as to whether the cumulative assessment of imports from both countries was warranted were reexamined. In 1994, the volume of footwear imported under CN code 6404 19 90 originating in the People's Republic of China stood at 101,1 million pairs, and that originating in Indonesia at 24 million pairs. The market shares of these dumped imports for the same period stood at 50,5 % and 12 % respectively.

Moreover, substantial dumping margins have been confirmed in respect of these products, and the conclusions set out in recital 68 of the provisional duty Regulation as regards the conditions of competition on the market could be confirmed after the exclusion of slippers from the proceeding. On this basis, it was considered that the cumulative assessment of the effects of the dumped imports of outdoor footwear from the two countries concerned was warranted. Accordingly, the provisional findings in this respect (as set out in recitals 64 to 69 of the provisional duty Regulation) should be confirmed in respect of the restricted category of outdoor footwear.

(63) The total volume of imports of outdoor footwear from the People's Republic of China and from Indonesia taken together increased from 65,4 million pairs in 1991 to 125,1 million pairs in 1994, a significant increase of more than 90 %. This corresponds to an increase in combined market share from 40,5 % in 1991 to 62,4 % in 1994.

2. **Undercutting calculation**

(64) It has been alleged that undercutting was not always practised, if at all, at the level indicated in the provisional duty Regulation. During the hearings certain parties have shown samples of allegedly comparable models where imported models (generally manufactured in accordance with the importer's own specifications and design) were more expensive than Community-produced ones.

Although these claims may be true in some particular cases, it has to be stressed that they were not confirmed on a broader basis by the investigation into both the exporters' prices for certain models and Eurostat prices. In these circumstances, the Commission considered it appropriate, for the purpose of establishing definitive findings, to continue to rely exclusively on the detailed and/or global information collected (and verified to the maximum extent possible) in the course of the investigation, on the basis of which the existence of price undercutting has been positively established.

(65) It has been claimed that the adjustment for differences in level of trade was insufficient and ought to be revised. In particular, evidence was provided showing that the 13 % adjustment granted at the provisional stage to take account of differences in the level of trade between importers and Community producers' clients, only covered intra-Community transport and other ancillary costs.

A further analysis was carried out, concentrating on the importers for which corroborated data relating to this adjustment had been provided, i.e. the five cooperating importers named in the provisional duty Regulation. These importers had been the subject of a verification visit and together represented 12,5 % of the import volume concerned during the investigation period.

It could be verified that three of them had not sourced the product concerned in a significant way from Community producers during the investigation period, but had rather the same customers as the Community producers. It was therefore concluded that, to be compared in a fair way, import prices had to be adjusted for the costs incurred between importation and the point when the products actually reached the customers, and for a reasonable profit. For this purpose, all costs which could be allocated to the product concerned were taken into account, with the exception of those which appeared to be part of the production costs (such as raw materials provided by the importer to the producer in the exporting country) and thus to have been included in the customs value of the goods as reported in Eurostat.

Conversely, two of the five importers appeared to be customers of the Community producers, and thus only their costs from CIF to delivered duty paid at their warehouse level (DDP) were taken into account, as this corresponded to the level of trade where the Community producers' prices and costs had been established.

For each importer, the relation between the average import price for the product concerned and the costs mentioned above was examined. It resulted from this analysis that, to adjust the CIF price to a level of trade comparable to that of the Community producers' deliveries, two elements had to be taken into account. Indeed, although a part of the costs can be considered as proportional to the value of the goods, an adequate adjustment was found to require also a fixed amount per pair, to reflect the costs incurred inevitably by any importation, independently of the goods' value.

(66) On the basis of the evidence examined it was found that, in order to be compared in a fair way to the Community producers' prices and costs, the CIF import price for the product concerned had to be adjusted 20 % upwards and then increased by an amount of ECU 0,2 per pair, plus the normal customs duty rate.

(67) Calculations have been amended accordingly, resulting in the confirmation of the existence of the undercutting practices established in the provisional duty Regulation. On the basis of Eurostat, as for the cooperating exporters subject to a provisional anti-dumping duty, average undercutting margins, expressed as a percentage of the Community industry's prices, were found to be in excess of 7 % for Indonesia and 18 % for the People's Republic of China.

3. General injury factors

(68) Since no new representations were made by any interested parties as regards the provisional assessment of general injury factors (such as, *inter alia*, consumption on the Community market, production, sales, profitability and employment of the Community industry), no re-examination of the findings concerned was undertaken.

(69) However, given the exclusion of slippers from the single category of products under consideration, the main findings relating to the market and the Community industry manufacturing outdoor footwear, which were not detailed in the provisional duty Regulation, are outlined below:

— total Community consumption increased from 161,3 million pairs in 1991 to 200,4 million pairs in 1994,

— production decreased from 40,4 million pairs in 1991 to 30,8 million pairs in 1994, a 24 % drop,

— sales experienced a decrease of 45 % in volume terms and 32 % in value terms over the same period, corresponding to a fall in market share from 20,8 % to 9,2 %,

— profitability on sales of outdoor footwear for companies in the first group experienced a decrease from 12,3 % in 1991 to 2,8 % in 1994, this downward trend being confirmed by that established in relation with the companies in the control sample,

— as far as employment and company closures are concerned, due to the ability of most companies in the sector to produce both indoor and outdoor footwear, no absolute figures limited to outdoor footwear production were established in the course of the investigation. In view, however, of the indicators presented above, when compared to those established in the provisional duty Regulation, the negative trend of employment and the significant number of company closures could be confirmed in respect of the Community industry manufacturing outdoor footwear.

4. Conclusion on injury

(70) In the light of the above and in the absence of other arguments, it is confirmed that, as was established in recital 84 of the provisional duty Regulation for the Community industry producing both outdoor and indoor footwear, the Community industry producing outdoor footwear has suffered material injury within the meaning of Article 3 of the Basic Regulation.

G. CAUSATION

(71) Most exporters and importers again raised the case of imports from Vietnam as being a cause of the injury suffered by the Community industry. In this respect, it has to be stressed that at the time of the lodging of the complaint Vietnam's known share of the outdoor footwear market was relatively limited. The increase which took place afterwards was already noticeable during the investigation period, where the market share held by the products originating in Vietnam was, however, much more limited than that of Chinese products. It follows from the above that the effects of Vietnamese imports could not have broken the causal link established between the imports subject to the current investigation and the injury suffered by the Community industry.

(72) Since no other potential cause of injury has been put forward with substantiated evidence, the provisional findings in this respect as set out at recitals 85 to 95 of the provisional duty Regulation are therefore confirmed. Furthermore, in view of the above trends, it is considered that the above conclusion applies equally to outdoor footwear.

H. COMMUNITY INTEREST

1. Impact on consumers

(73) Although no representations have been received either from consumers or consumer organizations following the publication of the provisional duty Regulation, some parties have argued that anti-dumping measures would seriously affect Community consumers and, among these, in particular those with the lowest income.

This argument concerning the foreseeable impact of measures on the consumers' buying price has been examined in detail. The results of this examination are as follows.

(a) *Impact in absolute terms*

(74) Firstly, as far as footwear prices to distributors are concerned, it is likely that the Community industry, with a 9,2 % market share and an ECU 5,1 per pair average price, would not be able to increase its prices above the 4,2 % necessary to reach the reasonable profit as defined in the provisional duty Regulation (recital 106) without running the risk of worsening its current strong downward trend in terms of market share. In addition, imports from countries not concerned by this proceeding represent 28,4 % of the market for the product concerned and it is expected that producers in these third countries will not be willing or able to command significant price increases.

As for Indonesia, it should be recalled that the injury elimination level foreseen for this country is considerably lower than for the People's Republic of China, the average price of the imports being ECU 2,57 per pair. The market share of footwear originating in the People's Republic of China being 50,5 %, (with an average price of ECU 1,83 per pair) and in view of the duty rate proposed, the average maximum foreseeable impact of the measures proposed on the market of the footwear concerned as a whole amounts to ECU 0,5 % per pair.

Thus, only if distribution chooses to keep its margins unchanged and charges the entirety of its increased costs to the consumers would the latter have in turn to pay the corresponding amount of ECU 0,5 per pair. Since the average per head consumption of the footwear concerned in the Community is below one pair per person per year, the impact of the proposed measures for the consumer remains clearly marginal.

(b) *Impact in relative terms, effect of price on consumption*

(75) In relative terms, the basis of the calculations was the average price of the footwear concerned at delivered-warehouse distributor level, namely ECU 3,6 per pair, which takes into account, for the imports, the adjustment for differences in level of trade referred to in recital 65 of this Regulation. Using the lowest mark-up found among the distribution channels analysed below, i.e. 125 %, it is estimated that the average price for the consumer of the product concerned is above ECU 8,1 per pair. As a consequence, the impact on the consumer price of fully reflected duties would be below 6,5 %.

This percentage should, as explained above, be examined in light both of the absolute value of the increase (ECU 0,5 per pair) and the general evolution of prices. Indeed, over the four years examined, and due to the penetration of the dumped imports, the average market price at delivered-warehouse distributor level decreased by more than 16 % when corrected for the general inflation rate.

(76) In the absence of any other element or reaction from consumer organizations, it was therefore concluded that the impact of the proposed measures on the consumer of the footwear concerned was likely to be minimal. It could as a consequence be concluded that to significant contraction in demand was to be foreseen as a result of a possible full reflection of the duty on the consumer price.

2. Impact on distribution

(a) *Impact on distribution as a whole*

(77) It has been argued that the imposition of measures would have a strong negative impact on importers. More globally, diverging views have been expressed on the situation of the whole distribution chain which, it has been argued, was an activity with a far greater significance in the Community than footwear production, in terms of both turnover and employment.

It should be recalled first that, by its very nature, for a given quantity of footwear, the distribution chain will have a higher turnover than the manufacturing companies it buys from, simply by virtue of its distribution margin. Secondly, the employment figures for footwear distribution in general, where all types of footwear are sold, cannot be compared with those of the Community production of the product concerned only.

As consumers do not buy shoes in significant quantities outside the Community, negative consequences of anti-dumping duties for distribution as a whole could only result from a significant reduction of consumption and therefore of turnover, or a downward pressure on distributin margins in order to minimize an increase in consumer prices (and a decrease in consumption).

As explained above, in the light of the foreseeable impact of possible measures on the consumers of the product concerned, it can be considered as highly unlikely that consumption of the product concerned would drop significantly, even if the distribution sector were to maintain its current margins.

Taken as a whole, it can therefore be concluded that the effects of possible measures on the distribution chain will be very limited. Care was however taken to make an in-depth analysis in the light of the structure of footwear distribution in the Community.

(b) *Structure of footwear distribution in the Community*

(78) Within footwear distribution in the Community, four different channels of sale to the end customer are generally identified. These are the branded chains, the independent retailers, the non-specialized supermarkets, and, as a fourth category, the other types of generally non-specialized distribution (clothing and general stores for example).

(i) The independent retailers

(79) The traditional distribution channel consists of independent retailers, generally buying from wholesalers. In the evolution of the distribution however, wholesalers tend to disappear as retailers enter into a closer relationship with a more limited number of producers, or tend to group in purchase associations while retaining their independence.

As far as the retailers themselves are concerned, they face an adverse competitive situation due to both their individual lack of price control on suppliers and the high margins they require to cover the fairly high costs of the city centres retail outlets from which they predominantly operate (150 % to 200 %). In fact, they have lost ground in certain Member States to more recently developed forms of distribution falling within the other three categories, in particular the branded chains.

However, as a consequence of their strong presence in some other Member States and their situation at the upper end of the market where they maintain a continous commercial relationship with their customers, it should be noted that independent retailers are still, at least in terms of value added and employment (over 250 000 persons), the most important distribution channel in the Community, although probably not the largest one in terms of market share (in volume).

(ii) The branded chains

(80) These chains, which are sometimes involved in production activity in the Community, are generally owned by one or two large companies in each country, which own several brands and operate across the whole market range. They operate from out-of-town super or discount stores, which, because of their sales volume, prices and specialization, can resist the non-specialized supermarkets' pressure.

The branded chains also sell through in-town shops replacing the independent retailers with less costly, standardized shops which accommodate the need, on the part of some customers, for an alternative retail buying environment to discount halls. Due to their purchasing power, their access to world supply (they import on their own account) and the relatively low margins they operate with, generally around 25 % of the cost of sales for the central trading arm and 100 % on average for the shops, they are able to gain market share rapidly once they enter a market and to achieve growth rates in excess of 5 % per year.

(iii) The non-specialized supermarkets

(81) Important in terms of volume, but less in terms of value on the total footwear market due to the low average price of their sales, non-specialized supermarkets have a strong influence at the lower end of the market. Altough they sometimes buy directly from suppliers located outside the Community, they usually rely on specialized importers for their imports, which constitute an important part of their footwear sales. Their traditional mark-up is around 100 %, but it can range from around 60 % on promotional operations to over 130 % on some Community products. Due to the supplementary step of the importer and the fixed part of the costs incurred, imports from the countries concerned through this sales channel usually reach the consumer at a price three times higher than the CIF level.

(iv) Other sales channels

(82) Other sales channels, such as mail order companies or garment stores, gained significance in certain Member States but none of these has individually acquired importance on a Community-wide basis. In certain Member States, specialized mail-order firms have a cost structure similar to the branded chains. Community-wide apparel chains of 'small' shops also introduce footwear in their stores as a fashion branded item, generally with higher margins than on their usual articles. Due to the fashion aspect of these sales, they are in competition with the branded chains, although to a lesser extent than the large general city centre stores.

(c) *Specific impact of the proposed measures on the various sales channels*

(83) As regards the independent retailers, which still constitute the largest source of employment in Community footwear distribution, the general conclusion presented in recital 77 of this Regulation is strengthened by the fact that they usually have a low proportion of their supplies of the product concerned originating in Indonesia or the People's Republic of China. It should be added that they are grouped in a confederation representing eight Member States on a representative level, and that no submission opposing the possible imposition of anti-dumping measures was received from this source or any other.

(84) The companies owning branded chains have contested the need for the imposition of anti-dumping duties. Although the general conclusion is also applicable to them, the fact that some of them rely more than the independent retailers on the dumped imports for the supply of the product concerned explains why, within the distribution chain, they could fear a negative effect of the measures on their comparative competitive situation.

The direct effect of possible measures on the financial situation of these companies would be negligible if the amount of the duty were to be fully passed on to the consumer. Indirect financial effects could only be expected if, due to this price increase, consumers were to significantly reduce their purchases of the product concerned. However, should this happen, it would be only to a limited extent, as explained in recital 76.

Moreover, the product concerned is never sold separately in specialized shops and, due to its particularly low prices, represents less than 10 % of the turnover of the cooperating companies operating branded chains. In this perspective, even a small contraction in the demand for the product concerned, which appears unlikely, would have a negligible impact on the companies as a whole, in particular if the demand is at least partly re-oriented to footwear with a higher price, with probably a higher margin in absolute terms.

(85) As far as non-specialized supermarkets or other non-specialized stores are concerned, in view of the even more limited extent to which their sales rely on the product concerned, their situation should not be affected by the imposition of measures even in the case of the market evolution envisaged above.

(86) The situation of the importers supplying these non-specialized distribution channels was examined, as they imported in some cases a more important portion of their turnover from the countries concerned than their clients. These companies are generally run with a very limited and flexible structure allowing them to sell only when the trading margin they foresee covers the costs incurred. Their expertise on the market and their ability to design and sell are not affected by the country of origin of the goods. The anti-dumping measures having an impact on footwear distribution as a whole, these importers will be able to benefit from any market situation, and continue to supply their clients with Chinese or Indonesian imports, or any non-dumped product, as well as Community-produced ones.

(87) In conclusion, it could not be established that the imposition of anti-dumping measures on the footwear concerned would be such as to affect significantly the financial situation of either the footwear distribution chain as a whole or of a part of it.

3. Impact on the Community industry and its suppliers

(88) The argument according to which the measures would have no positive effect on the situation of the Community industry due to the shift of supply to other third countries has been presented again. It has been argued moreover that the situation of the textile footwear industry in this respect was comparable to that of the synthetic handbags manufacturers and that accordingly the Council should also in the present case refrain from taking measures [1].

Shift of supply between various countries has been an important factor on the footwear market for a number of years. In this regard, it should be noted that the Community industry has been able, by its automation and rationalization, partly to compensate, by its own increase in exports, for the constant change of country from which varying volumes were imported in the Community. This could however not be the case for the massive surge in dumped imports from the two countries concerned in the present proceeding. As far as the alleged parallelism between the present proceeding and the synthetic handbags case is concerned, it should be stressed that the significant market share still held by the complainant Community industry in this case, the nature of the capital holders in most exporting companies, as well as the important industrial investment necessary to produce footwear, clearly exclude any reasonable and meaningful comparison between the two industries. The Council cannot accept therefore that for the sake of consistency, it should refrain from taking measures in the present case.

[1] See recitals 105 and 106 of Council Regulation (EC) No 1567/97 (OJ L 208, 2. 8. 1997, p. 31).

(89) It has been argued again that, should measures be imposed, this would have negative consequences on footwear machine manufacturers which would be limited in their sales to Indonesia and the People's Republic of China.

As far as the machine suppliers are concerned, it should be noted that the Community industry is clearly investing in automation, and in the injection process in particular. This automation is linked with investments in machines and in moulds produced in the Community, which continue to create a virtuous circle of technological improvement. No evidence has been received on the other hand showing that exporters in Indonesia or the People's Republic of China are main clients of the Community equipment manufacturers.

(90) No new evidence having been submitted in respect of these arguments, the conclusions presented in recitals 99 and 104 of the provisional duty Regulation are accordingly confirmed.

4. Conclusion concerning Community interest

(91) As a conclusion, and having examined all the various interests involved, it is considered that there are no compelling reasons not to take action against the dumped imports in question. The conclusions set out in recital 105 of the provisional duty Regulation are therefore confirmed.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

(a) *General considerations*

(92) It should be recalled that the calculations used to establish the injury elimination level at the provisional stage were based on two different sets of price comparisons. As far as the cooperating exporters were concerned, the prices of the most exported models were compared to the Community industry's corresponding non-injurious prices on the basis of a grouping into 16 so-called families of footwear, of which 13, relating to outdoor footwear, were considered for the purpose of the definitive determination. For the vast majority of imports, however, in the absence of cooperation from any exporters, the injury elimination level had to be calculated on an average basis for the CN code concerned, this approach having been called the category comparison.

(93) It has been argued that, in performing these comparisons, the Commission failed to take into account the alleged differences between vulcanized and injected footwear. Further to what has been explained at recitals 26 to 30 of this Regulation, it is considered that there are no differences between vulcanized and injected footwear which are such as to significantly affect global price comparisons.

Indeed, the difference in the manufacturing processes used for the production of the soles of two comparable models does not result in a different consumer perception. As far as the cooperating exporters are concerned, in the case where imported vulcanized models were compared to Community-produced injected footwear because these were the most similar models found, the exporters were given the opportunity to comment on the basis of the documents and non-confidential files available to them, and none of them contested the comparison made.

(94) Exporters from the People's Republic of China claimed that the descriptive elements of the Community-produced models used for comparison purposes were insufficient. In this respect, it should be recalled that the exporters were provided with copies of the non-confidential files where photographs of the Community-produced models used as a reference in each family were provided. This was done in addition to the written explanations given and the calculation sheets included in the disclosure.

(95) Following the claim made by importers, and in order to perform the price comparisons in the calculation of the injury elimination level, CIF import prices were adjusted to the duty-paid, customer-delivered price level by using the adjustment methodology used for the undercutting assessment, as presented at recital 66 of this Regulation.

(96) It was argued by certain importers that, even if it could be admitted that injurious dumping in respect of footwear with an import price below three US dollars was taking place, this was not the case for more sophisticated footwear. The latter category, according to the importers in question, should be attributed a 0 % injury elimination level.

In this respect, it should be recalled that, although huge volumes of outdoor footwear are indeed imported below ECU 2,5 (equivalent to US$ 3), these imports covered, in the sample of the importers' transactions examined, only 45 % of the value of the imports concerned. The fact that a majority of the import turnover was above the alleged price break shows that, in reality, the imports of the product concerned, though made at extremely low prices when compared to what they would be if normal competitive conditions prevailed, are spread over a wide price range.

Moreover, the non-injurious price levels established for the investigated Community producers were also both below and above the alleged price break, adjusted to the appropriate customer-delivered level (ECU 3,7), depending on the shoe type. In the absence of any other evidence relating to this aspect of the market, this claim should therefore be rejected.

(97) No other remarks having been submitted, the general injury elimination level methodology, as established in recitals 106 to 112 of the provisional duty Regulation, are therefore confirmed.

The reduction in the product coverage of the proceeding and the change in the level of trade adjustment, however, affect the provisional findings, as set out below.

(b) *Indonesia*

(98) In conformity with the methodology set out in the provisional duty Regulation, the revised injury elimination levels for the cooperating companies in the sample for Indonesia, expressed as a percentage of the CIF import price, ranged from 0 to 31,5 %, with an average to be applied to cooperating companies outside the sample of 14,1 %. As regards the calculation of the residual injury elimination margin, it was considered that, in the case of a market economy country such as Indonesia, the most reasonable basis was to use the average level found on the basis of verified data established in respect of the cooperating exporters in the sample, i.e. 14,1 %.

(c) *People's Republic of China*

(99) In accordance with the methodology set out in the provisional duty Regulation, the revised single injury elimination level for the People's Republic of China was found to be 49,2 %.

2. **Duty**

(100) One of the cooperating Indonesian companies not included in the sample objected to the fact that it had been attributed a duty based on the weighted average dumping margin found for the sample.

This argument could not be accepted since Article 9 (6) of the Basic Regulation provides that, where the Commission has limited its examination in accordance with Article 17, any anti-dumping duty imposed on cooperating companies not included in the sample shall not exceed the weighted average margin of dumping established for the parties in the sample. Moreover, it will be recalled from recital 23 of the provisional duty Regulation that the Indonesian companies concerned had agreed to this methodology.

(101) Since the residual injury elimination level for Indonesia and the People's Republic of China, as well as the individual level for PT Sindoll Pratama, is lower than the corresponding dumping margins, the anti-dumping duty should be based on these levels. For the other cooperating exporters in Indonesia, the anti-dumping duty should be based on the dumping margins established above.

(102) The anti-dumping duty rates, applicable to the net, free-at-Community-frontier price before duty should therefore be as follows:

Country	Manufacturer and exporter	Rate of duty
PEOPLE'S REPUBLIC OF CHINA	All companies	49,2 %
INDONESIA	PT Dragon	4,0 %
	PT Emperor Footwear Indonesia	0,0 %
	PT Sindoll Pratama	0,0 %
	PT Bosaeng Jaya	14,1 %
	PT Volmacarol	14,1 %
	All other companies	14,1 %

J. COLLECTION OF THE PROVISIONAL DUTIES

(103) In view of the magnitude of the dumping margins found for the exporting producers and countries, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 165/97 should be defin-

itively collected at the rate of the duty definitively imposed. However, to the extent to which it can be established, to the satisfaction of the customs authorities, that imports related to footwear falling within CN Code 6404 19 10 (slippers) or shoes excluded from the scope of the present proceeding, as described under Article 1 (3) (b), (c) and (d) of this Regulation, the amounts secured by way of provisional anti-dumping duty should be released in their totality,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear falling within CN code ex 6404 19 90 (Taric code 6404 19 90*90), originating in the People's Republic of China and Indonesia, except as regards the footwear described in paragraph 3.

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

Country	Products manufactured by	Rate of duty (%)	Taric additional codes
PEOPLE'S REPUBLIC OF CHINA	All companies	49,2 %	
INDONESIA	All companies	14,1 %	8900
	with the exception of:		
	PT Dragon	4,0 %	8941
	PT Emperor Footwear Indonesia	0,0 %	8942
	PT Sindoll Pratama	0,0 %	8942

3. The duty shall not apply to:

(a) shoes sometimes known as 'espadrilles', which, for the purpose of the present Regulation, 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 (Taric code 6404 19 90*10);

(b) shoes sometimes known as 'diving boots' or 'water sports boots', which, for the purpose of the present Regulation, are shoes with an upper made of neoprene, whether laminated on one or both sides with textile material, where the neoprene thickness is of 2,5 mm or more, covering the entirety of the foot, with an abrasion-resistant sole, and designed for certain water sports such as diving (Taric code 6404 19 90*20);

(c) shoes sometimes known as 'medical shoes', which, for the purpose of the present Regulation, are shoes which, although not manufactured according to the individual medical need of one person, are designed for easing the recovery during or after therapy or a medical operation, as for example shoes to walk in while having a plastered or bandaged foot. These shoes do not cover the foot entirely and have a wide opening which enables even a bandaged foot to fit inside. They are sold not per pair, but individually, and show at the same time more than one of the following characteristics:

— the closing device can be adjusted to the bandage or plaster size,

— special internal soles or pads can be inserted for medical purposes,

— the design of the sole is such that it prevents harmful contact of the foot with the ground, at the same time preventing non-medical use of the shoe,

— the design is functional and does not include decorations or other fashionable accessories,

(Taric code 6404 19 90*30);

(d) shoes sometimes known as 'beach shoes', which, for the purpose of the present Regulation, are shoes the upper of which is limited to a strip of textile material, this upper being attached on both sides to a thick, lightweight alveolar plastic sole, in contact both with the foot and the ground. This textile strip leaves the front as well as the rear part of the foot uncovered, and its width does not exceed one third of the shoe's length. As the back of the foot is not enclosed by the shoe, the wearer's heel lifts from the sole when

walking. Beach shoes are designed to be worn with wet or sandy feet on the beach or around swimming pools, and their design excludes any practical use for walking over a longer distance (Taric code 6404 19 90*40).

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

Article 2

1. The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 165/97 shall be definitively collected at the rate of the duty definitively imposed, with the exception of the amounts for which it can be established, to the satisfaction of the customs authorities, that they related to imports of footwear falling within CN code 6404 19 10 or shoes described in Article 1 (3) (b), (c) and (d) of this Regulation, which amounts shall be released.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels, 29 October 1997.

For the Council

The President

J. POOS