

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1338/2006**

**of 8 September 2006**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of chamois leather originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission after consulting the Advisory Committee,

Whereas:

**A. PROVISIONAL MEASURES**

(1) On 16 March 2006, the Commission, by Regulation (EC) No 439/2006 <sup>(2)</sup> (the provisional Regulation), imposed a provisional anti-dumping duty on imports into the Community of chamois leather originating in the People's Republic of China (the PRC).

**B. SUBSEQUENT PROCEDURE**

(2) Following the disclosure of the essential facts and considerations on the basis of which it was decided to impose the said provisional anti-dumping measures, several interested parties made written submissions containing their views on the provisional findings. No parties requested to be heard.

(3) A Chinese exporting producer and an importer which had not made themselves known to the Commission before the imposition of provisional measures, protested against the imposition of definitive anti-dumping duties, without substantiating any arguments that would put into question the facts and considerations on the basis of which provisional measures were imposed. These companies were in any case informed that, since they had come forward only at a very late stage of the investigation, they could not be considered as cooperating parties.

(4) The Chinese trading company referred to in recital 25 of the provisional Regulation reiterated its claim that it should qualify for an individual determination of dumping. This company had already been informed before the imposition of provisional measures that individual determination can only be made for exporting producers and not for traders. The claim was therefore rejected.

(5) All parties were informed of the essential facts and considerations, on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of chamois leather originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations.

(6) Comments submitted by interested parties were duly considered and, where appropriate, the findings have been modified accordingly.

**C. PRODUCT CONCERNED AND LIKE PRODUCT**

(7) Concerning the production process as described in recital 13 of the provisional Regulation, it is hereby clarified that the grain surface is removed from the skins, which are then tanned using solely fish or other animal oil in the case of chamois leather, or partially tanned with aldehydes or other tanning agents and then with fish or other animal oil in the case of combination of chamois leather.

(8) Moreover, in order to clarify the reference made to crust chamois leather and combination of crust chamois leather in recital 14 of the provisional Regulation, the product concerned must be defined as chamois leather, or combination chamois leather, whether or not cut to shape, including crust chamois leather and combination crust chamois leather (chamois leather) originating in the PRC (the product concerned), currently classifiable within CN codes 4114 10 10 and 4114 10 90.

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ L 80, 17.3.2006, p. 7.

- (9) In the absence of any other comments in this respect, recitals 13 to 17 of the provisional Regulation are otherwise confirmed.

#### D. DUMPING

##### 1. Normal value

- (10) Following provisional disclosure, the Chinese trading company referred to in recital 25 of the provisional Regulation objected to the use of the USA as analogue country as set out in recital 22 of that Regulation, in particular as regards an alleged lack of substantial production in the USA. Furthermore, it claimed that the reasons for disregarding Turkey were not properly justified. This trading company did not substantiate its claim or provide any evidence.

- (11) As explained in recital 21 of the provisional Regulation, in the case of Turkey, the analysis showed that the Turkish domestic market was very limited. Almost all of the Turkish production is export-oriented (mainly to Europe and the USA) and therefore domestic sales were not representative in order to choose Turkey as analogue country. The Turkish domestic market is less than 2 % of the USA domestic market and also appears to be more limited than the USA market in terms of competition. Indeed, there was a high level of competition in the USA from imports from other countries, as explained in recital 22 of the provisional Regulation. As to the alleged lack of production in the USA, it should be noted that it was only after the investigation period (IP) that the USA cooperating producer started to delocalise its production. During the IP, there was a relevant domestic market for chamois leather in the USA. Therefore, the choice of the USA as analogue country is hereby confirmed.

- (12) Following definitive disclosure, this trader continued to contest the appropriateness of the USA as analogue country claiming that the data provided by the USA producer would be difficult to verify because this company had ceased to produce in the USA, and therefore this data may not be reliable. In this respect, it should be noted that throughout the IP, as mentioned in recital 11, the USA producer was still producing considerable quantities of chamois leather in the USA for sale on its domestic market. In addition, the data for the IP on which the normal value was established were duly verified at the premises of the USA producer and were found to be accurate and reliable. Thus, the claim from the trading company is rejected.

- (13) In the absence of any other arguments in this respect, recitals 20 to 24 of the provisional Regulation are confirmed.

##### 2. Export price

- (14) In the absence of any comments in this respect, recital 25 of the provisional Regulation is hereby confirmed.

#### 3. Comparison

- (15) Further to provisional disclosure, the Chinese trading company referred to in recital 25 of the provisional Regulation claimed that a further adjustment should be made as regards differences in physical characteristics on the basis that some of the chamois leather exported to the Community from the PRC was in the form of patchwork, made from small pieces of off-cut chamois leather, which were of lower quality than the chamois leather sold by the US industry.

- (16) The claim was examined on the basis of the information provided by the trading company and accepted in so far as the exports of patchwork chamois leather could be identified. Consequently, a further adjustment was made in respect of patchwork chamois leather for the purpose of ensuring a fair comparison between the normal value and the export price, by increasing the adjustment for differences in physical characteristics set out in recital 26 of the provisional Regulation.

#### 4. Dumping margin

- (17) In the light of the above, the dumping margin finally determined, expressed as a percentage of the CIF Community frontier price, duty unpaid, is 69,8 %.

#### E. INJURY

##### 1. Community production

- (18) In the absence of any comments in this respect, recital 28 of the provisional Regulation is hereby confirmed.

##### 2. Definition of the Community industry

- (19) In the absence of any comments in this respect, recitals 29 and 30 of the provisional Regulation are hereby confirmed.

##### 3. Community consumption

- (20) In reviewing the statistical information available from Eurostat, the imports from third countries other than the PRC were modified. Subsequently, the Community consumption figures were accordingly amended as follows:

Apparent Community consumption	2001	2002	2003	2004	IP
Square feet (in thousands)	20 462	21 334	22 109	21 312	21 886
Index 2001 = 100	100	104	108	104	107

(21) This shows that demand for the product concerned in the Community increased by 7 % over the period considered which is slightly more than set out in recital 31 of the provisional Regulation. On this basis, and in the absence of any other comments concerning Community consumption, the methodology explained in recital 31 of the provisional Regulation is hereby confirmed.

#### 4. Volume of the imports from the country concerned and market share

(22) Given the slightly revised figures for Community consumption, the market share of the imports from the PRC is accordingly modified over the period considered as follows:

	2001	2002	2003	2004	IP
Market share	10,4 %	7,6 %	22,8 %	29,4 %	30,2 %

(23) During the period considered, imports from the PRC increased their share of the Community market from 10,4 % in 2001 to 30,2 % in the IP. This rapid increase in market share took place against a background of slower growth in consumption. Therefore, the trend set out in recital 33 of the provisional Regulation is hereby confirmed.

(24) Further to the acceptance of the claim made by a Chinese trading company as set out in recital 16 above, and the relevant adjustment made for the purpose of the dumping calculations, an alike adjustment was made to the import prices of the product concerned due to the lower quality of chamois leather exported to the Community from the PRC in the form of patchwork for the purpose of calculating the level of price undercutting. The adjustment for quality differences set out in recital 35 of the provisional Regulation was therefore accordingly revised upwards. On this basis, the comparison showed that during the IP, the product concerned originating in the PRC was sold in the Community at prices which undercut the Community industry prices, when expressed as a percentage of the latter, by 29 %.

(25) In the absence of any other comments in this respect, recitals 32 and 34 of the provisional Regulation are hereby confirmed.

#### 5. Economic situation of the Community industry

(26) Given the revised figures for Community consumption, the market share of the Community industry is accordingly modified over the period considered as follows:

	2001	2002	2003	2004	IP
Market share	39,9 %	38,3 %	33,8 %	30,1 %	30,8 %

(27) The significant decrease of the Community industry's sales in volume over the period considered is fully reflected in their market share which decreased continuously from 39,9 % in 2001 to 30,8 % in the IP. Therefore, the trend set out in recital 39 of the provisional Regulation is hereby confirmed.

(28) In the absence of any other comments in this respect, recitals 37, 38 and 40 to 54 of the provisional Regulation are hereby confirmed.

#### 6. Conclusion on injury

(29) The above revised factors, i.e. Community consumption, market shares of the Community industry and of the Chinese producers, left unaffected their trends as they were set out in the provisional Regulation. The undercutting margin remained at a high level. On this basis, it is considered that the conclusions regarding the material injury suffered by the Community industry as set out in the provisional Regulation are not altered. In the absence of any other comments, they are therefore definitively confirmed.

#### F. CAUSATION

##### 1. Effects of the dumped imports

(30) The cooperating exporting trader argued that the Commission failed to establish a well founded causation with regard to the imports of the product concerned. It further objected to the analysis in the provisional Regulation, arguing that since the import prices were steadily low and in particular even when the Community industry was profitable, there would be no causal link between the import prices and the negative profitability of the Community industry during the IP.

(31) In this respect, it should be firstly noted that pursuant to Article 3(5) of the basic Regulation, the injury analysis is not limited to the profitability of the Community industry, but also takes account of numerous other factors as set out in recitals 28 to 58 of the provisional Regulation, on the basis of which the Community industry was found to have suffered material injury during the period considered. Regarding the effect of the dumped imports, this was mainly illustrated by the threefold market share increase of the imports from the PRC over the period considered. This increase was made at the expense of the Community industry since it faced a substantial decrease in its sales volume (- 17 percentage points) albeit in a growing market. As for the dumped prices, these were found to have significantly undercut the Community industry's prices during the IP. Although import prices indeed did not follow a stringent downtrend, but fluctuated somewhat over the period considered, they remained at a significantly lower level than that of the Community industry, showing thus that they continuously depressed the market conditions which progressively forced the Community industry to lower its selling prices as this is shown clearly in recital 45 of the provisional Regulation. On this basis, the argument of the exporting trader was rejected.

- (32) In the absence of any other comments concerning the effects of the dumped imports, recitals 60 to 64 set out in the provisional Regulation are hereby confirmed.

## 2. Effects of other factors

- (33) The same party further argued that since the average price of imports from Turkey during the IP was much lower than the price from the PRC and the prices of imports from other third countries were admittedly lower than those of the Community industry, exclusion of those imports from injury analysis and dumping investigation demonstrate that the PRC was purposefully targeted on a discriminatory basis. With regard to the imports from Turkey, it was further argued that the methodology used by the Commission to selectively use price trends is not compatible with rulings on several WTO provisions.

- (34) In this respect, it should be firstly noted that the Commission analysed the imports from Turkey separately, as they were the most significant in volume after those from the PRC. For the purpose of clarity, transparency and completeness of the analysis and in view of the revision of the statistical data mentioned in recital 19, a more detailed table with revised imports from third countries is presented below:

Imports from other third countries	2001	2002	2003	2004	IP
Turkey (thousand square feet)	353	380	237	893	1 677
Average prices (EUR/square foot)	1,01	0,73	0,33	0,81	0,52
Romania (thousand square feet)	300	137	280	330	303
Average prices (EUR/square foot)	0,99	0,68	0,45	0,61	0,64
Pakistan (thousand square feet)	50	330	167	157	210
Average prices (EUR/square foot)	1,00	0,37	0,90	1,20	0,54
Mexico (thousand square feet)	590	1 017	853	293	170
Average prices (EUR/square foot)	1,54	1,16	1,06	1,43	1,13

Imports from other third countries	2001	2002	2003	2004	IP
Other countries excluding those mentioned above (thousand square feet)	1 029	1 125	939	881	1 138
Average prices (EUR/square foot)	1,29	0,84	0,88	0,57	0,49

- (35) This table shows that solely imports from Turkey increased substantially, i.e. from 353 thousand square feet in 2001 to 1 677 thousand square feet in the IP at downward prices below those of the Community industry. However, as explained in recital 66 of the provisional Regulation, a significant part of these imports was made by a cooperating Community producer in order to complete its product range or to re-export the product after having been trimmed and repackaged and therefore these quantities could not have caused injury to the Community industry. As for the remaining quantities, they represented a low and stable market share around 2 %, with the exception of the IP, and as also explained in recital 66 of the provisional Regulation, these imports may have contributed, albeit not significantly, to the material injury suffered by the Community industry.

- (36) With regard to the 'other countries' (excluding Turkey) mentioned in the table above, their imports represented a market share of close to or even lower than *de minimis* in the IP and with a downward or relatively stable trend over the period considered. The overall market share of imports from these countries, decreased from 9,6 % in 2001 to 8,3 % in the IP. On this basis, it is definitively considered that none of these countries could have caused injury to the Community.

- (37) The argument of the Chinese trading company cited at the end of recital 33 according to which 'the methodology used by the Commission to selectively use price trends is not compatible with rulings on several WTO provisions' was vague and unsubstantiated and has therefore been rejected.

- (38) On the basis of the above, and in the absence of any other submitted information substantiating the effect of imports from countries other than the PRC, it is definitively considered that such imports could not be a determining reason for the injurious situation of the Community industry.

- (39) It was further argued that the injury suffered by the Community industry was in a significant part caused by its losses in export markets. It was submitted that if any losses in overseas market are attributed to a country subject to an anti-dumping investigation, the action itself points to a discriminatory intention.

(40) It should be firstly noted that the Commission's analysis of the Community industry's situation including its profitability takes account solely of its business activity for the product concerned within the Community. Therefore, any injury allegedly caused by losses in export markets is not taken into consideration in the framework of this investigation. Furthermore, the exports of the Community industry were mentioned in so far as necessary to interpret some aggregated indicators such as for example stocks. Therefore, it is considered that the analysis of the situation in the Community industry was made in full accordance with the basic Regulation.

(41) In the absence of any other comments concerning causality, recitals 59 to 72 set out in the provisional Regulation are hereby confirmed.

#### G. COMMUNITY INTEREST

(42) In the absence of any comments concerning Community interest, recitals 73 to 82 set out in the provisional Regulation are hereby confirmed.

#### H. DEFINITIVE ANTI-DUMPING MEASURES

(43) In view of the claim referred to in recitals 15, 16 and 24, the import data used in the determination of the injury elimination level, as described in recital 86 of the provisional Regulation, was adjusted in order to take into account the fact that certain quantities of chamois leather exported to the Community from the PRC in the form of patchwork were of lower quality than the chamois leather sold by the Community industry.

(44) In the light of the above, the injury elimination level finally determined was 58,9 %.

(45) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on imports of chamois leather originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found. On the basis of the above, the definitive duty is 58,9 %.

#### I. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(46) In view of the magnitude of the dumping margin found in the PRC and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duty imposed. As the definitive duty is lower than the provisional duty amounts provisionally secured in excess of the definitive rate of the anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of chamois leather and combination chamois leather, whether or not cut to shape, including crust chamois leather and combination crust chamois leather originating in the People's Republic of China, falling within CN codes 4114 10 10 and 4114 10 90.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by all companies in the People's Republic of China shall be 58,9 %.

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

#### Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 439/2006 on imports of chamois leather originating in the People's Republic of China shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the amount of the definitive duty shall be released.

#### Article 3

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

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

Done at Brussels, 8 September 2006.

For the Council

The President

E. TUOMIOJA