

Many in the European footwear manufacturing industry supported antidumping measures on imports of shoes from China and Vietnam when the European Union (EU) applied them between 2006 and 2011. It was an open secret that the European Commission took the measures reluctantly and made manufacturers' organisations, particularly Italy's, work extremely hard to secure the protective measures. For this reason, many were surprised by announcements in 2016 that the EU was reimposing antidumping measures on footwear exporters from Asia. This article explains the reasons behind this latest twist in the decade-long saga.



The European Court of Justice in Luxembourg, whose February 2016 decision that Chinese and Vietnamese shoe suppliers had a right to apply for market economy status sparked a new-found enthusiasm at the European Commission for antidumping measures.

CREDIT: EUROPEAN COURT OF JUSTICE

The EU's untold antidumping story

Antidumping duties on imports into Europe of shoes with leather uppers from China and Vietnam have been the subject of debate in the global industry for more than ten years. Urged to do so by influential shoe manufacturers' associations in Spain, Portugal and particularly Italy, the European Commission (the executive arm of the European Union) agreed to impose duties of 10% on imports of the shoes in question coming to Europe from Vietnam and of 16.5% on shoes from China. The measures came into effect provisionally in April 2006 and became definitive (for two years) in October the same year.

Defence against disloyal trade

Antidumping measures are a trade defence mechanism, which national governments and trading blocs can seek to use if they can prove that exporters are being unfaithful to trade agreements or World Trade Organization (WTO) rules. Such behaviour frequently brings accusations of 'disloyal trade', the first sign of which is usually that the price exporters are charging for a product seems unfeasibly low.

Manufacturers in some territories are suspected of being encouraged to keep prices down to win market share while receiving revenue to compensate them for their trouble



Clarks is one of three prominent brands still to be embroiled, with some of their outsource manufacturing partners in Vietnam and China, in an antidumping dispute with the European Commission.

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through unmerited subsidies or tax rebates. This unlevelling of the playing field naturally provokes a reaction in domestic companies who feel they are being unfairly prevented from competing against overseas rivals; the antidumping duties are one way of evening things up again.

Concrete proof

For that to happen, of course, these domestic competitors have to provide detailed, concrete proof that disloyal trade is afoot, which involves a great deal of hard work, such as collating the sales price of particular products in the exporters' home markets and comparing these to the prices their products sell for overseas. Again, if the price at home is more expensive than the export price, it's an indication that something may be amiss. In the case of European footwear, Italy's Assocalzaturifici (then called ANCI) carried out the lion's share of that work and its president at the time, Vito Artioli, quickly became an expert on the subject and, with his colleagues, devoted long hours to gathering data and completing all the paperwork that the European Commission demanded before taking action. He was equally generous in sharing information and explaining what was going on to industry colleagues.

He frequently said that the future of shoe production in Europe was at stake and warned that centuries-old artisan traditions and thousands of jobs could perish. He argued that this would be bad news for consumers in Europe. "Far from being damaged by the dreaded price increases caused by customs duties, which are tiny percentages of very low average import prices, in the long run, consumers could lose their

ability to choose," he said in 2009. What he meant was that, if most of their shoes were imported from Asia, consumers would still be asked to pay high retail prices, but that most of their money would go on "the profits and the enormous margins" that brands and retailers can make on shoes made in lower-cost economies (it's why they have their shoes made there in the first place), rather than on the high-quality materials and workmanship many European shoemakers prefer to use. If there were no longer any companies making these high-quality shoes in Europe, consumers' shoe choices would be left in the hands of what he called "Asian monopolies"; the public would end up getting far less 'shoe' for its money. Instead, consumers would fund the marketing budgets and profits of enormous Wall Street-facing retail organisations and brands and, in the case of sports shoes, donate to the millions of dollars that athletes pocket for endorsement contracts.

Labours of lobbying

Not everyone agreed with ANCI and its counterparts in Spain and Portugal. Sports brands used their lobbying power to try to change the minds of the powerful in Brussels and complained publicly about the unfairness of the antidumping measures. Perhaps because of this, or perhaps because of deep-seated desires to make trade genuinely open and free and to let the market decide which shoes reached shop shelves, the footwear industry bodies were left in no doubt that influential people in Brussels wanted to end antidumping as quickly as possible.

Definitive measures came into effect in October 2006, with an obligatory review after two years as part of the deal. When this review began, outgoing European Union trade commissioner, Peter Mandelson, complained to the *Financial Times* that the review had gone ahead because he had no choice (it was already programmed in), with the clear suggestion that he would have preferred to remove the antidumping duties then and there. There was also a clear indication that the Commission would seek to carry out its review and, perhaps, remove the tariffs as quickly as possible. It took until December 2009 for the Commission to confirm



Puma argued that if some of its suppliers were entitled to market economy status and protection from antidumping policies, it paid too much duty between 2006 and 2011.

CREDIT: PUMA



Former European Trade Commissioner, Peter Mandelson, made little secret of his antipathy towards antidumping measures against footwear imports when the European Commission first put them in place.

CREDIT: EUROPEAN COMMISSION

what would happen next: the EU was keeping antidumping duties in place and was, in fact, extending them to imports of shoes from Macao to put an end to the practice of triangulation (manufacturers in mainland China were accused of using Macao as a route to export markets to get round the tariffs). This was a blow to the plans of Mr Mandelson and a victory for the footwear manufacturers.

Holiday plans on hold

All of this was well documented at the time. What was less widely known was that, according to Vito Artioli, the authorities in Brussels went silent for months at the start of 2009 before suddenly issuing demands during August that year for detailed documentation about discrepancies between the domestic sales price and export price of Vietnamese and Chinese shoes. This required those arguing for the retention of antidumping duties to give up much of their summer holiday plans to put the necessary paperwork together. They succeeded because, Mr Artioli said at the time, the Commission was "forced to acknowledge our case, given that China and Vietnam are still today embracing trade policies that obviously cause great harm to the European footwear industry. Antidumping is a necessary act against those countries that adopt unfair initiatives, marketing products below cost to undermine their competitors."

The Commission had to wait until the end of the extension period in December 2010 to give formal notice that the antidumping measures were ending and, despite a formal request from ANCI for continuing to retain the measures, in March 2011 the payment of tariffs on imports from Vietnam and China ceased.

In comments at the time, Vito Artioli made it clear he had fought as hard as possible but was being forced to accept the new situation, albeit with the promise that the measures would come back if dumping continued and the European footwear industry was able to provide new proof. He said at the start of 2011: "We believe that the anti-dumping duties imposed on Chinese and Vietnamese leather footwear imports were fair, legal and strictly necessary to restore competitive trade conditions. However, today, in a political climate not



Former president of the Italian footwear manufacturers' association, Vito Artioli, became an expert on antidumping and was tireless in gathering the information the European Commission said it required, even at very short notice in (August) 2009.

CREDIT: PUMA

favourable to manufacturers, the commitment of the European Commission in favour of fair and competitive trade should be supported." And that appeared to be the end of that.

Change of heart

At this time, the organisation least likely to call for a return of antidumping duties on footwear imports was the European Commission. That's why it was something of a surprise when, in 2016, the Commission announced it was re-imposing antidumping duties on a small group of footwear manufacturers from China and Vietnam. This move on the part of the Commission was hard to understand. There was some initial excitement in industry press, but that quickly died down because this is not a return to 2006 and most shoe imports coming into the European Union from Vietnam and China face no new tariffs.

Three prominent footwear brands are implicated, however, a trio comprising Clarks, Timberland and Puma. Timberland has offered no reaction. Clarks told *World Footwear*: "We are aware of the decision and continue to consider its implications for our business, and our options in light of it." Puma gave us a hint of the reason for all this reluctance to talk. It said: "We cannot comment on this as it is an ongoing legal procedure."

Legal history

In July 2005, the Commission gave notice of what was to come and most manufacturers in Asia carried on as though they had not noticed; perhaps they hadn't (or perhaps they expected their European customers to pick up the tab). A small group, though, came up with an interesting response. Anticipating by 11 years what would become another heated subject in 2016, they submitted a formal request to be granted 'market economy status' (MES) by the European Union. The concept at stake is that developed economies adhere to market economy principles: the market decides costs and pricing. If regional or national governments interfere in an attempt to alter the market's price or cost levels, they exclude themselves from market economy status.

In 2016, China expected to be granted MES automatically

EU FOOTWEAR ANTIDUMPING TIMELINE

July 2005: The European Union initiates the process of bringing in antidumping measures against imports of leather shoes from Vietnam and China

April 2006: Provision measures begin

October 2006: Definitive measures begin

October 2008: Review begins

December 2009: EU keeps antidumping measures in place and extends them to include Macao to counteract the practice of 'triangulating' exports of shoes from China and Vietnam

December 2010: EU gives notice that the measures are about to expire

March 2011: Expiry confirmed; all goes quiet (or so we thought)

February 2016: The European Court of Justice rules that a small group of manufacturers supplying Clarks, Timberland and Puma had the right to ask for special consideration under rules governing market economy status (exempting them from antidumping or entitling them to a lower rate) and that the European Commission was wrong to impose antidumping duties without considering their request

August 2016: The EU says it has now given these claims due consideration and found that none of the manufacturers met the criteria for 'market economy status'

September 2016: In an effort to stave off wider claims for reimbursement of the antidumping duties paid, the EU reimposes definitive antidumping duties on the small group of manufacturers and brands that triggered the Court of Justice decision; its aim is to emphasise that the measures were always legal and correct.

because last year marked the fifteenth anniversary of its joining the WTO; countries that are still on the path towards fully embracing market principles are allowed to join the WTO, but the assumption is that they will continue along that path and, after 15 years, will surely have reached their MES destination. Europe says China was promised a review in 2016; China says it was promised a move to MES automatically. Lively discussions are ongoing as this issue of *World Footwear* goes to press, but it's fair to say the European Commission has resisted the change.

This is important in the context of this discussion because one of the consequences of China's being granted MES would be that manufacturing industries in Europe would no longer be able to ask the EU to impose antidumping measures on their Chinese competitors, even if they could show that imported products were still being brought in from China at falsely cheap prices; MES would free Chinese exporters, including exporters of shoes, from facing antidumping measures in future.

To return to 2005, the far-sighted footwear manufacturers (from Vietnam as well as from China) who sought to cloak

themselves pre-emptively in the MES protective blanket were not making the claim on behalf of all of Vietnam or all of China; exporters who believe they can show that their individual companies' export prices are in keeping with market rates are entitled to apply for individual treatment and to have a lower duty to pay, if any. It was this individual treatment that the 2005 group asked for. Their plea fell on deaf ears in Brussels.

Fast forward to 2016

Without much publicity at the time, it transpires that Clarks, Puma and Timberland all raised legal objections in 2009 to having the anti-dumping duties imposed on them for imports of shoes made by these specific Asian companies without any consideration from the European Union of their manufacturing partners' individual treatment requests. These legal arguments eventually made their way to the European Court of Justice, which decided that the Commission ought to have given consideration to the claims.

Matters came to a head last February when the Court of Justice suggested that the three brands and their outsource manufacturing partners had a right to a response. They also had a major vested interest because traders who did successfully negotiate individual treatment (we know of at least one, a Chinese firm) still had to pay a tariff, but paid 9.7% instead of the stipulated 16.5%. Having imported millions of pairs of shoes since 2006, and having paid millions of euros in antidumping duties on many of them, the appellants found the idea of reimbursement of up to 6.8% of the duties paid very attractive.

The 'R' word

Reimbursement is a frightening word in Brussels and the Commission has gone to considerable lengths to contest these claims. Despite that, there are commentators who insist that the 2016 Court of Justice decision means the whole campaign of antidumping duties on shoe imports was illegal and that all importers may well have a right to ask for their money back. Faithful to the Court of Justice findings, the Commission set about checking, *a posteriori*, the MES and individual treatment claims of the Vietnamese and Chinese manufacturers concerned, carrying out the work between February and August 2016. It decided the claims were invalid, highlighting a number of objections, including what it said was a lack of freedom on the part of these footwear manufacturers to decide for themselves the volumes of shoes they ship overseas and the export price they charge.

The European Commission has not belatedly discovered any deep-seated sympathy for the arguments that Vito Artioli and his colleagues began putting forward a decade ago. Its support of antidumping now is much more pragmatic. It has focused on the small group of companies that made the original MES claims. It has re-imposed antidumping duties on them, and on them alone, because, commentators say, its retrospective analysis of these cases allows it to insist the steps it imposed on them and on all similar exporters ten years ago were legal. These particular manufacturers triggered the 2016 panic; they are the ones being made to pay now in the form of reinstated antidumping tariffs that other shoe exporters from the two Asian countries are free from. But their example will serve as a warning to everyone else. If any brand or manufacturer should dare to say the 'R' word out loud in Brussels, they know what's coming. 🚫