

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).

5. UNFORESEEN DEVELOPMENTS

- (31) In the last five years, a series of events has occurred which led to a sharp increase in imports of the product concerned, particularly from PRC. This series of events could not have been foreseen at the time of conclusion of the Uruguay round. It should be noted that the analysis focuses on PRC, as more than 98 % of imports of the product concerned into the EU are of Chinese origin.
- (32) Until the mid 1990s, PRC's capacity for producing the product concerned was large enough to meet domestic demand and exports to its main and most profitable export markets namely Japan and the United States of America (West Coast). Chinese exports to the Community were at a low level and were relatively stable.
- (33) The table below provides estimates of worldwide consumption and of PRC's production capacity, production, exports and domestic consumption for the canning seasons 1998/99 to 2002/03 on an indexed basis where estimated worldwide consumption in 1998/99 is equal to 100.

	1998/99	1999/2000	2000/01	2001/02	2002/03
Worldwide consumption	100	115	113	137	141
Chinese production capacity	70	96	113	139	148
Chinese production	57	82	86	109	124
Chinese domestic consumption	5	9	12	16	20
Chinese total exports (estimated)	48	65	70	96	104

Source: Eurostat and other publicly available information as well as information submitted in the investigation. The data is indexed because the party providing the Chinese data requested that this be treated as confidential.

- (34) In 1998/99, Chinese domestic consumption was 5, whilst production capacity was 70, with actual production of 57 (greatly in excess of what was needed to supply domestic needs). By 2002/03, Chinese domestic consumption had increased to 20, but Chinese production capacity had increased to 148, with actual production of 124 (88 % of estimated worldwide consumption). Although Chinese consumption has been increasing rapidly, it remains low in real terms. Whilst worldwide consumption has been increasing, it has done so gradually (by around 7 % per annum). In these circumstances, it was not foreseeable that Chinese production capacity would soar by 16 % per annum and outstrip worldwide consumption by 2002/03, leaving no room for other producers. As PRC's domestic consumption has increased to only 20, the increase in Chinese production capacity and production clearly increased pressure on PRC to export very large quantities (and indeed, exports more than doubled from 48 to 104 in the period considered). These figures can be given some context by considering that Chinese exports in 2002/03 were more than three times total estimated consumption in the European Community in that year.
- (35) It appears that the EU/US trade dispute over hormones in meat was also a factor in the increase in Chinese exports to the EU. The list of products that the United States of America proposed to make subject to retaliatory measures in relation to that dispute included the product concerned. This appears to have been perceived by Chinese producers as providing an opportunity to substantially increase their exports to the United States of America in replacement of the EU product, and encouraged considerable expansion of Chinese canning capacity. However, the opportunity never materialised, and PRC was faced with significant excess capacity for which it had to find alternative outlets. The most attractive market appeared to be the EU, and PRC massively increased its exports to the EU market.

- (36) Chinese monetary policy, in terms of which the yuan is pegged to the US dollar at around 8,28 yuan/USD, despite perceived differences in the relative values of the two currencies, has also encouraged exports. This made it much more likely that the product concerned would be exported, rather than being sold on the Chinese domestic market. Further, following the unexpected fall in the value of the US dollar against the euro since October 2000, the yuan lost value compared to the euro making the European market all the more attractive to Chinese exporters.
- (37) In conclusion, it is the Commission's analysis that the unforeseen developments which caused the increase in imports to the Community consists of a number of concurrent factors: the unprecedented increase in Chinese production capacity leading to high pressure to export; the possibility that United States retaliatory measures in the hormones dispute would exclude the EU product from the United States, encouraging an increase in PRC's capacity and consequently production; a change in consumer preferences from 2001 onwards and the exchange rate policy of the Chinese government coupled with the unexpected fall of the United States dollar since October 2000. This combination of factors, clearly unforeseeable at the end of the Uruguay Round, created the conditions for an unprecedented increase in imports to the Community.

6. SERIOUS INJURY

6.1. INTRODUCTION

- (38) In order to make a definitive determination as to whether there is serious injury to the Community producers of the like product, i.e. a significant overall impairment in the position of the Community producers, the Commission finalised its evaluation of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Community producers. In particular, for the product concerned, the Commission evaluated the development of production capacity, production, capacity utilisation, employment, productivity, cash flow, return on capital employed, captive use, stocks, consumption, sales, market share, price, undercutting and profitability for the seasons 1998/99 to 2002/03.
- (39) An analysis of Community consumption, although not in an injury indicator, is also given.

6.1.1. Consumption

	1998/99	1999/2000	2000/01	2001/02	2002/03
Consumption (t)	80 065	74 056	65 676	80 960	72 843

- (40) Consumption of the product concerned in the Community was established on the basis of total sales made by the Community producers and other EU producers and total imports of the product concerned into the Community as reported by Eurostat.
- (41) Between 1998/99 and 2000/01, consumption in the Community declined by 18 % from 80 065 tonnes to 65 676 tonnes. Between 2000/01 and 2001/02, it grew by 23 % to reach its highest level for the period under examination (80 960 tonnes). In the most recent season (2002/03) there was a 10 % decline in consumption compared to 2001/02, with consumption closer to its average for the period under consideration (74 720 tonnes per annum).

6.1.2. Production capacity and capacity utilisation

	1998/99	1999/2000	2000/01	2001/02	2002/03
Capacity (t)	126 760	129 260	129 260	129 260	129 260
Capacity utilisation	65 %	59 %	47 %	47 %	31 %

- (42) The Commission has analysed the Community producers' production capacity on the basis of full season production capacities (1 October to 30 September in the following year). The like product is produced from November until February using production facilities some of which can be used for processing other fruit and vegetables during the rest of the year. However, from November until February there are no other fruits or vegetables available for processing in the regions concerned (Valencia and Murcia, Spain).
- (43) The investigation confirmed that overall estimated theoretical production capacity remained stable throughout the period of the investigation with only one small increase (of 2 %) recorded between 1998/99 and 1999/2000.
- (44) Capacity utilisation fell between 1998/99 and 1999/2000 from 65 to 59 %. This fall is partially explained by the 2 % increase in capacity in that year, but the greater part is explained by a fall in production of 7,5 % from 81 869 tonnes to 75 767 tonnes. Capacity utilisation fell by a further 12 percentage points in 2000/01 (to 47 %). It remained stable in the following year but then fell to 31 % (a fall of 16 percentage points) in 2002/03. The falls in capacity utilisation, from 1999/2000 onwards reflect the falls in production in the same periods.

6.1.3. Total Community production

	1998/99	1999/2000	2000/01	2001/02	2002/03
Production (t)	81 869	75 767	60 462	60 329	39 600

- (45) Total Community production fell between 1998/99 and 2001/02 from 81 869 tonnes to 60 329 tonnes. Thereafter, production fell by a further 35 % in the season 2002/03 to its lowest level in the period under examination.
- (46) The trend in production is confirmed by the most recently available data (2003/04) which indicate a further fall in production to 26 165 tonnes (partial data). The Community producers cannot invest and commit to produce unless they have advance orders from their major customers. However, they are unable to obtain such orders as they cannot compete on price.

6.1.4. Employment

	1998/99	1999/2000	2000/01	2001/02	2002/03
Employment (end of period)	2 502	2 441	2 462	2 419	2 343

- (47) Employment in relation to the product concerned fell in 1999/2000. It then recovered slightly in 2000/01 before falling further in 2001/02 and 2002/03. In addition to the fall in employment recorded by the Community producers, there was also a reduction in employment in mandarin canning in the Community during the five-year period as some producers involved in canning the product concerned in the Community ceased this activity before the opening of the safeguard investigation. It is to be noted that the large majority of the workforce is represented by seasonal workers. For this reason, this table should be considered in conjunction with the following table on hours worked.

6.1.5. Hours worked and productivity

	1998/99	1999/2000	2000/01	2001/02	2002/03
Hours worked	944 000	985 000	823 000	861 000	625 000
Productivity (hours worked/tonne)	15,9	16,8	15,6	16,8	17,7

- (48) A more accurate picture of the impact on employment by the Community producers is seen from hours worked, which includes the employment of seasonal workers. The number of hours worked also provides a more accurate basis for measuring productivity than the number of employees.
- (49) In general, a steady decline in the number of hours worked can be observed, with a fall from 861 000 to 625 000, a fall of 27 % in the most recent period. Productivity fell slightly between 1998/99 and 2001/02 from 15,9 hours worked per tonne produced to 16,8 hours worked, and further declined to 17,7 hours in the last season (2002/03). It is to be noted that variances in productivity are mainly due to the yield of the fresh product.

6.1.6. Cash flow and return on capital employed (ROCE)

Financial year	1998	1999	2000	2001	2002
Cash flow (index: 1999 = 100)	2	100	80	116	-4
ROCE	15,1	18,9	9,3	9,8	8,1

- (50) Cash flow and ROCE could only be examined at the level of the cooperating companies which produced the product concerned (rather than in relation to the product concerned) and are shown in calendar years. These indicators are therefore less meaningful than the other indicators. Nevertheless, it can be seen that cash flow and ROCE were substantially reduced in the most recent period.

6.1.7. Sales volume

	1998/99	1999/2000	2000/01	2001/02	2002/03
Sales volume in the Community (t)	63 718	56 483	45 341	36 156	28 030

- (51) Sales in the Community of the like product by the Community producers fell from 63 718 tonnes to 45 341 tonnes between 1998/99 and 2000/01, reflecting the fall in consumption and the increase in imports in that period. However, despite increased consumption in the following year, sales continued to fall between 2000/01 and 2001/02 (by 20 %) reaching 36 156 tonnes, as imports more than doubled to 44 804 tonnes. This reflects the increasing dominance of imports in the market. In the most recent period, sales have continued to fall to 28 030 tonnes in 2002/03, the lowest historical level, representing a decrease of 56 % in four years.

6.1.8. Market share

	1998/99	1999/2000	2000/01	2001/02	2002/03
Market share	79 %	76 %	69 %	44 %	38 %

- (52) The Community producers' market share fell from 79 to 69 % between 1998/99 and 2000/01, to 44 % in 2001/02 and to 38 % in 2002/03. The substantial falls in the last two seasons demonstrate the increasing market penetration of imports in those periods, which occurred despite the fact that Community producers lowered their prices by 17 % between 2000/01 and 2001/02 and a further 6 % in 2002/03.
- (53) The combination of the fall in prices and loss of market share to imports occurred at the same time as a significant fall in the profitability of the Community producers (discussed below).

6.1.9. Price of the like product and undercutting

	1998/99	1999/2000	2000/01	2001/02	2002/03
Unit prices of Community sales (EUR/tonne)	826	790	925	827	781
Unit prices of Chinese exports plus customs duty (EUR/tonne) (*)	732	773	910	790	691
Undercutting (EUR/tonne)	94	17	15	37	90
Undercutting	11 %	2 %	2 %	4 %	12 %

(*) Source: Eurostat.

- (54) The average price of the like product fell between 1998/99 and 1999/2000 but recovered in 2000/01, increasing by 17 % to EUR 925 per tonne. The average price again fell to EUR 827 per tonne in 2001/02, and further declined to EUR 781 per tonne in 2002/03.
- (55) In order to determine the level of undercutting, price information was examined for comparable time periods, at the same level of trade and for sales to similar customers. Based on a comparison of average ex-works prices charged by the Community producers and by exporting producers to the Community importers (cif EU border including customs duty), domestic prices were undercut throughout the five periods examined by between 2 and 12 %.

6.1.10. Profitability

	1998/99	1999/2000	2000/01	2001/02	2002/03
Net profit/loss on Community sales	4,0 %	0,5 %	6,8 %	-1,7 %	-4,3 %

- (56) The profitability of the Community producers' sales in the Community varied significantly in the five-year period under consideration. The lowest profitability was recorded in 2001/02 and in 2002/03, and the highest in 2000/01. In 2002/03, as imports increased to their highest level in the period under consideration, the average price of imports fell to EUR 605 per tonne and the average price of the Community product fell to EUR 781 per tonne. This fall in prices taken together with the fall in sales volume occurred at the same time as the Community producers' profitability fell from 6,8 % to (-1,7 %) in 2001/02 and this trend continued into a worse loss making situation (-4,3 %) in 2002/03.
- (57) Underselling reflects the extent to which the price of the imported product is lower than the price which the Community producers could be expected to achieve in a non-injurious situation. The level of underselling was calculated on the basis of the weighted average non-injurious price per tonne of the Community product. This price was calculated by taking the respective cost of production for the Community product (adjusted to take account of transport costs to ensure a proper comparison with imports delivered to the main geographical area for consumption) to which was added a profit margin of 6,8 %. This profit margin was considered reasonable as it refers to profits of the Community producers in a normal trading situation unaffected by a sudden sharp rise in imports. This non injurious price was compared with the weighted average price per tonne of the imported product concerned during the period April to December 2003, at the same level of trade, cif Community border, customs duty, post importation costs and with importers' profit added. The difference between these two prices was expressed as a percentage of the cif/Community border price of the imported product, and resulted in underselling of 57,9 %.

6.1.11. Stocks

	1998/99	1999/2000	2000/01	2001/02	2002/03
Closing stock (t)	13 016	10 628	11 205	17 279	11 069

- (58) Stock levels fell between 1998/99 and 2000/01, but then increased significantly in 2001/02 before falling again in 2002/03 to their level in 2000/01, as the Community producers reduced their high stock levels by cutting production. The increase in stock between 2000/01 and 2001/02 coincided with a fall in the Community producers' sales volume in the Community of 20 %, and was found to be chiefly attributable to that fall in sales volume.

6.1.12. Conclusion

- (59) The data shows that whilst production capacity increased slightly at the beginning of the period under consideration, there is negative development for capacity utilisation, production, employment, productivity, cash flow and ROCE. Overall, before the background of consumption which declined for two years and recovered to close to its previous level before declining again in 2002/03, the data shows negative developments for sales, market share, prices and profitability in both 2001/02 and 2002/03. There was an increase in stocks in 2001/02, but these returned to their previous level in 2002/03.
- (60) In particular, the Commission notes that whilst, in 2001/02, as imports more than doubled (44 804 tonnes), the Community producers' sales volume in the Community reached a low level (36 156 tonnes) and the Community producers' profitability fell to (- 1,7 %). This occurred against an increase in consumption in that year. Against such a background, whilst imports could have been expected to follow the consumption level and prices could have been expected to firm, imports more than doubled and the price of both the imported product and that produced by the Community producers fell.
- (61) Further, in 2002/03, although consumption fell by 10 % there was no fall in the level of imports and the main impact of the fall in consumption was borne by the Community producers whose sales fell by 22 % whilst their prices fell by 6 %. This together with a stock overhang from the previous year necessitated a significant reduction in production by the Community producers.
- (62) This combination of factors is reflected in the economic indicators pertaining to the Community producers. The Community producers have lost market share, which reached its lowest level in 2002/03. They have also suffered a reduction in sales in absolute terms in both 2001/02 and 2002/03. In consequence, they have been forced to reduce production in each of these years. As a result, their capacity utilisation has fallen in both 2001/02 and in 2002/03. Productivity and employment have also fallen in both 2001/02 and in 2002/03. The overall effect of the falls in Community sales volume and prices is a reduction in the Community producers' sales revenue by 29 % from EUR 41,9 million in 2000/01 to 29,9 million in 2001/02 and EUR 21,9 million in 2002/03. At the same time, the profitability of the Community producers fell from 6,8 % to (- 1,7 %) in 2001/02 and (- 4,3 %) in 2002/03.
- (63) Taking account of all of these factors the Commission concludes that the Community producers have suffered serious injury.

7. CAUSATION

- (64) In order to examine the existence of a causal link between increased imports and the serious injury, and in order to ensure that injury caused by other factors is not attributed to increased imports, the Commission has proceeded as follows:
- the injurious effects of factors considered to be causing injury have been distinguished from each other,

- these injurious effects have been attributed to the factors which are causing them, and,
- after having attributed injury to all causal factors present, the Commission has determined whether increased imports are a 'genuine and substantial' cause of serious injury.

7.1. ANALYSIS OF CAUSATION FACTORS

7.1.1. Effect of increased imports

- (65) The market for canned mandarins is transparent as regards sources of supply and customers. As canned mandarins are essentially a commodity product, the product concerned and the like product compete mainly on price.
- (66) In the period 2000/01 to 2002/03, the market share of imports grew from 31 to 56 % and then 62 %, whilst the market share of the Community producers fell from 69 to 44 % and then 38 %. Over the same period, imports have grown from 34 to 74 % and on to 113 % of Community production indicating that imports have also increased relative to production, at the expense of the Community producers.
- (67) As to prices, between 2000/01 and 2002/03, the Eurostat average unit price of the imported product on the Community market fell from EUR 792 to EUR 691 and then to EUR 605 per tonne. Over the same period, the average unit price of the Community product fell from EUR 925 to EUR 827 and then EUR 781 per tonne. The effect of the fall in the average unit price of the like product alone on the Community producers' revenue from sales in the Community would have been a reduction of 11 % (EUR 4,4 m) in 2001/02, and a further reduction of 6 % (EUR 1,7 m) in 2002/03. Taking account of the simultaneous fall in sales volume the actual fall in sales revenue in the Community was EUR 12 m in 2001/02 and of EUR 8 m in 2002/03. These reductions in sales revenues (together with increased costs) created a significant fall in profitability and the Community producers showed a loss of 1,7 % in 2001/02 and of 4,3 % in 2002/03.
- (68) For the foregoing reasons, the Commission concludes that there is a correlation between the increase in imports at low prices and the serious injury suffered by the Community producers, and that the increase in imports has had injurious effects in particular in terms of downward pressure on prices and a reduction in the volume sold by the Community producers on the Community market.

7.1.2. Effect of changes in consumption

- (69) The Commission has carried out a full examination of the injurious effects of the fall in consumption between 1998/99 and 2000/01. That fall has to be considered in the context of the overall trend during the five-year period under investigation. Consumption decreased from 80 065 tonnes in 1998/99 to 74 056 tonnes in 1999/2000 and 65 676 tonnes in 2000/01, but then grew by 15 284 tonnes to 80 960 tonnes in 2001/02, before falling back to 72 843 tonnes in 2002/03.
- (70) The Commission notes that whilst consumption fell to its lowest level for the period under consideration in 2000/01, that was also the year in which the Community producers achieved their highest level of profitability (6,8 %). On the other hand, consumption rose in 2001/02 to 80 960 tonnes (its highest level during the period) but the Community producers profitability fell to (-1,7 %) at the same time. Therefore, there is no clear correlation between consumption itself and the profitability and general economic situation of the Community producers.

- (71) In examining the effect of consumption on the profitability of the Community producers, account has to be taken of the reaction of all market participants to the changes in consumption. In this respect, it was found that while Community producers were forced to reduce their sales in the Community by roughly 9 185 tonnes in 2001/02 compared to 2000/01, imports moved sharply in the other direction (+ 24 469 tonnes). Similarly, in 2002/03, whilst imports continued at their level in the previous year, the Community producers' sales fell by over 8 000 tonnes.
- (72) As regards price effects, variations in consumption of canned goods with a substantial shelf-life should not normally lead to substantial price effects if production is adjusted to the needs of the market. In this respect, the Community producers appear to have reacted by reducing both production and sales to a greater extent than that necessary to stay in line with the falls in consumption. This is mirrored by a similar decrease in stocks.
- (73) Similarly, if price pressure is reduced then the injurious effects which stem from low prices would also be minimised. The most important factor is profit, where any fall would have been minimised if prices and sales volumes had not fallen substantially. Therefore, it is reasonable to conclude that, in the absence of the sharp rise in imports at low prices, the fall in consumption would not have led to a substantial fall in profits.
- (74) If all market participants had adjusted their production, then the Community producers would still have sold less in 1999/2000, 2000/01 and 2002/03. But consumption in 2001/02 was at its highest level since 1998/99, and at approximately the same level as in that year. The Community producers' sales, however, decreased in 2001/02 compared to 1998/99 by 29 438 tonnes, a decrease of 43 %. At the same time, imports increased in 2001/02 by 28 457 tonnes compared to 1998/99. Imports therefore increased considerably between 1998/99 and 2001/02 despite consumption being only slightly higher.

	1998/99	1999/2000	2000/01	2001/02	2002/03
Consumption (t) actual development	80 065	74 056	65 676	80 960	72 843
Market share actual	80 %	76 %	69 %	45 %	38 %
Market share simulation (*)	80 %	71 %	57 %	45 %	35 %

(*) Simulation if the level of consumption was constant throughout the period at its 1998/99 level.

- (75) The above table illustrates that even if consumption had remained constant throughout the period examined, the Community industry's market share would not have developed in a substantially different manner. This shows that the development of consumption had only a limited impact on the market share of the Community industry.
- (76) For the reasons given above, it is concluded that, although there is a link between the fall in consumption and the injurious effects observed, this link is not substantial.

7.1.3. Effect of changes in export performance

	1998/99	1999/2000	2000/01	2001/02	2002/03
Exports (in tonnes)	21 316	21 672	14 544	18 099	17 780

- (77) The Commission also examined the effects of the fall in exports. Between 1998/99 and 2000/01, the volume of Community producers' exports of canned mandarins fell from 21 316 tonnes to 14 544 tonnes as the Community producers lost market share to low-priced competition from PRC (particularly as a result of the hormones dispute discussed at recital 35. Between 2000/01 and 2001/02, exports recovered to 18 099 tonnes and to 17 780 tonnes in the 2002/03 season. Over the five-year period, exports decreased by around 3 500 tonnes, although the principal reduction occurred between 1999/2000 and 2000/01 (the year in which the Community producers were most profitable). In 2001/02, exports actually increased, to the benefit of the Community producers. In the most recent period, between 2001/02 and 2002/03, exports have decreased by 319 tonnes or 1,7 %, representing only 0,8 % of Community production in that year.
- (78) It should also be noted that in the calculation of profitability at 6.1.10 only Community sales were taken into account. Therefore, the recorded fall in the profitability of the Community producers in the most recent periods is largely independent of the effect of exports.
- (79) For the reasons given above, it is concluded that there is some link between the fall in exports and the injurious effects observed, in so far as, for example, reduced exports have contributed to lower production and capacity utilisation. However, it is considered that the majority of that effect occurred between 1999/2000 and 2000/01 (when the Community producers were still profitable) and that the very small reduction in exports in 2002/03, equivalent to less than 1 % of Community production had no appreciable effect.

7.1.4. Effect of any excess capacity

- (80) The Commission has examined whether injurious effects may have resulted from excess capacity amongst the Community producers. There was only a single small change in estimated theoretical production capacity during the period of the investigation, when, in 1999/2000 production capacity increased by 2 % to 129 260 tonnes.
- (81) This increase in capacity contributed to a fall in capacity utilisation in 1999/2000 and subsequent years as the anticipated need for additional capacity did not materialise. Therefore, it is concluded that there is a link between the increase in capacity and the injurious effects observed in the earlier part of the five year period, although the effect of the additional capacity on the overall profitability of the Community producers was very small.

7.1.5. Effect of lack of supply of raw material

- (82) Some exporters argued that the reason behind the fall in production by the Community producers was a lack of supply of raw material (namely fresh small citrus fruit) on the EU market. However, based on its examination of the EU market in fresh small citrus fruit, the Commission determines that there was adequate supply to meet demand from the processing industry.
- (83) Table A shows actual production of fresh small citrus fruit (clementines, mandarins and satsumas) in the years 1998 to 2002.

Table A

Year	1998	1999	2000	2001	2002
Production	2 329 341	2 823 106	2 511 550	2 379 634	2 650 000

Source: CLAM

7.1.6. Demand for fresh small citrus fruits by the processing industry

- (84) The quantity of clementines and satsumas used by the processing industry for the production of canned mandarins from 1998/99 to 2002/03 is as shown in table B.

Table B

Season	1998/99	1999/2000	2000/01	2001/02	2002/03
Satsumas and clementines	120 000	110 000	95 000	95 000	60 000

- (85) As tables A and B illustrate, the supply of small fresh citrus fruit on the EU market was far greater than the demand of the processing industry.
- (86) Nevertheless, the processing industry is in competition with other purchasers of fresh satsumas and clementines and its ability to compete appears to be hampered by the fall in prices achieved for the like product. The price of fresh mandarins for processing is set by annual contracts between the canners and the farmers agreed at the beginning of the season. Table C shows the price obtained by the producers for mandarins sold as fresh product and for canning.

Table C

Season	1998/99	1999/2000	2000/01	2001/02	2002/03
Fresh (EUR/tonne)	547	498	571	557	527
Canning (EUR/tonne)	256	255	313	245	172

- (87) The price differential reflects two factors. First, that the Community producers are becoming less able to afford to purchase the raw materials (fresh satsumas and clementines) at a price which allows them to achieve a reasonable level of profitability. Second, because of the low prices offered by the Community producers to growers for satsumas, which are principally used as raw material for canning, growers are reorientating their production from satsumas towards clementines in an effort to increase the profitability of their production. However, that process does not yet appear to be sufficiently far advanced to have had an appreciable effect on the availability of supply to the Community producers.
- (88) Therefore, the Commission determines that lack of supply did not contribute to the injury suffered by the Community producers.

7.1.7. Other factors

- (89) No causation factors (other than those dealt with in parts 7.1.1 to 7.1.6 above) were identified by the Commission services or raised by interested parties during the definitive investigation.

7.2. ATTRIBUTION OF INJURIOUS EFFECTS

- (90) The serious injury suffered by the Community producers took the form mainly of reduced sales volume, reduced unit prices and worsening profitability and financial losses. The Commission identified that three factors contributed to the injury apart from the increase in imports: decline in consumption, decline in exports and increased capacity.

- (91) First of all, there was a decline in consumption between 1998/99 and 2000/01 after which there was a rise in consumption in 2001/02, followed by a further fall in the most recent period. However, the development of imports did not follow this consumption pattern at all and the Commission considers that the decline in consumption between 1998/99 and 2000/01 did not play a significant role either in volume or prices. The fall in consumption in 2002/03 coincided with a fall in sales volumes, prices and profitability for the Community producers and the Commission has concluded that that fall in consumption was a contributory factor in the serious injury suffered by the Community producers.
- (92) The Commission also examined the decline in exports by the Community producers over the five-year period. There was a decline over the earlier part of the five-year period. However, in the latter part of the period, when serious injury was sustained, exports increased before falling slightly. Therefore, the development in exports had a significantly smaller impact on the Community producers in the periods 2001/02 and 2002/03 than the surge in imports.
- (93) The Commission also examined the increase in capacity which occurred in 1999/2000 and which was thereafter retained. The cost of this additional capacity on an annual basis was not significant.
- (94) The Commission noted that, having ensured the effects of other factors are not attributed to increased imports, that there is a genuine and substantial causal link between the decline in the Community producers' sales volume, sales prices and profitability and the increase in imports, which not only increased at a much faster rate than the increase in consumption between 2000/01 and 2001/02, but increased whilst consumption fell from 1998/99 to 2000/01 and in 2002/03.

7.2.1. Conclusion

- (95) After having examined the injurious effects of the other known factors and separated and distinguished them from each other and from the injurious effects of the increased imports, and after having ensured that injury caused by other factors is not attributed to imports, the Commission has reached the conclusion that there is a genuine and substantial link between increased imports and serious injury to the Community producers.

8. COMMUNITY INTEREST

8.1. PRELIMINARY REMARKS

- (96) The purpose of safeguard measures is to remedy serious injury and prevent a further deterioration of the situation of the Community producers of the product concerned. In addition to unforeseen developments, increased imports, serious injury and causation, the Commission has examined whether any compelling economic reasons exist which could lead to the conclusion that it is not in the Community interest to impose definitive measures. For this purpose the impact of measures on all parties involved in the proceedings and the likely consequences of taking or not taking measures were considered on the basis of the evidence available.

8.2. INTEREST OF THE COMMUNITY PRODUCERS

- (97) The Community producers have invested heavily and have the most highly mechanised and automated production systems in the world. They are viable and competitive in normal market conditions. During the period examined, the Community producers have suffered a significant fall in production and sales as a result of which they are currently unable to operate profitably. The Community producers' position would continue to be jeopardised if the current high level of imports at low prices continues.

- (98) The imposition of definitive safeguard measures would provide the Community producers with an opportunity to restructure and thereby ensure the long term viability of their production of the product concerned and of their businesses as a whole. It would provide them with the necessary breathing space to restructure and benefit from greater expenditure on research and development aimed at further reducing production costs. Plans are already well advanced for consolidation within the sector but it will necessarily take time to carry out consolidation and for the benefits thereof to flow through. In addition, a number of cost saving initiatives have been identified including greater cooperation between the Community producers in the purchasing of raw materials other than the fresh fruit itself (which is already subject to joint purchasing arrangements).

8.3. INTERESTS OF PRODUCERS OF FRESH SMALL CITRUS FRUIT IN THE COMMUNITY

- (99) It is in the interests of fresh fruit producers supplying raw material to the Community producers to have strong and predictable demand for their product at a price at which they are able to make a reasonable profit. It appears that one effect of the high level of low priced imports of the product concerned is to drive down the price of the raw material (small fresh citrus fruit, especially satsumas) on the EU market. Therefore, it is in the interests of the fresh fruit producers for measures to be taken to reduce the volume of low priced imports of the product concerned to the EU.

8.4. INTEREST OF USERS AND IMPORTERS IN THE COMMUNITY

- (100) In order to evaluate the impact on importers and users of measures, the Commission sent questionnaires to the known importers and users of the product concerned on the Community market. Responses were received from nine importers, but none was received from users other than those related to importers.
- (101) Some importers of the product concerned claimed that the imposition of measures was unnecessary as the problems experienced by the Community producers were caused by high prices and a lack of supply of fresh mandarins for canning in the Community rather than by increased imports. However, it is noted that, by the end of 2001/02, the year in which imports increased to 44 804 tonnes and the Community producers EU sales fell to 36 156 tonnes, the Community producers stocks had increased by 6 074 tonnes to 17 279 tonnes. This appears to demonstrate that the fall in sales suffered by the Community producers was not caused by an inability to supply on their part, but by some other factor, and the most likely explanation appears to be the growing dominance of increased imports at low prices.
- (102) The importers also argued that it was better to maintain different supply sources and that, if measures were taken, those measures should not be in the form of a minimum price system or allocation of a quota on a first come first served basis as to do so would further disrupt the market. In particular, a first-come-first-served basis would encourage imports in the early part of the year until the quota was utilised when demand would then turn to domestic supply. In addition, they stressed the need for traders in the principal European markets and consumers to continue to have access to good quality product at low prices.
- (103) The definitive measures consist of a tariff quota which reflects the traditional level of imports. Therefore, disadvantages likely to be suffered by users and importers, if at all, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the measures, which are considered the minimum necessary to prevent further deterioration in the situation of the Community producers.

8.5. INTEREST OF CONSUMERS IN THE COMMUNITY

- (104) As the product concerned is a consumer product, the Commission informed various consumer organisations of the opening of an investigation. No responses were received from consumer organisations and the impact on consumers is therefore considered to be minimal.

9. EU ENLARGEMENT

9.1. IMPORTS TO THE ACCESSION COUNTRIES

- (105) Given that the measures will have effect after EU enlargement, scheduled to take place on 1 May 2004, the Commission also considered the increase in imports (both in absolute and relative terms) as it relates to the EU-25.

	2000	2001	2002	2003
Accession country imports from outside the EU-25	2 562	4 268	5 350	6 528
Accession country imports from the EU-15	1 964	1 014	1 472	1 500 (*)
Total	4 527	5 283	6 821	8 028

(*) Estimate.

- (106) Imports to the accession countries from outside the EU-25 increased by 67 % from 2 562 tonnes in 2000 to 4 268 tonnes in 2001, and continued to increase to 5 350 tonnes (a further increase of 25 %) in 2002. In 2003, such imports increased by a further 22 % to 6 528 tonnes.

- (107) In order to consider what would have been the likely increase in imports to the EU-25 in recent years, it is necessary to add imports the EU together with accession country imports from outside the EU-25.

	2000	2001	2002	2003
EU imports (*)	17 573	20 335	44 804	44 813
Accession country imports from outside the EU-25	2 562	4 268	5 350	6 528
Total	20 135	24 603	50 154	51 341

(*) Data is for canning seasons — from 1 October in one year to 30 September in the following year.

- (108) On this basis, total imports for the EU-25 would have increased by 22 % from 20 135 to 24 603 tonnes between 2000 and 2001, and then by 104 % to 50 154 tonnes between 2001 and 2002. Imports would then have continued at this high level in 2003, and indeed there would have been an increase of 2 % to 51 341 tonnes.

- (109) There is no production of the product concerned in the accession countries, and as noted above, imports to the EU-25 developed in a similar way to imports to the EU-15. Therefore, it is considered that the analysis of serious injury and causation for the EU-15 remains valid for the EU-25.
- (110) The Commission has also considered the issue of Community interest as it relates to the EU-25. There is no production of the raw material or the product concerned in the accession countries. However, there are imports of the product concerned to the accession countries which represent around 12 % of total imports to the EU-25. The interests of importers, users and consumers in the accession countries are those of importers/users and consumers and do not diverge from those of importers/users and consumers in the EU-15, which represent far greater numbers. The interests of the importers/users and consumers in the EU-15 are identical to and fully representative of those for the EU-25. Therefore, it is considered that the analysis of serious injury and causation for the EU-15 remains valid for the EU-25.
- (111) Any interested party which considers that following EU enlargement the continuation of measures in their present form is unjustified in relation to the EU-25 is invited to make representations to the Commission by no later than 15 May 2004 setting out detailed reasons as to why the Commission should open a review of the measures.

10. GENERAL CONSIDERATIONS

- (112) By reason of the increased imports of the product concerned (as described in recitals 24 to 27) the Community market in the product concerned, being one of the products listed in Article 1(2) of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Commission Regulation (EC) No 386/2004 ⁽²⁾, is affected by serious disturbance likely to jeopardise the achievement of the objectives set out in Article 33 of the Treaty. The conditions set under Article 22 of Regulation (EC) No 2201/96, if applicable, are therefore fulfilled.

11. FINAL CONSIDERATIONS

- (113) The Commission's analysis of the findings of the investigation demonstrates that the conditions for safeguard measures are met.

11.1. FORM AND LEVEL OF MEASURES

- (114) In order to keep the Community market open and ensure the availability of adequate supply to meet demand it is appropriate to establish a system of tariff quotas in excess of which an additional duty requires to be paid so that even imports in excess of the tariff quotas can enter the Community, albeit upon payment of an additional duty. That additional duty should be set at a level which is consistent with the aim of preventing serious injury to the Community producers. In this regard, it is noted that the additional duty fixed under the provisional safeguard measures (Commission Regulation (EC) No 1964/2003) proved to be inadequate to reduce the level of imports in the short term. Indeed, in the period for which the provisional measures were applicable, 9 November 2003 to 10 April 2004, imports of the product concerned continued to increase and prices continued to fall. Under the provisional measures, the rate of additional duty was fixed at EUR 155 per tonne. Partially as a result of the increased strength of the euro, it is clear that this rate was absorbed by reductions in the average price charged by exporting producers in PRC. Therefore, in order to have the desired effect, the rate of additional duty should be greater than EUR 155 per tonne.

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 64, 2.3.2004, p. 25.

- (115) The level of the additional duty has been calculated on the basis of a target price at which the Community producers would achieve a profit of 6,8 % on turnover, adjusted to take account of transport costs to ensure a proper comparison with imports delivered to the main geographical area for consumption. This amount was then compared to the average import price in the period April 2003 to December 2003 at the same level of trade, adjusted to cif Community border, customs duty, post importation costs and with importers' profit added. The abovementioned profit level was based on an assessment of actual profits achieved by the Community producers in the period 1998/99 to 2001/02. The level of underselling has been calculated at 57,9 % of the cif import price. In terms of a fixed duty, the duty payable should therefore be EUR 301 per tonne. Given the recognised effect of major changes in the strength of the euro relative to the Chinese yuan on the price of imports, in the event that the euro later falls relative to the yuan so as to significantly affect prices, the level of duty can be reviewed.
- (116) In order to maintain access to the Community market, the tariff quotas should be based on the volume of imports during a recent period. The most recent three-year period for which import statistics are available is 1999/2000 to 2001/02 (2002/03 is not considered representative as the safeguard proceedings commenced during that period). The tariff quotas should therefore be based on the average volume imported in these years (27 570 tonnes for the EU-15). Given a significant build up of stocks by some importers and the continuing high level of imports most recently, it is considered that this is the maximum volume which should be imported without additional duty. It is considered that this volume is such as to allow the Community producers to continue to adjust whilst avoiding a further deterioration in their situation.
- (117) The Commission notes that the amounts of the tariff quotas will require to be revised in light of enlargement which is scheduled for 1 May 2004. The amount of the tariff quotas for the first period (27 570 tonnes for the EU-15) should therefore be increased by the average import quantity per annum from non-EU countries to the accession countries in the years 2000 to 2002. This average amounts to 4 060 tonnes. Therefore the EU-25 tariff quota for the first period should be 31 630 tonnes. As the final period is only 212 days, the actual imports quota for the final period should be reduced proportionately.
- (118) In order to preserve traditional trade flows whilst ensuring that the Community market remains open to new supplying countries, the amount of the tariff quotas should be divided amongst those countries having a substantial interest in supplying the product concerned to the Community market, and a part should be reserved for those countries which do not currently have such a substantial interest. After consultation with PRC, the only country having such a substantial interest, the Commission considers it appropriate to assign a specific tariff quota to PRC based on the proportions of the total quantity of the product supplied by that country during the three-year period 1999/2000 to 2001/02. The vast majority of the imports in this period originated in PRC and therefore a country specific tariff quota should apply to PRC and one to all other countries.
- (119) On the basis outlined, the amount of the initial quota assigned to PRC for the EU-25 would be 30 843 tonnes for a period of one year, whilst the amount assigned to all other countries for that period would be 787 tonnes. It is considered that if this were done, the quota assigned to all other countries would be too small to allow competition or to allow newcomers to enter the market. It is desirable that countries other than PRC should also have the opportunity to export the product concerned to the Community. The quota assigned to all other countries should therefore be increased to 3 % of average Community consumption over the period under consideration (or 2 314 tonnes for one year), giving an overall base for the tariff quotas of 33 157 tonnes.

- (120) In view of the obligation to liberalise the measures, the overall annual amount of the tariff quotas should be increased by 5 % in each of the following periods that is to say to 34 815 tonnes for the period to 10 April 2006, to 36 556 tonnes for the period to 10 April 2007, and 22 294 for the period to 8 November 2007 (212 days). The Commission will carry out a mid-term review in accordance with Article 21 of Regulation (EC) No 3285/94 to examine the effects of the measure, determine whether and in what manner it is appropriate to accelerate the pace of liberalisation, and to ascertain whether application of the measure is still necessary. In the context of the mid-term review, the Commission will also have regard to the steps taken by the Community producers by way of restructuring.
- (121) In conformity with Community legislation and the international obligations of the Community, the safeguard measures should not apply to any product originating in a developing country as long as its share of imports of that product into the Community does not exceed 3 %. The only developing country which does not meet the requirements to benefit from this derogation is PRC. The developing countries to which the definitive measures do not apply should therefore be specified and this is done in Annex 2.

11.2. ADMINISTRATION OF THE TARIFF QUOTA

- (122) Prior to the imposition of measures, certain importers and their associations requested that a system be introduced which would allow importers who traditionally import the product concerned from PRC to have guaranteed quantities based on their traditional level of imports from PRC. Other importers argued that any system of quotas should operate on a first come first served basis in order to avoid an unnecessary administrative burden and to maintain competition.
- (123) In order to obtain the information necessary to establish the appropriate method for managing the quotas, the Commission published a notice on 2 October 2003 ⁽¹⁾. On the basis of the information provided, in each of the canning seasons 1999/2000, 2000/01 and 2001/02, the vast majority of imports of the product concerned (more than 90 %) were imported by a small number of importers who imported an average of 500 tonnes or more per canning season (hereafter referred to as traditional importers). The remainder was imported by importers other than traditional importers (hereafter referred to as other importers).
- (124) Whilst some importers argued that the threshold for traditional importers should be lower (e.g. 300 tonnes or less), in the application of the provisional measures it was found that there were a large number of importers who wished to import smaller quantities. Therefore, the interests of importers of smaller quantities as a whole are better served by increasing the share of the tariff quota available to non traditional importers rather than reducing the threshold to qualify as a traditional importer.
- (125) Having examined the request in the light of experience gained during the application of the provisional measures, the Commission notes the following:
- without a system of guaranteed licences, the price of the imported product from PRC is likely to rise dramatically in the early part of the tariff quota period, and might subsequently collapse when importers reach or exceed the level of imports necessary to fulfil their orders (windfall effects). The 'windfall' effects of the allocation of the tariff quotas on a first-come-first-served basis risk harming Community producers as demand will be focused on imports from PRC in the early part of the canning season and will only transfer to the Community producers' product after the tariff quota is exhausted. This risks reducing the Community producers' sales in the early part of the canning season, and they would also suffer from the uncertainty created by severe price fluctuations. Were this to occur, it would jeopardise achievement of the aim pursued in establishing the definitive measures,

⁽¹⁾ OJ C 236, 2.10.2003, p. 30.

- it is in the interests of existing importers who normally import substantial quantities of the product concerned from PRC that provision is made to ensure that traditional trade flows are preserved and that they continue to be able to import a certain quantity of the product concerned from PRC free of additional duty. It is also in the interests of new importers that they have some opportunity to import the product concerned from PRC free of additional duty,
 - it is in the interests of retailers and consumers that there should continue to be an adequate supply of the product concerned on the Community market and that the market price should be stabilised,
 - the form of the definitive measures should be such as to achieve their objective whilst minimising unnecessary market disruption in the form of severe price fluctuations and negative effects on the Community producers, as well as ensuring least administrative burdens on importers. In this regard it is noted that during the period of application of the provisional measures, imports of the product concerned actually increased whilst the retail price charged by the at least one major player was reduced by 17 %,
 - the measures should be in such a form as to encourage competition amongst importers to an increasing degree and ensure that new non traditional importers have the opportunity to join the market.
- (126) Having taken account of these considerations, the Commission considers that it would not be appropriate to administer the tariff rate quota on a first-come-first-served basis. Rather, those economic operators who have traditionally imported a substantial quantity of the product concerned to the Community or accession countries (traditional importers) should have the opportunity to apply for a licence to import a quantity of the product concerned free of additional duty, based on their traditional level of imports from PRC. At the same time, other importers who wish to import the product concerned into the Community from PRC, but who do not meet this criteria (other importers), should have the opportunity to apply for a licence to import a quantity of the product concerned free of additional duty.
- (127) Therefore a system of licences could be established whereby the right to import the product concerned free of duty is subject to presentation of an import licence. The detailed rules for that system should be complimentary to, or derogate from, those laid down by Commission Regulation (EC) 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 322/2004 ⁽²⁾.
- (128) In order that the system can operate effectively, the right to apply for a licence should be restricted to operators, natural or legal persons, individuals or groups who have recent experience of importing into the Community or accession countries. Measures are also needed to keep to a minimum speculative applications for import licences which may result in the tariff quotas not being fully utilised. Therefore, in order to qualify to apply for a licence, importers should have recently imported into the Community a reasonable minimum quantity of similar products. Given the nature and value of the product concerned, it is considered reasonable that in order to qualify to apply for a licence, importers must have imported at least 50 tonnes of processed fruit and vegetable products as referred to in Article 1(2) of Regulation (EC) No 2201/96 in one or more of the last three canning seasons (2000/01, 2001/02 and 2002/03 for the first period of the definitive measures (11 April 2004 to 10 April 2005). Further, provision should be made to require the payment of a security in respect of each tonne of the product concerned for which an application for a licence to import is made. That security should be at a level sufficiently high to discourage speculative applications but not so high as to discourage those engaged in genuine commercial activity in relation to processed fruit and vegetable products. It is considered that a security equal to around 20 % of the value of the imported product concerned is reasonable in this context.

⁽¹⁾ OJ L 152, 24.6.2000, p. 1.

⁽²⁾ OJ L 58, 26.2.2004, p. 3.

- (129) In the provisional measures, traditional importers received 85 % of the tariff quota (23 435 tonnes on an annual basis), whilst other importers received 15 % (4 135 tonnes on an annual basis). The measures should be such as to preserve the position of traditional importers, whilst at the same time maintaining competition and providing access to the market for other importers. There are a significant number of importers who have a history of importing canned satsumas from PRC but who do not meet the 500-tonne threshold to be treated as traditional importers. Given the variety of volumes imported by these importers, it was found to be more equitable to increase the amount of the tariff quota for such importers than to reduce the amount of the volume threshold.
- (130) It is considered that, notwithstanding the high percentage of the product concerned imported by traditional importers in recent canning seasons, in order to keep the market open, maintain competition and provide the opportunity for importers of smaller quantities to participate in the market, 25 % of the tariff quota for goods originating in PRC should be available to 'other importers'. By allocating 75 % to traditional importers in the definitive measures the initial annual amount of the tariff quota available to them would be maintained at 23 132 tonnes. This would preserve the position of traditional importers whilst allowing a higher percentage to be allocated to non-traditional importers than was allocated in the provisional measures. Therefore the amount allocated to other importers should be increased to 7 711 tonnes (25 % of the tariff quota).
- (131) Licences for the relevant percentage of the tariff quota allocated to traditional importers for the period concerned for imports of the product concerned originating in PRC should be made available upon application and subject to objective criteria, to traditional importers. Licences for the remainder of the tariff quota for the period concerned should be made available upon application and subject to objective criteria to 'other importers'. Such criteria are necessary to ensure that each traditional importer has the opportunity to preserve his position vis à vis other traditional importers, that no single importer is able to control the market and that competition between importers is preserved. In this respect, the most appropriate objective criteria for traditional importers is the maximum quantity (net weight) of the product concerned imported per canning season by the traditional importer in the last three canning seasons (2000/01, 2001/02 and 2002/03 for the first period of the definitive measures (11 April 2004 to 10 April 2005). The most appropriate objective criteria for other importers is a limit of 20 % of the tariff quota available to other importers for goods of Chinese origin (*id est* 3 % of the tariff quota for goods of Chinese origin).
- (132) As regards imports of the product concerned originating in countries other than PRC, as traditional importers do not import substantial quantities of the product concerned from countries other than PRC, and as the tariff quota to be established is substantially higher than imports in previous canning seasons, it is considered that the whole of the tariff quota should be available to all importers on the same basis, and that (for the reasons abovementioned) the most appropriate objective criteria for limiting applications for import licences is a limit of 20 % of the tariff quota available for goods of that origin.
- (133) The eligibility of imported goods from developing countries to be excluded from the tariff quotas is dependent on the origin of the goods. The eligibility of imported goods for the tariff quota assigned to imports originating in PRC, and for the tariff quota for imports originating in all other countries, is also dependent on the origin of the goods. The criteria for determining origin currently in force in the Community should therefore be applied, and in order to ensure that the tariff quotas are administered efficiently, presentation of a certificate of origin at the Community frontier should be required for imports of the product concerned except where imports of the product concerned are covered by a proof of origin issued or made out in accordance with the relevant rules established in order to qualify for preferential tariff measures.

11.3. DURATION

- (134) The definitive measures should not last more than four years including the period of the provisional measures which came into force on 9 November 2003. They should therefore expire no later than 8 November 2007,

HAS ADOPTED THIS REGULATION:

*Article 1***System of tariff quotas**

1. A system of tariff quotas is hereby opened in relation to imports into the Community of certain prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, containing added sugar, currently classifiable within CN codes 2008 30 55 and 2008 30 75 (hereinafter canned mandarins). The volume of each of the tariff quotas, and the period for which they apply, are specified in Annex 1.
2. The conventional rate of duty provided in Council Regulation (EC) No 2658/87 ⁽¹⁾, or any preferential rate of duty, shall continue to apply to canned mandarins imported under the quotas referred to in paragraph 1.
3. Subject to Article 9, imports of those canned mandarins which are made without presentation of a licence such as is referred to in Article 3(1) relating to the country from which those canned mandarins originate shall be subject to an additional duty of EUR101 per tonne.

*Article 2***Definitions**

For the purposes of this Regulation:

- (a) 'canning season' means a: period of 12 months from 1 October in one year to 30 September in the next year;
- (b) 'accession countries' means Latvia, Lithuania, Estonia, Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Malta and Cyprus;
- (c) 'importer' means an operator, natural or legal person, individual or group having imported into the Community or the accession countries, in one or more of the last three canning seasons, at least 50 tonnes per canning season of processed fruit and vegetable products as referred in Article 1(2) of Regulation (EC) No 2201/96, irrespective of the origin of those imports;
- (d) 'traditional importer' means an importer who has imported an average of 500 tonnes or more of canned mandarins per canning season into the Community or the accession countries in the last three canning seasons, irrespective of the origin of those imports;
- (e) 'reference quantity' means the maximum quantity of canned mandarins imported per canning season by a traditional importer during one of the last three canning seasons.
- (f) 'other importers' means importers who are not traditional importers;
- (g) 'origin' refers to the country from which an import originates, being either PRC on the one hand, or a country other than PRC on the other.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

*Article 3***System of import licences**

1. All imports under the quotas referred to in Article 1(1) shall be subject to the presentation of an import licence (hereinafter the licence) issued in accordance with Regulation (EC) No 1291/2000, subject to the provisions of this Regulation.
2. Article 8(4) of Regulation (EC) No 1291/2000 shall not apply to the licences. Box 19 of licences shall be marked '0'.
3. In derogation from Article 9 of Regulation (EC) No 1291/2000, the rights accruing from licences shall not be transferable.
4. The amount of the security referred to in Article 15(2) of Regulation (EC) No 1291/2000 shall be EUR10 per tonne net.

*Article 4***Validity of licences**

1. Box 8 of licence applications and licences shall indicate the country of origin of the product. The word 'yes' in box 8 shall be marked with a cross. Licences shall be valid only for the products originating in the country indicated in that box.
2. Licences shall be valid only for the period for which they have been issued. Box 24 thereof shall contain an entry indicating the period of validity of the licence (e.g. 'licence valid only from 11 April 2004 to 10 April 2005').

*Article 5***Licence applications**

1. Only importers may lodge licence applications.

Applications shall be lodged with the competent national authorities. In support of their applications, importers shall provide information verifying to the satisfaction of the competent national authorities compliance with Article 2(c) and (d).

2. Licence applications for the period to 10 April 2005 may be lodged during the period 1 to 7 May 2004. Licence applications for any later period may be lodged from 1 to 8 February immediately prior to the beginning of the relevant period in all other cases.
3. Licence applications lodged by traditional importers shall cover a quantity no greater than the reference quantity for the traditional importer concerned in relation to imports of canned mandarins originating in PRC, and no more than 20 % of the tariff quota specified in relation to imports of canned mandarins originating in all other countries.
4. Licence applications lodged by other importers shall cover a quantity no greater than 3 % of the tariff quota specified in Annex 1 in relation to imports of canned mandarins originating in PRC, and no more than 20 % of the tariff quota specified in relation to imports of canned mandarins originating in all other countries.
5. Box 20 of licence applications shall indicate 'traditional importer' or 'other importer' as appropriate, and 'request under Regulation (EC) No 658/2004'.

*Article 6***Allocation of the tariff quotas**

1. For imports of Chinese origin, the tariff quota defined in Article 1(1) for each period shall be allocated as follows:

(a) 75 % to traditional importers;

(b) 25 % to other importers.

If in any period the quantity allocated is not fully exhausted by one category of importers, the remainder may be allocated to the other category.

2. For imports other than of Chinese origin, the quota defined in Article 1(1) shall be available to traditional importers and other importers.

*Article 7***Member States communications to the Commission**

1. The Member States shall notify the Commission whether import licence applications have been lodged and the quantities covered by the licence applications;

2. For the period 11 April 2004 to 10 April 2005, the information referred to in paragraph 1 shall be notified by no later than 12.00 (Brussels time) on 11 May 2004.

3. For each subsequent period, the information referred to in paragraph 1 shall be notified by no later than 12.00 (Brussels time) on 10 February immediately prior to the beginning of the relevant period.

4. The communication referred to in paragraph 1 shall be effected by electronic means on the form sent for that purpose by the Commission to the Member States. The information contained therein shall be broken down by type of importer and by origin within the meaning of Article 2.

*Article 8***Issue of licences**

1. On the basis of the information notified by the Member States pursuant to Article 7, the Commission shall decide, by means of a regulation, for each origin and each type of importer within the meaning of Article 2, and taking into account paragraph 2, the proportion in which the licences are to be issued. That decision shall be taken by no later than 2 June 2004 in the case of the period 11 April 2004 to 10 April 2005, and no later than 15 March immediately prior to the beginning of the relevant period in all other cases.

2. Where, on the basis of the information notified by the Member States pursuant to Article 7, the Commission finds that licence applications exceed the quantities established in accordance with Articles 1 and 6, it shall fix a single percentage reduction to be applied to the licence applications in question.

3. Licences shall be issued by the competent national authorities on the fourth working day following the entry into force of the regulation foreseen in paragraph 1.

4. Where, pursuant to paragraph 1, the quantity for which a licence is issued is less than the quantity requested, the licence application may be withdrawn within three working days of the entry into force of the measures adopted pursuant that paragraph. In the event of such a withdrawal, the security shall be released immediately.

*Article 9***Developing countries**

Imports of canned mandarins originating in one of the developing countries specified in Annex 2 shall not be subject, or allocated, to the tariff quotas.

*Article 10***General provisions**

1. The origin of the canned mandarins to which this Regulation applies shall be determined in accordance with the provisions in force in the Community.
2. Subject to paragraph 3, any release into free circulation in the Community of canned mandarins originating in a third country shall be subject to presentation of a certificate of origin issued by the competent national authorities of that country meeting the conditions laid down in Article 47 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾.
3. The certificate of origin referred to in paragraph 2 shall not be required for imports of canned mandarins covered by a proof of origin issued or made out in accordance with the relevant rules established in order to qualify for preferential tariff measures.
4. Proof of origin shall be accepted only if the canned mandarins meet the criteria for determining origin set out in the provisions in force in the Community.

Article 11

The Member States and the Commission shall cooperate closely to ensure compliance with this Regulation.

Article 12

This Regulation shall enter into force on 11 April 2004 and apply until 8 November 2007.

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

Done at Brussels, 7 April 2004.

For the Commission
Pascal LAMY
Member of the Commission

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

ANNEX I

Period	Quota — PRC (tonnes)	Quota — all other countries (tonnes)
11.4.2004 to 10.4.2005	30 843	2 314
11.4.2005 to 10.4.2006	32 385	2 430
11.4.2006 to 10.4.2007	34 004	2 551
11.4.2007 to 8.11.2007	20 738	1 556

ANNEX II

List of Developing Countries — excluded from the measures as they export less than 3 % of imports to the Community.

United Arab Emirates, Afghanistan, Antigua and Barbuda, Angola, Argentina, Barbados, Bangladesh, Burkina Faso, Bahrain, Burundi, Benin, Brunei Darussalam, Bolivia, Brazil, Bahamas, Bhutan, Botswana, Belize, Democratic Republic of Congo, Central African Republic, Congo, Côte d'Ivoire, Chile, Cameroon, Colombia, Costa Rica, Cuba, Cape Verde, Djibouti, Dominica, Dominican Republic, Algeria, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Federated States of Micronesia, Gabon, Grenada, Ghana, Gambia, Guinea, Equatorial Guinea, Guatemala, Guinea-Bissau, Guyana, Honduras, Haiti, Hong Kong, Indonesia, India, Iraq, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Cambodia, Kiribati, Comoros, St Kitts and Nevis, Kuwait, Lao People's Democratic Republic, Lebanon, St Lucia, Sri Lanka, Liberia, Lesotho, Libyan Arab Jamahiriya, Morocco, Madagascar, Marshall Islands, Mali, Myanmar, Mongolia, Mauritania, Mauritius, Maldives, Malawi, Mexico, Malaysia, Mozambique, Namibia, Niger, Nigeria, Nicaragua, Nepal, Nauru, Oman, Panama, Peru, Papua New Guinea, Philippines, Pakistan, Palau, Paraguay, Qatar, Rwanda, Saudi Arabia, Solomon Islands, Seychelles, Sudan, Sierra Leone, Senegal, Somalia, Suriname, Sao Tomé and Príncipe, El Salvador, Syrian Arab Republic, Swaziland, Chad, Togo, Thailand, Tunisia, Tonga, East Timor, Trinidad and Tobago, Tuvalu, Tanzania (United Republic of), Chinese Taipei, Uganda, Uruguay, St Vincent and Northern Grenadines, Venezuela, Viet Nam, Vanuatu, Samoa, Yemen, South Africa, Zambia and Zimbabwe.