COMMISSION REGULATION (EC) No 1964/2003

of 7 November 2003

imposing provisional 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 1994 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 6 and 8 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 (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83 [3], as last amended by Regulation (EC) No 427/2003 [4], and in particular Articles 5 and 6 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

Regulations (EC) No 3285/94 and (EC) No 519/94

(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 provided evidence that imports into the European Community of the product concerned are increasing rapidly both in absolute terms, and relative to Community production and consumption, and, in particular, that imports have increased rapidly in recent years.

(3) Spain alleged that the increase in the volume of imports of the product concerned has, among other consequences, had a negative impact on the prices of like or directly competitive products in the Community, and on the market share held and the quantities sold by the Community producers, resulting in damage to the Community producers.

(4) Spain further advised that, based on the information submitted by the Community producers, any delay in the adoption of safeguard measures by the European Community would cause damage which it would be difficult to repair, and urged their adoption as a matter of urgency.

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

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

[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.

(7) The Commission 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 of the investigation. The Commission sent questionnaires to all these parties, to representative associations of mandarin producers in the Community, and to those parties who made themselves known within the time limits set in the notice of initiation. Pursuant to Article 5 of Council Regulation (EC) No 519/94 and Article 6 of Council Regulation (EC) No 3285/94 the Commission also gave parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) The Government of the People's Republic of China (PRC), certain exporting producers and their representative associations, Community producers and importers and their representative associations, and associations representing mandarin producers in the Community, 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 provisional findings. The Commission sought and verified all the information which it deemed necessary for the purpose of a provisional determination. Verification visits were carried out at the premises of six Community producers and four importers as well as at the premises of their representative associations, and at the premises of a supplier of fresh produce to the Community producers.

2. **LIST OF COOPERATING PARTIES**

Producers

Industrias Videca, SA; Villanueva de Castellon, Valencia, Spain

La Joya Export SA; Burriana, Castellón, Spain

Agriconsa; Algemesi, Valencia, Spain

Conservas y Frutas, SA; Mula, Murcia, Spain

Halcon Foods SA; Campos del Rio, Murcia, Spain

Alcurnia Alimentación SL; Molina de Segura, Murcia, Spain

Marin Gimenez Hnos. SA; Caravaca, Murcia, Spain

Conservas Fernandez SA; La Copa-Bullas, Murcia, Spain.

Importers

Wydra International GmbH, Reinbek, Germany

EDEMA Zentral AG, Hamburg, Germany

Hüpeden and Co. GmbH, Hamburg, Germany

Wünsche International GmbH, Hamburg, Germany

E. Schröder KG (GmbH and Co.), Hamburg, Germany

Rewe Zentral AG, Cologne, Germany

Henry Lamotte GmbH, Bremen, Germany

MCM Foods BV, Rotterdam, Netherlands

WS China Import GmbH, Hamburg, Germany

Waren-Verein der Hamburger Borse e.V., Hamburg, Germany.

Exporters

Hu Nan Cereals, Oils Imp. & Exp. Group Co., Ltd, Changsha City, China

Huangyan Guangyi Foods Co., Ltd, Huangyan Zhejiang, China

Huangyan Mingqiang Foods Co., Ltd, Zhejiang, China

Jiangsu Cereals, Oils Import & Export Group Corp., Nanjing, China

Jiangxi Cereals, Oils & Foodstuffs Imp. & Exp. Corp., Nanchang City, Jianxi, China

Jinhua Iceman Foods Co., Ltd, Zhejiang, China

Ningbo Huifeng Foods Co., Ltd, Fenghua City, Zhejiang, China

Ninghai Kaizi Co., Ltd, Ninghai, Zhejiang, China

Shandong Jiayuan Imp & Exp Co., Ltd, Qingdao, China

Shandong Jiufa Edible Fungus Co., Ltd, Nanchang City, Jianxi, China

Taizhou Hengsheng Canned Foods Co., Ltd, Linhai, Zhejiang, China

Taizhou Huangyan Hanfuming Foods Co., Ltd, Taizhou, Zhejiang, China

Xiamen International Trade Group Co., Ltd, Xiamen, China

Xiangshan Huayu Foodstuff Co., Ltd, Xiangshan Dancheng, Zhejiang, China

Xiangshan Longxin Foods Co., Ltd, Xiangshan County, Zhejiang, China

Zhejiang Cereals, Oils & Foodstuffs I/E Co., Ltd, Hangzhou, China

Zhejiang Huangyang Bai Le Foods Co., Ltd, Taizhou City, China

Zhejiang Linhai Jiayuan Foodstuff Co. Ltd, Linhai, Zhejiang, China

Zhejiang Long Wei Food Co., Ltd, Linhai, Zhejiang, China

Zhejiang Ninghai Dongda Food Co., Ltd, Ninghai County, China

Zhejiang Xin An Jiang Canned Food Co., Ltd, Qiandaohu Town, Zhejiang, China

Zhejiang Xinchang Best Foods Co., Ltd, XinChang, Zhejiang, China

Zhejiang Xinshiji Foods Co., Ltd, Zhejiang, China

Zhejiang Zhongda Newland Co., Ltd, Hangzhou, Zhejiang, China

Zhejiang Chun-an Foreign Trade Corp., Chun-An, Zhejiang, China.

Raw material suppliers

Narvill Cooperativa V., Vilavella, Castellón, Spain

Cooperativa Agrícola San Bernardo Coop. V., Carlet, Valencia, Spain

Cooperativa Agrícola Nuestra Señora de Loreto (CANSO), L'Alcudia, Valencia, Spain

Cooperativa Agrícola Betera Coop. V., Bétera, Valencia, Spain

Cooperativa Agrícola SCJ Coop. V. (Copal), Algemesi, Valencia, Spain

Cocalni Coop. V., Alquerias del Nino Perdido, Castellon, Spain.

3. **THE EU MANDARIN MARKET**

(9) Mandarins are harvested in winter, with the harvesting and canning season starting about the beginning of October and finishing around the end of January in the following year. The fresh produce is destined to 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. As all production for the season is completed by the end of January, the production data provided for 2002/03 is complete and no extrapolation was necessary. However, the other economic data for the most recent season (2002/03), has been extrapolated based on the data available for the first nine months of that season.

(10) In October 1996, by Council Regulation (EC) No 2202/96 the Council introduced a Community aid scheme for producers of certain citrus fruits including mandarins, clementines, wilkings and similar citrus hybrids. The aim of that scheme was to encourage producers to present their products for processing rather than withdrawal whilst avoiding systematic recourse to processing as an alternative outlet for fruit originally destined for the fresh market. Under the scheme, aid is granted to producers of citrus fruit which is supplied to the processing industry in order, amongst others, to support producers, facilitate negotiations with the industry and promote the concentration of production through producers' organisations. The scheme incorporates certain mechanisms to help encourage producers to produce and supply the quantities which they have undertaken to supply whilst at the same time discouraging excessive production.

(11) A related scheme makes provision for aid to be given to producers to meet part of the cost of withdrawal of fresh citrus fruit from the market. The principal objective of that scheme is to stabilise prices on the Community market in fresh produce. In addition, it supports producers' incomes and encourages the withdrawal of produce which is of lower quality from the market.

(12) However, as the Community producers situation had substantially deteriorated, it was clear that they were not benefiting from the above schemes as intended.

4. **PRODUCT CONCERNED**

(13) The product in respect of which the Commission has been informed that trends in imports appear to call for safeguard measures are 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)

(14) 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 packings of a net content exceeding 1 kg, and of net content not exceeding 1 kg, respectively.

(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. 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 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 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).

(18) Certain exporting producers argued that not only canned mandarins, but all canned fruits, should be treated as a single imported product concerned. In support of this proposition, they referred to:

(a) the physical properties, nature and quality of the products;

(b) the extent to which the products are capable of serving the same or similar end-uses;

(c) the extent to which consumers perceive and treat the products as alternative means of performing particular functions in order to satisfy a particular want or demand;

(d) the international classification of the product for tariff purposes.

(19) That argument is rejected. The Commission's analysis is that there is a difference between canned mandarins and other canned fruit. The fresh fruit from which they are manufactured have different CN codes at the six-digit level to that for fresh mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids. Whilst it is true that canned mandarins and other canned fruit fall within HS code 2008, so too do products as diverse as peanut butter and prepared or preserved ginger. The taste, texture and shape and colour of the products are different. They have different levels of vitamins and minerals and fulfil different dietary requirements. The principal end-uses of the products are also different. This finding is further confirmed by the fact that 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).

(20) They further argued that prepared and preserved fruit and fresh fruit are one imported product concerned. That argument also must be 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, de-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.

(21) The Commission's provisional determination is that the product concerned forms one single imported product falling under the relevant CN codes listed above.

5. LIKE OR DIRECTLY COMPETING PRODUCTS

(22) The Commission has undertaken a preliminary examination of whether the product produced by the Community producers (hereinafter referred to as 'the like product') is like the imported product concerned.

(23) The imported product concerned is produced in different qualities. Those with around 10 % or less broken fruit segments are referred to as 'fancy'. All others are referred to as 'standard'. Some cooperating exporters and importers alleged that canned mandarins originating in 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 the majority of imports originate in PRC, there is conflicting evidence as to the quality/perceived quality of the product concerned and the like product.

— One importer traded premium and also discount brands of the product concerned. The verification showed that in 2002 he bought from Spain in relative terms even slightly larger premium brand quantities than from PRC and no discount brand quantities while importing the latter from PRC. The premium brand is bought and resold at higher prices which in all likelihood should also reflect a better quality.

— 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.

(24) In considering whether alleged differences in quality exist, that would result in the imported product not being like the domestically produced product, the Commission took into account, in particular, the following findings of the preliminary investigation:

(a) the imported product and the Community product shared the same international classification for tariff purposes at HS code level (six digits). Furthermore, they shared the same or similar physical properties such as taste, size, shape and texture. There were some differences in terms of quality but these were minimal and generally not perceived by consumers;

(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 variation.