

Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96

## COUNCIL IMPLEMENTING REGULATION (EU) No 1294/2009

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THE COUNCIL OF THE EUROPEAN UNION,

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

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<sup>(1)</sup> (the 'basic Regulation') and in particular Articles 9(4) and 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

### A. **PROCEDURE**

#### 1. MEASURES IN FORCE

- (1) On 5 October 2006, the Council, by Regulation (EC) No 1472/2006<sup>(2)</sup> (the 'original Regulation'), imposed a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China ('PRC' or 'China') and Vietnam (the 'countries concerned'). The established duty levels were ranging from 9,7 % to 16,5 % in case of the PRC and 10 % in case of Vietnam. Measures were imposed for a period of two years. The investigation that led to these measures will be referred to as the 'original investigation'.
- (2) By Regulation (EC) No 388/2008<sup>(3)</sup> (the 'extending Regulation'), the Council extended the anti definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not. The extension followed an anti-

circumvention investigation carried out pursuant to Article 13(3) of the basic Regulation.

## 2. PRESENT INVESTIGATION

### 2.1. Request for review

- (3) The request was lodged by the European Confederation of the Footwear Industry (CEC, 'the applicant'), on behalf of producers representing a major proportion, in this case more than 35 %, of the total Union production of certain footwear with uppers of leather.
- (4) In the framework of the standing test several national associations of footwear producers in Member States expressed their views vis-à-vis the opening of the expiry review and requested that their names be kept confidential for fear that their member companies could face retaliation from some customers. Some other parties questioned why the names and the positions of the opposing and supporting associations have been kept confidential. The Commission asked the associations explicitly again whether they could agree to a disclosure of their name and position. Four associations agreed to disclose their names and positions, whereas the others opposed, referring once more to their fear for retaliation against their member companies. The Commission took the view that there indeed was a significant possibility of retaliation in the form of lost sales for these producers and accepted that names should not be disclosed.
- (5) Some parties argued that the Commission should not have initiated an expiry review investigation as Article 3 of the original Regulation states that it shall be in force for a period of 2 years as of its entry into force. Recital 326 of the original Regulation, however, explains that, notwithstanding the shorter duration of the measures, the rules of Article 11 of the basic Regulation will apply mutatis mutandis. In line with this recital, the text of the notice of impending expiry<sup>(4)</sup> stated that the measures would expire on 7 October 2008 unless a review was initiated in accordance with the rules of Article 11(2) of the basic Regulation. Since an expiry review of the anti-dumping measures has indeed been initiated, the anti-dumping measures remain in force pending this review.
- (6) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

### 2.2. Initiation

- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, by a Notice of initiation published in the *Official Journal of the European Union*<sup>(5)</sup> on 3 October 2008 (the 'Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

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- (8) The investigation of likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 up to the end of the RIP (the 'period considered'). Reference was also made where appropriate to the year 2005 and to the investigation period used in the original investigation which covered the period from 01 April 2004 to 31 March 2005 ('original investigation period' or 'OIP').
3. PARTIES CONCERNED BY THIS INVESTIGATION
- (9) The Commission officially advised the applicant, the Union producers mentioned in the request, any other known Union producers, known importers and their associations, known retailers/distributors and their associations, known consumer organisations, the known exporting producers in the countries concerned as well as their associations and the authorities of the countries concerned of the initiation of the expiry review.
- (10) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the Notice of initiation.
- (11) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
4. SAMPLING
- (12) In view of the large number of exporting producers in the countries concerned, of Union producers and of importers involved in the investigation, the application of sampling was envisaged in the Notice of initiation in accordance with Article 17 of the basic Regulation.
- (13) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and representatives acting on their behalf, Union producers and importers were requested to make themselves known and to provide information as specified in the Notice of initiation.
- 4.1. **Sampling for exporting producers in the People's Republic of China and Vietnam**
- 4.1.1. *The People's Republic of China*
- (14) A total of 58 companies or groups of related companies ('groups') in the PRC came forward and provided the requested information within the given deadline. These 58 companies or groups produced and/or exported the product concerned to the Union market during the investigation period and expressed a wish to be included in the sample. They were regarded as cooperating

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companies and were considered for inclusion in the sample. The level of cooperation from the PRC, i.e. the percentage of exports to the Union by the Chinese cooperating companies as compared to all Chinese exports to the Union, was around 22 %.

- (15) The sample was selected in agreement with the Chinese authorities, on the basis of export volumes and geographical spread of the cooperating companies. The seven sampled companies represented around 56 % of the exports to the Union of the 58 cooperating companies, and 13 % of the total exports to the Union from the PRC. They all replied to the questionnaires within the given deadlines.
- (16) Certain non-sampled Chinese exporters claimed that since they had not been selected to be in the sample, they were not in a position to defend their interests. However, it is part of the principle of sampling that a representative number of exporting producers is selected and that the results of the assessment of this sample can be regarded as representative also for other cooperating exporters. It is further noted that all interested parties were able to participate in the investigation and to submit their views. This argument was therefore rejected.

#### 4.1.2. *Vietnam*

- (17) A total of 51 companies or groups in Vietnam came forward and provided the requested information within the given deadline. These 51 companies or groups produced and/or exported the product concerned to the Union market during the investigation period and expressed a wish to be included in the sample. They were regarded as cooperating companies and were considered for inclusion in the sample. The level of cooperation from Vietnam, i.e. the percentage of exports to the Union by the Vietnamese cooperating companies as compared to all Vietnamese exports to the Union, was around 82 %.
- (18) The sample was selected in agreement with the Vietnamese authorities, on the basis of export volumes. The three sampled companies represented around 27 % of the Union exports of the 51 cooperating companies, and 22 % of the total Union exports from Vietnam. They all replied to the questionnaires within the given deadlines.

#### 4.2. **Sampling of Union producers**

- (19) The procedure to obtain the information necessary for the selection of the sample of Union producers was as follows. The CEC acting on behalf of all complainants confirmed that all complaining producers were ready to cooperate and participate in the sampling exercise. Given the detailed and extensive information available on file (emanating i.a. from the complaint, standing exercise, and CEC submissions), it was not necessary to send a sampling form to individual complaining producers. In addition, the Notice of initiation invited any producer to make itself known should it wish

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to cooperate in the proceeding. In addition to the complainants, a further five companies made themselves known after initiation and requested to be included in the sampling exercise. All of these were sent sample forms requesting information already at hand for the complainants. Only two of the five companies supplied sample returns. These two companies were however not retained as they were excluded from the definition of the Union industry (see recital 198).

- (20) Union production of the product concerned is largely concentrated in three Member States holding around 2/3 of all production. The rest is spread over the remaining Member States. As seen in recitals 202 and onwards, the Union producers business models are characterised by differences mainly in product/quality range, distribution channels and whether clustering of activities and subcontracting parts of the manufacturing process within or outside the Union takes place.
- (21) On the basis of the information obtained, the Commission selected a sample based on the largest representative volumes of production and sales within the Union which could be investigated within the time available. However, as detailed above, this is not an entirely homogenous industry and in order to assess representativeness of the selected companies, the producers' geographical spread amongst Member States<sup>(6)</sup>, as well as the segment to which their products belong were also taken into consideration. As a result 8 companies operating in four member States were selected. The selected companies also represent all the major business models present in the Union, in terms of how the product is manufactured, of how the product is distributed, and of product specialisation. Regarding product specialisation, the companies selected included production across all major price segments (low range, mid range, high range) as well as across all gender and age segments (ladies, men, unisex, children footwear). Regarding product distribution, the companies selected included all major levels of distribution (to wholesalers, to retailers, as well as direct retailing). Regarding production, the companies selected included full in-house manufacturing in all key stages of the production process as well as companies which had outsourced parts of such manufacturing process (both in and outside the Union).
- (22) The 8 producers selected in the sample were thus considered to be representative of the overall producers in the Union, and represented 8,2 % of the production of the complaining Union producers and 3,1 % of the total Union production. Pursuant to Article 17(2) of the basic Regulation, CEC was consulted on the selection of the sample and did not raise any objections.
- (23) The investigation revealed that one of the sampled Union producers progressively discontinued production in the Union during the RIP, taking its full manufacturing activity outside the Union. It should be noted that the weight of the company was not such as to have any significant impact, at least from a quantitative point of view, on the situation of the sampled companies

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as a whole—including their representativeness. The quantitative findings on injury would not have been materially different should this company have been excluded. In this context, and given that (i) it had produced in the Union during the RIP, and that (ii) it subcontracts large part of the production, a business model which, according to many parties, is important in the Union, it was decided not to formally exclude this company from the sample. This further ensures that, qualitatively, the sample represents as adequately as possible the reality of the sector. Furthermore, considering that an expiry review requires an analysis of continuation/recurrence of injury, this may help in better predicting how the situation on the Union market could develop if the measures were not continued. However, evidently only data pertaining to its activity as Union producer were used.

- (24) The Union institutions have considered whether, given that the Union production and sales of this company during the RIP were found to be lower than initially reported at sample stage, the Union industry's production and sales as a whole should have been reduced similarly—i.e., the resulting impact on the sample should be transposed to the entire population. However, it was found that the error appears to have been made in good faith by this company who mistakenly counted outsourcing to a country in the Union vicinity as Union production. In that light, firstly, it is noted that the sample is used primarily to assess those injury indicators which cannot be reasonably obtained for the Union industry as a whole. Production and sales have been obtained at an aggregated level for the Union industry, and therefore the argument is not relevant. In addition, the information on file, including that compiled in parallel via the additional analysis of national associations performed in this investigation, does not indicate any need for such an adjustment. Finally, for argument's sake, if the full production and sales figures for the Union industry in the RIP were reduced to transpose the sample's lower figures, this would neither affect the representativeness of the sample nor the general conclusions regarding injury.
- (25) Various interested parties claimed a breach of the Article 17 of the basic Regulation, alleging that the sample of Union producers was not representative in terms of the percentage of production covered, in terms of production range, sales prices, ratio between production and sales, geographical spread as well as profitability and performance. It was also held that the sample did not take into account the large number of producers that have outsourced production to third countries.
- (26) These allegations were carefully analysed and in view also of the complexity of this case, additional questionnaires were sent, processed and verified on-spot not only for individual companies, but also for national associations. In this context, the number of companies selected in the sample had to be limited to what could be reasonably investigated within the time available, i.e. 8 companies.

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

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

#### 4.3. **Sampling of Union importers**

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



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the sampled importers replied within the given deadlines. In view of its non-cooperation, the eighth sampled importer eventually had to be excluded from the sample.

5. VERIFICATION OF INFORMATION RECEIVED

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

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

— Yue Yuen Industrial (Holdings) Ltd., Hong Kong

Production company:

Zhongshan Pou Yuen Manufactory, Guangdong Province

Trading companies:

Idea Co. Ltd, Macao

The Look Co. Ltd, Macao

Gold Plenty Co. Ltd, Macao

— Guangzhou Panyu Pegasus Footwear Co. Ltd., Guangdong Province

— HuaJian Industrial (Holding) Co. Ltd., Hong Kong and its production company Dongguan HuaBao Shoes Co. Ltd, Guangdong Province

— Zhejiang Aokang Shoes Co. Ltd., Zhejiang Province

— Foshan City Nanhai Golden Step Industrial Co. Ltd., Guangdong Province

— Jianle Footwear Industrial Co. Ltd, Fujian Province

— General Footwear/Gentfort Shoes Co.Ltd, Guangdong Province

5.2. **Exporting producers in Vietnam**

— Pou Yuen Industrial Holdings Limited, Hong Kong

Production companies:

Pouyuen Vietnam Company Limited, Ho Chi Minh City

Pou Sung Vietnam Company Limited, Dong Nai Province

Pou Chen Vietnam Enterprise Company Limited, Dong Nai Province

Trading companies:

Betsey Trading Limited

Sinnamon Trading Limited

Sky High Trading Limited

Fitbest Enterprises Limited

— Golden Star Co. Ltd, Haiphong City

— Shyang Hung Cheng Industrials Co Ltd, Binh Duong Province

5.3. **Union Industry producers and national associations of producers**

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

(40) Verification visits were also carried out at the premises of the 8 sampled Union producers, located in four different Member States. As was the case in the original investigation the sampled Union producers as well as other cooperating Union 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 Union producers supply customers in the Union that also source their products from the PRC and Vietnam, thus benefiting directly from these imports. Those complainants are therefore in a sensitive position since some of their clients may have evident reasons to oppose their lodging or supporting a complaint against alleged injurious dumping. For these reasons they considered that there was a risk of retaliation by some of their clients, including the possible termination of their business relationship. The request was granted as it was sufficiently substantiated.

(41) The representatives of certain exporting producers as well as unrelated importers claimed that they could not properly exercise their right of defence because the identity of the complainants had not been disclosed. They argued that, in those circumstances, they could not verify that the companies included in the sample were truly representative. In the alternative, these parties held that should confidentiality nevertheless be warranted, full disclosure of the individual company figures should in such case be given.

(42) In this context it is recalled that the production volume of the sample, broken down by countries, was made available for inspection to all interested parties. As concerns the argument that all information but for the identity of the company should be disclosed it should be noted that such disclosure could indirectly reveal the identity of the sampled company. The usual practice of disclosure of non limited versions of the questionnaire responses was therefore maintained (i.e. containing indexed data) also in this case. In view of the foregoing it must be concluded that the right of defence of parties was adequately preserved and the claim was therefore rejected.

#### 5.4. Unrelated importers

- Achten Beheer BV, Waalwijk, The Netherlands

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

5.5. **Producers in the analogue market**

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

6. **RIGHTS OF PARTIES**

- (43) Certain parties raised objections throughout the proceeding concerning alleged impairment of their rights of defence. They claimed that, as regards the sampled Union producers, the information contained in the file open for inspection by interested parties was incomplete and not provided on time.
- (44) In this respect it should be underlined that a version of a party's response for inspection by interested parties (an 'open response') was provided by all the sampled companies without undue delays and in line with the time limits accorded to other parties in the investigation. When an open response is submitted to the Commission, it may however only be inserted in the open file, once possible confidentiality issues have been resolved as provided for under Article 19 of the basic Regulation. It has also to be noted that the Commission has a duty to insert information in the open file in good time for parties to exercise their rights. This duty has been duly fulfilled in this case.
- (45) As regards the completeness of the open responses, it should be noted that it is a normal part of investigations that parties make additional submissions over time in which they provide additional information. These are added to the non-confidential file as soon as any confidentiality issues are resolved. This process, whereby the contributions made by all interested parties are progressively integrated into the body of evidence used to arrive at findings and into the non-confidential file, can not be confused with files being incomplete.
- (46) Given the complexity of this case, parties' access was facilitated as follows. Firstly, electronic access was afforded to interested parties, whereby they could obtain upon request a full copy of all documents on file on a CD-ROM. In addition, the electronic documents were accompanied by a clear index allowing (i) for easy access to the many documents presented in this case and (ii) for a dated record of documents on file. Furthermore, a series of notes for the file inserted into the open file responded to queries which might have an impact on the rights of defence of parties.

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- (47) The foregoing allowed parties to have enhanced access and to make extensive comments throughout the investigation, which were then addressed by the Commission as appropriate. The claims as concerns the lack of completeness and timeliness of the open file made by the various parties must therefore be rejected.
- (48) One interested party also claimed that the Commission had discriminated importers and exporters by offering more favourable treatment to the complaining Union producers in the investigation. In particular it was claimed that importers and exporters, unlike producers were not afforded confidentiality. It was also claimed that the complainants were given more favourable treatment as they were not requested to submit sample forms at the initiation of the proceeding and that too much flexibility as concerned deadline and standard of responses were given to the complainant while an exporter in the same situation would have been assessed on the basis of best facts available under Article 18 of the basic Regulation.
- (49) In this context it should be noted that the granting of confidentiality to the identity of the Union producers supporting the complaint was based on a duly motivated request in accordance with Article 19 of the basic Regulation. No such request was submitted by exporters or by importers nor did any events occur or any information come to the fore in the course of the investigation suggesting that the interests of exporters or importers would be impaired as a consequence of the disclosure of their identity. Considering that the situation of the Union producers in this context was fundamentally different from that of the exporters and importers, the claim of discrimination cannot be sustained.
- (50) As concerns the selection of the sample, it is referred to recital 19 above. The situation for exporters and importers was quite different from that of the complaining producers, as no detailed information was on file regarding the former. Therefore, the completion of the sample form was a necessity both in order to verify the parties' willingness to cooperate but also in order to obtain the basic information needed for the selection of the sample. Thus the claim of discrimination has to be rejected.
- (51) As concerns the flexibility afforded to Union producers in the context of information collected through questionnaires in the scope of the investigation and the use of Article 18 of the basic Regulation it should be noted that considering that the same approach was consistently used for exporters and importers as well as for Union producers, there could be no grounds for any claim of discrimination. The unsubstantiated allegation is thus rejected.
- (52) With regard to the choice of the analogue country, some parties submitted that short deadlines, timing and mode of transmission of the questionnaires discriminated Indian and Indonesian companies. In this respect it is noted that the sending of questionnaires to India and Indonesia could only be completed

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at the end of December 2008, after the relevant addresses of producers were obtained. The Commission made sure that companies in these countries were given the same time for replying as the ones in Brazil. Regarding the actual transmission of the questionnaires, the Commission used registered mail in all cases, as well as e-mail whenever possible. Therefore the above claims have to be rejected.

- (53) Some parties claimed that information regarding the analogue country was put on the open file with undue delays and that this constituted an impairment of their rights of defence. The Commission notes that in the present investigation, most of the first non-confidential replies to the questionnaires by companies in the analogue country were found to be deficient, and therefore new, appropriate open versions had to be requested. Once received, they were put on the open file without undue delays. In the meantime, the Commission included in the open file summary information on the companies consulted and the replies received. These claims therefore have to be rejected.

## **B. PRODUCT CONCERNED AND LIKE PRODUCT**

### **1. PRODUCT CONCERNED**

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

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

'sports footwear' shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1031/2008; 'footwear involving special technology' shall mean footwear having a CIF price per pair of not less than EUR 7.5, for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403

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91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98;

‘footwear with a protective toecap’ shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules (1) and falling within CN codes: CN codes: ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

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

## 2. LIKE PRODUCT

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

### 2.1. Product comparability

(57) Certain parties argued that the like product sold in the Union was not comparable to the product concerned exported from the PRC and Vietnam. It was found however that the product sold in the Union (in this review) was comparable to the product concerned exported from the countries concerned. In particular, it was found that the physical and technical characteristics and uses, as well as the channels of distribution of the product concerned were similar and have not changed since the original investigation. This argument was therefore rejected.

(58) Certain parties also argued that the system used to compare product types sold by the various co-operators in the investigation was inappropriate because it was not specific enough to guarantee a fair comparison. However, the system used (PCN system) allowed for the comparison of up to 600 different categories or product types organised into five main criteria, namely style of footwear, type of consumer, type of footwear, material of outer sole and presence of lining. Moreover, this PCN system was already used in the previous investigation. No substantiated reasons have been put forward to show why it should be amended. Therefore the same PCN system that was used in the original investigation was applied in the present expiry review investigation. This argument was therefore rejected.

(59) Certain parties alleged that the Commission changed its methodology as compared to the original case by changing the definition of the product control

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numbers (PCN's) in the course of the investigation. This allegation is however not correct. Rather, in the course of the investigation, it became apparent that certain parties had wrongly interpreted and applied the PCN structure for certain product types. In order to ensure a consistent approach, the footwear models in question were therefore re-classified and attributed to the proper PCN heading wherever this was found necessary. Thus, wherever the Commission identified inaccurate information given by the parties concerned it had to rectify this. Such rectification can therefore neither be considered as a change in methodology, nor as a change of content of the PCN. On the contrary, the need to respect the PCN methodology was the very reason why the rectification had to be carried out. Therefore the argument had to be rejected.

## 2.2. **Requests for exclusions**

- (60) Several interested parties made claims similar to those received in the original investigation. They argued that certain types of footwear, within the scope of the like product, e.g. hiking shoes, bowling shoes, white water canoeing shoes, special technology shoes, horse riding shoes and special sizes shoes, were too different to belong to the same category. A further claim was that the value threshold of EUR 7,5 per pair applicable to STAF shoes should be reduced. It is recalled that in the original investigation this value threshold had been reduced from EUR 9 to EUR 7,5 per pair.
- (61) In this respect, an expiry review does not allow for a change in the scope of the product under measures. Such change could be considered if a party were to make a substantiated request under Article 11(3) of the basic Regulation. Therefore the above claims had to be rejected.

## C. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

### 1. **GENERAL**

- (62) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was likely to continue or recur upon a possible expiry of the measures in force against the PRC and Vietnam.
- (63) The volumes and prices of imports from the two countries concerned have developed as shown in the table below. Chinese imports were subject to quotas until 31 December 2004 and imports increased substantially after this date and were at high levels in 2006. In 2007 and in the RIP import volumes have stabilised after a decrease compared to 2006. As a result of the anti-circumvention investigation the measures were extended to the imports of Macao SAR which were subject to registration as from September 2007.
- (64) Imports from Vietnam were not subject to quotas and were at high levels in the OIP. Imports volumes then decreased up to 2007 before rising again in the RIP.

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- (65) These figures show that, contrary to the arguments made by some interested parties, imports from the countries concerned remained at high levels in the RIP. Their combined market share in the RIP is 28,7 % and is thus significantly higher than the levels seen in the OIP (23,2 %). Although their respective market shares have fluctuated since the OIP, they remained overall substantial, as each of the countries had more than 10 % market share in the RIP.
- (66) Based on Eurostat figures, the average import prices from both countries concerned rose between the OIP and 2006. Since then, prices have stabilised for the PRC and fallen for Vietnam.
- (67) As Eurostat data are necessarily general and, while covering the product concerned, do not give indications of possible changes in product mix, an analysis was therefore undertaken to examine price trends of the seven sampled companies for the PRC and the three sampled companies for Vietnam. Overall, for the sampled companies in the two countries, it was found that prices of imports decreased over the period from 2006 to the RIP.

Table 1

**Total import volumes and values from countries under investigation**

	OIP	2005	2006	2007	RIP
<b>Volume (1 000 pairs)</b>					
<b>China</b>	63 403	183 568	157 560	123 016	125 052
<b>Market share</b>	8,8 %	22,9 %	21,6 %	17,8 %	18,5 %
<b>Vietnam</b>	102 625	100 619	79 427	62 503	68 852
<b>Market share</b>	14,2 %	12,6 %	11,0 %	9,1 %	10,2 %
<b>Values (Euro)</b>					
<b>China (Eurostat)</b>	7,2	7,5	8,4	8,4	8,5
<b>Vietnam (Eurostat)</b>	9,2	9,5	10,2	9,7	9,5

Source: Comext(Eurostat) adjusted as necessary using statistics available to the Commission to exclude products which are not the product concerned.

Table 2

**Total import volumes and values of sampled companies**

	OIP	2005	2006	2007	RIP
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Table 2

**Total import volumes and values of sampled companies**

<b>Volume (1 000 pairs)</b>					
<b>China (sample)</b>	n.a.	n.a.	11 381	12 787	13 759
<b>Market share</b>			1,5 %	1,8 %	2,0 %
<b>Vietnam (sample)</b>	n.a.	n.a.	14 400	15 250	14 500
<b>Market share</b>			2 %	2,2 %	2,2 %
<b>Values (Euro)</b>					
<b>China (sample)</b>	n.a.	n.a.	12,6	10,7	10,3
<b>Vietnam (sample)</b>	n.a.	n.a.	11,4	10,8	10,6

2. DUMPING OF CHINESE AND VIETNAMESE IMPORTS DURING THE RIP

2.1. Normal value

2.1.1. *Analogue country*

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

(69) For the purpose of establishing normal value for the PRC and Vietnam, the Commission indicated in the Notice of initiation its intention to use Brazil as analogue country which was used as an appropriate analogue country in the original investigation. The Commission invited interested parties to comment thereon.

(70) Comments were received from several categories of interested parties, such as cooperating exporting producers, their representative associations, their national authorities as well as representatives of importers suggesting that Thailand, India or Indonesia would be a more suitable analogue country than Brazil. The Commission examined these proposals in the light of the criteria applied for the analogue country selection.

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- (71) In this respect, the Commission established that the market size for leather footwear in the RIP could be estimated at 189 million pairs for Brazil, 800 million pairs for India, 109 million for Indonesia and only 6 million for Thailand. In view of the very small size of the Thai market and the availability of other options, the Commission did not further investigate Thailand as a potential analogue country.
- (72) Consequently, the Commission sought co-operation from footwear producers in Brazil, India and Indonesia, following the requests of the parties. Questionnaires were sent to companies in the three countries and meaningful responses were received from five Brazilian, one Indian and five Indonesian producers.

*Representativeness of domestic sales and product range*

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

*Competition in the potential analogue countries*

- (80) According to the data collected by the Commission, all three countries examined have an important number of producers which ensures that there is a high level of competition between domestic operators on their respective markets. Brazil has some 7 800 leather footwear producers, 1 500 of which can be considered of a size sufficiently comparable to Chinese/Vietnamese

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companies. India is reported to have some 3 000 producers. For Indonesia, the number of producers is estimated to be 212. The three countries have substantial exports (estimated around 64 million pairs for Brazil, 67 million for India and 27 million for Indonesia). Brazil was found to have a higher domestic consumption of leather shoes per capita (1) compared to India (0.7) and Indonesia (0.5).

- (81) As regards imports into the countries examined, they reached in the RIP a market share of ca. 2 % in Brazil, ca. 1 % in India and ca. 1,5 % in Indonesia.
- (82) Based on the above elements, the Commission considered that Brazil was the most suitable choice of analogue country. In particular, Brazil was found to have the most representative volume of domestic sales in footwear with uppers of leather. In addition, Brazilian cooperating companies produce a wide range of products, largely matching those of China and Vietnam. Indonesian cooperating producers, who had also a wide range of products, had much lower domestic sales, while Indian domestic sales, although at substantial volumes, were of a very limited range.

*Comments by interested parties*

*Product comparability*

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

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does not produce all sub-types of the like product. However, this does not prevent that a fair comparison of normal value can be established by making proper adjustments for this type. As indeed none of the Brazilian cooperating producers manufactured children's footwear, the normal value for this type was calculated, as in the original investigation, by appropriately adjusting the normal value calculated for adults' shoes. It is therefore concluded that Brazil could be used as analogue country for all types of leather footwear, including children's shoes.

- (87) Some parties submitted that footwear produced in Brazil uses high quality leather and has therefore higher prices than China and Vietnam. It would therefore not be comparable to the footwear originating in the two countries under investigation. Some other interested party on the contrary submitted that the Brazilian prices needed to be properly adjusted because the leather of Brazilian footwear was of lower quality than the leather used in China and Vietnam. The Commission examined this matter and found that in terms of prices and quality there was no difference in the leather used for footwear produced in Brazil and that used for footwear produced in China and Vietnam. It is recalled in this context that an adjustment to the normal value was applied in the original case, because leather used by the Brazilian analogue country producers was found to be of lower quality and sold at lower prices as compared to the leather used by the sampled producers in the export countries. In the current review investigation, producers in Brazil (and most producers in the export countries) are different from those that co-operated with the original investigation. In turn, the different mix in companies resulted in different leather input costs.
- (88) Some parties expressed the view that Brazilian and Vietnamese products are not comparable, arguing that Brazil exports expensive high-end footwear while Vietnam exports low-priced products, but did not submit substantiating evidence on this. The Commission notes that in any event Vietnamese products would have to be compared to products sold on the Brazilian domestic market, not to those exported from Brazil. The Commission did not find any evidence that the footwear originating in Vietnam or sold in Brazil was limited to a specific market segment.

*Competition on the Brazilian market*

- (89) Some parties submitted that Brazil had increased its tariffs on footwear from 20 % to 35 % as of January 2008 and argued that this rendered Brazil a highly protected market with reduced competition. They also argued that the market share held by imports in Brazil was too low with respect to consumption. The Commission examined these claims. It was found that Brazil indeed raised its tariffs from 20 % to 35 % in the beginning of 2008, i.e. in the middle of the RIP. However, the Commission also found that the value of the Brazilian currency vis-à-vis the US Dollar increased significantly over the RIP, and particularly after the tariff increase was introduced by Brazil. More precisely, the value of

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the Brazilian Real strengthened by up to 19 % (i.e. a greater increase than the increase in tariffs) compared to the beginning of the RIP. As a consequence, the rise in the value of the Brazilian currency with respect to the US Dollar offset to a large extent the effect of the tariff rise on import prices. Moreover, the Commission did not find any evidence that the raise in tariffs was reflected in a substantial increase of domestic prices, nor that it hindered imports. In fact, the Commission established that, despite the tariff increase, imports of leather shoes into Brazil in the first half of 2008 (i.e. after the tariff rise) increased considerably as compared to the first half of 2007. Thus, there was no effective impact of the tariff increase on the Brazilian market.

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

*Differences in socio-economic development*

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

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as it is deemed more appropriate with regard to the other factors taken into consideration.

*Differences in cost structure*

- (95) Several interested parties stressed the fact that labour costs are higher in Brazil than in China and Vietnam and that India, Indonesia or Thailand whose labour costs are more comparable, would thus be more appropriate analogue countries. It was submitted that due to higher wages, labour costs in Brazil amount to 50-70 % of the cost of production as opposed to 30 % in China.
- (96) In that respect, a country with a different level of economic development may indeed be chosen as analogue country for a non-market-economy country or an economy in transition. Similarly, labour costs which are an indicator for the economic development of a country cannot be considered as a relevant criterion in isolation. In any event, as regards the part of labour cost in the overall cost of production, the Commission established at the verification on site that labour costs in Brazil are less than 40 % of the total production cost and therefore much closer to the relevant Chinese level than alleged.
- (97) It was also argued by several parties that Brazil is not appropriate for establishing normal value, because Brazilian companies bear costs for design and research and development, which in the case of China and Vietnam are at the expense of their customers abroad. The Commission found that this difference in cost structure may be plausible, since exporters in the countries concerned sold the product concerned to former Union manufacturers in the Union which still support the abovementioned components of the cost of production and sell the product under their own brand name. However, this is not a reason to reject Brazil as a suitable analogue country as adjustments can be made for such costs when establishing normal value (see recital 118 et seqq.).
- (98) Some parties submitted that unlike China and Vietnam ex-factory prices in Brazil include marketing expenses, special taxes, and credit and delivery costs. In addition, overhead costs in Brazil were alleged to be higher, due to the smaller size of Brazilian companies. Here too, the Commission considers that this is not a reason to reject Brazil as a suitable analogue country, as adjustments can be made for such allowances in the calculation of normal value (see recital 118 et seqq.).
- (99) Some parties alleged that Asian countries have better access to raw materials than Brazil, in particular leather. The Commission examined the documentation submitted. It is shown indeed that leather production has progressed faster in Asia, but this has to be seen in the light of the increase in Asian production of leather goods. Latin American countries account for slightly more than 15 % of the world production of leather shoes and close to 15 % of the world production of raw leather. Asian countries produce more than 50 % of leather shoes in the world but less than 40 % of the world's raw

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leather. It can thus be concluded that, despite differences in absolute figures of leather production, Latin American countries have a higher self-sufficiency compared to Asian countries and therefore easier access to raw leather.

*Other claims made by parties*

- (100) Some interested parties argued that Brazil is not an appropriate reference country, because Brazilian footwear is not a substitute for Chinese and Vietnamese footwear, since after the imposition of anti-dumping duties by the Union, imports into the Union originating in Brazil did not go up while those from India and Indonesia increased. In this respect, imports into the Union from India and Indonesia did increase after anti-dumping duties were imposed. However, the Commission observes that commercial operators remain free regarding their choice of suppliers, and, as examined later under the injury analysis, in this case they preferred to source their products from neighbouring countries to China and Vietnam. This does not render Brazil inappropriate as analogue country. Moreover, an analogue country serves to establish normal value. Whether or not it exports to the Union is not relevant for this purpose. Therefore, this argument was rejected.
- (101) Some parties argued that Brazil cannot be a comparable market to Vietnam, because Vietnam is export oriented while Brazil sells mainly domestically. The Commission cannot accept the relevance of this argument. Vietnam is clearly more export-oriented than Brazil however it is not evident how this could affect the normal value calculated in Brazil, which by definition relates to Brazilian production costs and domestic sales.
- (102) Several parties raised the argument that Brazilian export prices are lower than the domestic ones. For some of the parties this indicates that export prices rather than domestic ones should be used for establishing normal value. Other parties argued that this constitutes evidence that Brazilian exporters are dumping and submit that Brazil would therefore be inappropriate as analogue country. First the Commission observes that export prices are not relevant in this case, since sufficiently representative and profitable domestic prices are available. Second, the allegation that Brazilian export prices are dumped has not been substantiated and in any event cannot be confirmed or denied without a proper investigation of this issue.
- (103) Some interested parties claimed that Brazil is inappropriate as analogue country because Brazilian producers receive government support for exports. The Commission first notes that this kind of support would affect primarily export prices which, as mentioned above, are not relevant for the present investigation. The Commission nevertheless examined the evidence submitted by the parties and found that the support referred to related to export promotion programmes, similar to the ones that can be found in many other countries, with the objective to make products better known abroad, by publicity campaigns and participation in international trade fairs. The

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Commission found no indication that support for export promotion in Brazil was benefitting to domestic sales of shoes.

- (104) Several parties raised the fact that Brazil has initiated an anti-dumping investigation into footwear originating in China, for which Italy was used as analogue country, and claimed that Italian and Brazilian companies colluded to maximise dumping findings in the review investigation carried out by the Union. However there was no substantiation to these allegations, and no other related evidence. The Commission therefore rejects this argument.

*Conclusion as regards the choice of analogue country*

- (105) In light of the above, it was concluded that Brazil was the most appropriate analogue country.
- (106) A large number of interested parties alleged that selecting Brazil as the analogue country would be determinant for a finding of dumping and that dumping would not be found if one of the other countries was selected. For argument's sake, the Commission therefore checked what the result would have been if Indonesia was selected, which, although not the best option as demonstrated above was the only tenable alternative to Brazil.
- (107) The results are given in the relevant section below, and confirmed that the choice of analogue country in this case, between the tenable options available, was not determinative of the results of the dumping calculations.
- (108) Brazil was therefore selected as the analogue country.

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

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

2.1.3. *Normal value for Golden Step*

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



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- (112) The Commission first established that Golden Step made no domestic sales during the RIP. Therefore, normal value could not be established on the basis of its domestic prices, as provided by Article 2(1), subparagraph 1, of the basic Regulation. Accordingly, another method had to be applied.
- (113) Given that no domestic prices could be used to establish normal value, a constructed normal value had to be calculated based on the costs of the producer in question. Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported shoe model, adjusted where necessary, a reasonable amount for selling, general and administrative ('SG&A') expenses and a reasonable margin of profit.
- (114) In this respect, SG&A and profit could not be determined in accordance with Article 2(6)(a) of the basic Regulation on the basis of actual amounts determined for other exporting producers in the country concerned because no other Chinese exporting producer had been awarded MET. Further, because Golden Step had not made any domestic sales of the same general category of products in the country concerned, the SG&A and profit could not be established pursuant to Article 2(6)(b) of the basic Regulation. Consequently, it had to be determined in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method.
- (115) In this context, the Commission assessed SGA and profit rates along three possible scenarios. It first established SGA and profits using the data of the original investigation. It also considered SGA and profits from Chinese exporting producers that recently obtained MET in other recent investigations and which had domestic sales in the ordinary course of trade. In a third scenario, it examined information regarding SG&A and profit found in the analogue country. Normal value was then assessed along these scenarios.

## 2.2. Chinese and Vietnamese export prices

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

## 2.3. Comparison of Chinese and Vietnamese Export Prices with analogue country normal values

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- (118) Following the methodology employed in the original investigation, for exported product types not sold on the Brazilian domestic market, the domestic sales prices of the most closely resembling product types were used in establishing normal values. These were appropriately adjusted where warranted.
- (119) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. In particular, the following adjustments have been made:
- (120) It was examined whether a level of trade adjustment under Article 2(10)(d) of the basic Regulation was warranted. In that context it was found that the levels of trade in the domestic and export markets were different. Accordingly, adjustments were made in accordance with Article 2(10)(d)-(i) of the basic Regulation to reflect the discounts granted to wholesalers on the Brazilian market, as compared to sales to retailers which had solely been made by the three Brazilian producers investigated.
- (121) In order to ensure a fair comparison between Chinese and Vietnamese exports on the one hand and Brazilian domestic sales on the other hand, an allowance was granted in accordance with Article 2(10)(i) of the basic Regulation to reflect differences in commissions paid to independent agents in Brazil.
- (122) According to Article 2(10)(k) of the basic Regulation, an allowance for R&D and design was also granted in order to reflect the costs incurred by the Brazilian producers as opposed to Chinese/Vietnamese producers.
- (123) An adjustment pursuant to Article 2(10)(a) of the basic Regulation was also made in the previous investigation to reflect differences in the quality of the leather used to manufacture the footwear. In the current investigation no such adjustment was found necessary because of the similar quality of leather used by the Brazilian, Chinese and Vietnamese exporters (see recital 87).
- (124) Other adjustments, including such concerning transport and insurance pursuant to Article 2(10)(e) of the basic Regulation, were made in all cases where they were found to be reasonable, accurate and supported by evidence.
- (125) Certain interested parties argued that USD/EUR exchange rate fluctuations impacted on the dumping margins found and warranted an adjustment. This claim had to be rejected. Under Article 2(10)(j) of the basic Regulation such adjustment can only be granted where a sustained movement in exchange rates has taken place. Where exchanges rates fluctuate freely, as is the case for the USD/EUR rate, they regularly move up- and downwards. No sustained movement can be identified in such case and accordingly no adjustment can be granted.

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

##### 2.4.1. *Determination of dumping for Golden Step*

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

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

(127) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. For all sampled companies one weighted average dumping margin has been calculated in the PRC. This dumping margin was attributed to all other exporting producers in the PRC.

(128) The country-wide level of dumping for the PRC was established at a range between 35 % and 38 % of the CIF Union frontier price, depending on the calculation method used for Golden Step as explained in recital 115.

(129) In view of what was concluded regarding the selection of the analogue country, a dumping calculation was also performed using the methodology stated above, except that Brazilian normal values were replaced by those of the cooperating Indonesian producers. This calculation resulted in a dumping margin ranging between 19 % and 22 %, depending on the calculation method used for Golden Step.

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

(130) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. Since none of the sampled companies had been granted MET, one weighted average dumping margin has been calculated in Vietnam. This dumping margin was attributed to all other exporting producers in Vietnam.

(131) The country-wide level of dumping for Vietnam was established at 43,8 % of the CIF Union frontier price.

(132) Similarly to the PRC, a dumping calculation was also performed using the methodology stated above, except that Brazilian normal values were replaced by those of the cooperating Indonesian producers. This calculation resulted in a dumping margin of 28,4 %.

#### 2.6. **Conclusion on continuation of dumping from the countries concerned**

(133) Certain interested parties argued that exports from the countries concerned between the imposition of definitive measures in April 2006 and the end of the RIP had fallen. It was argued that this decrease reflected falls in production

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and production capacity in the PRC and Vietnam which were due to the imposition of the definitive measures, a switch in production from the PRC and Vietnam to other countries or increase in their domestic sales. A further claim was that import prices had either increased or remained stable. The parties claimed therefore that import volumes and prices could not justify the finding of a continuation of dumping at significant volumes during the RIP.

(134) These arguments do not change the finding that substantial dumping margins were found for the RIP and that those margins cover large volumes of imports with large Union market shares. It was therefore concluded that a continuation of dumping has taken place in respect of the product concerned originating in the PRC and Vietnam.

### 3. DEVELOPMENT OF IMPORTS FROM THE PRC SHOULD MEASURES BE REPEALED

#### 3.1. **General remarks**

(135) The likely development of imports from the PRC was analysed in terms of both expected prices and volumes.

(136) As a starting point prices were established for the RIP. Data were available from the sampling returns (received from 58 cooperating exporting producers) which contained sales prices for the domestic market and export prices both to the Union market and to third country markets. This information was used as it was deemed to be the best source of price information available for the product concerned for the purpose of comparing price indications on various markets. These data were deemed representative because they covered 22 % of imports to the Union market. Export prices to the Union included in the sampling returns were cross-checked with statistical information available to the Commission, even if the statistical information could not be used for price comparisons as it did not cover Chinese domestic sales and exports to third countries.

(137) Although Eurostat based data was another reliable source it did not provide, as already explained in recital 67, the possibility of comparing prices on different markets.

(138) Prices on the Union market were obtained from Union producers' sampling data. The investigation established that these average prices were of comparable types to the imported footwear because:

- they concerned the like product,
- they were at the same level of trade,
- they were at comparable incoterms,
- they involved comparable quantities.

(139) The impact of certain new developments since the end of the RIP was also analysed because it was considered significant enough to affect the likelihood

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of continuation of dumping. Such analysis was also requested by interested parties.

**3.2. Relationship between prices in the Union and the PRC**

(140) Sampling returns indicated that the Chinese domestic prices established on the basis of exporters' own data were lower than prices on the Union market. It should, however, be noted that the data of all non-sampled companies (including data relating to any domestic sales) could not be verified. A detailed analysis of domestic prices in the PRC could therefore not be performed. Moreover, it was not deemed necessary, given the overall finding of continuation of dumping.

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

(141) Sampling returns indicated that the prices achieved by the Chinese co-operators on major third country markets were lower than prices prevailing on the Union market. This again indicated that Chinese producers could export larger quantities to the Union. Should measures be allowed to lapse it would be more profitable for Chinese exporting producers to redirect their exports to the Union. However, these data on prices achieved by the Chinese co-operators on major third markets could not be verified and therefore this analysis was not pursued further

(142) Certain interested parties claimed that other markets had become more attractive than the Union market. To support this claim one party submitted an analysis of the Chinese customs statistics. However, the Commission's analysis has shown that, apart from the United States' market, the Union market remains the most attractive market for the Chinese exporters. In fact, exports increased over the period covered by this party's analysis (i.e. 2005 to 2008). Should the anti-dumping duties be repealed, the Union market would become even more attractive and volumes would therefore likely increase.

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

(143) The sampling returns received from the 58 Chinese cooperating companies show that export prices to major third country markets are below the prices they achieve on the domestic market. However, these data could not be verified and therefore this analysis was not pursued further.

(144) In addition the level of the export prices to third countries compared to the Brazilian normal value indicated that those export prices are generally substantially lower. However, again for the reasons explained in recital 140, these data could not be verified and therefore this analysis was not pursued further.

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(145) In conclusion the available data indicated a likelihood of continuation of dumping.

### 3.5. **Unused capacities and stocks**

(146) All Chinese companies in the sample operated a production to order system and therefore their stocks were of finished goods awaiting despatch. The production to order system is used because the footwear sector has to adapt to new fashions each season based on orders from customers and cannot use sales from stocks. Therefore, as companies had no real stocks, that element could not be considered as a meaningful indicator for the analysis of likelihood of continuation of dumping.

(147) The investigation established that unused capacities of all 58 cooperating Chinese companies accounted for about 9 % of their total production capacity of footwear. This quantity would correspond to 14.5 million pairs for the 58 co-operators or around 65 million pairs for all exporting producers. The latter figure is around 10 % of total Union consumption (as given in table 3).

(148) The likely use of this spare capacity was analysed. Given the aforementioned differences between the price levels in the Union, on the Chinese domestic market and in third countries, Chinese companies are likely to have an incentive to use spare capacity for exports to the Union. Another factor, which makes the Union market attractive for the Chinese exporters, is its size.

(149) Furthermore, it should be pointed out that the existing assembly lines can be used to produce other kinds of footwear such as STAF and shoes with textile uppers as well as the product concerned. The companies sampled and the other co-operators in China produced large quantities of footwear which is not the product concerned. The current split between production of the product concerned and other footwear depends on the requirements of consumers and the ordering and sourcing policies of the Union importers. However should the measures be repealed the Union importers would surely reassess their sourcing policies and may order a greater proportion of the product concerned from Chinese producers. This could result in an increase of the quantities of the product concerned exported to the Union.

### 3.6. **Circumvention and absorption practices**

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

### 3.7. **Conclusion**

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- (151) The investigation has shown that should measures be repealed there would be a likelihood of continuation of dumping. This conclusion is based on the attractiveness of the Union market in terms of volume as well as on price comparisons between the Union, Chinese and third country markets.
- (152) Furthermore, a number of factors including the relative levels of prices, the availability of spare capacities, circumvention and the ability to switch from the production of other footwear to the product concerned provide evidence for a likely increase in imported quantities if measures are repealed. On the other hand, other factors such as the world economic crisis and a tendency to switch production to other countries will inevitably reduce imported quantities to some extent. These factors are further analysed in section 5 (developments following the RIP) below.
- (153) It is concluded that imports from the PRC will continue to enter the Union market in large volumes and that such volumes will be sold at low, dumped prices so that there is likelihood of continuation of dumping should the measures be allowed to lapse.
4. DEVELOPMENT OF IMPORTS FROM VIETNAM SHOULD MEASURES BE REPEALED
- 4.1. **General**
- (154) The likely development of imports from Vietnam was analysed in terms of both expected prices and volumes.
- (155) As a starting point prices were established for the RIP. Data were available from the sampling returns (received from 51 cooperating Vietnamese exporting producers) which contained sales prices for the domestic market and export prices both to the Union market and to third country markets. This information was used as it was deemed to be the best source of price information for the product concerned for the purpose of comparing price indications on various markets. These data were deemed representative because they covered 82 % of imports to the Union market. The Union sales prices included on the sampling returns were cross-checked with statistical information (Taric data) available to the Commission. However, the statistical information could not be used for price comparisons as it did not cover Vietnamese domestic sales and exports to third countries.
- (156) Although Eurostat based data was another reliable source it did not provide, as already explained in recital 67, the possibility of comparing prices on different markets.
- (157) Prices on the Union market were obtained from Union producers' sampling data. The investigation established that these average prices were of comparable types to the imported footwear because:
- they concerned like products,

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- they were at the same level of trade,
- they were at comparable incoterms,
- they involved comparable quantities.

#### 4.2. **Relationship between prices in the Union and Vietnam**

(158) Sampling returns indicated that the Vietnamese domestic prices established on the basis of exporters' own data were lower than prices on the Union market. It should, however, be noted that the data of all non-sampled companies (including data relating to any domestic sales) could not be verified. A detailed analysis of domestic prices in Vietnam could therefore not be performed. Moreover, as in the case of the PRC, it was not deemed necessary, given the overall finding of continuation of dumping.

#### 4.3. **Relationship between export prices to third countries and the price level in the Union**

(159) According to data from the Vietnam General Statistics Office and the Vietnam General Department of Customs (2008 calendar year) around 50 % of Vietnamese footwear exports are dispatched to the Union market. Further, the sampling information received shows that during the RIP the cooperating exporters also sold very large volumes on third country markets.

(160) Sampling returns indicated that the prices achieved by the Vietnamese co-operators on major third country markets were lower than prices prevailing on the Union market. This indicated that Vietnamese producers could export larger quantities to the Union.

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

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

#### 4.5. **Unused capacities and stocks**

(162) All Vietnamese companies in the sample operated a production to order system and therefore their only stocks were of finished goods awaiting despatch. The production to order system is employed because the footwear sector has to adapt to new fashions each season based on orders from customers and cannot utilise sales from stocks. It is therefore considered that stocks are in this case not a very strong indicator.

(163) The investigation established that unused capacities of all 51 cooperating Vietnamese companies account for about 17 % of their total production capacity for footwear. This quantity would correspond to 34 million pairs for the 51 co-operators or around 42 million pairs for all exporting producers. The latter figure is around 6 % of total Union consumption (as given in table 3).



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- (164) The likely use of this spare capacity was analysed. Given the aforementioned differences between the price levels in the Union and on third country markets, Vietnamese companies are likely to have an incentive to use their spare capacity for exports to the Union. This conclusion is supported by the attractiveness of the Union market in terms of its size.
- (165) Furthermore, it should be pointed out that the existing assembly lines can be used to produce other kinds of footwear such as STAF and shoes with textile uppers as well as the product concerned. The companies sampled and the other co-operators in Vietnam produced large quantities of footwear which was not the product concerned. The current split between production of the product concerned and other footwear depends on the requirements of consumers and the ordering and sourcing policies of the Union importers. However should the measures be repealed the Union importers would reassess their sourcing policies and may order a greater proportion of the product concerned from Vietnamese producers. This could result in an increase of the quantities of the product concerned exported to the Union.

#### 4.6. **Conclusion**

- (166) In addition to the continuation of dumping at high levels the investigation has shown that should measures be repealed there would be a likelihood of continuation of dumping. This conclusion is based on the attractiveness of the Union market in terms of its size and price levels.
- (167) Furthermore, a number of factors including the relative levels of prices, the availability of spare capacities, and the ability to switch from the production of other footwear to the product concerned provide evidence for an increase in imported quantities if measures are repealed. On the other hand, other factors such as the world economic crisis and a tendency to switch production to other countries will inevitably reduce imported quantities to some extent. These factors are further analysed in section 5 (developments following the RIP) below.
- (168) It is concluded that imports from Vietnam will continue to enter the Union market in large volumes and that such volumes will be sold at low, dumped prices so that there is likelihood of continuation of dumping should the measures be allowed to lapse.

#### 5. **DEVELOPMENTS FOLLOWING THE RIP**

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

##### 5.1. **The worldwide economic crisis**

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

**5.2. Developments in import volumes and prices following the RIP**

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

**5.3. A switch in the sourcing of Union imports from the PRC and Vietnam to other countries**

- (172) Some parties argued that exports of the product concerned originating in the countries concerned would fall because of a switch in sourcing away from the PRC and Vietnam to other countries such as Indonesia, Cambodia and India. It was argued that the process began after the imposition of measures in April 2006 and would continue if measures were re-imposed following the current review. Other reasons for such a switch were also mentioned, most notably rising production costs. For China they were alleged to be due to rising labour, energy and local materials costs, as well as environmental and labour legislation. An increase in the value of RMB was also brought up as a possible cause of the switch to other countries. For Vietnam it was alleged that there was a switch of sourcing to other countries because of increasing labour costs together with the loss of the 3,5 % GSP duty benefit on imports to the Union. Furthermore, it was argued that the switch of sourcing away from China and Vietnam was made attractive due to footwear production competitiveness improvements in the countries that are the new source. It was also argued that the switch was made easier by the fact that many producers in the countries concerned were owned or controlled by companies in other parts of South East Asia, such as Taiwan or Hong Kong and because sourcing of footwear for the Union market is controlled by large Union importers, who have the means to easily change their sources of supply whenever necessary.

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- (173) For the PRC, although it was apparent that some exporters have relocated and might further relocate to reduce their costs, the relocation was sometimes to other parts of the PRC (away from the coastal provinces which formed the traditional footwear production base). Such a move would not, in itself, lead to a reduction in production and exports from the PRC.
- (174) As regards Vietnam, it is not considered likely that the 3,5 % duty increase resulting from GSP graduation is of a magnitude such as to prompt significant relocation of production. Whilst it cannot be excluded that this graduation may have some impact on export volumes from Vietnam, it is unlikely to considerably affect the sourcing decisions of large Union importers. It is recalled that despite the imposition of anti-dumping duties much higher than 3,5 %, both Vietnam and China maintained high levels of import volumes into the Union.
- (175) It is therefore considered that any relocation of production would not be of such a magnitude as to radically change importers' sourcing decisions.
- (176) As regards imports from other countries into the Union, it was found that, after the anti-dumping measures were imposed, they did increase from certain Asian countries. This, however, does not alter the fact that the product concerned continued to be imported from the two countries under investigation into the Union in very significant volumes and at dumped prices.

#### 5.4. **Development of Chinese domestic consumption**

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

#### 5.5. **Conclusion**

- (179) The economic crisis is having a downward influence on imports into the Union from the countries concerned. It is however not unreasonable to assume that a recovery will follow at some stage, which would then result in increased sales volumes. Even if the highest forecast of a 25 – 30 % fall materialized over 2009 as a whole, volumes from the PRC would still reach over 80 million pairs and achieve a Union market share of above 10 % and volumes from Vietnam would still reach around 48 million pairs and achieve a Union market share of around 7 %.

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- (180) As regards a switch of sourcing of Union imports, it was found that the relocation observed to date has not had a determinative effect, and there is no indication that there would be in the near future any major change in the trends observed so far.
- (181) Exports from the countries concerned to the Union have continued to be made at dumped prices during the RIP. In view of the economic crisis and the (expected) contraction in demand, and in the absence of any information on import prices during the post-RIP pointing to the contrary, it does not seem unreasonable to predict that exports will continue to be made at dumped prices.
- (182) In light of the above findings concerning both the RIP and post RIP developments it is concluded that there is a likelihood of continuation of dumping.

#### **D. COMMENTS FROM INTERESTED PARTIES FOLLOWING DISCLOSURE**

- (183) A number of comments were received following disclosure of the findings. However, none of these were such to alter the conclusions. The main arguments raised were as follows.
1. CHOICE OF ANALOGUE COUNTRY
- (184) Several parties reiterated comments they had made in the course of the investigation regarding the choice of analogue country. They restated, *inter alia*, the view that Brazil was not an appropriate choice because of high protection through tariffs and non-automatic licenses, higher socio-economic development than China and Vietnam, assumed specialisation in women's footwear, and alleged dumping practices. The Commission had already taken note of these arguments, and addressed them thoroughly in the disclosure and in recitals (68)-(108) of this Regulation. The analysis clearly showed that Brazil was the most appropriate choice as analogue country in this case.
2. REPRESENTATIVENESS OF THE SAMPLE
- (185) Some interested parties claimed that the sample of exporters was less representative than reported in recital 15 and 18, because the dumping margin was calculated on the basis of 4 of the 12 months of the RIP. It is recalled, that this is the methodology of calculation normally used by the Commission in expiry reviews, where it should be determined whether there is continuation of dumping or a likelihood that dumping will recur. The investigation on spot ensured that the 4 months were representative of the full 12 month period. This was achieved by comparing costs and prices of the 4 months data supplied with the remaining 8 months. In addition the 4 months selected were the last month of each quarter and therefore evenly spread over the 12 month period. The Commission does not therefore agree that the method applied reduced the representativeness of the sample.

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### 3. PRODUCT CLASSIFICATION AND COMPARABILITY

(186) It was claimed by certain interested parties that by correcting mistakes on PCNs made by the cooperating exporters, as mentioned in recital 59, the Commission has changed the methodology used in the original case. This allegation is unfounded. It was precisely in order to use the PCN system adopted in the previous case that the Commission corrected PCN classification errors made by some exporters.

(187) It was alleged by certain interested parties that there was an insufficient level of direct matching of PCN's and that the method resorting to closely resembling PCNs is flawed. This claim cannot be accepted. This system was applied already in the original investigation. In the specific disclosures sent to parties in the present investigation, the Commission attached the correlation tables where the use of each resembling PCN was explained. The use of closely resembling PCNs ensures a fair comparison between Brazilian models and models sold by the export countries. Moreover, where necessary, the normal values stemming from resembling PCNs were properly adjusted. Furthermore, no party made any comment on a possible inaccuracy of a most resembling PCN used.

### 4. CALCULATION OF DUMPING

(188) Some parties stated that the calculation of dumping using Indonesia as analogue country was flawed, because the data used were neither verified nor properly adjusted. The Commission has examined the data presented by Indonesian companies, the use of which was suggested by several parties. As no adjustments were claimed, the Commission did not deem necessary to apply any. In any event, it is recalled that in this particular case Indonesia was used only to cross-check the finding based on Brazil.

### 5. LIKELIHOOD OF CONTINUATION OF DUMPING

(189) Several parties argued that the decrease in import volumes from China and Vietnam between 2005 and 2008 (which continued after the IP) and the increase of import prices in the same period suggest that there is no likelihood of continuation of injurious dumping. It is recalled that imports from China and Vietnam have more than 28 % market share in the Union in the RIP, which is very substantial. It is noted that in absolute figures import volumes from China and Vietnam were in the RIP larger than in the OIP, for which already injurious dumping had been established. Furthermore, the analysis of the sampled exporters' verified data showed that since 2006 prices have decreased.

(190) It was claimed by certain interested parties that production costs in China and Vietnam have increased reducing the competitive threat of the companies. The Commission is of the view that, since China and Vietnam are not market economies, an increase in cost does not necessarily entail a loss of

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competitiveness on the world market. The investigation showed that both countries continued to keep high market shares in the Union market and hence to be a threat.

- (191) Some parties raised that, while the Union accepted that imports fell after the RIP because of the economic crisis, it was not accepted as a decisive point in the likelihood of recurrence of dumping. As was explained in recitals 179 to 180 this was not accepted as a decisive point because the post RIP volumes are still very high and have a large Union market share at dumped prices. Clearly, these are indicators that they are very likely to continue to be dumped in the future in significant volumes.
- (192) Some parties contested the attractiveness of the Union market and claimed that other destinations, in particular the United States and, partly, Russia, are at least of equal interest to Chinese and Vietnamese exporters. It was also mentioned that submissions of a party regarding expected substantial growth of the Chinese market itself was not duly considered. The Commission examined this matter and found that the Union market remains one of the most attractive markets for the Chinese exporters. Should the anti-dumping duties be repealed, the Union market would become even more attractive and volumes would therefore likely increase. As regards the expected growth of consumption in China, the Commission looked into the elements provided by this party, but considered these insufficient to alter the conclusions. Even if this growth can be anticipated, there is no substantiated evidence that the growth would be of such magnitude to lead to a significant reduction of exports. On these grounds this argument had to be rejected.

## **E. DEFINITION OF THE UNION INDUSTRY**

### **1. UNION PRODUCTION AND STANDING**

- (193) The review request was lodged by the CEC on behalf of Union producers representing more than 25 % of the Union production of the product concerned during the RIP.
- (194) One interested party claimed that a number of the members of the CEC presumably supporting the complaint have themselves started to import large volumes from the countries concerned. It was also claimed that a significant 'real' production no longer took place in the Union. No evidence was provided in this regard to substantiate this allegation.
- (195) In this context, all available information, including information provided in the complaint, data collected from Union producers and national associations before and after the initiation of the investigation, as well as general production statistics was used in order to establish total Union production and the support for the investigation. The investigation revealed that none of the complaining Union producers should be excluded from the definition of Union production because, based on information obtained through the

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complainant, none of them were found to be related to exporting producers in the countries concerned and imports from the countries concerned, if any, were minimal. For each company concerned those imports constituted at the most 25 % of its production in the Union.

- (196) As detailed under recital 23 and onwards, one of the companies included in the Union industry sample was found to have discontinued production in the Union in the period considered. It was considered whether this company should be excluded from the definition of Union industry. However, the weight of this company was minimal in terms of overall production as well as in relation to the rest of the sample<sup>(7)</sup>. Therefore, even if this company was excluded, there would be no change in the overall picture in terms of standing.
- (197) Overall, the investigation has shown that there continues to be a significant leather footwear production in the Union, established in several Member states employing around 262 000 people. The footwear production sector is constituted of around 18 000 SME mainly situated in seven European countries with a concentration in three major producing countries.
- (198) The investigation did however reveal that two companies belonging to the same group were found to be related to exporting producers in the PRC and the group was also itself importing significant quantities of the product concerned, including from its related exporters in the PRC. Therefore, these companies were excluded from the notion of Union production in the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (199) Based on the above it was found that overall production of the Union Industry in the meaning of Articles 4(1) and 5(4) of the basic Regulation was 366 million pairs during the RIP.
- (200) Considering that the Union producers supporting the request accounted for more than 25 % of the total production and in the absence of opposition equal to or larger than that magnitude, it is therefore concluded that the request is supported by a major proportion of the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

## 2. DEVELOPMENT OF UNION PRODUCTION STRUCTURES

- (201) The data of the present case refers to an enlarged Union of 27 Member States rather than the 25 countries examined in the original case. Romania, which joined Union in 2007, is a significant producer. However, an important part of its output is rather transformation of raw material against a service fee ('toll manufacturing') for other companies in the Union. The impact of the genuine Romanian production on the overall picture of Union production and other indicators is therefore limited. The same limited impact can be attributed to Bulgaria. Enlargement has thus not had a significant effect in this regard.
- (202) The footwear sector in the Union is characterised by networks of micro (employing less than 10 persons) and small enterprises. Companies of more

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than 500 employees are exceptions and employ only a limited portion of the overall workforce in the sector. Micro and small enterprises have the advantage to be more flexible and adaptable to changes of market demand, but on the other hand, they are financially more vulnerable to the international competition and to the economic downturn.

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



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reduction in the number of producers on the market, as would otherwise have been expected.

## F. SITUATION OF THE UNION MARKET

### 1. CONSUMPTION IN THE UNION MARKET

TABLE 3

#### Union market Consumption

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

(209) Apparent consumption decreased by 7 % during the period considered, i.e. from 725 million pairs in 2006 to 675 million pairs during the RIP.

(210) The decrease in consumption has to be seen in conjunction with a parallel increase of consumption of other types of shoes outside the product scope (e.g., textile, rubber & plastic). By reference, textile, rubber and plastic shoes consumption increased by 23 % in the same period. This appears to point to some substitution amongst the two product categories, linked also to fashion trends (penetration of mixed synthetic/leather shoes, or synthetic shoes which resemble leather). Considering however, that the increase in consumption of other footwear is far higher (23 %) than the decrease in consumption of leather footwear (7 %), it can however not be concluded that textile and other materials have substituted leather footwear to more than a limited degree. Furthermore, average import prices of other footwear is half of that of leather footwear and this price difference makes it clear had there been large interchangeability between the two types, the far more expensive leather footwear segment would have been obliterated. On the contrary, a publicly available market study<sup>(8)</sup> underlines that leather shoes will have a continued strong position in the market. In fact, it appears that the consumers are now buying almost as many leather shoes as before, but in addition they are purchasing significantly more textile and synthetic shoes.

### 2. CURRENT IMPORTS FROM THE COUNTRIES CONCERNED

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

TABLE 4

#### Total import volumes from countries under investigation

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	<b>OIP</b>	<b>2005</b>	<b>2006</b>	<b>2007<sup>a</sup></b>	<b>RIP<sup>a</sup></b>
<b>PRC (000 pairs)</b>	63 403	183 568	157 560	123 016	125 052
<b>Index 2006</b>			100	78	79
<b>Index: OIP=100</b>	100	292	251	195	198
<b>market shares</b>	8,8 %	22,9 %	21,6 %	17,8 %	18,5 %
<b>Vietnam (000 pairs)</b>	102 625	100 619	79 427	62 503	68 852
<b>Index 2006</b>			100	79	87
<b>Index: OIP=100</b>	100	98	77	61	67
<b>market shares</b>	14,2 %	12,6 %	11,0 %	9,1 %	10,2 %

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

- (211) Total Chinese imports decreased from 157 to 125 million pairs during the period considered, or from 21,6 % to 18,5 % of the Union market.
- (212) However as demonstrated above, when comparing to the OIP, a strong increase of imports from China took place after the end of the quota system (1 January 2005), on the basis of low import prices. Import levels decreased after the imposition of measures, stabilising in 2007 and the RIP at over 120 million pairs—almost twice the amount of the OIP import volumes.
- (213) In addition, it should be underlined that an anti-circumvention investigation found that dumped Chinese products were avoiding the duties and undermining the remedial effect of the measures by circumventing the aforesaid measures via Macao within the meaning of Article 13 of the basic Regulation. This shows that the Union market has continued to be very important to Chinese exporting producers.
- (214) Vietnamese imports decreased in the period considered from 79 to 69 million pairs. Notwithstanding this drop of over 13 % as compared to the OIP, import levels remain significant and market shares are roughly stable around the 10 % mark during the RIP.
- (215) Together, imports from China and Vietnam amounted to 237 million pairs in 2006, 185 million pairs in 2007 and 194 million pairs in the RIP. While there was a decrease in volumes in the period concerned, the import levels are still

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higher than those that led to the imposition of measures (166 million). The joint market share of China and Vietnam dropped from 32,7 % to 28,7 % over the period but also in this case, the RIP market share is considerably higher than that of the OIP of 23 %.

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

- (216) 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 Union product.
- (217) In this respect, it was firstly found that the dumping margins established for each of the countries concerned were more than de minimis. In addition, the volume of the dumped imports from each of those countries was not negligible in the sense of Article 5(7) of the basic Regulation. Indeed, the import volume represented for PRC and Vietnam respectively around 18 and 10 % of the Union consumption during the RIP.
- (218) The investigation further showed that the conditions of competition both between the dumped imports and between the dumped imports and the like Union 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 Union industry compete against each other since they are alike in terms of their basic characteristics, interchangeable from the consumer's point of view and distributed via the same distribution channels. In addition, the investigation revealed that for both countries, the volume of imports developed in parallel: both countries decreased their imports by around 10-25 % between 2006 and the RIP. The import prices of those two countries are also in the same order of magnitude. In addition those prices were found to undercut the Union industry's prices at a comparable level of trade.
- (219) On this basis, it is concluded that all conditions of cumulation are met and that accordingly the effect of the dumped imports originating in the countries concerned should be assessed jointly for the purpose of the injury analysis.

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

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TABLE 5

**Price evolution from countries under investigation**

	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>PRC EUR/pair</b>	8,4	8,4	8,5
<b>Index: 2006=100</b>	100	99	103
<b>Vietnam EUR/pair</b>	10,2	9,7	9,5
<b>Index: 2006=100</b>	100	96	94

Source: Eurostat.

- (220) Average prices of Chinese imports in the period under consideration have remained fairly stable, at around EUR 8,4 per pair. This is approximately 20 % higher than the price level of the OIP (EUR 7,2) Average prices of Vietnamese imports have decreased during the period considered, and are in the RIP close to the EUR 9,2 level which was at hand in the OIP. The assessment of the trends of average prices does however not take into account changes in product mix that might have occurred in the period considered.

#### 2.4. **Undercutting**

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

Table 6

**Undercutting margins**

<b>Country</b>	<b>Price undercutting</b>
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Table 6

<b>Undercutting margins</b>	
PRC	31,9 %
Golden Step (PRC)	37,1 %
Vietnam	38,9 %

### 3. IMPORTS FROM THIRD COUNTRIES

#### 3.1. Import volume market share and prices in the RIP

TABLE 7

#### Import volume from third countries

<b>Volume</b>	<b>2006</b>	<b>2007</b>	<b>RIP</b>
India (million pairs)	50	55	56
index: 2006 = 100	100	111	112
Market share	7 %	8 %	8 %
Indonesia (million pairs)	20	29	31
index: 2006 = 100	100	144	158
Market share	3 %	4 %	5 %
Brazil (million pairs)	21	22	21
index: 2006 = 100	100	102	98
Market share	3 %	3 %	3 %
Thailand (million pairs)	11	12	12
index: 2006 = 100	100	108	107
Market share	2 %	2 %	2 %
Tunisia (million pairs)	10	12	12
index: 2006 = 100	100	124	130
Market share	1 %	2 %	2 %
Morocco (million pairs)	10	10	10

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index: 2006 = 100	100	99	98
Market share	1 %	1 %	1 %
Others - (million pairs)	63	67	59
index: 2006 = 100	100	107	93
Market share	9 %	10 %	9 %
Total (million pairs)	185	207	201
index: 2006 = 100	100	112	109
Market share	26 %	30 %	30 %

TABLE 8

**Import values from other third countries**

Values	2006	2007	RIP
India EUR/pair	11,34	11,67	11,98
index: 2006 = 100	100	103	106
Indonesia EUR/pair	9,98	10,06	9,67
index: 2006 = 100	100	101	97
Brazil EUR/pair	15,8	15,78	16,83
index: 2006 = 100	100	100	107
Thailand EUR/pair	12,56	13,54	13,55
index: 2006 = 100	100	108	108
Tunisia EUR/pair	12,76	13,2	13,39
index: 2006 = 100	100	103	105
Morocco EUR/pair	14,6	15,05	14,98
index: 2006 = 100	100	103	103
Others EUR/pair	14,64	14,25	15,26
index: 2006 = 100	100	97	104
Total EUR/pair	13,16	13,07	13,4
index: 2006 = 100	100	99	102

(223) As seen in the above, total imports from third country imports have increased in absolute terms in the period under consideration. Overall imports have gone

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from 185 million pairs in 2006 to 201 million pairs in the RIP and in market share they have increased from 26 % to 30 % in the RIP.

(224) Prices from third countries are however on average 34 % higher than Chinese prices, and 28 % higher than Vietnamese prices.

## G. ECONOMIC SITUATION OF THE UNION INDUSTRY

### 1. PRELIMINARY REMARKS

(225) Pursuant to Article 3(5) of the basic Regulation, the Commission analysed all economic factors and indices having a bearing on the state of the Union industry.

(226) As explained above, considering the peculiarity of the sector and the large number of complainant Union 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 capacity, sales volume, market share, employment, productivity, growth, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the national Union producers associations and individual companies. These factors were cross-checked, where possible, with the overall information provided by the relevant official statistics.
- The analysis of microeconomic elements (stocks, sales prices, cash flow, profitability, return on investments, ability to raise capital, investments and wages) was carried out for the individual companies, i.e. at the level of those Union producers that were included in the sample.

### 2. MACRO-ECONOMIC INDICATORS

#### 2.1. Output, production capacity and capacity utilisation

TABLE 9

#### Production capacity and utilisation

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

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

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- (227) Production decreased by 6 % in the period considered, largely mirroring the decrease in consumption of leather shoes noted for the same period.
- (228) Some interested parties representing importers and retailers claimed, but without providing any evidence, that the decrease in production in the Union would have to be seen as a positive indication rather than a sign that the Union industry continued to suffer injury in the period concerned. According to these parties, the decrease in production has been the consequence of a conscious streamlining process in the Union industry whereby the lower end segment has been abandoned in favour of the medium high end segment in which the Union industry has always been competitive
- (229) In this respect it should however be underlined and as determined already in the original investigation that many Union producers have disappeared because they were not able to compete against dumped imports — not necessarily due to inherent or structural lack of competitiveness. Therefore the allegation that the decrease of the Union production has to be considered as a positive indication is rejected
- (230) One interested party claimed that the fact that the Union industry capacity utilisation had remained stable showed that no injury was taking place.
- (231) As was already concluded in the original investigation the actual capacity in this sector is strongly dependent on the number of workers available rather than the technical capacity of the machines in the production line. For this reason, capacity is best measured by assessing the employment level as detailed below in section 2.3. In any event contrary to the claim made by the parties the investigation demonstrated that capacity utilisation when assessed from the point of view of technical capacity, decreased from 71 % to 66 % in the period considered and the argument that the stable utilisation rate would be a sign of no injury, can therefore not be upheld.

## 2.2. Sales volume and market share

TABLE 10

### Sales volume and market share

	2006	2007	RIP
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<b>Sales (000 pairs)</b>	302 784	298 116	279 865
<b>Index: 2006=100</b>	100	98	92
<b>Market shares</b>	41,8 %	43,2 %	41,5 %
<b>Index: 2006=100</b>	100	103	99

- (232) The Union industry sales decreased in absolute terms by 8 % in the period under consideration. However, in view of the fact that the same period saw a decrease in consumption of 7 %, the Union industry still managed to maintain its market share at a stable rate. When comparing to the situation in the original investigation which saw a drop in sales of 33 % it is also clear that the free fall in sales and market shares have been halted after the imposition of the measures.
- (233) One interested party claimed that no injury existed since the Union industry had increased its market share in the period considered. The investigation has however revealed that the Union industry's market share has seen very small changes in the period considered. Furthermore, as detailed above in section E.2 it would have been expected that the streamlining of production and change in business model would have allowed the companies that remain to materially increase their market presence. The fact that sales of the Union producers have remained flat indicates that the pressure caused by dumped imports continues to be a concern.
- (234) Some interested parties claimed that the fact that the Union industry had not increased its market share since the introduction of duties has shown that the Union industry has not been able to benefit from the duties and that the imported products in any event are not substitutable with the product produced in the Union.
- (235) Again it should be underlined that market share is only one of the indicators examined and that as detailed below under other factors, the investigation has shown that there is significant competition between Union manufactured products and the product imported from the countries concerned. While it is correct that the Union producers have not been able to significantly increase their market share the massive drop in sales seen in the original investigation has been halted and the measures have allowed Union producers to stabilise sales and market share. Further increases in market share appear to have been halted by the price pressure generated materially by dumped imports as seen in recitals 261 - 262.
- (236) Other interested parties claimed that the Union industry has seen a significant improvement in export performance and that injury therefore no longer was at hand.

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- (237) As seen in the table below the investigation has however contrary to this claim, revealed that the exports performance of the Union industry in the period considered showed a slight decrease rather than an increase.
- (238) In any event, it should be noted that exports accounts for only 25 % of the Union producers' sales. The performance in the Union is therefore still by far the most important factor determining the financial situation of Union producers. In addition, the investigation has not shown that an increase in export activity would provoke a drop in the sales in the Union.
- (239) Considering the above, the argument that the improved export performance would have eliminated the injury sustained by the Union industry cannot be upheld.

*Table 11*

**Exports by the Union producers**

	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>Exports by the Union producers (000, pairs)</b>	91 395	89 845	89 739
<b>Index: 2006=100</b>	100	98	98

*Source: Comext.*

**2.3. Employment**

*TABLE 12*

**Employment**

	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>Total employment(in 000)</b>	267	264	262
<b>Index: 2006=100</b>	100	99	98

- (240) Union producers employed around 260 000 persons directly involved in the production of the product concerned in the RIP.
- (241) One interested party claimed that the fact that employment levels in the Union industry had remained stable indicates that injury is no longer sustained.
- (242) In this context it is recalled that the assessment of injury has to be founded on an analysis of all relevant indicators and not only on one factor in isolation. Furthermore, the investigation ascertained that employment of the Union industry decreased slightly (– 2,0 %). The fact that a large part of the Union

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industry has moved towards a cluster system of production has likely been instrumental in allowing the employment levels not to decrease further and allow for the maintenance of important know how in the producing companies

- (243) Another interested party indicated that the lack of available labour force in the Union, rather than competition from imports from the countries concerned was one of the main reasons of the problems facing the Union industry.
- (244) Considering however that no evidence was provided in support of this claim and since the findings of the investigation did not suggest that availability of work force would be a significant problem to Union producers, this argument cannot be upheld.

#### 2.4. **Productivity**

TABLE 13

##### **Productivity**

	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>Productivity</b>	1 461	1 453	1 391
<b>Index: 2006=100</b>	100	99	95

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

#### 2.5. **Growth**

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

#### 2.6. **Magnitude of dumping margin**

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

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

- (248) Anti-dumping measures against imports of certain footwear with uppers of leather originating in PRC and Vietnam were imposed in October 2006. In this period only a partial recovery of the situation of the Union producers has been observed as detailed below.

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### 3. MICRO-ECONOMIC INDICATORS

#### 3.1. Stocks

TABLE 14

##### Stocks

	2006	2007	RIP
<b>(000 pairs)</b>	163	120	198
<b>Index: 2006=100</b>	100	73	121

Source: verified questionnaires replies.

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

#### 3.2. Sales prices

TABLE 15

##### Sales price

	2006	2007	RIP
<b>EUR/pair</b>	26,6	29,5	34,6
<b>Index: 2006=100</b>	100	111	130

Source: verified questionnaires replies.

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

#### 3.3. Cash flow, profitability and return on investments

TABLE 16

##### Cash flow — profitability — R.O.I

	2006	2007	RIP
<b>Cash flow (000 EUR)</b>	7 720	13 101	13 337
<b>Index: 2006=100</b>	100	170	173

Source: verified questionnaires replies.

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<b>% Profit on net turnover</b>	1,3 %	3,4 %	3,0 %
<b>Index: 2006=100</b>	100	261	231
<b>Return on investments</b>	9,5 %	22,8 %	20,5 %
<b>Index: 2006=100</b>	100	240	217

Source: verified questionnaires replies.

(251) The profit levels of the Union industry improved in the period concerned from 1,3 % in 2006 to 3 % in the RIP. The improvement in the profit influenced the evolution of the cash flow and Return of investments. This, however, has to be seen in the light of a significant deterioration and low levels of investment in the original investigation.

(252) Some interested parties argued that the profits of the Union industry had markedly improved and that this profit in fact was substantially higher than the 6 % target profit established in the original investigation. It was thus claimed that injury no longer was at hand, no matter the state of the other injury indicators.

(253) In this context it should be noted that while it holds true that the profitability levels have improved, the investigation has revealed that the Union industry has not been able to reach the target profit of 6 % as determined in the original investigation. A more pronounced increase of profit levels would have been expected not the least when considering the effort of a large part of industry in moving into new business models. This shows that industry is still in a fragile situation from a profitability point of view. The argument that the profit levels would be such as to indicate that the Union industry no longer suffers injury must therefore be rejected.

#### 3.4. Ability to raise capital

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

#### 3.5. Investments

TABLE 17

<b>Investment</b>	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>(000 EUR)</b>	9 019	13 777	20 979

Source: verified questionnaires replies.

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<b>Index: 2006=100</b>	100	153	233
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Source: verified questionnaires replies.

- (255) While investments did see an increase in the period considered, in absolute terms it still represented only 6 % of the turnover in the RIP. In addition, this increment is influenced by exceptional investments made in buildings by one of the sampled Union producers. Otherwise, the level of investment would be stable during the reference period and at low levels. Again, this has to be seen in the light of a significant deterioration and low levels of investment in the original investigation.

### 3.6. Wages

TABLE 18

#### Wages

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

Source: verified questionnaires replies.

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

## 4. CONCLUSION ON INJURY

- (257) As seen from the above, not all factors listed in the basic Regulation were found to have a direct bearing on the state of the Union footwear industry for the determination of injury. In particular, considering that production takes place on order, stocks are normally either not held or only consist of completed orders not yet delivered/invoiced and were therefore found to have very little meaning in the injury analysis. Similarly, since the sector continues to remain labour intensive, the production capacity is not technically limited and mainly depends on the number of workers hired by the producers.

- (258) The analysis of the macro indicators with a more direct bearing on the state of the Union industry shows that Union production as well as sales

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volume has decreased at approximately the same rate as Union consumption in the period considered. The sales, market share and employment of Union producers have thus remained stable. Productivity has seen a decrease but only moderately. Overall, while it would have been expected that the move to a new business model would have enabled an increase in sales and production of the Union producers that remain it is also clear that the economic free fall that industry was suffering before the imposition of the measure has been halted since the imposition of measures. This has also allowed a large part of the Union industry to change business model by way of streamlining production processes through the development of specialised clusters, moving up in the product segment as well as changing focus from wholesale distribution to direct supply to retail.

(259) An analysis of the relevant micro indicators also supports the partial recovery of the Union industry showing an increase in sales prices, cash-flow investment, and profit. The industry has however still not been able to recover to normal profit and investment levels and have still problems in raising capital and in salary development showing that the situation is still fragile and that injury has not been totally removed.

(260) Overall, the investigation has revealed that the Union industry continues to suffer material injury.

## 5. IMPACT OF DUMPED IMPORTS FROM THE COUNTRIES CONCERNED AND IMPACT OF OTHER FACTORS

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

(261) While the combined import volumes from the countries concerned have seen a decrease in the period considered, the volumes in the RIP still far exceed those in the original investigation. In the case of China the levels are almost twice of those seen in the OIP and while import volumes of Vietnam have decreased in the same period, their presence on the market is still significant with a market share of around 10 %.

(262) An analysis of the prices of imports from the countries concerned in the period considered, shows that prices of Chinese imports have remained stable while Vietnamese prices have decreased. When compared to prices in the OIP, Chinese prices have increased by around 20 % but prices of the Vietnamese are close to those found in the OIP. Notwithstanding differences in product mix and level of trade considerations, it is clear that average imports prices of EUR 8,6 for the PRC and EUR 9,51 from Vietnam continue to cause major concern to the Union producers whose average sales prices are well above EUR 30. This becomes even more evident when looking at the undercutting levels that have seen a drastic increase when compared to the OIP. For China undercutting levels have increased from 13,5 % to 31,9 % in this period and for Vietnam the equivalent increase is from 15,9 % to 38,9 %.

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

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

5.3. **Impact of other factors**

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

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

(265) Some interested parties maintained that there is no link between imports from the countries concerned and the performance of the Union industry. In particular it was held that there was no substitution between the like product produced in the Union and the product concerned. According to these parties there is no competition between Union produced leather shoes and those imported from China and Vietnam as the former tend to operate in the mid to high end market segment while the latter is mainly destined for the mid to low end segment. The fact that the Union industry was not able to regain market share following the imposition of the measures was held forward as evidence in this regard. The general improvement as concern the other injury indicators would instead be the consequence of the change in business model by the Union industry whereby a reduction of production and shift towards higher value added production mitigated the injury previously suffered for part of the Union industry. The difficulties experienced by the other group of Union producers was held to be caused by the failure to adapt rather than to dumped imports from the countries concerned.

(266) The investigation has shown that although part of the Union industry has also been moving upmarket, it still occupies some parts of the low bracket and large parts of the medium segment. When looking at the dumped imports, these cover not only the low segment, but also the medium segment—and in some cases, even the higher segment. There is in other words substantial competition between the leather shoes produced in the Union and those imported from the countries concerned.

(267) There had also been claims that there was no competition between the Union producers and the exporters concerned as the Union producers are concentrated on niche products and do not supply a full range of speciality shoes such as hiking, bowling, and orthopaedic shoes. In this context it should however be noted that these speciality shoes only form as small part of the product concerned and the impact can therefore not be significant. In any



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event, the investigation has shown that contrary to the claim, these speciality shoes are produced in the Union albeit in limited quantities and these are in direct competition with the imported speciality shoes. Furthermore and as detailed above, there is now an increase in competition between many of these speciality shoes and the classical 'brown shoe' traditionally produced by the Union industry.

(268) As concerns the comparison of Union production and imports from the countries concerned as per the age and gender, the investigation showed that there is substantial production in the Union of men, women and children's shoes. The focus would be on women's shoes making up around 55 % of production while men and children's shoes would be 35 % and 10 % respectively. When looking at the breakdown in age and gender for shoes imported from the countries concerned the figures would be different with higher focus on in particular children shoes at around 25 %. Notwithstanding these variations, it is clear that all three categories are sold in the Union market in significant quantities by the Union industry as well as by exporters.

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

(269) One party, representing Consumer interests maintained that the alleged dumping has had no impact on the situation of the Union industry but that the trend of globalisation and the shifting of production to lower cost countries rather than unfair trade lays at the heart of job losses and factory closures in the Union.

(270) Several other interested parties also pointed out the inability of the Union industry to benefit from the measures and the effect of the change in business model amongst Union producers as evidence in support of the claim that there is no link between imports and the Union industry performance.

(271) According to these claims, the Union industry is structurally incapable to compete in the mass production market largely due to lack of the necessary labour force and the cost thereof. As a consequence, a significant part of the Union industry has moved to a new business model and have invested in product innovation and upgrading so as to move focus from mid- to low-end product segment to the mid- to high-end and luxury segment. These companies that have focused on niche products with higher added value are also showing a good level of performance. Conversely, those companies that have failed to respond to globalisation are continuing to demonstrate poor results. According to this line of argument, the situation of the Union producers should thus be considered to be the consequence of their business strategy and is not linked to imports from the countries concerned.

(272) As seen above in section E.2 and G.4 the investigation has indeed revealed a heterogeneous picture of the Union industry. Parts of the industry are producing unbranded footwear in the mid- to low-end of the product segment

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and are selling through wholesalers rather than directly to retail. But this does not mean that these companies are inefficient by nature. What is clear from the investigation is that, irrespective of their competitive position, their difficult situation is being materially caused by dumped imports. As a consequence they are in an extremely difficult financial situation and their state has deteriorated sharply during the period considered. Many of these companies are making efforts to reorient to the mid- to high-end segment and to change distribution channels but the current pressure caused by dumped imports makes this development extremely difficult.

- (273) Notwithstanding their marked improvement and adaptation of business model, those companies that have redefined business model do not reach the target profits of 6 % as established in the original investigation. This shows that also this group is affected by the overall downward pressure exerted across all segments as a consequence of the dumped imports. It is therefore likely that this group would have been able to recover fully had they not been faced with the downward pressure on price caused by continued (and even increased) imports of dumped leather footwear.
- (274) The fact that even the companies that have moved to a new business model are still affected by the injurious dumping despite being highly efficient in terms of pooling of resources and specialisation, would suggest that lack of efficiency and structural problems within the industry is not breaking the link between the dumping and the injury sustained.

### 5.3.3. *Impact of imports from third countries*

- (275) Several interested parties have indicated that the growing footwear industry in other third countries has dramatically increased exports to the Union. In this respect it has been claimed that imports from third countries had a significant impact on the situation of the Union industry during the period considered and would be equally important when analysing the likely continuation or recurrence of injury should measures be discontinued. According to these parties the termination of the measures would affect the balance of imports between imports from the countries concerned and imports from other countries since there is substitution between these sources. The termination of measures would therefore have no effect on the Union industry.
- (276) In this respect the investigation has shown that imports from third countries with low prices such as India and Indonesia are large and increasing. The footwear sector is to a large extent organised in international groups having different production bases in different countries. This allows for a certain degree of flexibility to shift production once a production base is established in other countries. The investigation has shown that the establishment in a new country could be done in one to two years.
- (277) In terms of market share, the shares lost by China and Vietnam may have been taken over by other exporting countries — in particular by India and

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Indonesia. However, the effect of their prices is not comparable to the effect of prices of imports from China and Vietnam. While not taking into account differences in product mix the difference in price is particularly stark in the case of India, where the average export price is 25,8 % higher than the average export price of shoes imported from Vietnam and 40,3 % higher than the average export price of shoes imported from China. Therefore their effect on the Union industry is significantly less pronounced. The average export price of shoes imported from Indonesia is 13,2 % higher than the average price of shoes imported from China and comparable to the average export price of shoes imported from Vietnam. Nevertheless the volumes of Indonesian imports would still mean that their relative impact would be limited. Having regard to the above, the relative volumes and higher prices of imports from other Asian countries do not allow to conclude that their effect would be sufficient to breach the link between the injury suffered by the Union industry and the large volumes of dumped imports from China and Vietnam.

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

- (278) It has also been claimed that the poor performance of the Union industry should not be linked to imports from the countries concerned but rather to a decline in consumption in the Union. This decline in consumption would allegedly be linked to changes in fashion trends that have moved from formal towards more casual footwear. Accordingly, the consumer has switched preference in favour of low price segment typically represented by imports from third countries.
- (279) In this context the investigation has shown that there has been a decrease in consumption of product concerned. However, if there had been full substitutability between leather shoes and other materials, this decrease would have been much more pronounced. The decrease in consumption and changes in consumer preference would therefore not on its own appear to be a factor that would break the causal link.
- (280) The investigation has also shown that the retail of shoes has diversified from the traditional shoe shop to a number of new outlets including department stores, general apparel shops as well as super/hyper markets, which account for a very significant amount of sale, possibly exceeding 40 %.
- (281) It has also been argued that this highly competitive scenario exerts a downward pressure on prices and that this effect has had a higher impact on the Union industry than the dumped imports. While pressure from the retail sector as such cannot be ruled out as a factor that may have had an impact on the Union industry it must however be borne in mind that also this structure is dependent on finding suppliers that can supply at such low prices. The large volumes of dumped products have most certainly been a key factor in developing and maintaining this price pressure. Furthermore, the fact that the

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Union producers have managed to increase prices would also indicate that the impact of the changes in the retail structure is not such as to break the link between the injury and the dumped imports.

5.3.5. *Impact of the Union producers' export performance*

(282) The poor export performance of the Union industry linked to the strength of the EURO against the USD was also put forward as a cause of the injury suffered by the Union industry and that therefore as such had to be distinguished from the effects of imports from the countries concerned.

(283) However, a comparison of overall domestic prices with overall exports would rather suggest that the export prices of Union producers have gone up by around 12 % in the period considered and that these prices, during the RIP were around 20 % higher than the domestic prices. Export volumes have remained stable and absorb ca. 25 % of production. Considering that the investigation has shown that the export performance of Union producers has only seen a small decrease, the argument that export performance would be the cause of injury to the Union can not be sustained.

5.4. **Conclusion on impact of other factors**

(284) As seen from the above, several interested parties have claimed that factors other than the dumped imports have been the major cause of injury to the Union industry.

(285) The relevant other factors have been identified and carefully analysed. However, the facts of the case show that none of the other known factors in isolation or seen together would be such as to break the causal link between the dumped imports and the injury suffered by Union producers

H. **LIKELIHOOD OF CONTINUATION OF INJURY**

1. **IMPACT OF THE PROJECTED VOLUME AND PRICE EFFECTS IN CASE OF REPEAL OF MEASURES ON THE STATE OF THE UNION INDUSTRY**

(286) In accordance with Article 11(2) of the basic Regulation, imports from the countries currently being reviewed were assessed in order to establish if there was a likelihood of continuation of injury.

(287) With regard to the likely effect on the Union industry of the expiry of the measures in force, the following factors were considered in line with the elements summarised above in respect of the likelihood of continuation of dumping.

1.1. **The PRC**

(288) As concluded above in recital 261-262, imports of large volumes at dumped prices from the PRC have continued during the RIP.

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

## 1.2. Vietnam

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

## 2. ARGUMENTS RAISED BY PARTIES

- (297) A number of interested parties have put forward claims that other factors than dumped imports from the countries concerned would put into question the

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likely effect of dumped imports on the situation of the Union industry in the future.

- (298) The factors brought forward are to a large extent already addressed in the injury section G.5 and would therefore not need to be repeated in this section. Some of the arguments have, however, been linked to post-RIP events and have therefore been subject to additional analysis in terms of their likely future impact.

#### 2.1. **Likely effect of the market downturn**

- (299) Several parties have held that the effects of the economic downturn should be distinguished from the alleged effects of imports as this event must be considered external to the likelihood of continuation/recurrence of injurious dumping. According to these interested parties, the Union industry would be particularly affected by the downturn as the consumer in such circumstances would typically switch to a lower quality/price product as a consequence of the decrease in purchase power.

- (300) The market downturn will most likely lead to a further decrease in consumption of the product concerned. While leather shoes still will have a strong position in the market, sales are likely to go down significantly, more than the 7 % already seen in the period before the downturn.

- (301) It is likely that the economic constraints will make consumers and retailers more sensitive to price and a decrease in purchasing power of the consumer could put a cap on prices at retail level. In turn this could trigger a segment shift (consumers moving from the high/medium segment to medium as well as from the medium to medium/low) and to more repairs. The competition between leather shoes and other cheaper products made of textile and synthetics would under such circumstances most likely increase.

- (302) In short, it cannot be ruled out that the downturn in the market will contribute to the deterioration of the situation of the Union industry given the related consumption and price effects. At the same time however, it is also likely that the economic downturn will magnify the effect of dumped imports even further. The reason for this is that the downturn is likely to put price pressure on all operators, including the exporters from the countries concerned, which may lower their already dumped prices even further. Even lower prices will put pressure also in the mid to high segment and would risk forcing Union producers back towards the mid to low segment. This in turn would lead to even fiercer product competition between Union production and the dumped imports.

#### 2.2. **Likely impact of changes in consumption patterns**

- (303) Several interested parties claimed that any future decline in the performance of the Union industry, if any, would not be linked to imports from the countries concerned but rather to a decline in consumption in the Union. This decline

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in consumption would allegedly be linked, not only to changes in fashion trends that has moved from formal towards more casual footwear but also to the downturn in the market. This event would increase the tendency of the consumer to switch preference in favour of low price segment typically represented by imports from third countries

- (304) A drop in overall consumption would in all likelihood have a detrimental effect on the performance of the Union producers. It can however also be expected that a decrease in purchasing power of the consumer will make the market less responsive to short term fashion-trends leading to a revival of the classical 'brown shoe' which is the segment where the Union industry is the strongest. It can thus not be concluded that a drop in consumption would hit Union produced shoes harder than those imported. Overall, while the Union producers most likely will be affected by a drop in consumption the effect of large volumes of dumped imports from the countries concerned will still be a very significant cause of injury should measures be allowed to lapse.

### 2.3. Likely impact of drop in export performance

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

### 2.4. Likely impact of structural problems and lack of efficiency amongst Union producers

- (307) It has also been argued that the Union producers have had problems benefiting from measures in the past due to the fact that the source of the problems suffered are linked to structural problems and inefficiency in the industry rather than to the alleged dumping from China and Vietnam. According to these claims, the event of the economic downturn will deepen the structural problems in the sector and further dilute the link between the injury suffered and the dumping.
- (308) First and foremost it is recalled that the investigation has shown that, irrespective of their competitive position, the Union producers have been materially injured by the imports of dumped imports. In any event, it should be noted as demonstrated above, that the Union industry while still in a precarious situation has shown at least a partial recovery in the period considered and have been able to maintain a stable market share. Moreover a large part of

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the sector has been able to redefine business model or is trying to through (i) the grouping of resources in clusters making the most of specialisation and allowing the groups to benefit from economies of scale, (ii) the direct sales to retailers and (iii) the production of shoes in the mid-upper and upper segments. It is highly unlikely that the industry would have been able to carry through with this process had the measures not been in place and in any case those which are now in the process of changing their business model will in all likelihood not be able to complete it.

- (309) It can however also be expected that the market downturn will increase pressure and possibly also halt the process for the companies that have still not been able to refocus by way of a change in business model. The situation of these companies will risk deteriorating even further and many companies in this group may even be going out of business as competition intensifies. The companies that have adopted the more advanced business models are not likely to escape the effects of the market downturn either as the prices in the high/medium segment in which they are specialised, also is likely to be subject to an overall downward pressure.
- (310) Nevertheless, as for the assessment of the situation seen in the period considered, it would be difficult to argue that, on its own, the event of the economic downturn would break the causal link with dumped imports. On the contrary, as detailed above in recital 302 downward pressure on price sustained by cheap dumped imports will most likely also, generate a domino effect, forcing an even larger share of the Union production towards the same segment as the dumped imports so as to increase the pressure of the dumped imports on the Union producers. Under such circumstances Union producers would therefore be more dependent than ever on the existence of measures in the future.

#### 2.5. **Likely effects of imports from third countries**

- (311) It was also examined whether imports from third countries would be likely to have an impact on the situation of the Union industry should measures allow to lapse. In this context it has been held that third countries exports to the Union have been constantly growing and that in the wake of higher costs in China and Vietnam and coupled with the economic downturn, these would be the main cause of concern to the Union in the future.
- (312) Bearing in mind the price difference between the dumped imports from the countries concerned and those of third countries it would however rather be likely that Chinese and Vietnamese exports will gain a price edge over imports from third countries. This would in turn point to a relative decrease of such imports in the future. As demonstrated above in sections C.3 and C.4 there are no signs that the Chinese or Vietnamese exporters are likely to withdraw their presence on the Union market. On the contrary, the large capacities at



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hand would suggest that they have an incentive to stay in the market as long as possible.

- (313) In view of the above, imports from third countries would in all likelihood have less of an impact on the situation of the Union industry should measures lapse.

#### 2.6. **Likely impact of fluctuations in exchange rates**

- (314) It has also been argued that the injury to the Union producers is likely to decrease as a result of the appreciation of the USD to the EURO. The fluctuation in currency would push up the prices of the dumped imports that are traded in Euro so as to close the price gap between the dumped imports and Union producer prices.

- (315) In this context it should be noted that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused (or are likely to cause) material injury to the Union industry or whether such material injury (or likelihood thereof) was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause (or are likely to cause) injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

- (316) The likely effect of the dumped imports on the Union industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Union 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.

- (317) 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.

- (318) However, even in the event that this factor were taken into account, given the likely pressure on consumer prices in a context of a market downturn, it is unlikely that importers buying from the countries concerned would be able to increase prices to retail as a result of the appreciation of the USD. Furthermore, exchange rates as such are very difficult to predict and a depreciation of the USD against the Euro has been seen post RIP making it impossible to conclude that the currency fluctuations will have an upwards effect on prices of dumped imports from the countries concerned.

- (319) In view of the foregoing it cannot be concluded that the development of exchange rate could be another factor causing injury.

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### 3. CONCLUSION ON THE LIKELY IMPACT OF OTHER FACTORS

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

## I. CONCLUSION ON THE CONTINUATION OF INJURY

- (321) As established above in section G4, the investigation has shown that the injurious situation of the Union industry has continued in the RIP. The continuation of injury is according to Article 11.2 of the basic Regulation in itself a strong indicator that injury is likely to also continue in the future which would suggest that measures should be kept in place.
- (322) The findings pertaining to imports shows that imports of large volumes at dumped prices are likely to continue and that price pressure (not least in the context of the economic downturn) is likely to intensify the competition between dumped imports and Union produced leather shoes. The investigation has also shown that there would be no other known factors that would break the strong link between the dumped imports and the injury Union producers would suffer.
- (323) An overall analysis of the findings in the investigation indicates that the consequence of the lifting of measures would likely lead to continuously large and possibly increased volumes of imports from both China and Vietnam at prices which would even further undercut those of the Union industry. The market downturn would most likely further exacerbate this development. The dumped imports would therefore most likely have significant detrimental effects on the Union industry. Under such circumstances the Union industry would either have to follow the decrease in prices in order to maintain market share, or maintain sales prices at current levels and instead lose customers and eventually sales. In the former case, the Union industry would have to operate at a loss and in the latter case the loss of sales as such would eventually lead to increased costs followed by losses.
- (324) Moreover, the Union industry has suffered the effects of dumped imports for many years and is currently in a precarious economic situation. However, it has also been established that a large part of the Union producers have been able to redefine their business models, concentrating on higher added value, mid to high end product segment and with more streamlined distribution channels. This group is also gradually absorbing the activity of the part of industry that has not yet been able to adjust and implement new business models and a further adjustment period would be needed to complete this change-over across the entire industry.

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- (325) Should the measures be terminated at this sensitive stage, the situation of the Union producers would deteriorate and the process of moving to a new business model would be likely halted and the very existence of a large part of the industry would be jeopardized.
- (326) Therefore the investigation has revealed that there is, due to imports from both China and Vietnam, a clear likelihood of continuation of injury to the Union industry for the short/medium term, until the process of adjustment has been completed.

#### J. **COMMENTS FROM INTERESTED PARTIES FOLLOWING DISCLOSURE**

- (327) A number of comments were received following disclosure of the findings. However, none of these were such to alter the conclusions. The main arguments raised were as follows.

##### 1. **COMMENTS RECEIVED PERTAINING TO FORMAL, PROCEDURAL AND RIGHTS OF DEFENCE MATTERS**

###### 1.1. **Confidentiality of the names of the complainant**

- (328) Several interested parties repeated their concerns as to the confidentiality treatment granted to the complainant, claiming that there was no trace in the file in support of the allegation that the situation of the complainant would be negatively affected should their identity be disclosed. One interested party added that in order not to be disclosed, WTO practice would require that good cause be demonstrated for all documents, whether considered confidential by nature or not. According to this party no such good cause had been shown in this case.
- (329) The same party also argued that should the request for confidentiality nevertheless be granted, this should in turn mean that at least the full details on unit price and profitability indicators of the sample could be disclosed.
- (330) As indicated in recitals 40-42 the confidentiality concerning the identities of the complainant and the producers selected for the sample was based on a duly justified request further to Article 19 in the basic Regulation. It is therefore not correct that due cause was not demonstrated by the complainant. As concerns the argument that full details of unit price and profitability should be disclosed it is maintained that this, seen in context with publicly available information, could indirectly reveal the identity of the complainant. Moreover within the group of the sampled companies, such disclosure would affect the commercial interests of the other sampled companies that are also competitors on the market.
- (331) In view of the above, the comments received would not be such as to alter the conclusion to grant confidential treatment to the identity of the Union producers supporting the request.

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## 1.2. Definition of Union industry and standing

- (332) Several interested parties argued that the Commission had applied the definition of Union industry and Union production incorrectly.
- (333) Two parties claimed that an injury assessment has to be based on information on the complainant and supporters of the complaint and not on the basis of the total Union production. According to these parties, this meant that the macro indicators used were not representative.
- (334) It was also held that the Commission had failed to exclude from the sample a company that had discontinued production in the Union in the RIP. Some parties maintained that the inclusion of this company had distorted the micro indicators as well as the undercutting and underselling analysis. Conversely, another interested party that did not object to the inclusion in the sample of this party, held that all data of this company and not only that relating to its activity in the Union should be taken into account for the injury analysis.
- (335) The same interested parties claimed that the Commission had failed to exclude from the definition of Union industry companies that imported up to 25 % of the total production from third countries. According to these interested parties this constituted a change in methodology when compared to recital 231 of the Regulation imposing provisional measures in the original investigation, stipulating that all companies that had delocalised had been excluded. It was also claimed that the Commission practice in general as concerned the application of Article 4(1) of the basic Regulation, would require the exclusion of companies that import around 25 % of the total production. In this context one party also claimed that the Commission had wrongly concluded that none of the CEC members had outsourced production even when a submission showing the contrary had been submitted in the course of the investigation.
- (336) Several interested parties also indicated that the general disclosure document was inconsistent as recital 3 indicated that the support for the complaint was 35 %, while recital 193 indicated 25 %.
- (337) As seen above in recitals 193-200 the Union industry was defined as provided for in Article 4.1 of the Basic Regulation. The assessment of the situation of the entire Union production complies with the basic Regulation. The argument that the injury assessment was based on an incorrect definition of the Union industry must thus be rejected.
- (338) As to the failure to exclude one of the sampled companies, it is recalled that recitals 23 and 196 provides the reasons why the company should be retained in the sample. It is further concluded that a possible exclusion would not have any effect, on standing or on the injury situation, including undercutting, of the sample. This was due to the very small weight of this company in the sample. Whether the company is formally excluded or not has therefore no practical implications on the outcome of the analysis.

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- (339) As seen in recital 195, Union production was based only on companies that fall under the definition of Article 4 (including 4(1)). Based on the information on record, no legal entities were taken into account that had delocalised and that should have been excluded from the definition of Union producer under Article 4(1). In this context it is recalled that limited imports as such do not amount to delocalisation. While a small number of complaining producers did import, these volumes were very limited and in any event at most 25 % of the total output of the company concerned. In view of the foregoing the claim that the Commission has deviated from the practice in the original case or from the provisions of the basic Regulation is not correct.
- (340) As to the alleged inconsistency between the figure of support of the complaints mentioned in recitals 3 and 193, it should be noted that recital 193 simply states that the support is over and above the legal minimum of 25 % and is therefore not an indication of the actual support over and above this threshold.

### 1.3. **Period for assessment of injury**

- (341) Several interested parties claimed that the period for assessing injury was incoherent. In particular, it was held that using the period under consideration for certain indicators, while referring back to the OIP and to 2005 for other injury indicators, would lead to an inconsistent result. Other interested parties claimed that the Commission had relied on data for 2005 and the OIP without disclosing these data.
- (342) The assessment of the injury analysis was based on the findings in the period concerned i.e. from 2006 up to and including the RIP. References to the OIP and 2005 were made only to complement the analysis but did not have a decisive impact on the conclusions. In view of the foregoing the claim that the period for assessing injury led to an inconsistent analysis will have to be rejected.

### 1.4. **Representativeness of the sample of Union producers**

- (343) Several parties maintained that the sample of Union producers was not representative in term of product types, size and geographical spread.
- (344) In this context it was held that the Commission had not given sufficient explanation for the geographical spread of the sample and that this in any event was not representative as footwear is produced in at least 7 Member states out of which only four were part of the sample. In addition it was claimed that one Member state in particular was overrepresented. One interested party also requested that the Commission provided information on the level of tolling arrangements found with the Union industry.
- (345) One party also claimed that women's shoes were overrepresented in the sample and another party recalled that the profitability of the sample was unrepresentative when compared to the figure deduced from the complaint.

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- (346) Recital 28 provides details of the geographical spread of the sample and its representativeness as compared with the overall spread in the Union. In this context it is recalled that the sample largely mirrored the geographical spread of the entire population and that an exactly identical geographical spread would not be necessary. Furthermore, the investigation revealed that around 60 % of the sample production was made through so-called ‘subcontracting’ or ‘tolling’ arrangements.
- (347) In addition, as such ‘subcontracting’ or ‘tolling’ occurs also amongst companies in different Member States, care was taken to ensure that production was allocated to the Member state of the company that had ordered the service.
- (348) Considering the foregoing, a degree of variation as to the weight of one Member State will not render the sample unrepresentative. Similarly, considering the subcontracting arrangement and the fact that two thirds of the production is concentrated in three Member States, there can be no requirement to include representatives from 7 producing countries.
- (349) It is recalled from recital 29 that the sampled Union producers were found to include a cross-section of product ranges which largely reflected that of the overall population. The same holds true for the gender division and although there are variations in all categories, men, women and children's shoes are sold in significant quantities by the sampled companies as well as by the overall population. As concern the profit level, the fact that there is a variation between the sample and that of the request does not render the sample unrepresentative. In any event, it should be noted that the profitability of the sample is in the same range as the one established when analysing all information in the complaint.

#### 1.5. **Duty level in the original investigation**

- (350) Some parties argued that China has been discriminated vis-à-vis Vietnam already since the original case, because a higher duty was applied on Chinese imports although the dumping margin established for China was lower than the one for Vietnam. It was also claimed that China was discriminated against by the method used to adjust the injury margin in the original investigation.
- (351) First, it is law in the Union that duties are established in line with the lesser duty rule, which means that the injury margin may be setting the duty, instead of the dumping margin. Second, in the original case it was found necessary in order to impose the lowest possible remedy of injurious dumping to take into account non-injurious volumes and values, which were calculated to arrive to the lowest possible level of remedy of injury caused by both China and Vietnam, and which resulted in the duties imposed. In this context, it is recalled that the purpose of an expiry review is to assess whether the facts at hand would warrant that measures in their current form be kept in place for

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a further period. Considering that there is no scope for change in the level of measures in the context of this review, arguments to this effect cannot be taken into account.

## 2. COMMENTS RECEIVED PERTAINING TO THE INJURY ANALYSIS

### 2.1. **Cumulation of Chinese and Vietnamese imports**

(352) One interested party claimed that the conditions for cumulation were not fulfilled as the trend concerning Vietnam was very different from that of China. It was also claimed that imports from Vietnam could no longer be considered to cause injury as the volumes in the RIP were below those of the non-injurious volumes as established in the original investigation.

(353) It is recalled that an extensive analysis was carried out above in recital 216 and onwards showing that the conditions for cumulation were met. In view of this fact, the argument on the non injurious volume is not relevant.

### 2.2. **Effect of outsourcing**

(354) One interested party indicated that the disclosure document showed that the Union industry is continuing to delocalise. According to these parties, this showed that the duties in place had not been able to stop the delocalisation process.

(355) In this context it is recalled that the purpose of the duties is not to stop or promote any delocalisation process, but to correct trade distortions caused by dumped imports. It is also to be noted that several companies have delocalised to other Member States or to third countries which are not under measures. In view of the foregoing, this argument cannot be taken into account.

### 2.3. **Impact of the Macro indicators**

(356) One interested party considered that responses from national associations were not sufficient as a source for injury indicators since only information pertaining to some of the injury indicators could be deduced from some of their responses. The fact that only nine responses were obtained, was also challenged.

(357) Several parties challenged the macro indicators due to the fact that these were based on Union production as a whole rather than on information from complainants and supporters. The justification for the establishment of the macro indicators were already explained above in recital 337 and would therefore require no further assessment. One interested party indicated that the macro indicators in any event were not reliable. The fact that an increase of employment of 359 % had been seen since the original investigation was given as an example of why the figures had to be considered unreasonable. This claim was supported by the observation showing that the macro indicators on several occasions were different from those observed in the sample.

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- (358) Several interested parties indicated that the consumption trends disclosed were incoherent as one part of the document mentioned a decrease of 7 % while a 14 % decrease is mentioned in another part of the document. Similarly, the data on production capacity and the data on employment were considered inconsistent as these showed different trends even if the disclosure document concluded that the two were linked.
- (359) As to the sources and as explained above in recital 225-226, the Commission requested and obtained from national associations the information that was reasonably at their disposal. The fact that this does not cover all injury indicators is in no way an anomaly, but rather a reflection that such bodies simply do not have access to data pertaining to some specific indicators. This is why the investigating authority obtains such data from a representative sample of companies. The nine replies obtained from the national associations account for a large majority of production (above 80 % of total Union production) and were further complemented from available statistical information and other data provided by interested parties.
- (360) Concerning the level of employment it is recalled that in the original investigation, the figure of 57 000 workers was based on the complainants' figures. The current employment figure of 262 000 is a macro indicator and pertains to the Union industry as defined above. As for the differences between the indicators for the sample and for the whole Union Industry, it is recalled that those indicators do not need to perfectly mirror each other to be representative. The fact that they followed the same trends further attest to their representativeness. As to the alleged inconsistency for the consumption, the 7 % decrease referred to the period 2006 — RIP while the 14 % decrease referred to the period 2005 — RIP.
- (361) In view of the above, the comments with regard to the composition and the analysis of the macro indicators must be rejected.

#### 2.4. **Impact of micro indicators**

- (362) One interested party indicated that the 3 % profit reached by the Union industry should be considered as a good result, in particular when considering that the market is contracting. It was also indicated that the claim that the Union industry is facing price pressure from the Chinese and Vietnamese imports was not supported by the findings that the Union industry managed to raise prices by 30 % in the period considered.
- (363) As established in the original investigation, the profit level expected in the absence of injurious dumping is 6 %, well above the ca. 3 % level achieved by the Union industry, which is furthermore not high enough to assure the viability in the medium term and to finance the ongoing restructuring process. This is also to be compared with the very healthy profit level of importers. As for the Union Industry's sales prices, their increase did not prevent direct



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competition between the products and therefore undercutting and underselling have been affected. The low profit margin proves the price pressure, as the Union industry cannot apply a higher mark-up.

(364) In view of the above, the arguments with regard to the analysis of the micro indicators must be rejected.

#### 2.5. **Undercutting analysis**

(365) Several interested parties indicated concerns as to the undercutting analysis carried out by the Commission. In this context it was held that the Commission had artificially increased the matching of product control numbers, PCN's by a reclassification of certain shoes from product group E to A.

(366) Several interested parties considered that the Commission had failed to disclose why the level of adjustment for R&D as established in the original investigation had now been decreased. Similarly, it was considered that the Commission had not disclosed to which extent adjustments had been made for sales to unrelated trading companies..

(367) The claim that an artificial matching was obtained through a reclassification to the PCN's is not correct. As detailed in recital 57 and onwards there was no re-classification however, where appropriate, a correction had to be done when parties had declared the shoes in the wrong category.

(368) In respect of the claim that no justification was given for the change in the R&D adjustment, it should be noted that this was established using the same method as in the original investigation, i.e. on the basis of verified information supplied by the cooperating parties which refers to the RIP. The CIF price of the exporters was established based on data provided by the companies themselves and corrected where necessary.

(369) In view of the above, the claims that the undercutting analysis was deficient must be rejected.

#### 2.6. **Conclusion of continuation of injury**

(370) Several interested parties claimed that the overall injury indicators were all positive and that the Commission had based the conclusion of continuation of injury solely on the profitability. Moreover, considering the fact that the profitability in the RIP was the highest since 2001, also this indicator should have to be interpreted as indicating that the Union industry is no longer suffering injury. Several interested parties did furthermore name and provide specific examples of companies that were doing well in support of their claim that Union industry was not injured.

(371) Another interested party considered that the Commission had failed to take into account the impact of change in the business model when assessing the production and sales as well as the injury picture in general. It was similarly

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claimed that the effects of outsourcing had not been taken into account and according to this party the average profit of the sample would have been much higher had the outsourced activities been taken into account.

(372) In this context, it is underlined that the analysis of injury indicators is global by nature and not all indicators have to show deterioration in order for injury to be found. It should also be taken into consideration that measures were in force during the period analysed, and that therefore a certain mitigation of the injury is to be logically expected. This notwithstanding and as already established in recital 257 and onwards, consumption, production, sales, capacity utilisation showed a deterioration over the period, undercutting and underselling continued at significant levels, and profitability remained at very low levels, substantially below the normal profit to be expected in the absence of injurious dumping. Together, the picture showed a partial removal of injury by the measures — but by no means its disappearance.

(373) In an industry with over 18 000 companies, it is natural that there will be a spread in the performance of individual companies however, this does not imply that injury does not exist for the industry as a whole. It is recalled that the analysis of macro indicators for the whole industry and micro indicators for a representative sample of producers (both as per Article 4(1) of the basic Regulation), showed that injury had continued.

(374) As concern the impact of the change in business model, the calculated average profit refers to the sampled Union producers. All the changes (i.a. business model, level of trade) were included in the analysis. As per the requirements of the law, an operator's activity as an importer can not be ascribed to its situation as producer.

(375) In view of the foregoing, the conclusions on injury as established in recitals 257-260 remain unchanged.

### 3. COMMENTS RECEIVED PERTAINING TO THE CAUSAL LINK BETWEEN THE INJURY SUSTAINED BY UNION INDUSTRY AND THE DUMPED IMPORTS

(376) Several interested parties considered that the Commission had failed to consider the full impact of other causes on the financial viability of the Union producers. In general it was claimed that the Commission had taken an isolationist approach to the impact of other causes. In this context it was held that the assessment of each issue in isolation had meant that all effects except the one assessed at the time, were attributed to the dumped imports.

(377) Several interested parties considered that the Commission had underestimated the impact of imports from third countries. According to these parties the weighted average price of imports from third countries was only EUR 0,39 higher than those of the PRC and Vietnam and would therefore have a significant impact on Union industry. It was also indicated that had

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the comparison been based on landed values, rather than the CIF values, the prices of imports from in particular India and Indonesia would be lower than those of the countries concerned.

- (378) Several parties claimed that the Commission had failed to justify the conclusion that there was competition between the product concerned and the like product produced in the Union. It was also claimed that this conclusion would be contradictory as several sections in the disclosure document had described how the Union industry is concentrated to the mid to high end segment. This finding was considered difficult to reconcile with the conclusion that the Union industry competes with the Chinese and Vietnamese low end products. One interested party considered that the Commission had failed to provide a definition of what was to be considered as high, mid and low end products and claimed that no evidence had been provided showing that the Union industry was actually moving upmarket.
- (379) One interested party considered that the Commission had failed to take into account the impact of the change in consumption and crisis on Union industry. In particular it was considered that the Commission had wrongly concluded that import prices would decrease as a consequence of the crisis when the actual developments in the 6 months following the RIP showed a decrease in volumes and an increase in price.
- (380) One interested party considered that the Commission had not provided sufficient evidence demonstrating that structural deficiencies would not be the reason for the problems facing industry. According to this party, the argument that injury was at hand also for the companies that had changed business model had to be rejected as it was considered that a change in business model as such would not necessarily indicate that there were no structural problems at hand.
- (381) In addition to the other causes mentioned above, one interested party claimed that the Commission had failed to assess in the overall analysis of other causes, the effects of remodelling of the business model on the profit of the Union producers and the effect of the outsourcing with Union industry as well as the effect of lack of skilled workers.
- (382) In this context it is recalled that a most careful and comprehensive analysis of other factors has been made in the context of the review. It is also recalled, as concluded in recital 285, that these factors were analysed taken together as well as individually and the claim that the Commission was using an isolationist approach can therefore not be upheld.
- (383) In relation to the impact of imports from third countries the investigation had established that there are considerable differences in import price between the countries concerned and other third countries, most of which have average prices significantly higher than the PRC's and Vietnam's. It is recalled from recital 277 that these differences apply also, to India and in when compared

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to the PRC also to Indonesia. Furthermore, even if one were to set aside the difference in import prices the market share of India and Indonesia is only 8 % and 5 % respectively, as compared to the 29 % market share of the PRC and Vietnam. In terms of volumes, the impact of imports does therefore not break the causal link.

- (384) Recital 265 provides a comprehensive analysis as concern the competition between the shoes imported from the countries concerned and those produced in the Union. In this context, it can only be added that findings regarding the sampled companies that had changed business model clearly showed that this part of the industry was moving to a higher product segment. A significant presence of dumped imports in the medium/high segments was also established. Evidence on product types produced in the Union and those of the imports were also provided in the non confidential file. As was already established in the previous investigation, the ‘mid/high’ segment essentially reflect branded products of higher retail price. The low segments reflect unbranded products with lower prices. Considering the above, the claim that the analysis of the competition between the products lacked factual basis cannot be upheld.
- (385) As seen from recital 278 and onwards, a comprehensive analysis was made concerning the impact of the change in consumption trends. As concerns the impact of the economic crisis, good care was taken in the investigation to ensure that effect of the downturn was not attributed to the dumped imports. In this context, it should first and foremost be underlined that the RIP, on which the injury analysis was based, covers a period before the crisis. The effect of the downturn was therefore not reflected in the analysis of the RIP. Considering the fact that a number of interested parties argued that the economic crisis rather than the dumped imports were at the heart of the problems facing the Union industry, an additional analysis, assessing in particular post RIP event was however also undertaken. An increase in import prices in the 6 month period following the RIP would not negate the conclusion as detailed in recital 302 that the downturn could magnify the effect of the dumping. The expected price pressure would apply on all levels not the least at retail level. In view of the above, the claim that the effect of the drop in consumption and the economic downturn was not taken into account must be rejected.
- (386) An extensive analysis of the situation of the Union industry, in relation to the change of business model and efficiency was provided in the document. In this context, it should be added that the effect of the change of business model could clearly be seen in the improving trend of the injury indicators of this group of companies. The improvement in the relationship between costs and prices demonstrated that this new business model was crafted on efficiency and is viable. The claim that the change in business model would not provide evidence of efficiency of the Union industry must therefore be rejected.

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(387) Finally it is recalled that contrary to what is claimed, the impact of the change in business model on profitability, sales and production was analysed and was taken into account when assessing the claim that Union industry suffered from structural problems. Similarly as explained above in recital 23, the outsourcing business model was present in the analysis. An assessment was however also made under the Union interest section of the situation of importers and retailers and all data provided by the one cooperating producer excluded from the definition of the Union industry was carefully analysed. As concerns the unsubstantiated claim that the lack of skilled workers would be the cause of the problems experienced by the Union industry, this argument was already addressed in recital 244 and no further clarification would thus be needed. In view of the above, the claim that the Commission failed to take into account other factors must be rejected.

## K. UNION INTEREST

### 1. INTRODUCTION

(388) According to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the Union industry, other Union producers, importers, retailers/distributors and consumers.

(389) In order to assess the impact of continuation or termination of the measures, the Commission requested information from all relevant interested parties. Although not strictly necessary from a legal point of view, but given the complexity of the case, it was considered appropriate to collect, wherever possible, additional information from a wider range of angles than is usual in the Union's practice. This allowed the investigating authority to cross check the validity of the findings. As concerns the Union industry, not only the companies sampled in this expiry review investigation were requested to provide specific data but also other Union producers. Altogether, the comments of 14 Union producers as well as the information provided by nine footwear industry associations could be taken aboard. Sampling questionnaires were sent to 139 companies which were either known to be or listed in the request as importers of the product concerned. Several others received such a questionnaire at their request. 21 importers filled in this sampling questionnaire and indicated a willingness to be included in the sample. Specific questionnaires for the purpose of this analysis were also sent to associations of importers as well as to wholesalers, distributors and retailers and their associations. In this context, eight replies were received. Finally, consumers associations were also contacted with specific questions. Three of them replied.

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

## 2. INTEREST OF THE UNION INDUSTRY

(391) As concerns the Union industry, as set out in G.2, G.3 and G.4, the investigation showed that a significant part of the Union producers was able to benefit from the imposition of measures. The economic free fall that was found in the original investigation and led to the imposition of definitive anti-dumping measures has been halted as the continuous loss of market share, profitability and employment came to end. This stabilisation of the situation of the Union industry is indeed considered an important improvement given that it shows that in a relative short period of time a large part of Union producers could reverse the steep downward trend observed before the imposition of measures. Indeed, the review revealed that there is still important production/manufacturing of footwear with uppers of leather within the Union, amounting to around 360 million pairs of shoes in the RIP and providing employment to around 260 000 people. It is recalled that the vast majority of these producers are small to medium sized companies which are vital for the prosperity in certain regions. A significant proportion of those producers developed business models that increased their competitiveness such as moving gradually upmarket, concentrating on higher value products, creating brands, streamlining their distribution channels, creating cooperation networks in their vicinity or elsewhere, as described in recitals 201 et seqq. With regard to the still significant, but decreasing, part of the Union industry whose situation has continued to deteriorate in all aspects, despite the imposition of measures, they benefited from the measures insofar as the measures have prevented an even more rapid deterioration and potential bankruptcy, providing for valuable time to enable them to adapt to the changing market conditions.

(392) On the other hand, the investigation showed that after two years of measures, the Union industry is still in an overall fragile situation and vulnerable to the effect of dumped imports that are undercutting the prices of the Union industry as elaborated in recital 259 et seqq.

(393) In summary, the industry benefited from the measures and has shown its capacity to improve its situation and its viability once measures mitigate the effects of injurious dumping.

(394) In this respect, several interested parties claimed and reiterated after disclosure of the definitive findings that the measures did not have the desired effect of

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bringing some market share or production back to the Union producers, but predominantly benefited third country producers. It is noted that, as shown in table 10, the market share of the Union industry remained stable whereas the market share of imports from other countries increased significantly. Thus, already from the mere data, it is shown that the Union industry has stabilised its position on the market since the imposition of the anti-dumping measures. Against a background of ever decreasing sales and market shares stated in the original investigation, a stabilisation at a level of ca. 40 % of market share has to be considered as an important success for the Union industry. Moreover, it is underlined that anti-dumping measures are not imposed to create employment in the Union or to ultimately bring back production to the Union (or to stop imports), but to restore a level playing field between the Union products and the dumped imports. Anti-dumping measures are only imposed with a purpose to restore fair trade conditions on the Union market and thereby to allow Union producers to recover by either increasing their sales and/or by increasing their prices to sustainable levels. Moreover, as set out in table 8, these third country imports had a significantly higher average import price or were made in relatively low volumes so that their effect on the Union producers is less pronounced. To conclude, the Union producers benefited from the imposition of the measures because the continuous loss of market share was stopped, they stabilised their sales volume and managed to increase their profitability and sales prices. In view of this, the argument is rejected.

- (395) Should measures be maintained, it can be expected that the Union industry will continue to benefit from the measures by at least keeping its relative market position and to further improve it once the negative effects of the economic downturn are overcome. During the economic downturn, the measures would likely help to cushion the effect of the significant amount of dumped, low-priced imports by preventing another surge of imports as was observed before the imposition of measures, notably in 2005 after the quotas lapsed. Considering that competition has increased across product segments i.e. due to fashion trends resulting in the interchangeable use of product types, measures would also help to protect Union produced products from dumped imports breaking into their product segment. Indeed, as was found during the investigation, also certain producers in the countries concerned moved upmarket, by producing increasingly mid to even high end shoes. This would enable the Union industry to maintain its relative positioning and thereby safeguard a significant employment rate.
- (396) It can also be expected that with the economic conditions improving and consumption increasing, people would be ready to spend more on footwear and in particular on higher value footwear, thus benefiting more the Union producers. In this scenario, the continuation of the measures would allow an increasing part of the Union producers to (continue to) further develop their business models, production process and distribution channels and thereby

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improve their financial situation gradually, as was evidenced during the review investigation period.

- (397) Should measures lapse, it can be expected that the already fierce competition, in particular at the middle/low end segment, will be reinforced considerably. It can further be expected that this increased competition on the prices in the low and middle segment will have a direct effect on the prices of all other styles. This in turn will very likely endanger also the large group of Union producers that managed to redefine their business model and to improve their situation. As the financial situation and profitability of those producers is not robust enough to withstand the price pressure exerted by large amounts of dumped imports that considerably undercut the prices of the Union industry for an extended period of time, this would lead very likely to many more producers disappearing and to a significant loss of direct employment of Union producers and suppliers of goods and services to the Union industry.
3. ADDITIONAL ANALYSIS REGARDING THE INTEREST OF UNION MANUFACTURERS
- (398) In order to get a more complete picture of the interest of Union manufacturers and beyond the standard analysis of the impact on the Union industry as a whole, additional information was collected via the national footwear industry associations and the companies that were sampled in the original investigation. Furthermore, one cooperating producer which has been excluded from the Union industry but still has significant production in Union submitted its views.
- (399) The additional information collected from the national footwear associations showed a mixed picture, mostly depending on whether there is considerable footwear production in the specific Member State left or whether the country had important importing interests. Whereas five national associations with important footwear production supported the continuation of the measures and highlighted the benefits of the measures for their national footwear producers, four other associations representing countries where the production of footwear has largely or entirely been outsourced to third countries or with important production capacity but also significant imports, stated that the continuation of the measures would overall be against the interest of the Union. The latter associations represented more companies that were importing or distributing/retailing to a significant extent. Therefore, their views were also considered under the recitals dealing with the interests of unrelated importers and retailers below. On balance, the total volume of production accounted for these four associations was significantly lower than that of the five associations which argued that measures benefited manufacturers.
- (400) Moreover, the Union producers that had been sampled in the original investigation were also contacted in order to complement the picture and to



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analyse some of the allegations made that the Union industry had disappeared and thus not benefited from the imposition of the measures. This additional collection of information from the previously sampled Union producers was also justified under Union interest aspects because the footwear sector in the Union belongs to an industry that is so fragmented and heterogeneous that the injury sample is unavoidably small.

- (401) This look at the situation of the previously sampled Union producers indicated that all cooperating companies sampled in the original investigation have kept a significant part of their production in the Union. Overall they were favourable to the continuation of the anti-dumping measures and highlighted the positive effect of it for the employment in the Union. At the same time, most of them have partly delocalized parts of their production of shoes to countries outside the Union including one of the countries concerned and have pursued complementary solutions in their business strategy in order to enhance competitiveness. Those which continue to produce only in-house in the Union specialize in higher end, higher quality products with relatively short lead times. The replies of those previously sampled Union producers confirmed that, as has been described in the injury part for the sampled Union producers, different business models have been developed and some of the Union producers adapted to the changing market circumstances by a number of actions, including outsourcing part of the production to third countries and/or within the Union, changing sales channels, invest in quality and brand image etc. These replies also confirmed the general picture described above regarding the benefits of maintaining measures and the disadvantages of repealing them for the Union industry.
- (402) Lastly, in order to further complete the picture of manufacturing interests in the Union, the reply by the producer excluded from the definition of the Union industry, was also analysed. It submitted a consolidated reply of all its European activities as well as specific replies by its two European manufacturing operations. This producer had opposed the review request as it was against the continuation of the anti-dumping measures in question.
- (403) The company has two production facilities in the Union which are assembly operations, using uppers which have been manufactured in Asia. Nevertheless, the production volumes of these two plants have significantly decreased between 2005 and the RIP. Whereas in 2005 imported footwear represented less than half of the volumes of shoes sold by this company, this percentage increased significantly until the RIP in which the majority of the footwear sold by the company was a direct purchase from Asia. More recent market intelligence indicates that the company is further decreasing its production activities in the Union and replacing these quantities by imports.
- (404) Although the company had significantly decreased its manufacturing activities in the Union, this had only resulted in a slight decrease in overall employment within the Union. It appeared that, since 2005, the company

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had increased its global turnover and significantly improved its profitability. This had led to additional employment in the Union in fields other than manufacturing (administration, design & development, marketing & sales, etc.). From the information available, it appears that whereas anti-dumping duties had a negative impact on the financial results of the company, they were not so significant as the overall profitability improved. The existence of anti-dumping measures did not prevent the company from continuing outsourcing production to third countries, including to the countries concerned. On the other hand, the imposition of measures did not lead the company to increase its production activities in the Union either. Thus, the strategic decisions on production activities appear to have been taken on broader cost considerations.

(405) Should measures be maintained, the company would very likely continue to be affected by the anti-dumping duties, given that it will likely continue to import from the countries concerned. The extent of this negative impact of the duties will very likely continue to be not significant, given that the company can diversify its import sources, as they did in the past. Should measures be repealed, on the other hand, the company would benefit in view of its imports from the countries concerned and could likely increase its profitability further.

(406) In conclusion, a refined analysis of other Union producers confirms the general findings, i.e. producers developed several different business models and most of them appeared to have benefited from the imposition of anti-dumping measures, as they reported to have slightly improved their situation and increased their competitiveness by adapting, inter alia, production strategies and sales channels. Thus, the information available suggests that most of these producers would continue to benefit from the maintenance of the measures at least as far as their decision to keep production activities in the Union is concerned. In turn, these producers would also suffer should measures lapse because the dumped imports from the countries concerned would exert a downward pressure on the prices on all product segments produced by them.

(407) The negative effects on some producers which have outsourced production to the countries concerned would very likely continue not to be disproportionate, as was shown in the past and given that the measures did not prevent those producers from continuing to outsource to the countries concerned. Thus, the impact of the anti-dumping duties on those producers will depend mostly on the companies' own sourcing decision. It would thus be in the companies' own hands to steer the impact of the anti-dumping duties.

#### 4. INTEREST OF THE UNRELATED IMPORTERS

##### 4.1. General

(408) The review investigation confirmed that two main categories of importers can be distinguished. One category mainly consists of companies that import and resell their own branded shoes, the production of which they have outsourced

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in third countries. These companies usually have significant activities in the Union, e.g. in design, research & development, sourcing of raw materials, and sometimes even their own distribution chain. It follows from this, that this category of importers have important ‘adding value’ activities in the Union where they usually employ a relatively high number of people. The second category consists of importers which are pure traders focussing their trading more on volumes and less on brand — they predominantly trade ‘private label’ shoes. These importers in general have lower structure costs and less added value activities in the Union.

- (409) It was found that within these two main categories, there are different business models. For example, in the first category one can distinguish brands with a European origin, but also non European brands and formal footwear as well as casual footwear. In the second category one can find importers which have their own retail stores, but also importers which only sell to wholesalers/distributors. Some of the companies in this second category will only trade private label shoes, but others will also have specific sourcing agreements with established brands and/or licensing agreements, and/or joint ventures.
- (410) In view of the diversity amongst importers, as described above, and in order to capture a picture as complete as possible, the situation of importers has been analysed from several different angles. Firstly, the comments received by importers and their associations have been analysed. In addition, statistical data as well as relevant publications have also been consulted and used in this respect. Finally, for some economic key data, the verified information of the importers’ sample was used.
- (411) As mentioned above, for establishing some economic key data it was decided to sample importers. This decision was taken based on the fact that the original investigation showed that the number of cooperating importers was high and many of them had sent in a questionnaire reply. It was therefore considered appropriate, in this expiry review, to apply sampling.
- (412) As already mentioned in recital 37, from the 21 Union importers that came forward and showed a willingness to cooperate with the investigation, eight were sampled. The sample consisted of the five largest companies in terms of volumes and value of imports and re-sales in the Union plus a few smaller importers; the latter in order to have a more representative cross-section of the parties offering cooperation with their different business models, geographical location and traded product segments. The sampled companies constituted the maximum number of companies that could reasonably be investigated within the time available. According to the figures available at that stage of the investigation, the sampled importers accounted for around 18 % of Union imports of the product concerned during the RIP. One of the sampled companies, although it had indicated a willingness to be included in the sample, did finally not reply to the questionnaire and all efforts to secure the cooperation of this small importer were fruitless. Therefore, this company

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eventually had to be excluded from the sample. The seven other sampled importers fully cooperated with the investigation and sent questionnaire responses within the deadlines.

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

#### 4.2. **Import volumes**

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

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*Table 19*

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#### **Import volumes of sampled importers (pairs)**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>PRC &amp; Vietnam</b>	29 761 231	30 806 163	26 616 891	29 577 492

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Table 19

**Import volumes of sampled importers (pairs)**

<i>indexed</i>	100	104	89	99
<b>Other countries</b>	13 181 962	16 077 607	22 680 174	28 096 596
<i>indexed</i>	100	122	172	213

(418) In line with the general statistical data the sampled importers significantly increased their purchases of leather shoes from other countries. Imports volumes from the PRC and Vietnam have remained fairly stable since 2005, with a certain dip in 2007, but recovery in the RIP to almost the same level as in 2005. It follows that, as regards the sampled importers, overall the volume of traded leather footwear has increased by nearly 1/3 since 2005, with a stable trend from the countries concerned, notwithstanding the imposed anti-dumping measures, and an increasing trend from third countries. Out of the third countries that have benefited from these increased import volumes, Indonesia and India have benefited the most.

(419) The sample's purchase trend from the countries concerned is stable which does not correspond to the trend observed in Eurostat (significant decrease). A closer look into the sample suggests that the stable trend for the imports from the countries concerned stems from the fact that one of the larger sampled importers — against the trend not only of Eurostat but also of the other sampled importers — not only strongly increased its purchases from third countries but, in order to meet demand, also increased its imports from the countries concerned significantly, thereby offsetting the overall decreasing trend of such imports in the sample. Taking this into account, it is concluded that the evolution of imports of the product in question in the sample is in line with the quantitative analysis of the Eurostat database, i.e. a general decrease of imports from the countries concerned.

**4.3. Purchase prices**

(420) As shown in tables 5 and 8, Eurostat data suggests that average import prices of leather shoes from the countries concerned and third countries have both increased since 2005, and CIF import prices of leather shoes from third countries even slightly more than CIF import prices of leather shoes from the countries concerned. However, given that the mix of the imported shoes has a significant impact on the prices and that this mix for all exporting countries may have changed considerably, the average prices which can be calculated from reported Eurostat volumes and values are not necessarily the most accurate for establishing price trends. In this respect, the price trend of the importers' sample can be considered more meaningful as the importers' product mix has likely changed to a lesser extent given that those companies

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are all specialised in certain types and styles of footwear for a long period of time.

- (421) As described in recitals 412 and 408 et seqq., the sampled importers represented various different business models which resulted, inter alia, in significant differences in average prices per importer. Moreover, some of the importers traded many millions of pairs per year, whereas others traded ‘only’ a few hundred thousand pairs per year. Thirdly, for some of the individual importers the traded volumes –and, consequently, their weight in sample– fluctuated strongly throughout the period considered. For those reasons, it was considered that weighted average results should be complemented with an arithmetic average analysis in order to acquire a complete picture of the relevant trends.
- (422) The average import prices of the sampled importers during the period 2005-RIP have been as follows:

*Table 20*

**Average import prices of sampled importers (EUR)**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b><i>PRC and Vietnam</i></b>				
<b>CIF: weighted average</b>	11,1	11,81	10,24	10,07
<b><i>indexed</i></b>	<i>100</i>	<i>106</i>	<i>92</i>	<i>91</i>
<b>CIF: arithmetic average</b>	10,17	11,42	10,54	10,42
<b><i>indexed</i></b>	<i>100</i>	<i>112</i>	<i>104</i>	<i>102</i>
<b>Landed<sup>a</sup>: weighted average</b>	11,72	13,43	12,12	11,88
<b><i>indexed</i></b>	<i>100</i>	<i>115</i>	<i>103</i>	<i>101</i>
<b>Landed<sup>a</sup>: arithmetic average</b>	10,74	12,98	12,48	12,3
<b><i>indexed</i></b>	<i>100</i>	<i>121</i>	<i>116</i>	<i>115</i>

***Other countries***

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

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Table 20

**Average import prices of sampled importers (EUR)**

<b>CIF: weighted average</b>	13,11	12,71	10,85	10,46
<b><i>indexed</i></b>	<i>100</i>	<i>97</i>	<i>83</i>	<i>80</i>
<b>CIF: arithmetic average</b>	12,21	12,56	12,59	11,53
<b><i>indexed</i></b>	<i>100</i>	<i>103</i>	<i>103</i>	<i>94</i>

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

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

**4.4. Resale prices**

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

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Table 21

**Average resale prices of sampled importers (EUR)**

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

- (426) The above data points to stable or slightly increasing resale prices over the period 2005 - RIP. In 2006, resale prices increased by 7 % to 10 % which is an increase similar to the increase of CIF purchase prices in 2006 (see recital 422 above). From 2006 to the RIP, resale prices decreased.
- (427) The investigation did not bring any information or evidence to light, indicating that the resale prices of other importers would have developed in a different direction than described above.

**4.5. Profitability**

- (428) As regards the sampled importers, the profitability was established based on the combination of the import and resale price picture just described and the development of the importers' other cost factors. Following disclosure, some of the sampled importers questioned their individual profit data used and requested that revised data be accepted. Some of these claims were accepted and some clerical errors were corrected. The revised profitability picture is as follows:

Table 22

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

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>RIP</b>
<b>Weighted average</b>	36,2 %	18,1 %	20,5 %	20,4 %
<b>Arithmetic average</b>	29,6 %	17,8 %	20,7 %	21,3 %

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

- (429) The above figures have been calculated on the basis of the profit figures on the product concerned, as reported by the sampled importers. In some



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cases, the reported figures had to be revised following the on spot verification. As stated above, following the definitive disclosure, four sampled importers questioned their individual profitability analysis and reiterated that revised data as submitted after the on spot verification should be accepted. With regard to one sampled importer it is noted that its claim regarding the selling, general and administrative cost (SG&A) was partially accepted by correcting a clerical error, leading to a small decrease of the sample's profitability as disclosed to interested parties. However, its claim that the originally reported SG&A should be accepted and that, in addition, a significant amount of royalties that allegedly had to be paid to its related company outside of the Union should be taken into consideration has to be rejected. As regards the originally reported SG&A, during the verification visit they were found to be overstated as the company could not substantiate the claimed amounts. Thus, a correction was made based on documents received during the verification visit. As to the alleged costs for royalties, this amount was claimed only after the verification visit and the claim was not sufficiently substantiated. As regards the second sampled importer, it also reiterated its request that revised profitability data based on the profit reported in a form allegedly submitted to the US authorities should be accepted. In this respect, it is noted that the company had submitted a profitability table for the product concerned which was confirmed during the verification as it could be fully reconciled with the audited accounts and other available data.

The document sent in after the verification only mentioned a global profit level for 'Europe' and included all products and probably also those operations outside the 27 Member States, but geographically within Europe (Switzerland, Balkans). This form could also not be linked to the verified data on spot and thus the claim was rejected. In its submission after disclosure the company provided more details in this respect, but due to its late submission and lack of substantiated evidence it could not be considered. The second claim of that company related to some cost items that should have been taken into account, two of which could not be linked to the information verified on the spot. However, it was accepted to take into consideration a third cost item that was fully verified during the verification but that was omitted in the table. The impact on the overall profitability was however limited. The third importer originally only submitted profit data for a small part of its Union operations. The data submitted cannot be regarded as representative for the company Union operations in general given that significant differences between the regions existed as concerns costs and income. Thus, the profit data was complemented during the on-spot verification by the remaining Union operation figures based on all verifiably information available. The company contested the result of that computation and submitted at the end of the verification visit a revised profitability table which only differed in one item from the Commission's computation, i.e. the purchase cost. As this proposed purchase cost could not be linked to the information available, contrary to the purchase costs as established by the Commission, the revised table was not accepted. The claim was thus rejected and the profitability data as established during the on spot verification was used. Following disclosure, the fourth importer contested its own profitability data submitted, verified

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and accepted without further adjustments during the on spot verification visit, arguing that the whole methodology used would not be accurate. As the company however did not suggest a different methodology to be applied to establish the profit on the product concerned, the claim has to be rejected as unsubstantiated.

- (430) It is recalled that in the original investigation, the questionnaire replies from the cooperating importers indicated a weighted average net profit of 12 % for the period of 1 April 2004 until 31 March 2005. In this review investigation, the verified data of the sampled importers however showed that the weighted average profit of those sampled importers in 2005 was above 20 %. In 2006, a significant drop in profitability occurred, by more than 18 percentage points on a weighted average basis and by close to 12 percentage points on an arithmetic average. It appeared that most of the sales contracts had already been agreed before the imposition of the provisional measures in March 2006 and in many cases the agreed sales prices did not take account of the possible imposition of anti-dumping duties. Consequently, the profit of the sampled importers achieved on the product concerned declined in 2006. In 2007 and RIP the profit increased again, but it is still 8-16 percentage points below the profit achieved in 2005.
- (431) Given that after March 2006, most of the sampled importers adapted their sourcing channels and pricing policy to the changed circumstances, i.e. the imposition of anti-dumping duties, a closer analysis of the factors impacting the profitability as of 2007 was carried out. The following can be noted. First, whereas the profit drop in 2006 could largely be attributed to the anti-dumping duties, in 2007 and the RIP other, company-specific factors were also having an important negative impact on the profit of the importers' sample. In 2007 and the RIP certain sampled importers incurred significant increases in SG&A expenses, resulting in strongly deteriorating gross margins. This had a bearing on the calculated profit for the sample as a whole. No common reason, such as e.g. higher marketing costs for sporting events, could be found for this increase in SG&A cost for those sampled importers.
- (432) At the same time, it is noted that the Euro — US dollar exchange rate development has helped the importers in keeping their purchase cost down, including the cost of the product concerned. From the end of 2005 until the end of the RIP, the Euro appreciated by almost 30 % as compared to the US dollar and, as the importers' contracts with their suppliers are usually set in US dollars and only limited hedging has been reported by the importers, this 'gain' cushioned the effect of the anti-dumping duties and other cost increases. On the basis of information provided by one of the sampled importers, profit levels during the RIP could have been up to 6 percentage points lower had the exchange rates remained stable.
- (433) Moreover, an alternative profitability analysis was made, distinguishing the profit achieved on private label footwear from profit made on branded footwear. To this end, the verified data available from the sampled importers

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was complemented by the information obtained by another large importer of private label shoes, which did not come forward in the sampling exercise, but cooperated with the investigation by submitting its views. This information suggests that the profit levels of the private label shoe importers were in general significantly lower than the profit levels of most of the branded shoe importers, but they were still high and within the range of 11 % to 17 % during the RIP. This confirms the findings of the original investigation in which this category of importers reported to realise a profit level of 17 % on average. On the other hand, this refined analysis also showed that for importers of branded footwear, the profitability has improved since the original investigation. In that investigation, those importers had reported on average a profitability of around 10 % whereas the profit of the sampled importers of branded footwear during the RIP amounted to more than 20 %. It can thus be concluded that, in general, the economic situation of the group of private label footwear importers has remained largely the same since the original investigation, whereas the situation of the branded footwear importers appeared to have even improved.

- (434) In any case, under any scenario the profit levels achieved by the sampled importers were relatively high, and they did not show a decreasing trend after 2006. It is also noted that the overall level of the sampled importer profits, i.e. always above 10 %, points at a rather stable and sustainable business.
- (435) The investigation did not bring any information or evidence to light, indicating that the profit level of other importers would have developed in a different direction than the profit trends as described above.

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

- (436) In view of the global financial and economic crisis which started just after the RIP, it was considered appropriate to analyse the situation of the importers beyond the RIP. In several of the submissions received reference was made to the direct negative impact that this economic downturn would have on the sector, aggravating the negative impact of the anti-dumping duties. On the basis of additional information and comments provided by parties, as well as publicly available information such as Eurostat, market intelligence etc., the following picture emerges.
- (437) From the available statistical data it appears that imports from the countries concerned continue to drop, although the decline is moderate as compared to the decrease in the period from 2005 to the RIP (– 15 % post-RIP). At the same time, imports from third countries continue to increase. In other words, the process of shifting production from the countries concerned to third countries is still on-going. Eurostat data also point at strong increases in import prices, notably as concerns footwear from the countries concerned (+ 21,5 % as compared to RIP).

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- (438) A similar post-RIP evolution was reported by the sampled importers, which continued to increase their sourcing from other countries and decrease sourcing from the countries concerned. Overall, their imported volumes of the product in question remained rather stable. The importers explained that due to the approximately 6-month lead time, purchases after the RIP were a result of orders placed before the start of the economic downturn. The sampled importers' average purchase prices in Euros of the product concerned increased as compared to the RIP, by 15 % approximately. The reasons for this price increase as reported by the importers are first the appreciation of the USD at the end of 2008 and the beginning of 2009 which increased the sourcing costs in EUR terms of products from the countries concerned and second, the increased cost of production in the countries concerned, specially the increase in labour costs.
- (439) As the resale prices remained stable or increased slightly only, it appears that the profitability of the sampled importers on their trading of the product concerned might have been further affected. Moreover, importers have claimed that due to the advance purchase orders and the subsequent contraction in demand, their inventories have increased considerably. However, a calculation of importers' post RIP profit levels based on the provided price data showed that the fall in profit would most likely be moderate (by 2 percentage points approximately), resulting in still healthy profit levels overall.
- (440) It was however mentioned by several importers that, since autumn 2008, consumer demand has significantly weakened and that this weakened demand is not yet reflected in import volumes as orders had been made 6 to 9 months before, i.e. before the economic downturn. Thus, importers expected more significant drops in import volumes in the next season. In addition, several importers reported that some of the major distribution chains either have gone into insolvency or have financial difficulties as a result of which orders have been cancelled, the importers' stocks are increasing and they need to grant special discounts to their customers. Some of the sampled importers had yet announced major restructuring plans in view of the downturn, others reported that they increasingly tried to control costs by other means.
- (441) It follows from the above that until July 2009 the impact of the crisis was still limited in terms of import and sales volumes given that orders were placed before the crisis kicked in at the consumer level and were made based on more optimistic consumption expectations. In terms of profitability, it appears that most importers have, so far, managed to limit the impact of the crisis also by taking various measures aimed to control costs.

#### 4.7. **Likely effect if measures are maintained**

- (442) Should measures continue, it is highly likely that those will affect importers more in the future as the economic parameters have changed significantly:

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with the purchase price increases recently observed and the expected overall decrease in consumption the effect of the anti-dumping duty would become more apparent than it was in the past, even if the exchange rate development would cushion the purchase price increase as happened during the period considered. Moreover, several importers indicated that other important cost increases occurred in the countries concerned, such as higher labour costs etc. All in all, profits on the product concerned are likely to decrease in the near future, but also to a large part due to other cost increases than the anti-dumping duties. However, as the importers generally generated healthy margins, this decrease would in all likelihood not endanger those companies.

- (443) As evidenced since 2005, importers would probably continue or start to source even higher quantities from other third countries, given that the anti-dumping duty will affect them more. At the same time, importers will likely try to pass on a higher proportion of any general cost increase to retailers/distributors. However, given the relative importance of those retailers/distributors for the importers (as further explained in recital 472 below), importers are not likely to fully pass on eventual cost increases to their clients. This has also been observed in the period July 2008 — March 2009.
- (444) The effect of the maintained anti-dumping duties in a period of shrinking demand, rising purchase prices and increased cost awareness of consumers on the importers would however be different depending on the flexibility of the importer. It is recalled that some importers have already proven a large flexibility in their sourcing strategies and in their product mix (more STAF and/or textile/plastic shoes and/or accessories). This allows them to mitigate the effect of the duty in the future. Other importers which maintain their traditional sourcing channels in the countries concerned and are focussing on leather footwear might indeed experience an overall drop in profitability and/or sales.

#### 4.8. **Comments**

- (445) As mentioned in recitals 60 et seqq., several interested parties claimed the exclusion of specific shoe types from the product scope. In addition, most parties submitted that, should it not be possible to revise the product scope in the current investigation, their imported shoe types should be excluded from the measures under Article 21 of the basic Regulation. The latter claims were mostly based on the alleged lack of production (production capacity and willingness to produce) of these types of shoes in the Union, which would entail the absence of competition with and injury to the Union industry, and the unfavourable economic environment in which the measures would have an increasingly negative effect on importers, distributors, retailers and consumers within the Union.
- (446) In this respect it is important to underline that significant competition was found between the imports from the countries concerned and the type of

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footwear produced in the Union, as set out in recital 267 et seqq. This also means that there is still a significant production of leather footwear in the Union. More in general, it is also noted that the product scope cannot be modified, extended or reduced in the framework of an expiry review irrespective of the eventual evolution of the production pattern in the Union during the existence of the measure.

- (447) Despite the above, the Commission contacted the relevant footwear associations in order to have a clearer picture of the types/quantities of certain footwear that is produced in the Union. From that information collected, it appears that most of the shoes for which the above claim was made are (still) produced in the Union and that the production pattern has not significantly changed during the period of the existing measures. The information gathered does not allow a final general determination whether certain niche product types produced in the Union cover the demand for these products.
- (448) Most of these products are specific niche products sold to specialized consumers in small quantities, have high quality and complex technical features and belong to the high price category i.e. horse riding shoes, bowling shoes or special sizes/narrow feet shoes. Therefore these product types would in principle fit in the general specification pattern of the Union producers. By imposing or maintaining measures, Union producers could be encouraged to invest again in such niche product type production or to increase their existing production capacities. Otherwise there would be no incentive at all for Union producers to invest in such product lines. Moreover, as measures are not meant to stop imports and did not do so in the case at hand, it is justifiable to have anti-dumping measures also on those niche product types, as long as no clear dividing line can be drawn between the different product types. In any event, as far as the niche products are concerned, the limited data available indicates that their share in the overall imports is very limited and that therefore the impact of the measures on those product types is not considered to be disproportionate in relation to the vast majority of the imports.
- (449) Certain importers of sports footwear as well as their association submitted that they would not have a viable alternative for their sourcing in the Union.
- (450) In this respect it is firstly noted that the information collected from the national footwear associations suggests that there is still significant production of sports footwear in the Union, although it cannot be excluded that demand would surpass supply in that segment. Even assuming that there was insufficient production of sports footwear in the Union, the investigation showed that alternative sources of supply exist, such as Indonesia and India offering increasingly competitive prices, as shown above.
- (451) It has been further argued by several sampled importers, notably the larger global footwear brands, that they have long-term strategic relationships with

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certain factory groups in the PRC and Vietnam on the basis of high quality, social, safety and environmental standards which took years to cultivate. Therefore, changing sources by relocating production would incur high costs and long lag times (12 to 18 months).

- (452) In this respect it is important to underline that the anti-dumping measures concerned are not prohibitive; in other words, the fact that the measures have been imposed — to correct a trade distortion — has not resulted in a cessation of imports from the countries concerned and a consequent need for importers to source from other countries. Notwithstanding the above, the investigation showed that a significant degree of flexibility exists: importers usually purchase from supplier groups with production bases in several Asian countries. These groups are flexible and can change sourcing from one country to another, if there is an incentive to do so. The details provided through the sampling exercise on the sourcing of the product in question since 2005, as summarized on an aggregated basis under recital 417 above, demonstrate that most of the sampled importers have, within 1 to 2 years, changed origin of a significant part of their sourced leather footwear. A large non-sampled importer also reported increased imports from other Asian countries, at the expense of imports from the countries concerned. Therefore, the information on the file demonstrates that, although extra costs might be involved, shifting production from one country to another is not considered too cumbersome and it appears to be rather common. The argument is therefore dismissed.
- (453) It was also submitted by the importers' associations and some importers that the importers were not anymore in a position to absorb the effect of the duties. It was claimed that during the period 2006-RIP, the negative effect of the measures to the consumers had been (partly) compensated by the effect of the exchange rate development since 2006, but, according to these submissions, the reversal of the exchange rate development since the end of the RIP would have made an increase in their resale prices inevitable and result in higher prices for the consumers in the shops if duties be maintained.
- (454) It is acknowledged that the appreciation of the Euro versus the US dollar since the imposition of the anti-dumping measures has been significant as described also in recital 432 above. Indeed the exchange rate development has been beneficial to the importers of the product concerned from the end of 2005 until the end of the RIP, as contracts with their suppliers are usually set in US dollars and the Euro appreciated by almost 30 % as compared to the US dollar in the course of that period.
- (455) As concerns the importers alleged inability to absorb the duty in view of a different exchange rate development since mid-2008, leading to higher import prices in Euro's, it is to be noted that the profit level that importers achieve on the trading of the product concerned, as analysed through the sample (see table 22 above), was still healthy in the RIP. It suggests that importers would be in a position to continue to operate in a sustainable manner even

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if for a certain period the exchange rate developments would be to their disadvantage. Moreover, as concerned the exchange rate developments, there are no signs that the Euro is in a free fall as compared to the US Dollar; on the contrary, whereas the Euro depreciated vis-à-vis the US Dollar from July to November 2008, it moved up again since then. It is therefore speculative to anticipate a depreciation of the Euro for the short and medium term. As concerns retail prices of leather shoes it should further be noted that there are several other sources for leather footwear and these sources are increasingly used by importers. There are therefore no data on the file which would point at the necessity for importers to fully pass on the duty to wholesalers/retailers, resulting in significant increases in prices at retail level. Therefore, the argument is not convincing.

- (456) Some of the importers, most of them pertaining to the group of branded footwear producers, submitted that the measures would harm the significant ‘manufacturing value added’ by them in the Union through their significant activities in the areas of notably design, development, branding and sourcing. In this respect the investigation confirmed that indeed many importers do not just simply trade shoes but are also engaged, in the Union, in value-adding activities as those mentioned above. Such activities are generating significant high level employment.
- (457) In this respect it is noted that the information provided by the sampled importers did not point at any decline in these companies’ employment allocated to the product concerned during the period 2005 — RIP. On the contrary, the aggregated employment figures of the sampled branded footwear producers point rather at a slight increase in such employment. This follows from the fact that, in line with their purpose, the anti-dumping measures have not blocked entrance to the Union market of leather shoes originating in the PRC and Vietnam, but rather adjusted their price level in order to restore a level playing field. Moreover, the level of the duties is in this case modest and the importers can, in addition, switch origin — as they have in some cases indeed done. In view of the above, the argument that the anti-dumping measures would jeopardize the high level jobs that these importers have generated in the Union is dismissed.

#### 4.9. **Conclusion**

- (458) On the basis of the above analysis it is definitively concluded that, during the period 2006-RIP, the anti-dumping measures have had an impact on the economic situation of the importers of the product concerned in the Union, but this impact is not considered to be disproportionate given the overall strong market position of the importers found in the investigation. The limited deterioration of the economic situation of the importers appears to have continued during the nine months following the RIP. However, the sector is generally speaking in a good shape and the profits obtained on the product under review are still high. It is therefore considered unlikely that maintaining



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the measures would have a significant adverse effect on the interests of importers.

#### 4.10. **Interest of the distributors/retailers**

##### 4.10.1. *General*

(459) The information available indicates that in the retail/distribution market in the Union roughly 60 % of all footwear is traded by the ‘traditional’ specialist distribution consisting of large retailers that are often importing shoes themselves and so-called buying groups and around 40 % of all footwear is traded by ‘non-specialist’ distribution, consisting of supermarkets, clothing shops as well as department stores. It is estimated that the retailers/distributors sector in the Union employs around 140 000 people in the sales of the product concerned to consumers. To be noted that while in the northern Union Member States larger retailers are dominating, in the southern Member States retailing is often done by SME's.

(460) Whereas the large retail chains did not wish to participate in the importers sample and did not respond to the detailed retailers’ questionnaire, one large importer/retailer as well as a group of retailers submitted written representations and were granted hearings. Consequently, the only retailer whose replies could be verified was Clark's, which cooperated as an importer.

(461) Replies to the questionnaire for associations of wholesalers, distributors and retailers were received from the European association of fashion retailers (AEDT), the European Branded Footwear Coalition (EBFC), the European Outdoor Group (EOG), EuroCommerce representing the retail, wholesale and international trade sectors in Europe, the Federation of European Sporting Goods Industries (FESI), the Foreign Trade Association (FTA), the Dutch association of fashion, shoes and sports retailers MITEX, and Svenskt Sportforum. No supermarket chain responded to the questionnaire, however Lidl provided information on its purchases and resales of the product concerned between 2005 and 2008. The above associations and retailers opposed the measures and any prolongation thereof, basically arguing that the measures decreased profitability and caused many retailers to search for alternative sources of supply. They have also claimed that the extension of the measures would harm the European footwear industry which has successfully adapted to the challenges and opportunities of modern markets which outsource manufacturing. They maintained that the measures have not avoided massive delocalization of production which will not come back to the Union as Union producers are unable to fulfil the demand for a wide choice of quality footwear at low prices.

##### 4.10.2. *Purchase prices*

(462) In order to assess the claim of decreased profit margins since the imposition of anti-dumping measures, in a first step, an analysis of the distributors/

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retailers purchase prices of the product concerned as compared to the sales prices they achieved during the period 2005-RIP, was made. As described in recital 425 above, based on the questionnaire replies of the sampled importers it appeared that the importers' resale prices, which equal the distributors/retailers' purchase prices, were stable or increased only slightly during the period 2005 - RIP.

#### 4.10.3. Resale prices

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

Table 23

#### Average consumer prices in certain Member States (indexed)

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

Source: national statistical offices.

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

#### 4.10.4. *Profitability*

- (466) As the information submitted by retailers was not detailed enough, it has not been possible to directly obtain retailers' profitability data. However, comparing the retailers' purchase price development, as mentioned under recital 462 above, with their resale price development, as mentioned under recital 463 et. seqq. above, there is no sign of shrinking profit margins which can be attributed to the cost effect of the duties as the purchase prices of the product concerned remained stable or increased slightly, whereas the resale prices increased slightly.
- (467) As concerns the general level of profitability of the retail sector, there are some indications that this is lower than the profit level achieved by the importers. Furthermore, according to the specialized press, some regions in particular appear to be particularly competitive and difficult from a retailers' point of view (strong competition, consolidation process in the market, strong dependence on the financial market which is reluctant to invest and strategic failures). At the same time, however, one of the largest shoe retail chains operating in the Union reported record profits in 2008 in the press and announced ambitious expansion plans.
- (468) As concerns the retailers' overall profitability, it should also be noted that the effect of the anti-dumping duty is, in any case, diluted by the turnover achieved on their other products like STAF, leather footwear from other origins, other kinds of footwear and accessories.
- (469) To conclude, the argument of decreasing profitability was not substantiated by the retailers during the review investigation and also the findings of the investigation did not support such a statement. From the information available

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it appears to be more likely that the imposition of anti-dumping measures did not negatively affect the retailers from 2006 until the RIP, or just to a limited extent.

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

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

4.10.6. *Likely effect if measures are maintained*

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

(472) Those retailers/distributors operating in very competitive markets and sourcing predominantly leather shoes from the countries concerned could, in such a scenario, end up in a fragile situation given their relatively high costs and relatively low net margins. A repeal of the anti-dumping measures on the product concerned would offer such companies relief in that scenario. For those retailers/distributors, however, that are sourcing also from third countries/Union and that have a more diversified product mix, the impact of possible price increases will likely be diluted in the turnover. Moreover, the investigation has shown that although being in a particular market position, the importance of large retailers and retailer buying groups is sufficiently significant to prevent importers to fully pass on cost increases.

(473) To conclude, those retailers which continue to source predominantly the product concerned will suffer more from any prolongation of the measures while those retailers with a more mixed and flexible business model, switching their sourcing to other alternative sources and diversifying their product mix, will probably be less affected - although they might suffer more than during the RIP.

4.10.7. *Comments*

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- (474) It was argued that the measures had caused many retailers to search for alternative sources of supply. The information on the file shows that some retailers might indeed have changed their sourcing, but none of the retailers or their associations reported that there were shortages of supply or even difficulties to find alternative sources following the imposition of measures. Thus, while indeed several retailers have looked for alternative sources, the information suggests that they were successful in finding competitive alternative sources of supply. While it is acknowledged that this effort was time-consuming for some retailers, this is considered to be an indirect, not disproportionate effect of the imposition of measures as compared to the benefits for the European producers suffering from dumped imports.
- (475) It was submitted by several interested parties that the favourable cost factors which had been in place during the period considered, as summarized in recital 465 above, had ended. Instead, since the end of the RIP, the exchange rate development would have developed negatively and the production costs in the PRC and Vietnam were on the rise again. Consequently, if the measures would be maintained, this would bring the retail sector in a difficult situation, having to move up price points. This would not only result in higher prices at retail level but also less turnover and, in view of the high fixed cost, a strong decrease of profit.
- (476) As mentioned in recital 454 above, it is highly speculative to anticipate a depreciation of the Euro on the short and medium term. Moreover, whereas rising costs in the PRC are likely to affect the importers' position, the argument is not valid for retailers as the information on the file on sales prices of importers to retailers, during the period considered and post-RIP, demonstrates that price increases were passed on to retailers to a limited extent only. That points at a generally strong market position of retailers.
- (477) Therefore, whereas it is acknowledged that the principle of 'price points' is widely used in the footwear retail sector and that it allows for smaller price increases to attract less attention from the consumer, there are no indications on the file that retailers are confronted with an overall significant increase in purchase prices of the product concerned. There is, consequently, no evidence on the file that they would have to, in general, move up price points for the product concerned. Furthermore, even if they would have to do so for certain specific models, the effect of that could be neutralized by changing sources or product mix. In view of the above, the argument is dismissed.

#### 4.11. **Conclusion**

- (478) To conclude, based on the limited information available, there are no indications that the measures had a significant adverse effect on the financial situation of distributors/retailers during the period 2006-RIP. Taking into consideration the likely effects of the economic downturn post-RIP, notably in view of the retailers' sandwich position between importers and consumers

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and the possibly modest profits of retailers, it can however not be excluded that the financial situation of those retailers which are predominantly selling the product concerned will deteriorate. It is however noted that the retailers are free to source their products from other origins and to diversify the products offered so that they can mitigate the effects of anti-dumping duties in their turnover. In general, retailers are in a much more favourable market position than Union producers as they have the above described flexibility whereas the Union producers are fully exposed to the price pressure exerted by the imported dumped products.

#### 4.12. **Interest of the consumers**

##### 4.12.1. *General*

- (479) The Commission contacted 39 consumer associations in the Union to inform them about the initiation of the expiry review. These associations were explicitly invited to explain their position on the existing measures and to provide any other information that might be relevant for the investigation. Three consumer organisations came forward as an interested party and submitted comments in writing.
- (480) Two national consumer associations indicated their support for the anti-dumping measures. One of them specifically mentioned that, even with the measures imposed, prices of footwear from the countries concerned remain very low. The European consumers' organisation BEUC opposed the measures, inter alia arguing that the measures were harmful to the consumer.
- (481) In this respect, in the original investigation, the impact on consumers was predicted to be limited assuming that the relatively moderate duty rates would be diluted in the different layers of the distribution chain and not fully be passed on to consumers. Nevertheless, a 'worst case' scenario was drawn up, i.e. a full pass-on to consumer was estimated. The estimation in the original case was a maximum increase of consumer prices by 2 %, or EUR 1 per pair.
- (482) The results of the review investigation indeed demonstrate that consumer prices of leather shoes only increased slightly since the imposition of the measures (see recitals 463 et seqq.). The increase in average shoe retail prices as reported by the national statistical offices of the group of representative Member States mentioned in those recitals and in table 23 is between -0,5 % and +4,1 %, which is lower than the reported inflation in that period.
- (483) On the basis of the analysis of import prices, it was also established that prices of leather footwear from the PRC and Vietnam remained relatively low, even after adding the anti-dumping duties (see recital 422 above). Therefore, from the information on the file, it does not appear that the measures have harmed consumers to a significant degree.

##### 4.12.2. *Other comments*

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- (484) Several interested parties argued that the measures were harmful to the consumers, and that they have resulted in higher prices. It was also argued by certain importers that the impact of the measures on consumers would become much more noticeable now that they could not longer absorb the duties.
- (485) As mentioned in recital 482 above, there anti-dumping duties appear not to have resulted in a noticeable increase of retail prices. As regards the alleged inability of importers to absorb the duties, the post-RIP analysis gives already some indications in that respect. Indeed, as explained in recital 438 above, during the period July 2008 to March 2009 the importers' purchase prices increased strongly whereas their resale prices remained stable or increased slightly at most. That information suggests that importers would not necessarily need to pass on any cost increase to the next level in the distribution chain. The argument is therefore rejected.
- (486) One interested party claimed that the measures would result/had resulted in a reduced choice of leather footwear for consumers, notably a lack of middle/to low end leather shoes at affordable prices. This claim had already been made during the original investigation.
- (487) The above claim was not substantiated. Moreover, in view of the stable retail prices over a long period in time, it is unlikely that consumers would loose interest in the product in question for reasons of price evolution. It is also noted that apart from one association which claimed that measures would have led to less choice for consumers without substantiating this argument by evidence, no other retailer or retail association complained about reduced choice or a shortage of supply. Even if the investigation has confirmed that the choice of consumers has slightly shifted away from the product in question, given the modest decrease of consumption of leather shoes observed during the period considered and the increased demand for textile shoes, this can however be attributed to changing fashion trends rather than to a reduced choice of leather footwear.

## 5. CONCLUSION ON UNION INTEREST

- (488) It follows from the above that a significant part of the Union industry producers has improved its situation since the imposition of anti-dumping measures and has proven its viability by adapting their business models to the challenges of the globalised market. Should measures be maintained, they will allow for more time to continue this process. Should measures lapse, the price pressure of the dumped imports on the mid to low end products will likely impact also on the higher end products and eventually affect all leather footwear. In this scenario, it is likely that more Union producers will go into bankruptcy given that due to their predominant small to medium size, they are financially more vulnerable.

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- (489) On the other hand, the impact of the anti-dumping duties from 2006 until the RIP on importers, retailers/distributors and consumers was not disproportionate. Should measures continue and assuming that consumer demand will further weaken in the wake of the economic crisis, the impact of the anti-dumping duties on all players will in all likelihood be higher than in the past. However, given the generally healthy state and proven flexibility of the importers and the general strong market position of retailers/distributors that can diversify their product mix considerably, it can be assumed that those operators will not disproportionately suffer in the short to medium term. As regards consumers, there was no noticeable price-increase following the imposition of the anti-dumping duties and, also taking into account the results of the post-RIP analysis, there are no indications that consumer prices will increase disproportionately in the future.
- (490) To conclude, the review investigation did not bring to light any compelling reasons why the anti-dumping measures should not be maintained.

**L. COMMENTS FROM INTERESTED PARTIES FOLLOWING DISCLOSURE**

- (491) A number of comments were received following disclosure of the findings. However, none of these were such to alter the conclusions. The main arguments raised were as follows.
1. INTEREST OF THE UNION INDUSTRY
- (492) After disclosure of the definitive findings, one interested party claimed that it were not the anti-dumping measures that helped the Union industry, but the restructuring efforts only. This claim was not only without further substantiation, but it also ignores the objective findings of this review investigation. Notably, it ignores the coincidence in time between the imposition of the anti-dumping measures and the stabilisation process of the Union industry. Indeed, since the imposition of the measures, the massive increase of low priced, dumped imports stopped and combined imports fell from a market share of 35,5 % to 28,7 %. This decrease of dumped imports on the Union market alleviated the price pressure exerted by those low priced footwear and helped the Union industry to continue with its restructuring efforts.
- (493) It was also reiterated that the Union cannot mass produce and due to the consequent missing economies of scale it would not be able to satisfy the strong demand in the Union of cheaper shoes. Firstly, it is pointed out that this claim was not substantiated. Secondly, amongst the Union producers, there are also a number of bigger producers of lower segment shoes with lower sales prices, some of them having been analysed in the sample. Moreover, with regard to the claim that the Union industry would not be in a position to deliver the required volumes, it is noted that the investigation showed that most of the larger importers selected in the sample do not only order from



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one single supplier, but also source relatively smaller volumes from several suppliers. This, together with the effects of the ‘clustering model’ as set out in section E.2., whereby work forces of several smaller companies are combined, should logically also enable the Union industry to produce bigger volumes. This claim is therefore rejected.

(494) Two interested parties claimed that the situation of globally outsourcing Union producers was not analysed in the same detail as was done for the sampled Union producers. It is however noted that the analysis included an assessment of all interested parties to the extent that they cooperated in the investigation. For example, the interest of a large Union producer who was excluded from the definition of the Union industry because of its import volumes, see recitals 402 et seqq, was examined in quite some detail. It should also be noted that companies in the Union which have outsourced the majority of their production to third countries are to be technically considered in anti-dumping investigations as importers and the situation of importers has fully been taken into account and analysed in recitals 409 et seqq.

(495) One party pointed out that there was a wrong assessment of the interests of formerly sampled Union producers as some of them were allegedly against the continuation of measures. This is however not correct, as even the company that did not see the benefit for itself claimed that measures helped to curb dumped imports. One other company only mentioned that it is difficult for them in the economic crisis to foresee the exact effect of anti-dumping duties in the future, but this company did not mention that the duties were without merit. Thus, even the parties that did not explicitly mention that they directly benefited from measures have pointed out that measures have brought the indirect benefit of curbing imports from the PRC and Vietnam.

(496) It is therefore definitely confirmed that overall the Union producers benefited from the measures and showed their capacity to improve their situation once measures mitigated the effects of injurious dumping.

## 2. INTEREST OF THE UNRELATED IMPORTERS

(497) Several interested parties criticised in general that the interests of anonymous complainants would be protected whereas the interests of importers, other economic operators as well as consumers would have been largely disregarded. It is noted that the imposition of the anti-dumping duties was overall found to be beneficial for the Union producers and not found to be disproportionately negative for the other relevant operators. The allegation of discrimination between those parties is however strongly rejected as the same treatment was offered to all parties in the investigation and all interests of cooperating economic operators such as importers, retailers, outsourcing Union producers and consumers were carefully considered and analysed in the investigation.

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- (498) Several parties claimed that the importers' profits would not be high enough to shoulder increased import costs, exchange rate developments, cost of switching to other sources of supply and anti-dumping duties. This claim has however not been sufficiently substantiated. As shown in table 22, the order of magnitude of the profit of importers, i.e. around 20 %, is such that it appears that they still have room to shoulder the aforementioned costs.
- (499) It has been claimed that the employment figure given for importers, i.e. around 23 000 people, is too low as it would not include 'value adding jobs' in the Union. This is however not true. The employment figure of importers has been calculated on the basis of the verified employment figures of the sampled importers which also included high value adding jobs, such as design, marketing, R&D, branding etc., attributable to the product concerned. All verified employment figures were added and put into relation to the import volume of the product concerned of the sampled importers. Then, this result was extrapolated to the overall import volume from the countries concerned. Thus, the employment figure established included also significant 'value adding jobs' in the Union.
- (500) Some parties have claimed that the argument that importers could easily switch sources of supply is factually incorrect and simplistic. One interested party claimed that there were no alternative sources of supply. In this respect, it is noted that it was never stated that switching sources of supply would be easy. The Commission does not deny that switching suppliers might entail extra costs and requires time and that some importers have long term relationships with their suppliers. Based on the information gathered from the sampled importers and another non-sampled importer, it could however be concluded in recital 452 of the Regulation that a significant degree of flexibility existed and that any additional efforts to switch sources were not such as to prevent those operators from doing so. Indeed, those importers significantly increased their supply from third countries as shown in table 19. The same trend was observed for non-sampled importers, given that Eurostat shows an increase of 4 percentage points as regards imports from third countries (table 7).
- (501) Some interested parties argued that the continuation of measures will intensify job decline in the Union, certainly with regard to importers and retailers. This claim was not substantiated by the interested parties. Moreover, the file shows that, as concerns the sampled importers, employment related to the product concerned increased by 6 % from 2005 to the RIP.
- (502) It was claimed that an analysis of potential benefits of discontinuation of measures to importers was missing. In this regard, it is noted that based on the wording of Article 21 of the basic anti-dumping Regulation, it has to be analysed if there are compelling reasons not to impose anti-dumping measures. In the framework of an expiry review this means that it has to be analysed if there exist compelling reasons not to maintain the measures, i.e.

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negative effects of a prolongation of those measures have to be identified and those effects have to be balanced against the benefits of the Union industry in order to assess if those negative effects are disproportionate. Thus, from a legal point of view, the opposite scenario, i.e. letting measures expire, would only need to be further analysed if there are specific indications in the case that this would constitute a disproportionate burden for importers, retailers or consumers. No such indications were found. However, and for the sake of the argument only, the following could be said about the likely effects on importers, retailers and consumers if measures would lapse. As regards importers, the investigation showed that a certain part of their loss of profitability from 2005 until the RIP could be attributed to the anti-dumping duties paid. Should measures lapse and all other costs remain stable, these costs would disappear and in that respect, the profit levels might increase to a level higher than the roughly 20 % found during the investigation. For retailers, it is unclear from the information on file whether they would benefit from an expiry of the measures, because the sampled importers did not always adapt their resale prices in case the import prices dropped, as it can be seen by a comparison of the arithmetic average import price and arithmetic average resales price from 2007 to the RIP.

As regards the effect on consumers, it is even more unlikely that an expiry of the measures would lead to decreasing prices, given that retail prices remained largely stable despite the price movements at import level from 2005 until the RIP. Moreover, it is unlikely as well that consumers would benefit via an increased choice given that there is no evidence on file demonstrating that the choice for the consumers was affected by the imposition of anti-dumping duties. In any event, all this cannot alter the overall conclusions that there are no compelling reasons not to maintain the measures.

(503) Some importers and their associations claimed that the impact of the crisis was underestimated and that the effects of the downturn will continue to worsen. Firstly, these claims have been insufficiently substantiated as not concrete data relating to the product concerned was submitted. As stated in recitals 436 et seqq. of the Regulation, the impact of the crisis has been analysed until June 2009 on the basis of best data available i.e. an additional questionnaire was sent out in order to have a look specifically at this issue. On the basis of the information collected, a prudent analysis of the data obtained was done and it is clear that this analysis is mainly based on data until June 2009. It can thus not be ruled out that the impact of the economic crisis on consumption and prices is worse than it was until June 2009, but it can still be concluded that given the profit level well above 15 %, the importers are unlikely to suddenly be disproportionately affected by the isolated effect of anti-dumping duties.

This is all the more true as the market situation post June 2009 showed mixed signals with signs of improvement in some Member States. Therefore, it is not apparent at this stage that the impact of the crisis has been seriously underestimated. It is moreover noted that by looking at the above data, the Commission went well beyond their legal

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obligations as Article 6(1) of the basic Regulation explicitly states that information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

(504) Lastly, some parties reiterated their claim that some product types should be excluded from the anti-dumping measures under Union interest aspects as there is only negligible production of notably sports and outdoor footwear left in the Union. It was alleged that the decline in the Union production would constitute changed circumstance that have to be taken into consideration in the expiry review. It is firstly recalled that it is not possible to modify the scope of the measures in the framework of an expiry review pursuant to Article 11(2) of the basic Regulation as stated in recital 61 of this Regulation. Even assuming that it would be legally possible, quod non, it is pointed out that this claim of decreasing production was already made in the original investigation and rebutted in recitals 28 and 38 of the definitive Regulation. As those parties did not submit any new substantiated evidence to demonstrate to what extent the Union production of those footwear types shrank in relation to the original investigation, the claim is rejected and the findings as described in recital 450 of this Regulation are hereby confirmed.

### 3. INTEREST OF THE DISTRIBUTORS/RETAILERS

(505) One interested party claimed that the analysis distinguished artificially between importers and retailers and that the interest of integrated companies that have to shoulder the whole burden of the measures was not taken into consideration. Firstly, it is noted that the only company which cooperated as a retailer was in fact an integrated importer/retailer, as indicated in recital 460 above, so the specificity of those integrated companies was represented both amongst the sampled importers and in the retailers' analysis. Secondly, all information provided by other retailers which did not fully cooperate in the investigation was also taken into account. The Commission thus considered and analysed all available information on integrated companies. Considering the above, the claim that the interest of integrated companies had not been taken into account cannot be upheld.

(506) Some interested parties expressed a general criticism claiming that the impact of the measure on retailers was not analysed in sufficient detail. This claim was not substantiated. As described in recitals 459 et seq., the Commission pro-actively and repeatedly tried to gather information from retailers but apart from one integrated importer/retailer that cooperated as an importer, no retail chain accepted to fully cooperate in the investigation. Despite the limited cooperation of retailers, the analysis considered, to the extent possible, all information available on the retail sector such as written submissions by interested parties, information provided in hearings, market intelligence, studies and specialized press. In view of the above, the claim that the impact of the measures on retailers was not analysed in sufficient detail must be rejected.

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- (507) A number of parties claimed that the Commission did not take into account publicly available information on retailer profitability. One party argued that the profitability data collected from publicly available financial reports of major Union retailers shows a deeply worrying situation which the analysis has disregarded. In the same vein, some parties have considered that the severe effects of the economic crisis on the retail sector were not taken into account. It was argued that although one of the largest shoe retail chains reported record profits in 2008, this is the exception to the rule and smaller retailers suffer severely. In this respect, it is reiterated that there was very limited cooperation from retailers, as only one retailer/importer cooperated fully in the investigation. Moreover, neither before nor after disclosure any specific information was submitted as regards the profit of retailers with regard to leather footwear or the product concerned. In spite of this, the Commission took into account and analysed a variety of other sources of information such as submissions from retailers, market information, press reports which pointed to a wide variability of profits in the retail sector: whereas some retailers indeed appeared to have experienced decreasing margins and weakening demand, specialized press reported increasing sales and revenues for others. Thus, the publicly available information referred to by the parties above was considered but proved to provide only a partial picture and therefore a variety of other information sources were used which indicated a wider spread of profits. Consequently, the impact of the economic downturn on retailers has been analysed to the extent possible on the basis of information available. The claim that the profitability of retailers has not been correctly analysed must therefore be rejected.
- (508) Some parties objected to a reference to the general level of profitability of the retail sector and to a turnover achieved on other footwear as they consider this irrelevant for the investigation. One party argued that if it was stated by the investigation authority that the effect of measures on retailers had been diluted by sales of other products, a similar analysis should have been made for Union producers. It is noted that retailers and Union producers of the like product are in a different situation insofar as they produce mainly leather footwear while retailers usually have a wider portfolio of other products. The statements made in recitals 472 et seqq remain therefore valid.
- (509) Some parties questioned the accuracy of the employment figures of the retail sector and considered that more jobs were at stake without substantiating this argument. In this respect, it is to be noted that the employment figure of the retail sector as indicated in recital 459 was calculated on the basis of the verified employment figure, related to the retail function and allocated to the product concerned, of the only cooperating importer/retailer. An estimation was then made by extrapolating the above employment figure on the basis of the volumes retailed by this company as compared to total volumes of the product concerned retailed on the Union market. This estimate was

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then cross-checked with submissions from other parties and with market intelligence sources which confirmed the order of magnitude established by the Commission. The above argument is therefore rejected.

(510) It was argued by several parties that it was difficult for retailers to switch sources, in particular for SMEs, as they had long and trusted relationships and the expense of switching suppliers and the delays involved could be prohibitive. Some parties argued that in the current economic downturn relocation costs were particularly hard to digest for retailers. In this respect it is recognised that switching sources might cause some problems for some retailers in times of economic crisis. However, the Commission did not find that the costs and the delays involved in switching sources of supply were prohibitive. In fact, information gathered during the investigation suggested that several retailers had looked for alternative supplies and had switched without a disproportionately negative effect. The above argument cannot therefore be upheld.

(511) One party pointed out that the increased cost of leather footwear from the PRC and Vietnam, in addition to the measures, made it uncompetitive to continue sourcing from these countries. The argument that sourcing from the countries concerned is no longer competitive was not substantiated and does not seem to be compatible with the finding that imports from the countries concerned still have a combined market share of 28 % during the RIP. Moreover, the allegation that there are other increasing costs in the countries concerned that have a bearing on sourcing decisions of importers confirms the finding of the Commission in recital 402 et seqq. that there seem to be other factors than the anti-dumping duty which have an impact on the decision of importers/retailers to switch supplies. As there are many other factors in play, it is not possible to attribute all negative impact to the measures.

(512) Several parties claimed that it had not been sufficiently considered that consumer price points prevented small price increases being passed on to consumers. This statement in fact confirmed the finding of the Commission that the price increases to retailers were too small to be translated to any significant extent at consumer level. In this respect reference is made to recital 477.

(513) One party held that the analysis did not take into consideration the tough price battle in the retail sector. This argument is rejected as the strong retail competition was considered in the analysis as described in recital 467.

#### 4. INTEREST OF THE CONSUMERS

(514) Several parties argued that consumer price increases were higher than what was found in the investigation and, if the measures were extended, consumer prices would further increase. Others questioned the accuracy of the figures used by the Commission for consumer prices alleging that they did not cover all Member States and included other products than the product concerned.

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Two parties complained that the industry monitor information on retail prices submitted by one of them had not been considered. It should be recalled in this respect that all information submitted on retail prices had been analysed in the investigation, reference is made to recitals 463 et seqq.

In fact, the Commission used a number of sources to establish the evolution of retail prices, namely information from cooperating parties (resale prices of wholesalers, purchase prices and resale prices of the cooperating importer/retailer and other retailers submitting information); statements by a number of interested parties that consumer prices had not increased as well as information from statistical sources. This latter source, presented in table 23, was found to be more reliable than the industry monitor information on retail prices referred to above for the following reasons. In fact, the data submitted by this party was considered narrower and less representative as it contained only a very small part of the product scope and it omitted one important consumer market, namely the UK, a very competitive retail market according to interested parties. In contrast, the information presented in table 23 was gathered from national statistical offices (including the UK which reported a slight decrease in consumer prices between 2005 and RIP) and was dominated by the product concerned. In any event, the information provided by interested parties during the investigation showed moderate price increases or even decreases. On these grounds the above arguments had to be rejected.

- (515) One party claimed that consumers had difficulties in obtaining high quality and reasonably priced products. This argument was not substantiated and is therefore dismissed.
- (516) One party argued that the decreasing consumption of leather footwear showed the negative impact of the measures on consumers, without, however, substantiating this argument. As described in recital 482, consumer prices have remained largely stable and therefore there has been no negative impact on consumers. The Commission found a number of factors which had led to a decreasing consumption of leather shoes, including changing fashion trends, and therefore it was not possible to conclude that decreasing consumption would be attributable to the measures. The above argument is therefore dismissed.

## 5. OTHER COMMENTS FOLLOWING DISCLOSURE

- (517) Two parties claimed that the Union interest analysis was incomplete as the interests of Union logistic providers (shipping companies etc) were not taken into account in the Union interest analysis. It is to be noted that no such operator came forward and requested that its views be taken into account and no information has been submitted in this respect. Thus, the claim that the Union interest analysis is incomplete in that respect is rejected. In the same vein, some parties claimed that the positive effects of letting measures lapse should have been analysed in the Union interest part. As to this claim, it is

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referred to the explanation given in recital 502 of the Regulation why such an analysis is not deemed to be necessary from a legal point of view in this case.

- (518) The Vietnamese government and the Vietnam Leather and Footwear association claimed that the continuation of measures lessens the effect of aid programs granted by the Union. The imposition or prolongation of anti-dumping duties is a normal, technical consequence of the fact that Vietnamese exporters were found to be engaged in injurious dumping practices. Any political consideration such as the one brought forward is outside of the legal framework and thus irrelevant. Moreover, there is no conflict between the Union granting development aid to Vietnam in various areas and the imposition of anti-dumping duties after a thorough investigation conducted in accordance with international trade rules.

#### M. **DEFINITIVE ANTI-DUMPING MEASURES**

- (519) In the light of the foregoing, the anti-dumping measures on leather footwear should be maintained. Nevertheless, and without ignoring that continuation of injurious dumping has been established and that Union interest calls for the imposition of measures, the present proceeding is characterised by particular circumstances as referred to in recitals 324 to 326 above, which should also be adequately reflected in the duration of the anti-dumping measures. The investigation showed that there is a likelihood of continuation of injury for the short/medium term, until the process of adjustment of the Union industry has been completed. The duration of the measures should therefore be limited to 15 months.
- (520) In accordance with Article 11(2) of the basic Regulation, the extension of measures following an expiry review would normally apply for 5 years, unless there are specific grounds or circumstances which call for a shorter period. In the current case the investigation demonstrated that the Union industry was undergoing significant changes in the period considered. In particular it was found that one part of the industry was adapting its business model with increasing profits which neared the target profit. This group was also found to be significantly expanding both in terms of turnover and volume so as to gradually absorb a significant part of the other group of industry that had not undergone a significant change in its business model.
- (521) Based on these developments found, it is considered that at this point in time, regarding the period after the one stipulated in recital 519, the likelihood of continuation of injury can no longer be ascertained. Therefore, it is considered inappropriate to propose a longer duration of the measures than that period.
- (522) It is recalled that the measures subject to the current review were extended by Regulation (EC) No 388/2008<sup>(9)</sup> to imports of the same product, consigned from the Macao SAR, whether declared as originating in the Macao SAR or not. No new element was brought forward in this respect in the framework of this review. The definitive anti-dumping duty of 16,5 % and applicable



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to imports originating in the PRC should therefore be extended to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not.

## N. FINAL PROVISIONS

(523) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of duties on the PRC and on Vietnam. In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representation subsequent to the disclosure. The oral and written comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

It follows from the above that the anti-dumping duties should be maintained for 15 months,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1 A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap, originating in the People's Republic of China and Vietnam and falling within CN codes: 6403 20 00, ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 et ex 6405 10 00<sup>(10)</sup>.

The TARIC codes are listed in the Annex to this Regulation.

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

‘sports footwear’ shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I to Regulation (EC) No 1031/2008<sup>(11)</sup>;

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

‘footwear with a protective toecap’ shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules<sup>(12)</sup> and falling within CN codes: ex 6403 51 05, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 05, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 05, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 05, ex 6403 99 11, ex 6403 99 31, ex 6403

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99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00;

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

3 The rate of the anti-dumping duty applicable to the net, free-at-Union frontier price, before duty, for the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

<b>Country</b>	<b>Company</b>	<b>Anti-dumping duties</b>	<b>TARIC additional code</b>
PRC	Golden Step	9,7 %	A775
	All other companies	16,5 %	A999
Vietnam	All companies	10,0 %	—

4 The definitive anti-dumping duty of 16,5 % and applicable to imports from ‘all other companies’ in the People's Republic of China is hereby extended to imports of the products described in paragraph 1 consigned from the Macao SAR, whether declared as originating in the Macao SAR or not. The TARIC codes for imports consigned from the Macao SAR are listed in the Annex to this Regulation.

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

#### *Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall be in force for a period of 15 months.

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

Done at Brussels, 22 December 2009.

*For the Council*

*The President*

A. CARLGREN

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ANNEX

TARIC CODES FOR FOOTWEAR WITH UPPERS OF LEATHER  
OR COMPOSITION LEATHER AS DEFINED IN ARTICLE 1

<b>CN code</b>	<b>TARIC code for imports originating in China and Vietnam</b>	<b>TARIC code for imports consigned from Macao</b>
6403 20 00	20, 80	20
6403 51 05	15, 18, 95, 98	15, 95
6403 51 11	91, 99	91
6403 51 15	91, 99	91
6403 51 19	91, 99	91
6403 51 91	91, 99	91
6403 51 95	91, 99	91
6403 51 99	91, 99	91
6403 59 05	15, 18, 95, 98	15, 95
6403 59 11	91, 99	91
6403 59 31	91, 99	91
6403 59 35	91, 99	91
6403 59 39	91, 99	91
6403 59 91	91, 99	91
6403 59 95	91, 99	91
6403 59 99	91, 99	91
6403 91 05	15, 18, 95, 98	15, 95
6403 91 11	95, 98	95
6403 91 13	95, 98	95
6403 91 16	95, 98	95
6403 91 18	95, 98	95
6403 91 91	95, 98	95
6403 91 93	95, 98	95
6403 91 96	95, 98	95
6403 91 98	95, 98	95
6403 99 05	15, 18, 95, 98	15, 95
6403 99 11	91, 99	91
6403 99 31	91, 99	91
6403 99 33	91, 99	91

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6403 99 36	91, 99	91
6403 99 38	91, 99	91
6403 99 91	95, 98	95
6403 99 93	25, 28, 95, 98	25, 95
6403 99 96	25, 28, 95, 98	25, 95
6403 99 98	25, 28, 95, 98	25, 95
6405 10 00	81, 89	81

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- (1) OJ L 56, 6.3.1996, p. 1.
- (2) OJ L 275, 6.10.2006, p. 1.
- (3) OJ L 117, 1.5.2008, p. 1.
- (4) OJ C 75, 26.3.2008, p. 25.
- (5) OJ C 251, 3.10.2008, p. 21.
- (6) Considering that intra-Union subcontracting of full or partial production is common in the Union, the geographical considerations also had to take into account the extent to which the ownership of the production process is conferred on companies in the Member State in question or if the production was rather based on subcontracting or tolling arrangements where ownership of the finished goods remains with the party ordering the service.
- (7) In view of the need to protect the identity of the complainants as indicated in recital 40 and onwards, an exact figure of the relative weight of this company in relation to the rest of the sample could not be given as this could give indications as to the identity of the company.
- (8) CBI market study 'The footwear market in the EU'. April 2008.
- (9) OJ L 117, 1.5.2008, p. 1.
- (10) As defined in Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, 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.
- (11) OJ L 291, 31.10.2008.
- (12) The impact resistance shall be measured according to European Norms EN345 or EN346.

**Changes to legislation:**

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