Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 158/2013

of 18 February 2013

reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9 thereof,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

(1) On 20 October 2007 the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union* the initiation of an anti-dumping proceeding concerning imports into the Community of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China ('PRC')[(2)]. On 4 July 2008, the Commission, by Regulation (EC) No 642/2008[(3)] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits originating in the PRC.

(2) The proceeding was initiated as a result of a complaint lodged on 6 September 2007 by the Spanish National Federation of Associations of Processed Fruit and Vegetables ('FENAVAL', previously named 'FNACV') ('the complainant') on behalf of producers representing 100 % of the total Community production of certain prepared or preserved citrus fruits (namely mandarins etc.). The complaint contained evidence of dumping of the product concerned and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

(3) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 October 2002 to the end of the investigation period ('period considered').

(4) On 9 November 2007, the Commission made imports of the same product originating in the PRC subject to registration by Regulation (EC) No 1295/2007 of 5 November 2007 making imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration[4] ('Registration Regulation').

(5) It is recalled that safeguard measures were in force against the same product until 8 November 2007. The Commission imposed provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) by Regulation (EC) No 1964/2003[5]. Definitive safeguard measures followed by Regulation (EC) No 658/2004[6] ('the safeguard Regulation'). Both the provisional and definitive safeguard measures consisted of a tariff rate quota i.e. a duty was only due once the volume of duty free imports had been exhausted.

(6) By Regulation (EC) No 1355/2008[7] ('the original Regulation') the Council imposed a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

(7) The range of the definitive anti-dumping duty was between 361,4 and 531,2 EUR/tonne net product weight.

1.1. **Xinshiji judgment**

(8) By judgment of 17 February 2011 in Case T-122/09 — *Zhejiang Xinshiji Foods Co. Ltd and Hubei Xinshiji Foods Co. Ltd* v *Council of the European Union supported by European Commission*[8] — ('the Xinshiji judgment') the General Court annulled the original Regulation in so far as it concerns the applicants Zhejiang Xinshiji Foods Co., Ltd and Hubei Xinshiji Foods Co. Ltd

(9) The General Court's judgment was based on the grounds that the Commission breached the rights of defence by not providing the information necessary for the applicants to determine whether, in the light of the structure of the market, the adjustment of export price to the ex-works level of the importer was appropriate in that it made it possible to compare the export price and the Union industry price at the same level of trade. The General Court also considered that the Commission infringed the duty to state reasons as the reasons for a measure must appear in the actual body of the measure and may not be stated in written or oral explanations given subsequently when the measure is already the subject of proceeding brought before the European Union Courts.

(10) In April 2011 the Commission lodged an appeal (C-195/11 P) seeking to set aside the Xinshiji judgment. Following the declaration of invalidity of the original Regulation by the Court of Justice of the European Union ('the Court') on 22 March 2012 (see recital 16 below), the Commission withdrew its appeal as it became without object.

(11) On 3 December 2011 the Commission published a notice[9] partially reopening the anti-dumping investigation ('the first reopening Notice') in order to implement the

General Court's Xinshiji judgment. The reopening was limited to determine whether, in the light of the structure of the market, the adjustment of export price to the ex-work level of the importer was appropriate in that it made it possible to compare the export price and the Union industry price at the same level of trade.

(12) Simultaneously, all interested parties received a disclosure document with its enclosures explaining the reasons behind the adjustment of the post-importation costs which had been taken into account in calculating the price of products originating in the PRC.

(13) Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.

(14) All parties which so requested within the above time limit and which demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(15) The two applicant exporters, eight importers, two associations of importers and one association of producers came forward as interested parties.

1.2. **Analogue country judgment**

(16) On 22 March 2012, in Case C-338/10 — *Grünwald Logistik Service GmbH (GLS)* v *Hauptzollamt Hamburg-Stadt* ('the analogue country judgment') — the Court declared the original Regulation invalid[(10)].

(17) The Court held that since the Commission and the Council had determined the normal value of the product concerned on the basis of the prices actually paid or payable in the European Union for a like product, without taking all due care to determine that value on the basis of the prices paid for that same product in a market economy third country, they had infringed the requirements of Article 2(7)(a) of the basic Regulation.

(18) On 19 June 2012 a notice[(11)] ('the second reopening Notice') was published in the *Official Journal of the European Union*. In the notice parties were informed that, in view of the above-mentioned judgment of the Court, imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC were no longer subject to the anti-dumping measures imposed by the original Regulation, and that definitive anti-dumping duties paid pursuant to that Regulation for the product concerned should be repaid or remitted.

(19) The notice also partially reopened the relevant anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC in order to implement the above judgment of the Court.

(20) The notice set out that the reopening was limited in scope to the selection of an analogue country, if any, and the determination of the normal value pursuant to Article 2(7)(a) of the basic Regulation to be used for the calculation of any margin of dumping.

(21) Moreover, by the same notice, interested parties were invited to make their views known, submit information and provide supporting evidence regarding the

availability of market economy third countries which could be selected to determine normal value pursuant to Article 2(7)(a) of the basic Regulation, including with regard to Israel, Swaziland, Thailand and Turkey.

(22) The Commission directly informed the Union industry and their association, the exporting producers, suppliers and importers and their associations known to be concerned, and the authorities of the third countries concerned. Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.

(23) All parties which so requested within the above time limit and which demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(24) Eight importers and one association of importers came forward as interested parties.

2. PROCEDURE AFTER DISCLOSURE OF PROVISIONAL MEASURES

(25) Following the imposition of provisional anti-dumping duties on imports of the product concerned originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.

(26) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission completed the investigation with regard to Union ('Community') interest aspects. In this respect, verification visits were carried out at the premises of the following unrelated importers in the Union:

— Wünsche Handelsgesellschaft International (GmbH & Co KG), Hamburg, Germany,

— Hüpeden & Co (GmbH & Co) KG, Hamburg, Germany,

— I. Schroeder KG. (GmbH & Co), Hamburg, Germany,

— Zumdieck GmbH, Paderborn, Germany,

— Gaston spol. s r.o., Zlín, Czech Republic.

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

(28) Some importers proposed a joint meeting of all interested parties, pursuant to Article 6(6) of the basic Regulation; however the request was refused by one of them.

(29) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

3. PRODUCT CONCERNED AND LIKE PRODUCT

(30) Subsequent to the imposition of provisional measures, two unrelated Union importers argued that certain types of mandarins should be excluded from the definition of the product concerned either because of their sweetness level or because of their packing when exported. In this respect, it is noted that these claims were not accompanied with any type of verifiable information and data proving that these types have characteristics that differentiate them from the product concerned. It is also noted that differences in packing cannot be considered as a critical element when defining product concerned, especially when formats of packing were already taken into account when defining the product concerned as set out in recital 16 of the provisional Regulation. These arguments are therefore rejected.

(31) The measures were imposed on the product defined in the original Regulation as follows: prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as defined under CN heading 2008, currently falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67 and 2008 30 90 69) and originating in the PRC.

(32) In this regard, in the analogue country judgement the Court interpreted the statistics communicated by the Commission to the Court on 27 July 2011 as data relative solely to the product concerned. However, the Commission has re-examined the full extent of each CN code included in those statistics and it should be noted that they have a broader scope than the product under measures, since they included full CN codes 2008 30 55, 2008 30 75 and 2008 30 90. The statistical data only covering the product concerned or like product for CN codes 2008 30 55 and 2008 30 75, for the abovementioned countries during the investigation period are as follows:

Country	**Volume of imports(tonnes)**
PRC	49 791,3
Thailand	666,1
Turkey	151,2
Israel	4,8
Swaziland	0

(33) Under CN code 2008 30 90, the statistics included products other than the product concerned. As a consequence, no conclusions can be drawn on imports of the like product with regard to this CN code. Therefore, it cannot be derived from the statistics that the like product was imported during the investigation period in significant quantities from either Israel or Swaziland.

4. SAMPLING

4.1. Sampling for exporting producers in the PRC