Commission Regulation (EU) No 572/2012 of 28 June 2012 making imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration

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THE EUROPEAN COMMISSION,

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

Having regard to the judgment of the European Court of Justice ('ECJ') of 22 March 2012 in Case C-338/10,

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 Articles 10(4) and 14(5) thereof,

After consulting the Advisory Committee,

Whereas:

The European Commission ('the Commission') has received a request, pursuant to Article 14(5) of the basic Regulation, to make imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People’s Republic of China subject to registration.

A. **PRODUCT CONCERNED**

(1) The product concerned by this registration is 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, 2008 30 90 69) originating in the People's Republic of China.

B. **THE COURT JUDGEMENT**

(2) On 22 March 2012, in Case C-338/10, the European Court of Justice ('ECJ') declared Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China[(2)] ('definitive anti-dumping Regulation' or 'the contested Regulation') invalid.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 572/2012. (See end of Document for details)*

(3) The ECJ judgment was based on the ground that the Commission had not taken all due care to determine the normal value on the basis of the price or constructed value in a market economy third country as prescribed by Article 2(7)(a) of the basic Regulation.

(4) As a consequence of that judgment, imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 1355/2008.

(5) Following the ECJ judgment, the Commission has thus decided to reopen the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China initiated pursuant to the basic Regulation. The reopening is limited in scope to the implementation of the finding of the ECJ as recalled above.[(3)]

C. REQUEST

(6) Following the ECJ judgement, the Spanish National Federation of Associations of Processed Fruit and Vegetables ('FENAVAL', previously named 'FNACV') ('the applicant') requested that imports of the product concerned are made subject to registration pursuant to Article 14(5) of the basic Regulation so that measures may subsequently be applied against those imports from the date of such registration.

D. GROUNDS FOR THE REGISTRATION

(7) The applicant submitted that the declaration of invalidity by the ECJ of the anti-dumping measures concerned more than one and a half year before their envisaged expiry, for reasons other than the absence of dumping and subsequent injury, heavily jeopardizes its viability. In this respect it pointed in particular at the immediate risk of significant stockpiling of imports concerned, as had already been seen in the past. It therefore requested the registration of such imports.

(8) According to Article 14(5) of the basic Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

(9) The request contains sufficient evidence to justify registration. It should be recalled that the the product is seasonal and fungible, that it is normally canned and that it can easily be stored for extended periods and easily transported. All this makes it possible to rapidly build-up inventories.

(10) In Commission Regulation (EC) No 642/2008, which imposed provisional anti-dumping duties on imports of the product concerned, it was already described that, prior to the imposition of provisional anti-dumping measures, imports of the product concerned had also increased very sharply within a relatively short period[(4)]. The applicant's fear that a surge of imports is to reoccur now that the measures have

been found to be invalid is therefore considered justified. It is corroborated by statistical data from Member States which already reported a very sharp increase in imports in March 2012, to levels twice as high as in March 2011 and 3-4 times higher than in any other preceding month in 2011 and 2012.

(11) The ECJ judgement is limited to the determination of the normal value on the basis of the price or constructed value in a market economy third country. Therefore, the existence of injury is not challenged. In its request, the applicant also pointed at the immediate risk of severe injury to the EU industry as importers would still be able to switch from EU products to Chinese products, leaving EU industry with massive stocks in their warehouses.

(12) In view of the above it is considered that the remedial effect of any definitive anti-dumping duties is likely to be seriously undermined, unless such duties would be applied retroactively. Accordingly, the conditions for registration in this case are met.

E. PROCEDURE

(13) In view of the above, the Commission has concluded that the applicant's request contains sufficient evidence to make imports of the product concerned subject to registration, in accordance with Article 14(5) of the basic Regulation.

(14) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

F. REGISTRATION

(15) Pursuant to Article 14(5) of the basic Regulation, imports of the product concerned should be made subject to registration in order to ensure that, should the reopened investigation result in findings leading to the re-imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively in accordance with applicable legal provisions. Any future liability would emanate from the findings of the reopened anti-dumping investigation.

G. PROCESSING OF PERSONAL DATA

(16) 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[(5)],

HAS ADOPTED THIS REGULATION:

Article 1

1 The Customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 1225/2009, to take the appropriate steps to register the imports into the European Union of prepared or preserved mandarins (including tangerines and satsumas), clementines,