COMMISSION REGULATION (EC) No 658/2004

of 7 April 2004

imposing definitive safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1995 on common rules for imports and repealing Regulation (EC) No 518/94 [1], as last amended by Regulation (EC) No 2474/2000 [2], and in particular Articles 7 and 16 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EC) No 1765/82, (EEC) No 1766/82 and (EEC) No 3420/83 [3], as last amended by Regulation (EC) No 427/2003 [4], and in particular Articles 6 and 15 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

1. PROCEDURE

(1) On 20 June 2003, the Spanish Government informed the Commission that trends in imports of prepared or preserved citrus fruits (namely mandarins, etc.) appeared to call for safeguard measures under Regulations (EC) No 3285/94 and (EC) No 519/94, submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94, and requested the Commission to take safeguard measures under those instruments.

(2) Spain claimed that there had been recent substantial and rapid increases in imports of the product concerned, both in absolute terms and relative to Community production and consumption. Furthermore, Spain alleged that the increase in the volume of imports into the European Community had had a negative impact on the price level in the Community and in the market share and the volume sold by the Community producers, causing them serious damage. Spain also urged the adoption of Community safeguard measures as a matter of urgency.

(3) The Commission informed all Member States of the situation and consulted with them on the terms and conditions of imports, import trends and the serious injury or threat thereof and the various aspects of the economic and commercial situation with regard to the Community products in question.

(4) On 11 July 2003, the Commission initiated an investigation relating to serious injury or threat thereof to the Community producers of products like or directly competing with the imported product.

(5) Following a preliminary investigation, the Commission imposed provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) under Commission Regulation (EC) No 1964/2003 [5] of 7 November 2003.

[1] OJ L 349, 31.12.1994, p. 53.
[2] OJ L 286, 11.11.2000, p. 1.
[3] OJ L 67, 10.3.1994, p. 89.
[4] OJ L 65, 8.3.2003, p. 1.
[5] OJ L 290, 8.11.2003, p. 3.

(6) The Commission continued to a full investigation in relation to the product concerned and officially advised the exporting producers and importers as well as their representative associations known to be concerned, the representatives of exporting countries and the Community producers.

(7) Certain exporting producers, Community producers and importers submitted comments in writing. All interested parties who requested a hearing within the time limit set, and who indicated that they were likely to be affected by the result of the proceeding and that there were particular reasons why they should be heard, were granted such a hearing. The oral and written comments submitted by the parties were considered and taken into account in reaching the definitive findings. The Commission sought and verified all the information which it deemed necessary for the purpose of a definitive determination.

2. **RESULTS OF THE INVESTIGATION**

2.1. PRODUCT CONCERNED AND LIKE OR DIRECTLY COMPETING PRODUCT

2.1.1. **Product concerned**

(8) The product in respect of which the Commission has been informed that trends in imports appear to call for safeguard measures is certain prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, containing added sugar (the product concerned).

(9) The product concerned is currently classified within CN codes 2008 30 55 and 2008 30 75. These CN codes correspond to the product concerned in immediate packing of a net content exceeding 1 kg, and of net content not exceeding 1 kg, respectively.

(10) The investigation showed 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 (14 to 16 %). Peeling and segmenting can either be carried out manually or by machine.

(11) 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 most popular.

(12) 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 produce or for juicing or canning. They are similar, and indeed fresh mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids all fall under a single CN code at six-digit level (0805 20).

(13) Certain exporting producers argued that not only canned mandarins, but all canned fruits, should be treated as a single imported product concerned.

(14) The Commission rejected this argument and confirmed that there is a difference between canned mandarins and other types of canned fruit. The fresh fruit from which other types of canned fruit are manufactured have different codes in the Combined Nomenclature at the six-digit level. Whilst it is true that canned mandarins and other canned fruit fall within HS code 2008, so too do other products which are diverse. Therefore, falling within HS code 2008 is not considered, of itself, to be an important factor. Whilst, different types of canned fruit (both single variety and mixed variety) share some characteristics (e.g. long shelf-life, preservation in sugar syrup or fruit juice), the taste, texture, size, shape and colour of the products are different and they are not readily substitutable for canned mandarins. Although, all are foodstuffs, their principal end-uses are also different. Moreover the production process in relation to each product is different (depending on whether or not the fruit requires to be dried, peeled, chopped, sliced or segmented).

(15) Another argument was that prepared and preserved fruit and fresh fruit are one imported product concerned. That argument was also rejected. Prepared and preserved fruit fall under a different tariff classification from fresh fruit at four-digit level. Fresh fruit is not processed, and has a limited shelf-life. It is generally washed, peeled, stoned, sliced, chopped or otherwise processed by the end-user. It is generally considered to have different characteristics such as taste, texture etc. to prepared and preserved fruit as well as different end uses.

(16) Notwithstanding the fact that the product concerned can be manufactured from a number of distinguishable types of small citrus fruit, that it comes in different qualities, and that it is packaged in immediate packings of various different sizes, the Commission's enquiry indicates that they all have identical or similar physical characteristics, uses and applications. Accordingly, the Commission's determination is that the product concerned forms one single product falling under the relevant CN codes listed above.

2.1.2. **Like or directly competing products**

(17) The Commission has examined whether the product produced by the Community producers (hereinafter referred to as the like product) is like the imported product concerned.

(18) The product concerned is produced in different qualities, generally with around 10 % or less of broken fruit segments (referred to as 'fancy' quality). All others are referred to as 'standard'. Some cooperating exporters and importers alleged that canned mandarins originating in the People's Republic of China (PRC) were of better quality than those of EU origin because they were peeled by hand, claiming that imports from PRC usually contained a lower percentage of broken segments. However, whilst a large majority of imports originate in PRC, there is conflicting evidence as to the quality/perceived quality of the product concerned and the like product and this quality argument could not be substantiated:

— one importer traded premium and also discount brands of the product concerned. The verification showed that in 2002 he bought slightly larger quantities of premium brand product from Spain than from PRC and imported all his discount brand quantities from PRC,

— in order to ensure the quality of their product and the highest standards of hygiene, the Community producers have invested heavily in extensive modernisation programmes and their processes are highly automated. Community producers pointed out that as a result of concerns as to the rigour with which hygiene controls are applied to imported products during the canning process, there is a consumer preference in some countries for canned mandarins produced by the Community producers.

(19) In these circumstances, the Commission determination of this issue is that there is no significant difference in either the actual quality or the perceived quality of the product concerned and that produced by the Community producers, although some slight differences both in actual quality and perceived quality do exist.

(20) In reaching its determination, the Commission took into account in particular the following findings of the investigation:

(a) the imported product and the Community product share the same international classification for tariff purposes at HS code level (six digits). Furthermore, they share the same or similar physical properties such as taste, size, shape and texture. There were some differences in terms of quality but these were generally not perceived by consumers. Furthermore, the absence of the origin in the label of certain imported products sold in the European market makes it difficult for the consumers to distinguish between EU product and imported product;

(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, they were, therefore, alternative or substitute products and were easily interchangeable;

(d) the imported product and the Community product were both perceived by consumers as alternatives to satisfy a particular want or demand, in this respect the differences identified by certain exporters and importers were simply minor variations.

(21) In light of the foregoing, the Commission has concluded that despite the alleged differences in the product characteristics and qualities identified in aforementioned submissions, the imported product and the Community product are 'like'.

2.2. DEFINITION OF THE COMMUNITY PRODUCERS

(22) Total Community production of the product concerned was around 40 000 tonnes during the 2002/03 canning season. All production of the product concerned in the Community was carried out in Spain.

(23) The eight producers (canners) in the Community which cooperated fully in the investigation are all members of associations integrated with the Spanish National Federation of Associations of Processed Fruit and Vegetables (FNACV). In the year 2002/03, total Community production of the product concerned was 39 600 tonnes of which the aforementioned producers accounted for 34 150 tonnes, equivalent to over 85 % of the total Community production. They represent therefore a major proportion of total Community production within the meaning of Article 5(3)(c) of Regulation (EC) No 3285/94 and Article 15(1) of Regulation (EC) No 519/94. They are accordingly considered as the Community producers for the purposes of this proceeding.

3. **INCREASED IMPORTS**

3.1. INTRODUCTION

(24) The Commission has investigated whether the product concerned is imported into the Community in such greatly increased quantities, absolute or relative to total Community production, and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers. In this respect, the Commission has focused on imports of the product concerned in the most recent period for which data were available. The table below shows the development of imports for the years 1998/99 to 2002/03.

	1998/99	1999/2000	2000/01	2001/02	2002/03
EU imports	16 347	17 573	20 335	44 804	44 813
Community production	81 869	75 767	60 462	60 329	39 600
Imports/Production	20 %	23 %	34 %	74 %	113 %

3.2. VOLUME OF IMPORTS

(25) Between 1998/99 and 1999/2000, imports increased by around 7 %. In the following year, the rate of increase grew to around 16 % with imports increasing to 20 335 tonnes in 2000/01. There then followed a massive surge in imports between 2000/01 and 2001/02. Imports increased by 120 % in a single year to 44 804 tonnes, more than 2,5 times the level of imports in 1998/99. Imports remained at about this level in the 2002/03 canning season.

These trends are confirmed by the most recent data available. Recent intelligence indicates that imports into the EU during 2003 (latest period for which data is available) reached around 54 000 tonnes, and peaked in the last quarter with imports of over 17 000 tonnes notwithstanding that provisional safeguard measures were introduced on 9 November 2003.

(26) Relative to total Community production, imports increased from 20 % in 1998/99 to 34 % in 2000/01, to 74 % in 2001/02, and 113 % in 2002/03. These trends are confirmed by the most recent information.

3.3. MARKET SHARE OF IMPORTS

	1998/99	1999/00	2000/01	2001/02	2002/03
Market share of imports	20 %	24 %	31 %	56 %	62 %

(27) The market share of imports increased between 1998/99 and 2000/01 from 20 to 31 %, before nearly doubling to 56 % in 2001/02. The market share taken by imports further increased to 62 % of the consumption in 2002/03. It is the Commission's conclusion that the increases in the recent past can be considered sudden, sharp and significant when comparing them to developments in previous canning seasons.

4. **IMPORT PRICES**

	1998/99	1999/2000	2000/01	2001/02	2002/03
Price EUR/tonne	631	670	792	691	605

Source: Eurostat.

(28) The average price (cif, EU border) of the imported product increased by 6 % between 1998/99 and 1999/2000, and then by a further 18 % between 1999/2000 and 2000/01, before falling by 13 % in 2001/02 to 691 EUR/tonne. Average prices continued to fall in 2002/03 reaching EUR 605. The Commission notes that, although prices increased in 2000/01, the main increase in imports occurred in 2001/02 against a background of falling prices and that prices continued to fall in 2002/03 (by 12 %).

(29) The downward trend in prices is further confirmed by the most recently available data. Updated information provided by importers on the evolution of import and resale prices and quantities in the period April 2003 to December 2003 indicates that prices fell by a further 13,5 % in that period. As exports of canned mandarins are usually invoiced in US dollars, the fall of the US dollar against the euro has contributed to the further price decrease. The exchange rate averaged USD 1,15: EUR in the period April 2003 to December 2003 against USD 1,08: EUR in the period 2002/03, a drop of 6,6 %. Since the overall price decrease amounted to 13,5 %, it appears that this fall is not wholly attributable to exchange rate movements but also real price decreases during the months before and shortly after the imposition of provisional measures.

(30) In assessing likely future price trends, the Commission also notes that the market leading retailer of satsumas in Germany lowered the price for a standard tin of 314 ml from 0,35 EUR to 0,29 EUR as of 5 January 2004 (i.e. after the imposition of provisional measures).