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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Corrigenda

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1977

of 26 October 2017

repealing Implementing Regulation (EU) No 876/2014 concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Articles 57(4) and 58(2) thereof,

Whereas:

(1) By Implementing Regulation (EU) No 876/2014 ([2]), the Commission classified a portable battery-operated apparatus for capturing and recording still and video images under CN code 8525 80 99 as other video camera recorders.

(2) In its judgment in Joined Cases C-435/15 and C-666/15 ([3]), the Court of Justice ruled that Implementing Regulation (EU) No 876/2014 is invalid.

(3) For reasons of legal certainty, provisions which have been declared invalid by the Court of Justice should be formally removed from the legal order of the Union.

(4) Implementing Regulation (EU) No 876/2014 should therefore be repealed.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 876/2014 is repealed.

Article 2

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

([1]) OJ L 269, 10.10.2013, p. 1.
([2]) Commission Implementing Regulation (EU) No 876/2014 of 8 August 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ L 240, 13.8.2014, p. 12).
([3]) Judgment of the Court of Justice of 22 March 2017, *GROFA and others*, C-435/15 and C-666/15, ECLI:EU:C:2017:232.

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

Done at Brussels, 26 October 2017.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union

COMMISSION REGULATION (EU) 2017/1978

of 31 October 2017

amending Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin as regard echinoderms harvested outside classified production areas

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ([1]), and in particular Article 10(1) thereof,

Whereas:

(1) Regulation (EC) No 853/2004 lays down specific hygiene rules for food of animal origin for food business operators. It provides, inter alia, that food business operators may place products of animal origin on the market only if they have been prepared and handled exclusively in establishments that meet certain requirements, including the relevant requirements of Annex III thereto.

(2) Section VII of Annex III to Regulation (EC) No 853/2004 specifies that that Section applies to live bivalve molluscs, and with the exception of the provisions on purification, it also applies to live echinoderms, live tunicates and live marine gastropods. It also specifies that specific requirements are applicable to pectinidae and marine gastropods which are not filter feeders harvested outside production areas.

(3) Regulation (EC) No 854/2004 of the European Parliament and of the Council ([2]) lays down specific rules for the organisation of official controls on products of animal origin. It provides that the Member States are to ensure that the production and placing on the market of live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods undergo official controls as provided for in Annex II thereto. Chapter II of Annex II to Regulation (EC) No 854/2004 provides that production areas are to be classified according to the level of faecal contamination. Filter feeder animals, such as bivalve molluscs, can accumulate micro-organisms representing a risk for public health.

(4) Echinoderms are generally not filter feeder animals. Consequently, the risk of such animals accumulating micro-organisms related to faecal contamination is remote. In addition, no epidemiological information has been reported to link the provisions for classification of production areas laid down in Annex II to Regulation (EC) No 854/2004 with risks for public health associated with echinoderms which are not filter feeders. For this reason, such echinoderms should also be excluded from provisions on the classification of production areas as laid down in Chapter II of Section VII of Annex III to Regulation (EC) No 853/2004.

(5) In addition, Chapter IX of Section VII of Annex III to Regulation (EC) No 853/2004 establishes specific requirements for pectinidae and live marine gastropods which are not filter feeders harvested outside classified production areas. Such requirements should also apply to echinoderms which are not filter feeder.

(6) Section VII of Annex III to Regulation (EC) No 853/2004 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

([1]) OJ L 139, 30.4.2004, p. 55.
([2]) Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 206).

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EC) No 853/2004 is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2019.

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

Done at Brussels, 31 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Section VII of Annex III to Regulation (EC) 853/20004 is amended as follows:

(1) In the introductory part, point 1 is replaced by the following:

'1. This Section applies to live bivalve molluscs. With the exception of the provisions on purification, it also applies to live echinoderms, live tunicates and live marine gastropods. The provisions on the classification of production areas set out in Chapter II, Part A, of that Section do not apply to marine gastropods and to echinoderms which are not filter feeders.'

(2) Chapter IX is replaced by the following:

'CHAPTER IX: SPECIFIC REQUIREMENTS FOR PECTINIDAE, MARINE GASTROPODS AND ECHINODERMS WHICH ARE NOT FILTER FEEDERS HARVESTED OUTSIDE CLASSIFIED PRODUCTION AREAS

Food business operators harvesting pectinidae, marine gastropods and echinoderms which are not filter feeders, outside classified production areas or handling such pectinidae, and/or such marine gastropods and/or echinoderms must comply with the following requirements:

1. Pectinidae, marine gastropods and echinoderms which are not filter feeders, must not be placed on the market unless they are harvested and handled in accordance with Chapter II, Part B, and meet the standards laid down in Chapter V, as demonstrated by a system of own-checks;

2. In addition to point 1, where data from official monitoring programmes enable the competent authority to classify fishing grounds — where appropriate, in cooperation with food business operators — the provisions of Chapter II, Part A, apply by analogy to pectinidae;

3. Pectinidae, marine gastropods and echinoderms which are not filter feeders, must not be placed on the market for human consumption otherwise than via a fish auction, a dispatch centre or a processing establishment. When they handle pectinidae and/or such marine gastropods, and/or echinoderms food business operators operating such establishments must inform the competent authority and, as regards dispatch centres, comply with the relevant requirements of Chapters III and IV;

4. Food business operators handling pectinidae, live marine gastropods and live echinoderms which are not filter feeders, must comply with the following requirements:

   (a) with the documentary requirements of Chapter I, points 3 to 7, where applicable. In this case, the registration document must clearly indicate the location of the area where the pectinidae and/or live marine gastropods and/or live echinoderms were harvested; or

   (b) with the requirements of Chapter VI, point 2 concerning the closing of all packages of live pectinidae, live marine gastropods and live echinoderms dispatched for retail sale and Chapter VII concerning identification marking and labelling.'

COMMISSION REGULATION (EU) 2017/1979

of 31 October 2017

amending Annex II to Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of officials controls on products of animal origin intended for human consumption as regard echinoderms harvested outside classified production areas

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ([1]), and in particular Article 17(1) thereof,

Whereas:

(1) Regulation (EC) No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

(2) Regulation (EC) No 854/2004 provides that Member States are to ensure that the production and placing on the market of live bivalve molluscs, live echinoderms, live tunicates and live marine gastropods undergo official controls as described in Annex II thereto. Chapter II of that Annex sets out rules concerning the classification of production areas and monitoring of such areas.

(3) In Chapter II of Annex II to Regulation (EC) No 854/2004, production areas are classified according to the level of faecal contamination. Filter feeders animals, such as bivalve molluscs, can accumulate micro-organisms representing a risk for public health. This is the reason why the classification of production areas is based on the presence of certain micro-organisms related to faecal contamination.

(4) Echinoderms are generally not filter feeding animals; consequently the risk of such animals accumulating microorganisms related to faecal contamination is remote. In addition, no epidemiological information has been reported to link the rules, laid down in Chapter II of Annex II to Regulation (EC) No 854/2004 for the classification of production areas, with risks for public health associated with echinoderms which are not filter feeders.

(5) Echinoderms should be consequently excluded from the rules on the classification of production areas set out in Chapter II of Annex II to Regulation (EC) No 854/2004.

(6) Chapter III of Annex II to Regulation (EC) No 854/2004 establishes the official controls concerning pectinidae and live marine gastropods not filter feeders harvested outside classified production areas; echinoderms which are not filter feeders should be included in this Chapter.

(7) Chapter III of Annex II to Regulation (EC) No 854/2004 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex II to Regulation (EC) No 854/2004, Chapter III is replaced by the following:

'CHAPTER III: OFFICIAL CONTROLS CONCERNING PECTINIDAE, MARINE GASTROPODS AND ECHINODERMS WHICH ARE NOT FILTER FEEDERS HARVESTED OUTSIDE CLASSIFIED PRODUCTION AREAS

Official controls on pectinidae, marine gastropods and echinoderms, which are not filter feeders, harvested outside classified production areas shall be carried out in fish auctions, dispatch centres and processing establishments.

([1]) OJ L 139, 30.4.2004, p. 206.

Such official controls must verify compliance with the health standards for live bivalve molluscs laid down in Annex III, Section VII, Chapter V, of Regulation (EC) No 853/2004 as well as compliance with other requirements of Annex III, Section VII, Chapter IX, of that Regulation.'

Article 2

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

It shall apply from 1 January 2019.

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

Done at Brussels, 31 October 2017.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2017/1980

of 31 October 2017

amending Annex III to Regulation (EC) No 2074/2005 as regards paralytic shellfish poison (PSP) detection method

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ([1]) and in particular point (4) of Article 11 thereof,

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ([2]), and in particular point 13(a) of Article 18 thereof,

Whereas:

(1) Regulation (EC) No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin and Regulation (EC) No 853/2004 lays down specific requirements concerning hygienic rules for food of animal origin. Implementing measures for those Regulations as regards recognised testing methods for marine biotoxins are set out in Annex III to Commission Regulation (EC) No 2074/2005 ([3]).

(2) Point 2 of Chapter I of Annex III to Regulation (EC) No 2074/2005 provides that if the results of the paralytic shellfish pois on (PSP) detection method are challenged, the reference method is to be the biological method.

(3) During the thirty-sixth session of the Codex Alimentarius committee on methods of analysis and sampling (Budapest, Hungary 23–27 February 2015) ([4]) it was confirmed to maintain the biological testing method in Section I-8.6.2 of the Codex as Type IV ([5]).

(4) All Codex methods, including Type IV methods, can be used only for control, inspection and regulation (Principles for the establishment of methods of analysis) and when parties so agreed, for resolution of disputes (Guidelines for Settling Disputes on Analytical (Test) Results (CAC/GL 70-2009) but not as reference method.

(5) Considering that a Type IV method cannot be used as reference method, it is important to adapt the current Union rules to the international standards.

(6) Taking into account the so-called Lawrence method as published in AOAC Official Method 2005.06 (Paralytic Shellfish Poisoning Toxins in Shellfish) is currently used for the detection of paralytic shellfish poison (PSP) content of edible parts of molluscs, it is opportune that this method is used as reference method for the detection of those toxins.

(7) Chapter I of Annex III to Regulation (EC) No 2074/2005 should therefore be amended accordingly.

(8) In order to allow the Member States to adapt their methods to the chemical method, the biological testing method may be still used as reference method until 31 December 2018.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

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([1]) OJ L 139, 30.4.2004, p. 55.
([2]) OJ L 139, 30.4.2004, p. 206.
([3]) Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004 (OJ L 338, 22.12.2005, p. 27).
([4]) http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FMeetings%252FCX-715-36%252FREP15_MASe.pdf
([5]) Paragraph 56 of the Report.

HAS ADOPTED THIS REGULATION:

Article 1

Chapter I of Annex III to Regulation (EC) No 2074/2005 is replaced by the following:

'CHAPTER I

PARALYTIC SHELLFISH POISON (PSP) DETECTION METHOD

1. The paralytic shellfish poison (PSP) content of edible parts of molluscs (the whole body or any part edible separately) must be detected in accordance with the biological testing method or any other internationally recognised method.

2. If the results are challenged, the reference method shall be the so-called Lawrence method as published in AOAC Official Method 2005.06 (Paralytic Shellfish Poisoning Toxins in Shellfish).'

Article 2

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

It shall apply from 1 January 2019.

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

Done at Brussels, 31 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2017/1981

of 31 October 2017

amending Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards temperature conditions during transport of meat

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ([1]), and in particular Article 10(1)(d) and (e) thereof,

Whereas:

(1) Regulation (EC) No 853/2004 lays down specific rules on the hygiene of food of animal origin for food business operators. That Regulation provides that food business operators are to ensure compliance with specific temperature requirements before and during the transport of meat.

(2) In accordance with Annex III to that Regulation, meat, other than offal, of domestic ungulates is to be immediately chilled after post-mortem inspection to a core temperature of not more than 7 °C along a chilling curve that ensures a continuous decrease of the temperature, unless other specific provisions provide otherwise. This is to be completed in the slaughterhouse chillers, before transportation may begin.

(3) On 6 March 2014, the Scientific Panel on biological hazards of the European Food Safety Authority (EFSA) adopted Part 1 of a scientific opinion ([2]) on the public health risks related to the maintenance of the cold chain during storage and transport of meat, which concerns meat of domestic ungulates only. That opinion concludes that since most bacterial contamination occurs on the surface of the carcass, the surface temperature is an appropriate indicator of bacterial growth. It also provides for combinations of maximum surface temperatures at carcass loading and maximum chilling and transport times, which result in growth of pathogens (micro-organisms that cause food-borne illness) equivalent to or less than that obtained when carcasses are chilled to a core temperature of 7 °C in the slaughterhouse.

(4) On 8 June 2016, EFSA adopted a further scientific opinion ([3]) on growth of spoilage bacteria during storage and transport of meat. That opinion found that some spoilage bacteria (bacteria which do not necessarily cause illness, but can render food unacceptable for human consumption due to decay), in particular *Pseudomonas* spp., can reach critical levels more quickly than pathogens, depending upon the level of initial contamination with spoilage bacteria, as well as on temperature conditions.

(5) The aerobic colony count must be routinely assessed by food business operators in accordance with Commission Regulation (EC) No 2073/2005 ([4]) It can be used as an indicator of the upper limit of the concentration of any spoilage bacteria species present on the meat.

(6) Based on the EFSA opinion and considering the assessment tools available, it is therefore possible to introduce alternative, more flexibility approaches for the temperature conditions during transport of fresh meat, in particular carcasses or larger cuts without any increased public health risk, and without deviating from the basic principle that such meat should be chilled to 7 °C by a continuous decrease of temperature. This increased flexibility would enable meat to reach the consumer more swiftly after slaughter, thus facilitating trade flows of fresh meat within the Union.

(7) While the alternative approaches are based on the surface and transport air temperatures, a continuous decrease of the temperature as already mandatory by current provisions requires that part of the body heat should also be removed prior to long distance transport. Setting a core temperature to which carcasses and larger cuts must be chilled before transport is a way to ensure that a significant proportion of body heat is removed.

([1]) OJ L 139, 30.4.2004, p. 55.
([2]) *EFSA Journal* 2014; 12(3):3601 [81 pp.].
([3]) *EFSA Journal* 2016; 14(6):4523 [38 pp.].
([4]) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

(8) Regulation (EC) No 853/2004 also provides for a derogation from the obligation to chill the meat to 7 °C before transport with regard to specific products under specific conditions. To avoid any misuse of this derogation, it is appropriate to clarify that this is only allowed if justified by technological reasons, e.g. when chilling to 7 °C may not contribute to the hygienic and technically most appropriate processing of the product.

(9) Annex III to Regulation (EC) No 853/2004 should therefore be amended accordingly.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EC) No 853/2004 is amended as follows:

(1) in Section I, Chapter VII, point 3 is replaced by the following:

'3. Meat must attain the temperature specified in point 1 before transport, and remain at that temperature during transport.

However, following points (a) and (b) shall apply.

(a) Transport of meat for the production of specific products may take place before the temperature specified in point 1 is attained if the competent authority so authorises, provided that:

(i) such transport takes place in accordance with the requirements that the competent authorities of origin and destination specify in respect of transport from one given establishment to another;

(ii) the meat leaves the slaughterhouse, or a cutting room on the same site as the slaughter premises, immediately and transport takes no more than 2 hours;

and,

(iii) such transport is justified for technological reasons.

(b) Transport of carcases, half carcases, quarters, or half carcases cut into three wholesale cuts of ovine and caprine animals, bovine animals and porcine animals may commence before the temperature specified in point 1 is attained, provided that all of the following conditions are fulfilled:

(i) the temperature is monitored and recorded within the framework of procedures based on the HACCP principles;

(ii) food business operators dispatching and transporting the carcases, half carcases, quarters, or half carcases cut into three wholesale cuts have received documented authorisation from the competent authority at the place of departure to make use of this derogation;

(iii) the vehicle transporting the carcases, half carcases, quarters, or half carcases cut into three wholesale cuts are fitted with an instrument that monitors and records air temperatures to which the carcases, half carcases, quarters, or half carcases cut into three wholesale cuts are subjected in such a way that competent authorities are enabled to verify compliance with the time and temperature conditions set out in point (viii);

(iv) the vehicle transporting the carcases, half carcases, quarters, or half carcases cut into three wholesale cuts collects meat from only one slaughterhouse per transport;

(v) carcases, half carcases, quarters, or half carcases cut into three wholesale cuts subject to this derogation must have a core temperature of 15 degrees at the start of the transport if they are to be transported in the same compartment as carcases, half carcases, quarters, or half carcases cut into three wholesale cuts which meets the temperature requirement at Point 1 (i.e. 7 degrees);

(vi) a declaration by the food business operator accompanies the consignment; that declaration must state the duration of chilling before loading, the time at which loading of the carcases, half carcases, quarters, or half carcases cut into three wholesale cuts were started, the surface temperature at that time, the maximum transportation air temperature to which carcases, half carcases, quarters, or half carcases cut into three wholesale cuts may be subjected, the maximum transport time permitted, the date of authorisation and the name of the competent authority providing the derogation;

(vii) the food business operator of destination must notify the competent authorities before he receives for the first time carcases, half carcases, quarters, or half carcases cut into three wholesale cuts, not attaining the temperature specified in point 1 before transport;

(viii) such meat is transported in accordance with the following parameters:

— for a maximum transport time ([1]) of 6 hours:

<table>
<tr><th>Species</th><th>Surface temperature ([2])</th><th>Maximum time to chill to surface temperature ([3])</th><th>Maximum transportation air temperature ([4])</th><th>Maximum daily mean carcase aerobic colony count ([5])</th></tr>
<tr><td>Ovine and caprine animals</td><td rowspan="3">7 °C</td><td>8 hours</td><td rowspan="3">6 °C</td><td>$\log_{10}$ 3,5 cfu/cm²</td></tr>
<tr><td>Bovine animals</td><td>20 hours</td><td>$\log_{10}$ 3,5 cfu/cm²</td></tr>
<tr><td>Porcine animals</td><td>16 hours</td><td>$\log_{10}$ 4 cfu/cm²</td></tr>
</table>

— for a maximum transport time ([1]) of 30 hours:

Species	Surface temperature ([2])	Maximum time to chill to surface temperature ([3])	Core temperature ([6])	Maximum transportation air temperature ([4])	Maximum daily mean carcase aerobic colony count ([5])
Porcine animals	7 °C	16 hours	15 °C	6 °C	$\log_{10}$ 4 cfu/cm²

— for a maximum transport time ([1]) of 60 hours:

<table>
<tr><th>Species</th><th>Surface temperature ([2])</th><th>Maximum time to chill to surface temperature ([3])</th><th>Core temperature ([6])</th><th>Maximum transportation air temperature ([4])</th><th>Maximum daily mean carcase aerobic colony count ([5])</th></tr>
<tr><td>Ovine and caprine animals</td><td rowspan="2">4 °C</td><td>12 hours</td><td rowspan="2">15 °C</td><td rowspan="2">3 °C</td><td rowspan="2">$\log_{10}$ 3 cfu/cm²</td></tr>
<tr><td>Bovine animals</td><td>24 hours</td></tr>
</table>

([1]) Maximum time allowed from the start of loading of meat into the vehicle until the completion of the final delivery. Loading of the meat into the vehicle may be postponed beyond the maximum time allowed for chilling of the meat to its specified surface temperature. If this happens, then the maximum transport time allowed must be shortened by the same length of time by which the loading was postponed. The competent authority of the Member State of destination may limit the number of delivery points.

([2]) Maximum surface temperature allowed at loading and thereafter measures at the thickest part of the carcase, half carcases, quarters, or half carcases cut into three wholesale cuts.

([3]) Maximum time allowed from the moment of killing until the reaching of the maximum surface temperature allowed at loading.

([4]) The maximum air temperature to which the meat is allowed to be subjected from the moment loading begins, and throughout the whole duration of the transport.

([5]) Slaughterhouse maximum daily mean carcase aerobic colony count using a rolling window of 10 weeks, allowed for carcases of the relevant species, as assessed by the operator to the satisfaction of the competent authority, according to the sampling and testing procedures laid out in points 2.1.1, 2.1.2 of Chapter 2, and point 3.2 of Chapter 3, of Annex I to Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

([6]) The maximum core temperature of the meat allowed at the time of loading, and thereafter.';

(2) in Section I, Chapter V, the following point 5 is added:

'5. Carcases, half carcases, quarters, or half carcases cut into no more than three wholesale cuts may be boned and cut prior to reaching the temperature referred to in point 2(b) when they have been transported under the derogation set out in point 3(b) of Chapter VII of Section I. In this case, throughout cutting or boning, the meat must be subjected to air temperatures that ensure a continuous decrease of the temperature of the meat. As soon as it is cut and, where appropriate, packaged, the meat must be chilled to the temperature referred to in point 2(b) if it is not already below this temperature.'

Article 2

This Regulation shall enter into force on the twentieth 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, 31 October 2017.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1982

of 31 October 2017

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 Dongguan Luzhou Shoes Co. Ltd, Dongguan Shingtak Shoes Co. Ltd, Guangzhou Dragon Shoes Co. Ltd, Guangzhou Evervan Footwear Co. Ltd, Guangzhou Guangda Shoes Co. Ltd, Long Son Joint Stock Company and Zhaoqing Li Da Shoes Co., Ltd, 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 ([1]) ('the basic Regulation'), and in particular Articles 9(4) and 14(1) and (3) 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 uppers of 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.

(4) Further to an expiry review initiated on 3 October 2008 ([5]), the Council further extended the anti-dumping measures for 15 months by Implementing Regulation (EU) No 1294/2009 ([6]), i.e. until 31 March 2011, when the measures expired ('Implementing 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 judgments of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council the General Court rejected those challenges.

(6) The applicants appealed those judgments. In its judgments of 2 February 2012 in case C-249/10 P Brosmann Footwear (HK) and Others v Council and of 15 November 2012 in case C-247/10 P Zhejiang Aokang Shoes v Council ('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 judgment in Case C-249/10 P and paragraph 29 and 32 of the judgment in Case C-247/10 P).

(7) The Court of Justice then gave judgment itself in the matter. It held that '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 judgment in Case C-249/10 P and paragraph 36 of the judgment 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 a notice published in the *Official Journal of the European Union* ([7]), 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. That notice invited interested parties to come forward and make themselves known.

(10) In March 2014, the Council, by Implementing Decision 2014/149/EU ([8]), 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 Council Regulation (EEC) No 2913/92 ([9]) establishing the Community Customs Code ('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.

(11) Three importers of the product concerned, C&J Clark International Ltd ('Clark'), Puma SE ('Puma') and Timberland Europe BV ('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 ([10]), the Court of Justice declared Regulation (EC) No 1472/2006 and Implementing Regulation (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 ([11]).

(13) Regarding Case C-571/14 Timberland Europe, 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 judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ([12]).

(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 ([13]). 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 ([14]), 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 Regulation (EC) No 1472/2006 and Implementing Regulation (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 ([15]) (the 'basic Regulation prior to its amendment') ([16]).

(18) By Commission Implementing Regulation (EU) 2016/1395 ([17]), 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 have submitted MET and IT claims but that had not been sampled.

(19) By Commission Implementing Regulation (EU) 2016/1647 ([18]), 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 Commission Implementing Regulation (EU) 2016/1731 ([19]) 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 one exporting producer in Vietnam and by two exporting producers in the PRC that submitted MET and IT claims, but had not been sampled.

(21) In view of the implementation of the judgment in Joined 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 ([20]). In Article 1 of that 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 investigation that lead to the imposition of the definitive measures by Regulation (EC) No 1472/2006 ('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) Following a notification from the French customs authorities in accordance with Article 1 of Implementing Regulation (EU) 2016/223, the Commission identified two Chinese exporting producers that provided MET and IT claims in the original investigation but that had not been sampled. Another exporting producer was identified that was supplier of Deichmann, a German importer that contested the payment of duties. Consequently, the Commission analysed the MET and IT claim form from these three Chinese exporting producers.

(23) As a result of the above, by Implementing Regulation (EU) 2016/2257 ([21]), the Commission re-imposed a definitive anti-dumping duty and collected definitely the provisional duty imposed on imports certain footwear with uppers of leather originating in the People's Republic of China and produced by three exporting producers that had submitted MET and IT claims but that had not been sampled.

(24) In accordance with Article 1 of Implementing Regulation (EU) 2016/223, the UK, Belgium and Swedish customs authorities notified the Commission reimbursement claims of importers on 12 July 2016 (UK), 13 July 2016 (Belgium) and 26 July 2016 (SWE) respectively. As a result of these notifications, the Commission analysed MET and IT claims from 19 exporting producers and, by Implementing Regulation (EU) 2017/423 ([22]), re-imposed a definitive anti-dumping duty and collected definitely 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 these 19 exporting producers.

(25) As mentioned in recital (34) of the abovementioned Implementing Regulation (EU) 2017/423, during the above investigation, through comments made by several interested parties following disclosure, five additional companies/company groups were identified that had either itself or via a related Chinese or Vietnamese exporting producer submitted a MET/IT claim form during the original investigation, but that were not sampled and that had not been assessed in any previous implementation exercise. These companies were listed in Annex VI to Implementing Regulation (EU) 2017/423 and were part of four company groups.

(26) On this basis the Commission identified four company groups comprising together seven individual companies that were Chinese or Vietnamese exporting producers that were not sampled in the original investigation and that had submitted a MET/IT claim form. Thus, in the current regulation, the Commission assessed the MET and IT claim forms of: Dongguan Luzhou Shoes Co. Ltd, Dongguan Shingtak Shoes Co. Ltd, Guangzhou Dragon Shoes Co. Ltd, Guangzhou Evervan Footwear Co. Ltd, Guangzhou Guangda Shoes Co. Ltd, Long Son Joint Stock Company and Zhaoqing Li Da Shoes Co. Ltd ('the exporting producers concerned'). Dongguan Luzhou Shoes Co. Ltd and Zhaoqing Li Da Shoes Co. Ltd are companies related to the company Dah Lih Puh listed in the Annex VI to Implementing Regulation (EU) 2017/423. Dongguan Shingtak Shoes Co. Ltd, Guangzhou Dragon Shoes Co. Ltd and Guangzhou Guangda Shoes Co. Ltd are companies related to Shing Tak Ind. Co. Ltd listed in the Annex VI to Implementing Regulation (EU) 2017/423. The company Guangzhou Evervan Footwear Co. Ltd is related to Evervan Group P/A EVA Overseas Intl. Ltd, also listed in the Annex VI to Implementing Regulation (EU) 2017/423.

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

(27) 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 ([23]).

(28) This 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 (26) are concerned.

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

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

(31) The Commission has examined whether MET or IT prevailed for the exporting producers concerned mentioned in recital (26) 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.

(32) 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 and the individual duty rate, i.e. in case of imports from China, the difference between 16,5 %, and the duty imposed on the only exporting company in the sample that obtained MET, namely 9,7 %; and, in case of imports from Vietnam, the difference between 10 % and the individual duty rate calculated for the exporting producer concerned, if any.

(33) Should the analysis reveal that IT was to be granted to an 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, i.e. in case of imports from China 16,5 % and in case of imports from Vietnam 10 %, and the individual duty calculated for the exporting producer concerned, if any.

(34) 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.

(35) As explained in recital (12), the Court of Justice annulled the contested Regulation and Implementing 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.

(36) 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. That 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 (37) and following).

C. **ASSESSMENT OF THE MET CLAIMS**

(37) 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 judgment in Case C-249/10 P and paragraph 24 of the judgment in Case C-247/10 P).

(38) 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.

(39) None of the exporting producers concerned was able to demonstrate that it met criterion 1 (Business decisions). More specifically, the Commission found that certain exporting producers (Companies 28, 29, 31 and 32) ([24]) could not determine freely their sales quantities for domestic and export markets. In this respect, the Commission established that there were limitations in the output and/or a limitation to sales quantities on specific markets (domestic and export). Moreover, all exporting producers concerned failed to provide essential and complete information (such as evidence concerning the structure and the capital of the company, evidence or explanations concerning the company's decision making, evidence concerning the cost of electricity or an English version of the Articles of Association) to demonstrate that their business decisions were taken in accordance with market signals without significant State interference.

(40) With regard to criterion 2 (Accounting), all seven exporting producers concerned failed to demonstrate that they had a set of basic accounting records independently audited in line with international accounting standards. In this regard, the assessment for Companies 27, 28, 29, 31 revealed that their accounts were in breach of international accounting standards such as the lack of information concerning the lease of buildings or incorrect reporting of land use right or use of fixed exchange rate. For Companies 27, 28, 30 and 32 the Commission found inconsistencies between the information provided in the MET claim and the supporting documentation (i.e. Balance Sheet). Company 26 provided the Commission with an independent auditor opinion/report and the financial statements only in Vietnamese language and failed to submit an English translation thereof.

(41) Regarding criterion 3 (Assets and carry-over), Companies 26, 27, 28, 29, 30, 31 and 32 failed to demonstrate that no distortions are carried over from the non-market economy system. In particular, these companies failed to provide essential and complete information, inter alia, about the assets owned by the company, the terms and the value of the land use-rights, the deviation from the standard tax rate, the recruitment policy of the company, the tax rate or the electricity suppliers and rates.

(42) Company 27 failed to demonstrate that it met Criterion 4 (Legal environment). In particular, although the company was in the situation of apparent insolvency according to its balance sheet, this was not disclosed in its financial statements or auditor report. The company thus failed to demonstrate that it operated under bankruptcy and property laws that guarantee stability and legal certainty.

(43) Company 29 failed to demonstrate that it met Criterion 5 (Currency exchange) since, according to the Notes of the financial statements, the company used a fixed exchange rate for the foreign currency business, which is not in line with criterion 5 which stipulates that exchange rate conversions are carried out at a market rate.

(44) The Commission informed the exporting producers concerned that none of them should be granted MET and invited them to provide comments. No comments were received.

(45) Therefore, none of the seven 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.

D. **ASSESSMENT OF THE IT CLAIMS**

(46) 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.

(47) As mentioned in recital (37) 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) of the basic Regulation prior to its amendment 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.

(48) 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 therein are met so that they can be granted IT. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the IT claim.

(49) The five criteria are the following:

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

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

(3) 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;

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

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

(50) All seven exporting producers concerned claimed IT in the event that they would not be granted MET. Therefore, the Commission also assessed whether IT should be granted to these exporting producers, in addition to rejecting their MET claims as described in recitals (37) to (44) above.

(51) Regarding criterion 1 (Repatriation of capital and profits), Company 30 failed to demonstrate that it was free to repatriate capital and profits and did thus not demonstrate that this criterion was fulfilled.

(52) With regard to criterion 2 (Export sales and prices freely determined), the Commission concluded that Companies 29, 31 and 32 had failed to prove that business decisions such as export prices and quantities, and conditions and terms of sale were freely determined in response to market signals, as the evidence analysed, such as articles of association or business licences, showed a limitation in output and/or on the sales quantities of footwear in specific markets.

(53) As regards criterion 3 (Company — key management and shares — is sufficiently independent from State interference), the Commission concluded that Companies 26, 27, 28, 29, 30 and 31 failed to provide the necessary information to demonstrate that they were sufficiently independent from State interference. Inter alia, no information or insufficient information was provided as regards the ownership structure of the company and how the decisions were taken (Companies 27, 28, 29, 30), on how the land use right were transferred to these companies and at what terms and conditions (Companies 28, 29 and 31). Company 26 also provided only a Vietnamese version of the Articles of Association and failed to provide an English translation thereof.

(54) In addition, Companies 26, 27, 28, 29 and 30 also failed to prove that they fulfilled the requirements of criterion 5 (Circumvention) on the basis that no information was provided as to how decisions were taken within the company and whether the State exerted significant influence in this decision making of the company.

(55) Finally, for Company 29 exchange rate conversions were not carried out at the market rate, but at a fixed rate as mentioned in recital (43) above. Therefore, it did not fulfil the requirements of criterion 4 (Market based exchange rate).

(56) In light of the above, none of the seven exporting producers concerned fulfilled the conditions set out in Article 9(5) of the basic Regulation prior to its amendment and IT was therefore denied to all of them. The Commission informed the exporting producers concerned accordingly and invited them to provide comments. No comments were received.

(57) The residual anti-dumping duty applicable to China and Vietnam, of 16,5 % and 10 % respectively, should therefore be imposed for exports made by the seven 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 applicable to China and Vietnam respectively should be re-imposed in respect of the exporting producers concerned at the same rate as originally imposed by the contested Regulation and Implementing Regulation (EU) No 1294/2009, no changes are required to Regulation (EC) No 388/2008. That latter regulation remains valid.

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

(59) Following disclosure, the Commission received comments on behalf of FESI and the Footwear Coalition ([25]) representing importers of footwear in the Union.

Procedural requirements when assessing MET and IT claim forms

(60) FESI and the Footwear Coalition claimed that the burden of proof when assessing MET/IT claims lies with the Commission, as the Chinese and Vietnamese exporting producers had discharged the burden by submitting the MET/IT claims in the original investigation. FESI and the Footwear Coalition also claimed that the same procedural rights should have been granted to the exporting producers concerned by the current implementation as those granted to the sampled exporting producers during the original investigation. FESI and the Footwear Coalition argued in particular, that only a desk analysis had been carried out rather than on-the-spot verification visits, and that the Chinese and Vietnamese exporting producers were not provided any opportunity to complement their MET/IT claim forms via deficiency letters.

(61) FESI and the Footwear Coalition further argued that the exporting producers concerned by this implementation were not provided with the same procedural guarantees than those applied in standard anti-dumping investigations, but stricter standards were applied. FESI and the Footwear Coalition claimed that the Commission has not taken into account the time lag between the filing of the MET/IT request in the original investigation and the assessment of these claims. In addition, exporting producers during the original investigation were only provided 15 days in order to fill in the MET/IT requests, instead of the usual 21 days.

(62) On this basis, FESI and the Footwear Coalition claimed that the fundamental legal principle of granting interested parties full opportunity to exercise their rights of defence laid down in Article 41 of the Charter of Fundamental Rights of the European Union and Article 6 of the Treaty on European Union, was not respected. On this basis, it was argued that by not giving the exporting producers the opportunity to complete incomplete information the Commission misused its powers and effectively reversed the burden of proof at the stage of the implementation.

(63) Finally, FESI and the Footwear Coalition also claimed that this approach would be discriminatory vis-à-vis the Chinese and Vietnamese exporting producers that were sampled in the original investigation, but also other exporting producers in non-market economy countries that were subject to an anti-dumping investigation and filed MET/IT claims in that investigation. Thus, the Chinese and Vietnamese companies concerned by the current implementation should not be made subject to the same information provision threshold as applied in a normal 15-month investigation and should not be subject to stricter procedural standards.

(64) FESI and the Footwear Coalition also claimed that the Commission applied de facto facts available within the meaning of Article 18(1) of the basic Regulation, while the Commission did not comply with the procedural rules set out in Article 18(4) of the basic Regulation.

(65) The Commission 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 recital (48)). In that regard, it is recalled that there is no obligation for the Commission contained in the basic Regulation or in the case-law to give the possibility of the exporting producer to complement the MET/IT claim with all missing factual information. The Commission may base its assessment on the information submitted by the exporting producer.

(66) In relation to the argument that only a desk analysis was carried out, the Commission notes that a desk analysis is a procedure whereby the requests for MET/IT are analysed on the basis of the documents submitted by the exporting producer. All MET/IT applications are subject to a desk analysis by the Commission. In addition, the Commission may decide to carry out on-site verification visits. On-site verifications visits are, however, not required, nor are they carried out for every application for MET/IT. On-site inspections, where they are carried out, usually have as their purpose to confirm a certain preliminary assessment made by the institutions and/or to check the veracity of the information provided by the exporting producer concerned. In other words, if the evidence submitted by the exporting producer clearly shows that MET/IT is not warranted, the additional and optional step of on-site inspections would typically not be organised. It is for the Commission to assess whether a verification visit is appropriate ([26]). The discretion to decide on the means of verifying the information in an MET/IT form lies with that institution. So, where, as in the present case, the Commission decides, on the basis of a desk analysis, that it was in possession of sufficient evidence to rule on an MET/IT claim, a verification visit is not necessary and cannot be required.

(67) Concerning the claim that the rights of defence were not appropriately respected through the Commission's decision not to send deficiency letters, it is, first of all, recalled that rights of defence are individual rights, and that FESI and the Footwear Coalition cannot rely on a violation of an individual right of other companies. Second, the Commission contests the assertion that there is a practice by the Commission that significant exchange of information and a detailed deficiency completion process is carried out when use is made of desk analysis alone as opposed to desk analysis plus on-site verification. Indeed, FESI and the Footwear Coalition have not been able to provide evidence to the contrary.

(68) FESI and the Footwear Coalition's comments on discrimination must equally be rejected as unfounded. It is recalled that the principle of equal treatment is violated where the Union institutions treat like cases differently, thereby placing some traders at a disadvantage by comparison to others, without such differentiation being justified by the existence of substantial objective differences ([27]). Yet, that is precisely not what the Commission is doing: by requiring the non-sampled Chinese and Vietnamese exporting producers to file MET/IT claims for re-assessment, it intends to bring these formerly non-sampled exporting producers on the same footing as those who were sampled in the initial investigation. In addition, as the basic Regulation does not set out a minimum

timeframe in this regard, so long as the timeframe for this purpose is reasonable and provides the parties with sufficient opportunity to assemble (or re-assemble) the information needed while at the same time safeguarding their rights of defence, no discrimination occurs.

(69) Regarding Article 18(1) of the basic Regulation, in the current case, the Commission accepted the information provided by the exporting producers concerned, it did not reject this information and based its assessment on it. Therefore, the Commission did not apply Article 18. It follows that there was no need to follow the procedure under Article 18(4) of the Basic Regulation. The procedure under Article 18(4) is followed in cases where the Commission intends to reject certain information provided by the interested party and to use facts available instead.

Legal basis of re-opening of the investigation

(70) FESI and the Footwear Coalition argued that the Commission would be in breach of Article 266 TFEU, as this article does not provide it with the legal basis to reopen the investigation with respect to an expired measure. FESI and the Footwear Coalition also reiterated that Article 266 TFEU does not allow for the imposition of anti-dumping duties retroactively, which was also confirmed by the ruling of the Court of Justice in Case C-458/98 P IPS v Council ([28]).

(71) In this regard, FESI and the Footwear Coalition argued that the anti-dumping proceeding concerning imports of footwear from China and Vietnam had been concluded on 31 March 2011 with the expiry of the measures. To this aim, the Commission had issued a notice in the *Official Journal of the European Union* regarding the expiry of the duties on 16 March 2011 ([29]) ('notice of expiry'), the Union industry had not claimed any continuation of dumping and also the judgment of the Court of Justice of the European Union did not invalidate the notice of expiry.

(72) In addition, the same parties argued that there would also not be any grounds in the basic Regulation which would allow the Commission to re-open the anti-dumping investigation.

(73) In this context, FESI and the Footwear Coalition argued in addition that the resumption of the investigation and the assessment of the MET/IT claims filed by the Chinese and Vietnamese exporting producers concerned in the original investigation is in violation of the universal principle of prescription or limitation. This principle is laid down in the WTO Agreement and the basic Regulation that set a 5-year time limit for the duration of measures and in Articles 236(1) and 221(3) of the Community Customs Code that set a 3-year period for importers to claim the repayment of anti-dumping duties on the one hand and for national customs authorities to collect import duties and anti-dumping duties on the other hand ([30]). Article 266 of the TFEU does not allow from the deviation of this principle.

(74) Finally, it was claimed that the Commission has not provided any reasoning or prior jurisprudence to support of the use of Article 266 TFEU as a legal basis for the re-opening of the procedure.

(75) Concerning the lack of any legal basis to re-open the investigation, the Commission recalls the case-law quoted above at recital (15), pursuant to which it may resume the investigation at the very point at which the illegality occurred. According to the case-law, the legality of an anti-dumping Regulation has to be assessed in the light of the objective norms of Union law, and not of a decisional practice, even where such a practice exists (which is not the case here). Hence, the Commission's past practice, *quod non*, cannot create legitimate expectations: pursuant to settled case-law of the Court, legitimate expectations can only arise where the institutions have given specific assurances which would allow an interested party to lawfully deduce that the Union institutions would act in a certain way ([31]). Neither FESI nor the Footwear Coalition have attempted to demonstrate that such assurances were given in the present case. That is all the more the case because the previous practice referred to does not correspond to the factual and legal situation of the present case, and whose differences can be explained by factual and legal differences with the present case.

(76) Those differences are as follows: the illegality identified by the Court does not concern the findings on dumping, injury, and Union interest, and therefore the principle of the imposition of the duty, but only the precise duty rate. The previous annulments relied on by the interested parties, on the contrary, concerned the findings on dumping, injury and Union interest. The institutions are therefore permitted to recalculate the precise duty rate for the exporting producers concerned.

(77) In particular, in the present case, there was no need to seek additional information from interested parties. Rather, the Commission had to assess information that had been filed, but not assessed before the adoption of Regulation (EC) No 1472/2006. In any event, as noted in recital (75) above, previous practice in other cases does not constitute precise and unconditional assurance for the present case.

(78) Finally, all parties against which the proceeding is directed, i.e. the exporting producers concerned, as well as the parties in the Court cases and the association representing one of those parties, have been informed by the disclosure of the relevant facts on the basis of which the Commission intends to adopt the present MET/IT assessment. Hence, their rights of defence are safeguarded. In that regard, it is to be noted in particular that unrelated importers do not enjoy, in an antidumping proceeding, rights of defence, as those proceedings are not directed against them.

(79) 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 following a judgment annulling the initial act. According to the case-law referred to in recital (15) above, the administrative procedure should be resumed at the point in time where the illegality occurred.

(80) 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; Article 9(4) of the basic Regulation provides that an investigation has to be closed by an act of the Commission.

Article 236 of the Community Customs Code

(81) FESI and the Footwear Coalition also submitted that the procedure adopted to reopen the investigation and retroactively impose the duty amounts to an abuse of powers by the Commission and violates the TFEU. FESI and the Footwear Coalition argue in this regard that the Commission does not have the authority to interfere with Article 236(1) of the Community Customs Code by preventing the repayment of the anti-dumping duties. They argued that it was up to the national customs authorities to draw the consequences of an invalidation of duties and that they would also be obliged to reimburse anti-dumping duties that had been declared invalid by the Court.

(82) In this regard, FESI and the Footwear Coalition claimed that Article 14(3) of the basic Regulation does not allow the Commission to derogate from Article 236 of the Community Customs Code, as both legislations are of an equal legal order and the basic Regulation cannot be seen as a *lex specialis* of the Community Customs Code.

(83) Furthermore, the same parties continued Article 14(3) of the basic Regulation does not refer to Article 236 of the Community Customs Code and only states that special provisions may be adopted by the Commission, but no derogations to the Community Customs Code.

(84) In response thereto, it is important to underline that Article 14(1) of the basic Regulation does not automatically render applicable the rules governing Union customs legislation to the imposition of the individual anti-dumping duties ([32]). Rather, Article 14(3) of the basic Regulation gives the Union's institutions the right to transpose and make applicable, where necessary and useful, the rules governing the Union's customs legislation ([33]).

(85) This transposition does not require a full application of all the provisions of the Union's customs legislation. Article 14(3) of the basic Regulation explicitly envisages special provisions with regard to the common definition of the concept of origin, a good example of where deviation from the provisions of the Union's customs legislation occurs. It is on that basis that the Commission made use of the powers arising from Article 14(3) of the basic Regulation and required that national customs authorities refrain temporarily from any reimbursement. This does not challenge the exclusive competence that national customs authorities have in relation to disputes concerning customs debt: the decision-making authority remains with the customs authorities of the Member States. The Member States customs authorities still decide, on the basis of the conclusions reached by the Commission vis-à-vis the MET and IT claims, whether reimbursement should be granted or not.

(86) Thus, while it is true that nothing in the Union's customs legislation allows for an obstacle to the reimbursement of erroneously paid customs duties to be erected, no such sweeping statement can be made in relation to the

reimbursement of anti-dumping duties. Accordingly, and with the overarching necessity to protect the Union's own resources from unjustified requests for repayment and the related difficulty this would have caused pursuing unjustified repayments thereafter, the Commission had to deviate temporarily from the Union's customs legislation by making use of its powers under Article 14(3) of the basic Regulation.

Lack of statement of legal basis

(87) FESI and the Footwear Coalition also argued that in violation of Article 296 TFEU, the Commission failed to provide adequate statement of reasons and indication of the legal basis on which duties were re-imposed retroactively and therefore the reimbursement of duties denied to the importers concerned by the current implementation. Accordingly, FESI and the Footwear coalition claimed that the Commission had breached the right to effective judicial protection of interested parties.

(88) The Commission considers that the extensive legal reasoning provided in the general disclosure document and in this Regulation duly motivates the latter.

Legitimate expectations

(89) FESI and the Footwear Coalition claimed further that the retroactive correction of expired measures violates the principle of protection of legitimate expectations. FESI argued that first, parties including importers, would have received assurance that the measures expired on 31 March 2011 and that given the time elapsed since the original investigation, parties were entitled to have justified expectations that the original investigation will not be resumed or reopened. Likewise, the Chinese and Vietnamese exporting producers were entitled to have justified legitimate expatiations that their MET/IT claims provided in the original investigation would not be reviewed anymore by the Commission, based on the mere fact that these claims were no assessed within the three-month period applicable during the original investigation.

(90) Regarding legitimate expectations of interested parties that anti-dumping measures expired and that the investigation will not be re-opened anymore, reference is made to recitals (78) and (79) and where these claims had been addressed in detail.

(91) Regarding the legitimate expectations of Chinese and Vietnamese exporting producers not to have their MET/IT claims reviewed, reference is made to recital (74) above, where this has equally been addressed in light of the case-law of the Court on this matter.

Principle of non-discrimination

(92) FESI and the Footwear Coalition submitted that the imposition of anti-dumping measures with retroactive effects constitutes discrimination of (i) the importers concerned by the current implementation vis-à-vis importers concerned by the implementation of the Brosmann and Aokang judgments referred to in recital (6) that were reimbursed duties paid on imports of footwear from the five exporting producers concerned by these judgments, as well as (ii) a discrimination of the exporting producers concerned by the current implementation vis-à-vis the five exporting producers concerned by the Brosmann and Aokang judgments which were not made subject of any duty following Implementing Decision 2014/149/EU.

(93) Regarding the claim on discrimination, the Commission recalls first of all the requirements for discrimination, as set out in recital (67) above.

(94) Then, it is noted that the difference between importers concerned by the current implementation and those concerned by the implementation of the Brosmann and Aokang judgments is that the latter decided to challenge Regulation (EC) No 1472/2006 in the General Court, whereas the former did not.

(95) A decision adopted by a Union institution, which has not been challenged by its addressee within the time-limit laid down by the sixth paragraph of Article 263 TFEU, becomes definitive as against him. That rule is based in particular on the consideration that the periods within which legal proceedings must be brought are intended to ensure legal certainty by preventing Union measures which produce legal effects from being called into question indefinitely ([34]).

(96) This procedural principle of Union law necessarily creates two groups: those which challenged a Union measure and who may have gained a favourable position as a result (like Brosmann and the other four exporting producers), and those who did not. Yet, that does not mean that the Commission has treated the two parties unequally in violation of the principle of equal treatment. An acknowledgement that a party falls into the latter category because of a conscious decision not to challenge a Union measure does not discriminate against that group.

(97) So, all interested parties did enjoy judicial protection in the Union courts at all times.

(98) Insofar as it concerns the alleged discrimination of the exporting producers concerned by the current implementation which were not made subject of any duty following Implementing Decision 2014/149/EU, it should be noted that the decision of the Council not to re-impose duties was clearly taken with regard to the particular circumstances of the specific situation as it stood at the time the Commission made its proposal for the re-imposition of those duties and in particular on the grounds that the anti-dumping duties concerned had already been reimbursed, and to the extent that the original communication of the debt to the debtor in question had been withdrawn following the judgments in Brosmann and Aokang. According to the Council, this reimbursement had created legitimate expectations on the part of the importers concerned. Since no comparable reimbursement took place for other importers, these are not in a comparable situation to those importers concerned by the Council decision.

(99) In any event, the fact that the Council chose to act in a certain way, given the particular circumstances of the case before it, cannot bind the Commission to implement another judgment in the exact same way.

Commission's competence to impose definitive anti-dumping measures

(100) In addition, FESI and the Footwear Coalition claimed that the Commission does not have the competence to adopt the Regulation imposing an anti-dumping duty retroactively in the current implementation exercise, and that this competence would in any event lie with the Council. This claim was based on the argument that if the investigation is resumed at the very point at which the illegality occurred, the same rules should also be applicable as the ones at the time of the original investigation, where definitive measures were adopted by the Council. These parties argued that in accordance with Article 3 of Regulation (EU) No 37/2014 ([35]) (also called 'Omnibus I Regulation'), the new decision-making procedure in the field of the common commercial policy does not apply to the present context given that before the entry into force of the Omnibus I Regulation the Commission (i) had already adopted an act (the provisional Regulation), (ii) the consultations that were required under Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community were initiated and concluded, and (iii) the Commission had already adopted a proposal for a Council Regulation adopting definitive measures. On this basis, these parties concluded that the decision making procedures prior to the entry in force of the Omnibus I Regulation should apply.

(101) That claim, however, focuses on the date of initiation of the investigation (which is indeed relevant in relation to the other substantive amendments that were made to the basic Regulation) but fails to note that Regulation (EU) No 37/2014 uses a different criterion (that is, the initiation of the procedure for adoption of measures). The position of FESI and the Footwear Coalition is therefore based on an incorrect interpretation of the transitional rule in Regulation (EU) No 37/2014.

(102) Indeed, given the reference in Article 3 of Regulation (EU) No 37/2014 to 'procedures initiated for the adoption of measures', which sets out the transitional rules for the changes to the decision-making procedures for the adoption of anti-dumping measures, and given the meaning of 'procedure' in the basic Regulation, for an investigation that was initiated prior to the entry into force of Regulation (EU) No 37/2014, but where the Commission had not launched the consultation of the relevant committee with a view to adopting measures prior to that entry into force, the new rules apply to the procedure for adopting the said anti-dumping measures. The same holds true for proceedings where measures had been imposed on the basis of the old rules and come up for review, or for measures where provisional duties had been imposed on the basis of the old rules, but the procedure for adopting definitive measures had not been launched yet when Regulation (EU) No 37/2014 entered into force. In other words, Regulation (EU) No 37/2014 applies to a specific 'procedure for adoption' and not to the entire period of a given investigation or even proceeding.

(103) The contested Regulation was adopted in 2006. The relevant legislation applicable to this proceeding is the basic Regulation. Therefore, this claim is rejected.

F. **CONCLUSIONS**

(104) Having taken account of the comments made and the analysis thereof, the Commission concluded that the residual anti-dumping duty applicable to China and Vietnam, i.e. 16,5 % and 10 % respectively, should be re-imposed for the period of application of the contested Regulation.

G. **DISCLOSURE**

(105) 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 seven exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure.

(106) 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 ([36]), 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 ([37]) which took place during the period of application of Regulation (EC) No 1472/2006 and Implementing Regulation (EU) 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 ([38]);

— '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 ([39]) and falling within CN codes: ex 6403 30 00 ([40]), 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 % for the Chinese exporting producers concerned and 10 % for the Vietnamese exporting producer concerned.

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.

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, 31 October 2017.

For the Commission

The President

Jean-Claude JUNCKER

(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).

(5) OJ C 251, 3.10.2008, p. 21.

(6) 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).

(7) OJ C 295, 11.10.2013, p. 6.

(8) 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).

(9) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

(10) OJ C 106, 21.3.2016, p. 2.

(11) 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).

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

(13) 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-1999, paragraph 83.

(14) 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.

([15]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

([16]) 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). 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).

([17]) 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).

([18]) 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).

([19]) Commission Implementing Regulation (EU) 2016/1731 of 28 September 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 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).

([20]) 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).

([21]) 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 (OJ L 340I, 15.12.2016, p. 1)

([22]) Commission Implementing Regulation (EU) 2017/423 of 9 March 2017 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 Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ L 64, 10.3.2017, p. 72).

([23]) Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85.

([24]) In order to protect confidentiality, company names have been replaced by numbers. Companies 1 to 3 have been subject to Implementing Regulation (EU) 2016/1731 mentioned in recital (20), while Companies 4 to 6 have been subject to Implementing Regulation (EU) 2016/2257 mentioned in recital (23). Companies 7 to 25 have been subject to Implementing Regulation (EU) 2017/423 mentioned in recital (24). The companies concerned by the current Regulation were attributed the consecutive numbers 26 to 32.

([25]) Wolverine Europe BV, Wolverine Europe Limited and Damco Netherlands BV, in their reply to the General Disclosure Document, referred to the comments submitted by FESI and the Footwear Coalition.

([26]) Case T-192/08 Transnational Company Kazchrome and ENRC Marketing v Council, [2011] ECR II-07449, at paragraph 298. The judgment was upheld on appeal, see Case C-10/12 P Transnational Company Kazchrome and ENRC Marketing v Council, ECLI:EU:C:2013:865.

([27]) Case T-255/01 Changzhou Hailong Electronics & Light Fixtures and Zhejiang Sunlight Group v Council, [2003] ECR II-04741, at paragraph 60.

([28]) C-458/98 P — Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85

([29]) Notice of the expiry of certain anti-dumping measures (OJ C 82, 16.3.2011, p. 4).

([30]) That time limit is now found in Articles 103(1) and 121(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

([31]) Case C-373/07 P Mebrom v Commission, [2009] ECR I-00054, at paragraphs 91-94.

([32]) See Commission Staff Working Document, Compliance with the judgments of the Court of Justice of 2 February 2012 in Case C-249/10 P Brosmann and of 15 November 2012 in Case C-247/10P Zhejiang Aokang, accompanying the Proposal for a Council Implementing Regulation 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 Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co Ltd and Zhejiang Aokang Shoes Co. Ltd, /* SWD/2014/046 final, at recitals 45-48.

([33]) Case C-382/09 Stils Met, [2010] ECR I-09315, paragraphs 42-43. The TARIC, for instance, which is also used as a vehicle to ensure compliance with trade defence measures, finds its origins in Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

([34]) Case C-239/99 Nachi Europe [2001], ECR I-01197, at paragraph 29.

([35]) Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L 18, 21.1.2014, p. 1).

([36]) 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.

([37]) As defined in Regulation (EC) No 1719/2005. 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.

([38]) 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).

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

([40]) By virtue of Regulation (EC) No 1549/2006 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.

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	Reference in Implementing Regulation (EU) 2017/423 (Annex VI)	TARIC additional code
Dongguan Luzhou Shoes Co. Ltd	Dah Lih Puh	A999
Dongguan Shingtak Shoes Co. Ltd	Shing Tak Ind. Co. Ltd	A999
Guangzhou Dragon Shoes Co. Ltd	Shing Tak Ind. Co. Ltd	A999
Guangzhou Evervan Footwear Co. Ltd	Everan Group P/A EVA Overseas International, Ltd and Everan Group P/A Jiangxi Guangyou Footwear Co.	A999
Guangzhou Guangda Shoes Co. Ltd	Shing Tak Ind. Co. Ltd	A999
Long Son Joint Stock Company	Long Son Joint Stock Company	A999
Zhaoqing Li Da Shoes Co., Ltd	Dah Lih Puh	A999

CORRIGENDA

Corrigendum to Commission Delegated Directive (EU) 2017/1975 of 7 August 2017 amending, for the purposes of adapting to scientific and technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for cadmium in colour converting light-emitting diodes (LEDs) for use in display systems

(Official Journal of the European Union L 281 of 31 October 2017)

On page 30, Article 2(1):

for: '1. Member States shall adopt and publish, by [12 months after the date of entry into force of this directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [12 months after the date of entry into force of this directive + 1 day].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.'

read: '1. Member States shall adopt and publish, by 20 November 2018 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 21 November 2018.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.'

On page 31, Annex, table, third column:

for: 'Expires for all categories on [two years after the publication of the Delegated Directive in the Official Journal]'

read: 'Expires for all categories on 31 October 2019.'

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