

COMMISSION REGULATION (EC) No 553/2006**of 23 March 2006****imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation) ⁽¹⁾, in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Initiation of the proceeding**

- (1) On 7 July 2005, the Commission announced by a notice (notice of initiation), published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain footwear with uppers of leather originating in the People's Republic of China (PRC) and Vietnam.
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 30 May 2005 by the European Confederation of the Footwear industry (CEC) on behalf of producers representing a major proportion, in this case more than 40 %, of the total Community production of certain footwear with uppers of leather.

1.2. Parties concerned and verification visits

- (3) The Commission officially advised the exporting producers in the PRC and Vietnam and the importers/traders known to be concerned, the representatives of the exporting countries concerned, the complainant Community producers and their associations of the initiation of the proceeding. The interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) In view of the high number of Chinese and Vietnamese exporting producers and Community producers, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. It should be noted that no sampling was applied for the importers and the traders in the Community, which were all asked to cooperate.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 166, 7.7.2005, p. 14.

- (5) In order to allow exporting producers in the PRC and Vietnam to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and to the authorities of the two countries concerned.
- (6) The Commission sent questionnaires to the 10 Community producers selected in the sample, to the exporting producers in the samples selected for the countries concerned, to all importers known to be concerned and to all importers that made themselves known within the deadlines set out in the notice of initiation. In addition, questionnaires were sent to the national footwear associations of the Member States of the Community where manufacturing companies are concentrated in order to obtain general information on the development of their situation, and to a consumer association.
- (7) Questionnaire replies were received from 12 of the sampled Chinese exporting producers, with one of the Chinese exporting producers in the sample choosing not to cooperate further, from four Chinese exporting producers requesting individual examination in accordance with Article 17(3) of the basic Regulation, from the eight sampled Vietnamese exporting producers and from another four Vietnamese exporting producers requesting individual examination in accordance with Article 17(3) of the basic Regulation. Replies were also received from the 10 sampled Community producers, 39 importers not related to an exporting producer. Submissions were also received from three associations of importers.
- (8) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out as follows:

(a) Community producers

Verification visits were carried out at the premises of the ten sampled Community producers, located in five different Member States. 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 PRC and Vietnam, thus benefiting directly from these imports. Those complainants are therefore in a sensitive position since some of their clients may not be satisfied with 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.

The representatives of certain exporting producers and one unrelated importer 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 complainants were truly representative. However, it is noted that the individual production volume of each complainant was made available for inspection by the interested parties, thus even if the names of those companies were blanked out, their representative quality could be verified. The claim was therefore rejected.

(b) Unrelated importers in the Community

- Adidas Salomon AG, Germany,
- C&J Clark International Limited, United Kingdom,
- George Clothing Ltd, United Kingdom,
- Nike European Operations BV, The Netherlands,
- Puma AG Rudolf Dassler Sport, Germany,
- Timberland Europe BV, The Netherlands.

(c) Exporting producers in PRC

- Apache Footwear Ltd (APE I),
- Apache Footwear II Ltd (APE II),
- FED International Corp. (FED),
- FuGuiNiao Shoes Development Co. Ltd (FS),
- Golden Step Industrial Co. Ltd (GS),
- Growth-Link Overseas Co. Ltd (GLO),
- Heng Tai Hong Wei Shoes Co. Ltd (Heng Tai),
- Laikong Footwear Co. Ltd (Laikong),
- Laitin Footwear Co. Ltd (Laitin),
- Poong Won Chehwa Co. Ltd (PWC),
- Sun Sang Kong Yuen Shoes FTY (Hui Yang) Co. Ltd (SSKY),
- Yue Yuen Group (Yue Yuen).

(d) Exporting producers in Vietnam

- Pou Yuen Vietnam Enterprise Ltd, Yuen Yuen,
- Pou Chen Vietnam Enterprise Ltd, Yuen Yuen,
- Taekwang Vina Industrial Co. Ltd,
- Haiphong Leather Products and Footwear Company
- Company No 32,
- Dona Biti's IMEX Corp. Pte. Ltd,
- Binh Tien Imex Corp. Pte. Ltd,
- Kai Nan Joint Venture Co. Ltd.

In view of the need to establish a normal value for exporting producers in the PRC and Vietnam to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Brazil in this case, took place at the premises of the following companies:

- Bison Indústria de Calçados Ltda,
- Calçados Azaleia SA,
- H. Bettarello Curtidora e Calçados Ltda.

1.3. Investigation period

- (9) The investigation of dumping and injury covered the period from 1 April 2004 to 31 March 2005 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the IP (the period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. General

- (10) The product under investigation is footwear with uppers of leather or composition leather (footwear with uppers of leather), other than:
- sports footwear within the meaning of subheading note 1 to Chapter 64 of the Combined Nomenclature, i.e. (i) footwear which is designed for a sporting activity and has, or has provision for, the attachment of, spikes, sprigs, stops, clips, bars or the like, and (ii) skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes,
 - slippers and other indoor footwear,
 - footwear with a protective toecap.
- (11) The product scope therefore mainly includes sandals, boots, urban footwear and city shoes.
- (i) Special technology athletic footwear
- (12) Various exporting producers and importers claimed that certain specific types of sports footwear, other than those mentioned above, should also be excluded from the product scope. This claim is based on the allegation that, in view of their specificities, such types of footwear and other types of footwear with uppers of leather could not be considered as forming one single product.
- (13) More specifically, this claim concerns footwear for use in sporting activities and involving a special technology called 'STAF', i.e. special technology athletic footwear. In this context, footwear for use in sporting activities should be taken to mean tennis shoes, basketball shoes, gym shoes, training shoes and the like. The footwear concerned (i.e. STAF) is currently classified 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. The claims concerning STAF have been analysed in detail. Firstly, it was established that STAF are highly sophisticated footwear that have distinctive technical features and are designed specifically for use in sporting activities. Those features mainly include a complex outsole designed to protect part of the athlete's heel and forefoot and an additional mid-sole with special cushioning or stabilising elements featuring shock absorption and/or motion control. Those features are essential in order to increase performance and avoid injuries when practising sporting activities.

- (14) To incorporate those features, significant research and development costs in terms of design, specially incorporated materials, as well as on-site testing are incurred. Those additional costs generally result in a higher import price for STAF footwear as compared to other types of footwear.
- (15) Secondly, the investigation revealed that STAF is different from the other types of footwear since (i) it is normally sold via different sales channels, (ii) it has usually a different end-use and consumer perception and (iii) import trends of STAF have developed differently compared to other types of footwear. These differences are set out below in detail.
- (16) Concerning the distribution channels, STAF is largely sold in stores that are exclusively specialised in sports equipment or, in the case of large brand retail chains or department stores, in displays/sections specifically dedicated to sports items. On the other hand, other types of footwear are mostly distributed via footwear retailers, brand or not, or even supermarkets.
- (17) The fact that STAF is distributed via different sales channels also indicates that consumers perceive STAF differently from other types of footwear. More precisely, it is also considered that consumers of sporting equipment clearly make the distinction between footwear specifically designed for sporting activities and other types of footwear, including those casual types of footwear that look like sports shoes (casual footwear), although not having the STAF characteristics. In addition, while STAF could be used for daily, non-sportive use, similar to other types of footwear, those other types of footwear are certainly not suitable for sporting activities. Therefore the degree of interchangeability between STAF and non-STAF footwear is rather limited.
- (18) Moreover, the investigation showed that imports from the countries concerned of STAF developed differently in recent years as compared to the other types of footwear. While STAF import volumes even decreased by 5 % between 2003 and the IP, imports of non-STAF types rose by more than 50 % during the same period. In terms of price developments, the decline in STAF import prices from the countries concerned was clearly less marked than for the other types of footwear: between 2003 and the IP, the average STAF price decreased by 6 %, whereas the average price for other types decreased by 12 %. Finally, the average import price of STAF from the countries concerned during the IP was almost 40 % higher than the non-STAF average import price.
- (19) For the above reasons, i.e. differences of basic physical and technical characteristics, sales channels, end-use and consumer perception, it is provisionally concluded that STAF should be excluded from the definition of the product concerned, and thus from the scope of this investigation.
- (20) The Community footwear industry claimed that fashion trends in recent years have played an essential role as they have brought sports shoes into the market segment of casual footwear. They also alleged that both types of footwear are sold through the same distribution outlets and that consumers often buy and use STAF for purposes other than sports. Therefore, in the opinion of the Community industry, STAF should not be excluded from the scope of the product concerned.
- (21) In this respect, even if fashion trends may have had an impact on the consumer's choice and preferences, they certainly do not affect the essential basic physical and technical characteristics of a product, and therefore do not alter the above conclusions.

- (22) It is also considered that if casual footwear has become extremely popular in the last years, this fashion trend concerns casual shoes overall, and more specifically the look-alike sports type of shoes or even sports shoes not having STAF features. Even if STAF shoes may also, in the context of this fashion for casual shoes, be used for a purpose different from that for which they were designed, this remained a very limited phenomenon, which was moreover not based on the specific and unique features of STAF, but on the mere fact that they look similar to the look-alike sport shoes.
- (23) The claim that fashion trends resulted in an increasing consumption of STAF on the Community market is not supported by the import data. As a matter of fact, as shown above, STAF imports, thus Community consumption since this type of footwear is mainly produced in the two countries concerned with only very negligible production in the Community, decreased in recent years. It should also be pointed out that the claim made by the Community industry referred to all types of sports shoes, and not specifically STAF, which were, as mentioned above, given that they look similar to the look-alike sport shoes, only marginally affected by the general fashion trend.
- (24) It is however acknowledged that STAF are sometimes distributed in non-sports specialised retail shops, and that there may be a certain degree of competition between STAF and non-STAF type of footwear. However, as this remains within a limited scale, it is not deemed sufficient to alter the above conclusions.
- (25) One Member State opposed the exclusion of STAF from the scope of the proceeding on the grounds that this would imply a serious risk of circumvention. This is based on the allegation that a simple physical control is not sufficient to distinguish the different types of footwear, and that such distinction can be made only through a chemical analysis of the materials and technical tests on the mechanic components incorporated in the footwear.
- (26) While it is not excluded that a simple physical control is not always sufficient to differentiate between the types, this can not be considered a valid argument for the non-exclusion of STAF. Indeed, the fact that it may sometimes physically to differentiate various types of shoes does not give rise to the above conclusions that STAF should be considered a different type from the other leather footwear. In addition, in many other instances, more than a physical control is required in order to identify whether a product should or should not be covered by the scope of anti-dumping measures in place, and this was never considered sufficient not to exclude such product from the scope of the measures. The claim was therefore rejected.
- (27) Finally, certain interested parties claimed that all types of sports footwear, thus not only STAF, should be excluded from the proceeding. These allegations are based on the same claims made for the exclusion of STAF. The investigation however revealed that the conclusions with respect to STAF did not apply to footwear not having the STAF characteristics. Rather, it was found that the conclusions drawn in the two preceding recitals also apply in the case of those types of footwear, i.e. there is no clear dividing line and there is direct competition between those and the remaining types of footwear. The claim was therefore rejected.

(ii) Children's Footwear

- (28) For the purpose of this proceeding, it is provisionally established that children's footwear shall mean footwear with insoles of a length of less than 24 cm, and with a sole and heel combined having a height of 3 cm or less. Those types of footwear are currently classified within the CN codes: ex 6403 20 00, ex 6403 30 00, 6403 51 11, 6403 51 91, 6403 59 31, 6403 59 91, 6403 91 11, 6403 91 91, 6403 99 31, 6403 99 91 and ex 6405 10 00. The investigation will further have to determine whether this definition should be modified for the purpose of any definitive measures.
- (29) It is recalled that, in a proceeding concerning footwear with uppers of leather and plastic ⁽³⁾, footwear with insoles of a length of less than 24 cm, was not considered to fall within the definition of the product concerned. The reason being that, in view of their specificities, children's footwear and other types of footwear with uppers of leather were, at the time, not considered as forming one single product. The Commission, therefore, in the process of this investigation, examined whether such footwear falls within the definition of product concerned or whether it merits a separate investigation.
- (30) Firstly, there are indeed certain technical and physical differences between children's shoes and other types of shoes. Because of their small size, the manufacturing process is considerably different; specific skills are required to produce smaller footwear which is appropriate to the special physical characteristics of children's feet, especially during the phase of muscular-skeletal development of the early years.
- (31) Secondly, children's shoes are often sold via different sales channels compared to other footwear, which also indicates that consumers may perceive children's shoes differently to other types of footwear. More precisely, it is considered that, as a rule, consumers of children's shoes clearly made the distinction between footwear specifically designed for children and other types of footwear. In addition, as compared to adult shoes, the market for children's shoes appears to be less driven by fashion trends or other similar considerations; the emphasis instead appears to be more on price and quality. Another element influencing consumer perception is certainly the fact that there is a much higher turnover of children's shoes than of other footwear, because of children's physical development.

On examination, at this stage of the proceeding, the arguments for and against the inclusion of children's shoes in the definition of the product concerned do not yet allow for a definitive conclusion. Therefore, the Commission decided to provisionally treat children's shoes as forming part of the product concerned, pending further investigation and consideration at the definitive stage.

(iii) Other claims

- (32) It was also claimed that the product definition is too broad to be considered one single product, since it includes many different styles, materials and levels of quality, and that all those various types should be analysed individually by various proceedings. This claim is based on the fact that the product definition covers 33 different CN codes, thus allegedly giving an indication that many different products are covered, and that the various types of footwear have different characteristics, end-uses, production processes and are sold via different sales channels.

⁽³⁾ Council Regulation (EC) No 467/98 (OJ L 60, 28.2.1998, p. 1).

- (33) The number of different CN codes covered by the product definition is, as such, also irrelevant for the question as to whether a product definition is broad or narrow. The relevant criteria applied in order to determine whether or not the product, subject of an investigation, can be considered a single product, i.e. its basic physical and technical characteristics, are set out in detail above.
- (34) Furthermore, even though the various types of footwear may indeed have different specific characteristics, the investigation showed that, with the exception of STAF, their basic characteristics however remain identical. In addition, the fact that the product concerned can be produced by using different processes is not in itself a criterion which could result in a finding of two or more distinct products. Finally, the investigation also revealed that the various types of the product concerned were generally sold via the same sales channels. While some specialised shops may focus on certain specific types, the vast majority of the distributors (retailers, department stores, supermarkets) sell all various types of footwear, in order to offer a wide choice range to their customers.
- (35) Lastly, certain importers argued that the scope of the product, as defined in the notice of initiation, is even broader than the product definition given by the complainants themselves, which was allegedly limited to only three types of footwear.
- (36) In this respect, it is pointed out that the definition of the like product set out in the notice of initiation is exactly the same definition given in the complaint. The three types of footwear to which it referred were given for illustrative purposes only. The complaint clearly indicates that those three types represent the large majority of the imports from the countries concerned (more than 50 %). This can certainly not be understood as a limitation of the scope of the proceeding to only those three types.
- (37) In view of the above, the claims that the product definition is too broad were rejected.

(iv) Conclusion

- (38) All the remaining footwear types, i.e. all leather uppers footwear excluding STAF, although they cover a wide range of styles and types, their essential characteristics, their uses and consumer perception remain basically the same.
- (39) In addition to the fact that they share the same basic physical and technical characteristics, all those various styles and types are in direct competition and to a very large extent interchangeable. This is clearly illustrated by the fact that there are no clear dividing lines between the various types, i.e. there is quite some overlapping and competition between adjoining types.
- (40) In conclusion, for the purposes of this proceeding and in accordance with consistent Community practice, it is therefore considered that all types of the product described above, with the exception of STAF, should be regarded as forming one single product.

2.2. Product concerned

- (41) The product concerned is footwear with uppers of leather or composition leather, as described above, originating in PRC and in Vietnam.

- (42) The investigation has shown, as mentioned above, that all types of footwear with uppers of leather despite the differences in terms of type and style, have the same basic physical and technical characteristics, i.e. outdoor footwear with uppers of leather, they are basically used for the same purposes, and can be regarded as different types of the same product.
- (43) Therefore, for the purpose of this investigation the product concerned is footwear with uppers of leather, as described in the 'General' part above, originating in PRC and Vietnam (the product concerned). This product is currently classifiable within the following CN codes: ex 6403 20 00, ex 6403 30 00, ex 6403 51 15, ex 6403 51 19, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 35, ex 6403 59 39, ex 6403 59 95, ex 6403 59 99, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00.
- (44) It should be noted that until 1 January 2005, the products originating in PRC and falling within the above CN codes were subject to a quantitative quota, with the exception of the products falling within CN codes 6403 20 00 and ex 6403 30 00, and those footwear used for sporting activities and involving a special technology.
- (45) It is therefore concluded that, for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

2.3. Like product

- (46) The investigation showed that the product concerned and the footwear with uppers of leather manufactured and sold domestically in PRC and Vietnam as well as footwear with uppers of leather produced and sold in the Community by the Community industry were similar as far as their basic physical and technical characteristics and uses are concerned, and that they are perceived by users as being interchangeable.
- (47) Certain interested parties argued that footwear with uppers of leather produced by the Community industry and sold on the Community market was not similar to the product concerned. They claimed that this is evidenced in particular by differences between products in terms of quality, consumer perceptions, channels of sales and segmentation. It was further claimed that the consumers in the Community usually perceive the product concerned as being a cheaper product and that those products do not benefit from any brand premium.
- (48) The investigation revealed contradictory statements by importers in that respect. While some claimed that the product concerned is usually of inferior quality and remains in a different price category compared to Community made products, others claimed that brand footwear manufactured in the countries concerned is imported at higher prices, probably of mediocre quality, imported at an extremely low price, from those same countries. On the other hand, the investigation confirmed that in the Community both, low and high quality footwear are manufactured and sold via the same distribution channels as the product concerned, i.e. independent retailers, non-specialised super-markets, department stores, etc.
- (49) In addition, footwear does not necessarily indicate its country of origin, and it is therefore often very difficult for the consumer to make the distinction between footwear manufactured in the countries concerned and Community made products.

- (50) For those reasons, it is considered that, whatever its origin, footwear produced in the countries concerned and in the Community compete at all levels of the market and are not subject to different consumer perceptions. While there may be some minor differences between the product concerned and Community production, it is considered that these differences do not affect the substantial basic characteristics, properties and uses of the product.
- (51) Likewise, no major differences were found between the product concerned and footwear with uppers of leather produced and sold both by the exporters/producers on their domestic market and sold by producers in Brazil, which served as an analogue country for the purpose of establishing the normal value for those companies that were not granted market economy treatment.
- (52) In view of the above, it is provisionally concluded that, in accordance with Article 1(4) of the basic Regulation, and for the purpose of this investigation, all types of footwear with uppers of leather or composition leather produced and sold in the countries concerned and in Brazil and those produced and sold by the Community industry on the Community market are alike to those exported from the countries concerned to the Community.

3. SAMPLING

3.1. Sampling for exporting producers in the PRC and Vietnam

- (53) In view of the large number of exporting producers in the PRC and Vietnam, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17(1) of the basic Regulation.
- (54) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned. The authorities in the PRC and Vietnam were also consulted.

3.1.1. Preselection of cooperating exporting producers

- (55) Some 163 companies in the PRC and 86 companies in Vietnam came forward and provided the requested information within the given deadline set in the notice of initiation. However, only 154 Chinese exporting producers and 81 Vietnamese exporting producers reported exports to the Community during the investigation period. Those exporting producers that exported the product concerned to the Community during the investigation period and expressed a wish to participate in the sample, were initially considered as cooperating companies and were taken into account in the selection of the sample.
- (56) Exporting producers which did not make themselves known within the aforesaid period or did not provide the requested information in due time, were considered as non-cooperating with the investigation.

3.1.2. Selection of the sample

- (57) In the case of the PRC, a sample of the four largest exporting producers was originally considered in line with Article 17(1) of the basic Regulation. This would have allowed a limited investigation and still be reasonably representative. However, in the course of the consultation process with the interested parties, represented in this case by the Chinese authorities and the respective Chinese producers' association, the Chinese authorities insisted that more companies be added to the list in order to increase the representative level of the sample. Consequently, the sample was significantly extended to 13 Chinese exporting producers, representing over 20 % of the Chinese export volume to the Community. The Chinese authorities gave their full agreement to the sample chosen.
- (58) In the case of Vietnam, a sample of the four largest exporting producers was also originally considered in line with Article 17(1) of the basic Regulation. However, given the request made by the Chinese authorities to increase the representative level of the sample of Chinese exporters, and in order not to have samples significantly different in representative terms for the two countries concerned, it was decided to also increase the size of the sample of the Vietnamese exporters to eight companies. At the end of the discussion process with the Vietnamese authorities, which were in contact with the Vietnamese association of producers, full agreement was reached with those authorities on a sample of eight companies in Vietnam.
- (59) In accordance with Article 17(1) of the basic Regulation, the following criteria were taken into account in the selection of the sample:
- size of exporting producer with regard to export sales to the Community,
 - size of exporting producer with regard to domestic sales.
- (60) Regarding the second criteria above, it was considered essential to include in the sample, some companies with domestic sales in order to have as representative a cross-section of the footwear industry in the samples as possible. This was necessary, in particular, to have information available, in the event that some or all exporters in the samples would fulfil the MET criteria, on prices and costs associated with producing and selling the product concerned on the domestic markets of the countries concerned. Therefore, only the major exporting companies which also represented a major part of the domestic sales have been selected.
- (61) The selected companies accounted for respectively around 25 and 22 % of the export quantities to the Community of the Chinese and Vietnamese cooperating exporting producers and respectively around 42 and 50 % of domestic sales in the PRC and Vietnam reported by the cooperating exporters. The exclusion of the STAF products did not significantly influence the representative sample.
- (62) The cooperating exporting producers, which were not finally retained in the sample, were informed through the Chinese or Vietnamese authorities that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.
- (63) Questionnaires were sent for completion to all sampled companies and replies from all of them, except one in the PRC, were received within the given deadlines.

3.1.3. *Individual examination*

- (64) Four exporting producers in the PRC and four exporting producers in Vietnam, which were not included in the sample, claimed an individual dumping margin and have provided the relevant information within the given deadline, with a view to the application of Articles 9(6) and 17(3) of the basic Regulation. However, in view of the unprecedented size of the samples which concerned 20 companies and many other related parties, the Commission concluded, in accordance with Article 17(3) of the basic Regulation, that no individual examination of exporting producers in the PRC nor Vietnam could be granted because this would have been unduly burdensome and would have prevented completion of the investigation in good time.

3.2. **Sampling of Community producers**

- (65) As far as Community producers are concerned, the Commission selected a sample based primarily on the size of the relevant Community producers in terms of production volume. This was based on the information provided by the producers themselves and by their national associations. In order to receive a balanced picture of the footwear industry, the geographical location of the producers was also considered. Thus, the sample, which primarily reflects the size and importance of the various producing companies, also reflects the geographical spread of the industry in the Community. The 10 producers in the sample represent around 10 % of the production of the complainant Community producers.

4. **DUMPING**

4.1. **Market economy treatment (MET)**

- (66) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and Vietnam, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

1. business decisions and costs are made in response to market conditions, and without significant State interference;
2. accounting records are independently audited, in line with international accounting standards (IAS) and applied for all purposes;
3. there are no significant distortions carried over from the former non-market economy system;
4. legal certainty and stability is provided by bankruptcy and property laws;
5. currency exchanges are carried out at the market rate.

- (67) All the Chinese and the Vietnamese producers selected in the samples requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. However, one Chinese producer did not submit a questionnaire reply subsequent to having had its request for MET examined. In these circumstances, it is necessary to establish a dumping margin for this producer on the basis of facts available. Consequently, its request for MET is null and void and only 12 MET claims of the remaining sampled Chinese exporting producers have been further analysed by the Commission.

- (68) For those companies selected in the samples, the Commission sought all information deemed necessary and verified all information submitted in the MET claim at the premises of the companies in question.

4.1.1. MET determination regarding exporting producers in the PRC

- (69) The following table summarises situation of each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Company	1	2	3	4	5	Conclusion
	Business decisions	Accounting	Assets and 'carry over'	Legal environment	Currency exchange	
Company 1	no	no	no	yes	yes	no MET
Company 2	no	yes	no	yes	yes	no MET
Company 3	no	yes	yes	yes	yes	no MET
Company 4	no	no	no	no	no	no MET
Company 5	no	yes	yes	yes	yes	no MET
Company 6	no	no	no	no	no	no MET
Company 7	no	no	no	no	no	no MET
Company 8	no	no	no	yes	yes	no MET
Company 9	no	no	no	yes	yes	no MET
Company 10	no	no	no	yes	yes	no MET
Company 11	no	yes	yes	yes	yes	no MET
Company 12	no	no	no	no	no	no MET

Source: Verified questionnaire replies of cooperating Chinese exporters.

- (70) The companies concerned were given an opportunity to comment on the above findings. All 12 companies disagreed with the findings and claimed that they should be granted MET.
- (71) Firstly, it is noted that four sampled Chinese exporting producers did not meet any of the five criteria required to qualify for MET. This was due to the fact that the information they had provided was substantially incomplete and therefore no conclusions could be drawn as to whether they fulfilled the relevant criteria. Consequently, these criteria are deemed not to be met.
- (72) Secondly, it is recalled that it is the Commission's consistent practice to examine whether a group of related companies, as a whole, fulfils the conditions for MET. Therefore, in cases where a subsidiary or any other company related to the applicant in the PRC is a producer and/or a seller of the product concerned, all such related companies have to provide a MET claim form. Consequently, failure in that respect by all of the four sampled exporting producers mentioned in recital 71 lead to the result that it could not be established that these groups, as a whole, fulfil all the conditions for MET.
- (73) As far as the first criterion is concerned (Business decisions made in response to market signals, without significant State interference, and costs reflect market values), it was concluded that all 12 Chinese sampled exporting producers did not demonstrate that they fulfil this criterion. In particular, the reasons for not meeting the first criterion included the existence of sales restrictions set out in the Articles of Association and/or business licences or, in one case, *de facto* sales restrictions, of the sampled companies, which are due to State interference. The sampled companies argued upon disclosure that such restrictions are irrelevant, because these allegedly are outdated and are merely non-binding company internal rules. However, such documents set out the basis, *inter alia*, upon which a company trades its goods. In fact, and to the contrary, the Chinese administration only authorises a company to operate on the basis of its Articles of Association and its business licence, which constitute the specific legal framework for a given company.

- (74) As far as the second criterion is concerned (Firms have a clear set of accounting records, independently audited in line with international accounting standards and are applied for all purposes), seven companies failed to demonstrate that they fulfil the condition set in Article 2(7)(c) of the basic Regulation. As a matter of fact, accounts were characterised by significant flaws in those cases. For instance, for one exporter, the audited balance sheets did not reflect the fair and true value of assets and liabilities at all times because they were not booked at the moment they incurred (at the time of purchase) but when payments were made. Such infringement of a fundamental international accounting standard (IAS), notably the accrual principle, was however not commented on by the auditors. Consequently, the accounting records were not audited in line with international accounting standards. In another case, accounting records were unclear because important vouchers were incomplete. This, again, was not mentioned by the auditors. Upon disclosure no convincing explanation for such failures has been provided. In addition, two sampled exporting producers did not follow their auditors' recommendations concerning the accounting of accruals, land-rents, provisions for bad debts, the devaluation of fixed assets and stocks in the financial years following the audit so as to keep clear accounts.
- (75) Nine companies have not demonstrated that they fulfil the third criterion (Production costs and financial situation are not subject to distortions carried over from the non-market economy system). In the cases at stake, it was notably found that land-use rights or machinery had not been passed on at market conditions to the exporters concerned, a fact that indeed caused distortions of costs and financial situations carried over from the non market economy system. Upon disclosure some of the sampled Chinese exporting producers contested these findings. However, they did not properly substantiate their allegations that they obtained those assets at market conditions.
- (76) As regards the fourth criterion (The firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms), in regard to the four producers that failed to provide sufficient information, it was concluded, in the absence of such information, that they did not demonstrate that they meet this criterion.
- (77) Finally, the same four companies, given their failure to provide sufficient information, also failed to demonstrate that they meet the fifth criterion (Exchange rate conversions are carried out at market rates).

4.1.2. MET determination regarding exporting producers in Vietnam

- (78) The following table summarises the determination for each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Company	1	2	3	4	5	Conclusion
	Business decisions	Accounting	Assets and 'carry over'	Legal environment	Currency exchange	
Company 1	no	no	no	yes	yes	no MET
Company 2	no	no	no	yes	yes	no MET
Company 3	no	no	no	yes	yes	no MET
Company 4	no	no	no	yes	yes	no MET
Company 5	no	yes	no	yes	yes	no MET
Company 6	no	no	no	yes	yes	no MET
Company 7	yes	no	no	yes	yes	no MET
Company 8	yes	no	no	yes	yes	no MET

Source: Verified questionnaire replies of cooperating Vietnamese exporters.

- (79) The companies concerned were given an opportunity to comment on the above findings. All eight companies disagreed with the determinations made and claimed that they should be granted MET.
- (80) Regarding the first criterion, six companies failed to demonstrate that their business decisions were made in response to market signals and without significant State interference.
- (81) Four of them operate under the obligation to export either all or a significant part of their production. The companies concerned claimed that they were allowed to sell on their domestic market. However, their submissions failed to give any relevant counter arguments. The companies merely argued that they are free to ask for a modification of their investment licence if they want to sell on their domestic market and/or that quantitative sales restrictions have a tax purpose. In that respect, the Commission services cannot but note that the companies are apparently free to remove this restriction from their investment licence but did not request any modifications during the IP nor thereafter. These companies were thus still subject to a sales ratio and were therefore not able to take their business decisions in reaction to market signals. The claims were therefore rejected.
- (82) As regards the two remaining companies, they were found to be entirely state owned with direct management links to the State. Both of these companies challenged the fact that there was significant State interference but did not provide additional new arguments to substantiate their claim. Their claims were therefore rejected.
- (83) As far as the second criterion is concerned, seven companies failed to fulfil the condition set in Article 2(7)(c) of the basic Regulation.
- (84) Three companies had no audited accounts nor published financial statements. For three other companies, it could not be guaranteed that accounting records are in line with the IAS and applied for all purposes since the auditors specifically mentioned in the published financial statements that the accounting statements are not intended to present the financial position of the company in accordance with accounting principles and practices generally accepted in countries and jurisdictions other than Vietnam. This was found to be in contradiction to the IAS norms which state in their 'Framework for the preparation and presentation of financial statements' that 'the objective of financial statements is to provide information about the financial position, performance and changes in financial position of an entity that is useful to a wide range of users in making economic decisions'. In addition, IAS1 states that any entity whose financial statements comply with IAS shall make an explicit and unreserved statement of such compliance in the notes which is obviously not the case for these companies.
- (85) For two of these companies, significant problems have been raised by the auditors in their report and for one of them, the verification performed by the auditors was found to be highly insufficient to guarantee the reliability of the accounts.
- (86) The seven exporting producers concerned contested the conclusions. However, in view of (i) the absence of audited accounts for three of them, (ii) the substantial problems raised by the auditors themselves in their report for two others, and (iii) the significant remark made by the auditors concerning the last two companies, which clearly warns the users that their accounts do not comply with the generally accepted accounting principles; the submissions made by these seven companies did not contain any new elements that would permit the Commission services to revise their conclusions. The claims were therefore rejected.

- (87) As far as the third criterion is concerned, in view of the situation regarding the land use rights which do not correspond to market economy conditions but are still centrally determined by the authorities, in particular regarding price setting and price revision, all companies failed to demonstrate that there are no distortions carried over from the non-market economy system. Moreover, for three of these companies, distortions were also found to be carried over from the non-market economy system regarding, more particularly, the valuation of the assets. The conclusions were contested by the companies which failed to provide new elements to substantiate their claims. The latter were therefore rejected.
- (88) The fourth and fifth criteria were found to be met by each of the eight companies.
- (89) It is also recalled that it is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MES and, therefore, in cases where a subsidiary or any other company related to the applicant in Vietnam is a producer and/or a seller of the product concerned, the company is invited separately to complete a MES claim form. In that respect, two companies did not provide an MES claim form for one of their related producers in Vietnam, so that it could not be established that the group as a whole fulfils all the conditions for MES.
- (90) It was consequently concluded that none of the companies fulfil all the conditions set out in Article 2(7)(c) of the basic Regulation.

4.2. Individual treatment (IT)

- (91) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.
- (92) As far as the PRC is concerned, the exporting producers who requested MET also claimed IT in the event that they would not be granted MET.
- (93) On the basis of the information available, it was found that these companies failed to demonstrate that they cumulatively meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (94) In particular, it was established that since no producer demonstrated that it met the first criterion under the analysis of MET above because of *de jure* or *de facto* requirements to export all or a significant part of production, the producers' export quantities, and conditions and terms of sale were not freely determined, but rather on the basis of the administrative authorisation process fixed by articles of association and/or business licences of the sampled Chinese exporting producers. Consequently, all sampled Chinese exporting producers failed to demonstrate that they meet the requirements set out in Article 9(5)(b) of the basic Regulation, which requires *de jure* and *de facto* free determination of export sales. Furthermore, the four companies not meeting the fifth criterion under the MET analysis were deemed not to meet the criterion set out in Article 9(5)(d) of the basic Regulation, i.e. exchange rate conversions at market rates.
- (95) As far as Vietnam is concerned, the exporting producers who requested MET also claimed IT in the event that they would not to be granted MET.

- (96) On the basis of the information available, it was found that these companies did not meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (97) In particular, it was established, as set out under the analysis of MET above, that for four companies, the export sales quantities were not freely determined by the company, but were fixed in the company's business licence. For the two 100 % State-owned companies, it was considered that they failed to demonstrate that appropriate measures were taken to prevent State interference. For the two remaining companies, it was found that they are linked to a third company which did not fulfil the requirements for IT as set forth in Article 9(5) of the basic Regulation for reasons of export sales restrictions and State involvement in its internal structure and decision-making process. As there would be a risk of circumvention were different duty rates to be applied to these three related companies, IT could not be granted to the former two companies.

4.3. Normal value

4.3.1. *Analogue country*

- (98) 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 analogue country.
- (99) In the notice of initiation the Commission indicated its intention to use Brazil as an appropriate analogue country for the purpose of establishing normal value for the PRC and Vietnam and invited the interested parties to comment thereon.
- (100) Comments were received from the cooperating exporting producers suggesting Thailand, India or Indonesia as being a more suitable analogue country than Brazil. The main arguments claimed against Brazil were that Brazil does not possess similarities to PRC and Vietnam in terms of socio-economic and cultural developments, or per capita GNP, that Brazil hardly produces STAF and that it also differs from China and Vietnam in terms of labour cost and conditions of access to raw material.
- (101) Some of the interested parties suggesting analogue countries other than Brazil argued that in a previous investigation concerning imports of certain footwear with uppers of leather or plastics originating in the PRC, Indonesia and Thailand⁽⁴⁾, Indonesia was chosen as analogue country and that, consequently, it should also be chosen for this investigation.
- (102) The Commission sought cooperation from exporters in Brazil and in other potential analogue countries such as India, Indonesia and Thailand. Letters were sent to more than 50 companies in Brazil as well as in India and more than 20 companies in Indonesia. In addition, the Commission services contacted the Thai Footwear Association and obtained cooperation from six Thai exporting producers. Out of all the companies which were contacted in the other countries, one Indian exporting producer, two Indonesian exporting producers and eight Brazilian exporting producers agreed to cooperate in the investigation.

⁽⁴⁾ See footnote 3.

Representative domestic sales

- (103) One of the most important criteria for the selection of the analogue country are the representative domestic sales in the analogue country as compared to exports of the product concerned originating in the non-market economy country or countries concerned by the proceeding. Therefore, pursuant to Article 2(2) of the basic Regulation which is also applied to the analogue country, the domestic prices of the analogue country will normally be considered representative if their volume is at least 5 % of the quantities exported to the EU by the non-market economy country.
- (104) As regards Indonesia, it should be noted that the two cooperating Indonesian exporting producers reported domestic sales which were not sufficiently representative as compared to the exports originating in the countries concerned.
- (105) Regarding India, only one cooperating exporter came forward. Its domestic sales represented, however, less than 5 % of the Vietnamese exports and were therefore not sufficiently representative with regard to the total exports from the countries concerned.
- (106) As regards Thailand, six exporting producers came forward and cooperated by replying to the questionnaire. They did not have domestic sales representing 5 % or more of PRC or Vietnamese exports and were therefore not sufficiently representative with regard to the total exports from the countries concerned. Consequently, Thailand was not found to be an appropriate analogue country.
- (107) In contrast, the three main Brazilian exporting producers amongst the eight which cooperated, reported domestic sales which represented respectively more than 50 % of their own exports and their aggregate domestic sales were also found to account for 5 % or more in comparison with exports from the two countries concerned.
- (108) On the basis of the above, Brazil appeared to be the most reasonable choice in view of the representative domestic sales which permitted to avoid construction of the normal value and possible numerous adjustments.

Competition in the reference country

- (109) In terms of competition, the choice of Brazil as analogue country appeared also to be reasonable since it has more than 7 000 producers, with a total production of more than 700 million pairs of shoes in 2004 and a domestic consumption of more than 500 million pairs in 2004. Exports represented around 200 million pairs of shoes in 2004 amongst which more than 50 % for footwear with uppers of leather. Brazil mainly exports to North America (United States and Canada), South America and Europe. Imports accounted for around nine million pairs of shoes in 2004 amongst which around 80 % originating in the countries concerned.
- (110) Based on 2003 figures, Brazil was also found to have the highest domestic consumption of shoes per capita (2,7) before Thailand (2,3), Indonesia (1,7) and India (0,6) (all types of shoes included).

Special technology athletic footwear

- (111) As regards the fact that Brazil hardly produces STAF, this argument was deemed irrelevant in view of the decision to exclude this type of shoes from the scope of the investigation as explained in recital 19.

Socio-economic and cultural developments

- (112) Some parties claimed that Brazil is too different from the PRC and Vietnam in terms of socio-economic and cultural developments, or per capita GNP.
- (113) It should first be noted that differences in terms of cultural development are considered irrelevant for the choice of an analogue country, because an analogue country is taken to reflect market economy conditions and not comparable cultural development levels.
- (114) As regards the choice of a country with different economic development, it should be mentioned 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, however, does not prevent Brazil being chosen as analogue country as long as it is deemed more appropriate with regards to the other factors taken into consideration.
- (115) The same conclusion can be drawn with regard to the difference in income per capita which is also an indicator of economic development. In addition, it should be noted that, on the basis of the World Bank's main criteria for classifying economies is gross national income per capita, Brazil is classified in the same category as the PRC, Thailand and Indonesia.

Labour costs

- (116) 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 would be more appropriate analogue countries.
- (117) In this respect, it should be pointed out that the choice of the analogue country is not necessarily made among countries which have the same or the closest costs as the countries concerned, since precisely these latter costs are deemed biased by the fact that the countries concerned have no market economy or their economy is in transition. As mentioned in recital 114, a country with a different level of economic development may be chosen as analogue country for a non-market-economy country or an economy in transition. Similarly, labour costs which reflect the state of economic development of a country are not, in isolation, considered as a relevant criterion.
- (118) None the less, as mentioned above, the level of cooperation from the Indian, the Thai and the Indonesian exporting producers was not such as to provide a sufficient representative sample of their domestic sales. Taking one of them as the reference country would lead to unnecessary use of constructed normal value and numerous adjustments.

Difference in the costs of production structures

- (119) Interested parties also claimed that the cost structure between Brazil and the countries concerned is different since some costs (Research & Development (R & D), design, etc.) supported by the customers of the Chinese and Vietnamese exporters are incurred by the Brazilian producers and therefore included in their cost of production.

- (120) It was indeed found that, in some cases, exporters in the countries concerned sold the product concerned to former Community manufacturers in the Community 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.
- (121) A difference in access to raw material, in particular leather, between Brazil on the one hand and the PRC and Vietnam on the other, was also claimed by interested parties. However, the allegations were found to be contradictory and did not provide any substantive evidence as to why other countries would be more appropriate. For example, some interested parties argued that there is unlimited availability of raw materials in the countries concerned, while only the basic raw materials would be available in Brazil. Other interested parties claimed, on the contrary, that the countries concerned have to import cow leather and do not have the same access to raw materials as Brazil which has large and well established production of raw leather.
- (122) Some parties however confirmed that Brazil has a larger access to leather than the countries concerned. In particular, Brazil has one of the largest commercial bovine herds of the world as well as hundreds of companies specialized in tanning and leather finishing. The Brazilian tanning industry produces, annually, more than 30 million hides, of which only 40 % is absorbed by the Brazilian leather consuming market (footwear, leather articles, furniture). Such know-how in terms of processing and availability of raw material can only have a downward effect on the Brazilian cost of production. Therefore, the allegation that Brazil would not be a reasonable choice on the basis of the access to raw material was rejected.
- (123) Those same parties then claimed that the countries concerned use leather of lower quality than that used by the Brazilian producers. In that respect, it should be noted that the investigation of the Chinese and Vietnamese exporting producers, forming part of the samples, showed that the quality of the leather used by them was higher than that used by Brazilian producers. However, this is not a reason to reject Brazil as a suitable analogue country as an adjustment for a difference in physical characteristics can be made to take into account any difference in the quality of the leather.
- (124) In light of the above, it was concluded that Brazil is an appropriate analogue country.

4.3.2. *Determination of normal value in the analogue country*

- (125) 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 three main cooperating Brazilian producers.
- (126) The domestic sales of the three Brazilian producers of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers in the PRC and in Vietnam.
- (127) An examination was also made as to 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 verification carried out at the three main producers showed that their sales volume, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of each producer. Therefore, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not.

4.4. Export price

- (128) The exporting producers made export sales to the Community either directly to independent customers or through unrelated trading companies located outside the Community.
- (129) Where export sales to the Community were made directly to independent customers, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (130) Where export sales to the Community were made through unrelated trading companies, 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.

4.5. Comparison

- (131) The comparison between normal value and export price was made on an ex-factory basis.
- (132) 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. For all investigated exporting producers, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs and commissions have been granted where applicable and justified. An adjustment was also made pursuant to Article 2(10)(a) of the basic Regulation to allow for the quality of the leather and Article 2(10)(k) of the basic Regulation for R & D and design costs.
- (133) For exported product types not sold on the domestic market of Brazil, the domestic sales prices of similar product types were used in establishing normal values, appropriately adjusted where warranted.

4.6. Dumping margins

4.6.1. General methodology

- (134) Pursuant to Article 2(11) and (12) of the basic Regulation, dumping margins were 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 as established above. Given that none of the exporting producers in the samples fulfilled either the MET criteria nor the IT criteria, one weighted average dumping margin has been calculated for all companies in the sample of exporters in the PRC, and another one for the companies in the sample of exporters in Vietnam.
- (135) The dumping margin for cooperating exporting producers, who made themselves known within the time limits set in the notice of initiation, but were neither part of the samples nor examined individually, has been established on the basis of the weighted average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.

- (136) For those exporting producers which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.
- (137) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics.
- (138) Where the level of cooperation was low, i.e. less than 80 % of total exports of the product concerned being accounted for by the cooperating exporters, it was considered appropriate to set the dumping margin for the non-cooperating exporting producers at a level higher than the highest dumping margin established for the cooperating exporting producers. In such cases, the dumping margin was therefore established at a level which corresponds to the weighted average dumping margin of the most sold product types of the cooperating exporting producers with the highest dumping margins.
- (139) Where the level of cooperation was high, i.e. 80 % or more of total exports of the product concerned being accounted for by the cooperating exporters, it was considered appropriate to set the dumping margin for any non-cooperating exporting producers at the level of the weighted average dumping margin established for cooperating exporting producers in the country concerned.
- (140) It has been the consistent practice of the Commission to consider related exporting producers or exporting producers belonging to the same group as one single entity for the determination of a dumping margin and thus establish one single dumping margin for them. Calculating individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related exporting producers to channel their exports to the Community through the company with the lowest individual dumping margin.
- (141) In accordance with this practice it was found that three unrelated exporting producers in Vietnam were individually related to three other exporting producers. For these exporting producers, it was decided to first calculate a dumping margin for each of the six companies. A weighted average dumping margin was then established for each of the three groups of related companies based on the dumping margin for the two companies in each group.
- (142) The comparison of the data concerning exports to the Community provided by the exporting producers in each exporting country and the total volume of imports originating in each exporting country indicated that the level of cooperation was high, since these exports represented more than 90 % of total Community imports from each exporting country during the IP.
- (143) Therefore, the country-wide average dumping margin of each exporting country was determined on the basis of the weighted average dumping margin of those cooperating exporting producers included in the sample and whose information regarding export prices could be considered reliable. It should be noted that export price data from four of the sampled Chinese exporting producers could not be used, because they submitted unreliable transaction listings, which, for instance, included non-product concerned or did not match with source documentation. Therefore, country-wide dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid, were attributed to all other exporting producers in the respective export country. Given that, as explained in recital 134, one dumping margin has been established for the sampled exporters in the PRC and one for those in Vietnam, these dumping margins should also be attributed to all other exporting producers in the countries concerned.

4.6.2. Dumping margins

(a) People's Republic of China

The provisional country-wide dumping margin, expressed as a percentage of the cif import price at the Community border is 21,4 %.

(b) Vietnam

The provisional country-wide dumping margin, expressed as a percentage of the CIF import price at the Community border is 64,0 %.

5. INJURY

5.1. General

- (144) In view of the above provisional conclusions concerning the product scope, it should be noted that all figures related to STAF have been excluded from the data analysed below.
- (145) A full provisional analysis of injury had been made for the product concerned, including children's shoes. However, as a provisional finding of material injury must be made for imports on which provisional measures are imposed, the following detailed analysis refers to imports excluding children's shoes, as it is provisionally envisaged to exclude the latter from the application of the measures on grounds of Community interest. This is considered necessary as the analysis is linked to measures which must be based on the injury elimination levels, which are different when children's shoes are excluded. It should be noted, however, that the exclusion of children's shoes does not affect the overall provisional conclusions on injury. Indeed the trend of all the relevant injury factors, whether or not children's shoes are covered by measures, remains similar.

5.2. Community production

- (146) Within the Community, the product concerned is manufactured by more than 8 000 producers. Around 80 % of the Community production is concentrated in Italy, Portugal and Spain. Footwear is also manufactured, although to a lesser extent, in almost all other Member States.
- (147) Certain parties claimed that even though they do not manufacture the product concerned in the Community, they should still be considered as Community producers since they maintain design, brand, R & D, management and retail activities in the Community.
- (148) The established practice in that respect is that only the companies active in the production in the Community may qualify for being a Community producer. In the case of the traditional Community producers all development, design and manufacturing activities take place in the Community. Other Community producers may purchase part of the footwear, usually the uppers, from non-Community sources, but the production of the footwear itself remains in the Community and the final product still qualifies for EC origin, as the major value added operations take place in the Community. This was also not contested by any interested party. The situation of the operators referred to in the preceding recital is different in the sense that even though part of the design and development takes place in the Community, the manufacturing operations, and the development of the products at factory level, are not carried out in the Community. The emanating products do not qualify for EC origin, and those operators in the Community can therefore not be considered Community producers. This claim was therefore rejected.

- (149) It was concluded that the producers mentioned in recital 146 constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

5.3. Definition of the Community industry

- (150) The complaint was lodged by and/or on behalf of Community producers representing a total of 814 companies. Those complainants were found to account for a major proportion of the total Community production of the product concerned, i.e. in this case around 42 %.
- (151) For the purpose of the injury analysis, and in view of this significant number of complaining Community producers, the provisions of the Article 17 of the basic Regulation had to be applied. A sample of 10 producers was selected accordingly. These 10 companies, representing slightly more than 10 % of the production of the complaining Community producers, fully cooperated in the investigation.
- (152) On the basis of the above, it is considered that the 814 complainant Community producers, i.e. those sampled and the other non-sampled Community producers, are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will hereinafter be referred to as the 'Community industry'.

5.4. Community consumption

- (153) The Community consumption was established on the basis of the following information:

- the production volume of the overall Community producers,
- the exports made by the Community producers,
- the overall Community import volume.

- (154) On this basis, the Community consumption developed as follows:

	2001	2002	2003	2004	IP
Consumption (000 pairs)	586 280	530 130	550 028	577 573	591 053
<i>Index: 2001 = 100</i>	100	90	94	99	101

Source: Eurostat, information contained in the complaint.

- (155) The footwear consumption in the Community first declined by 10 % in 2002, but then increased thereafter. Overall, the Community consumption increased by 1 %. The consumption of footwear per capita in the Community remained relatively stable during the period considered.

5.5. Imports from the countries concerned

5.5.1. Cumulative assessment of the effects of the dumped imports concerned

- (156) 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.
- (157) 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 9 and 14 % of the Community consumption during the IP.
- (158) 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 increased their imports by around 40 million pairs between 2001 and the IP. The import prices of those two countries also followed a similar decreasing trend, falling by 39 % for PRC and by 22 % for Vietnam. In addition those prices were found to undercut the Community industry's prices at a comparable level of trade.
- (159) Certain interested parties claimed that the conditions for cumulative assessment were not fulfilled in this case because the market shares of the countries concerned developed differently and their price level was not comparable.
- (160) The table below, however, shows that the import volumes, market shares and average unit prices of both countries developed similarly over the period considered:

Import volume and market shares					
	2001	2002	2003	2004	IP
PRC (000 pairs)	12 772	11 942	21 340	26 763	53 470
<i>Index: 2001 = 100</i>	100	94	167	210	419
Market share	2,2 %	2,3 %	3,9 %	4,6 %	9,0 %
Vietnam (000 pairs)	41 241	47 542	64 666	81 042	81 477
<i>Index: 2001 = 100</i>	100	115	157	197	198
Market share	7,0 %	9,0 %	11,8 %	14,0 %	13,8 %

Average prices					
	2001	2002	2003	2004	IP
PRC EUR/pair	12,4	12,2	9,1	7,5	7,5
<i>Index: 2001 = 100</i>	100	98	74	61	61
Vietnam EUR/pair	12,5	11,8	10,5	9,8	9,7
<i>Index: 2001 = 100</i>	100	95	84	79	78

- (161) It is pointed that the sudden increase of Chinese imports during the IP, which significantly overlaps with 2004, is more than likely related to the suppression of the quota as of January 2005. It is however noted that it is an established practice to examine the trends of import volume and prices of the countries concerned over a number of years, in this case from 1 January 2001 to the end of the IP. In this context, the Chinese and Vietnamese imports clearly followed the same trends. In addition, the absolute difference in the level of the prices between the two countries is not relevant in the context of the cumulative assessment. It may indeed be explained by various factors, e.g. a different product mix. It is the price trends over the period considered that are relevant and they are in fact comparable for the two countries. For those reasons the claim could not be accepted.
- (162) 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.

5.5.2. Volume and market share of the dumped imports concerned

	2001	2002	2003	2004	IP
Imports (000 pairs)	54 013	59 484	86 006	107 805	134 947
<i>Index: 2001 = 100</i>	100	110	159	200	250
Market share	9,2 %	11,2 %	15,6 %	18,7 %	22,8 %

Source: Eurostat.

- (163) The above table indicates that the imports into the Community of the product concerned, originating in the countries concerned, more than doubled during the period considered.
- (164) The market share of the countries concerned hugely expanded during the period considered, increasing from 9,2 % in 2001 to 22,8 % during the IP. This has to be seen against the background of the relatively stable Community consumption.

- (165) It was claimed by certain interested parties that the development of the import volume of the countries concerned was distorted due to the effect of the lifting of the import quotas as of 1 January 2005. This is allegedly due to the fact that, in 2004, certain companies postponed to early 2005 their exports which would normally have been done at the end of 2004. In this respect, even though the end of the quota system may indeed have had an impact on the import volume during the first quarter of 2005, it should firstly be noted that this only concerns one of the two countries concerned and not all the products covered by this investigation. In addition, the development of imports during the overall period considered shows a constantly increasing trend. It is therefore considered that the impact of the lifting of the quota did not have a significant distorting impact and certainly does not alter the conclusion that the dumped imports significantly increased between 2001 and the end of the IP.

5.5.3. Price evolution of the dumped imports

	2001	2002	2003	2004	IP
EUR/pair	12,4	11,9	10,2	9,2	8,9
Index: 2001 = 100	100	96	82	74	71

Source: Eurostat.

- (166) Import prices decreased dramatically from EUR 12,4 per pair in 2001 to EUR 8,9 per pair during the investigation period. This represents an overall decrease of almost 30 % during the period considered.

5.5.4. Undercutting

- (167) For the purpose of analysing price undercutting, the import prices of the sampled exporting producers were compared to the Community industry prices, on the basis of weighted averages for comparable product types during the IP. The Community industry prices were adjusted to an ex-works level, and compared to cif Community frontier import prices, plus 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. In order to make a fair comparison, adjustments were made in order to reflect costs that are incurred in the Community by the importers, such as design, selection of raw material etc., and which otherwise would not be reflected in the import price. Indeed, since footwear is produced on order, thus on the basis of the specifications (raw material, design, etc.) given by the importers themselves, those costs should be also reflected in the prices of the imported footwear so as to allow a fair comparison with the Community industry prices that also comprise those elements.
- (168) On the basis of the cooperating exporting producers' prices, the undercutting margins found, by country, and expressed as a percentage of the Community industry's prices, are as follows:

Country	Price undercutting
PRC	12,8 %
Vietnam	11,3 %

5.6. Peculiarities of the footwear sector in the Community

- (169) The footwear sector in the Community is characterised by networks of micro (employing less than 10 persons) and small enterprises. Big companies of more than 500 employees 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 in market demand, but on the other hand they are financially more vulnerable to external shocks.
- (170) Under the pressure of international competition, larger companies have tended to disappear, while the more flexible small and micro companies, organised in small groups, are more able to maintain their competitive position. The number of enterprises in the sector gradually decreased in recent years, and therefore only the 'survivors' could participate in the anti-dumping complaint. Also it is likely that many 'micro' companies did not have sufficient resources to support the anti-dumping complaint. For those reasons, it is considered that analysing the situation of only those complaining survivors, could possibly understate the level of the injury as far as the overall Community production of the product under investigation is concerned.
- (171) In the table below are presented certain macro indicators provided by the national federations of those Member States having complaining Community producers, i.e. Italy, Spain, Portugal, France, Poland and Greece. They concern the evolution of the production, employment and number of companies active in the production of the product concerned during the period under investigation. These data have been verified to the fullest possible extent.

	2001	2002	2003	2004	IP
Production (000 pairs)	538 910	446 917	408 559	370 143	349 222
<i>Index 2001 = 100</i>	100	83	76	69	65
Employment	238 018	226 126	215 426	201 174	194 579
<i>Index 2001 = 100</i>	100	95	91	85	82
Number of companies	10 728	10 684	10 447	10 044	9 579
<i>Index 2001 = 100</i>	100	100	97	94	89

- (172) Production of footwear with uppers of leather in the abovementioned Member States declined by 35 % during the period considered. During the same period, more than 1 000 companies were forced to close down. This represented more than 43 000 job losses, a decrease of 20 % of employment in 2001. The decline of the number of companies was especially marked during the IP, a period which, it is recalled, significantly overlaps with the year 2004. This indicates an acceleration of bankruptcies during the first quarter of 2005.
- (173) The above figures clearly demonstrate that the sector has been facing serious negative development in the last year, and is currently in a critical situation.

5.7. Situation of the Community industry

5.7.1. Preliminary remarks

- (174) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Community industry. It is however pointed to the fact that not all factors listed in the basic Regulation were found to have a bearing on the state of the Community footwear industry for the determination of injury. For example, because 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 remains relatively labour intensive, the production capacity is not technically limited and will mainly depend on the number of workers hired by the producers.
- (175) As explained above, in view of 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 entire Community industry, on the basis of the information collected from the individual producers at the complaint stage. These factors were cross-checked, where possible, with the overall information provided by the relevant associations throughout the Community,
 - 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.

5.7.2. Macro-economic indicators

Production, production capacity and capacity utilisation

	2001	2002	2003	2004	IP
Production (000 pairs)	223 047	182 576	172 339	158 213	146 868
<i>Index: 2001 = 100</i>	100	82	77	71	66

Source: Information collected at the complaint stage.

- (176) The production volume of the overall Community industry went down from 223 million pairs in 2001 to 146,9 million pairs during the investigation period. This represents a decrease of more than 30 %.
- (177) Although a factory is theoretically designed to achieve a certain production level, this level will strongly depend on the number of workers hired by this factory. Indeed, as explained above, most of the footwear manufacturing process is labour intensive. In those circumstances, for a stable number of companies, the best way to measure capacity is to examine the level of employment of those companies. It is therefore referred to the table below showing the Community industry's employment level. Alternatively, the development of the number of companies active in the sector also adequately reflects the overall production capacity. This development was examined above and it is recalled that during the period considered more than 1 000 companies had to close down.

Sales volume and market share

	2001	2002	2003	2004	IP
Sales (000 pairs)	158 913	125 665	121 234	111 240	105 749
<i>Index: 2001 = 100</i>	100	79	76	70	67
Market shares	27,1 %	23,7 %	22,0 %	19,3 %	17,9 %

Source: Information collected at the complaint stage.

- (178) Because production takes place on order, the sales volume of the Community industry followed a decreasing trend similar to the production. The number of pairs sold on the Community market dropped by more than 50 million between 2001 and the IP, i.e. by 33 %.
- (179) In terms of market shares, this corresponds to a loss of more than 9 percentage points. The Community industry market shares dropped from 27,1 % in 2001 to 17,9 % during the IP.

Employment

	2001	2002	2003	2004	IP
Total employees	83 238	69 361	66 425	61 640	57 047
<i>Index: 2001 = 100</i>	100	83	80	74	69

Source: Information collected at the complaint stage.

- (180) Employment dramatically decreased during the overall period considered. More than 26 000 jobs were lost within the Community industry, representing a decrease of 31 % in the IP compared to the 2001 level.
- (181) Reference is also made to the above table showing, for the overall leather footwear industry, a sector-wide decrease in employment of more than 43 000 jobs. The relevance of this figure is emphasised by the fact that around 700 companies (see above) had to cease their operations in the period 2001 to 2004, i.e. before an anti-dumping complaint was lodged, and could therefore not participate in this investigation.

Productivity

	2001	2002	2003	2004	IP
Productivity	2 680	2 632	2 594	2 567	2 575
<i>Index 2001 = 100</i>	100	98	97	96	96

Source: Information collected at the complaint stage.

- (182) Productivity was established by dividing the production volume with the Community industry's workforce, as reported in the above tables. On this basis, the Community industry's productivity remained relatively stable during the period considered.

Growth

- (183) Between 2001 and the IP, while Community consumption remained fairly stable, the Community industry's sales volume significantly decreased by around 30 %. In those circumstances, the Community industry faced a drop in market share of around nine percentage points. It is noted that, during the same period, the countries concerned managed to more than double their imports and gained around 14 percentage points of market share on the Community market.

Magnitude of dumping margin

- (184) With regard to 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.

Recovery from the effects of past dumping or subsidisation

- (185) Anti-dumping measures against imports of certain footwear with uppers of leather or plastics originating in PRC, Indonesia and Thailand were imposed in February 1998. The scope of those measures overlapped, to a certain extent, the products subject of the present investigation. Further to the publication of a notice of impending expiry of those measures, no request for a review was received, and the measures accordingly lapsed in March 2003. In the absence of a review request, it is considered that the Community industry had, at that time, recovered from the effects of past dumping.

5.7.3. *Micro-economic indicators***Production and sales volume**

- (186) Although production and sales volume are not, *per se*, considered micro-economic indicators, the corresponding figures for the sampled Community producers are nevertheless presented here in order to show how the situation of the sampled Community producers developed compared to that of the overall Community industry.

	2001	2002	2003	2004	IP
Production (000 pairs)	17 743	18 828	16 507	12 902	12 129
<i>Index: 2001 = 100</i>	100	106	93	73	68
EU sales volume (000 pairs)	15 130	15 877	14 544	13 652	13 422
<i>Index: 2001 = 100</i>	100	105	96	90	89

Source: Verified questionnaire replies.

- (187) After seeing an increase in production and sales in 2002 compared to 2001, the production and sales volume in the Community of those companies included in the sample then developed similarly to the overall Community industry. During the period considered, the production volume decreased by more than 30 % and the sales volume by more than 10 %. It is recalled that the overall Community industry faced a drop in production (– 34 %) and sales volume (– 33 %) during the same period.

Stocks

	2001	2002	2003	2004	IP
000 pairs	2 118	2 375	2 544	2 705	2 470
<i>Index: 2001 = 100</i>	100	112	120	128	117

Source: Verified questionnaire replies.

- (188) As already mentioned, stocks are deemed to have only a very little bearing on the state of the Community footwear industry for the determination of injury since production takes place on order. In theory, stocks are therefore not held and only result from processed orders that have not yet been delivered and/or invoiced. On that basis, the stock level first increased between 2001 and 2004, i.e. by 28 %, and then decreased at the end of the IP. This decrease during the IP is also to be seen in the context of the seasonality of the sector. Indeed, it is expected that the level of stock is higher in December than at the end of the first quarter of the year, i.e. in this case the end of the IP.

Sales prices

	2001	2002	2003	2004	IP
EUR/pair	20,9	20,5	20,0	19,8	19,4
<i>Index: 2001 = 100</i>	100	98	96	95	93

Source: Verified questionnaire replies.

- (189) The average unit sales price continuously declined during the period considered. Overall, the decrease was of 7,2 %. The Community industry price depression may seem limited, especially as compared to the 30 % dumped import price decrease over the period considered. It should however be seen in the context that footwear is produced on order, and therefore new orders are normally secured only if the corresponding price level allows at least for break even. In this respect, reference is made to the table below showing that, during the IP, the Community industry could not further lower its prices without incurring losses.

Cash flow, profitability and return on investments

	2001	2002	2003	2004	IP
Cash flow (EUR 000)	13 497	10 991	8 147	10 754	5 706
<i>Index: 2001 = 100</i>	100	81	60	80	42
Profit on net turnover (%)	1,6 %	2,1 %	0,1 %	2,3 %	1,1 %
Return on investments	5,7 %	8,0 %	0,4 %	10,0 %	4,8 %

Source: Verified questionnaire replies.

- (190) The above return indicators show a clear weakening of the financial situation of the companies during the period considered. It is noted that restructuring expenses incurred by one of the sampled Community producers negatively affected the profitability for the year 2003. The overall deterioration was especially marked during the IP and indicates significant adverse developments during the first quarter 2005, i.e. the last quarter of the IP.

- (191) The cash flow was especially affected. It declined by almost 60 % between 2001 and the IP. The level of cash flow is particularly relevant in the case of SMEs, which do not always have easy access to external funding, unlike bigger companies that can more easily provide bank guarantees. SMEs mostly have to rely on their own resources to finance their activities. The profitability level in relation to turnover remained relatively stable at a level of 1,5 % between 2001 and 2004, with the exception of the year 2003 however, but then dropped to a break-even level during the IP. The return on investments followed the same trend.
- (192) The overall level of profit remained at a low level during the overall period considered and emphasises the financial vulnerability of those SMEs, which, by nature, are especially exposed to external shocks.

Ability to raise capital

- (193) The investigation showed that capital requirements of several Community producers have been adversely affected by their difficult financial situation. This is stressed by the development of their individual level of profit and especially the deterioration of their cash flow. As explained above, SMEs are not always in a position to provide sufficient bank guarantees and may have difficulties to face the significant financial expenses that would result from a precarious financial situation.

Investments

	2001	2002	2003	2004	IP
EUR 000	8 026	10 428	6 039	4 119	3 744
<i>Index: 2001 = 100</i>	100	130	75	51	47

Source: Verified questionnaire replies.

- (194) The investments consented by the companies decreased by more than 50 % between 2001 and the IP. The decrease in investments is to be seen in relation with the deterioration of the financial situation of the Community producers in the sample.

Employment and wages

	2001	2002	2003	2004	IP
Total employees	4 705	4 088	3 470	2 861	2 754
<i>Index: 2001 = 100</i>	100	87	74	61	59

Source: Verified questionnaire replies.

	2001	2002	2003	2004	IP
Salaries and wages (EUR 000)	66 636	63 955	61 335	50 068	48 485
<i>Index: 2001 = 100</i>	100	96	92	75	73
Average salaries and wages per person (EUR)	14 163	15 645	17 676	17 500	17 605
<i>Index: 2001 = 100</i>	100	110	125	124	124

Source: Verified questionnaire replies.

(195) The level of employment of the sampled Community producers significantly deteriorated during the period under investigation. Around 20 000 jobs were lost during that period. Since footwear is made on order, any decline of the sales volume will immediately translate in a decrease of production, which in turn means a decrease of employment in this labour intensive sector.

(196) The increase of the average salaries and wages per person employed results from a significant drop in the number of workers, with a relatively low wage level, while the level of the administration staff and management, — with a higher average salary, remained relatively stable. The job losses were indeed especially marked at production level. Although it also decreased, the level of administrative staff generally depends less on the level of activity of the companies. The evolution of the average salaries and wages is also distorted by the fact that sometimes lay-off indemnities had to be paid to persons no longer included in the headcount of the companies.

5.8. Conclusion on injury

(197) The analysis of the macro-economic indicators, i.e. at the level of the overall Community industry, revealed that the injury mainly materialised in terms of decrease of sales volume and market share. Since footwear is manufactured on order, this also had a direct negative impact on the production level and employment in the Community. During the period considered, the Community industry's sales volume on the Community market decreased by more than 30 %, market share declined by nine percentage points, production dropped by 34 % and employment was reduced by 31 %, i.e. a loss of 26 000 jobs.

(198) The cost structure of the footwear industry is such that individual companies are either profitable or have to go out of business. Indeed, with direct expenses, mainly labour and raw material, representing up to 80 % of the production cost, footwear is made on order only after a direct costing has shown a sufficient level of profit for each order.

(199) The analysis of the micro-economic elements revealed that the individual companies in the sample have reached the lowest possible level of profit during the investigation period. Their level of profit during the IP was around break-even, and the cash flow followed a dangerous declining trend. The analysis of the situation of the sampled companies revealed that, during the IP, they were no longer in the position to further decrease their price levels without incurring losses which, in the case of SMEs, cannot be sustained for more than a few months without their being forced to close down.

(200) In this context the information provided by the national federations concerning the number of company closures is especially relevant. Between 2001 and the investigation period, the federations reported more than 1 000 closures of companies.

(201) In the light of the foregoing it is concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

6. CAUSATION

6.1. Introduction

- (202) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry was caused by dumped imports of the product concerned originating in the countries concerned. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

6.2. Effects of the dumped imports

- (203) Firstly it should be noted that the investigation revealed that the footwear, imported from the countries concerned, competes at all levels, i.e. all ranges and types, with the footwear produced and sold by the Community industry, and that their sales channels are, overall, identical.
- (204) The significant increase in volume of the dumped imports, which more than doubled during the period considered, coincided with the deterioration of the economic situation of the Community industry. This deterioration materialised amongst others, by a drop in production and sales volume of around 30 % during the same period.
- (205) The surge of dumped imports came together with a significant price decrease of the corresponding average price. Effectively, during the period under investigation, the average price of the dumped imports declined by 30 %.
- (206) In a relatively transparent and very price sensitive market, where footwear is produced on orders, this had a double negative impact on the situation of the Community industry. Firstly, it resulted in a depression of the Community industry prices, which decreased by around 8 % during the period considered. Secondly, and more importantly, the low priced imports from those countries seriously affected the Community industry's order books, thus causing a negative effect on production, sales volume and employment.
- (207) The development of the Community industry's market share and that of the countries concerned, as shown below, is clearly illustrated.

	2001	2002	2003	2004	IP
Countries concerned	9,2 %	11,2 %	15,6 %	18,7 %	22,8 %
Community industry	27,1 %	23,7 %	22,0 %	19,3 %	17,9 %

- (208) While the Community industry lost around nine percentage points of market share between 2001 and the IP, the countries concerned expanded by around 14 percentage points and this, during a period of relatively stable consumption.

- (209) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at continuously decreasing prices and, on the other hand, the Community industry's loss of sales and production volume, decrease in market share and employment, and price depression, it is concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

6.3. Effects of other factors

6.3.1. Performance of other Community producers

	2000	2001	2002	2003	IP
Sales volume (000 pairs)	223 471	184 702	166 978	152 201	149 345
<i>Index: 2001 = 100</i>	100	83	75	68	67
Market share	38,1 %	34,8 %	30,4 %	26,4 %	25,3 %

Source: Questionnaire replies, complaint, Eurostat.

- (210) The above table shows that the sales of the other Community producers on the Community market decreased by more than 70 million pairs during the period considered, a drop of more than 30 %. The corresponding market share has also decreased from 38,1 % in 2000 to 25,3 % during the IP. Based on the information available, it is therefore concluded that the other Community producers were in a situation similar to that of the Community industry and did not cause any injury to the Community industry.

6.3.2. Export performance of the Community industry

- (211) Certain interested parties claimed that the poor economic situation of the Community footwear industry was due to a deterioration of its export performance. This allegation is based on the fact that in a report issued by the Community footwear industry, it is asserted that market access is a major problem for the sector in export markets and that a wide range of tariff and non-tariff barriers are still preventing the Community producers from exploiting their export potential.
- (212) In this context, it should firstly be noted that the injury analysis focuses on the situation of the Community industry on the Community market. Therefore a deterioration of the export performance, if any, does not have any impact on most of the indicators analysed above, such as sales volume, market share and prices. In terms of the overall production volume, where the distinction between Community and outside Community market cannot be made, since footwear is produced on order, a decrease of sales on the Community market will necessarily translate into a declining production. Since the vast majority of the production is intended to be sold on the Community market, and even though export sales also decreased during the period considered, it is concluded that the major part of the decrease in production is related to injury suffered on the Community market, and not to decreasing exports. Finally, the assertion made by the Community producers, in fact, merely refers to prevention of exploitation of their export potential, and should therefore be seen as the inability to compensate decreasing sales on the Community market, i.e. where injury is being suffered, by increasing exports.
- (213) The claim was therefore rejected and it is concluded that the export performance of the Community industry did not cause any material injury.

6.3.3. Imports from other third countries

- (214) The imports from third countries were also examined. The following tables show the development of the market share and the average prices of the countries each accounting for more than 2 % of the overall Community imports during the IP:

Market shares	2001	2002	2003	2004	IP	Variance 2001/IP (% points)
Romania	6,4 %	8,0 %	8,4 %	7,8 %	7,7 %	+ 1,3 %
India	3,9 %	5,0 %	5,4 %	6,4 %	6,2 %	+ 2,3 %
Indonesia	2,0 %	1,9 %	1,6 %	1,6 %	1,6 %	- 0,4 %
Brazil	1,4 %	1,6 %	1,9 %	2,5 %	2,9 %	+ 1,5 %
Macao	1,4 %	1,9 %	2,4 %	3,3 %	2,5 %	+ 1,1 %
Thailand	0,9 %	0,9 %	1,0 %	1,2 %	1,2 %	+ 0,3 %

Average prices (EUR/pair)	2001	2002	2003	2004	IP	Variance 2001/IP
Romania	14,0	14,9	15,1	15,3	15,3	9 %
India	11,7	11,6	10,5	10,4	10,5	- 10 %
Indonesia	12,4	11,6	11,2	9,6	9,6	- 23 %
Brazil	16,9	15,8	13,7	13,2	12,6	- 25 %
Macao	13,1	11,7	11,0	10,9	11,0	- 16 %
Thailand	15,4	14,0	13,2	12,3	12,2	- 21 %

- (215) Individually, none of the countries listed above significantly increased their market shares during the period considered. The absolute level of their market share remained far below that of the countries concerned, and they also developed differently. It should be recalled that the cumulated market share of the countries concerned increased substantially from 9,2 % in 2001 to 22,8 % during the IP.
- (216) With the exception of one country, the average unit prices of the other third countries decreased over the period considered. However, they decreased to a lesser extent compared to the prices of the countries concerned, but especially their absolute price level during the overall period considered remained, with one exception, on average far above the price level of the dumped imports. In the case of imports from Indonesia, prices were lower than those of imports from Vietnam in the IP, but this has to be seen against a declining market share for Indonesia as opposed to a hugely increasing one for Vietnam. During the IP, import prices from the above countries were on average 30 % higher than import prices from the countries concerned. In addition, individually, the third country market shares did not increase similarly to that of the countries concerned. It can therefore even be considered that the other third countries had to follow the decreasing price trends of the countries concerned in order to maintain their level of market shares.
- (217) For the above reasons, it is concluded that imports from other third countries did not materially affect the situation of the Community industry.

6.3.4. *Changes in the patterns of consumption and decline in demand*

- (218) It was claimed by importers that injury suffered by the Community footwear producers was caused by a decrease in demand in the footwear segment in which the traditional Community producers specialised. Likewise certain exporting producers claimed that due to changing fashions, consumers nowadays are looking for low quality, disposable and mass marketed footwear.
- (219) In this respect, reference is made to section 2 above where it was concluded that all types of the product concerned and the like product were regarded as forming one single product and that footwear produced in the countries concerned and in the Community compete at all levels of the market. Any claim regarding certain types is therefore not relevant and the analysis should be carried out at the level of the product concerned and the like product, i.e. all types of footwear with uppers of leather as described in the relevant paragraph above. As to the overall Community consumption for the footwear with uppers of leather, it remained relatively stable during the period considered. The claims were therefore rejected and it is concluded that injury was not caused by any decline of demand.

6.3.5. *Exchange rate fluctuations*

- (220) Various exporting producers and importers claimed that the injury suffered by the Community industry was caused by the appreciation of the EURO against the USD which led to significant import price decreases, since allegedly most Chinese and Vietnamese footwear is traded in American dollars (USD).
- (221) It is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury 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 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.
- (222) In practice, the 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.
- (223) 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. To summarise, if the exports are dumped, and even if they benefited from a favourable development of exchange rates, it is difficult to see how the development of such exchange rate could be another factor causing injury.
- (224) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, be it exchange rate fluctuations or something else, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation.

- (225) In any event, and without prejudice of the above, even if exchange rate fluctuations had an effect on import prices, it would be impossible to separate and distinguish their impact since it is not precisely known to what extent imports from the countries concerned are traded in USD. In addition the biggest importers hedge their USD financial transactions and it is therefore very difficult to determine what would be the relevant exchange-rate to be examined.

6.3.6. *Lifting of the quota*

- (226) Certain parties claimed that the lifting of the import quotas at the beginning of 2005 was also a cause of injury to the Community industry. In this respect, it is recalled that the quotas only applied to one of the two countries concerned and not all the products covered by this proceeding. In addition, the injury analysis has been established over a longer period, in this case between 2001 and the end of the IP, and does therefore not only refer to the post quota period, i.e. the first quarter 2005. The claim was therefore rejected.

6.3.7. *Complainants have failed to modernise, are highly fragmented and have high labour costs*

- (227) Certain parties argued that the poor economic situation of the complainants is related to the fact that they did not modernise their production facilities and methods, and that the injury was caused by the fact that the sector is highly fragmented and not competitive compared to imports from low labour cost countries.
- (228) Indeed, the Community footwear sector is highly fragmented and labour costs in the Community are higher than in the countries concerned. The degree of fragmentation of the industry and the labour costs in the Community did not, however, increase during the period considered. In these circumstances, a causal link between those factors and the deterioration of the situation of the Community industry in the period considered cannot be established.

- (229) These claims were therefore rejected.

6.3.8. *EC footwear industries relocation of production*

- (230) The association of importers claimed that the relocation of EC producers to low-wage countries had contributed to the injury suffered by the Community footwear industry. This allegedly resulted in lowering production and sales in the Community and entailed significant restructuring costs, thus affecting the financial situation of those companies.
- (231) It should be recalled, however, that the injury analysis specifically focuses on the development of the economic situation of the Community industry. Since the producers that have delocalised production are, as already explained above, not even considered Community producers for the purposes of this investigation, thus not part of the Community industry, their situation has not been taken into consideration for the injury analysis. The imports of the companies that have relocated their production have however been taken into consideration when examining the imports of the countries concerned or from the other third countries.

6.4. Conclusion on causation

- (232) In conclusion, it is confirmed that the material injury suffered by the Community industry, which is characterised especially by a decline in sales volume, market shares and unit sales price resulting in a deterioration of the profitability indicators, was caused by the dumped imports concerned. Thus, the effect of the other examined factors was practically non-existent and was therefore not such as to break the causal link between the dumped imports and the injurious situation of the Community industry.
- (233) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.
- (234) It is therefore concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

7. COMMUNITY INTEREST

- (235) It has been examined whether Community interest calls for intervention to prevent the injurious dumping that was established.

7.1. Interest of the Community industry

- (236) The above analysis has clearly demonstrated that the dumped imports caused injury to the Community footwear industry. The sharply increased amount of dumped imports in recent years caused a strong price depression on the Community footwear market at wholesale level, i.e. where competition between imported and Community manufactured footwear takes place. The Community industry is generally no longer in a position to secure orders at a satisfactory price level, as evidenced by the situation of the sampled Community producers that were barely profitable during the IP. Furthermore, in many instances, the Community industry is no longer in a position to secure new orders since, at current price levels, this would require that they sell below their cost of production. The Community industry is therefore facing difficulties related to both sales prices and sales volume.
- (237) In this context, without the imposition of measures, the position of the Community industry will clearly continue to deteriorate, resulting in additional factory closures and job losses. Since producers tend to be grouped together geographically in certain Member States, with orders sometimes outsourced to other local factories, the disappearance of one producer can have a significant knock-on effect on other local companies. This would also apply to local suppliers of raw materials thus significantly affecting the overall activities. The imposition of measures would have several positive effects for the Community industry. Measures could prevent a further substantial increase of dumped imports from the countries concerned, which would enable the Community industry to at least maintain its current position on the market. The import data effectively show that, any increase of market share by the countries concerned is gained at the expense of the Community footwear industry.

- (238) Furthermore, when anti-dumping duties are imposed on imports of footwear from the countries concerned, wholesalers and importers would be much more likely to switch their sources of supply, at least partially, to Community producers. Should measures be imposed thus allowing the level of the import prices to be restored to non-dumped levels, the Community industry would be able to compete under fair trade circumstances on the basis of proper comparative advantage thus leaving them in a position to receive a satisfactory volume of new orders at prices which would ensure them a normal level of profit. Some increase in prices is indeed required to remove the injury.
- (239) Imposing measures is therefore clearly in the interest of the Community industry, i.e. those producers actively supporting the complaint, but also in the interest of the other Community producers that did not, or could not, actively support the complaint.
- (240) Certain interested parties argued that the imposition of measures would not restore the situation of the Community industry since importers would simply shift their supply to countries not subject to measures. On that basis, they claim that any measures would therefore not be in the interest of the Community industry.
- (241) This claim was however rejected. Indeed, the fact that importers may shift to other supplier countries is certainly not a valid reason for not taking action against injurious dumping in this case. Not only is it impossible to anticipate the extent to which such a shift would take place but these imports could also be dumped leaving the possibility that anti-dumping action could also be instigated against them.
- (242) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the effects of injurious dumping found.

7.2. Interest of the other economic operators

7.2.1. Interest of the consumers

- (243) No representations were received from consumers organisations following the publication of the notice of initiation of this proceeding. Some parties have, however, argued that imposing measures on imports of the product concerned would be contrary to the interest of consumers. They allege that the choice for consumers would be much reduced if Community market access is reduced for Chinese and Vietnamese products, in particular in the fast fashion segment mainly supplied by the Chinese and Vietnamese footwear sector. Secondly, it was submitted that measures would increase the cost for the average consumers, in terms of price, and finally that the Community industry would not have the capacity to meet the overall demand for footwear.
- (244) The claims concerning the negative impact of any measures on the consumers have been analysed in detail. In order to assess this impact, the following elements were considered:
- around two thirds of the overall footwear sector is not affected by the measures imposed under this Regulation. In fact footwear, with uppers of leather, covered by this proceeding represent less than 35 %, in comparison to 46 % in 2001,

- the proposed measures do not apply to all types of footwear with uppers of leather are. Indeed, the investigation concluded that certain types of footwear, see the above conclusion on STAF, — should not be covered by measures. This further reduces the scope of the measures in relation to the overall Community footwear market. In this respect, it is recalled that, during the IP, STAF represented almost 20 % of the imports from the countries concerned of footwear with uppers of leather,
 - a significant portion of the Community leather uppers footwear market is still supplied by sources other than China and Vietnam, i.e. sources of supply that will not be subject to any measures. The other third countries, representing around 30 % of the imports, will still be competing without being subject to measures. Similarly, the anti-dumping measures will not apply to EU producers sales, which still represented around half of the supply of leather footwear,
 - importers/wholesalers and distributors/retailers are normally involved in the distribution to consumers. The two stages each apply a mark-up, or a margin, in order to cover their own costs and to allow for a certain profit. The level of this margin may significantly vary from one operator to the other, but is, on average, relatively significant. For example, the mark-up applied during the IP by the co-operating importers to their sales prices to retailers was on average 125 %, and ranged from 20 to 200 %. Thus, there is a considerable gap between import prices and resale prices. Concerning the allegation that measures could result in a reduced choice of footwear, it should be noted that anti-dumping measures would only ensure that low dumped pricing is eliminated. There will therefore be no restriction in terms of import volume since the majority of the Community market will still be supplied by sources that will not be directly affected by measures.
- (245) In any case, any decrease of import volumes from the countries concerned could, at least in the medium term, also be compensated by an increasing supply of footwear by the Community industry and the countries not subject to measures, though this would take a short time to develop.
- (246) In terms of product range, it is recalled that not only fast fashion and/or lower-end footwear is manufactured in the countries concerned. Indeed, high- and mid-range brand footwear is also produced in China and in Vietnam. Furthermore, the investigation revealed that the Community industry also manufactures all ranges of footwear, not just the high quality and stylish town footwear, as often claimed. On that basis, the claim that measures would result in a reduced choice of footwear, overall and for certain specific fashion items, would at least need further evidence to substantiate it.
- (247) Concerning the effect on consumer prices, account has to be taken of the fact that very considerable difference exists between import prices on which measures are applied, and consumer prices. Import prices are so much lower that the impact on the much higher consumer prices will necessarily be much smaller. The fact that there are at least two intermediary economic operators between importation and consumer levels will limit the impact on consumers.
- (248) Finally, the provisional available data on consumer prices indicates that consumers in the Community generally did not benefit from the price depression of footwear at the wholesale level. Indeed, average import prices of all footwear in general fell by more than 20 % in the 2001 IP, while consumer prices increased slightly for the same period. This aspect will have to be specifically investigated for the product concerned for final findings.
- (249) It is not considered likely that consumers would bear the full brunt of any measures given the strong competition that prevails at this level. It is observed that if the cost of measures were shared equally between the three main categories of economic operators, the cost to consumers would be, on average, approximately 2 % or EUR 1,00 per pair.

Children's footwear

- (250) Interested parties have argued that the cost of imposing measures on children's shoes is significantly higher than for the other shoes under investigation. This is mainly because, children shoes have to be replaced considerably more often than adult shoes, three to four times more often for young children. Thus, the effect of anti-dumping measures on children shoes would be substantially higher (three to four times the amount) as compared to the effect of measures on normal shoes, as customers would have to pay noticeably more, relatively and cumulatively, for the purchase of children's shoes than for the purchase of adults' shoes. The additional costs caused by the imposition of measures to consumers of children's shoes might also negatively affect the financial situation of the average European families to a considerable extent and jeopardise the incentive for parents to buy quality footwear at regular intervals for their children.
- (251) Given that the provisional findings indicate that children's shoes have to be replaced three to four times more often than other shoes, it is fair to consider that the absolute cost to consumers will also be substantially higher for these shoes as compared to the other shoes concerned in this proceeding. Provisional measures could thus constitute a very significant burden for families with young children. Indeed, the risk would exist that the imposition of provisional measures on these shoes could cross the dividing line between the benefit of such measures and their possible cost.
- (252) On those grounds, and at this provisional stage, it is concluded that the benefits that would be obtained by preventing injury for the remainder of this investigation through the imposition of provisional measures on imports of children's shoes is outweighed by its potentially negative effect on consumers. It is therefore provisionally concluded that imposing measures on children's footwear would not be in the interest of the Community. They should therefore provisionally be excluded from the scope of provisional anti-dumping measures; this issue will be re-examined in depth before the imposition of any definitive measures.

7.2.2. Interest of the distributors/retailers

- (253) Only a limited number of representations were received from distributors/retailers or organisations of distributors/retailers within the given deadlines. Indeed, only one submission was received from a consortium of retailers from one Member State, and questionnaire replies were received from three importers, from the same Member State, who also have their own distribution network, including two supermarket chains. Those companies imported around 15 % of the product concerned originating in China and Vietnam during the IP.
- (254) Those parties claimed that the retail sector is a significant employer that would be negatively affected by any imposition of duties. Indeed, it was claimed that the retailers would be in a position to pass on to consumers only a part of the increasing costs resulting from anti-dumping duties, and that therefore their financial situation, which is already negatively affected by a poor economic situation, will further deteriorate, thus possibly leading to job losses.
- (255) Although the comments received from the retail sector within the legal framework of the investigation were limited and referred to only one Member State, the Commission decided to carry out a detailed analysis at the level of the overall Community. The following elements were noted.
- (256) Firstly, it should be pointed out that the footwear retail sector is concerned by sales of all types of footwear, thus significantly more than just the types of footwear covered by this proceeding. Furthermore, distributors/retailers are often also involved in sales of other products. This is for example typically the case of non-specialised supermarkets for which sales of footwear only represent a minor portion of overall sales. Therefore, the retail employment figure cannot simply be compared with the number of persons employed in footwear manufacturing activities.

- (257) Secondly, it is considered that the retail sector would in fact be negatively affected only if the imposition of anti-dumping measures would result in a decrease of the Community consumption of the footwear, i.e. if the retailers would see their turnover decrease significantly. Indeed, even if their purchase price may increase following the imposition of measures, the retailers would still be in a position to pass on, at least partially, this increase to the consumers in order to maintain a reasonable level of profit. In fact, retailers admit in their submissions that they would be in a position to partially absorb any cost increase. The retailers would in consequence suffer a negative effect only if such price increases would result in a decline of the number of pairs of shoes purchased by the consumers. However, in view of the above conclusions on prices, it is not considered likely that any significant fall in consumption will occur.
- (258) The view that the impact of measures on distributors/retailers will be limited is reinforced by the fact that those operators usually sell all kinds of footwear, and not just the types concerned, of Chinese or Vietnamese origin. Therefore, the imposition of anti-dumping measures would only affect a limited portion of their purchase prices, which would remain relatively small in comparison with their overall expenses.
- (259) Furthermore, footwear is mainly distributed in the Community by the following three sales channels: independent retailers, brand retail chains and non-specialised supermarkets. Other sales channels also exist (e.g. mail order companies), but they remain rather limited.
- (260) Independent retailers represent the more traditional distribution channels. Those retailers are usually supplied by wholesalers in the Community, and because of their high operating cost structure (rent, salaries of the sales force, etc.) they usually apply significant margins. Independent retailers sell all kinds of footwear, i.e. leather and non-leather uppers from all origins, and therefore their supplies of the product concerned are expected to be relatively limited given the share of the product concerned in overall sales of footwear. Consequently, they would be affected only in a very limited way, if at all, by the imposition of measures. Since they are usually supplied by wholesalers, it can also be assumed that part of the impact of the duties would be absorbed at that level.
- (261) Brand retail chains purchase their footwear centrally, and sell them via their retail stores located in various cities, and sometimes in different countries. None of those chains cooperated with the investigation, which may already be an indication that measures would not negatively affect their situation. Nevertheless, the following elements should be taken into consideration. Because they buy in large quantities and have limited operating costs and sometimes import directly themselves, brand retail chains can generally afford to sell at reduced prices. Indeed, they often operate as discount stores located out of town, with a limited number of employees. Since they aim at offering relatively low priced footwear, their supplies from the countries concerned may be more important than in the case of the independent retailers. However, they also sell all types of footwear, i.e. not just those covered by the investigation, and a part of their turnover also consists of sales of non-footwear products. In addition, in view of their important purchasing power, they are expected to be able to switch their sources of supply, at least to a certain extent, and also only partly pass on to the consumers any cost increase. Therefore, as in the case of the independent retailers, they would in fact be seriously affected only if their sales volume were to be significantly reduced following the imposition of duties which, as concluded above, is unlikely.
- (262) Non-specialised supermarkets are an important sales channel in terms of volume, but less in terms of value. Indeed, they focus more on the lower end of the market with the objective to sell significant volumes. Non specialised supermarkets sometimes import footwear themselves, but mainly operate through agents in the Community, or in the country of origin of the products. Footwear usually represents only a minor portion of the supermarkets' overall turnover, and they are certainly very flexible in their choice of suppliers, thus they could relatively easily change their source of supply, or even increase their supplies of Community manufactured footwear. For those reasons, it is expected that measures would not have significant adverse effects on the financial situation of that sales channel.

- (263) More generally, it should be noted that, based on the figures submitted by the co-operating importers, distributors/retailers also did not benefit from decreasing import prices in recent years. Indeed, while the cooperating importers saw their import prices decrease by around 30 % on average in the 2001 IP, the level of their resale prices remained on average relatively stable.
- (264) On the basis of the above findings, it is concluded that the impact of the proposed measures on the retailers and distributors is likely to remain limited. It should also be noted that since the majority of the sales of leather uppers footwear is still supplied by the Community producers, which are still in a position to offer a wide variety of types of footwear, and with relatively short delivery times as compared to imported products, it is also in the interest of the retailers and distributors that Community production be maintained.

7.2.3. Interest of the unrelated importers in the Community

- (265) Questionnaire replies were received from 33 importers representing, during the IP, around 25 % of the Community imports of the product concerned. The analysis of the situation of the importers has therefore been based on the situation of those importers that provided reliable data within the given deadlines.
- (266) Overall, the cooperating importers sourced around 70 % of their supplies from the countries concerned. During the investigation period, their average import price was EUR 9/pair. It should be noted that while this average import price decreased during the 2001 IP, in line with the trend given by the Eurostat data, i.e. by around 30 %, their average resale prices remained relatively stable during the same period.
- (267) Those cooperating companies reported a (weighted average) net profit of 12 % of their turnover, and the data submitted showed that they apply an average mark-up of 125 %. The level of this mark-up significantly fluctuated, however, amongst the various companies, and ranged between 20 % and more than 200 %.
- (268) Furthermore, two categories of importers can be identified within the cooperators: those present in the mid/high end of the market, and those active in the lower end of the market.
- (269) The first category of importers mainly consists of former Community producers that delocalised manufacturing to third countries, namely to the countries concerned. Those companies usually still keep a significant part of their activities in the Community, e.g. design, R & D, sourcing of the raw material, and sometimes, even have their own distribution chain. For those reasons, they usually employ a relatively large number of persons, particularly compared to the second category. These importers usually sell brand footwear, at a level of prices clearly above the level of the second category of importers. Their footwear is mainly distributed via independent retailers, but also sometimes through brand retail chains, or even by their own related distributors.
- (270) Since those companies are present in the mid/high-end of the market, their import price is also higher than that of the importers active in the lower end of the market. On average, the cooperating importers active in the mid/high-end of the market reported an average purchase price of around EUR 11/pair. It should be noted that the mark-up they apply is very significant and, was on average around 200 %. In other words their resale prices were on average above EUR 30/pair. Such level of mark-up is explained by the added value they generate in the Community (specific costs related to design, sourcing R & D, etc.), but also by their significant expenses related to marketing and brand. On average, they reported a profit margin of around 10 % of their turnover.

- (271) The second category of importers focuses more on volume, and mostly consists of wholesalers or even sometimes non-specialised supermarkets. An examination of responses of lower-end importers showed that their import price was on average EUR 6/pair. The investigation revealed that they applied a mark-up of 75 % during the IP and reported, on average, a profit margin of 17 % of their turnover. This is explained by the fact that they have low structure costs, and low added value in the Community, but also have more limited selling expenses. These companies also employ a more limited number of staff, i.e. on average less than 10 per company according to the co-operators.
- (272) In view of their different situation, measures, in the form of *ad valorem* duties, are expected to affect the distinct categories of importers differently. Indeed, in the case of the first category, since the duty is applied to a higher import price, the absolute value of the measures would accordingly also be higher. This impact should however be seen in the light of the level of their resale prices. Indeed, it is recalled that these importers apply on average a mark-up of 200 %. Therefore, even if the totality of the import price increase were to be fully passed on to their customers, i.e. mostly retailers and distributors, it would only represent, in absolute terms, a limited increase of their resale prices. This would probably not significantly affect the volume of their sales, since those importers focus on mid to high range products. It is however likely that part of the import price increase will have to be absorbed by these companies, which will have to either decrease their selling costs, or see their profit margin fall. They may therefore face certain adverse effects in the short term, especially with regard to orders already entered into at an agreed price before the provisional measures enter into force. This is discussed in detail in recitals 286 to 290.
- (273) In the case of the second category of importers, an *ad valorem* duty would result in a moderate absolute price increase since their import price is relatively low. With a relatively comfortable level of profit, i.e. on (weighted) average 17 % during the IP for the co-operating importers, it is expected that the measures would not seriously affect the financial situation of these companies. It should be noted that since this category of importers focuses on volume, it is likely that the importers that did not cooperate also belong to this category, and the absence of any expected significant negative impact on their financial situation may probably explain this lack of co-operation. However, as with the first category of importers and as discussed in recitals 286 to 290, the impact of provisional measures may be significant, especially given the focus of this category of importers on volume.
- (274) It is however important to emphasise the fact that the above analysis is based on the average data provided by the cooperating importers. Therefore, depending on how importers individually perform as compared to those averages, they may of course be differently affected by the measures. In addition, it should be noted that importers usually establish long-term relationships with their suppliers, sometimes even partnerships, and are often committed to long-term contracts whereby orders are placed months before actual delivery. Therefore switching from suppliers, or even country of origin, not only takes time, but also implies additional expense. Furthermore, importers may face the situation in which they have already committed themselves to resale prices for orders they have placed in the countries concerned, and which will only be delivered subsequently. Those importers may consequently not be in a position to pass on, even partially, any additional duty, which would in this case probably result in negative financial effects. It cannot be excluded that some importers will not be able to easily absorb this financial shock.
- (275) For the above reasons, it can be concluded that the imposition of measures may indeed have a possible negative effect on the financial situation of certain importers. On average however, this negative effect is not expected to have a significant financial impact on the overall situation of the importers. This is certainly the case for the category of importers active on the lower end of the market, which currently benefit from a more flexible financial situation. These importers likely import a significant part of the leather uppers footwear originating in the countries concerned.

7.3. Conclusion on Community interest

- (276) The above analysis showed that it is in the interest of the Community industry to impose measures, since those measures are expected to at least restrain the high level of imports at dumped prices which proved to have a significant negative impact on the financial situation of the Community industry. The other Community producers are expected to also benefit from those measures.
- (277) The analysis also demonstrated that consumers are not going to be affected by the effect of anti-dumping measures or, at worse, only to a very marginal extent.
- (278) The distributors and retailers may see their purchase prices of the product concerned increase, but as compared to their overall costs and situation, they will probably not be significantly affected by measures.
- (279) On average, importers would be in a position to overcome the imposition of measures, although depending on their specific situation, some may indeed face certain adverse effects. This is principally related to the fact that they are often engaged in long term contracts with their suppliers, and sometimes even committed to resale prices.
- (280) On balance, however, it is considered that imposing measures, i.e. removing injurious dumping, would allow the Community industry to maintain its activity and bring an end to the successive closures and job losses it has faced in the last years, and that the adverse effects that the measures may have on certain other economic operators in the Community are not disproportionate as compared to those beneficial effects for the Community industry.
- (281) This does not, however, apply to children's shoes which should therefore provisionally be excluded from the scope of measures. This issue will be re-examined in depth before the imposition of any definitive measures.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (282) In view of the conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from PRC and Vietnam should be imposed.

8.1. Injury elimination level

- (283) The level of the definitive anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

- (284) On the basis of the information available, it was found that a profit margin of 2 % of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping. This corresponds to the highest level of profit achieved by the Community industry during the period under examination, and namely during the year 2002 when the market shares from the countries concerned were relatively limited as compared to their IP level.
- (285) The necessary price increase was then determined on the basis of a comparison, at the same level of trade of the weighted average import price as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of each company composing the Community industry to a break-even point and by adding the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

8.2. Provisional duties

- (286) In the light of the foregoing, and in accordance with Article 9(4) of the basic Regulation, it is considered that provisional anti-dumping measures should be imposed on imports originating in the PRC and Vietnam at the level of the lowest of the dumping and injury margins, in accordance with the lesser duty rule.
- (287) On the basis of the above, the level of the provisional duties, based on the injury margins, and are as follows:

Country	Company	Anti-dumping duty
PRC	All companies	19,4 %
Vietnam	All companies	16,8 %

- (288) In view of the exceptional circumstances of the present proceeding, notably that it concerns a basic, non-durable consumer product, which is vulnerable to fashion trends and the trading of which presents unique characteristics, it is considered appropriate to phase-in the provisional anti-dumping measures. As the Community industry in particular sustained injury as a result of unfair trade practices from the countries concerned in the last part of the IP, its production capacity has been considerably reduced and, as a result, Community producers cannot immediately supply the necessary quantities if import levels fall as a result of measures. As discussed in recital 176, prior to the injurious dumping practices under investigation, the Community industry's production levels were considerably higher. Phasing-in the dumping duty will allow the Community industry a short grace period to enable it to return to previous production levels. In addition, by allowing the Community industry sufficient time to increase its production levels, availability of the product concerned will remain at reasonable levels to meet consumer demand.
- (289) Furthermore, the product concerned is a fashion-driven consumer good, usually purchased by importers and retailers on the basis of medium term contracts, for which prices are often already settled at the time when goods are ordered. Therefore switching from suppliers, or even country of origin, not only takes time, but also implies additional expense. Furthermore, importers may face the situation in which they have already committed themselves to resale prices for orders they have placed in the countries concerned, and which will only be delivered subsequently. At the same time, for those contracts where the delivery of goods is imminent or very close, it will not be possible to obtain alternative sources of supply, simply because of the lead time for production.

- (290) These long lead times are especially related to the fact that footwear is not only fashion driven, but also subject to seasonality effects. Indeed, before the beginning of a specific season, footwear has to be designed, the raw material has to be chosen, the appropriate suppliers thereof have to be selected and certain production tools (moulds) and prototypes need to be manufactured in advance. Those trade particularities in the footwear sector mean that there are long lead times between order and delivery, which means that importers have to plan ahead and that a change in their trading terms may be very disruptive. It is therefore considered in the interest of trade, overall, to avoid situations in which traders are faced with additional duties on products purchased and accounted for months before.
- (291) To sum up, the likely benefit for the Community industry of imposing the full level of the measures immediately would in such situation be outweighed by the negative impact on the trade.
- (292) Therefore, it is considered in the Community interest that the full amount of the duty be gradually phased in, in four steps, in order to ensure that unfair trade practices caused from injurious dumping are removed and parties can adjust to the new situation, whilst at the same time the Community market remains open, traditional trade flows are preserved and the availability of supply to meet the demand is guaranteed. The duties will be imposed in increments of 25 %. As the period of the adaptation phase is necessarily short, i.e., six months it was considered appropriate to impose the full amount of the duty as near the end of the provisional measures as possible with the total amount of provisional anti-dumping duties being imposed at as late a stage as possible, in order to make the imposition of the full duty as smooth as possible. It is emphasised that this approach is introduced here due to the exceptional nature of the footwear industry and that its introduction should clearly be restricted to the provisional conclusions of this investigation.
- (293) The provisional anti-dumping duties should therefore be imposed in as follows:

- (i) from entry into force of this Regulation until 1 June 2006

Country	Anti-dumping duty
People's Republic of China	4,8 %
Vietnam	4,2 %

- (ii) from 2 June 2006 until 13 July 2006

Country	Anti-dumping duty
People's Republic of China	9,7 %
Vietnam	8,4 %

- (iii) from 14 July 2006 until 14 September 2006

Country	Anti-dumping duty
People's Republic of China	14,5 %
Vietnam	12,6 %

(iv) from 15 September 2006

Country	Anti-dumping duty
People's Republic of China	19,4 %
Vietnam	16,8 %

(294) In order to ensure that any risk of false declarations or circumvention of the measures is minimised, a strengthened administrative import surveillance system on the basis of Article 308(d) of Commission Regulation (EC) No 2454/1993 ⁽⁵⁾, will allow earlier information on relevant import trends. Should evidence be found showing that these import trends change significantly this will be urgently investigated by the Commission.

9. FINAL PROVISION

(295) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain footwear with uppers of leather or composition leather, excluding footwear involving special technology, children's footwear and footwear with a protective toecap, originating in the People's Republic of China and Vietnam and falling within CN codes: ex 6403 20 00, ex 6403 30 00, ex 6403 51 15, ex 6403 51 19, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 35, ex 6403 59 39, ex 6403 59 95, ex 6403 59 99, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 ⁽⁶⁾ (TARIC codes 6403 20 00 90, 6403 30 00 29, 6403 30 00 99, 6403 51 15 90, 6403 51 19 90, 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 35 90, 6403 59 39 90, 6403 59 95 90, 6403 59 99 90, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 93 29, 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 90).

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

(a) 'footwear involving special technology' shall mean footwear having a cif price per pair of not less than EUR 9, 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 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 (TARIC codes 6403 91 13 10, 6403 91 16 10, 6403 91 18 10, 6403 91 93 10, 6403 91 96 10, 6403 91 98 10, 6403 99 93 11, 6403 99 96 11, 6403 99 98 11);

⁽⁵⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1). Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

⁽⁶⁾ As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

(b) 'children's footwear' shall mean footwear with a sole and heel combined having a height of 3 cm or less:

— with insoles of a length of less than 24 cm, or

— without inner sole and with an interior length of less than 24 cm when measured from toe to heel,

— and falling within CN codes: ex 6403 20 00, ex 6403 30 00 and ex 6405 10 00 (TARIC codes 6403 20 00 10, 6403 30 00 21, 6403 30 00 91, and 6405 10 00 10);

(c) 'footwear with a protective toecap' shall mean footwear incorporating a protective toecap and an impact resistance of at least 100 joules⁽⁷⁾ and falling within CN codes: ex 6403 30 00, ex 6403 51 15, ex 6403 51 19, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 35, ex 6403 59 39, ex 6403 59 95, ex 6403 59 99, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 (TARIC codes 6403 30 00 21, 6403 30 00 91, 6403 51 15 10, 6403 51 19 10, 6403 51 95 10, 6403 51 99 10, 6403 59 11 10, 6403 59 35 10, 6403 59 39 10, 6403 59 95 10, 6403 59 99 10, 6403 91 13 91, 6403 91 16 91, 6403 91 18 91, 6403 91 93 91, 6403 91 96 91, 6403 91 98 91, 6403 99 11 10, 6403 99 33 10, 6403 99 36 10, 6403 99 38 10, 6403 99 93 21, 6403 99 93 91, 6403 99 96 21, 6403 99 96 91, 6403 99 98 21, 6403 99 98 91 and 6405 10 00 10).

3. The rate of the provisional anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price of the products described in paragraph 1 shall be as follows:

(i) from entry into force of this Regulation, i.e. 7 April 2006 until 1 June 2006

Country	Anti-dumping duty
People's Republic of China	4,8 %
Vietnam	4,2 %

(ii) from 2 June 2006 until 13 July 2006

Country	Anti-dumping duty
People's Republic of China	9,7 %
Vietnam	8,4 %

(iii) from 14 July 2006 until 14 September 2006

Country	Anti-dumping duty
People's Republic of China	14,5 %
Vietnam	12,6 %

⁽⁷⁾ The impact resistance shall be measured according to European norms EN 345 or EN 346.

(iv) from 15 September 2006

Country	Anti-dumping duty
People's Republic of China	19,4 %
Vietnam	16,8 %

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

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

6. Member States and the Commission shall cooperate closely to ensure compliance with this Regulation, *inter alia*, with regard to a surveillance system.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

1. This Regulation shall enter into force on 7 April 2006.

2. Article 1 to 2 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 23 March 2006.

For the Commission
Peter MANDELSON
Member of the Commission
