

Enclosure 1



COMMISSION OF THE EUROPEAN COMMUNITIES

GENERAL DISCLOSURE DOCUMENT

R 459 Expiry Review on imports of leather footwear from China and Vietnam

A. PROCEDURE

1. Measures in force

- (1) On 5 October 2006, the Council, by Regulation (EC) No 1472/2006¹ (the 'original Regulation'), imposed a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China ('PRC' or 'China') and Vietnam (the 'countries concerned'). The established duty levels were ranging from 9.7% to 16.5% in case of the PRC and 10% in case of Vietnam. Measures were imposed for a period of two years. The investigation that led to these measures will be referred to as the 'original investigation'.
- (2) By Regulation (EC) No 388/2008 ⁽²⁾ (the 'extending Regulation'), the Council extended the anti definitive anti-dumping duty 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. The extension followed an anti-circumvention investigation carried out pursuant to Article 13(3) of the basic Regulation.

2. Present Investigation

2.1. Request for review

- (3) The request was lodged by the European Confederation of the Footwear Industry (CEC, 'the applicant'), on behalf of producers representing a major proportion, in this case more than 35%, of the total Community production of certain footwear with uppers of leather.
- (4) In the framework of the standing test, for which details are provided in (181) and onwards, several national associations of footwear producers in EU Member States expressed their views vis-à-vis the opening of the expiry review and requested that their names be kept confidential for fear that their member companies could face

¹ OJ L 275, 06.10.2006, p. 1.

² OJ L 117, 1.5.2008, p. 1.

retaliation from some customers. Some other parties questioned why the names and the positions of the opposing and supporting associations have been kept confidential. The Commission asked the associations explicitly again whether they could agree to a disclosure of their name and position. Four associations agreed to disclose their names and positions, whereas the others opposed, referring once more to their fear for retaliation against their member companies. The Commission took the view that there indeed was a significant possibility of retaliation in the form of lost sales for these producers and accepted that names should not be disclosed.

- (5) Some parties argued that the Commission should not have initiated an expiry review investigation as article 3 of the original Regulation states that it shall be in force for a period of 2 years as of its entry into force. Recital (326) of the original Regulation, however, explains that, notwithstanding the shorter duration of the measures, the rules of Article 11 of the basic Regulation will apply *mutatis mutandis*. In line with this recital, the text of the notice of impending expiry³ stated that the measures would expire on 7 October 2008 unless a review was initiated in accordance with the rules of article 11(2) of the basic Regulation. Since an expiry review of the anti-dumping measures has indeed been initiated, the anti-dumping measures remain in force pending this review.
- (6) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

2.2. *Initiation*

- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, by a notice of initiation published in the Official Journal of the European Union⁴ on 3 October 2008 (the 'Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.
- (8) The investigation of likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 up to the end of the RIP (the 'period considered'). Reference was also made where appropriate to the year 2005 and to the investigation period used in the original investigation which covered the period from 01 April 2004 to 31 March 2005 ('original investigation period' or 'OIP').

3. **Parties concerned by this investigation**

- (9) The Commission officially advised the applicant, the Community producers mentioned in the request, any other known Community producers, known importers and their associations, known retailers/distributors and their associations, known consumer organisations, the known exporting producers in the countries concerned as

³ OJ C 75, 26.3.2008, p. 25.

⁴ OJ C 251, 3.10.2008, p.21.

well as their associations and the authorities of the countries concerned of the initiation of the expiry review.

- (10) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the Notice of initiation.
- (11) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

4. Sampling

- (12) In view of the large number of exporting producers in the countries concerned, of Community producers and of importers involved in the investigation, the application of sampling was envisaged in the Notice of initiation in accordance with Article 17 of the basic Regulation.
- (13) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and representatives acting on their behalf, Community producers and importers were requested to make themselves known and to provide information as specified in the Notice of initiation.

4.1. Sampling for exporting producers in the People's Republic of China and Vietnam

4.1.1. The People's Republic of China

- (14) A total of 58 companies or groups of related companies ('groups') in the PRC came forward and provided the requested information within the given deadline. These 58 companies or groups produced and/or exported the product concerned to the Community market during the investigation period and expressed a wish to be included in the sample. They were regarded as co-operating companies and were considered for inclusion in the sample. The level of cooperation from the PRC, i.e. the percentage of exports to the EU by the Chinese cooperating companies as compared to all Chinese exports to the EU, was around 22 %.
- (15) The sample was selected in agreement with the Chinese authorities, on the basis of export volumes and geographical spread of the co-operating companies. The seven sampled companies represented around 56% of the exports to the EU of the 58 co-operating companies, and 13 % of the total exports to the EU from the PRC. They all replied to the questionnaires within the given deadlines.
- (16) Certain non-sampled Chinese exporters claimed that since they had not been selected to be in the sample, they were not in a position to defend their interests. However, it is part of the principle of sampling that a representative number of exporting producers is selected and that the results of the assessment of this sample can be regarded as representative also for other co-operating exporters. It is further noted that all interested parties were able to participate in the investigation and to submit their views. This argument was therefore rejected.

4.1.2. Vietnam

- (17) A total of 51 companies or groups in Vietnam came forward and provided the requested information within the given deadline. These 51 companies or groups

produced and/or exported the product concerned to the Community market during the investigation period and expressed a wish to be included in the sample. They were regarded as co-operating companies and were considered for inclusion in the sample. The level of cooperation from Vietnam, i.e. the percentage of exports to the EU by the Vietnamese cooperating companies as compared to all Vietnamese exports to the EU, was around 82 %.

- (18) The sample was selected in agreement with the Vietnamese authorities, on the basis of export volumes. The three sampled companies represented around 27% of the EU exports of the 51 co-operating companies, and 22 % of the total EU exports from Vietnam. They all replied to the questionnaires within the given deadlines.

4.2. *Sampling of Community producers*

- (19) The procedure to obtain the information necessary for the selection of the sample of Community producers was as follows. The CEC acting on behalf of all complainants confirmed that all complaining producers were ready to cooperate and participate in the sampling exercise. Given the detailed and extensive information available on file (emanating i.a. from the complaint, standing exercise, and CEC submissions), it was not necessary to send a sampling form to individual complaining producers. In addition, the notice of initiation invited any producer to make themselves known should the wish to cooperate in the proceeding. In addition to the complainants, a further five companies made themselves known after initiation and requested to be included in the sampling exercise. All of these were sent sample forms requesting information already at hand for the complainants. Only two of the five companies supplied sample returns. These two companies were however not retained as they were excluded from the definition of the Community industry (see recital (186)).
- (20) Community production of product concerned is largely concentrated in three Member States holding around 2/3 of all production. The rest is spread over the remaining Member States. As seen in recitals (181) and onwards, the Community producers business models are characterised by differences mainly in product/quality range, distribution channels and whether clustering of activities and subcontracting parts of the manufacturing process within or outside the Community takes place.
- (21) On the basis of the information obtained, the Commission selected a sample based on the largest representative volumes of production and sales within the Community which could be investigated within the time available. However as detailed above, this is not an entirely homogenous industry and in order to assess representativeness of the selected companies, the producers' geographical spread amongst Member States⁵, as well as the segment to which their products belong were also taken into consideration. As a result 8 Companies operating in four member States were selected. The selected companies also represent all the major business models present in the Community, in terms of how the product is manufactured, of how the product is distributed, and of product specialisation. Regarding product specialisation, the companies selected

⁵ Considering that intra-Community subcontracting of full or partial production is common in the Community, the geographical considerations also had to take into account the extent to which the ownership of the production process is conferred on companies in the Member State in question or if the production was rather based on subcontracting or tolling arrangements where ownership of the finished goods remains with the party ordering the service.

included production across all major price segments (low range, mid range, high range) as well as across all gender and age segments (ladies, men, unisex, children footwear). Regarding product distribution, the companies selected included all major levels of distribution (to wholesalers, to retailers, as well as direct retailing). Regarding production, the companies selected included full in-house manufacturing in all key stages of the production process as well as companies which had outsourced parts of such manufacturing process (both in and outside the Community).

- (22) The 8 producers selected in the sample were thus considered to be representative of the overall producers in the Community, and represented 8.2% of the production of the complaining Community producers and 3.1% of the total Community production. Pursuant to art. 17(2) of the basic Regulation, CEC was consulted on the selection of the sample and did not raise any objections.
- (23) The investigation revealed that one of the sampled Community producers progressively discontinued production in the Community during the RIP, taking its full manufacturing activity outside the Community. It should be noted that the weight of the company was not such as to have any significant impact, at least from a quantitative point of view, on the situation of the sampled companies as a whole—including their representativeness. The quantitative findings on injury would not have been materially different should this company have been excluded. In this context, and given that (i) it had produced in the Community during the RIP, and that (ii) it subcontracts large part of the production, a business model which, according to many parties, is important in the Community, it was decided not to formally exclude this company from the sample. This further ensures that, qualitatively, the sample represents as adequately as possible the reality of the sector. Furthermore, considering that an expiry review requires an analysis of continuation/recurrence of injury, may help in better predicting how the situation on the Community market could develop if the measures were not continued. However, evidently, only data pertaining to its activity as Community producer were used.
- (24) The Community institutions have considered whether, given that the Community production and sales of this company during the RIP were found to be lower than initially reported at sample stage, the Community industry's production and sales as a whole should have been reduced similarly—i.e., the resulting impact on the sample should be transposed to the entire population. However, it was found that the error appears to have been made in good faith by this Company who mistakenly counted outsourcing to a country in the Community vicinity as Community production. In that light, firstly, it is noted that the sample is used primarily to assess those injury indicators which cannot be reasonably obtained for the Community industry as a whole. Production and sales have been obtained at an aggregated level for the Community industry and therefore the argument is not relevant. In addition, the information on file, including that compiled in parallel via the additional analysis of national associations performed in this investigation, does not indicate any need for such an adjustment. Finally, for argument's sake, if the full production and sales figures for the Community industry in the RIP were reduced to transpose the sample's lower figures, this would neither affect the representativeness of the sample nor the general conclusions regarding injury.
- (25) Various interested parties claimed a breach of the Article 17 of the basic Regulation, alleging that the sample of Community producers was not representative in terms of

the percentage of production covered, in terms of production range, sales prices, ratio between production and sales, geographical spread as well as profitability and performance. It was also held that the sample did not take into account the large number of producers that have outsourced production to third countries.

- (26) These allegations were carefully analysed and in view also of the complexity of this case, additional questionnaires were sent, processed and verified on-spot not only for individual companies, but also for national associations. In this context, the number of companies selected in the sample had to be limited to what could be reasonably investigated within the time available, i.e. 8 companies.
- (27) Furthermore, given that the Community industry is highly fragmented in this case, it is unavoidable that the companies in the sample cover a relatively small portion of the overall Community production. This fragmentation, together with the fact that the larger producers were selected to be in the sample, implies that further increasing the number of companies would in any event not have had a significant impact on the proportion of the sample as compared to the overall Community production.
- (28) As explained above in recital (21), the Commission took geographical spread into account when selecting the sample. It is underlined that, by nature, a sample does not have to reflect the exact geographical spread (nor the exact distribution or breakdown of any other criterion) of the entire population in order to be representative. It suffices that, as is the case for the current sample, which includes four Member states, it reflects the relevant proportions of the major manufacturing countries involved. Any other approach would have been administratively impracticable, particularly if several different criteria have to be taken into account in order to ensure representativeness. In fact, this claim would imply *in fine* that a sample would be sufficiently representative only if it contained the full population. The investigation has thus underlined that the sample which covers four Member states; including the three with the by far biggest production, is largely representative of the Community production as a whole, in particular when taking into account production that is based on tolling arrangements and therefore should be accounted for in the Member state of the company ordering the tolling service.
- (29) The sampled companies also included a cross-section of product ranges which reflected the relevant orders of magnitude of Community production. In addition, the product ranges involved correspond to those of Chinese and Vietnamese exports.
- (30) Concerning sales prices, it was also argued that the average sales prices of the sample were not representative in relation to the sales prices indicated in the review request. In this context it should be noted however that, contrary to this claim, the investigation has shown that average sales prices of the sample are consistent with the prices reported in the request. In any event, even if this would not have been the case, the average sales prices of a sample would not have to be exactly the same as those reported in the request, as long as they are found to reflect the sales prices of the population of producers as a whole.
- (31) Regarding representativeness in terms of ratio between production and sales, it is recalled that in the sector as a whole production is typically made to order and strongly reflects fashion trends. Therefore, stock is not a very telling indicator, and production closely approximates sales. This has been confirmed at complaint stage and also

during the investigation for sampled companies and for the Community industry as a whole.

- (32) In addition to the considerations as outlined above, it is recalled that in any event Article 17 of the basic Regulation sets out that investigations may be limited to samples which are either statistically valid, or which constitute the largest representative volume of production, sales, or exports which can be reasonably investigated. It is clear from the wording of this provision that there is no quantitative indication or threshold as to what constitutes the level of the representative volume. The only indication is that such volume may be limited to what can reasonably be investigated within the time available.
- (33) For the reasons explained above, the claims made by the various parties were rejected and the legal validity of the sample is hereby confirmed since the sample is representative and was selected in full compliance with Article 17 of the basic Regulation.

4.3. *Sampling of Community importers*

- (34) Based on the information available, 139 importers were contacted. 22 unrelated importers replied to the sampling form, out of which 21 agreed to be included in the sample. According to the data they submitted, these 21 importers accounted for 12 % of imports of the product under review from the PRC and 40% of those imports from Vietnam (in the RIP).
- (35) The five largest importers (Clarks, Puma, Adidas, Nike and Timberland) accounted for about 18% of the imports concerned as they all reported significant imports from both countries. It was therefore considered that a sample composed of these five companies would be representative within the meaning of Article 17(1) of the basic Regulation, i.e. in terms of volume of imports.
- (36) However, in order to better reflect the geographical spread of importers and the differences in the types of footwear types imported, three other importers were selected in addition. In this respect, from the sampling returns it appeared that many of the importers that replied operated on a much smaller scale in terms of volume and they imported less known/fashionable brand shoes or higher value shoes. The business model and traded product segments of these smaller importers appeared to be distinct from the largest importers and these smaller importers could altogether account for an important share of the imports concerned. It was therefore considered important to have these importers also represented, as these companies' economic reality might be different from those of the large importers mentioned in recital (35) above.
- (37) On these grounds, a sample of eight importers including the five largest importers and three smaller importers was selected. They represent around 10 % of imports from the PRC and around 34 % of imports from Vietnam.
- (38) All co-operating importers which had indicated their willingness to cooperate were given an opportunity to comment on the selection of the sample. Questionnaires were sent for completion to the sampled companies. Seven of the sampled importers replied within the given deadlines. In view of its non-cooperation, the eighth sampled importer eventually had to be excluded from the sample.

5. Verification of information received

- (39) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the continuation or likelihood of recurrence of dumping and injury and the Community interest. Information submitted by the following companies was verified on-spot:

5.1. Exporting producers in the People's Republic of China

- Yue Yuen Industrial (Holdings) Ltd., Hong Kong
Production company:
Zhongshan Pou Yuen Manufactory, Guandong Province
Trading companies:
Idea Co. Ltd, Macao
The Look Co. Ltd, Macao
Gold Plenty Co. Ltd, Macao
- Guangzhou Panyu Pegasus Footwear Co. Ltd., Guangdong Province
- HuaJian Industrial (Holding) Co. Ltd., Hong Kong and its production company Dongguan HuaBao Shoes Co. Ltd, Guandong Province
- Zhejiang Aokang Shoes Co. Ltd., Zhejiang Province
- Foshan City Nanhai Golden Step Industrial Co. Ltd., Guangdong Province
- Jianle Footwear Industrial Co. Ltd, Fujian Province
- General Footwear/Gentfort Shoes Co.Ltd, Guangdong Province

5.2. Exporting producers in Vietnam

- Pou Yuen Industrial Holdings Limited, Hong Kong
Production companies:
Pouyuen Vietnam Company Limited, Ho Chi Minh City
Pou Sung Vietnam Company Limited, Dong Nai Province
Pou Chen Vietnam Enterprise Company Limited, Dong Nai Province
Trading companies:
Betsey Trading Limited
Sinnamon Trading Limited

Sky High Trading Limited

Fitbest Enterprises Limited

- Golden Star Co. Ltd, Haiphong City.
- Shyang Hung Cheng Industrials Co Ltd, Binh Duong Province

5.3. *Community Industry Producers and national associations of producers*

- Associação Portuguesa dos Industriais de Calçado, Componentes, Artigos de Pele e seus Sucedâneos (APICCAPS) (Portugal)
- Federación de Industrias del Calzado Español (FICE) Spain
- Associazione Nazionale Calzaturifici Italiani (ITALY)
- British Footwear Association LTd (Great Britain)
- Fachverband der Lederverarbeitenden Industrie (Austria)
- Fédération Française de la Chaussure (France)
- HDS Hauptverband der Deutschen Schuhindustrie e.V. (Germany)
- Polish Chambre of Shoe and Leather industry (Poland)

- (40) Verification visits were also carried out at the premises of the 8 sampled Community producers, located in four different Member States. As was the case in the original investigation the sampled Community producers as well as other cooperating Community producers requested, on the grounds of the provisions of Article 19 of the basic Regulation that their identities be kept confidential. They claimed that the disclosure of their identity could lead to a risk of significant adverse effects. Certain complainant Community producers supply customers in the Community that also source their products from the PRC and Vietnam, thus benefiting directly from these imports. Those complainants are therefore in a sensitive position since some of their clients may have evident reasons to oppose their lodging or supporting a complaint against alleged injurious dumping. For these reasons they considered that there was a risk of retaliation by some of their clients, including the possible termination of their business relationship. The request was granted as it was sufficiently substantiated.
- (41) The representatives of certain exporting producers as well as unrelated importers claimed that they could not properly exercise their right of defence because the identity of the complainants had not been disclosed. They argued that, in those circumstances, they could not verify that the companies included in the sample were truly representative. In the alternative, these parties held that should confidentiality nevertheless be warranted, full disclosure of the individual company figures should in such case be given.
- (42) In this context it is recalled that the production volume of the sample, broken down by countries, was made available for inspection to all interested parties. As concerns the argument that all information but for the identity of the company should be disclosed it

should be noted that such disclosure could indirectly reveal the identity of the sampled company. The usual practice of disclosure of non limited versions of the questionnaire responses was therefore maintained (i.e. containing indexed data) also in this case. In view of the foregoing it must be concluded that the right of defence of parties was adequately preserved and the claim was therefore rejected.

5.4. *Unrelated importers*

- Achten Beheer BV, Waalwijk, The Netherlands
- Adidas AG, Herzogenaurach, Germany
- C&J Clark's International Limited, Street, Somerset, United Kingdom
- Footex International BV, Hazerswoude-dorp, The Netherlands
- Nike European Operations BV, Laakdal, Belgium
- Puma AG Rudolf Dassler Sport, Herzogenaurach, Germany
- Timberland Europe BV, Enschede, The Netherlands

5.5. *Producers in the analogue market*

- Henrich & Cia Ltda, Dois Irmãos, Brazil
- Werner Calcados Ltda, Três Coroas, Brazil
- Industria de Calçados West Coast Ltda, Ivoti, Brazil

6. **Rights of parties**

- (43) Certain parties raised objections throughout the proceeding concerning alleged impairment of their rights of defence. They claimed that, as regards the sampled Community producers, the information contained in the file open for inspection by interested parties was incomplete and not provided on time.
- (44) In this respect it should be underlined that version of a party's response for inspection by interested parties (an 'open response') was provided by all the sampled companies without undue delays and in line with the time limits accorded to other parties in the investigation. When an open response is submitted to the Commission, it may however only be inserted in the open file, once possible confidentiality issues have been resolved as provided for under article 19 of the basic Regulation. It has also to be noted that the Commission services have a duty to insert information in the open file in good time for parties to exercise their rights. This duty has been duly fulfilled in this case.
- (45) As regards the completeness of the open responses, it should be noted that it is a normal part of investigations that parties make additional submissions over time in which they provide additional information. These are added to the non-confidential file as soon as any confidentiality issues are resolved. This process, whereby the contributions made by all interested parties are progressively integrated into the body

of evidence used to arrive at findings and into the non-confidential file, can not be confused with files being incomplete.

- (46) Given the complexity of this case, parties' access was facilitated as follows. Firstly, electronic access was afforded to interested parties, whereby they could obtain upon request a full copy of all documents on file on a CD-ROM. In addition, the electronic documents were accompanied by a clear index allowing (i) for easy access to the many documents presented in this case and (ii) for a dated record of documents on file. Furthermore, a series of notes for the file inserted into the open file responded to queries which might have an impact on the rights of defence of parties.
- (47) The foregoing allowed parties to have enhanced access and to make extensive comments throughout the investigation, which were then addressed by the Commission services as appropriate. The claims as concerns the lack of completeness and timeliness of the open file made by the various parties must therefore be rejected.
- (48) One interested party also claimed that the Commission services had discriminated importers and exporters by offering more favourable treatment to the complaining Community producers in the investigation. In particular it was claimed that importers and exporters, unlike producers were not afforded confidentiality. It was also claimed that the complainants were given more favourable treatment as they were not requested to submit sample forms at the initiation of the proceeding and that too much flexibility as concerned deadline and standard of responses were given to the complainant while an exporter in the same situation would have been assessed on the basis of best facts available under article 18 of the basic Regulation.
- (49) In this context it should be noted that the granting of confidentiality to the identity of the Community producers supporting the complaint was based on a duly motivated request in accordance with article 19 of the basic Regulation. No such request was submitted by exporters or by importers nor did any events occur or any information come to the fore in the course of the investigation suggesting that the interests of exporters or importers would be impaired as a consequence of the disclosure of their identity. Considering that the situation of the Community producers in this context was fundamentally different from that of the exporters and importers, the claim of discrimination cannot be sustained.
- (50) As concerns the selection of the sample, we refer to recital (19) above. The situation for exporters and importers was quite different from that of the complaining producers, as no detailed information was on file regarding the former. Therefore, the completion of the sample form was a necessity both in order to verify the parties' willingness to cooperate but also in order to obtain the basic information needed for the selection of the sample. Thus the claim of discrimination has to be rejected.
- (51) As concerns the flexibility afforded to Community producers in the context of information collected through questionnaires in the scope of the investigation and the use of article 18 of the basic Regulation it should be noted that considering that the same approach was consistently used for exporters and importers as well as for Community producers, there could be no grounds for any claim of discrimination. The unsubstantiated allegation is thus rejected.

- (52) With regard to the choice of the analogue country, some parties submitted that short deadlines, timing and mode of transmission of the questionnaires discriminated Indian and Indonesian companies. In this respect it is noted that the sending of questionnaires to India and Indonesia could only be completed at the end of December 2008, after the relevant addresses of producers were obtained. The Commission made sure that companies in these countries were given the same time for replying as the ones in Brazil. Regarding the actual transmission of the questionnaires, the Commission used registered mail in all cases, as well as e-mail whenever possible. Therefore the above claims have to be rejected.
- (53) Some parties claimed that information regarding the analogue country was put on the open file with undue delays and that this constituted an impairment of their rights of defence. The Commission notes that in the present investigation, most of the first non-confidential replies to the questionnaires by companies in the analogue country were found to be deficient, and therefore new, appropriate open versions had to be requested. Once received, they were put on the open file without undue delays. In the meantime, the Commission included in the open file summary information on the companies consulted and the replies received. These claims therefore have to be rejected.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (54) The product concerned by this review is the same as the product defined in the original Regulation, i.e. certain 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 toe-cap, originating in the People's Republic of China and Vietnam ('the product concerned'), currently falling within CN Codes 6403 20 00, ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00.

- (55) The definitions of Art 1(2) of the original Regulation apply in the present investigation. According to those definitions

'sports footwear' shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1031/2008;

'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 (1) and falling within CN codes: CN codes: ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

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

2. Like product

- (56) The like product subject to the present expiry review is, as defined in the original investigation, certain footwear with uppers of leather, whether produced and sold on the domestic market, in the analogue market, and/or exported to the Community from the PRC and Vietnam.

2.1. Product comparability

- (57) Certain parties argued that the like product sold in the Community was not comparable to the product concerned exported from the PRC and Vietnam. It was found however that the product sold in the Community (in this review) was comparable to the product concerned exported from the countries concerned. In particular, it was found that the physical and technical characteristics and uses, as well as the channels of distribution of the product concerned were similar and have not changed since the original investigation. This argument was therefore rejected.
- (58) Certain parties also argued that the system used to compare product types sold by the various co-operators in the investigation was inappropriate because it was not specific enough to guarantee a fair comparison. However, the system used (PCN system) allowed for the comparison of up to 600 different categories or product types organised into five main criteria, namely style of footwear, type of consumer, type of footwear, material of outer sole and presence of lining. Moreover, this PCN system was already used in the previous investigation. No substantiated reasons have been put forward to show why it should be amended. Therefore the same PCN system that was used in the original investigation was applied in the present expiry review investigation. This argument was therefore rejected.
- (59) Certain parties alleged that the Commission changed its methodology as compared to the original case by changing the definition of the product control numbers (PCN's) in the course of the investigation. This allegation is however not correct. Rather, in the course of the investigation, it became apparent that certain parties had wrongly interpreted and applied the PCN structure for certain product types. In order to ensure a consistent approach, the footwear models in question were therefore re-classified and attributed to the proper PCN heading wherever this was found necessary. Thus,

wherever the Commission identified inaccurate information given by the parties concerned it had to rectify this. Such rectification can therefore neither be considered as a change in methodology, nor as a change of content of the PCN. On the contrary, the need to respect the PCN methodology was the very reason why the rectification had to be carried out. Therefore the argument had to be rejected.

2.2. Requests for exclusions

- (60) Several interested parties made claims similar to those received in the original investigation. They argued that certain types of footwear, within the scope of the like product, e.g. hiking shoes, bowling shoes, white water canoeing shoes, special technology shoes, horse riding shoes and special sizes shoes, were too different to belong to the same category. A further claim was that the value threshold of 7.5 EUR per pair applicable to STAF shoes should be reduced. It is recalled that in the original investigation this value threshold had been reduced from 9 EUR to 7.5 EUR per pair.
- (61) In this respect, an expiry review does not allow for a change in the scope of the product under measures. Such change could be considered if a party were to make a substantiated request under Article 11(3) of the basic Regulation. Therefore the above claims had to be rejected.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. General

- (62) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was likely to continue or recur upon a possible expiry of the measures in force against the PRC and Vietnam.
- (63) The volumes and prices of imports from the two countries concerned have developed as shown in the table below. Chinese imports were subject to quotas until 1 January 2005 and imports increased substantially after this date and were at high levels in 2006. In 2007 and in the RIP import volumes have stabilised after a decrease compared to 2006. As a result of the anti-circumvention investigation the measures were extended to the imports of Macao SAR which were subject to registration as from September 2007.
- (64) Imports from Vietnam were not subject to the quotas and were at high levels in the OIP. Imports volumes then decreased up to 2007 before rising again in the RIP.
- (65) These figures show that, contrary to the arguments made by some interested parties, imports from the countries concerned remained at high levels in the RIP. Their combined market share in the RIP is 28.7% and is thus significantly higher than the levels seen in the OIP (23.2%). Although their respective market shares have fluctuated since the OIP, they remained overall substantial, as each of the countries had more than 10% market share in the RIP.
- (66) Based on Eurostat figures, the average import prices from both countries concerned rose between the OIP and 2006. Since then, prices have stabilised for the PRC and fallen for Vietnam.

- (67) As Eurostat data are necessarily general and, while covering the product concerned, do not give indications of possible changes in product mix, an analysis was therefore undertaken to examine price trends of the seven sampled companies for the PRC and the three sampled companies for Vietnam. Overall, for the sampled companies in the two countries, it was found that prices of imports decreased over the period from 2006 to the RIP.

Table 1

Total import volumes and values from countries under investigation

	O IP	2005	2006	2007	RIP
Volume (1000 pairs)					
China	63 403	183 568	157 560	123 016	125 052
Market share	8.8%	22.9%	21.7%	17.8%	18.5%
Vietnam	102 625	100 619	79 427	62 503	68 852
Market share	14.2%	12.6%	11.0%	9.1%	10.2%
Values (Euro)					
China (Eurostat)	7.2	7.5	8.4	8.4	8.5
Vietnam (Eurostat)	9.2	9.5	10.2	9.7	9.5

Source - Comext adjusted as necessary using statistics available to the Commission to exclude products which are not the product concerned.

Table 2

Total import volumes and values of sampled companies

	O IP	2005	2006	2007	RIP
Volume (1000 pairs)					
China (sample)	n.a.	n.a.	11 381	12 787	13 759
Market share			1.5%	1.8%	2.0%
Vietnam (sample)	n.a.	n.a.	14 400	15 250	14 500
Market share			2%	2.2%	2.2%
Values (Euro)					
China (sample)	n.a.	n.a.	12.6	10.7	10.3
Vietnam (sample)	n.a.	n.a.	11.4	10.8	10.6

2. Dumping of Chinese and Vietnamese imports during the RIP

2.1. Normal value

2.1.1. Analogue country

- (68) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an appropriate market economy third country.

- (69) For the purpose of establishing normal value for the PRC and Vietnam, the Commission indicated in the Notice of initiation its intention to use Brazil as analogue country which was used as an appropriate analogue country in the original investigation. The Commission invited the interested parties to comment thereon.
- (70) Comments were received from several categories of interested parties, such as complainants, cooperating exporting producers, their representative associations, their national authorities as well as representatives of importers suggesting that Thailand, India or Indonesia would be a more suitable analogue country than Brazil. The Commission examined these proposals in the light of the criteria applied for the analogue country selection.
- (71) In this respect, the Commission established that the market size for leather footwear in the RIP could be estimated at 189 million pairs for Brazil, 800 million pairs for India, 109 million for Indonesia and only 6 million for Thailand. In view of the very small size of the Thai market and the availability of other options, the Commission did not further investigate Thailand as a potential analogue country.
- (72) Consequently, the Commission sought co-operation from footwear producers in Brazil, India and Indonesia, following the requests of the parties. Questionnaires were sent to companies in the three countries and meaningful responses were received from five Brazilian, one Indian and five Indonesian producers.

Representativeness of domestic sales and product range

- (73) The Commission examined the representativeness of the companies that responded as regards their domestic sales
- (74) As regards Brazil, the three investigated companies had domestic sales of the like product in the investigation period representing around 17% of Chinese and around 19% of Vietnamese sampled exports.
- (75) As regards India, only one company came forward, which reported domestic sales of the like product in the investigation period representing around 5% of Chinese and around 6% of Vietnamese sampled exports.
- (76) As regards Indonesia, the five cooperating companies had domestic sales of the like product representing around 2% of Chinese and around 2% of Vietnamese sampled exports.
- (77) Brazil was thus the country with the most representative volume of domestic sales in the investigation period.
- (78) The Commission subsequently examined how many footwear types in respect to those exported by China and Vietnam were covered by the domestic sales in the three countries concerned.
- (79) Domestic sales of the co-operating Brazilian and Indonesian producers covered in the RIP a wide product range, matching a significant number of PCNs exported from China and Vietnam. In the case of India, the sole co-operating producer reported domestic sales in the RIP matching only 1 PCN exported by China and Vietnam.

Competition in the potential analogue countries

- (80) According to the data collected by the Commission, all three countries examined have an important number of producers which ensures that there is a high level of competition between domestic operators on their respective markets. Brazil has some 7,800 leather footwear producers, 1,500 of which can be considered of a size sufficiently comparable to Chinese/VN companies. India is reported to have some 3,000 producers. For Indonesia, the number of producers is estimated to be 212. The three countries have substantial exports (estimated around 64 million pairs for Brazil, 67 million for India and 27 million for Indonesia). Brazil was found to have a higher domestic consumption of leather shoes per capita (1) compared to India (0.7) and Indonesia (0.5).
- (81) As regards imports into the countries examined, they reached in the RIP a market share of $\pm 2\%$ in Brazil, $\pm 1\%$ in India and $\pm 1.5\%$ in Indonesia.
- (82) Based on the above elements, the Commission considered that Brazil was the most suitable choice of analogue country. In particular, Brazil was found to have the most representative volume of domestic sales in footwear with uppers of leather. In addition, Brazilian cooperating companies produce a wide range of products, largely matching those of China and Vietnam. Indonesian cooperating producers, who had also a wide range of products, had much lower domestic sales, while Indian domestic sales, although at substantial volumes, were of a very limited range.

Comments by interested parties

Product comparability

- (83) Several parties claimed that Brazil should not be used as analogue market, because it specialises only in women's footwear. They argued that this could be demonstrated by the questionnaire replies of the Brazilian cooperating companies and by the fact that Brazil exports mostly women's shoes.
- (84) However, the investigation showed that more than half of the total domestic sales reported by the cooperating Brazilian companies were men's shoes. During the verification visits the Commission made to the Brazilian producers, it was found that while the two smaller companies were indeed more specialised in women's footwear, the largest one sold predominantly men's footwear on the domestic market. Domestic market sales were hence made in sufficient quantities for women's as well as men's footwear types. As regards the argument that Brazil's exports are mainly women's footwear, the Commission does not consider that the pattern of a country's exports necessarily corresponds to that of products sold on its domestic market.
- (85) Some parties submitted that questionnaire responses showed that Brazil specialises in sandals which therefore cannot be compared to the footwear types exported from China and Vietnam, which cover a larger variety. The examination by the Commission did not confirm this claim, but showed that Brazilian producers sold a wide range of footwear types, which translated at PCN-level into a more than 50% matching rate with the models exported by the Chinese and Vietnamese companies in the samples.

- (86) Some parties argued that Brazil could not be used as analogue country for children footwear, because it has a very small production of this type of shoes. The Commission notes that it is not unusual that an analogue country does not produce all sub-types of the like product. However, this does not prevent that a fair comparison of normal value can be established by making proper adjustments for this type. As indeed none of the Brazilian cooperating producers manufactured children's footwear, the normal value for this type was calculated, as in the original investigation, by appropriately adjusting the normal value calculated for adults' shoes. It is therefore concluded that Brazil could be used as analogue country for all types of leather footwear, including children's shoes.
- (87) Some parties submitted that footwear produced in Brazil uses high quality leather and has therefore higher prices than China and Vietnam. It would therefore not be comparable to the footwear originating in the two countries under investigation. Some other interested party on the contrary submitted that the Brazilian prices needed to be properly adjusted because the leather of Brazilian footwear was of lower quality than the leather used in China and Vietnam. The Commission examined this matter and found that in terms of prices and quality there was no difference in the leather used for footwear produced in Brazil and that used for footwear produced in China and Vietnam. It is recalled in this context that an adjustment to the normal value was applied in the original case, because leather used by the Brazilian analogue country producers was found to be of lower quality and sold at lower prices as compared to the leather used by the sampled producers in the export countries. In the current review investigation, producers in Brazil (and most producers in the export countries) are different from those that co-operated with the original investigation. In turn, the different mix in companies resulted in different leather input costs.
- (88) Some parties expressed the view that Brazilian and Vietnamese products are not comparable, arguing that Brazil exports expensive high-end footwear while Vietnam exports low-priced products, but did not submit substantiating evidence on this. The Commission notes that in any event Vietnamese products would have to be compared to products sold on the Brazilian domestic market, not to those exported from Brazil. The Commission did not find any evidence that the footwear originating in Vietnam or sold in Brazil was limited to a specific market segment.

Competition on the Brazilian market

- (89) Some parties submitted that Brazil had increased its tariffs on footwear from 20% to 35% as of January 2008 and argued that this rendered Brazil a highly protected market with reduced competition. They also argued that the market share held by imports in Brazil was too low with respect to consumption. The Commission examined these claims. It was found that Brazil indeed raised its tariffs from 20% to 35% in the beginning of 2008, i.e. in the middle of the RIP. However, the Commission also found that the value of the Brazilian currency vis-à-vis the US Dollar increased significantly over the RIP, and particularly after the tariff increase was introduced by Brazil. More precisely, the value of the Brazilian Real strengthened by up to 19% (i.e. a greater increase than the increase in tariffs) compared to the beginning of the RIP. As a consequence, the rise in the value of the Brazilian currency with respect to the US Dollar offset to a large extent the effect of the tariff rise on import prices. Moreover, the Commission did not find any evidence that the raise in tariffs was reflected in a substantial increase of domestic prices, nor that it hindered imports. In fact, the

Commission established that, despite the tariff increase, imports of leather shoes into Brazil in the first half of 2008 (i.e. after the tariff rise) increased considerably as compared to the first half of 2007. Thus, there was no effective impact of the tariff increase on the Brazilian market.

- (90) Some parties submitted that Brazil is not an open market for footwear because imports of footwear into the country are hampered by non-automatic licensing. The Commission found that Brazil applies non-automatic licensing on imports of footwear, but notes this does not appear to have constituted a barrier to imports in view of the aforementioned import increase. In addition, the Commission established that Indonesia also applies non-automatic licensing regarding imports of footwear. The Commission notes that non-automatic import licensing is a WTO compatible practice. The Commission therefore concludes that there exist no grounds for regarding the non-automatic import licenses applied by Brazil as an import restriction which could lead to a conclusion that Brazil is a non-open market.
- (91) Some parties argued that the significant rise in the value of the Brazilian Real in the recent years affected competitiveness in Brazil negatively, or that a drop of the Real by 25% since the RIP affected Brazil's international competitiveness negatively. These arguments were not supported by substantiating evidence, but in any event, developments after the RIP cannot be considered pertinent in the choice of the analogue country.
- (92) Following the above, the Commission found no evidence that the overall conditions of competition on the Brazilian market have changed significantly since the original investigation so as to make Brazil unsuitable as an analogue country.

Differences in socio-economic development

- (93) It was argued by several parties that India or Indonesia are more appropriate choices for an analogue market, because Brazil does not possess similarities to China and Vietnam in terms of economic development, or per capita GNP.
- (94) It should be noted that by definition, a non-market-economy country or an economy in transition does not have the same economic characteristics as a market-economy country. It is not unusual that such difference in economic development exists between an analogue country and a non-market-economy country or an economy in transition. This applies also to the difference in income per capita which is also an indicator of economic development. This, however, does not prevent Brazil to be chosen as analogue country as long as it is deemed more appropriate with regard to the other factors taken into consideration.

Differences in cost structure

- (95) Several interested parties stressed the fact that labour costs are higher in Brazil than in Vietnam and China and that India, Indonesia or Thailand whose labour costs are more comparable and which would thus be more appropriate analogue countries. It was submitted that due to higher wages, labour costs in Brazil amount to 50-70% of the cost of production as opposed to 30% in China.

- (96) In that respect, a country with a different level of economic development may indeed be chosen as analogue country for a non-market-economy country or an economy in transition. Similarly, labour costs which are an indicator for the economic development of a country cannot be considered as a relevant criterion in isolation. In any event, as regards the part of labour cost in the overall cost of production, the Commission established at the verification on site that labour costs in Brazil are less than 40% of the total production cost and therefore much closer to the relevant Chinese level than alleged.
- (97) It was also argued by several parties that Brazil is not appropriate for establishing normal value, because Brazilian companies bear costs for design and research and development, which in the case of China and Vietnam are at the expense of their customers abroad. The Commission found that this difference in cost structure may be plausible, since exporters in the countries concerned sold the product concerned to former Community manufacturers in the EC which still support the above mentioned components of the cost of production and sell the product under their own brand name. However, this is not a reason to reject Brazil as a suitable analogue country as adjustments can be made for such costs when establishing normal value (see recital (118) et seq below).
- (98) Some parties submitted that unlike China and Vietnam ex-factory prices in Brazil include marketing expenses, special taxes, and credit and delivery costs. In addition, overhead costs in Brazil were alleged to be higher, due to the smaller size of Brazilian companies. Here too, the Commission considers that this is not a reason to reject Brazil as a suitable analogue country, as adjustments can be made for such allowances in the calculation of normal value (see recital (118) et seq below).
- (99) Some parties alleged that Asian countries have better access to raw materials than Brazil, in particular leather. The Commission examined the documentation submitted. It is shown indeed that leather production has progressed faster in Asia, but this has to be seen in the light of the increase in Asian production of leather goods. Latin American countries account for slightly more than 15% of the world production of leather shoes and close to 15% of the world production of raw leather. Asian countries produce more than 50% of leather shoes in the world but less than 40% of the world's raw leather. It can thus be concluded that, despite differences in absolute figures of leather production, Latin American countries have a higher self-sufficiency compared to Asian countries and therefore easier access to raw leather.

Other claims made by parties

- (100) Some interested parties argued that Brazil is not an appropriate reference country, because Brazilian footwear is not a substitute for Chinese and Vietnamese footwear, since after the imposition of anti-dumping duties by the EC, imports into the EC originating in Brazil did not go up while those from India and Indonesia increased. In this respect, imports into the EC from India and Indonesia did increase after anti-dumping duties were imposed. However, the Commission observes that commercial operators remain free regarding their choice of suppliers, and, as examined later under the injury analysis, in this case they preferred to source their products from neighbouring countries to China and Vietnam. This does not render Brazil inappropriate as analogue country. Moreover, an analogue country serves to establish

normal value. Whether or not it exports to the EC is not relevant for this purpose. Therefore, this argument was rejected.

- (101) Some parties argued that Brazil cannot be a comparable market to Vietnam, because Vietnam is export oriented while Brazil sells mainly domestically. The Commission cannot accept the relevance of this argument. Vietnam is clearly more export-oriented than Brazil however it is not evident how this could affect the normal value calculated in Brazil, which by definition relates to Brazilian production costs and domestic sales.
- (102) Several parties raised the argument that Brazilian export prices are lower than the domestic ones. For some of the parties this indicates that export prices rather than domestic ones should be used for establishing normal value. Other parties argued that this constitutes evidence that Brazilian exporters are dumping and submit that Brazil would therefore be inappropriate as analogue country. First the Commission observes that export prices are not relevant in this case, since sufficiently representative and profitable domestic prices are available. Second, the allegation that Brazilian export prices are dumped has not been substantiated and in any event cannot be confirmed or denied without a proper investigation of this issue.
- (103) Some interested parties claimed that Brazil is inappropriate as analogue country because Brazilian producers receive government support for exports. The Commission first notes that this kind of support would affect primarily export prices which, as mentioned above, are not relevant for the present investigation. The Commission nevertheless examined the evidence submitted by the parties and found that the support referred to related to export promotion programmes, similar to the ones that can be found in many other countries, with the objective to make products better known abroad, by publicity campaigns and participation in international trade fairs. The Commission found no indication that support for export promotion in Brazil was benefitting to domestic sales of shoes.
- (104) Several parties raised the fact that Brazil has initiated an anti-dumping investigation into footwear originating in China, for which Italy was used as analogue country, and claimed that Italian and Brazilian companies colluded to maximise dumping findings in the review investigation carried out by the EC. However there was no substantiation to these allegations, and no other related evidence. The Commission therefore rejects this argument.

Conclusion as regards the choice of analogue country

- (105) In light of the above, it was concluded that Brazil was the most appropriate analogue country.
- (106) A large number of interested parties alleged that selecting Brazil as the analogue country would be determinant for a finding of dumping and that dumping would not be found if one of the other countries was selected. For argument's sake, the Commission therefore checked what the result would have been if Indonesia was selected, which, although not the best option as demonstrated above was the only tenable alternative to Brazil.

(107) The results are given in the relevant section below, and confirmed that the choice of analogue country in this case, between the tenable options available, was not determinative of the results of the dumping calculations.

(108) Brazil was therefore selected as the analogue country.

2.1.2. Determination of normal value in the analogue country

(109) Following the choice of Brazil as an analogue country, normal value was calculated on the basis of the data verified at the premises of the co-operating Brazilian producers.

(110) The domestic sales of these producers were found to be representative compared to the volume of exports to the Community by the exporting producers in the PRC and Vietnam. It was also examined whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. The investigation showed that the sales at prices equal to or above the unit cost represented more than 80 % of the total sales volume of each producer. Therefore, the normal value was based on actual domestic prices, calculated as a weighted average of the prices of all domestic sales of a product type made during the RIP, irrespective of whether these sales were profitable or not.

2.1.3. Normal value for Golden Step

(111) In the case of Golden Step, the normal value was determined on the basis of the company's own data on domestic sales and cost of production. This data was verified at the premises of the company.

(112) The Commission first established that Golden Step made no domestic sales during the RIP. Therefore, normal value could not be established on the basis of its domestic prices, as provided by Article 2(1), subparagraph 1, of the basic Regulation. Accordingly, another method had to be applied.

(113) Given that no domestic prices could be used to establish normal value, a constructed normal value had to be calculated based on the costs of the producer in question. Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported shoe model, adjusted where necessary, a reasonable amount for selling, general and administrative ('SG&A') expenses and a reasonable margin of profit.

(114) In this respect, SG&A and profit could not be determined in accordance with Article 2(6)(a) of the basic Regulation on the basis of actual amounts determined for other exporting producers in the country concerned because no other Chinese exporting producer had been awarded MET. Further, because Golden Step had not made any domestic sales of the same general category of products in the country concerned, the SG&A and profit could not be established pursuant to Article 2(6)(b) of the basic Regulation. Consequently, it had to be determined in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method.

(115) In this context, the Commission assessed SGA and profit rates along three possible scenarios. It first established SGA and profits using the data of the original investigation. It also considered SGA and profits from Chinese exporting producers that recently obtained MET in other recent investigations and which had domestic

sales in the ordinary course of trade. In a third scenario, it examined information regarding SG&A and profit found in the analogue country. Normal value was then assessed along these scenarios.

2.2. Chinese and Vietnamese Export Prices

- (116) Where export sales were made directly to independent customers in the Community, the export prices were established on the basis of prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (117) Where export sales to the Community were made through unrelated trading companies located outside the Community, export prices were established on the basis of the prices of the product when sold for export to the trading companies i.e. to an unrelated buyer, by the producers concerned in accordance with Article 2(8) of the basic Regulation.

2.3. Comparison of Chinese and Vietnamese Export Prices with Analogue Country Normal Values

- (118) Following the methodology employed in the original investigation, for exported product types not sold on the Brazilian domestic market, the domestic sales prices of the most closely resembling product types were used in establishing normal values. These were appropriately adjusted where warranted.
- (119) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. In particular, the following adjustments have been made:
- (120) It was examined whether a level of trade adjustment under Article 2(10)(d) of the basic Regulation was warranted. In that context it was found that the levels of trade in the domestic and export markets were different. Accordingly, adjustments were made in accordance with Article 2(10)(d)-(i) of the basic Regulation to reflect the discounts granted to wholesalers on the Brazilian market, as compared to sales to retailers which had solely been made by the three Brazilian producers investigated.
- (121) In order to ensure a fair comparison between Chinese and Vietnamese exports on the one hand and Brazilian domestic sales on the other hand, an allowance was granted in accordance with Article 2(10)(i) of the basic Regulation to reflect differences in commissions paid to independent agents in Brazil.
- (122) According to Article 2(10)(k) of the basic Regulation, an allowance for R&D and design was also granted in order to reflect the costs incurred by the Brazilian producers as opposed to Chinese/Vietnamese producers.
- (123) An adjustment pursuant to Article 2(10)(a) of the basic Regulation was also made in the previous investigation to reflect differences in the quality of the leather used to manufacture the footwear. In the current investigation no such adjustment was found necessary because of the similar quality of leather used by the Brazilian, Chinese and Vietnamese exporters (see recital (87)).

- (124) Other adjustments, including such concerning transport and insurance pursuant to Article 2(10)(e) of the basic Regulation, were made in all cases where they were found to be reasonable, accurate and supported by evidence.
- (125) Certain interested parties argued that USD/EUR exchange rate fluctuations impacted on the dumping margins found and warranted an adjustment. This claim had to be rejected. Under Article 2(10)(j) of the basic Regulation such adjustment can only be granted where a sustained movement in exchange rates has taken place. Where exchanges rates fluctuate freely, as is the case for the USD/EUR rate, they regularly move up- and downwards. No sustained movement can be identified in such case and accordingly no adjustment can be granted.

2.4. *Determination of dumping for the companies investigated in the PRC*

2.4.1. *Determination of dumping for Golden Step*

- (126) In the case of Golden Step, the comparison of its export price with the normal value as explained in recitals (111) onwards showed a dumping margin in a range between 5% and 16%.

2.4.2. *Determination of dumping for the companies not granted MET*

- (127) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. For all sampled companies one weighted average dumping margin has been calculated in the PRC. This dumping margin was attributed to all other exporting producers in the PRC.
- (128) The country-wide level of dumping for the PRC was established a range between 35% and 38% of the CIF Community frontier price, depending on the calculation method used for Golden Step as explained in recital (115).
- (129) In view of what was concluded regarding the selection of the analogue country, a dumping calculation was also performed using the methodology stated above, except that Brazilian normal values were replaced by those of the cooperating Indonesian producers. This calculation resulted in a dumping margin ranging between 19% and 22%, depending on the calculation method used for Golden Step.

2.5. *Determination of dumping for the companies investigated in Vietnam*

- (130) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. Since none of the sampled companies had been granted MET, one weighted average dumping margin has been calculated in Vietnam. This dumping margin was attributed to all other exporting producers in Vietnam.
- (131) The country-wide level of dumping for Vietnam was established at 43.8 % of the CIF Community frontier price.
- (132) Similarly to the PRC, a dumping calculation was also performed using the methodology stated above, except that Brazilian normal values were replaced by those

of the cooperating Indonesian producers. This calculation resulted in a dumping margin of 28.4%.

2.6. *Conclusion on Continuation of Dumping from the Countries Concerned*

- (133) Certain interested parties argued that exports from the countries concerned between the imposition of definitive measures in April 2006 and the end of the RIP had fallen. It was argued that this decrease reflected falls in production and production capacity in the PRC and Vietnam which were due to the imposition of the definitive measures, a switch in production from the PRC and Vietnam to other countries or increase in their domestic sales. A further claim was that import prices had either increased or remained stable. The parties claimed therefore that import volumes and prices could not justify the finding of a continuation of dumping at significant volumes during the RIP.
- (134) These arguments do not change the finding that substantial dumping margins were found for the RIP and that those margins cover large volumes of imports with large Community market shares. It was therefore concluded that a continuation of dumping has taken place in respect of the product concerned originating in the PRC and Vietnam.

3. *Development of imports from the PRC should measures be repealed*

3.1. *General remarks*

- (135) The likely development of imports from the PRC was analysed in terms of both expected prices and volumes.
- (136) As a starting point prices were established for the RIP. Data was available from the sampling returns (received from 58 co-operating exporting producers) which contained sales prices for the domestic market and export prices both to the Community market and to third country markets. This information was used as it was deemed to be the best source of price information available for the product concerned. This data was deemed representative because it covered 22% of imports to the Community market. Export prices to the Community included on the sampling returns were cross-checked with statistical information available to the Commission, even if the statistical information could not be used for price comparisons as it did not cover Chinese domestic sales and exports to third countries. In addition, these data covered a wide range of footwear including STAF and other shoes which were not the product concerned.
- (137) Prices on the Community market were obtained from Community producers' sampling data. The investigation established that these average prices were of comparable types to the imported footwear because:
- they concerned the like product;
 - they were at the same level of trade;
 - they were at comparable incoterms;
 - they involved comparable quantities.

- (138) The impact of certain new developments since the end of the RIP was also analysed because it was considered significant enough to affect the likelihood of continuation of dumping. Such analysis was also requested by interested parties.

3.2. Relationship between prices in the Community and the PRC

- (139) Sampling returns indicated that the Chinese domestic prices established on the basis of exporters' own data were lower than prices on the Community market. It should, however, be noted that the data of all non-sampled companies (including data relating to any domestic sales) could not be verified. Amongst the sampled companies only the one that was granted MET could potentially have submitted domestic sales data that could be regarded as reliable. However, this company did not perform any domestic sales in the RIP. A detailed analysis of domestic prices in the PRC could therefore not be performed. Moreover, it was not deemed necessary, given the overall finding of continuation of dumping.

3.3. Relationship between export prices to third countries and the price level in the Community

- (140) Sampling returns indicated that the prices achieved by the Chinese co-operators on major third country markets were lower than prices prevailing on the Community market. This again indicated that Chinese producers could export larger quantities to the Community. Should measures be allowed to lapse it would be more profitable for Chinese exporting producers to redirect their exports to the Community. However, taking into account the reasons explained in recital (139), these data on prices achieved by the Chinese co-operators on major third markets could not be verified and therefore this analysis was not pursued further
- (141) Certain interested parties claimed that other markets had become more attractive than the Community market. To support this claim one party submitted an analysis of the Chinese customs statistics. However, the Commission's analysis has shown that, apart from the U.S., the Community market remains the most attractive market for the Chinese exporters. In fact, exports increased over the period covered by this party's analysis (i.e. 2005 to 2008). Should the anti-dumping duties be repealed, the Community market would become even more attractive and volumes would therefore likely increase.

3.4. Relationship between export prices to third countries and prices in the PRC

- (142) The sampling returns received from the 58 Chinese co-operating companies show that export prices to major third country markets are below the prices they achieve on the domestic market. However, for the reasons explained in recital (139), these data could not be verified and therefore this analysis was not pursued further.
- (143) In addition the level of the export prices to third countries compared to the Brazilian normal value indicated that those export prices are generally substantially lower. However, again for the reasons explained in recital (139), these data could not be verified and therefore this analysis was not pursued further.
- (144) In conclusion the available data indicated a likelihood of continuation of dumping.

3.5. Unused capacities and stocks

- (145) All Chinese companies in the sample operated a production to order system and therefore their stocks were of finished goods awaiting despatch. The production to order system is used because the footwear sector has to adapt to new fashions each season based on orders from customers and cannot use sales from stocks. Therefore, as companies had no real stocks, that element could not be considered as a meaningful indicator for the analysis of likelihood of continuation of dumping.
- (146) The investigation established that unused capacities of all 58 cooperating Chinese companies accounted for about 9% of their total production capacity of footwear. This quantity would correspond to 14.5 million pairs for the 58 co-operators or around 65 million pairs for all exporting producers. The latter figure is around 10% of total Community consumption (as defined in recital (197)).
- (147) The likely use of this spare capacity was analysed. Given the aforementioned differences between the price levels in the Community, on the Chinese domestic market and in third countries, Chinese companies are likely to have an incentive to use spare capacity for exports to the Community. Another factor, which makes the EU market attractive for the Chinese exporters, is its size.
- (148) Furthermore, it should be pointed out that the existing assembly lines can be used to produce other kinds of footwear such as STAF and shoes with textile uppers as well as the product concerned. The companies sampled and the other co-operators in China produced large quantities of footwear which is not the product concerned. The current split between production of the product concerned and other footwear depends on the requirements of consumers and the ordering and sourcing policies of the Community importers. However should the measures be repealed the Community importers would surely reassess their sourcing policies and may order a greater proportion of the product concerned from Chinese producers. This could result in an increase of the quantities of the product concerned exported to the Community.

3.6. Circumvention and absorption practices

- (149) As established by Regulation (EC) No 388/2008, the existing measures covering the PRC were circumvented by consignments through Macao SAR. Subsequently, measures were extended to consignments of the product concerned assembled in and transhipped through Macao SAR. Those circumvention practices demonstrate the attractiveness of the Community market for Chinese exporting producers.

3.7. Conclusion

- (150) The investigation has shown that should measures be repealed there would be a likelihood of continuation of dumping. This conclusion is based on the attractiveness of the Community market in terms of volume as well as on price comparisons between the Community, Chinese and third country markets.
- (151) Furthermore, a number of factors including the relative levels of prices, the availability of spare capacities, circumvention and the ability to switch from the production of other footwear to the product concerned provide evidence for a likely increase in imported quantities if measures are repealed. On the other hand, other factors such as the world economic crisis and a tendency to switch production to other countries will

inevitably reduce imported quantities to some extent. These factors are further analysed in section 5 (Developments following the RIP) below.

- (152) It is concluded that imports from the PRC will continue to enter the Community market in large volumes and that such volumes will be sold at low, dumped prices so that there is likelihood of continuation of dumping should the measures be allowed to lapse.

4. Development of imports from Vietnam should measures be repealed

4.1. General

- (153) The likely development of imports from Vietnam was analysed in terms of both expected prices and volumes.
- (154) As a starting point prices were established for the RIP. Data was available from the sampling returns (received from 51 co-operating Vietnamese exporting producers) which contained sales prices for the domestic market and export prices both to the Community market and to third country markets. This information was used as it was deemed to be the best source of price information for the product concerned. This data was deemed representative because it covered 82% of imports to the Community market. The Community sales prices included on the sampling returns were cross-checked with statistical information (Taric data) available to the Commission. However, the statistical information could not be used for price comparisons as it did not cover Vietnamese domestic sales and exports to third countries.
- (155) Prices on the Community market were obtained from Community producers' sampling data. The investigation established that these average prices were of comparable types to the imported footwear because:
- they concerned like products;
 - they were at the same level of trade ;
 - they were at comparable incoterms;
 - they involved comparable quantities.

4.2. Relationship between prices in the Community and Vietnam

- (156) Sampling returns indicated that the Vietnamese domestic prices established on the basis of exporters' own data were lower than prices on the Community market. It should, however, be noted that the data of all non-sampled companies (including data relating to any domestic sales) could not be verified. Furthermore, none of the sampled companies was granted MET. A detailed analysis of domestic prices in Vietnam could therefore not be performed. Moreover, as in the case of the PRC, it was not deemed necessary, given the overall finding of continuation of dumping.

4.3. Relationship between export prices to third countries and the price level in the Community

- (157) According to data from the Vietnam General Statistics Office and the Vietnam General Department of Customs (2008 calendar year) around 50% of Vietnamese footwear exports are dispatched to the Community market. Further, the sampling information received shows that during the RIP the co-operating exporters also sold very large volumes on third country markets.
- (158) Sampling returns indicated that the prices achieved by the Vietnamese co-operators on major third country markets were lower than prices prevailing on the Community market. This indicated that Vietnamese producers could export larger quantities to the Community.

4.4. Relationship between export prices to third countries and prices in Vietnam

- (159) Bearing in mind the low volume of sales made by the exporting producers on the Vietnamese domestic market no meaningful conclusion could be made in respect of this comparison.

4.5. Unused capacities and stocks

- (160) All Vietnamese companies in the sample operated a production to order system and therefore their only stocks were of finished goods awaiting despatch. The production to order system is employed because the footwear sector has to adapt to new fashions each season based on orders from customers and cannot utilise sales from stocks. It is therefore considered that stocks are in this case not a very strong indicator.
- (161) The investigation established that unused capacities of all 51 co-operating Vietnamese companies account for about 17% of their total production capacity for footwear. This quantity would correspond to 34 million pairs for the 51 co-operators or around 42 million pairs for all exporting producers. The latter figure is around 6% of total Community consumption (as defined in recital (197)).
- (162) The likely use of this spare capacity was analysed. Given the aforementioned differences between the price levels in the Community and on third country markets, Vietnamese companies are likely to have an incentive to use their spare capacity for exports to the Community. This conclusion is supported by the attractiveness of the Community market in terms of its size.
- (163) Furthermore, it should be pointed out that the existing assembly lines can be used to produce other kinds of footwear such as STAF and shoes with textile uppers as well as the product concerned. The companies sampled and the other co-operators in Vietnam produced large quantities of footwear which was not the product concerned. The current split between production of the product concerned and other footwear depends on the requirements of consumers and the ordering and sourcing policies of the Community importers. However should the measures be repealed the Community importers would reassess their sourcing policies and may order a greater proportion of the product concerned from Vietnamese producers. This could result in an increase of the quantities of the product concerned exported to the Community.

4.6. Conclusion

- (164) In addition to the continuation of dumping at high levels the investigation has shown that should measures be repealed there would be a likelihood of continuation of

dumping. This conclusion is based on the attractiveness of the Community market in terms of its size and price levels.

- (165) Furthermore, a number of factors including the relative levels of prices, the availability of spare capacities, and the ability to switch from the production of other footwear to the product concerned provide evidence for an increase in imported quantities if measures are repealed. On the other hand, other factors such as the world economic crisis and a tendency to switch production to other countries will inevitably reduce imported quantities to some extent. These factors are further analysed in section 5 (Developments following the RIP) below.
- (166) It is concluded that imports from Vietnam will continue to enter the Community market in large volumes and that such volumes will be sold at low, dumped prices so that there is likelihood of continuation of dumping should the measures be allowed to lapse.

5. Developments following the RIP

- (167) The impact of post-RIP developments as regards both PRC and Vietnam were also analysed because they were considered significant enough to affect the volumes of the product concerned produced in the countries concerned and exported to the Community market, and its prices.

5.1. The worldwide economic crisis

- (168) The crisis began in the second half of 2008 (i.e. after the end of the RIP). Some parties argued that it would have an impact on the production and exports (including exports to the Community) of the product concerned originating in the countries concerned because of the shrinking consumption on the world and Community footwear markets.

5.2. Developments in import volumes and prices following the RIP

- (169) It should be stated at the outset that the allegations made by parties concerning the likely impact of post-RIP developments on export volumes and from the countries concerned and the consumption in the Community were contradictory. Some interested parties estimated that exports from the countries concerned could fall by as much as 25-30% in 2009 as compared to RIP figures. Other interested parties expected such imports to remain stable. The Eurostat statistics available for the first half of 2009 indeed show a fall of 25% of import volumes from China and a fall of 28% of import volumes from Vietnam. In terms of prices, Eurostat statistics show an increase of 34% for imports of the product concerned from China and an increase of 26% for imports of the product concerned from Vietnam. However, taking into account the reasons expressed in recital (67) above these trends can not be considered as representative.

5.3. A Switch in the sourcing of Community imports from the PRC and Vietnam to other countries

- (170) Some parties argued that exports of the product concerned originating in the countries concerned would fall because of a switch in sourcing away from the PRC and Vietnam to other countries such as Indonesia, Cambodia and India. It was argued that the process began after the imposition of measures in April 2006 and would continue if

measures were re-imposed following the current review. Other reasons for such a switch were also mentioned, most notably rising production costs. For China they were alleged to be due to rising labour, energy and local materials costs, as well as environmental and labour legislation. An increase in the value of RMB was also brought up as a possible cause of the switch to other countries. For Vietnam it was alleged that there was a switch of sourcing to other countries because of increasing labour costs together with the loss of the 3.5% GSP duty benefit on imports to the EU. Furthermore, it was argued that the switch of sourcing away from China and Vietnam was made attractive due to footwear production competitiveness improvements in the countries that are the new source. It was also argued that the switch was made easier by the fact that many producers in the countries concerned were owned or controlled by companies in other parts of South East Asia, such as Taiwan or Hong Kong and because sourcing of footwear for the Community market is controlled by large Community importers, who have the means to easily change their sources of supply whenever necessary.

- (171) For the PRC, although it was apparent that some exporters have relocated and might further relocate to reduce their costs, the relocation was sometimes to other parts of the PRC (away from the coastal provinces which formed the traditional footwear production base). Such a move would not, in itself, lead to a reduction in production and exports from the PRC.
- (172) As regards Vietnam, it is not considered likely that the 3.5% duty increase resulting from GSP graduation is of a magnitude such as to prompt significant relocation of production. Whilst it cannot be excluded that this graduation may have some impact on export volumes from Vietnam, it is unlikely to considerably affect the sourcing decisions of large Community importers. It is recalled that despite the imposition of anti-dumping duties much higher than 3.5%, both Vietnam and China maintained high levels of import volumes into the Community.
- (173) It is therefore considered that any relocation of production would not be of such a magnitude as to radically change importers' sourcing decisions.
- (174) As regards imports from other countries into the Community, it was found that, after the anti-dumping measures were imposed, they did increase from certain Asian countries. This, however, does not alter the fact that the product concerned continued to be imported from the two countries under investigation into the Community in very significant volumes and at dumped prices.

5.4. *Development of Chinese Domestic Consumption*

- (175) Some parties argued that exports from the PRC would fall because of an increase in the Chinese domestic consumption, encouraged by the policies of the Chinese authorities. However, none of the parties submitted evidence which would allow an evaluation of the expected consumption growth – this evaluation is made even more difficult due to the economic crisis.
- (176) Whilst it is not unreasonable to assume that China's recent economic growth will result, at least in the medium term, in some increase in domestic consumption of footwear, no evidence has been submitted to demonstrate that this growth would lead to a (further) reduction in exports to the Community.

5.5. *Conclusion*

- (177) The economic crisis is having a downward influence on imports into the Community from the countries concerned. It is however not unreasonable to assume that a recovery will follow at some stage, which would then result in increased sales volumes. Even if the highest forecast of a 25 – 30% fall materialized over 2009 as a whole, volumes from the PRC would still reach over 80 million pairs and achieve a Community market share of above 10% and volumes from Vietnam would still reach around 48 million pairs and achieve a Community market share of around 7%.
- (178) As regards a switch of sourcing of Community imports, it was found that the relocation observed to date has not had a determinative effect, and there is no indication that there would be in the near future any major change in the trends observed so far.
- (179) Exports from the countries concerned to the Community have continued to be made at dumped prices during the RIP. In view of the economic crisis and the (expected) contraction in demand, and in the absence of any information on import prices during the post-RIP pointing to the contrary, it does not seem unreasonable to predict that exports will continue to be made at dumped prices.
- (180) In light of the above findings concerning both the RIP and post RIP developments it is concluded that there is a likelihood of continuation of dumping.

D. DEFINITION OF THE COMMUNITY INDUSTRY

1. Community production and standing

- (181) The review request was lodged by the CEC on behalf of Community producers representing more than 25% of the Community production of the product concerned during the RIP.
- (182) One interested party claimed that a number of the members of the CEC presumably supporting the complaint have themselves started to import large volumes from the countries concerned. It was also claimed that a significant 'real' production no longer took place in the Community. No evidence was provided in this regard to substantiate this allegation.
- (183) In this context, all available information, including information provided in the complaint, data collected from Community producers and national associations before and after the initiation of the investigation, as well as general production statistics was used in order to establish total Community production and the support for the investigation. The investigation revealed that none of the complaining Community producers should be excluded from the definition of Community production because, based on information obtained through the complainant, none of them were found to be related to exporting producers in the countries concerned and imports from the countries concerned, if any, were minimal. For each company concerned those imports constituted at the most 25% of its production in the Community.
- (184) As detailed under recital (23) and onwards, one of the companies included in the Community industry sample was found to have discontinued production in the Community in the period considered. It was considered whether this company should

be excluded from the definition of Community industry. However, the weight of this company was minimal in terms of overall production as well as in relation to the rest of the sample.⁶ Therefore, even if this company was excluded, there would be no change in the overall picture in terms of standing.

- (185) Overall, the investigation has shown that there continues to be a significant leather footwear production in the Community, established in several Member states employing around 262,000 people. The footwear production sector is constituted of around 18,000 SME mainly situated in seven European countries with a concentration in three major producing countries.
- (186) The investigation did however reveal that two companies belonging to the same group were found to be related to exporting producers in the PRC and the group was also itself importing significant quantities of the product concerned from its related exporters in the PRC. Therefore, these companies were excluded from the notion of Community production in the meaning of Article 4(1) and 5(4) of the basic Regulation.
- (187) Based on the above it was found that overall production of the Community Industry in the meaning of Article 4(1) and 5(4) of the basic Regulation was 366 million pairs during the RIP.
- (188) Considering that the Community producers supporting the request accounted for more than 25% of the total production and in the absence of opposition equal to or larger than that magnitude, it is therefore concluded that the request is supported by a major proportion of the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

2. Development of Community production structures

- (189) The data of the present case refers to an enlarged Community of 27 Member States rather than the 25 countries examined in the original case. Romania, which joined EU in 2007, is a significant producer. However, an important part of its output is rather transformation of raw material against a service fee ("toll manufacturing") for other companies in the Community. The impact of the genuine Romanian production on the overall picture of Community production and other indicators is therefore limited. The same limited impact can be attributed to Bulgaria. Enlargement has thus not had a significant effect in this regard.
- (190) The footwear sector in the Community is characterised by networks of micro (employing less than 10 persons) and small enterprises. Companies of more than 500 employees are exceptions and employ only a limited portion of the overall workforce in the sector. Micro and small enterprises have the advantage to be more flexible and adaptable to changes of market demand, but on the other hand, they are financially more vulnerable to the international competition and to the economic downturn.

⁶ In view of the need to protect the identity of the complainants as indicated in recital (40) and onwards, an exact figure of the relative weight of this company in relation to the rest of the sample could not be given as this could give indications as to the identity of the company.

- (191) Compared to the situation found in the original investigation, the production structures have changed in many ways. Under the pressure of international competition, many producers have disappeared, some altogether and others becoming distributors of production in Asian countries and closer to home (Bosnia, Croatia, Morocco, Tunisia, Serbia). Others have decided to move parts of the manufacturing process within the EU (Romania, Hungary, Poland).
- (192) As part of a process to change business model, many operators have also pooled production facilities through the integration in clusters set up through flexible sub-contracts with other producers. With this system a leader company provides design, raw material (which remains property of the leader company) and outsources in its geographical vicinity the manufacturing (or one or more phases of the manufacturing such as stitching) to various specialized micro companies granting to them a regular seasonal activity by agreed quantities. At the end of the process the leader company pays a fee for the work performed by the sub-contractors.
- (193) Part of the industry has also undergone a change in business model characterised by a move in production towards the upmarket segment concentrating in higher value products. Some of the biggest EU producers could thus find new opportunities by creating their own brand. Some of these producers use monobrand franchised shops when possible, some others have managed to obtain parts of independent shops reserved to their brand.
- (194) Many companies in this group have in addition modified their distribution policy, favouring sales to retailers (or even own retailing) rather than selling to wholesalers. Overall, these changes show a sector where different business models coexist.
- (195) The above changes towards cluster production, a higher end product segment and changes in distribution policy have allowed increased flexibility and efficiency through the pooling of resources to make use of economies of scale. It has also increased their ability to obtain the necessary financial means from the banks system.
- (196) These developments show a sector where different business models coexist. A large part of industry is still in a very early stage of changing business model and would need more time to complete the process. The second group, that have changed business model, have increased significantly during the period considered but they have nevertheless not been able to fully benefit from the reduction in the number producers on the market, as would otherwise have been expected

E. SITUATION OF THE COMMUNITY MARKET

1. Consumption in the Community market

Table 3
Community market Consumption

	2006	2007	RIP
Consumption (in 000 pairs)	724 553	690 285	674 826
Index: 2006=100	100	95	93

- (197) Apparent consumption decreased by 7% during the period considered, i.e. from 725 million pairs in 2006 to 675 million pairs during the RIP.
- (198) The decrease in consumption has to be seen in conjunction with a parallel increase of consumption of other types of shoes outside the product scope (e.g., textile, rubber & plastic). By reference, textile, rubber and plastic shoes consumption increased by 23% in the same period. This appears to point to some substitution amongst the two product categories, linked also to fashion trends (penetration of mixed synthetic/leather shoes, or synthetic shoes which resemble leather). Considering however, that the increase in consumption of other footwear is far higher (23%) than the decrease in consumption of leather footwear (7%), it can however not be concluded that textile and other materials have substituted leather footwear to more than a limited degree. Furthermore, average import prices of other footwear is half of that of leather footwear and this price difference makes it clear had there been large interchangeability between the two types, the far more expensive leather footwear segment would have been obliterated. On the contrary, a publicly available market study⁷ underlines that leather shoes will have a continued strong position in the market. In fact, it appears that the consumers are now buying almost as many leather shoes as before, but in addition they are purchasing significantly more textile and synthetic shoes.

2. Current Imports from the countries concerned

2.1. Import volume and market share of the imports concerned in the RIP

Table 4
Total import volumes from countries under investigation

	OIP	2005	2006	2007(*)	RIP(*)
PRC (000 pairs)	63 403	183 568	157 560	123 016	125 052
Index 2006			100	78	79
Index: OIP=100	100	292	251	195	198
market shares	8.8%	22.9%	21.6%	17.8%	18.5%
Vietnam (000pairs)	102 625	100 619	79 427	62 503	68 852
Index 2006			100	79	87
Index:OIP=100	100	98	77	61	67
market shares	14.2%	12.6%	11.0%	9.1%	10.2%

(*) As from September 2007 Macao imports, found to be circumventing the anti-dumping measures, are included in PRC data. The import volumes correspond to 3.7 m in 2007 and 6.4 m in the RIP. For the purpose of the analysis Macao's imports from September 2007 was considered as Chinese imports. Nevertheless even without such imports the assessment would not change, in view of the volumes and values involved.

- (199) Total Chinese imports decreased from 157 to 125 million pairs during the period considered, or from 21.6% to 18.5% of the EU market.

⁷ CBI market study 'The footwear market in the EU'. April 2008.

- (200) However as demonstrated above, when comparing to the OIP a strong increase of imports from China took place after the end of the quota system (1 January 2005), on the basis of low import prices. Import levels decreased after the imposition of measures, stabilising in 2007 and the RIP at over 120 million pairs—almost twice the amount of the OIP import volumes.
- (201) In addition, it should be underlined that an anti-circumvention investigation found that dumped Chinese products were avoiding the duties and undermining the remedial effect of the measures by circumvention the aforesaid measures via Macao within the meaning of Article 13 of the Basic Regulation. This shows that the Community market has continued to be very important to Chinese exporting producers.
- (202) Vietnamese imports decreased in the period considered from 79 to 69 million pairs. Notwithstanding this drop of over 13% as compared to the OIP, import levels remain significant and market shares are roughly stable around the 10% mark during the reference period
- (203) Together, imports from China and Vietnam amounted to 237 million pairs in 2006, 185 in 2007 and 194 in the RIP. While there was a decrease in volumes in the period concerned, the import levels are still higher than those that led to the imposition of measures (166 million). The joint market share of China and Vietnam dropped from 32.7% to 28.7% over the period but also in this case, the RIP market share is considerably higher than that of the OIP of 23%.

2.2. *Cumulative assessment of the effects of the dumped imports concerned*

- (204) The Commission considered whether the effects of dumped imports from the countries concerned should be assessed cumulatively, on the basis of the criteria set out in Article 3(4) of the basic Regulation. This Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations shall be assessed cumulatively only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Article 9(3) of the basic Regulation and that the volume of imports of each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product
- (205) In this respect, it was firstly found that the dumping margins established for each of the countries concerned were more than de minimis. In addition, the volume of the dumped imports from each of those countries was not negligible in the sense of Article 5(7) of the basic Regulation. Indeed, the import volume represented for PRC and Vietnam respectively around 18 and 10 % of the Community consumption during the IP.
- (206) The investigation further showed that the conditions of competition both between the dumped imports and between the dumped imports and the like Community product were similar. It was found that, irrespective of their origin, footwear with uppers of leather produced/sold by the countries concerned and those produced/sold by the Community industry compete against each other since they are alike in terms of their basic characteristics, interchangeable from the consumer's point of view and

distributed via the same distribution channels. In addition, the investigation revealed that for both countries, the volume of imports developed in parallel: both countries decreased their imports by around 10-25% between 2006 and the RIP. The import prices of those two countries are also in the same order of magnitude. In addition those prices were found to undercut the Community industry's prices at a comparable level of trade.

- (207) On this basis, it is concluded that all conditions of cumulation are met and that accordingly the effect of the dumped imports originating in the countries concerned should be assessed jointly for the purpose of the injury analysis.

2.3. *Price evolution and price behaviour of the imports of the product concerned*

Table 5
Price evolution from countries under investigation

	2006	2007	RIP
PRC €/pair	8.4	8.4	8.5
Index: 2006=100	100	99	103
Vietnam €/pair	10.2	9.7	9.5
Index: 2006=100	100	96	94

Source: Eurostat

- (208) Average prices of Chinese imports in the period under consideration have remained fairly stable, at around €8.4 per pair. This is approximately 20% higher than the price level of the OIP (€7.2). Average prices of Vietnamese imports have decreased during the reference period, and are in the RIP close to the €9.2 level which was at hand in the OIP. The assessment of the trends of average prices does however not take into account changes in product mix that might have occurred in the period considered.

2.4. *Undercutting*

- (209) The approach to calculate the price undercutting follows that of the original investigation. The import prices, including the anti-dumping duties, of the sampled exporting producers were compared to the Community industry prices, on the basis of weighted averages for comparable product types during the RIP. The Community industry prices were adjusted to an ex-works level and compared to CIF Community frontier import prices, plus anti-dumping and customs duties. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. For a fair comparison, adjustments were made to reflect costs incurred in the Community by the importers, such as design, selection of raw material, etc, which otherwise would not be reflected in the import price. This was justified since footwear imported is produced on order on the basis of the specifications (raw material, design) given by the importers themselves.
- (210) On the basis of the cooperating exporting producers' prices, the undercutting margins found, by country, expressed as a percentage of the Community industry's prices, are as follows:

Table 6
Undercutting margins

Country	Price undercutting
PRC	31.9%
Golden Step (PRC)	37.1%
Vietnam	38.9%

3. Imports from other third countries

3.1. Import volume market share and prices in the RIP

Table 7
Import volume from other third countries

Volume	2006	2007	IP
India (million pairs)	50	55	56
index: 2006 = 100	100	111	112
Market share	7%	8%	8%
Indonesia (million pairs)	20	29	31
index: 2006 = 100	100	144	158
Market share	3%	4%	5%
Brazil (million pairs)	21	22	21
index: 2006 = 100	100	102	98
Market share	3%	3%	3%
Thailand (million pairs)	11	12	12
index: 2006 = 100	100	108	107
Market share	2%	2%	2%
Tunisia (million pairs)	10	12	12
index: 2006 = 100	100	124	130
Market share	1%	2%	2%
Marocco (million pairs)	10	10	10
index: 2006 = 100	100	99	98
Market share	1%	1%	1%
Others - (million pairs)	63	67	59
index: 2006 = 100	100	107	93
Market share	9%	10%	9%
Total (million pairs)	185	207	201
index: 2006 = 100	100	112	109
Market share	26%	30%	30%

Table 8
Import values from other third countries

Values	2006	2007	IP
India €pair	11.34	11.67	11.98
index: 2006 = 100	100	103	106
Indonesia €pair	9.98	10.06	9.67
index: 2006 = 100	100	101	97
Brazil €pair	15.8	15.78	16.83
index: 2006 = 100	100	100	107
Thailand €pair	12.56	13.54	13.55
index: 2006 = 100	100	108	108
Tunisia €pair	12.76	13.2	13.39
index: 2006 = 100	100	103	105
Marocco €pair	14.6	15.05	14.98
index: 2006 = 100	100	103	103
Others €pair	14.64	14.25	15.26
index: 2006 = 100	100	97	104
Total €pair	13.16	13.07	13.40
index: 2006 = 100	100	99	102

- (211) As seen in the above, total imports of other third country imports have increased in absolute terms in the period under consideration. Overall imports have gone from 185 in 2006, to 201 million in the RIP and in market share they have increased from 26% to 30% in the RIP.
- (212) Prices from third countries are however on average 34% higher than Chinese prices, and 28% higher than Vietnamese prices.

F. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

1. Preliminary remarks

- (213) Pursuant to Article 3(5) of the basic Regulation, the Commission analysed all economic factors and indices having a bearing on the state of the Community industry.
- (214) As explained above, considering the peculiarity of the sector and the large number of complainant Community producers, the provisions on sampling had to be used. For the purpose of the injury analysis, the injury indicators have been established at the following two levels:
- The macroeconomic elements (production, sales volume, market share, employment, productivity, growth, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Community production, on the basis of the information collected from the national Community producers associations and individual companies. These factors were cross-checked, where possible, with the overall information provided by the relevant official statistics.

- The analysis of microeconomic elements (stocks, sales prices, cash flow, profitability, return on investments, ability to raise capital, investments, employment and wages) was carried out for the individual companies, i.e. at the level of those Community producers that were included in the sample.

2. Macro-economic indicators

2.1. Output, production capacity and capacity utilisation

Table 9
Production capacity and utilisation

	2006	2007	RIP
Production (000 pairs)	390 314	383 692	365 638
Index: 2006=100	100	98	94
Capacity (000 pairs)	551 844	571 663	564 091
Index: 2006=100	100	104	102
Capacity utilisation	71%	68%	66%
Index: 2006=100	100	95	92

Source: data related to EU27: Prodcom as confirmed by data obtained by individual producers as well as producer associations Note: As explained above in recital(23), the investigation revealed that the output of the sampled Community producers was between 18-21% lower in the period considered than originally indicated due to the situation of one producer in particular. Based on the information on file, there was no indication that the finding for this producer would be applicable to the entire sector. However, the possibility that the lower production finding was valid for the full Community production was examined. In order to verify the impact of this variation if applied to all Community production, a cross-check was made based on an assumption of a 20% decrease of the total Community production throughout the period considered. It is noted that the difference between the production volume of the sample determined in the investigation and that originally indicated remained stable throughout the period considered with only minor variations. It was therefore found that the overall trends in the injury factors relevant to this exercise (market share, productivity etc.) would not be affected.

- (215) Production decreased by 6% in the period considered, largely mirroring the decrease in consumption of leather shoes noted for the same period.
- (216) Some interested parties representing importers and retailers claimed, but without providing any evidence; that the decrease in production in the Community would have to be seen as a positive indication rather than a sign that the Community industry continued to suffer injury in the period concerned. According to these parties, the decrease in production has been the consequence of a conscious streamlining process in the Community industry whereby the lower end segment has been abandoned in favour of the medium high end segment in which the Community industry has always been competitive
- (217) In this respect it should however be underlined and as determined already in the original investigation that, many Community producers have disappeared because they were not able to compete against dumped imports—not necessarily due to inherent or structural lack of competitiveness. Therefore the allegation that the decrease of the Community production has to be considered as a positive indication is rejected

- (218) One interested party claimed that the fact that the Community industry capacity utilisation had remained stable showed that no injury was taking place.
- (219) As was already concluded in the original investigation the actual capacity in this sector is strongly dependent on the number of workers available rather than the technical capacity of the machines in the production line. For this reason, capacity is best measured by assessing the employment level as detailed below in section 2.3. In any event contrary to the claim made by the parties the investigation demonstrated that capacity utilisation when assessed from the point of view of technical capacity, decreased from 71% to 66% in the period considered and the argument that the stable utilisation rate would be a sign of no injury, can therefore not be upheld

2.2. Sales volume and market share

Table 10
Sales volume and market share

	2006	2007	IP
Sales (000 pairs)	302 784	298 116	279 865
Index: 2006=100	100	98	92
Market shares	41.8%	43.2%	41.5%
Index: 2006=100	100	103	99

- (220) The Community industry sales decreased in absolute terms by 8% in the period under consideration. However, in view of the fact that the same period saw a decrease in consumption of 7%, the Community industry still managed to maintain its market share at a stable rate. When comparing to the situation in the original investigation which saw a drop in sales of 33% is also clear that the free fall in sales and market shares have been halted after the imposition of the measures.
- (221) One interested party claimed that no injury existed since the Community industry had increased its market share in the period considered. The investigation has however revealed that the Community industry's market share has seen very small changes in the period considered. Furthermore, as detailed above in section D.2 it would have been expected that the streamlining of production and change in business model would have allowed the companies that remain to materially increase their market presence. The fact that sales of the Community producers have remained flat indicates that the pressure caused by dumped imports continues to be a concern.
- (222) Some interested parties claimed that the fact that the Community industry had not increased its market share since the introduction of duties has shown that the Community industry has not been able to benefit from the duties and that the imported products in any event are not substitutable with the product produced in the Community.

- (223) Again it should be underlined that market share, is only one of the indicators examined and that as detailed below under other factors, the investigation has shown that there is significant competition between Community manufactured products and the product imported from the countries concerned. While it is correct that the Community producers have not been able to significantly increase their market share the massive drop in sales seen in the original investigation has been halted and the measures have allowed Community producers to stabilise sales and market share. Further increases in market share appear to have been halted by the price pressure generated materially by dumped imports as seen in recitals (249)- (250).
- (224) Other interested parties claimed that the Community industry has seen a significant improvement in export performance and that injury therefore no longer was at hand.
- (225) As seen in the table below the investigation has however contrary to this claim, revealed that the exports performance of the Community industry in the period considered showed a slight decrease rather than an increase.
- (226) In any event, it should be noted that exports counts for only 25% of the Community producers' sales. The performance in the Community is therefore still by far the most important factor determining the financial situation of Community producers. In addition, the investigation has not shown that an increase in export activity would provoke a drop in the sales in the Community.
- (227) Considering the above, the argument that the improved export performance would have eliminated the injury sustained by the Community industry cannot be upheld.

Table 11
Export by Community industry

	2006	2007	IP
Exports by the Community industry (000, pairs)	91 395	89 845	89 739
Index: 2006=100	100	98	98

Source: Comext

2.3. *Employment*

Table 12
Employment

	2006	2007	IP
Total employment (in 000)	267	264	262
Index: 2006=100	100	99	98

- (228) Community producers employed around 260 000 persons directly involved in the production of the product concerned in the RIP.
- (229) One interested party claimed that the fact that employment levels in the Community industry had remained stable indicates that injury is no longer sustained.

- (230) In this context it is recalled that the assessment of injury has to be founded on an analysis of all relevant indicators and not only on one factor in isolation. Furthermore, the investigation ascertained that employment of the Community industry decreased slightly (-2,0%). The fact that a large part of the Community industry has moved a cluster system of production has likely been instrumental in allowing the employment levels not to decrease further and allow for the maintenance of important know how in the producing companies
- (231) Another interested party indicated that the lack of available labour force in the Community, rather than competition from imports from the countries concerned was one of the main reasons of the problems facing the Community industry.
- (232) Considering however that no evidence was provided in support of this claim and since the findings of the investigation did not suggest that availability of work force would be a significant problem to Community producers, this argument cannot be upheld.

2.4. *Productivity*

Table 13
Productivity

	2006	2007	IP
Productivity	1 461	1 453	1 391
Index: 2006=100	100	99	95

- (233) In this review, average productivity in the period considered has been assessed on the basis of total employment, including all work force of all production facilities in a cluster system. Productivity decreased moderately during the period. As mentioned under section D.2. the productivity is linked to the overall structure and types of footwear produced in the companies and can vary greatly from a country to another country and from a company to another. Therefore the drop cannot be considered as significant.

2.5. *Growth*

- (234) Between 2006 and the RIP, the Community industry market share remained stable but considering the fact that consumption decreased, Community producers still lost sales in absolute terms.

2.6. *Magnitude of dumping margin*

- (235) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

2.7. *Recovery from the effects of past dumping or subsidisation*

- (236) Anti-dumping measures against imports of certain footwear with uppers of leather originating in PRC and Vietnam were imposed in October 2006. In this period only a

partial recovery of the situation of the Community producers has been observed as detailed below.

3. Micro-economic indicators

3.1. Stocks

Table 14
Stocks

	2006	2007	IP
(000 pairs)	163	120	198
Index: 2006=100	100	73	121

Source: verified questionnaires replies

(237) Stocks remained negligible at around 2% of the production. It is recalled that the importance of this indicator should not be overestimated as production for this product type is made on order and stock at a determined point in time is the result of goods sold but not yet delivered.

3.2. Sales prices

Table 15
Sales price

	2006	2007	IP
EUR/pair	26.6	29.5	34.6
Index: 2006=100	100	111	130

Source: verified questionnaires replies

(238) Sales prices increased by 30% during the period. This increase is the result of two main factors. On one side the result of developments in business model mentioned above; on the other side, the cost increase mainly attributable to the raw materials.

3.3. Cash flow, profitability and return on investments

Table 16
Cash flow - profitability - R.O.I

	2006	2007	IP
EUR/pair	26.6	29.5	34.6
Index: 2006=100	100	111	130
% Profit on net turnover	1.3%	3.4%	3.0%
Index: 2006=100	100	261	231
Return on investments	9.5%	22.8%	20.5%
Index: 2006=100	100	240	217

Source: verified questionnaires replies

- (239) The profit levels of the Community industry improved in the period concerned from 1.3% in 2006 to 3% in the RIP.
- (240) Some interested parties argued that the profits of the Community industry had markedly improved and that this profit in fact was substantially higher than the 6% target profit established in the original investigation. It was thus claimed that injury no longer was at hand, no matter the state of the other injury indicators.
- (241) In this context it should be noted that while it holds true that the profitability levels have improved, the investigation has revealed that the Community industry has not been able to reach the target profit of 6% as determined in the original investigation. A more pronounced increase of profit levels would have been expected not the least when considering the effort of a large part of industry in moving into new business models. This shows that industry is still in a fragile situation from a profitability point of view. The argument that the profit levels would be such as to indicate that the Community industry no longer suffers injury must therefore be rejected.

3.4. Ability to raise capital

- (242) The investigation has shown that SMEs, which constitute the essentially the whole sector, are not in a position, due to their still weak financial situation, to provide sufficient bank guarantees and have therefore difficulties to raise new capital.

3.5. Investments

Table 17
Investment

	2006	2007	IP
000 euros	9 019	13 777	20 979
Index: 2006=100	100	153	233

Source: verified questionnaires replies

- (243) While investments did see an increase in the period considered, in absolute terms it still represented only 6% of the turnover in the RIP. In addition, this increment is influenced by exceptional investments made in buildings by one of the sampled community producers. Otherwise, the level of investment would be stable during the reference period and at low levels.

3.6. Wages

Table 18
Wages

	2006	2007	RIP
Salaries and wages (000€)	21 305	23 186	23 855
Index: 2006=100	100	109	112
Avg. salaries and wages per person (€)	21 826	21 418	21 897
Index: 2006=100	100	98	100

Source: verified questionnaires replies

- (244) Average wages have remained flat over the period considered, indicating that actual salaries are decreasing and not following the normal salary development. This only further demonstrates the level of pressure exerted on Community producers

4. Conclusion on injury

- (245) As seen from the above, not all factors listed in the basic Regulation were found to have a direct bearing on the state of the Community footwear industry for the determination of injury. In particular, considering that production takes place on order, stocks are normally either not held or only consist of completed orders not yet delivered/invoiced and were therefore found to have very little meaning in the injury analysis. Similarly, since the sector continues to remain labour intensive, the production capacity is not technically limited and mainly depends on the number of workers hired by the producers.
- (246) The analysis of the macro indicators with a more direct bearing on the state of the Community industry shows that Community production as well as sales volume has decreased at approximately the same rate as Community consumption in the period considered. The sales, market share and employment of Community producers have thus remained stable. Productivity has seen a decrease but only moderately. Overall, while it would have been expected that the move to a new business model would have been able to increase sale and production of the Community producers that remain it is also clear that the economic free fall that industry was suffering before the imposition of the measure has been halted since the imposition of measures. This has also allowed a large part of the Community industry to change business model by way of streamlining production processes through the development of specialised clusters, moving up in the product segment as well as changing focus from wholesale distribution to direct supply to retail.
- (247) An analysis of the relevant micro indicators also supports the partial recovery of the Community industry showing an increase in sales prices, cash-flow investment, and

profit. The industry has however still not been able to recover to normal profit and investment levels and have still problems in raising capital and in salary development showing that the situation is still fragile and that injury has not been totally removed.

- (248) Overall, the investigation has revealed that the Community industry continues to suffer material injury.

5. Impact of dumped imports from the countries concerned and impact of other factors

5.1. Impact of imports of dumped products from the countries concerned

- (249) While the combined import volumes from the countries concerned have seen a decrease in the period considered, the volumes in the RIP still far exceed those in the original investigation. In the case of China the levels are almost twice those seen in the OIP and while import volumes of Vietnam have decreased in the same period, their presence on the market is still significant with a market share of around 10%.
- (250) An analysis of the prices of imports from the countries concerned in the period considered, show that prices of Chinese imports have remained stable while Vietnamese prices have decreased. When compared to prices in the OIP, Chinese prices have increased by around 20% but prices of the Vietnamese are close to those found in the OIP. Notwithstanding differences in product mix and level of trade considerations, it is clear that average imports prices of 8.6 EUR for the PRC and 9.51 EUR from Vietnam continue to cause major concern to the Community producers whose average sales prices are well above 30 EUR. This becomes even more evident when looking at the undercutting levels that have seen a drastic increase when compared to the OIP. For China undercutting levels have increased from 13.5% to 31.9% in this period and for Vietnam the equivalent increase is from 15.9% to 38.9%.

5.2. Conclusion on the impact of imports of dumped products from the countries concerned

- (251) On the basis of the above it must be concluded that imports from the countries concerned both in terms of volume and price, continues to adversely affect the performance of Community producers.

5.3. Impact of other factors

- (252) The Commission thoroughly analysed whether any other known factors than the dumped imports could have had a bearing on the continued injury suffered by the Community producers in order to ensure that possible injury caused by any such factors was not attributed to the dumped imports.

5.3.1. Lack of competition between the Community-produced shoes and those imported from the countries concerned

- (253) Some interested parties maintained that there is no link between imports from the countries concerned and the performance of the Community industry. In particular, it was held that there was no substitution between the product concerned produced in the Community and that imported from the countries concerned. According to these parties, there is no competition between Community produced leather shoes and those imported from China and Vietnam as the former tend to operate in the mid to high-end

market segment while the latter is mainly destined for the mid- to low- end segment. The fact that the Community industry was not able to regain market share following the imposition of the measures was held forward as evidence in this regard. The general improvement as concern the other injury indicators would instead be the consequence of the change in business model by the Community industry, whereby a reduction of production and shift towards higher value added production which mitigated the injury previously suffered for part of the Community industry . The difficulties experienced by a the othergroup of Community producers was held to be caused by the failure to adapt rather than to dumped imports from the countries concerned.

- (254) The investigation has shown that although part of the Community industry has also been moving upmarket, it still occupies some parts of the low bracket and large parts of the medium segment. When looking at the dumped imports, these cover not only the low segment, but also the medium segment—and in some cases, even the higher segment. There is in other words substantial competition between the leather shoes produced in the Community and those imported from the countries concerned.
- (255) There had also been claims that there was no competition between the Community producers and the exporters concerned as the Community producers are concentrated on niche products and do not supply a full range of speciality shoes such as hiking, bowling, and orthopaedic shoes. In this context it should however be noted that these speciality shoes only form as small part of the product concerned and the impact can therefore not be significant. In any event, the investigation has shown that contrary to the claim, these speciality shoes are produced in the Community albeit in limited quantities and these are in direct competition with the imported speciality shoes. Furthermore and as detailed above, there is now an increase in competition between many of these speciality shoes and the classical “brown shoe” traditionally produced by the Community industry.
- (256) As concerns the comparison of Community production and imports from the countries concerned as per the age and gender, the investigation showed that there is substantial production in the Community of men, women and children's shoes. The focus would be on women's shoes making up around 55% of production while men and children's shoes would be 35% and 10% respectively. When looking at the breakdown in age and gender for shoes imported from the countries concerned the figures would be different with higher focus on in particular children shoes around 25%. Notwithstanding these variations, it is clear that all three categories are sold in the Community market in significant quantities by the Community industry as well as exporters.

5.3.2. Lack of efficiency of Community producers, structural deficiencies and impact of globalisation

- (257) One party, representing Consumer interests maintained that the alleged dumping has had no impact on the situation of the Community industry but that trend of globalisation and the shifting of production to lower cost countries rather than unfair trade lays at the heart of job losses and factory closures in the Community
- (258) Several other interested parties also pointed out the inability of the Community industry to benefit from the measures and the effect of the change in business model

amongst Community producers as evidence in support of the claim that there is no link between imports and the Community industry performance.

- (259) According to these claims, the Community industry is structurally incapable to compete in the mass production market largely due to lack of the necessary labour force and the cost thereof. As a consequence, a significant part of the Community industry have moved to a new business model and have invested in product innovation and upgrading so as to move focus from mid- to low-end product segment to the mid - to high-end and luxury segment. These companies that have focused on niche products with higher added value are also showing a good level of performance. Conversely, those companies that have failed to respond to globalisation are continuing to demonstrate poor results. According to this line of argument the situation of the Community producers should thus be considered to be the consequence of their business strategy and is not linked to imports from the countries concerned.
- (260) As seen above in section D.2 and E.4 the investigation has indeed revealed a heterogeneous picture of the Community industry. Parts of the industry are producing unbranded footwear in the mid- to low-end of the product segment and are selling through wholesalers rather than directly to retail. But this does not mean that these companies are inefficient by nature. What is clear from the investigation is that, irrespective of their competitive position, their difficult situation is being materially caused by dumped imports. As a consequence they are in an extremely difficult financial situation and their state has deteriorated sharply during the period considered. Many of these companies are making efforts to reorient to the mid- to high-end segment and to change distribution channels but the current pressure caused by dumped imports make this development extremely difficult.
- (261) Notwithstanding their marked improvement and adaptation of business model, those companies that have redefined business model do not reach the target profits of 6% as established in the original investigation. This shows that also this group is affected by the overall downward pressure exerted across all segments as a consequence of the dumped imports. It is therefore likely that this group would have been able to recover fully had they not been faced with the downward pressure on price caused by continued (and even increased) imports of dumped leather footwear.
- (262) The fact that even the companies that have moved to a new business model are still affected by the injurious dumping despite being highly efficient in terms of pooling of resources and specialisation, would suggest that lack of efficiency and structural problems within the industry is not breaking the link between the dumping and the injury sustained.

5.3.3. Impact of imports from other third countries

- (263) Several interested parties have indicated that the growing footwear industry in other third countries have dramatically increased exports to the Community. In this respect it has been claimed that imports from other third countries had significant impact on the situation of the Community industry during the period considered and would be equally important when analysing the likely continuation or recurrence of injury should measures be discontinued. According to these parties the termination of the measures would affect the balance of imports between imports from the countries concerned and imports from other countries since there is substitution between these

sources. The termination of measures would therefore have no effect on the Community industry.

- (264) In this respect the investigation has shown imports from other third countries with low prices such as India and Indonesia are large and increasing. The footwear sector is to a large extent organised in international groups having different production bases in different countries. This allows for a certain degree of flexibility to shift production once a production base is established in other countries. The investigation has shown that the establishment in a new country could be done in one to two years
- (265) In terms of market share, the shares lost by China and Vietnam may have been taken over by other exporting countries—in particular India and Indonesia. However, the effect of their prices is not comparable to the effect of prices of imports from China and Vietnam. While not taking into account differences in product mix the difference in price is particularly stark in the case of India, where the average export price is 25% higher than the average export price of shoes imported from Vietnam and 38% higher than the average export price of shoes imported from China. Therefore their effect on the Community industry is significantly less pronounced. The average export price of shoes imported from Indonesia is 11% higher than the average price of shoes imported from China and comparable to the average export price of shoes imported from Vietnam. Nevertheless the volumes of Indonesian imports would still mean that their relative impact would be limited. Having regard to the above, the relative volumes and higher prices of imports from other Asian countries do not allow to conclude that their effect would be sufficient to breach the link between the injury suffered by the Community industry and the large volumes of dumped imports from China and Vietnam

5.3.4. Impact of changes in consumption and consumer preference and impact of changes in the structure of the retail sector in the Community

- (266) It has also been claimed that the poor performance of the Community industry should not be linked to imports from the countries concerned but rather to a decline in consumption in the Community. This decline in consumption would allegedly be linked to changes in fashion trends that have moved from formal towards more casual footwear. Accordingly, the consumer has switched preference in favour of low price segment typically represented by imports from third countries.
- (267) In this context the investigation has shown that there has been a decrease in consumption of product concerned. However, if there had been full substitutability between leather shoes and other materials, this decrease would have been much more pronounced. The decrease in consumption and changes in consumer preference would therefore not on its own appear to be a factor that would break the causal link.
- (268) The investigation has also shown that the retail of shoes has diversified from the traditional shoe shop to a number of new outlets including department stores, general apparel shops as well as super/hyper markets, which account for a very significant amount of sale, possibly exceeding 40%.
- (269) It has also been argued that this highly competitive scenario exerts a downward pressure on prices and that this effect has had a higher impact on the Community industry than the dumped imports. While pressure from the retail sector as such cannot

be ruled out as a factor that may have had an impact on the Community industry it must however be borne in mind that also this structure is dependent on finding suppliers that can supply at such low prices. The large volumes of dumped products have most certainly been a key factor in developing and maintaining this price pressure. Furthermore, given the fact that the Community producers have managed to increase prices would also indicate that the impact of the changes in the retail structure is not such as to break the link between the injury and the dumped imports.

5.3.5. Impact of the Community producers' export performance

- (270) The poor export performance of the Community industry linked to the strength of the EURO against the USD was also put forward as a cause of injury suffered by the Community industry and that therefore as such had to be distinguished from the effects of imports from the countries concerned.
- (271) However, a comparison of overall domestic prices with overall exports would rather suggest that the export prices of Community producers have gone up by around 12% in the period considered and that these prices, during the RIP were around 20% higher than the domestic prices. Export volumes have remained stable and absorb ca. 25% of production. Considering that the investigation has shown that the export performance of Community producers has only seen a small decrease the argument that that export performance would be the cause of injury to the Community can not be sustained.

5.4. *Conclusion on impact of other factors*

- (272) As seen from the above, several interested parties have claimed that factors other than the dumped imports have been the major cause of injury to the Community industry.
- (273) The relevant other factors have been identified and carefully analysed. However, the facts of the case show that none of the other known factors in isolation or seen together would be such as to break the causal link between the dumped imports and the injury suffered by Community producers

G. LIKELIHOOD OF CONTINUATION OF INJURY

1. Impact of the projected volume and price effects in case of repeal of measures on the state of the Community industry

- (274) In accordance with Article 11(2) of the basic Regulation, imports from countries currently being reviewed were assessed in order to establish if there was a likelihood of continuation of injury.
- (275) With regard to the likely effect on the Community industry of the expiry of the measures in force, the following factors were considered in line with the elements summarised above in respect of the likelihood of continuation of dumping.

1.1. The PRC

- (276) As concluded above in recital (249)-(250), imports of large volumes at dumped prices from the PRC have continued during the RIP.

- (277) An analysis of capacities and the development of the domestic market in the PRC also revealed that this already high volume of exports would continue should measures be terminated. Even in the event that imports, as alleged, would decrease by up to 30% as a consequence of the market downturn, the volumes would still be very large.
- (278) It was also concluded that, due to its higher price level, when compared to the Chinese domestic market as well as other third country markets, the Community would continue to be an attractive market for Chinese exports should measures be allowed to lapse. While a certain increase in export price could not be ruled out it was nevertheless concluded that these exports would continue to be dumped.
- (279) The significant levels of dumping and undercutting observed indicate that the export volumes to the Community mentioned above would be made at dumped prices which would lie significantly below the prices and costs of the Community producers.
- (280) The combined effect of such volumes and prices would as such be capable to lead to a deterioration of the situation of the Community producers' already precarious situation.

1.2. Vietnam

- (281) Also for the case of Vietnam, continuation of dumping in large volumes was established in the RIP.
- (282) It was also concluded that that the Community continues to be the most important market for the Vietnamese exporters and that this is likely to continue to be the case in the event that measures are discontinued.
- (283) Considering the existence of significant spare capacities and when considering the price level in the Community when compared to that in the Vietnamese domestic market as well as other export markets, it is likely that the imports of dumped products will increase further should measures lapse. As is the case for China, even in the event that imports, as alleged, would decrease as a consequence of the economic downturn the import volumes would still be very significant.
- (284) As in the case of the PRC, the significant level of dumping and undercutting observed indicates that the export volumes to the Community mentioned above would be made at dumped prices which would lie significantly below the prices and costs of the Community producers. Similarly, the combined effect of such volumes and prices would as such be capable to lead to an deterioration of the Community producers' already precarious situation

2. Arguments raised by parties

- (285) A number of interested parties have put forward claims that other factors than dumped imports from the countries concerned would put into question the likely effect of dumped imports on the situation of the Community industry in the future.
- (286) The factors brought forward are to a large extent already addressed in the injury section E.4 and would therefore not need to be repeated in this section. Some of the arguments have, however, been linked to post-RIP events and have therefore been subject to additional analysis in terms of their likely future impact.

2.1. Likely effect of the market downturn

- (287) Several parties have held that the effects of the economic downturn should be distinguished from the alleged effects of imports as this event must be considered external to the likelihood of continuation/recurrence of injurious dumping. According to these interested parties, the Community industry would be particularly affected by the downturn as the consumer in such circumstances would typically switch to a lower quality/price product as a consequence of the decrease in purchase power.
- (288) The market downturn will most likely lead to a further decrease in consumption of the product concerned. While leather shoes still will have a strong position in the market, sales are likely to go down significantly more than the 7% already seen in the period before the downturn.
- (289) It is likely that the economic constraints will make consumer and retailers more sensitive to price and a decrease in purchasing power of the consumer could put a cap on prices at retail level. In turn this could trigger a segment shift (consumers moving from the high/medium segment to medium as well as from the medium to medium/low) and to more repairs. The competition between leather shoes and other cheaper products made of textile and synthetics would under such circumstances most likely increase.
- (290) In short, it cannot be ruled out that the downturn in the market will contribute to the deterioration of the situation of the Community industry given the related consumption and price effects. At the same time however it is also likely that the economic downturn will magnify the effect of dumped imports even further. The reason for this is that the downturn is likely to put price pressure on all operators, including the exporters from the countries concerned, which may lower their already dumped prices even further. Even lower prices will put pressure also in the mid to high segment and would risk forcing Community producers back towards the mid to low segment. This in turn would lead to even fiercer product competition between Community production and the dumped imports.

2.2. Likely impact of changes in Consumption patterns

- (291) Several interested parties claimed any future decline in the performance of the Community industry, if any, would not be linked to imports from the countries concerned but rather to a decline in consumption in the Community. This decline in consumption would allegedly be linked, not only to changes in fashion trends that has moved from formal towards more casual footwear but also to the downturn in the market. This event would increase the tendency of the consumer to switch preference in favour of low price segment typically represented by imports from third countries
- (292) A drop in overall consumption would in all likelihood have a detrimental effect on the performance of the Community producers. It can however also be expected that a decrease in purchasing power of the consumer will make the market less responsive to short term fashion-trends leading to a revival of the classical 'brown shoe' which is the segment where the Community industry is the strongest. It can thus not be concluded that a drop in consumption would hit Community produced shoes harder than those imported. Overall, while Community producers most likely will be affected by a drop in consumption the effect of large volumes of dumped imports from the countries

concerned will still be a very significant cause of injury should measures be allowed to lapse.

2.3. *Likely impact of drop in export performance*

- (293) It has also been argued by some interested parties that the economic downturn will be particularly hard felt on the export side in the Community production.
- (294) In this context it can be presumed that the financial downturn, which will be felt across the world, will also have an impact on EU exports. While a drop in export activity could certainly contribute negatively to the general development of the sector it should however be born in mind that that three quarters of the Community producers' activity is geared to the domestic EU market. Considering this, it cannot be concluded that the likely impact of the downturn of the export performance in itself would break the causal link between dumped imports and injury caused to the Community producers.

2.4. *Likely impact of structural problems and lack of efficiency amongst EU producers*

- (295) It has also been argued that Community producers have had problems benefiting from measures in the past due to the fact that the source of the problems suffered are linked to structural problems and inefficiency in the industry rather than to the alleged dumping from China and Vietnam. According to these claims, the event of the economic downturn will deepen the structural problems in the sector and further dilute the link between the injury suffered and the dumping.
- (296) First and foremost it is recalled that the investigation has shown that, irrespective of their competitive position, Community producers have been materially injured by the imports of dumped imports. In any event, it should be noted as demonstrated above, that the Community industry while still in a precarious situation has shown at least a partial recovery in the period considered and have been able to maintain a stable market share. Moreover a large part of the sector has been able to redefine business model or is trying to through (i) the grouping of resources in clusters making the most of specialisation and allowing the groups to benefit from economies of scale, (ii) the direct sales to retailers and (iii) the production of shoes in the mid-upper and upper segments. It is highly unlikely that the industry would have been able to carry through with this process had the measures not been in place and in any case those which are now in the process of changing their business model will in all likelihood not be able to complete it.
- (297) It can however also be expected that the market downturn will increase pressure and possibly also halt the process for the companies that have still not been able to refocus by way of a change in business model. The situation of these companies will risk deteriorating even further and many companies in this group may even be going out of business as competition intensifies. The companies that have adopted the more advanced business models are not likely to escape the effects of the market downturn either as the prices in the high/medium segment in which they are specialised, also is likely to be subject to an overall downward pressure.
- (298) Nevertheless, as for the assessment of the situation seen in the period considered, it would be difficult to argue that, on its own, the event of the economic downturn would break the causal link with dumped imports. On the contrary, as detailed above in

recital (290)d ownward pressure on price sustained by cheap dumped imports will most likely also, generate a domino effect, forcing an even larger share of the Community production towards the same segment as the dumped imports so as to increase the pressure of the dumped imports on Community producers. Under such circumstances Community producers would therefore be more dependent than ever on the existence of measures in the future.

2.5. *Likely effects of imports from third countries*

- (299) It was also examined whether imports from third countries would be likely to have an impact on the effects of dumped imports on the situation of the Community industry should measures allow to lapse. In this context it has been held that third countries exports to the Community have been constantly growing and that in the wake of higher costs in China and Vietnam and coupled with the economic downturn, these would be the main cause of concern to the Community in the future.
- (300) Bearing in mind the price difference between the dumped imports from the countries concerned and those of third countries it would however rather be likely that Chinese and Vietnamese exports will gain a price edge over imports from other third countries. This would in turn point to a relative decrease of such imports in the future. As demonstrated above in section C.3 there are no signs that the Chinese or Vietnamese exporters are likely to withdraw their presence on the Community market. On the contrary, the large capacities at hand would suggest they have an incentive to stay in the market as long as possible.
- (301) In view of the above, imports from other third countries would in all likelihood have less of an impact on the situation of the Community industry should measures lapse.

2.6. *Likely impact of fluctuations in exchange rates*

- (302) It has also been argued that the injury to the Community producers is likely to decrease as a result of the appreciation of the USD to the EURO. The fluctuation in currency would push up the prices of the dumped imports that are traded in Euro so as to close the price gap between the dumped imports and Community producer prices.
- (303) In this context it should be noted that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused (or are likely to cause) material injury to the Community industry or whether such material injury (or likelihood thereof) was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause (or are likely to cause) injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.
- (304) The likely effect of the dumped imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may sometimes need to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the

price difference is established on a comparable basis. From this, it becomes obvious that the exchange rate can in principle not be another factor of the injury.

- (305) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports.
- (306) However, even in the event that this factor were taken into account, given the likely pressure on consumer prices in a context of a market downturn, it is unlikely that that importers buying from the countries concerned would be able to increase prices to retail as a result of the appreciation of the USD. Furthermore, exchange rates as such are very difficult to predict and a depreciation of the USD against the Euro has been seen post IP making it impossible to conclude that that the currency fluctuations will have an upwards effect on prices of dumped imports from the countries concerned.
- (307) In view of the foregoing it cannot be concluded that the development of exchange rate could be another factor causing injury.

3. Conclusion on the likely impact of other factors

- (308) As seen from the above, while it cannot be ruled out that other factors including the economic downturn will have an effect on the financial situation of the Community producers the investigation has not shown that on their own they would break the link between the dumped imports and the continued injury that the Community industry would suffer.

H. CONCLUSION ON THE CONTINUATION OF INJURY

- (309) As established above in section F4, the investigation has shown that the injurious situation of the Community industry has continued in the RIP. The continuation of injury is according to art 11.2 of the Basic Regulation in itself a strong indicator that injury is likely to also continue in the future which would suggest that measures should be kept in place.
- (310) The findings pertaining to imports shows that imports of large volumes at dumped prices are likely to continue and that price pressure (not least in the context of the economic downturn) is likely to intensify the competition between dumped imports and Community produced leather shoes. The investigation has also shown that there would be no other known factors that would break the strong link between the dumped imports and the injury Community producers would suffer.
- (311) An overall analysis of the findings in the investigation indicates that the consequence of the lifting of measures would likely lead to continuously large and possibly increased volumes of imports from both China and Vietnam at prices which would even further undercut those of the Community industry. The market downturn would most likely further exacerbate this development. The dumped imports would therefore most likely have significant detrimental effects on the Community industry. Under such circumstances the Community industry would either have to follow the decrease in prices in order to maintain market share, or maintain sales prices at current levels and instead lose customers and eventually sales. In the former case, the Community

industry would have to operate at a loss and in the latter case the loss of sales as such would eventually lead to increased costs followed by losses.

- (312) Moreover, the Community industry has suffered the effects of dumped imports for many years and is currently in a precarious economic situation. However, it has also been established that a large part of Community producers have been able to redefine their business models, concentrating on higher added value, mid to high end product segment and with more streamlined distribution channels. This group is also gradually absorbing the activity of part of industry that has not yet been able to adjust and implement new business models and a further adjustment period would be needed to complete this change-over across the entire industry.
- (313) Should the measures be terminated at this sensitive stage, the situation of Community producers would deteriorate and the process of moving to a new business model would be likely halted and the very existence of a large part of the industry would be jeopardized.
- (314) Therefore the investigation has revealed that there is, due to imports from both China and Vietnam, a clear likelihood of continuation of injury to the Community industry for the short/medium term, until the process of adjustment has been completed.

I. COMMUNITY INTEREST

1. Introduction

- (315) According to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of the various interests involved, i.e. those of the Community industry, other Community producers, importers, retailers/distributors and consumers.
- (316) In order to assess the impact of continuation or termination of the measures, the Commission requested information from all relevant interested parties. Although not strictly necessary from a legal point of view, but given the complexity of the case, it was considered appropriate to collect, wherever possible, additional information from a wider range of angles than is usual in the EU's practice. This allowed the investigating authority to cross check the validity of the findings. As concerns the Community industry, not only the companies sampled in this expiry review investigation were requested to provide specific data but also other Community producers. Altogether, the comments of 14 Community producers as well as the information provided by nine footwear industry associations could be taken aboard. Sampling questionnaires were sent to 139 companies which were either known to be or listed in the request as importers of the product under review. Several others received such a questionnaire at their request. 21 importers filled in this sampling questionnaire and indicated a willingness to be included in the sample. Specific questionnaires for the purpose of this analysis were also sent to associations of importers as well as to wholesalers, distributors and retailers and their associations. In this context, eight replies were received. Finally, consumers associations were also contacted with specific questions. Three of them replied.

- (317) The fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures. On the basis of the above, it was examined whether, despite the conclusions on continuation of dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to maintain the measures in this particular case.

2. Interest of the Community industry

- (318) As concerns the Community industry, as set out in recitals (246) et seqq., the investigation showed that a significant part of the Community producers was able to benefit from the imposition of measures. The economic free fall that was found in the original investigation and led to the imposition of definitive anti-dumping measures has been halted as the continuous loss of market share, profitability and employment came to end. This stabilisation of the situation of the Community industry is indeed considered an important improvement given that it shows that in a relative short period of time a large part of Community producers could reverse the steep downward trend observed before the imposition of measures. Indeed, the review revealed that there is still important production/manufacturing of footwear with uppers of leather within the EU, amounting to around 360 million shoes in the RIP and providing employment to around 260 000 people. It is recalled that the vast majority of these producers are small to medium sized companies which vital for the prosperity in certain regions. A significant proportion of those producers developed business models that increased their competitiveness such as moving gradually upmarket, concentrating on higher value products, creating brands, streamlining their distribution channels, creating cooperation networks in their vicinity or elsewhere, as described in recitals (246) et seqq. With regard to the still significant, but decreasing, part of the Community industry whose situation has continued to deteriorate in all aspects, despite the imposition of measures, they benefited from the measures insofar as the measures have prevented an even more rapid deterioration and potential bankruptcy, providing for valuable time to enable them to adapt to the changing market conditions.
- (319) On the other hand, the investigation showed that after two years of measures, the Community industry is still in an overall fragile situation and vulnerable to the effect of dumped imports that are undercutting the prices of the Community industry as elaborated in recital (209) et seqq.
- (320) In summary, the industry benefited from the measures and has shown its capacity to improve its situation and its viability once measures mitigate the effects of injurious dumping.
- (321) In this respect, several interested parties claimed that the measures did not have the desired effect of bringing some market share back to the EU producers, but predominantly benefitted other third country producers. It is noted that, as shown in table 10, the market share of the Community industry remained stable whereas the market share of imports from other countries increased significantly. Thus, already from the mere data, it is shown that the Community industry has stabilised its position on the market since the imposition of the anti-dumping measures. Against a background of ever decreasing sales and market shares stated in the original investigation, a stabilisation at a level of ca. 40% of market share has to be considered

as an important success for the Community industry. Moreover, it is underlined that anti-dumping measures are not imposed to create employment in the EU or to ultimately bring back production to the EU (or to stop imports), but to restore a level playing field between the EU products and the dumped imports. Anti-dumping measures are only imposed with a purpose to restore fair trade conditions on the Community market and thereby to allow Community producers to recover by either increasing their sales and/or by increasing their prices to sustainable levels. Moreover, as set out in recital (212), these third country imports had a significant higher average import price so that their effect on the Community producers is much less pronounced. To conclude, the EU producers benefited from the imposition of the measures because the continuous loss of market share was stopped, they stabilised their sales volume and managed to increase their profitability and sales prices. In view of this, the argument is rejected.

- (322) Should measures be maintained, it can be expected that the Community industry will continue to benefit from the measures by at least keeping its relative market position and to further improve it once the negative effects of the economic downturn are overcome. During the economic downturn, the measures would likely work as a safety net, helping to cushion the effect of the significant amount of dumped, low-priced imports that are reinforced by the effects of the crisis. Considering that competition has increased across product segments i.e. due to fashion trends resulting in the interchangeable use of product types, measures would also help to protect Community produced products from dumped imports breaking into their product segment. Indeed, as was found during the investigation, also the certain producers in the countries concerned moved upmarket, by producing increasingly mid to even high end shoes. This would enable the Community industry to maintain their relative positioning and thereby safeguard a significant employment rate.
- (323) It can also be expected that with the economic conditions improving and consumption increasing, people would be ready to spend more on footwear and in particular on higher value footwear, thus benefitting more the EU producers. In this scenario, the continuation of the measures would allow an increasing part of the Community producers to (continue to) further develop their business models, production process and distribution channels and thereby improve their financial situation gradually, as was evidenced during the review investigation period.
- (324) Should measures lapse, it can be expected that the already fierce competition, in particular at the middle/low end segment, will be reinforced considerably. It can further be expected that this increased competition on the prices in the low and middle segment will have a direct effect on the prices of all other styles. This in turn will very likely endanger also the large group of Community producers that managed to redefine their business model and to improve their situation. As the financial situation and profitability of those producers is not robust enough to withstand the price pressure exerted by large amounts of dumped imports that considerably undercut the prices of the Community industry for an extended period of time, this would lead very likely to many more producers disappearing and to a significant loss of direct employment of EU producers and suppliers of goods and services to the EU industry.

3. Additional analysis regarding the interest of Community manufacturers

- (325) In order to get a more complete picture of the interest of Community manufacturers and beyond the standard analysis of the impact on the Community industry as a whole, additional information was collected via the national footwear industry associations and the companies that were sampled in the original investigation. Furthermore, one co-operating producer which has been excluded from the Community industry but still has significant production in EU submitted its views.
- (326) The additional information collected from the national footwear associations showed a mixed picture, mostly depending on whether there is considerable footwear production in the specific Member State left or whether the country had important importing interests. Whereas five national associations with important footwear production supported the continuation of the measures and highlighted the benefits of the measures for their national footwear producers, four other associations representing countries where the production of footwear has largely or entirely been outsourced to third countries or with important production capacity but also significant imports, stated that the continuation of the measures would overall be against the interest of the Community. The latter associations represented more companies that were importing or distributing/retailing to a significant extent. Therefore, their views were also considered under the recitals dealing with the interests of unrelated importers and retailers below. On balance, the total volume of production accounted for these four associations was significantly lower than that of the five associations which argued that measures benefited manufacturers.
- (327) Moreover, the EU producers that had been sampled in the original investigation were also contacted in order to complement the picture and to analyse some of the allegations made that the EU industry had disappeared and thus not benefited from the imposition of the measures. This additional collection of information from the previously sampled EU producers was also justified under Community interest aspects because the footwear sector in the EU belongs to an industry that is so fragmented and heterogeneous that the injury sample is unavoidably small.
- (328) This look at the situation of the previously sampled EU producers indicated that all cooperating companies sampled in the original investigation have kept a significant part of their production in the EU. Overall they were favourable to the continuation of the anti-dumping measures and highlighted the positive effect of it for the employment in the Community. At the same time, most of them have partly delocalized parts of their production of shoes to countries outside the Community including one of the countries concerned and have pursued complementary solutions in their business strategy in order to enhance competitiveness. Those which continue to produce only in-house in the Community specialize in higher end, higher quality products with relatively short lead times. The replies of those previously sampled EU producers confirmed that, as has been described in the injury part for the sampled Community producers, different business models have been developed and some of the Community producers adapt to the changing market circumstances by a number of actions, including outsourcing part of the production to third countries and/or within the EU, changing sales channels, invest in quality and brand image etc. These replies also confirm the general picture described above regarding the benefits of maintaining measures and the disadvantages of repealing them for the Community industry.
- (329) Lastly, in order to further complete the picture of manufacturing interests in the Community, the reply by the producer excluded from the definition of the Community

industry, was also analysed. It submitted a consolidated reply of European activities as well as specific replies by its two European manufacturing operations. This producer had opposed the review request as it was against the continuation of the anti-dumping measures in question.

- (330) The company has two production facilities in the Community which are assembly operations, using uppers which have been manufactured in Asia. Nevertheless, the production volumes of these two plants have significantly decreased between 2005 and the RIP. Whereas in 2005 imported footwear represented less than half of the volumes of shoes sold by this company, this percentage increased significantly until the RIP in which the majority of the footwear sold by the company was a direct purchase from Asia. More recent market intelligence indicates that the company is further decreasing its production activities in the EU and replacing these quantities by imports.
- (331) Although the company had significantly decreased its manufacturing activities in the Community, this had only resulted in a slight decrease in overall employment within the Community. It appeared that, since 2005, the company had increased its global turnover and significantly improved its profitability. This had led to additional employment in the Community in fields other than manufacturing (administration, design & development, marketing & sales, etc.). From the information available, it appears that whereas anti-dumping duties had a negative impact on the financial results of the company, they were not so significant as the overall profitability improved. The existence of anti-dumping measures did not prevent the company from continuing outsourcing production to third countries, including to the countries concerned. On the other hand, the imposition of measures did not lead the company to increase its production activities in the EU either. Thus, the strategic decisions on production activities appear to have been taken on broader cost considerations.
- (332) Should measures be maintained, the company would very likely continue to be affected by the anti-dumping duties, given that it will likely continue to import from the countries concerned. The extent of this negative impact of the duties will very likely continue to be not significant, given that the company can diversify its import sources, as they did in the past. Should measures be repealed, on the other hand, the company would benefit in view of its imports from the countries concerned and could likely increase its profitability further.
- (333) In conclusion, a refined analysis of other Community producers confirms the general findings, i.e. producers developed several different business models and most of them appeared to have benefitted from the imposition of anti-dumping measures, as they reported to have slightly improved their situation and increased their competitiveness by adapting, inter alia, production strategies and sales channels. Thus, the information available suggests that most of these producers would continue to benefit from the maintenance of the measures at least as far as their decision to keep production activities in the EU is concerned. In turn, these producers would also suffer should measures lapse because the dumped imports from the countries concerned would exert a downward pressure on the prices on all product segments produced by them.
- (334) The negative effects on some producers which have outsourced production to the countries concerned would very likely continue not be disproportionate, as was shown in the past and given that the measures did not prevent those producers from

continuing to outsource to the countries concerned. Thus, the impact of the anti-dumping duties on those producers will depend mostly on the companies' own sourcing decision. It would thus be in the companies' own hand to steer the impact of the anti-dumping duties.

4. Interest of the unrelated importers

4.1. General

- (335) The review investigation confirmed that two main categories of importers can be distinguished. One category mainly consists of companies that import and resell their own branded shoes, the production of which they have outsourced in third countries. These companies usually have significant activities in the Community, e.g. in design, research & development, sourcing of raw materials, and sometimes even their own distribution chain. It follows from this, that these category of importers have important "adding value" activities in the Community where they usually employ a relatively high number of people. The second category consists of importers which are pure traders focussing their trading more on volumes and less on brand – they predominantly trade "private label" shoes. These importers in general have lower structure costs and less added value activities in the Community.
- (336) It was found that within these two main categories, there are different business models. For example, in the first category one can distinguish brands with a European origin, but also non European brands, and formal footwear as well as casual footwear. In the second category one can find importers which have their own retail stores, but also importers which only sell to wholesalers/distributors. Some of the companies in this second category will only trade private label shoes, but others will also have specific sourcing agreements with established brands, and/or licensing agreements, and/or joint ventures.
- (337) In view of the diversity amongst importers, as described above, and in order to capture a picture as complete as possible, the situation of importers has been analysed from several different angles. Firstly, the comments received by importers and their associations have been analysed. In addition, statistical data as well as relevant publications have also been consulted and used in this respect. Finally, for some economic key data, the verified information of the importers' sample was used.
- (338) As mentioned above, for establishing some economic key data it was decided to sample importers. This decision was taken based on the fact that the original investigation showed that the number of cooperating importers was high and many of them had sent in a questionnaire reply. It was therefore considered appropriate, in this expiry review, to apply sampling.
- (339) As already mentioned in recital (37), from the 21 Community importers that came forward and showed a willingness to cooperate with the investigation, eight were sampled. The sample consisted of the five largest companies in terms of volumes and value of imports and re-sales in the Community plus a few smaller importers; the latter in order to have a more representative cross-section of the parties offering cooperation with their different business models, geographical location and traded product segments. The sampled companies constituted the maximum number of companies that could reasonably be investigated within the time available. According to the

figures available at that stage of the investigation, the sampled importers accounted for around 18% of Community imports of the product under review during the RIP. One of the sampled companies, although it had indicated a willingness to be included in the sample, did finally not reply to the questionnaire and all efforts to secure the cooperation of this small importer were fruitless. Therefore, this company eventually had to be excluded from the sample. The seven other sampled importers fully cooperated with the investigation and sent questionnaire responses within the deadlines.

- (340) As mentioned above, the verified data of the sampled importers, on an aggregate basis, has, inter alia, allowed for a detailed analysis of certain key economic parameters which, in view of the large number of operators, could reasonably only be achieved via sampling. However, the analysis of the situation of the importers has not been limited to the information provided within the framework of the sampling exercise. Specialized press and market studies as well as information sought and received from interested parties has also been taken into consideration in the Community interest analysis. The use of that information further ensured that all main business models active in this sector were sufficiently represented in the analysis.
- (341) Based on the verified information of the sampled importers and other information on file, it is estimated that the importation and resale to distributors/retailers of the product under review provided employment to around 23 000 people in the EU during the RIP.

4.2. *Import volumes*

- (342) As already reflected in table 4, Eurostat data show that, since 2005, imports of the product under review decreased significantly by ca. 90 million pairs. During the same period, imports of leather shoes from other countries increased by ca. 43 million pairs to 201 million pairs. The result is that, whereas in 2005 the volume of imports from the PRC and Vietnam was much higher (+80%) than the volume of imports from all other countries, during the RIP the level of imports from other countries had exceeded the level of imports from the PRC and Vietnam by 4%. Eurostat data also show that since 2005 overall imports of the product in question decreased by 11%.
- (343) A large importer which cooperated with the investigation but did not participate in the sampling exercise reported a similar evolution of imports. This company submitted that its purchases of the product under review declined by 25% since 2005, whereas imports of leather shoes from other countries increased significantly.
- (344) As regards the sampled importers, the leather shoes imports during the period 2005 - RIP have developed as follows in terms of volumes:

Table 19

Import volumes of sampled importers (pairs)

	2005	2006	2007	RIP
PRC & Vietnam	29 761 231	30 806 163	26 616 891	29 577 492
<i>indexed</i>	<i>100</i>	<i>104</i>	<i>89</i>	<i>99</i>
Other countries	13 181 962	16 077 607	22 680 174	28 096 596
<i>indexed</i>	<i>100</i>	<i>122</i>	<i>172</i>	<i>213</i>

- (345) In line with the general statistical data the sampled importers significantly increased their purchases of leather shoes from other countries. Imports volumes from the PRC and Vietnam have remained fairly stable since 2005, with a certain dip in 2007, but recovery in the RIP to almost the same level as in 2005. It follows that, as regards the sampled importers, overall the volume of traded leather footwear has increased by nearly 1/3 since 2005, with a stable trend from the countries concerned, notwithstanding the imposed anti-dumping measures, and an increasing trend from third countries. Out of the third countries that have benefited from these increased import volumes, Indonesia and India have benefited the most.
- (346) The sample's purchase trend from the countries concerned is stable which does not correspond to the trend observed in Eurostat (significant decrease). A closer look into the sample suggests that the stable trend for the imports from the countries concerned stems from the fact that one of the larger sampled importers – against the trend not only of Eurostat but also of the other sampled importers – not only strongly increased its purchases from third countries but, in order to meet demand, also increased its imports from the countries concerned significantly, thereby offsetting the overall decreasing trend of such imports in the sample. Taking this into account, it is concluded that the evolution of imports of the product in question in the sample is in line with the quantitative analysis of the Eurostat database, i.e. a general decrease of imports from the countries concerned.

4.3. Purchase prices

- (347) As shown in tables 5 and 8, Eurostat data suggests that average import prices of leather shoes from the countries concerned and third countries have both increased since 2005, and CIF import prices of leather shoes from third countries even slightly more than CIF import prices of leather shoes from the countries concerned. However, given that the mix of the imported shoes has a significant impact on the prices and that this mix for all exporting countries may have changed considerably, the average prices which can be calculated from reported Eurostat volumes and values are not necessarily the most accurate for establishing price trends. In this respect, the price trend of the importers' sample can be considered more meaningful as the importers' product mix has likely changed to a lesser extent given that those companies are all specialised in certain types and styles of footwear for a long period of time.
- (348) As described in recitals (339) and (335) et seqq., the sampled importers represented various different business models which resulted, inter alia, in significant differences in average prices per importer. Moreover, some of the importers traded many millions of pairs per year, whereas others traded "only" a few hundred thousand pairs per year.

Thirdly, for some of the individual importers the traded volumes –and, consequently, their weight in sample- fluctuated strongly throughout the period considered. For those reasons, it was considered that weighted average results should be complemented with an arithmetic average analysis in order to acquire a complete picture of the relevant trends.

- (349) The average import prices of the sampled importers during the period 2005-RIP have been as follows:

Table 20
Average import prices of sampled importers (€)

	2005	2006	2007	RIP
<i>PRC and Vietnam</i>				
CIF: weighted average	11,10	11,81	10,24	10,07
<i>indexed</i>	<i>100</i>	<i>106</i>	<i>92</i>	<i>91</i>
CIF: arithmetic average	10,17	11,42	10,54	10,42
<i>indexed</i>	<i>100</i>	<i>112</i>	<i>104</i>	<i>102</i>
Landed*: weighted average	11,72	13,43	12,12	11,88
<i>indexed</i>	<i>100</i>	<i>115</i>	<i>103</i>	<i>101</i>
Landed*: arithmetic average	10,74	12,98	12,48	12,30
<i>indexed</i>	<i>100</i>	<i>121</i>	<i>116</i>	<i>115</i>
<i>Other countries</i>				
CIF: weighted average	13,11	12,71	10,85	10,46
<i>indexed</i>	<i>100</i>	<i>97</i>	<i>83</i>	<i>80</i>
CIF: arithmetic average	12,21	12,56	12,59	11,53
<i>indexed</i>	<i>100</i>	<i>103</i>	<i>103</i>	<i>94</i>

* Simulated landed price = CIF + import duty + anti-dumping duty (as from 7 April 2006) + customs handling charges

- (350) An analysis of CIF import prices from the PRC and Vietnam from 2005, i.e. the last year without anti-dumping measures, until the RIP shows an increase by 2% (arithmetic average) or a decrease by 9% (weighted average). Overall, the analysed data would point to stable or somewhat decreasing import prices before import and anti-dumping duties. In both scenarios, import prices before duties increased strongly in 2006 and decreased afterwards.
- (351) At the same time, average CIF import prices of leather shoes from other countries fell in both assessments (-20% to -6%). Consequently, the gap between the import price of leather shoes before duties from the countries concerned and other countries has decreased, roughly from €2,00 per pair to €1,00 (in percentages: from ca. 20% to ca. 10 % - arithmetic averages) or from €2,00 to €0,50 (in percentages: from ca. 20% to ca. 5% - weighted averages). Anti-dumping duties are added only in case of the PRC and Vietnam. The average landed prices (i.e. import prices inclusive of importation costs, import duties and, if applicable, anti-dumping duties) of leather shoes from the PRC and Vietnam on the one side and from other countries on the other side can

therefore now be considered as being at more comparable levels. Ergo, the prices of leather shoes produced in other countries become more attractive as compared to the prices of shoes produced in the countries concerned.

4.4. *Resale prices*

- (352) As concerns the importer's resale prices detailed information was acquired through the importers' sample. The sampled importers' resale prices of the product under review have developed as follows:

Table 21

Average resale prices of sampled importers (€)

	2005	2006	2007	RIP
Weighted average	34,62	36,97	33,68	32,28
<i>indexed</i>	<i>100</i>	<i>107</i>	<i>97</i>	<i>93</i>
Arithmetic average	27,09	29,72	28,46	29,24
<i>indexed</i>	<i>100</i>	<i>110</i>	<i>105</i>	<i>108</i>

- (353) The above data points to stable or slightly increasing resale prices over the period 2005 - RIP. In 2006, resale prices increased by 7% to 10% which is an increase similar to the increase of CIF purchase prices in 2006 (see recital (349) above). From 2006 to the RIP, resale prices decreased.
- (354) The investigation did not bring any information or evidence to light, indicating that the resale prices of other importers would have developed in a different direction than described above.

4.5. *Profitability*

- (355) As regards the sampled importers, the combination of the import and resale price picture just described and the development of the importers' other cost factors yielded the following profitability picture:

Table 22

*Average profit on product under review achieved by sampled importers
(net profit before taxes/turnover)*

	2005	2006	2007	RIP
Weighted average	36,6%	19,4%	16,3%	22,2%
Arithmetic average	30,0%	18,6%	22,0%	22,5%

Note: profit on importers sales to consumers (retail sales) excluded

- (356) The above figures have been calculated on the basis of the profit figures on the product under review, as reported by the sampled importers. In some cases, the reported figures had to be revised following the on spot verification.

- (357) It is recalled that in the original investigation, the questionnaire replies from the cooperating importers indicated a weighted average net profit of 12% for the period of 1 April 2004 until 31 March 2005. In this review investigation, the verified data of the sampled importers however showed that the weighted average profit of those sampled importers in 2005 was above 20%. In 2006, a significant drop in profitability occurred, by more than 17 percentage points on a weighted average basis and by more than 11 percentage points on an arithmetic average. It appeared that most of the sales contracts had already been agreed before the imposition of the provisional measures in March 2006 and in many cases the agreed sales prices did not take account of the possible imposition of anti-dumping duties. Consequently, the profit of the sampled importers achieved on the product under review declined in 2006. In 2007 and RIP the profit increased again, but it is still 7-14 percentage points below the profit achieved in 2005.
- (358) Given that after March 2006, most of the sampled importers adapted their sourcing channels and pricing policy to the changed circumstances, i.e. the imposition of anti-dumping duties, a closer analysis of the factors impacting the profitability as of 2007 was carried out. The following can be noted. First, whereas the profit drop in 2006 could largely be attributed to the anti-dumping duties, in 2007 and the RIP other, company-specific factors were also having an important negative impact on the profit of the importers' sample. In 2007 and the RIP certain sampled importers incurred significant increases in SG&A expenses, resulting in strongly deteriorating gross margins. This had a bearing on the calculated profit for the sample as a whole. No common reason, such as e.g. higher marketing costs for sporting events, could be found for this increase in SG&A cost for those sampled importers.
- (359) At the same time, it is noted that the Euro - US dollar exchange rate development has helped the importers in keeping their purchase cost down, including the cost of the product under review. From the end of 2005 until the end of the RIP, the Euro appreciated by almost 30% as compared to the US dollar and, as the importers' contracts with their suppliers are usually set in US dollars and only limited hedging has been reported by the importers, this "gain" cushioned the effect of the anti-dumping duties and other cost increases. On the basis of information provided by one of the sampled importers, profit levels during the RIP could have been up to 6 percentage points lower had the exchange rates remained stable.
- (360) Moreover, an alternative profitability analysis was made, distinguishing the profit achieved on private label footwear from profit made on branded footwear. To this end, the verified data available from the sampled importers was complemented by the information obtained by another large importer of private label shoes, which did not come forward in the sampling exercise, but cooperated with the investigation by submitting its views. This information suggests that the profit levels of the private label shoe importers were in general significantly lower than the profit levels of most of the branded shoe importers, but they were still high and within the range of 11% to 17% during the RIP. This confirms the findings of the original investigation in which this category of importers reported to realise a profit level of 17% on average. On the other hand, this refined analysis also showed that for importers of branded footwear, the profitability has improved since the original investigation. In that investigation, those importers had reported on average a profitability of around 10% whereas the profit of the sampled importers of branded footwear during the RIP amounted to more than 22%. It can thus be concluded that, in general, the economic situation of the group of private label footwear importers has remained largely the same since the

original investigation, whereas the situation of the branded footwear importers appeared to have even improved.

- (361) Also, as some of the sampled companies performed additionally retailing activities, a refined analysis was performed, splitting between profits achieved on pure trading activities, (i.e. purchasing of the product from producers and/or traders and re-selling it to wholesalers and distributors) on one hand and import and retail activities on the other. If this retail business would be excluded from the profit calculation and the profit margin would be calculated on the pure importers function, the average profit would be up to 6 percentage points higher.
- (362) In any case, under any scenario the profit levels achieved by the sampled importers were relatively high, and they did not show a decreasing trend after 2006. It is also noted that the overall level of the sampled importer profits, i.e. always above 10%, point to a rather stable and sustainable business.
- (363) The investigation did not bring any information or evidence to light, indicating that the profit level of other importers would have developed in a different direction than the profit trends as described above.

4.6. *The impact of the economic downturn post-RIP*

- (364) In view of the global financial and economic crisis which started just after the RIP, it was considered appropriate to analyse the situation of the importers beyond the RIP. Already in several of the submissions received reference was made to the direct negative impact that this economic downturn would have on the sector, aggravating the negative impact of the anti-dumping duties. On the basis of additional information and comments provided by parties, as well as publicly available information such as Eurostat, market intelligence etc., the following picture emerges.
- (365) From the available statistical data it appears that imports from the countries concerned continue to drop, although the decline is moderate as compared to the decrease in the period from 2005 to the RIP (-15% post-RIP). At the same time, imports from third countries continue to increase. In other words, the process of shifting production from the countries concerned to third countries is still on-going. Eurostat data also point at strong increases in import prices, notably as concerns footwear from the countries concerned (+21.5% as compared to RIP).
- (366) A similar post-RIP evolution is reported by the sampled importers, which continued to increase their sourcing from other countries and decrease sourcing from the countries concerned. Overall, their imported volumes of the product in question remained rather stable. The importers explained that due to the approximately 6-month lead time, purchases after the RIP were a result of orders placed before the start of the economic downturn. The sampled importers' average purchase prices in Euros of the product under review increased as compared to the RIP, by 15% approximately. The reasons for this price increase as reported by the importers are first the appreciation of the USD at the end of 2008 and the beginning of 2009 which increased the sourcing costs in EUR terms of products from the countries concerned and second, the increased cost of production in the countries concerned, specially the increase in labour costs.

- (367) As the resale prices remained stable or increased slightly only, it appears that the profitability of the sampled importers on their trading of the product under review might have been further affected. Moreover, importers have claimed that due to the advance purchase orders and the subsequent contraction in demand, their inventories have increased considerably. However, a calculation of importers' post RIP profit levels based on the provided price data showed that the fall in profit would most likely be moderate (by 2 percentage points approximately), resulting in still healthy profit levels overall.
- (368) It was however mentioned by several importers that, since autumn 2008, consumer demand has significantly weakened and that this weakened demand is not yet reflected in import volumes as orders had been made 6 to 9 months before, i.e. before the economic downturn. Thus, importers expected more significant drops in import volumes in the next season. In addition, several importers reported that some of the major distribution chains either have gone into insolvency or have financial difficulties as a result of which orders have been cancelled, the importers' stocks are increasing and they need to grant special discounts to their customers. Some of the sampled importers had yet announced major restructuring plans in view of the downturn, others reported that they increasingly tried to control costs by other means.
- (369) It follows from the above that until July 2009 the impact of the crisis was still limited in terms of import and sales volumes given that orders were placed before the crisis kicked in at the consumer level and were made based on more optimistic consumption expectations. In terms of profitability, it appears that most importers have, so far, managed to limit as well the impact of the crises by taking various measures aimed to control costs.

4.7. *Likely effect if measures are maintained*

- (370) Should measures continue, it is highly likely that those will affect importers more in the future as the economic parameters have changed significantly: with the purchase price increases recently observed and the expected overall decrease in consumption the effect of the anti-dumping duty would become more apparent than it was in the past, even if the exchange rate development would cushion the purchase price increase as happened during the period considered. Moreover, several importers indicated that other important cost increases occurred in the countries concerned, such as higher labour costs etc. All in all, profits on the product under review are likely to decrease in the near future, but also to a large part due to other cost increases than the anti-dumping duties. However, as the importers generally generated healthy margins, this decrease would in all likelihood not endanger those companies.
- (371) As evidenced since 2005, importers would probably continue or start to source even higher quantities from other third countries, given that the anti-dumping duty will affect them more. At the same time, importers will likely try to pass on a higher proportion of any general cost increase to retailers/distributors. However, given the relative importance of those retailers/distributors for the importers (as further explained in recital (404) below), importers are not likely to fully pass on eventual cost increases to their clients. This has also been observed in the period July 2008 – March 2009.

- (372) The effect of the maintained anti-dumping duties in a period of shrinking demand, rising purchase prices and increased cost awareness of consumers on the importers would however be different depending on the flexibility of the importer. It is recalled that some importers have already proven a large flexibility in their sourcing strategies and in their product mix (more STAF and/or textile/plastic shoes and/or accessories). This allows them to mitigate the effect of the duty in the future. Other importers which maintain their traditional sourcing channels in the countries concerned and are focussing on leather footwear might indeed experience an overall drop in profitability and/or sales.

4.8. *Comments*

- (373) As mentioned in recitals (60) et seq., several interested parties claimed the exclusion of specific shoe types from the product scope. In addition, most parties submitted that, should it not be possible to revise the product scope in the current investigation, their imported shoe types should be excluded from the measures under Article 21 of the basic Regulation. The latter claims were mostly based on the alleged lack of production (production capacity and willingness to produce) of these types of shoes in the Community, which would entail the absence of competition with and injury to the Community industry, and the unfavourable economic environment in which the measures would have an increasingly negative effect on importers, distributors, retailers and consumers within the Community.
- (374) In this respect it is important to underline that significant competition was found between the imports from the countries concerned and the type of footwear produced in the EU, as set out in recital (254) et seq. This also means that there is still a significant production of leather footwear in the EU. More in general, it is also noted that the product scope cannot be modified, extended or reduced in the framework of an expiry review irrespective of the eventual evolution of the production pattern in the Community during the existence of the measure.
- (375) Despite the above, the Commission contacted the relevant footwear associations in order to have a clearer picture of the types/quantities of certain footwear that is produced in the EU. From that information collected, it appears that most of the shoes for which the above claim was made are (still) produced in the Community and that the production pattern has not significantly changed during the period of the existing measures. The information gathered does not allow a final general determination whether certain niche product types produced in the Community cover the demand for these products.
- (376) Most of these products are specific niche products sold to specialized consumers in small quantities, have high quality and complex technical features and belong to the high price category i.e. horse riding shoes, bowling shoes or special sizes/narrow foot shoes. Therefore these product types would in principle fit in the general specification pattern of the Community producers. By imposing or maintaining measures, EU producers could be encouraged to invest again in such niche product type production or to increase their existing production capacities. Otherwise there would be no incentive at all for EU producers to invest in such product lines. Moreover, as measures are not meant to stop imports and did not do so in the case at hand, it is justifiable to have anti-dumping measures also on those niche product types, as long as no clear dividing line can be drawn between the different product types. In any event,

as far as the niche products are concerned, the limited data available indicates that their share in the overall imports is very limited and that therefore the impact of the measures on those product types is not considered to be disproportionate in relation to the vast majority of the imports.

- (377) Certain importers of sports footwear as well as their association submitted that they would not have a viable alternative for their sourcing in the Community.
- (378) In this respect it is firstly noted that the information collected from the national footwear associations suggests that there is still significant production of sports footwear in the EU, although it cannot be excluded that demand would surpass supply in that segment. Even assuming that there was insufficient production of sports footwear in the EU, the investigation showed that alternative sources of supply exist, such as Indonesia and India offering increasingly competitive prices, as shown above.
- (379) It has been further argued by several sampled importers, notably the larger global footwear brands, that they have long-term strategic relationships with certain factory groups in the PRC and Vietnam on the basis of high quality, social, safety and environmental standards which took years to cultivate. Therefore, changing sources by relocating production would incur high costs and long lag times (12 to 18 months).
- (380) In this respect it is important to underline that the anti-dumping measures concerned are not prohibitive; in other words, the fact that the measures have been imposed –to correct a trade distortion- has not resulted in a cessation of imports from the countries concerned and a consequent need for importers to source from other countries. Notwithstanding the above, the investigation showed that a significant degree of flexibility exists: importers usually purchase from supplier groups with production bases in several Asian countries. These groups are flexible and can change sourcing from one country to another, if there is an incentive to do so. The details provided through the sampling exercise on the sourcing of the product in question since 2005, as summarized on an aggregate basis under recital (344) above, demonstrate that most of the sampled importers have, within 1 to 2 years, changed origin of a significant part of their sourced leather footwear. A large non-sampled importer also reported increased imports from other Asian countries, at the expense of imports from the countries concerned. Therefore, the information on the file demonstrates that, although extra costs might be involved, shifting production from one country to another is not considered too cumbersome and it appears to be rather common. The argument is therefore dismissed.
- (381) It was also submitted by the importers' associations and some importers that the importers were now not anymore in a position to absorb the effect of the duties. It was claimed that during the period 2006-RIP, the negative effect of the measures to the consumers had been (partly) compensated by the effect of the exchange rate development since 2006, but the, according to these submissions, reversal of the exchange rate development since the end of the RIP would have made an increase in their resale prices inevitable and result in higher prices for the consumers in the shops if duties be maintained.
- (382) It is acknowledged that the appreciation of the Euro versus the US dollar since the imposition of the anti-dumping measures has been significant as described also in recital (359) above. Indeed the exchange rate development has been beneficial to the

importers of the product under review from the end of 2005 until the end of the RIP, as contracts with their suppliers are usually set in US dollars and the Euro appreciated by almost 30% as compared to the US dollar in the course of that period.

- (383) As concerns the importers alleged inability of the importers to absorb the duty in view of a different exchange rate development since mid-2008, leading to higher import prices in Euro's, it is to be noted that the profit level that importers achieve on the trading of the product under review, as analysed through the sample (see recital (355) above), was still healthy in the RIP. It suggests that importers would be in a position to continue to operate in a sustainable manner even if for a certain period the exchange rate developments would be to their disadvantage. Moreover, as concerned the exchange rate developments, there are no signs that the Euro is in a free fall as compared to the US Dollar; on the contrary, whereas the Euro depreciated vis-à-vis the US Dollar from July to November 2008, it moved up again since then. It is therefore speculative to anticipate a depreciation of the Euro for the short and medium term. As concerns retail prices of leather shoes it should further be noted that there are several other sources for leather footwear and these sources are increasingly used by importers. There are therefore no data on the file which would point at the necessity for importers to fully pass on the duty to wholesalers/retailers, resulting in significant increases in prices at retail level. Therefore, the argument is not convincing.
- (384) Some of the importers, most of them pertaining to the group of branded footwear producers, submitted that the measures would harm the significant "manufacturing value added" by them in the Community through their significant activities in the areas of notably design, development, branding and sourcing. In this respect the investigation confirmed that indeed many importers do not just simply trade shoes but are also engaged, in the Community, in value-adding activities as those mentioned above. Such activities are generating significant high level employment.
- (385) In this respect it is noted that the information provided by the sampled importers did not point at any decline in these companies' employment allocated to the product under review during the period 2005 - RIP. On the contrary, the aggregated employment figures of the sampled branded footwear producers point rather at a slight increase in such employment. This follows from the fact that, in line with their purpose, the anti-dumping measures have not blocked entrance to the Community market of leather shoes originating in the PRC and Vietnam, but rather adjusted their price level in order to restore a level playing field. Moreover, the level of the duties is in this case modest and the importers can, in addition, switch origin – as they have in some cases indeed done. In view of the above, the argument that the anti-dumping measures would jeopardize the high level jobs that these importers have generated in the Community is dismissed.

4.9. Conclusion

- (386) On the basis of the above analysis it is concluded that, during the period 2006-RIP, the anti-dumping impact have had a limited impact on the economic situation of the importers of the product under review in the Community. The slight deterioration of the economic situation of the importers appears to have continued during the nine months following the RIP. However, the sector is generally speaking in a good shape and the profits obtained on the product under review are still high. It is therefore

considered unlikely that maintaining the measures would have a significant adverse effect on the interests of importers.

4.10. Interest of the distributors/retailers

4.10.1. General

- (387) The information available indicates that in the retail/distribution market in the EU roughly 60% of all footwear is traded by the “traditional” specialist distribution consisting of large retailers that are often importing shoes themselves and so-called buying groups and around 40% of all footwear is traded by “non-specialist” distribution, consisting of supermarkets, clothing shops as well as department stores. It is estimated that the retailers/distributors sector in the Community employs around 140 000 people in the sales of the product under review to consumers. To be noted that while in the northern EU countries larger retailers are dominating, in the southern Member States retailing is often done by SME's.
- (388) Whereas the large retail chains did not wish to participate in the importers sample and did not respond to the detailed retailers' questionnaire, one large importer/retailer as well as a group of retailers submitted written representations and were granted hearings. Consequently, the only retailer whose replies could be verified is Clark's, which cooperated as an importer.
- (389) Replies to the questionnaire for associations of wholesalers, distributors and retailers were received from the European association of fashion retailers (AEDT), the European Branded Footwear Coalition (EBFC), the European Outdoor Group (EOG), EuroCommerce representing the retail, wholesale and international trade sectors in Europe, the Federation of European Sporting Goods Industries (FESI), the Foreign Trade Association (FTA), the Dutch association of fashion, shoes and sports retailers MITEK, and Svenskt Sportforum. No supermarket chain responded to the questionnaire, however Lidl provided information on its purchases and resales of the product under review between 2005 and 2008. The above associations and retailers opposed the measures and any prolongation thereof, basically arguing that the measures decreased profitability and caused many retailers to search for alternative sources of supply. They have also claimed that the extension of the measures would harm the European footwear industry which has successfully adapted to the challenges and opportunities of modern markets which outsource manufacturing. They maintained that the measures have not avoided massive delocalization of production which will not come back to the EU as Community producers are unable to fulfill the demand for a wide choice of quality footwear at low prices.

4.10.2. Purchase prices

- (390) In order to assess the claim of decreased profit margins since the imposition of anti-dumping measures, in a first step, an analysis of the distributors/retailers purchase prices of the product under review as compared to the sales prices they achieved during the period 2005 - RIP was made. As described in recital (352) above, based on the questionnaire replies of the sampled importers it appeared that the importers' resale prices, which equal the distributors/retailers' purchase prices, were stable or increased only slightly during the period 2005 - RIP.

4.10.3. Resale prices

- (391) In a second step, the development of the resale prices was examined, and, due to the lack of precise data submitted by retailers, information was collected from statistical offices of Member States which altogether represented 66% of the Community population. This information suggests that the retail price development during the period considered had, generally, been one of a very modest increase, as the below table shows:

Table 23
Average consumer prices in certain Member States (indexed)

	2005	2006	2007	RIP
<i>Germany</i>				
"footwear"	100	99,2	100,3	100,9
<i>The Netherlands</i>				
"footwear"	100	100,7	101,4	103,1
"children footwear"	100	99,3	101,5	100,9
<i>France</i>				
"chaussures de ville"	100	99,9	101,1	101,5
<i>United Kingdom</i>				
"footwear"	100	98,4	99,6	99,5
<i>Spain</i>				
"ladies footwear"	100	101,9	102,6	103,7
"men's footwear"	100	101,6	103,5	104,1
"children footwear"	100	100,9	102,6	103,3
<i>Italy</i>				
"footwear"	100	100,9	102,0	102,6

Source: national statistical offices

- (392) The above mentioned categories of shoes, although not exactly matching the product definition, are dominated by the product in question and the trends above can therefore be considered as a valid reference for the retail sales prices of the product under review.
- (393) The above trends were further confirmed by several interested parties which submitted that the retail prices had remained relatively stable for a longer period and in any case throughout the period 2005 - RIP. They explained the fact that the prices of shoes at retail level had been stable for such a long period by (i) favourable cost factors as the continuous shift of production to low cost countries and the favourable exchange rate development and (ii) the principle of "price points" which is applied by retailers and the consumer willingness to pay. The principle of "price points" is the fact that shoes are usually sold at fixed price points and not in between, for example a category of shoes is sold at €44,95, one category up is €49,95, one category further up is €54,95 etcetera.

4.10.4. Profitability

- (394) As the information submitted by retailers was not detailed enough, it has not been possible to directly obtain retailers' profitability data. However, comparing the retailers' purchase price development, as mentioned under recital (390) above, with their resale price development, as mentioned under recital (391) - (393) above, there is no sign of shrinking profit margins which can be attributed to the cost effect of the duties as the purchase prices of the product under review remained stable or increased slightly, whereas the resale prices increased slightly.
- (395) As concerns the general level of profitability of the retail sector, there are some indications that this is lower than the profit level achieved by the importers. Furthermore, according to the specialized press, some regions in particular appear to be particularly competitive and difficult from a retailers' point of view (strong competition, consolidation process in the market, strong dependence on the financial market which is reluctant to invest and strategic failures). At the same time, however, one of the largest shoe retail chains operating in the Community reported record profits in 2008 in the press and announced ambitious expansion plans.
- (396) As concerns the retailers' overall profitability, it should also be noted that the effect of the anti-dumping duty is, in any case, diluted by the turnover achieved on their other products like STAF, leather footwear from other origins, other kinds of footwear and accessories.
- (397) To conclude, the argument of decreasing profitability was not substantiated by the retailers during the review investigation and also the findings of the investigation did not support such a statement. From the information available it appears to be more likely that the imposition of anti-dumping measures did not negatively affect the retailers from 2006 until the RIP, or just to a limited extent.

4.10.5. The impact of the economic downturn post-RIP

- (398) The limited information available concerning the impact of the economic downturn post-RIP on the footwear retail sector points at decreasing margins and weakening of demand during the first nine months following the RIP. However, the information was submitted only by one company, mainly operating in one specific region, which is also operating as importer and can therefore not be considered as representative for the retail sector in general. Furthermore, specialized press has reported a significant improvement of the shoe retail sector situation in that region (with increasing sales volumes and revenues) since mid-2009. Consequently, in the absence of representative cooperation from the retail sector, no final conclusions could be drawn on the exact impact of the economic downturn.

4.10.6. Likely effect if measures are maintained

- (399) Against the background of the current economic downturn, it is likely that the consumption of leather footwear will decrease and the price pressure exerted by increasingly price sensitive consumers will increase in the short to medium term. On the other hand, importers would likely try to pass on at least partly their price increases to retailers. Thus the retailers' sandwich position between importers and consumers could lead to an increasingly difficult situation.

- (400) Those retailers/distributors operating in very competitive markets and sourcing predominantly leather shoes from the countries concerned could, in such a scenario, end up in a fragile situation given their relatively high costs and relatively low net margins. A repeal of the anti-dumping measures on the product under review would offer such companies relief in that scenario. For those retailers/distributors, however, that are sourcing also from third countries/EU and that have a more diversified product mix, the impact of possible price increases will likely be diluted in the turnover. Moreover, the investigation has shown that although being in a particular market position, the importance of large retailers and retailer buying groups is sufficiently significant to prevent importers to fully pass on cost increases.
- (401) To conclude, those retailers which continue to source predominantly the product under review will suffer more from any prolongation of the measures while those retailers with a more mixed and flexible business model, switching their sourcing to other alternative sources and diversifying their product mix, will probably be less affected - although they might suffer more than during the RIP.

4.10.7. Comments

- (402) It was argued that the measures had caused many retailers to search for alternative sources of supply. The information on the file shows that some retailers might indeed have changed their sourcing, but none of the retailers or its associations reported that there were shortages of supply or even difficulties to find alternative sources following the imposition of measures. Thus, while indeed several retailers have looked for alternative sources, the information suggests that they were successful in finding competitive alternative sources of supply. While it is acknowledged that this effort was time-consuming for some retailers, this is considered to be an indirect, not disproportionate effect of the imposition of measures as compared to the benefits for the European producers suffering from dumped imports.
- (403) It was submitted by several interested parties that the favourable cost factors which had been in place during the period considered, as summarized in recital (393) above, had ended. Instead, since the end of the RIP, the exchange rate development would have developed negatively and the production costs in the PRC and Vietnam were on the rise again. Consequently, if the measures would be maintained, this would bring the retail sector in a difficult situation, having to move up price points. This would not only result in higher prices at retail level but also less turnover and, in view of the high fixed cost, a strong decrease of profit.
- (404) As mentioned in recital (383) above, it is highly speculative to anticipate a depreciation of the Euro on the short and medium term. Moreover, whereas rising costs in the PRC are likely to affect the importers' position, the argument is not valid for retailers as the information on the file on sales prices of importers to retailers, during the period considered and post-RIP, demonstrates that price increases were passed on to retailers to a limited extent only. That points at a generally strong market position of retailers.
- (405) Therefore, whereas it is acknowledged that the principle of "price points" is widely used in the footwear retail sector and that it allows for smaller price increases to attract less attention from the consumer, there are no indications on the file that retailers are confronted with an overall significant increase in purchase prices of the product under

review. There is, consequently, no evidence on the file that they would have to, in general, move up price points for the product under review. Furthermore, even if they would have to do so for certain specific models, the effect of that could be neutralized by changing sources or product mix. In view of the above, the argument is dismissed.

4.10.8. Conclusion

- (406) To conclude, based on the limited information available, there are no indications that the measures had a significant adverse effect on the financial situation of distributors/retailers during the period 2006-RIP. Taking into consideration the likely effects of the economic downturn post-RIP, notably in view of the retailers' sandwich position between importers and consumers and the possibly modest profits of retailers, it can however not be excluded that the financial situation of those retailers which are predominantly selling the product under review will deteriorate. It is however noted that the retailers are free to source their products from other origins and to diversify the products offered so that they can mitigate the effects of anti-dumping duties in their turnover. In general, retailers are in a much more favourable market position than EU producers as they have the above described flexibility whereas the EU producers are fully exposed to the price pressure exerted by the imported dumped products.

4.11. *Interest of the consumers*

4.11.1. General

- (407) The Commission contacted 39 consumer associations in the Community to inform them about the initiation of the expiry review. These associations were explicitly invited to explain their position on the existing measures and to provide any other information that might be relevant for the investigation. Three consumer organisations came forward as an interested party and submitted comments in writing.
- (408) Two national consumer associations indicated their support for the anti-dumping measures. One of them specifically mentioned that, even with the measures imposed, prices of footwear from the countries concerned remain very low. The European consumers' organisation BEUC opposed the measures, inter alia arguing that the measures were harmful to the consumer.
- (409) In this respect, in the original investigation, the impact on consumers was predicted to be limited assuming that the relatively moderate duty rates would be diluted in the different layers of the distribution chain and not fully be passed on to consumers. Nevertheless, a "worst case" scenario was drawn up, i.e. a full pass-on to consumer was estimated. The estimation in the original case was a maximum increase of consumer prices by 2%, or 1 € per pair.
- (410) The results of the review investigation indeed demonstrate that consumer prices of leather shoes only increased slightly since the imposition of the measures (see recital (391) - (393) above). The increase in average shoe retail prices as reported by the national statistical offices of the group of representative Member States mentioned in those recitals and in table 23 is between -0,5% and +4,1%, which is lower than the reported inflation in that period.

- (411) On the basis of the analysis of import prices, it was also established that prices of leather footwear from the PRC and Vietnam remained relatively low, even after adding the anti-dumping duties (see recital (349) - (350) above). Therefore, from the information on the file, it does not appear that the measures have harmed consumers to a significant degree.

4.11.2. Other comments

- (412) Several interested parties argued that the measures were harmful to the consumers, and that they have resulted in higher prices. It was also argued by certain importers that the impact of the measures on consumers would become much more noticeable now that they could not longer absorb the duties.
- (413) As mentioned in recital (410) above, there anti-dumping duties appear not to have resulted in a noticeable increase of retail prices. As regards the alleged inability of importers to absorb the duties, the post-RIP analysis gives already some indications in that respect. Indeed, as explained in recital (366) above, during the period July 2008 to March 2009 the importers' purchase prices increased strongly whereas their resale prices remained stable or increased slightly at most. That information suggests that importers would not necessarily need to pass on any cost increase to the next level in the distribution chain. The argument is therefore rejected.
- (414) One interested party claimed that the measures would result/had resulted in a reduced choice of leather footwear for consumers, notably a lack of middle/to low end leather shoes at affordable prices. This claim had already been made during the original investigation.
- (415) The above claim was not substantiated. Moreover, in view of the stable retail prices over a long period in time, it is unlikely that consumers would loose interest in the product in question for reasons of price evolution. It is also noted that no retailer or retail association complained about reduced choice or a shortage of supply. Even if the investigation has confirmed that the choice of consumers has slightly shifted away from the product in question, given the 14% decrease of consumption of leather shoes observed during the period considered and the increased demand for textile shoes, this can however be attributed to changing fashion trends rather than to a reduced choice of leather footwear.

4.12. *Conclusion on Community interest*

- (416) It follows from the above that a significant part of the Community industry producers has improved its situation since the imposition of anti-dumping measures and has proven its viability by adapting their business models to the challenges of the globalised market. Should measures be maintained, they will serve as an additional safety net and allow for more time to continue this process. Should measures lapse, the price pressure of the dumped imports on the mid to low end products will likely impact also on the higher end products and eventually affect all leather footwear. In this scenario, it is likely that more EU producers will go into bankruptcy given that due to their predominant small to medium size, they are financially more vulnerable.
- (417) On the other hand, the impact of the anti-dumping duties from 2006 until the RIP on importers, retailers/distributors and consumers was limited. Should measures continue

and assuming that consumer demand will further weaken in the wake of the economic crisis, the impact of the anti-dumping duties on all players will in all likelihood be higher than in the past. However, given the generally healthy state and proven flexibility of the importers and the general strong market position of retailers/distributors that can diversify their product mix considerably, it can be assumed that those operators will not disproportionately suffer in the short to medium term. As regards consumers, there was no noticeable price-increase following the imposition of the anti-dumping duties and, also taking into account the results of the post-RIP analysis, there are no indications that consumer prices will increase disproportionately in the future.

- (418) To conclude, the review investigation did not bring to light any compelling reasons why the anti-dumping measures should not be maintained.

J. DEFINITIVE ANTI-DUMPING MEASURES

- (419) In the light of the foregoing, the anti-dumping measures on leather footwear should be maintained. Nevertheless, and without ignoring that continuation of injurious dumping has been established and that Community interest calls for the imposition of measures, the present proceeding is characterised by particular circumstances as referred to in recitals (311) to (313) above, which should also be adequately reflected in the duration of the antidumping measures. The investigation showed that there is a likelihood of continuation of injury for the short/medium term, until the process of adjustment of the Community industry has been completed. The duration of the measures should therefore be limited to 15 months.
- (420) It is recalled that the measures subject to the current review were extended by Council Regulation (EC) No 388/2008⁸ to imports of the same product, consigned from the Macao SAR, whether declared as originating in the Macao SAR or not. No new element was brought forward in this respect in the framework of this review. The definitive anti-dumping duty of 16.5 % and applicable to imports originating in China should therefore be extended to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not.
- (421) On the basis of the above, the proposed definitive duties are as follows:

Country	Company	Anti-dumping duties
PRC	Golden Step	9.7%
	All other companies	16.5%
Vietnam	All companies	10.0%

⁸ OJ L 117, 1.5.2008, p. 1.

- (422) The definitive anti-dumping duty of 16.5 % and applicable to imports from 'all other companies' in the People's Republic of China is proposed to be extended to imports from the Macao SAR, whether declared as originating in the Macao SAR or not.