

## PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

### COMMISSION

#### Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam

(2008/C 251/12)

Following the publication of a notice of impending expiry <sup>(1)</sup> of the anti-dumping measures in force on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam ('countries concerned'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(2)</sup> ('the basic Regulation').

#### 1. Request for review

The request was lodged on 30 June 2008 by the European Confederation of the Footwear Industry (CEC) ('the applicant') on behalf of producers representing a major proportion, in this case more than 35 %, of the total Community production of certain footwear with uppers of leather.

#### 2. Product

The product under review is 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 ('the product concerned'), currently classifiable 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. These CN codes are given only for information.

#### 3. Existing measures

The measures currently in force are definitive anti-dumping duties imposed by Council Regulation (EC) No 1472/2006 <sup>(3)</sup> on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam, extended by Council Regulation (EC) No 388/2008 <sup>(4)</sup> to imports of the same product, consigned from the Macao SAR, whether declared as originating in the Macao SAR or not.

#### 4. Grounds for the review

The request is based on the grounds that the expiry of measures would be likely to result in continuation or recurrence of dumping and injury to the Community industry.

In view of the provisions of Article 2(7) of the basic Regulation, the applicant established normal value for the People's Republic of China and Vietnam on the basis of the price in an appropriate market economy country, which is mentioned in point 5.1(d). The allegation of continuation of dumping is based on a comparison of normal value, established as set out in the preceding sentence, with the export prices of the product concerned when sold for export to the Community.

<sup>(1)</sup> OJ C 75, 26.3.2008, p. 25.

<sup>(2)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(3)</sup> OJ L 275, 6.10.2006, p. 1.

<sup>(4)</sup> OJ L 117, 1.5.2008, p. 1.

On this basis, the dumping margins calculated are significant for all exporting countries concerned.

Furthermore, the applicant points out that during the period of imposition of measures, the exporters/producers of the product concerned from the People's Republic of China tried to undermine the existing measures by circumvention practices, which were counteracted by Regulation (EC) No 388/2008.

The applicant has provided evidence that imports of the product concerned from the People's Republic of China and Vietnam have continued to enter in significant quantities, and that such quantities would be likely to remain at their current levels, if not increase, *inter alia*, due to the potential of the manufacturing facilities of the exporting producers.

In addition, the applicant alleges that the current improved situation with regard to injury is mainly due to the existence of measures and that any continuation of substantial imports at dumped prices from the countries concerned would likely lead to a recurrence of further injury of the Community industry should measures be allowed to lapse.

## 5. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

### 5.1. Procedure for the determination of likelihood of dumping and injury

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation or recurrence of dumping and injury.

#### (a) Sampling

In view of the apparent number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

#### (i) Sampling for exporters/producers in the People's Republic of China and Vietnam

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies

within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the turnover in local currency and the volume in pairs of the product concerned sold for export to the Community during the period 1 July 2007 to 30 June 2008,
- the turnover in local currency and the sales volume in pairs of the product concerned sold on the domestic market during the period 1 July 2007 to 30 June 2008,
- the turnover in local currency and the sales volume in pairs for the product concerned sold to other third countries during the period 1 July 2007 to 30 June 2008,
- the precise activities of the company with regard to the product concerned and the production volume in pairs of the product concerned, the production capacity and the investments in production capacity during the period 1 July 2007 to 30 June 2008,
- the names and the precise activities of all related companies<sup>(1)</sup> involved in the production and/or selling (export and/or domestic) of the product concerned,
- the last available audited statutory accounts (in case your company is not under obligation to have audited statutory accounts, please provide the non audited version); in case the documents are not in one of the official languages of the European Union, please provide translation to one of those languages, preferably English,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion or inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting countries, and any known associations of exporters/producers.

<sup>(1)</sup> For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

## (ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the total turnover in euro of the company during the period 1 July 2007 to 30 June 2008,
- the total number of employees,
- the precise activities of the company with regard to the product concerned,
- the volume in pairs and value in euro of imports into and resales made in the Community market during the period 1 July 2007 to 30 June 2008 of the imported product concerned originating in the People's Republic of China and Vietnam or consigned from the Macao SAR, whether declared as originating in the Macao SAR or not,
- the names and the precise activities of all related companies <sup>(1)</sup> involved in the production and/or selling of the product concerned,
- the last available audited statutory accounts (in case your company is not under obligation to have audited statutory accounts, please provide the non audited version); in case the documents are not in one of the official languages of the European Union, please provide translation to one of those languages, preferably English,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion or inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

<sup>(1)</sup> For guidance on the meaning of related companies, please refer to Article 143 of Regulation (EEC) No 2454/93.

## (iii) Sampling for Community producers

In view of the large number of Community producers supporting the request, the Commission intends to investigate injury to the Community industry by applying sampling.

The selection of the sample will be based on the largest representative volume of production and sales of the Community industry which can be reasonably investigated within the time available.

In order to obtain the information necessary for the selection of the sample of Community producers, the Commission will contact associations of Community producers and/or individual Community producers. In addition, individual Community producers, particularly those not members of an association, may also indicate their willingness to be included in the sample. These producers should make themselves known by contacting the Commission within the time limit set in point 6(b)(i).

## (iv) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the samples.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must co-operate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

## (b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community industry and to any association of producers in the Community, to the sampled exporters/producers in the People's Republic of China and Vietnam, to any association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting countries concerned.

(c) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

(d) *Selection of the market economy country*

In the previous investigation Brazil was used as an appropriate market economy country for the purpose of establishing normal value in respect of the People's Republic of China and Vietnam. The Commission envisages using Brazil again for this purpose. Interested parties are hereby invited to comment on the appropriateness of this country within the specific time limit set in point 6(c).

**5.2. Procedure for the assessment of Community interest**

In accordance with Article 21 of the basic Regulation, in order to decide if the measures are in the interest of the Community, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organizations. Such parties, including those not yet known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting the particular reasons why they should be heard, within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

**6. Time limits**(a) *General time limits*

## (i) For parties to request a questionnaire

All interested parties who did not co-operate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

## (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in point 6(b)(iii).

## (iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) *Specific time limits in respect of sampling*

(i) The information specified in points 5.1(a)(i), 5.1(a)(ii) and 5.1(a)(iii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(ii) All other information relevant for the selection of the sample as referred to in point 5.1(a)(iv) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

(iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

(c) *Specific time limit for the selection of the market economy country*

Parties to the investigation may wish to comment on the appropriateness of Brazil which, as mentioned in point 5.1(d), is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China and Vietnam. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

### 7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' <sup>(1)</sup> and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission  
Directorate-General for Trade  
Directorate H  
Office: N-105 04/092  
B-1049 Brussels  
Fax (32-2) 295 65 05

### 8. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

### 9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

### 10. Possibility to request a review under Article 11(3) of the basic Regulation

As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

### 11. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(2)</sup>.

### 12. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of DG Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of DG Trade (<http://ec.europa.eu/trade>).

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<sup>(1)</sup> This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

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<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.