COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.2008
COM(2008)822 final

Proposal for a

COUNCIL REGULATION (EC) No …/..

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

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Article 5 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation').

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

Provisional measures were imposed by the Commission Regulation No 642/2008[1]

Consistency with other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 20 October 2007, the Commission initiated an anti-dumping proceeding concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

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[1] OJ L 178, 5.7.2008, p.19

The investigation found dumping of the product concerned, which caused injury to the Community industry. The investigation also found that there was no compelling Community interest against the imposition of anti-dumping measures. On this basis, provisional measures were imposed by means of Commission Regulation (EC) No 642/2008. The continuation of the investigation has confirmed the essential provisional findings.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to impose definitive measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instrument: Regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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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[2] (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 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')[3]. On 4 July 2008, the Commission, by Regulation (EC) No 642/2008[4] ('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').

(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 of 5 November 2007.[5]

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2 OJ L 56, 6.3.1996, p. 1.
3 OJ C 246, 20.10.2007, p. 15
4 OJ L 178, 5.7.2008, p.19
5 OJ L 288, 6.11.2007, p. 22.

(5) 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.[6] Definitive safeguard measures followed by Regulation (EC) No 658/2004 of 7 April 2004 (the "Safeguards Regulation").[7] 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 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

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[6] OJ L 290, 8.11.2003, p. 3.
[7] OJ L 104, 8.4.2004, p. 67.

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 co-operating Chinese exporting producers and largely confirmed in the course of the further investigation. This argument is therefore rejected.

(13) Three Chinese co-operating 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 co-operating 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 co-operating 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 co-operating Community producers.

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

operation. 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 co-operating 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 co-operating 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.

(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 %

- Co-operating 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 recital (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 remained consistently high. Therefore the findings presented at the provisional stage are confirmed.

(27) Some parties argued that post-IP volumes should also be examined to assess whether Chinese imports are increasing. It is to be noted that trends on imports from China were evaluated for the period 2002/2003 to 2006/2007 and a clear increase was observed. In accordance with the provisions of the basic Regulation, post-IP events are not taken into account, except in exceptional circumstances. In any event, as stated below in recital (48) the level of imports post-IP was examined and was found to be significant.

(b) Price undercutting

(28) Three cooperating exporting producers contested the Commission's findings on undercutting. One contested the methodology used to calculate undercutting and requested an adjustment to reflect costs borne by traders for their indirect sales. Where justified, calculations were adapted. The revised comparison showed that, during the IP, imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices by a range of 18,4% to 35,2% based on the data submitted by the sampled cooperating exporting producers.

4. Situation of the Community industry

(29) Two importers and the importers' association contested the duration of the packing season indicated in recital (79) of the provisional Regulation. They argued that the packing season in Spain lasts only three months instead of four to five as indicated in the provisional Regulation. However this allegation is linked to the crop (variable by nature) and to the quantity produced and in any case has no impact on the injury factors as analysed by the Commission services.

(30) In the absence of any other substantiated information or argument concerning the situation of the Community industry, recitals (63) to (86) of the provisional Regulation are hereby confirmed.

5. Conclusion on injury

(31) Following disclosure of the provisional Regulation, some importers and some exporting producers claimed, with reference to recitals (83) to (86) of the provisional Regulation, that data used by the Commission to establish the injury level was neither correct nor objectively evaluated. They argued that almost all injury-related indicators showed positive trends and that therefore no evidence of injury can be found.

(32) In this regard, it is noted that even if some indicators show small improvements, the situation of the Community industry has to be evaluated as a whole and in consideration of the fact that safeguard measures were in place until the end of the investigation period. This matter was explored at length in recitals (51) to (86) of the provisional regulation. The deep restructuring process which these measures allowed for, resulting in a large reduction in production and capacity, would have under normal circumstances led to a significant improvement in the Community producers' overall situation, including production, capacity utilisation, sales, and price/cost differentials. Instead, volume indicators have remained weak, stocks have increased substantially and financial indicators have continued to be in the red—some even worsening.

(33) On this basis, it is considered that the conclusions regarding the material injury suffered by the Community industry as set out in the provisional Regulation are not altered. In the absence of any other substantiated information or arguments, they are therefore definitively confirmed.

G. CAUSATION

1. Effect of the dumped imports

(34) Some parties argued that the volume of the Chinese imports had been stable since 1982 and that therefore they could not have caused injury as explained in the provisional Regulation (see recital 58). Indeed, as explained above in recital (26), imports from China during the period examined have increased significantly to the detriment of the EU industry market share. Moreover, the argument refers to the trend in imports that exceed well above the period in question therefore the argument is rejected.

(35) As mentioned in recital (28) above, it is definitively concluded that during the IP, the prices of imports from the sampled Chinese exporting producers undercut the average Community industry prices by percentages ranging from 18,4% to 35,2%. The revision of the undercutting margin leaves unaffected the conclusions on the effect of the dumped imports set out in recitals (100) and (101) of the provisional Regulation.

2. Exchange rate fluctuations

(36) After the imposition of the provisional duties some importers further argued the negative influence of the exchange rate on the price level. They argued that the exchange rate level is the main factor that caused injury. Nevertheless, the Commission's assessment refers merely to a difference between price levels with no requirement to analyse the factors affecting the level of those prices. As a consequence a clear causal link between the high dumping level and the injury suffered by the Community industry was found and therefore recital (95) of the provisional Regulation can be confirmed.

3. Supply and price of raw materials

(37) Some interested parties argued that injury is not caused by dumped imports but rather by the scarce supply of fresh fruit i.e. the raw material for canned mandarins. .

(38) However, official data from the Spanish Ministry for Agriculture confirm that the quantity available for the canning industry is more than sufficient to cover all the production capacity of the Spanish producers.

(39) Producers compete to a certain extent for fresh fruit with the direct fresh produce consumer market. However, this competition does not break the causal link. A clear, significant reason for the Community industry's relatively low production, sales and market share is rather to the pressure of the massive imports from China at very low prices. In this situation, and considering that the market price is dictated by the imports covering more than 70% of the market, which engage in price undercutting, suppression and depression, it would be uneconomic to produce more without reasonable expectations for selling the product at prices allowing for a normal profit. Therefore the Spanish industry could reasonably provide significantly higher quantities under the condition that the market price would not penalise their economic results.

(40) Another fact confirming this analysis is the consistent existence of a significant amount of stocks by Community producers, underlining that the Community industry's injurious situation occured not because of insufficient production, but due to production that cannot be sold due to the pressure of Chinese imports.

(41) As an agricultural product, the price of the raw material is subject to seasonal fluctuations due to its agricultural nature. Nevertheless, in the five-year period analysed, which included harvests with lower and higher prices, the Commission observes that injury (e.g. in the form of financial losses) occurs irrespectively of these fluctuations and therefore the economic results of the Community industry are not directly correlated to such seasonal fluctuations.

4. Quality differences

(42) Some parties claimed that the Chinese product was of a higher quality than the Community production. However, any price differences resulting therefrom were not sufficiently substantiated, and there is no evidence that the alleged consumer preference for Chinese products would be so intense as to be the cause of the deteriorated situation for the Community industry. In any case such alleged price differences would favour the Chinese product, increasing the undercutting/underselling level. In the absence of any further new and substantiated information or argument, recital (99) of the provisional Regulation is hereby confirmed.

5. Cost increases

(43) Some parties argued that extraordinary cost increases by some producers were at the root of the injury. These allegations were not sufficiently substantiated. The Commission analysis did not detect any such events which could reverse the assessment of causation or affect the calculation of the injury elimination level.

(44) Some parties submitted comments on the increased costs of production and inability of the Community industry to reduce them. Certain cost items (such as energy) have increased, but their impact is not such as to break the causal link in a context where a very significant amount of dumped Chinese exports are depressing sales and production (thereby increasing the Community industry's unit costs) and suppressing and depressing Community industry prices.

6. Aid schemes

(45) It was alleged that the EC aid schemes caused artificial growth of processing in the EC and then encouraged reduced levels of raw material supply for the product concerned. This allegation was of a general nature and was not sufficiently substantiated. In any event, the schemes in question were modified in 1996 when the aid was allowed to the farmers instead than to the processors of the product concerned. The Commission's analysis has not detected any residual effects during the investigation period which could break the causal link. Regarding supply, reference is made to recitals (40) and (41) above.

7. Conclusion on causation

(46) In the absence of any further new and substantiated information or arguments, recitals (87) to (101) of the provisional Regulation are hereby confirmed.

(47) In the light of the above, the provisional finding of the existence of a causal link between the material injury suffered by the Community industry and the dumped Chinese imports is confirmed.

H. COMMUNITY INTEREST

1. Developments after the investigation period

(48) As from 9 November 2007 imports from the PRC were subject to registration pursuant to the Commission Regulation (EC) No 1295/2007 of 5 November 2007 making imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration ('Registration Regulation').[8] This was done with a view to the possible retroactive imposition of anti-dumping duties. Consequently and exceptionally, developments after the IP have also been analysed. Eurostat data confirms that imports from China remain significant and this has been corroborated by certain importers. The volume for the last ten months after the IP reached a level of 74.000 tonnes at stable low prices.

2. Ability of Community producers to supply the Community market

(49) A number of parties commented on the low level of the Spanish production, which they claimed is unable to fully supply the community market. While it is correct to state that in the present situation the Community industry does not supply the overall EU market, it should be noted that this fact is linked to the effect of injurious imports, as explained above. In any event, the intended effect of the measures is not to close the Community market to Chinese imports, but to remove the effects of injurious

[8] OJ L 288 6.11.2007, p. 22.

dumping. Given *inter alia*, the existence of only two sources of supply of these products, it is considered that in the event definitive measures are imposed, Chinese products would continue to enjoy a significant demand in the Community.

3. Interest of the Community industry and suppliers

(50) One importers' association alleged that any anti-dumping measures without any limitation of quantities would not help protect the Spanish industry but would automatically trigger illegal trading activities. This is an argument which rather points to the need for the institutions to ensure proper monitoring of the enforcement of measures, rather than against the benefit measures could have for Community producers.

(51) Another importer argued that imposition of anti-dumping measures would not improve the situation of the Spanish producers, due to the existence of large stocks built by the importers in the EU, which would be able to satisfy the market demand in the nearest future. The size of the stocks and the phenomenon of stockpiling were supported by another importer. These comments confirm the Commission analysis in the provisional Regulation and elsewhere in this Regulation. However, it is recalled that measures are intended to provide relief from injurious dumping over a period of five years—not only one.

(52) In the absence of any other new and substantiated information or argument in this respect, the conclusion made in recitals (103) to (106) and (115) of the provisional Regulation regarding the interest of the Community industry are hereby confirmed.

4. Interest of unrelated importers/traders in the Community

(53) Cooperating importers expressed a general interest in maintaining two sources of supply of the product concerned, namely Spain and China, in order to maintain the security of supply at competitive prices.

(54) Nevertheless the majority of the importers, should definitive measures be imposed, would prefer a measure which contains also quantitative elements. This is not considered adequate, as explained below in recital (68).

(55) Data from the sampled cooperating importers were verified and confirmed that the canned mandarins sector represents less than 6% of their total turnover and that they achieved, on average, a level of profitability exceeding 10% during both the investigation period and the period of 2004-2008.

(56) The foregoing underlines that, on balance, the potential impact of measures on importers/traders would not be disproportional to the positive effects emanating therefrom.

5. Interest of users/retailers

(57) One user, representing less than 1% of consumption, submitted generic comments on the reduced availability of mandarins in the EU and on the superior quality of the Chinese product. He was invited to further cooperate providing individual data but declined and did not substantiate his allegations. Another retailer, a member of the main importer's association, generally opposed a price increase. No other submission concerning the interest of users/retailers was received in the course of the investigation. In this situation and in absence of any substantiated comments from users/retailers, the conclusions made in recitals (109) to (112) of the provisional Regulation are hereby confirmed.

6. Interest of consumers

(58) Contrary to what was claimed by one importer, the interest of consumers was taken into consideration at the provisional stage. The Commission's findings were outlined in recitals (113) and (114) of the provisional Regulation. Other parties suggested that the impact on consumers would be significant. However, no information was provided that could cast doubt on the findings in the aforementioned recitals. Even if duties were to lead to an increase in consumer prices, no party has disputed the fact that this product is a very small part of household food expenditure. Therefore in the absence of any comments from consumers and of any further new and substantiated information these recitals are confirmed.

7. Conclusion on Community interest

(59) The additional analysis above concerning the interests at stake has not altered the provisional conclusions in this respect. Data of the sampled cooperating importers were verified and confirmed that the canned mandarins sector represents for them less than 6% of their total turnover and that they achieved, in average terms a comfortable result during both the investigation period and the period of 2004-2008 examined, so the impact of the measures on importers will be minimal. It has been also ascertained that the financial impact on the final consumer would be negligible, considering that marginal quantities per capita are bought in the consumer countries. It is considered that the conclusions regarding the Community interest as set out in the provisional Regulation have not changed. In the absence of any other comments, these conclusions set out in the provisional Regulation are therefore definitively confirmed.

I. DEFINITIVE MEASURES

1. Injury elimination level

(60) One importer claimed that the profit margin at the level 6,8% used as reference at the provisional stage is overestimated. In this respect it should be noted that the same level was used and accepted for safeguard measures as the actual profit achieved by the Community industry in the period 1998/ 99 to 2001/02. It refers to profits of the Community producers in a normal trading situation before the increase in imports which led to injury in the industry. The argument is therefore rejected.

(61) Community producers claimed that provisional duties did not take into account the peculiar situation of the canned mandarins market, where the production is concentrated in only one country and the vast majority of sales and of imports are concentrated in another European country. For that it was requested that final calculations take into account the transport cost from the producer country to the consumer country. The claim was justified and warranted and calculations were adapted accordingly to reflect the concentration of sales in the relevant areas of the Community.

(62) One party made comments on the undercutting and underselling calculation. Where warranted adjustments were made at definitive stage.

(63) The resulting injury margins, taking into account, when warranted, the requests from interested parties, expressed as a percentage of the total cif import value of each sampled Chinese exporter were less than dumping margins found, as follows:

- Yichang Rosen Foods Co., Ltd., Yichang, Zhejiang 100,1%
- Huangyan No. 1 Canned Food Factory, Huangyan, Zhejiang 48,4%

– Zhejiang Xinshiji Food Co., Ltd., and related producer Hubei Xinshji Foods Co., Ltd., Sanmen 92,0%

– Co-operating exporting producers not included in the sample 90,6%

All other companies 100,1%

2. Retroactivity

(64) As specified in recital (4), on 9 November 2007 the Commission made imports of the product concerned originating in the PRC subject to registration on the basis of a request by the Community industry. This request has been withdrawn and therefore the matter has not been further examined.

3. Definitive measures

(65) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found.

(66) On the basis of the above and in line with corrigendum published in the *Official Journal* L 258[9] the definitive duty should amount as follows:

– Yichang Rosen Foods Co., Ltd., Yichang, Zhejiang 531,2 Eur/ton

– Huangyan No.1 Canned Food Factory Huangyan, Zhejiang, 361,4 Euro/ton

– Zhejiang Xinshiji Foods Co., Ltd., Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd., Dangyang City, Hubei Province 490,7 Euro/Ton

– Co-operating exporting producers not included in the sample 499,6 Euro/Ton

All other companies 531,2 Euro/Ton

4. Form of the measures

(67) A number of parties requested measures which combined price and quantity elements, whereby for an initial import volume no duty or a reduced duty would be paid. In certain cases, this was linked to a license system.

(68) This option was considered but rejected for, in particular, the following reasons. Anti-dumping duties are imposed because the export price is lower than the normal value. The amounts exported to the Community are relevant for the analysis whether dumped imports cause injury. However, these amounts are, normally, irrelevant for the level of the duty that should be imposed. In other words, if it is found that dumped imports cause injury, the dumping may be offset by a duty which applies as of the first shipment imported after the entry into force of the duty. Finally, to the extent that it would be found that it is in the Community's interest that during a certain period, products may be imported without imposing anti-dumping duties, art. 11(4) of the basic regulation allows for suspension under certain conditions.

(69) Some parties have alleged that any form of measures without a quantitative limitation will lead to duty avoidance. Parties made reference again to the stockpiling which

[9] OJ L 258, 26.09.2008, p.74

occurred in the wake of the enlargement of the European Union on 1st May 2004. The Commission services' analysis has confirmed that this was a clear attempt to avoid the duties. Given these statements and the facts described in the provisional regulation in recitals (123) and (125), the Commission will monitor developments in order to take the necessary actions to ensure proper enforcement of measures.

(70) Other parties have argued that measures should exclude volumes already subject to existing sales contracts. This would in practice amount to an exemption of duties which would undermine the remedial effect of measures, and is therefore rejected. Reference is also made to recitals (51) and (52) above.

(71) The provisional Regulation imposed an anti-dumping duty in the form of a specific duty for each company resulting from the application of the injury elimination margin to the export prices used in the calculation of the dumping during the IP. This methodology is confirmed at the level of definitive measures.

5. Undertakings

(72) At a late stage in the investigation several exporting producers in the PRC offered price undertakings. These were not considered to be acceptable given the significant price volatility of this product, the risk of duty avoidance and circumvention for this product (see recitals (124) and (125) of the provisional regulation), and the fact that, no guarantees were contained in the offers on the part of the Chinese authorities to allow for adequate monitoring in a context of companies not having been granted market economy treatment.

J. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(73) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of provisional duties imposed. As for the exporting producers for whom the definitive duty is slightly higher than the provisional duty, amounts provisionally secured should be collected at the level determined in the provisional Regulation, in accordance with Article 10(3) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 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, originating in the People's Republic of China, 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).

2. The amount of the definitive anti-dumping duty applicable for products described in paragraph 1 produced by the companies below shall be as follows:

Company	EUR/tonne net product weight	TARIC additional code

Yichang Rosen Foods Co., Ltd., Yichang, Zhejiang	531,2	A886
Huangyan No.1 Canned Food Factory, Huangyan, Zhejiang,	361,4	A887
Zhejiang Xinshiji Foods Co., Ltd., Sanmen, Zhejiang and its related producer Hubei Xinshiji Foods Co., Ltd., Dangyang City, Hubei Province	490,7	A888
Co-operating exporting producers not included in the sample as set out in the Annex	499,6	A889
All other companies	531,2	A999

Article 2

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93[10] the amount of anti-dumping duty, calculated on the basis of Article 1 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

2. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

1. Amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EC) No 642/2008 on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China shall be definitively collected at the rate of the provisional duty.

2. For the co-operating exporting producers that were erroneously not listed under the Annex of co-operating exporting producers of Commission Regulation (EC) No 642/2008, namely Ningbo Pointer Canned Foods Co., Ltd., Xiangshan, Ningbo, Ninghai Dongda Foodstuff Co., Ltd., Ningbo, Zhejiang and Toyoshima Share Yidu Foods Co., Ltd., Yidu, Hubei, the amounts secured in excess of the provisional duty applicable to co-operating producers not included to the sample shall be released.

Article 4

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

[10] OJ L 253, 11.1.1993, p. 3.

Done at Brussels,

For the Council
The President
[…]

ANNEX

Co-operating exporting producers not included in the sample (TARIC additional code A889)

Hunan Pointer Foods Co., Ltd., Yongzhou, Hunan

Ningbo Pointer Canned Foods Co., Ltd., Xiangshan, Ningbo

Yichang Jiayuan Foodstuffs Co., Ltd., Yichang, Hubei

Ninghai Dongda Foodstuff Co., Ltd., Ningbo, Zhejiang

Huangyan No.2 Canned Food Factory, Huangyan, Zhejiang

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

Toyoshima Share Yidu Foods Co., Ltd., Yidu, Hubei

Guangxi Guiguo Food Co., Ltd., Guilin, Guangxi

Zhejiang Juda Industry Co., Ltd., Quzhou, Zhejiang

Zhejiang Iceman Group Co., Ltd., Jinhua, Zhejiang

Ningbo Guosheng Foods Co., Ltd., Ninghai

Yi Chang Yin He Food Co., Ltd., Yidu, Hubei

Yongzhou Quanhui Canned Food Co., Ltd., Yongzhou, Hunan

Ningbo Orient Jiuzhou Food Trade & Industry Co., Ltd., Yinzhou, Ningbo

Guangxi Guilin Huangguan Food Co., Ltd., Guilin, Guangxi

Ningbo Wuzhouxing Group Co., Ltd., Mingzhou, Ningbo