Commission Regulation (EC) No 642/2008 of 4 July 2008 imposing a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation of the proceeding

(1) On 20 October 2007 the Commission announced by a notice published in the *Official Journal of the European Union*[(2)] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China ('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 thereof, which was considered sufficient to justify the initiation of a proceeding.

(3) On 9 November 2007, the Commission made imports of the same product originating in the PRC subject to registration under Regulation (EC) No 1295/2007 of 5 November 2007[(3)].

(4) It is recalled that safeguard measures were in force against the same product until 8th 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 of 7 November 2003[(4)]. Definitive safeguard measures followed by Regulation (EC) No 658/2004 of 7 April 2004 (the "Safeguards Regulation")[(5)]. 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.

1.2. Parties concerned by the proceeding

(5) The Commission officially advised the complaining Community producers and their association, the exporting producers and their association, suppliers and importers and their associations known to be concerned, and the authorities of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) The complainant producers, exporting producers, importers, and their respective associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(7) In the notice of initiation, the Commission indicated that sampling for the determination of dumping and injury in accordance with Article 17 of the basic Regulation may be applied. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 October 2006 to 30 September 2007).

(8) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent MET and IT claim forms to the Chinese companies known to be concerned. Five companies/groups of related companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET. However, only one company claiming MET was selected in the sample (see recital (26) below). Nine companies/groups of related companies requested only IT.

(9) The Commission sent questionnaires to all Community producers known to be concerned and to their association, to all importers selected in the sample and their associations, to suppliers known to be concerned and to the exporting producers selected in the sample. In addition, questionnaires were sent to all potential analogue country producers identified by the Commission (see recitals (40)-(41) below).

(10) Questionnaire replies were received from four Community producers representing 100 % of the total Community production, from the six sampled unrelated importers in the Community and their respective associations. Replies were also received from all sampled Chinese exporting producers and their related companies. Finally, submissions were also received from the association of Chinese producers and one importers association.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

Exporting producers in the PRC:

— Yichang Rosen Foods Co., Ltd., Zhejiang

— Huangyan No.1 Canned Food Factory Zhejiang and its related trader Merry & Co., Ltd., Huangyan

— Zhejiang Xinshiji Foods Co., Ltd. and its related producer Hubei Xinshiji Foods Co., Ltd., Sanmen.

Community producers:

— Halcon Group SA, Murcia, Spain

— Cofrusa SA, Murcia, Spain

— Agriconsa SA, Valencia, Spain

— Videca SA, Valencia, Spain.

1.3. Investigation period (IP)

(12) 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').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. General remarks

(13) Mandarins are harvested in autumn and winter, with the harvesting and canning season starting early October and finishing around the end of January, the following year. The fresh product is destined for the fresh fruit market, for juicing or for canning. Practice in the mandarin canning industry is to use the season (the period from 1 October in one year to 30 September in the following year) as the basis for comparisons, and the Commission has adopted this practice in its analysis.

2.2. Product concerned

(14) The product concerned 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. These are currently classified as follows: CN code 2008 30 55 covers the product concerned not containing added spirit but containing added sugar and in immediate packings of a net content exceeding 1 kg; CN code 2008 30 75 covers the product concerned not containing added spirit but containing added sugar and in immediate packings of a net content not exceeding 1kg. In addition, a part of ex CN code 2008 30 90 contains mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids prepared or preserved with no added spirit or added sugar (usually in water or its own juice).

(15) The preliminary investigation shows that the product concerned is obtained by peeling and segmenting certain varieties of small citrus fruit (mainly satsumas) which are then packaged in a medium of sugar syrup, juice or water. Peeling and segmenting can either be carried out manually or by machine.

(16) The product concerned is produced in various weights to meet the demands both of the consumer market and of the catering and food industries. The vast majority of the consumer market is taken by the 312 g net weight/ (175 g drained) size, although the share of sales taken by the larger 850 g/(480 g) size is increasing. Larger packaging sizes, particularly those of 2,65 kg/(1 500 g) and 3,1 kg/(1 700 g), are used by the catering and food industries, with the 2,65 kg format being the most popular.

(17) Satsumas, clementines and other small citrus fruit are commonly known by the collective name 'mandarin'. Most of these different varieties of fruit are suitable to be used as fresh product or for juicing or canning. They are similar and their preparations or preservations are, thus, considered as one single product.

2.3. Like product

(18) It was argued by one European importer that the product concerned imported from the PRC was of a higher quality as the Chinese mandarin orange contains less seeds/pips.

(19) As in the Safeguards Regulation, some parties argued that there are differences between the product concerned and the product produced by the Community industry in terms of quality. Community producers argued that consumers have a preference for their products due to perceived higher hygiene standards during the canning process.

(20) The Commission investigated these claims and found the following:

(a) the imported product and the Community product shared the same or similar physical properties such as taste, size, shape and texture. There were some differences in terms of quality but these did not affect the basic characteristics of the product nor their perception by the user/consumer as a single product category;

(b) the imported product and the Community product were sold via similar or identical sales channels. Price information was readily available to buyers and the product concerned and the product of the Community producers competed mainly on price;

(c) the imported product and the Community product both serve the same or similar end-uses;

(d) the imported product and the Community product were both perceived by consumers as interchangeable and satisfy the same type of demand. In this respect, the differences identified by certain importers were of minor importance for the purposes of the analysis under this section.

(e) the imported product and the Community product normally classified under the ex CN code 2008 30 90 (citrus fruit with no added spirit or added sugar usually in water or its own juice), which were not covered by the safeguard measures, serve also the same or similar end-uses and are perceived by consumers as fully interchangeable and alike in all basic characteristics with products normally classified under the other two CN codes, i.e. 2008 30 55 and 2008 30 75.

Given that 'likeness' does not require completely identical products, any minor variations were not sufficient to change the overall finding of likeness between the imported and Community products.

(21) Therefore, the Commission concludes that the imported product and the Community product are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. SAMPLING

3.1. Sampling for exporting producers in the PRC

(22) In view of the large number of exporting producers in the PRC, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17(1) of the basic Regulation.

(23) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of the product concerned. The authorities of the PRC and the producers' association were also consulted.

3.1.1. Pre-selection of cooperating exporting producers

(24) Sixteen companies/groups of related companies in the PRC came forward and provided the requested information within the given deadline set in the notice of initiation. All of them reported exports to the Community during the IP and expressed a wish to participate in the sample.

(25) Exporting producers which did not make themselves known within the aforesaid period or did not provide the requested information in due time, were considered as non-cooperating with the investigation. However, a comparison between Eurostat import data and the volume of exports to the Community of the product concerned reported for the IP by the companies mentioned in recital (24) suggests that the co-operation of Chinese exporting producers was very high.

3.1.2. Selection of the sample