II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2257

of 14 December 2016

re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Chengdu Sunshine Shoes Co. Ltd, Foshan Nanhai Shyang Yuu Footwear Ltd and Fujian Sunshine Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), and in particular to Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Article 9 and 14 thereof,

Whereas:

A. **PROCEDURE**

(1) On 23 March 2006, the Commission adopted Regulation (EC) No 553/2006 ([2]) imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') originating in the People's Republic of China ('PRC' or 'China') and Vietnam ('the provisional Regulation').

(2) By Regulation (EC) No 1472/2006 ([3]) the Council imposed definitive anti-dumping duties ranging from 9,7 % to 16,5 % on imports of certain footwear with uppers of leather, originating in Vietnam and in the PRC for two years ('Regulation (EC) No 1472/2006' or 'the contested Regulation').

(3) By Regulation (EC) No 388/2008 ([4]) the Council extended the definitive anti-dumping measures on imports of certain footwear with upper leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) Commission Regulation (EC) No 553/2006 of 23 March 2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3)
([3]) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).
([4]) Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not (OJ L 117, 1.5.2008, p. 1).

(4) Further to an expiry review initiated on 3 October 2008 ([1]), the Council further extended the anti-dumping measures for 15 months by Regulation (EU) No 1294/2009 ([2]), i.e. until 31 March 2011, when the measures expired ('Regulation (EU) No 1294/2009').

(5) Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the applicants') challenged the contested Regulation in the Court of First Instance (now: the General Court). By judgements of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council [2010] ECR II-671 and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council [2010] ECR II-747, the General Court rejected those challenges.

(6) The applicants appealed those judgements. In its judgments of 2 February 2012 in case C-249/10 P Brosmann et al and of 15 November 2012 in case C-247/10P Zhejiang Aokang Shoes Co. Ltd ('the Brosmann and Aokang judgments'), the Court of Justice set aside those judgments. It held that the General Court erred in law in so far as it held that the Commission was not required to examine requests for market economy treatment ('MET') under Article 2(7)(b) and (c) of the basic Regulation from non-sampled traders (paragraph 36 of the judgement in Case C-249/10 P and paragraph 29 and 32 of the judgement in Case C-247/10 P).

(7) The Court of Justice then gave judgement itself in the matter. It held: *'[…] the Commission ought to have examined the substantiated claims submitted to it by the appellants pursuant to Article 2(7)(b) and (c) of the basic regulation for the purpose of claiming MET in the context of the anti-dumping proceeding [which is] the subject of the contested regulation. It must next be found that it cannot be ruled out that such an examination would have led to a definitive anti-dumping duty being imposed on the appellants other than the 16,5 % duty applicable to them pursuant to Article 1(3) of the contested regulation. It is apparent from that provision that a definitive anti-dumping duty of 9,7 % was imposed on the only Chinese trader in the sample which obtained MET. As is apparent from paragraph 38 above, had the Commission found that the market economy conditions prevailed also for the appellants, they ought, when the calculation of an individual dumping margin was not possible, also to have benefited from the same rate'* (paragraph 42 of the judgement in Case C-249/10 P and paragraph 36 of the judgement in Case C-247/10 P).

(8) As a consequence, it annulled the contested Regulation, in so far as it relates to the applicants concerned.

(9) In October 2013, the Commission by means of notice published in the *Official Journal of the European Union* ([3]) announced that it had decided to resume the anti-dumping proceeding at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the applicants for the period from 1 April 2004 to 31 March 2005 and invited interested parties to come forward and make themselves known.

(10) In March 2014, the Council, by Implementing Decision 2014/149/EU ([4]), rejected a Commission proposal to adopt a Council Implementing Regulation re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd and terminated the proceedings with regard to these producers. The Council took the view that importers having bought shoes from those exporting producers, to whom the relevant customs duties had been reimbursed by the competent national authorities on the basis of Article 236 of Regulation (EEC) No 2913/92 ([5]) ('the Community Customs Code'), had acquired legitimate expectations on the basis of Article 1(4) of the contested Regulation, which had rendered the provisions of the Community Customs Code, and in particular its Article 221, applicable to the collection of the duties.

([1]) OJ C 251, 3.10.2008, p. 21.
([2]) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ L 352, 30.12.2009, p. 1).
([3]) OJ C 295, 11.10.2013, p. 6.
([4]) Council Implementing Decision 2014/149/EU of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd, OJ L 82, 20.3.2014, p. 27.
([5]) Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

(11) Three importers of the product concerned, C&J Clark International Ltd ('Clark'), Puma SE ('Puma') and Timberland Europe B.V. ('Timberland') ('the importers concerned') challenged the anti-dumping measures on imports of certain footwear from China and Vietnam invoking the jurisprudence mentioned in recitals (5) to (7) before their national Courts, which referred the matters to the Court of Justice for a preliminary ruling.

(12) On 4 February 2016, in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, the Court of Justice declared Regulations (EC) No 1472/2006 and (EU) No 1294/2009 invalid in so far as the European Commission did not examine the MET and individual treatment ('IT') claims submitted by exporting producers in the PRC and Vietnam that were not sampled ('the judgments'), contrary to the requirements laid down in Articles 2(7)(b) and 9(5) of Council Regulation (EC) No 384/96 ([1]).

(13) Regarding the third case C-571/14, Timberland Europe B.V. against Inspecteur van de Belastingdienst, kantoor Rotterdam Rijnmond, the Court of Justice decided on 11 April 2016 to remove the case from the register at the request of the referring national Court.

(14) Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Court's judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping, compliance with the Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ([2]).

(15) According to the case-law of the Court, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ([3]). That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ([4]), except if the illegality occurred at the stage of initiation.

(16) Apart from the fact that the Institutions did not examine the MET and IT claims submitted by exporting producers in the PRC and Vietnam that were not sampled, all other findings made in Regulations (EC) No 1472/2006 and (EU) No 1294/2009 remain valid.

(17) In the present case, the illegality occurred after initiation. Hence, the Commission decided to resume the present anti-dumping proceeding that was still open following the judgments at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005, which was the investigation period ('investigation period'). The Commission also examined, where appropriate, whether the exporting producers concerned qualified for IT in accordance with 9(5) of Council Regulation (EC) No 1225/2009 ([5]) (the 'basic Regulation prior to its amendment') ([6]).

([1]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, 6.3.1996, p. 1.

([2]) Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic* v *Commission* [1988] ECR 2181, paragraphs 27 and 28.

([3]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia* v *Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais* v *Commission* [2011] II-0000, paragraph 83.

([4]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147, paragraphs 80 to 85.

([5]) Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

([6]) Regulation (EC) No 1225/2009 was subsequently amended by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community OJ L 237, 3.9.2012, p. 1–2. According to Article 2 of Regulation (EU) No 765/2012, the amendments introduced by that amending Regulation only apply to investigations initiated after the entry into force of that Regulation. The present investigation, however, was initiated on 7 July 2005 (OJ C 166, 7.7.2005, p. 14).

(18) By Implementing Regulation (EU) 2016/1395 ([1]), the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark and Puma of certain footwear with uppers of leather originating in the PRC and produced by thirteen Chinese exporting producers that had submitted MET and IT claims but that had not been sampled.

(19) By Implementing Regulation (EU) 2016/1647 ([2]), the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Clark, Puma and Timberland of certain footwear with uppers of leather originating in Vietnam and produced by certain Vietnamese exporting producers that had submitted MET and IT claims, but had not been sampled.

(20) By Implementing Regulation (EU) 2016/1731 ([3]), the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports of Puma and Timberland of certain footwear with uppers of leather originating in the People's Republic of China and produced by General Footwear Ltd and certain footwear with uppers of leather originating in Vietnam and produced by Diamond Vietnam Co Ltd and Ty Hung Footgearmex/Footwear Co. Ltd ('Ty Hung Co Ltd') that submitted MET and IT claims, but had not been sampled.

(21) In view of the implementation of the judgment in joint cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE mentioned above in recital (12), the Commission adopted Implementing Regulation (EU) 2016/223 ([4]). In Article 1 of this Regulation the Commission instructed National customs authorities to forward all requests for reimbursement of the definitive anti-dumping duties paid on imports of footwear originating in China and Vietnam made by importers based on Article 236 of the Community Customs Code and based on the fact that a non-sampled exporting producer had requested MET or IT in the original investigation. The Commission shall assess the relevant MET or IT claim and re-impose the appropriate duty rate. On this basis the National customs authorities should subsequently decide on the request for repayment and remission of the anti-dumping duties.

(22) The validity of Implementing Regulation (EU) 2016/223 is subject to a preliminary ruling request lodged by the Finanzgericht Düsseldorf on 9 May 2016 (Deichmann SE v Hauptzollamt Duisburg; case C-256/16). The above request for a preliminary ruling was made in the context of a dispute between Deichmann SE, a German importer of footwear, and the relevant National customs authority, Hauptzollamt Duisburg. The dispute concerned the reimbursement of anti-dumping duties paid by Deichmann SE on imports of footwear from its Chinese supplier Chengdu Sunshine Shoes Co. Ltd which lodged an MET and IT claim and was not sampled.

(23) On 20 April 2016, in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the French customs authorities notified the Commission reimbursement claims of importers in the Union and provided supporting documents. The notification of the French customs authorities listed 46 companies as suppliers of footwear from China and Vietnam.

([1]) Commission Implementing Regulation (EU) 2016/1395 of 18 August 2016 re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckinghan Shoe Mfg Co., Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 225, 19.8.2016, p. 52).

([2]) Commission Implementing Regulation (EU) 2016/1647 of 13 September 2016 re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co, Ltd, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 245, 14.9.2016, p. 16).

([3]) Commission Implementing Regulation (EU) 2016/1731 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by General Footwear Ltd (China), Diamond Vietnam Co Ltd and Ty Hung Footgearmex/Footwear Co. Ltd and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 262, 29.9.2016, p. 4).

([4]) Commission Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 41, 18.2.2016, p. 3).

(24) For a large number of these companies (36 companies — listed in Annex III of this Regulation) the Commission has no record that these companies have submitted any MET or IT claim form in the original investigation. Amongst these companies there were also companies that are not concerned by the investigation as they were for instance not located in China or Vietnam or trading companies in any event not entitled to any individual dumping margin. The relevant reimbursement claims of importers in the Union should therefore not be granted, because the contested Regulation has not been annulled as far as they are concerned.

(25) Out of the remaining 10 companies, four were already assessed individually or as part of a company group selected in the sample of exporting producers in the original investigation (listed in Annex IV of this Regulation). As none of these companies received an individual duty rate, the duty for China of 16,5 % applied to imports of footwear from Feng Tay Chine and the residual duty rate for Vietnam of 10 % applied to imports from Pou Yuen Vietnam Enterprise and Pou Yuen Vietnam Company Ltd as well as Sky High Trading Limited. These rates were not affected by the judgement mentioned in recital (12). The relevant reimbursement claims of importers in the Union should therefore not be granted, because the contested Regulation has not been annulled as far as they are concerned.

(26) Three out of the remaining six companies (listed in Annex V of this Regulation) were already assessed either individually or as part of a company group in the context of the implementation of the judgment mentioned in recital (12), namely in Regulation (EU) 2016/1647 mentioned in recital (19). The relevant reimbursement claims of importers in the Union should therefore not be granted, because the duty has been re-imposed on them.

(27) Amongst the remaining three companies, Fujian Sunshine Footwear Co Ltd and Foshan Nanhai Shyang Yuu Footwear Ltd (named Shyang Yuu Footwear in the notification of the French customs authorities) were Chinese exporting producers that were not sampled and that submitted an MET/IT claim form. The Commission therefore assessed the MET and IT claims provided by these companies.

(28) The last company 'Capital Concord Enterprises Ltd' was related to one of the companies mentioned in recital (27), but did not produce or sell footwear. Therefore it is not entitled to an individual duty rate.

(29) In summary, in the present Regulation, the Commission assessed the MET/IT claim forms of three Chinese exporting producers, namely Chengdu Sunshine Shoes Co. Ltd, Fujian Sunshine Footwear Co Ltd and Foshan Nanhai Shyang Yuu Footwear Ltd, that provided such claim forms and that were not sampled.

B. **IMPLEMENTATION OF THE JUDGMENTS OF THE COURT OF JUSTICE IN JOINED CASES C-659/13 AND C-34/14 FOR IMPORTS FROM CHINA**

(30) The Commission has the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the parts of the assessment which are not affected by the judgment [1].

(31) The present Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to the declaration of invalidity in so far as the exporting producers mentioned in recital (29) are concerned.

(32) All other findings made in the contested Regulation and in Regulation (EU) No 1294/2009, which were not declared invalid by the Court of Justice, remain valid and are herewith incorporated into the present Regulation.

(33) Therefore, the following recitals are limited to the new assessment necessary in order to comply with the judgments.

[1] Case C-458/98 P *Industrie des Poudres Sphériques* v *Council* [2000] I-8147

(34) The Commission has examined whether MET or IT prevailed for the exporting producers mentioned in recital (29) ('exporting producers concerned') which submitted MET/IT requests for the investigation period. The purpose of this determination is to ascertain the extent to which the importers concerned are entitled to receive a repayment of the anti-dumping duty paid with regard to anti-dumping duties paid on exports of these suppliers.

(35) Should the analysis reveal that MET was to be granted to the exporting producers concerned whose exports were subject to the anti-dumping duty paid by the importers concerned, an individual duty rate would have to be attributed to that exporting producer and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, namely 16,5 %, and the duty imposed on the only exporting company in the sample that has obtained MET, i.e. *Golden Step*, namely 9,7 %.

(36) Should the analysis reveal that IT was to be granted to the Chinese exporting producer for which MET was rejected, an individual duty rate would have to be attributed to the exporting producer concerned and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, namely 16,5 %, and the individual duty calculated for the exporting producer concerned, if any.

(37) Conversely, should the analysis of such MET and IT claims reveal that both MET and IT should be rejected, no repayment of anti-dumping duties can be awarded.

(38) As explained in recital (12), the Court of Justice annulled the contested Regulation and Regulation (EU) No 1294/2009 with regard to exports of certain footwear from certain Chinese and Vietnamese exporting producers, in so far as the Commission did not examine the MET and IT claims submitted by these exporting producers.

(39) The Commission has therefore examined the MET and IT claims of the exporting producers concerned in order to determine the duty rate applicable to their exports. The assessment showed that the information provided did not demonstrate that the exporting producers concerned operated under market economy conditions or that they qualified for individual treatment (see for a detailed explanation below recitals (40) and following).

1. **Assessment of the MET claims**

(40) It is necessary to point out that the burden of proof lies with the producer wishing to claim MET under Article 2 (7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, there is no obligation on the Union Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union Institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET and it is for the Union judicature to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgement in Case C-249/10 P and paragraph 24 of the judgement in Case C-247/10 P).

(41) In accordance with Article 2(7)(c) of the basic Regulation all five criteria listed in this Article should be met so that an exporting producer can be granted MET. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the MET request.

(42) Two of the exporting producers concerned (Company 4 and 6) ([1]) were not able to demonstrate that they met criteria 1 (Business decisions). More specifically, the information provided by Company 4 revealed limitations in the sales quantities for the domestic and export markets. The company has not demonstrated that despite these limitations business decisions were taken in response to market signals reflecting supply and demand

([1]) In order to protect confidentiality, company names have been replaced by numbers. Company 1 to 3 have been subject to Implementing Regulation (EU) 2016/1731 mentioned in recital (20). The companies concerned by the current Regulation were attributed the consecutive numbers 4 to 6.

without significant State interference. Regarding Company 6, it did not show how decisions were taken within the company and thus that these decisions were indeed taken in accordance with market signals without significant State interference.

(43) None of the three companies could demonstrate that they met criterion 2 (Accounting). The accounts of all companies showed deficiencies and were not in compliance with international accounting standards. For instance, for Company 4 the balance of fixed assets was missing as well as the depreciation method and the types of fixed assets of that company. There was also no income tax recorded despite profits and received subsidies were not reflected in the balance sheet. For Company 6 there were inconsistencies between the amounts reported in the balance sheets of consecutive years. Finally, there were several deficiencies in the financial statements of Company 5, in specific concerning the Capital surplus amount. Thus, Company 5 did not submit information regarding the origin of the capital surplus or how it has been evaluated.

(44) Regarding criterion 3 (Assets and 'carry-over'), none of the three exporting producers concerned could show that no distortions were carried over from the former non-market economy system. None of the companies gave conclusive information on whether the relevant land use rights were transferred and/or what were the terms and the value of the land use rights.

(45) For the reasons set out in recital (40), for none of the exporting producers concerned criteria 4 (Bankruptcy and property laws) and 5 (Exchange rate conversions) were assessed.

(46) On the basis of the above, the Commission concluded that none of the three exporting producers concerned should be granted MET and informed the exporting producers concerned accordingly, which were invited to provide comments. No comments were received from any of the three exporting producers concerned.

(47) Therefore, none of the three exporting producers concerned fulfilled all the conditions set out in Article 2(7)(c) of the basic Regulation and MET is, as a result, denied for all of them.

2. **Assessment of the IT claims**

(48) Pursuant to Article 9(5) of the basic Regulation prior to its amendment, where Article 2(7)(a) of the same Regulation applies, an individual duty shall however be specified for the exporters which can demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation prior to its amendment.

(49) As mentioned in recital (40) it is necessary to point out that the burden of proof lies with the producer wishing to claim IT under Article 9(5) of the basic Regulation prior to its amendment. To that end, the first subparagraph of Article 9(5) provides that the claim submitted must be properly substantiated. Accordingly, there is no obligation on the Union Institutions to prove that the exporter does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union Institutions to assess whether the evidence supplied by the exporter concerned is sufficient to show that the criteria laid down in Article 9(5) of the basic Regulation prior to its amendment are fulfilled in order to grant IT.

(50) In accordance with Article 9(5) of the basic Regulation prior to its amendment, exporters should demonstrate on the basis of a properly substantiated claim that all five criteria listed in this Article are met so that they can be granted IT.

(51) Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the IT claim.

(52) The five criteria are the following:

(a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

(b) export prices and quantities, and conditions and terms of sale are freely determined;

(c) the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

(d) exchange rate conversions are carried out at the market rate; and

(e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(53) All three exporting producers concerned that requested MET also claimed IT in the event that they would not be granted MET.

(54) One the three exporting producers (Company 4) concerned was not able to demonstrate that it met criterion 2 (Export sales and prices freely determined). More specifically, the Articles of Association of that exporting producer set a limitation to sales quantities on specific markets. Therefore it failed to demonstrate that business decisions, such as export quantities are freely determined and made in response to market signals reflecting supply and demand.

(55) Furthermore, none of the three exporting producers could show that they met criterion 3 (Company –key management and shares- is sufficiently independent from State interference). None of the companies could show that the relevant land use rights were transferred to them or at what terms and conditions. Company 6 did furthermore not provide any information regarding its board composition and how decisions are taken within the company. On this basis, none of the three exporting producers concerned showed that it was sufficiently independent from State interference.

(56) Therefore, none of the three exporting producers concerned fulfilled the conditions set out in Article 9(5) of the basic Regulation prior to its amendment and the Commission informed the exporting producers concerned accordingly, which were invited to provide comments. No comments were received from any of the three exporting producers concerned and IT was, as a result, denied to all of them.

(57) The residual anti-dumping duty applicable to China should therefore be imposed for exports made by the three exporting producers concerned for the period of application of Regulation (EC) No 1472/2006. The period of application of that Regulation was initially from 7 October 2006 until 7 October 2008. Following the initiation of an expiry review, it was prolonged on 30 December 2009 until 31 March 2011. The illegality identified in the judgments is that the Union Institutions failed to establish whether the products produced by the exporting producers concerned should be subject to the residual duty or to an individual duty. On the basis of the illegality identified by the Court, there is no legal ground for completely exempting the products produced by the exporting producers concerned from paying any anti-dumping duty. A new act remedying the illegality identified by the Court therefore only needs to reassess the applicable anti-dumping duty rate, and not the measures themselves.

(58) Since it is concluded that the residual duty should be re-imposed in respect of the exporting producers concerned at the same rate as originally imposed by the contested Regulation and Regulation (EU) No 1294/2009, no changes are required to Council Regulation (EC) No 388/2008. That Regulation remains valid.

C. **CONCLUSIONS**

(59) Account taken of the comments made and the analysis thereof it was concluded that the residual anti-dumping duty applicable to China, i.e. 16,5 %, should be re-imposed for the period of application of the contested Regulation.

D. **DISCLOSURE**

(60) The exporting producers concerned and all parties that came forward were informed of the essential facts and considerations on the basis of which it was intended to recommend the re-imposition of the definitive anti-dumping duty on exports of the three exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure.

E. **COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE**

(61) Following disclosure, the Commission received comments on behalf of (i) the Federation of the European Sporting Goods ('FESI') and the Footwear Coalition; (ii) Deichmann group of companies ('Deichmann') and (iii) Skechers SARL ('Skechers'), both importers of footwear in the Union.

(62) In their comments to the disclosure, FESI and the Footwear Coalition, first noted that the current implementation is based on the same legal grounds and reasons as the Regulations previously adopted by the Commission related to the same implementation procedure, i.e. Regulation (EU) 2016/1395, Regulation (EU) 2016/1647 and Regulation (EU) 2016/1731. Therefore, in their reply to the disclosure, they simply referred to, and incorporated by reference, the comments they had filed in relation to the above Regulations on 16 December 2015, 6 June 2016, 16 June 2016 and 11 August 2016 respectively, without, however, detailing such comments and claims.

(63) FESI and the Footwear Coalition mainly reiterated that the reopening of the proceeding and the retroactive re-imposition of the anti-dumping duty (i) would lack any legal basis and that the Commission would have no competence to adopt any further measures to ostensibly comply with the obligation in Article 266 of the TFEU; (ii) would breach the principles of legal certainty, protection of legitimate expectations and non-retroactivity; (iii) would be disproportional and violate Article 5(4) of the TEU as well as Article 266 of the TFEU; and (iv) would breach the principle of non-discrimination.

(64) In reply to these comments the Commission refers to Regulation (EU) 2016/1395, Regulation (EU) 2016/1647 and Regulation (EU) 2016/1731 which fully addressed the comments made by FESI and the Footwear Coalition in the current implementation. Since FESI and the Footwear Coalition did not elaborate on their arguments any further, the Commission considers that these have been fully replied to in the above Regulations and the conclusions made in this regard in these Regulations are herewith confirmed.

(65) In addition FESI and the Footwear Coalition argued that in the interest of legal certainty, the Commission should not adopt and publish any further legal acts regarding the implementation of the judgment of the Court of Justice in joined cases C-659/13 and C-34/14, until the Court of Justice rules on an ongoing preliminary ruling brought by the Finanzgericht Düsseldorf (in Case C-256/16), referred to in recital (22), regarding the validity of Implementing Regulation (EU) 2016/223.

(66) According to Article 278 TFEU, legal action against legal acts adopted by the Institutions do not have suspensive effect. Furthermore, according to the case-law, a national Court may only suspend the application of a legal act where the criteria set out in the *Zuckerfabrik Süderdithmarschen/Altana* judgments are met. The referring Court in Case C-256/16 has not suspended the application of Implementing Regulation (EU) 2016/223. The Commission therefore has no basis for refraining from complying with that Regulation. In any event, the validity of the present Regulation is independent of the validity of Implementing Regulation (EU) 2016/223.

(67) FESI and the Footwear Coalition lastly claimed that in breach of the principle of sound administration, the Commission made a superficial assessment of the status of the companies mentioned in Annex III of this Regulation without reviewing the confidential information available to it in its records and that it has incorrectly classified companies in that Annex even though they duly filed MET/IT requests in the 2005 footwear proceeding.

(68) The Commission herewith confirms that for none of the companies listed in Annex III it has any record of having received an MET or IT claim during the original investigation. FESI and the Footwear Coalition did not provide any evidence of the existence of such claims. As mentioned in recital (24), amongst the companies listed in Annex III, there were companies that are not concerned by the investigation as they were for instance not located in China or Vietnam, or they were trading companies in any event not entitled to any individual dumping margin. The Commission therefore rejected the above claim.

(69) With regard to Deichmann, it first claimed that the Commission has no legal basis to investigate the MET/IT claims submitted by exporting producers in the original investigation. Deichmann argued that the proceeding, which was closed by the expiry of the measures on 31 March 2011, was not invalidated by the judgment in joined cases C-659/13 and C-34/14, and that therefore, it cannot be re-opened.

(70) As regards the claim that the measures in question expired on 31 March 2011, the Commission fails to see why the expiry of the measure would be of any relevance for the possibility for the Commission to adopt a new act to replace the annulled act. The judgment annulling the initial act reopens, according to the case-law, the administrative procedure, which can be resumed at the point in time where the illegality occurred.

(71) The anti-dumping proceedings are hence, as a result of the annulment of the act concluding the proceedings, still open. The Commission is under an obligation to close those proceedings, as the basic Regulation provides that an investigation has to be closed by an act of the Commission.

(72) Second, Deichmann claimed that the current proceeding is in breach of the principles of non-retroactivity and legal certainty, as well as Article 10 of the basic Regulation.

(73) As to the claim concerning retroactivity based on Article 10 of the basic Regulation and Article 10 of the WTO Anti-Dumping Agreement ('WTO ADA'), Article 10(1) of the basic Regulation, which follows the text of Article 10(1) of the WTO ADA, stipulates that provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4) of the basic Regulation, as the case may be, enters into force. In the present case, the anti-dumping duties in question are only applied to products which entered into free circulation after the provisional and the contested (definitive) Regulation taken pursuant to 7(1) and 9(4) of the basic Regulation respectively had entered into force. Retroactivity in the sense of Article 10(1) of the basic Regulation, however, refers only to a situation where the goods were introduced into free circulation before measures were introduced, as can be seen from the very text of that provision as well as from the exception for which Article 10(4) of the basic Regulation provides.

(74) The Commission also observes that there is neither retroactivity nor violation of legal certainty and legitimate expectations involved in the present case.

(75) As to retroactivity, the case-law of the Court distinguishes, when assessing whether a measure is retroactive, between the application of a new rule to a situation that has become definitive (also referred to as an existing or definitively established legal situation) ([1]), and a situation that started before the entry into force of the new rule, but which is not yet definitive (also referred to as a temporary situation) ([2]).

(76) In the present case, the situation of the imports of the products concerned that occurred during the period of application of Regulation (EC) No 1472/2006 has not yet become definitive, because, as a result of the annulment of the contested Regulation, the anti-dumping duty applicable to them has not yet been definitively established. At the same time, importers of footwear were warned that such a duty may be imposed by the

([1]) Case 270/84 Licata v ESC [1986] ECR 2305, paragraph 31 Case C-60/98 Butterfly Music v CEDEM [1999] ECR 1-3939, paragraph 24; Case 68/69 Bundesknappschaft v Brock [1970] ECR 171, paragraph 6; Case 1/73 Westzucker GmbH v Einfuhr und Vorratsstelle für Zucker [1973] 723, paragraph 5; Case 143/73 SOPAD v FORMA a.o. [1973] ECR 1433, paragraph 8; Case 96/77 Bauche [1978] ECR 383, paragraph 48; Case 125/77 KoninklijkeScholten-Honig NV v Floofdproduktschaap voor Akkerbouwprodukten [1978] ECR 1991, paragraph 37; Case 40/79 P v Commission [1981] ECR 361, paragraph 12; Case T-404/05 Greece v Commission [2008] ECR II-272, paragraph 77; C-334/07 P Commission v Freistaat Sachsen [2008] ECR 1-9465, paragraph 53.

([2]) Case T-176/01 *Ferrière Nord v Commission* [2004] ECR II-3931, paragraph 139; C-334/07 P (see footnote 22).

publication of the Notice of Initiation ([1]) and the provisional Regulation. It is standing case-law of the Union Courts that operators cannot acquire legitimate expectations until the Institutions have adopted an act closing the administrative procedure, which has become definitive ([2]).

(77) The present Regulation constitutes immediate application to the future effects of a situation that is on-going: The duties on footwear have been levied by National customs authorities. As a result of the requests for reimbursement, which have not been decided in a definitive way, they constitute an on-going situation. The present Regulation sets out the duty rate applicable to those imports, and hence regulates the future effects of an on-going situation.

(78) In any event, even if there was retroactivity in the sense of Union law, *quod non*, such retroactivity would in any event be justified, for the following reason:

(79) The substantive rules of Union law may apply to the situations existing before their entry into force in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them ([3]). In particular, in case C-337/88 Società agricola fattoria alimantare (SAFA) ([4]) it was held that: [A]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

(80) In the present case the purpose is to comply with the obligation of the Commission pursuant to Article 266 TFEU. Since, in the judgments referred to in recital (12) above, the Court only found an illegality with regards to the determination of the applicable duty rate, and not with regards to the imposition of the measures themselves (that is, with regards to the finding of dumping, injury and Union interest), the exporting producers concerned could not have legitimately expected that no definitive anti-dumping measures would be imposed. Consequently, that imposition, even if it was retroactive, *quod non*, cannot be construed as breaching legitimate expectations.

(81) Third, Deichmann claimed that the Commission's statement in recital (38) that the Court of Justice annulled the contested Regulation and Regulation (EU) No 1294/2009 with regard to exports of certain footwear from certain Chinese and Vietnamese exporting producers is incorrect, insofar as judgment in cases C-659/13 and C-34/14 did not annul Regulations (EC) No 1472/2006 and (EU) No 1294/2009 with regard to the three exporting producers concerned, but it had annulled these Regulations with *erga omnes* effect. According to Deichmann, if the Commission were to re-impose an anti-dumping duty only on imports from the three exporting producers concerned, and not on imports from other exporting producers equally affected by the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, it would constitute unjustifiable discrimination vis-à-vis imports of these other exporting producers, and it would also be in breach of Article 266 TFEU.

(82) Regarding the claim of discriminatory treatment vis-à-vis imports of other exporting producers affected by the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, the Commission observes that exporting producers and certain importers concerned by the present Regulation enjoy judicial protection in the Union courts against the present Regulation. Other importers enjoy such protection via the national courts and tribunals, which act as judges of ordinary Union law.

(83) The claim of discrimination is equally unfounded. As mentioned in recital (21), in view of the implementation of the judgment in joint cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, the Commission adopted Implementing Regulation (EU) 2016/223 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and

([1]) OJ C 166, 7.7.2005, p. 14.
([2]) Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 51 to 54; Joined Cases T-116/01 and T-118/01, *P&O European Ferries (Vizcaya) SA* v *Commission* [2003] ECR II-2957, paragraph 205.
([3]) Case C-34/92 *GruSa Fleisch* v *Hauptzollamt Hamburg-Jonas* [1993] ECR I-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 *Meridionale Industria Salumi α.δ.* [1981] ECR 2735, paragraph 9 and 10; Case 21/81 *Bout* [1982] ECR 381, paragraph 13; Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraphs 53 and 55 to 56; Case T-180/01 *Euroagri* v *Commission* [2004] ECR II-369, paragraphs 36 to 37.
([4]) Case C-337/88 *Società agricola fattoria alimentare (SAFA)* [1990] ECR I-1, paragraph 13.

implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14. In Article 1 of this Regulation the Commission instructed National customs authorities to forward all requests for reimbursement of the definitive anti-dumping duties paid on imports of footwear originating in China and Vietnam made by importers based on Article 236 of the Community Customs Code and based on the fact that a non-sampled exporting producer had requested MET or IT in the original investigation. The Commission shall assess the relevant MET or IT claim and re-impose the appropriate duty rate. On this basis the National customs authorities should subsequently decide on the request for repayment and remission of the anti-dumping duties.

(84) Therefore, for all imports of footwear where the above criteria are fulfilled the Commission will examine the MET and IT claims and anti-dumping duties will be re-imposed based on the objective criteria laid down in Articles 2 (7)(b) and 9(5) of the basic Regulation prior to its amendment. Therefore, all other non-sampled exporting producers from the PRC and Vietnam and their importers will be treated in the same fashion at a later stage pursuant to the procedure set out in Implementing Regulation (EU) 2016/223. It is only where there are no outstanding national procedures that no assessment of the MET and IT claims will be carried out, as it would serve no practical purpose.

(85) Fourth, Deichmann claimed that it would be discriminatory to re-impose an anti-dumping duty on the three exporting producers concerned, given that no anti-dumping duty was re-imposed following the Brosmann and Aokang judgments.

(86) This claim is unfounded. Importers that have imported from Brosman and the other four exporting producers concerned by the judgment in cases C-247/10P and C-249/10P, are in a different factual and legal situation, because their exporting producers decided to challenge the contested Regulation and because they were reimbursed their duties, so that they are protected by Article 221(3) of the Community Customs Code. No such challenge and no such reimbursement have taken place for others.

(87) Fifth, Deichmann alleged that there were several procedural irregularities resulting from this investigation. In the first place, they argued that the exporting producers concerned may no longer be in a position to provide meaningful comments or adduce additional evidence to support their MET/IT claims that they made several years ago. For example, the companies may no longer exist or relevant documents may no longer be available.

(88) In addition, Deichmann argued that unlike during the original investigation, the Commission's measures would *de facto* and *de jure* affect only importers, whereas they have no means of providing any meaningful input and cannot require their suppliers to cooperate with the Commission.

(89) The Commission observes that nothing in the basic Regulation requires the Commission to give exporting companies claiming MET/IT the possibility to complete lacking factual information. It recalls that according to the case-law, the burden of proof lies with the producer wishing to claim MET/IT under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments in Brosmann and Aokang, there is no obligation on the Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Commission to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7) (c) of the basic Regulation are fulfilled in order to grant it MET/IT (see above recital (40)). The right to be heard concerns the assessment of those facts, but does not comprise the right to remedy deficient information. Otherwise, the exporting producer could prolong indefinitely the assessment, by providing information piece by piece.

(90) In that regard, it is recalled that there is no obligation, for the Commission, to request the exporting producer to complement the MET/IT claim. As mentioned in the preceding recital, the Commission may base their assessment on the information submitted by the exporting producer. In any event, the exporting producers concerned have not contested the assessment of their MET/IT claims by the Commission, and they have not identified which documents or which people they have no longer been able to rely upon. The allegation is therefore so abstract that the Institutions cannot take into account those difficulties when carrying out the assessment of the MET/IT

claims. As that argument is based on speculation and not supported by precise indications as to which documents and which people are no longer available and as to what the relevance of those documents and people for the assessment of the MET/IT claim is, that argument is rejected.

(91) Regarding the claim that importer would have no means to provide any meaningful input, the Commission observes the following: first, importers do not enjoy rights of defence, as the anti-dumping measure is not directed against them, but against the exporting producers. Second, importers had the opportunity to comment on that point already during the administrative procedure prior to the adoption of the contested Regulation. Third, if importers thought that there was an irregularity in that regard, they had to take the necessary contractual arrangements with their suppliers to ensure to dispose of the necessary documentation. Therefore, the claim has to be rejected.

(92) Sixth, Deichmann argued that the Commission failed to examine whether the imposition of the anti-dumping duties would be in the Union interest and argued that the measures would be against the Union interest because (i) the measures already had their intended effect when first imposed; (ii) the measures would not cause additional benefit for the Union industry; (iii) the measures would not affect the exporting producers and (iv) the measures would impose an important cost on the importers in the Union.

(93) The present case only concerns the MET/IT requests, because this is the only point on which a legal error has been identified by the Union Courts. For Union interest, the assessment in Regulation (EC) No 1472/2006 remains fully valid. Furthermore, the present measure is justified in order to protect the financial interest of the Union.

(94) Lastly, Deichmann claimed that the anti-dumping duty, if re-imposed, could no longer be collected because of the statute of limitations of Article 103 of the Community Customs Code had expired. According to Deichmann, this situation would constitute an abuse of power by the Commission.

(95) The Commission recalls that according to Article 103 of the Community Customs Code, the statute of limitations does not apply where an appeal pursuant to Article 44 of the Community Customs Code is lodged, as in all the present cases, which concern appeals on the basis of Article 236 of the Community Customs Code.

(96) With regard to Skechers, it acknowledged that none of the exporting producers concerned by the current implementation was its supplier and therefore considered that the conclusions were not relevant to its situation. This party argued that the conclusions of the current implementation cannot therefore constitute a basis for denying its reimbursement requests filed at the national customs. The importer further requested that the MET/IT claims of its suppliers should be investigated on the basis of the documents provided by the relevant Belgian customs authorities to the Commission.

(97) With regard to the above claim, the Commission refers to the Implementing Regulation (EU) 2016/223 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 which sets out the procedure to be followed in this matter. In particular, in accordance with Articles 1 and 2 of that Regulation, the Commission will examine the relevant MET/IT claims as soon as it has received the relevant documentation from the customs authorities. It is noted that the Belgium customs authorities have meanwhile provided the Commission with a list of non- sampled exporting producers from China and Vietnam, that had allegedly requested MET or IT during the original investigation, and that were suppliers to importers who requested reimbursement of the duties. The Commission is currently carrying out an assessment of these claims where appropriate. This investigation is still ongoing.

(98) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap, originating in the People's Republic of China and Vietnam and produced by the exporting producers listed in Annex II to this Regulation and falling within CN codes: 6403 20 00, ex 6403 30 00 ([1]), ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 ([2]) which took place during the period of application of Regulation (EC) No 1472/2006 and Regulation (EC) No 1294/2009. The TARIC codes are listed in the Annex I to this Regulation.

2. For the purpose of this Regulation, the following definitions shall apply:

— 'sports footwear' shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1719/2005 ([3]);

— 'footwear involving special technology' shall mean footwear having a CIF price per pair of not less than EUR 7,5, for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98;

— 'footwear with a protective toecap' shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules ([4]) and falling within CN codes: ex 6403 30 00 ([5]), ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

— 'slippers and other indoor footwear' shall mean such footwear falling within CN code ex 6405 10 00.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price of the products described in paragraph 1 and manufactured by the exporting producers listed in Annex II to this Regulation shall be 16,5 %.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 553/2006 shall be definitively collected. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

([1]) By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

([2]) As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

([3]) As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together. (OJ L 286, 28.10.2005, p. 1).

([4]) The impact resistance shall be measured according to European Norms EN345 or EN346.

([5]) By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.

Article 3

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

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

Done at Brussels, 14 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1

(a) From 7 October 2006:

6403 30 00 39, 6403 30 00 89, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90, 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90, 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(b) From 1 January 2007:

6403 51 05 19, 6403 51 05 99, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90, 6403 51 95 90, 6403 51 99 90, 6403 59 05 19, 6403 59 05 99, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 05 19, 6403 91 05 99, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 05 19, 6403 99 05 99, 6403 99 11 90, 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

(c) From 7 September 2007:

6403 51 05 15, 6403 51 05 18, 6403 51 05 95, 6403 51 05 98, 6403 51 11 91, 6403 51 11 99, 6403 51 15 91, 6403 51 15 99, 6403 51 19 91, 6403 51 19 99, 6403 51 91 91, 6403 51 91 99, 6403 51 95 91, 6403 51 95 99, 6403 51 99 91, 6403 51 99 99, 6403 59 05 15, 6403 59 05 18, 6403 59 05 95, 6403 59 05 98, 6403 59 11 91, 6403 59 11 99, 6403 59 31 91, 6403 59 31 99, 6403 59 35 91, 6403 59 35 99, 6403 59 39 91, 6403 59 39 99, 6403 59 91 91, 6403 59 91 99, 6403 59 95 91, 6403 59 95 99, 6403 59 99 91, 6403 59 99 99, 6403 91 05 15, 6403 91 05 18, 6403 91 05 95, 6403 91 05 98, 6403 91 11 95, 6403 91 11 98, 6403 91 13 95, 6403 91 13 98, 6403 91 16 95, 6403 91 16 98, 6403 91 18 95, 6403 91 18 98, 6403 91 91 95, 6403 91 91 98, 6403 91 93 95, 6403 91 93 98, 6403 91 96 95, 6403 91 96 98, 6403 91 98 95, 6403 91 98 98, 6403 99 05 15, 6403 99 05 18, 6403 99 05 95, 6403 99 05 98, 6403 99 11 91, 6403 99 11 99, 6403 99 31 91, 6403 99 31 99, 6403 99 33 91, 6403 99 33 99, 6403 99 36 91, 6403 99 36 99, 6403 99 38 91, 6403 99 38 99, 6403 99 91 95, 6403 99 91 98, 6403 99 93 25, 6403 99 93 28, 6403 99 93 95, 6403 99 93 98, 6403 99 96 25, 6403 99 96 28, 6403 99 96 95, 6403 99 96 98, 6403 99 98 25, 6403 99 98 28, 6403 99 98 95, 6403 99 98 98, 6405 10 00 81 and 6405 10 00 89

ANNEX II

List of exporting producers for which imports a definitive anti-dumping duty is imposed

Name of the exporting producer	TARIC additional code
Chengdu Sunshine Shoes Co. Ldt and related company 'Capital Concord Enterprises Ltd'	A999
Foshan Nanhai Shyang Yuu Footwear Ltd (also 'Shyang Yuu Footwear')	A999
Fujian Sunshine Footwear Co Ltd	A999

ANNEX III

List of companies notified to the European Commission that did not submit any MET/IT claim during the original investigation

— (KMW) MONTAIN HARDWEAR DISTRIBUTIO

— (KYD) KENTUCKY DISTRIBUTION CENTER

— C.T.N. FOOTWEAR COM. LTD

— CALCADO JONITA

— CIMTEX COMPOSITE MANUFACTURING

— DA SHENG ENTERPRISE CO., LTD

— EASY WAY FOOTWARE CO.,LTD

— ETS COLUMBIA INTER

— FUJIAN PUTIAN SHUANGYUAN FOOTW

— FUJIAN SHUANGCHI SPORTS GOODS

— FUZHOU DONG LIAN ENTERPRISE CO

— FUZHOU TIANXIANG SHOES & GARME

— GENWELL INTERNATIONAL CORP

— GREAT LOTUS MANUFACTURING CO

— HO HSING INTERNATIONAL CO., LTD

— IDEA (MACAO COMMERCIAL OFFSHORE)

— JEESHEN INTERNATIONAL CO LTD C.O. J

— KINGFIELD INTERNATIONAL LTD

— LUCKY PORT TRADING LIMITED

— MACNEILL WORLDWID PACIFIC LTD

— PORTLAND NORGE WITH PO

— POU YUEN (CAMBODIA) ENTERPRISE

— PRO DRAGON INC.

— PT SHYANG JU FUNG

— PUTIAN XINLONG FOOTWEAR CO. LT

— QINGDAO SUNWAY SHOES CO.LTD

— REKORD

— SHINY EAST LIMITED

— STATEWAY ENTERPRISES LIMITED

— SUN PALACE TRADING LIMITED

— THE LOOK MACAO COMMERCIAL OFFSHORE

— WEI TONG TRADING LIMITED

— WINNING INDUSTRIAL

— XIAMEN FULI SHOES CO.,LTD

— YYS

— ZHEJIANG WILLING FOREIGN TRADING CO

ANNEX IV

List of exporting producers notified to the Commission already assessed individually or as part of a company group selected in the sample of exporting producers in the original investigation

Name of the companies:

— Feng Tay Chine

— Pou Yuen Vietnam Enterprise

— Pou Yuen Vietnam Company Ltd

— Sky High Trading Limited

ANNEX V

List of exporting producers notified to the Commission already assessed either individually or as part of a company group in the context of Regulation (EU) 2016/1647

Name of the exporting producer:

— Shoe Majesty Trading Company Limited (also Vietnam Shoe Majesty Co, Ltd)

— Feng Tay Vietnam (belonging to the same company group as Vietnam Shoe Majesty Co Ltd.)

— Freetrend Industrial Limited