Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1355/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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[(1)] (the 'basic Regulation') and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 20 October 2007 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 (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 (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).

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(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[4].

(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 (the 'safeguard Regulation')[6]. 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.

B. SUBSEQUENT PROCEDURE

(6) 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.

(7) 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 Community interest aspects. In this respect, verification visits were carried out at the premises of the following unrelated importers in the Community:

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

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

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

— Zumdieck GmbH, Paderborn, Germany,

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

(8) 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.

(9) 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.

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

C. PRODUCT CONCERNED AND LIKE PRODUCT

(11) Two unrelated EC 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

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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.

D. SAMPLING

1. Sampling for exporting producers in the PRC

(12) Two unrelated EC importers disputed that the Chinese exporting producers selected for the sample represented 60 % of the total exports to the Community. Nevertheless, they were not able to provide any verifiable information that could undermine the accuracy of the sampling information submitted by the cooperating Chinese exporting producers and largely confirmed in the course of the further investigation. This argument is therefore rejected.

(13) Three Chinese cooperating exporting producers submitted representations claimed that their related companies were exporting producers of the product concerned and should therefore be included in the Annex of cooperating exporting producers. These claims were considered warranted and it was decided to revise the relevant Annex accordingly. One unrelated EC importer argued that exports made to the EC through traders should automatically be allowed to benefit from the measures applicable to the Chinese exporting producers. In this respect, it is noted that anti-dumping measures are imposed on products manufactured by exporting producers in the country under investigation that are exported to the EC (irrespective of which company trades them) and not to business entities engaged only in trading activities. The claim was therefore rejected.

E. DUMPING

1. Market economy treatment (MET)

(14) Following the imposition of provisional measures, no comments were submitted by the Chinese cooperating exporting producer with respect to the MET findings. In the absence of any relevant comments, recitals 29 to 33 of the provisional Regulation are hereby confirmed.

2. Individual treatment

(15) In the absence of any relevant comments, recitals 34 to 37 of the provisional Regulation concerning individual treatment are hereby confirmed.

3. Normal value

(16) It is recalled that the normal value determination was based on the data provided by the Community Industry. This data was verified at the premises of the cooperating Community producers.

(17) Following the imposition of provisional measures, all three Chinese sampled cooperating exporting producers and two unrelated EC importers questioned the use

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of Community Industry prices for the calculation of normal value. It was submitted that normal value should have been calculated on the basis of the PRC production costs account taken of any appropriate adjustments relating to the differences between the EC and the PRC markets. In this respect it is noted that the use of information from a non-market economy country and in particular from companies which have not been granted MET would be contrary to the provisions of Article 2(7)(a) of the basic Regulation. This argument is therefore rejected. It was also argued that data on prices from all other importing countries or relevant published information could have been used as a reasonable solution account taken of the lack of analogue country cooperation. However, such general information, in contrast to the data used by the Commission, could not have been verified and cross checked with regard to their accuracy in line with the provisions of Article 6(8) of the basic Regulation. This argument is therefore rejected. No other argument was submitted that could cast doubt on the fact that the methodology used by the Commission is in line with the provisions of Article 2(7)(a) of the basic Regulation and, in particular, the fact that it constitutes in this particular case the only remaining reasonable basis for calculation of normal value.

(18) In the absence of any other comments, recitals 38 to 45 of the provisional Regulation are hereby confirmed.

4. Export price

(19) Following the imposition of provisional measures, one Chinese sampled cooperating exporting producer submitted that its export price should be adjusted in order to take into account certain cost elements (in particular ocean freight). In this respect it is noted that this issue was dealt with during the on-the-spot verification both with regard to this company as well with regard to the other companies in the sample. On that occasion, each company submitted information with regard to the costs in question. The amount claimed now by the company is considerably higher than the amount originally reported. It is noted that this new claim is based simply on a declaration by a freight forwarder and does not reflect data relating to a real transaction. None of the other sampled exporting producers questioned the figures used with respect to ocean freight. Moreover, given the late submission, this claim can not be verified. In particular, the adjustment requested does not relate to any data already on the file. Following this claim the Commission has nevertheless reviewed the amount of the cost in question account taken of the importance of this particular cost to the EC export transactions reported by the company. As a consequence, the Commission came to the conclusion that it is more appropriate to use the average ocean freight cost verified on-the-spot for all the sampled Chinese companies. Consequently, the company's export price was adjusted accordingly.

(20) One other Chinese sampled cooperating exporting producer highlighted two computation errors on the calculation of its export price related to its submitted export listings. The claim was considered warranted and the producer's relevant export price was revised accordingly.

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(21) In the absence of any other comments in this respect, recital 46 of the provisional Regulation is hereby confirmed.

5. Comparison

(22) In the absence of any comments in this respect, recitals 47 and 48 of the provisional Regulation are hereby confirmed.

6. Dumping margins

(23) In light of the above, the definitive dumping margins, expressed as a percentage of the CIF Community frontier price duty unpaid, are the following:

— Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang 139,4 %,

— Huangyan No 1 Canned Food Factory, Huangyan, Zhejiang 86,5 %,

— Zhejiang Xinshiji Foods Co., Ltd, Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province 136,3 %,

— Cooperating exporting producers not included in the sample 131 %.

All other companies 139,4 %.

F. INJURY

1. Community production and Community industry

(24) In the absence of substantiated comments, the findings set out in recitals 52 to 54 of the provisional Regulation are confirmed.

2. Community consumption

(25) One of the exporting parties argued that there is a discrepancy between the level of the consumption set out in the safeguard Regulation No 658/2004 and the level set in the provisional Regulation. It is underlined that the difference in the level of consumption was basically due to the different product scope in the current investigation and to the different number of Member States in those two investigations. No further and substantiated information was received in this respect. The findings set out in recitals 55 to 57 of the provisional Regulation are therefore confirmed. As a corollary, the subsequent parts of the analysis which draw on consumption are also confirmed in this respect.

3. Imports from the country concerned

(a) Volume and market share of imports of the product concerned

(26) In respect of the market share some interested parties opposed the Commission statement set out in recital 58 that indicated an increase of the market share of the dumped imports. They argued that contrary to the Commission findings the market share of imports from China decreased. The evaluation of imports from the PRC in volume and market share was verified. As set out in recital 58 of the provisional Regulation there was only one year where the market share of the Chinese imports decreased. For the rest of the period examined the market share of imports from China