# COMMISSION REGULATION (EC) No 642/2008

## of 4 July 2008

## imposing a provisional anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the 'basic Regulation') and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

### 1. PROCEDURE

#### 1.1. Initiation of the proceeding

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

(2) The proceeding was initiated as a result of a complaint lodged on 6 September 2007 by the Spanish National Federation of Associations of Processed Fruit and Vegetables (FNACV) ('the complainant') on behalf of producers representing 100 % of the total Community production of certain prepared or preserved citrus fruits (namely mandarins etc.). The complaint contained evidence of dumping of the product concerned and of material injury resulting thereof, which was considered sufficient to justify the initiation of a proceeding.

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

(4) It is recalled that safeguard measures were in force against the same product until 8th November 2007. The Commission imposed provisional safeguard measures against imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) by Regulation (EC) No 1964/2003 of 7 November 2003 [4]. Definitive safeguard measures followed by Regulation (EC) No 658/2004 of 7 April 2004 (the "Safeguards Regulation") [5]. Both the provisional and definitive safeguard measures consisted of a tariff rate quota i.e. a duty was only due once the volume of duty free imports had been exhausted.

#### 1.2. Parties concerned by the proceeding

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

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

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

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 246, 20.10.2007, p. 15.
[3] OJ L 288, 6.11.2007, p. 22.
[4] OJ L 290, 8.11.2003, p. 3.
[5] OJ L 104, 8.4.2004, p. 67.

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

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

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

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

Exporting producers in the PRC:

— Yichang Rosen Foods Co., Ltd., Zhejiang

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

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

Community producers:

— Halcon Group SA, Murcia, Spain

— Cofrusa SA, Murcia, Spain

— Agriconsa SA, Valencia, Spain

— Videca SA, Valencia, Spain.

### 1.3. **Investigation period (IP)**

(12) The investigation of dumping and injury covered the period from 1 October 2006 to 30 September 2007 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 October 2002 to the end of the investigation period ('period considered').

## 2. **PRODUCT CONCERNED AND LIKE PRODUCT**

### 2.1. **General remarks**

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

### 2.2. **Product concerned**

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

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

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

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

### 2.3. **Like product**

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

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

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

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

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

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

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

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

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

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

## 3. **SAMPLING**

### 3.1. **Sampling for exporting producers in the PRC**

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

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

#### 3.1.1. *Pre-selection of cooperating exporting producers*

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

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

3.1.2. *Selection of the sample*

(26) In accordance with Article 17(1) of the basic Regulation, the size of the exporting producers with regard to export sales to the Community was taken into account in the selection of the sample. Based on this criterion, a sample of four exporting producers, two of them related, was chosen. Based on the sampling information, the chosen companies accounted, in the IP, for more than 60 % of the total volume of exports to the Community of the product concerned reported by the companies referred to in recital (24) above. In addition, one of them had also made substantial domestic sales of the product concerned in the IP. It was therefore considered that such sample would allow limiting the investigation to a reasonable number of exporting producers which could be investigated within the time available while ensuring a high level of representation. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and raised no objection within the time limit set for that purpose.

3.2. **Individual examination**

(27) None of the exporting producers which were not included in the sample claimed an individual dumping margin by providing the relevant information within the given deadline, with a view to the application of Article 17(3) of the basic Regulation. Therefore, an individual examination of exporting producers was not made in this investigation.

3.3. **Sampling for importers**

(28) In view of the large number of importers identified from the complaint itself and from the previous safeguard investigation, sampling was also envisaged in the notice of initiation in accordance with Article 17(1) of the basic Regulation. A large number of importers offered to cooperate. The six major importers in terms of volume of imports were selected for the sample. These importers represent slightly more than 60 % of total Community imports.

## 4. DUMPING

### 4.1. Market Economy Treatment

(29) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(30) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. Business decisions regarding prices and costs are made in response to market conditions and without State interference;

2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes;

3. There are no significant distortions carried over from the former non-market economy system;

4. Legal certainty and stability is provided by bankruptcy and property laws;

5. Currency exchanges are carried out at the market rate.

(31) In the present investigation, one of the exporting producers included in the sample (see recitals (22) to (26) above) replied to the MET claim form.

(32) This exporting producer cannot receive MET because it failed to show that it fulfils the conditions set out in the first, second and third criterion of Article 2(7)(c) of the basic Regulation. In particular, as far as criterion 1 is concerned, it was established on spot that the labour contracts of the company were signed by the workers blank, without any reference to remuneration and working hours. It was thus impossible to determine the conditions under which the workers were recruited and paid and consequently whether the labour cost reflected supply and demand. As far as criterion 2 is concerned, it was established on spot that fundamental International Accounting Standards were disregarded (i.e. accrual principle, offsetting, inconsistencies between the amounts reported in the accounts and the actual source accounting material, lack of faithful representations of transactions) both in the accounts and in their audit which put into question the reliability of the company's accounts. With regard to criterion 3, it was established that the company benefitted from a number of subsidies (e.g. refund of VAT never paid by the suppliers/farmers and certain export subsidies from the Fund for Provincial Foreign Trade Development Projects as well as an export bonus), which indicates that significant distortions from the former non-market economy system are still in place.

(33) In light of the foregoing, the sole Chinese exporting producer which has requested MET has not shown that that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

4.2. **Individual treatment**

(34) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(35) The sole exporting producer in the sample which requested MET, claimed also IT in the event that it would not be granted MET. The other exporting producers included in the sample also claimed IT.

(36) For all companies concerned, the preliminary examination of their IT claims showed that all met the requirements for IT as set forth in Article 9(5) of the basic Regulation.

(37) It was therefore concluded that IT should provisionally be granted to the following exporting producers in the PRC:

— Yichang Rosen Foods Co., Ltd., Zhejiang

— Huangyan No.1 Canned Food Factory Zhejiang, Huangyan

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

4.3. **Normal Value**

(38) For the reasons stated above, no MET was granted to any exporting producer in the PRC.

(39) Therefore, normal value shall be determined for all Chinese exporting producers in accordance with Article 2(7)(a) of the basic Regulation.

(40) According to information contained in the complaint, the product concerned is not being produced in significant quantities outside the Community and the country concerned. It was therefore suggested in the notice of initiation to base the normal value on any other reasonable basis, i.e. the prices actually paid or payable in the Community for the like product. Interested parties were invited to submit their comments in this respect. The Commission itself continued to seek any potential analogue countries after the publication of the notice of initiation. The Commission sought co-operation from two companies in Thailand. One of them initially agreed to co-operate in the investigation but failed to reply to the questionnaire later on. The other company did not react at all.

(41) Two exporting producers from the country concerned and an association of importers and wholesalers disagreed with basing the normal value on the prices paid or payable in the Community but did not offer any other solution which would comply with the basic Regulation.

(42) In view of the above, it was provisionally decided to determine normal value for all exporting producers in the sample on any other reasonable basis, in this case on the basis of the prices actually paid or payable in the Community for the like product, in accordance with Article 2(7)(a) of the basic Regulation.

(43) Following the choice of the prices paid or payable in the Community, normal value was calculated on the basis of the data verified at the premises of the co-operating Community producers listed in recital (11) above.

(44) The domestic sales of these Community producers of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers included in the sample.

(45) As the sales prices of the Community industry were loss-making, they had to be duly adjusted to include a reasonable profit margin, as foreseen under Article 2(7)(a) of the basic Regulation. The 6,8 % profit used was the level of profit achieved in the last canning season (2000/2001) before the huge increase in Chinese imports that led to the imposition of safeguard measures, i.e., the last season where market conditions were not influenced by injurious imports at abnormally low prices.

4.4. **Export prices**

(46) The export prices were based on the prices actually paid when sold to independent customers for export from the PRC to the Community.

4.5. **Comparison**

(47) The comparison between normal value and export price was made on an ex-factory basis.

(48) For the purpose of ensuring a fair comparison between the normal value and the export price, due adjustments were made for differences affecting prices and price comparison in accordance with Article 2(10) of the basic Regulation. Adjustments were made, whenever necessary, for differences in transport, insurance and any other transport related costs.

4.6. **Dumping margin**

(49) In view of the foregoing, and pursuant to Article 2(11) and (12) of the basic Regulation, the provisional dumping margin for all exporters in the PRC was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type determined and adjusted as explained above. In accordance with consistent practice, a weighted average dumping margin was calculated for related exporting producers. For the co-operating not sampled exporting producers a weighted average dumping margin based on the dumping margins of the companies in the sample was calculated. Furthermore, since the co-operation of exporting producers was very high (see recital (25) above), the highest individuali dumping margin of the companies in the sample was attributed to all other companies.

(50) On this basis the provisional dumping margins, expressed as a percentage of the cif Community frontier price duty unpaid are:

— Yichang Rosen Foods Co., Ltd., Zhejiang 139,6 %

— Huangyan No.1 Canned Food Factory Zhejiang, Huangyan 87,4 %

— Zhejiang Xinshiji Foods Co., Ltd. and its related producer Hubei Xinshiji Foods Co., Ltd., Sanmen 134,7 %

— Co-operating exporting producers not included in the sample 128,4 %

— All other companies 139,6 %.

5. **INJURY**

5.1. **General Remarks**

(51) It should be recalled that the product in question was subject to safeguard measures during most of the period considered. This was justified by the fact that the Community industry suffered serious injury at the end of the period under scrutiny in the safeguard investigation (i.e. from 1998/1999 to 2002/2003).

5.2. **Community production and Community industry**

(52) In the course of the present investigation it was found that the product concerned was manufactured in the Community by four Community producers on whose behalf the complaint was lodged (Halcon Group SA, Murcia, Spain; Cofrusa SA, Murcia, Spain; Agriconsa SA, Valencia, Spain; Videca SA, Valencia, Spain). None of these producers was related to any Chinese exporters or importers of the product concerned from the PRC.

(53) The investigation showed that the Community producers had produced around 34 100 tonnes of the product concerned in the IP. This represents 100 % of the total volume of the like product produced in the Community. The aforementioned Community producers are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

(54) It is noted that in the safeguards investigation there were eight cooperating producers in the Community. The fact that there only remain four producers in the Community reflects the closure of some firms and mergers of others.

5.3. **Community Consumption**

(55) During the period considered the Community consumption developed as follows.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Community Consumption (in tonnes) | 78 623 | 90 197 | 80 065 | 80 145 | 78 859 |
| *Index (2002/03 = 100)* | *100* | *115* | *102* | *102* | *100* |

(56) Community consumption was established on the basis of the total volume of EU sales of the product concerned by the Community industry, plus EU sales of former Community producers who no longer produced during the IP, plus imports from all third countries. The figures concerning the total EU sales of the product concerned by the Community industry derive from verified data provided by the Community producers. Sales of former Community producers emanate from estimations by the complainant and have been verified with the results of the safeguard investigation including notice C322/06 published in the *Official Journal of the European Union* of 17 December 2005. Imported quantities were derived from Eurostat.

(57) As presented in the table above, the consumption of the product concerned in the Community has been relatively stable over the period considered with the exception of the increase observed in 2003/04. This apparent increase in consumption may be explained essentially by the 'stockpiling' of the product concerned as described in the notice mentioned in the recital above. Eurostat data confirm this phenomenon in the new Member States, prior to their accession to the EU in May 2004. Indeed, imports in the new Member States reached almost 15 000 tonnes before their accession (during the season 2003/2004) and considerably lowered to ca. 4 000 tonnes/year on average during the seasons 2004/2005, 2005/2006 and 2006/2007. In the IP, consumption can be deemed stable at a level consistent with the preceding period of the years 2005 and 2006.

### 5.4. **Imports into the Community from the PRC**

#### 5.4.1. *Volume and market share of imports of the product concerned*

(58) The evolution of imports from the PRC, in volume and market share, has been the following:

| Import volumes | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| PRC in tonnes | 51 193 | 65 878 | 49 584 | 61 456 | 56 108 |
| *Index (2002/03 = 100)* | *100* | *129* | *97* | *120* | *110* |

*Source*: Eurostat

| Market shares of consumption | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| PRC | 65,1 % | 73 % | 61,9 % | 76,7 % | 71,1 % |

(59) A similar surge in imports from the PRC can be seen in 2003/04 as observed above in Community consumption. These then fell back to lower levels in 2004/05 (post-accession of new Member States). The market share of imports from China remains consistently high, as China is the main exporter of this product to the EU and the rest of the world.

#### 5.4.2. *Prices of imports and price undercutting/underselling*

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Import prices from the PRC *Source Eurostat* (EUR/tonne) | 595 | 525 | 531 | 612 | 596 |
| *Index (2002 = 100)* | *100* | *88* | *89* | *103* | *100* |

(60) The above table shows the development of average import prices from the PRC. Over the period considered prices fell only in 2003/04. In the IP, they recovered back to their original level in 2002/2003.

(61) A comparison of selling prices on the Community market during the IP was made between the prices of Community industry and imports from the country concerned. In this market, the point which serves as a reference for delivery of imports and Community production is Hamburg. For this reason the relevant sales prices of Community industry were those to independent customers, adjusted where necessary to a Hamburg-delivered level, after deduction of discounts and rebates. These prices were compared with the sales prices charged by the Chinese exporting producers net of discounts and adjusted where necessary to cif Hamburg plus duty and customs clearance paid. The adjustments included, where appropriate, the safeguard duty paid of EUR 301/MT for exports which were not covered by the quota.

(62) The 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, when expressed as a percentage of the latter ranging from 19,6 % to 35,2 % based on the data submitted by the sampled cooperating exporting producers. In addition, the analysis of the price development of the Community industry shows that substantial price suppression (and, during the IP, depression) has taken place (see *infra*).

5.5. **Situation of the Community industry**

(63) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1 October 2002 to the IP.

(64) The Community industry data below is the aggregated information from the four Community producers.

**Production, production capacity and capacity utilisation**

(65) The table below indicates the evolution of production, production capacity and capacity utilisation of the Community producers:

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Production (tonnes) | 31 238 | 23 000 | 28 865 | 16 149 | 34 125 |
| *Index (2002/03 = 100)* | *100* | *73* | *92* | *52* | *109* |
| Production capacity (tonnes) | 74 380 | 74 380 | 74 380 | 66 380 | 68 380 |
| *Index (2002/03 = 100)* | *100* | *100* | *100* | *89* | *92* |
| Capacity utilisation % | 42 % | 31 % | 39 % | 24 % | 50 % |
| *Index (2002/03 = 100)* | *100* | *74* | *93* | *57* | *119* |

(66) As shown in the table above, production during the period varied as a result of smaller harvests in 2003/04 and 2005/06. Production capacity fell towards the end of the period considered. The capacity utilisation remained, irrespective of harvest fluctuations, at very low levels throughout the period.

**Stocks**

(67) The figures below represent the volume of stocks of the Community industry at the end of each period.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Stocks (tonnes) | 7 159 | 3 695 | 6 140 | 1 688 | 11 895 |
| *Index (2002/03 = 100)* | *100* | *52* | *86* | *24* | *166* |

(68) It should be noted, that the product concerned has a long shelf life (of more than three years), preserving their characteristics in terms of taste and colour.

(69) Stocks have fluctuated throughout the period but have increased considerably during the IP. This appears to be due to the pressure of dumped imports and to the expectation that safeguard measures would disappear, thus paving the way for importers to switch from Community industry to Chinese imports as a source of the product concerned.

**Sales volume, market share and average sales prices**

(70) The figures below represent the sales volume, market share and average unit sales prices of the Community industry.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Sales volume Community Industry in tonnes | 17 635 | 19 705 | 23 240 | 17 769 | 21 387 |
| *Index (2002/03 = 100)* | *100* | *112* | *132* | *101* | *121* |
| Market share | 22,4 % | 21,8 % | 29,0 % | 22,2 % | 27,1 % |
| *Index (2002/03 = 100)* | *100* | *97* | *129* | *99* | *121* |
| Average sales prices (EUR/tonne) | 824,3 | 819,8 | 840,6 | 1 058,7 | 1 034,6 |
| *Index (2002/03 = 100)* | *100* | *99* | *102* | *128* | *125* |

(71) Notwithstanding the existence of safeguard measures and the disappearance of a number of Community producers (whose market share decreased from 11,2 % in 2002/03 to 8,1 % in 2004/05 and disappeared afterward), the Community industry's sales volumes slightly increased in absolute terms, but remained low over the period considered. Indeed, Community industry's market share gained only 4,7 percentage points over the period considered. Average sales prices have increased in the period considered but not to the extent necessary to achieve a normal profit, underlining the impact on price levels by the substantial imports from China at very low prices.

**Growth**

(72) Overall, it has to be noted that the Community industry's market share increased by around 5,2 % in the period considered reaching a modest 27,6 % in the IP and showing that the pressure of the Chinese imports did not allow the Community industry to substantially improve its performance.

**Profitability, return on investments**

(73) The pre-tax profit margin shown below relates to sales of the Community industry and reflects the fact that the industry remained loss making, helped somewhat by the imposition of safeguard measures but also jeopardised by the avoidance of measures due to stockpiling which was taking place in parallel (see recital 57). The positive effect of safeguard measures is therefore particularly reflected towards the end of the period considered.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Pre-tax Profit Margin | – 3 % | – 17,6 % | – 17,3 % | – 12,6 % | – 4,3 % |
| *Index (2002 = 100)* | *100* | *585* | *575* | *420* | *141* |
| Return on Investments (RoI) | – 3 % | 7,2 % | 4,3 % | – 31,2 % | – 28,9 % |

(74) The RoI above shows a trend towards decline after 2003/04. Deteriorating return on investment is also an indication of the deterioration of the situation of the Community producers.

**Cash flow**

| | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|
| Cash flow (% of total sales) | 8,7 % | – 0,5 % | – 1,6 % | – 4,6 % | 3,2 % |

(75) As Community producers can other kind of fruits, cash flow could only be examined at total company activity rather than in relation to the product concerned only. This indicator is therefore less meaningful and is shown in terms of the financial years (calendar years). Nevertheless it can be seen that a progressive deterioration took place until 2005 and a limited recovery occurred during the IP.

**Investment in the product concerned and the ability to raise capital**

(76) The trend for the investments of the Community industry is shown in the following table.

| EUR | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Investments | 698 358 | 837 152 | 994 242 | 1 110 304 | 785 109 |
| *Index (2002/03 = 100)* | *100* | *120* | *142* | *159* | *112* |

(77) Despite the negative development seen for profitability above, the Community industry has increased its investments in the product concerned in order to further improve its competitiveness in respect of the product concerned. The investments were mainly made in machinery. These steps have significantly contributed to improving the sampled Community industry's efficiency.

(78) There is evidence of a reduced ability to raise capital over the period considered, *inter alia* given the negative profit margins involved in production and the importance of the product in the overall activity of the companies at hand.

**Employment and productivity**

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Number of employees | 1 975 | 1 965 | 1 837 | 1 546 | 2 091 |
| *Index (2002/03 = 100)* | *100* | *99* | *93* | *78* | *106* |
| Productivity (hours worked/tonne produced) | 17 | 16,8 | 16 | 16,5 | 15,5 |
| *Index (2002/03 = 100)* | *100* | *99* | *94* | *97* | *91* |
| Total hours worked during the season | 531 000 | 386 000 | 462 000 | 266 000 | 529 000 |
| *Index (2002/03 = 100)* | *100* | *74* | *88* | *60* | *116* |

(79) It should be recalled that the canning of the product concerned is by nature a seasonal activity lasting 4 or 5 months and that the bulk of the production is carried on by seasonal workers. Therefore the ratio indicating the number of employees is less meaningful, while the total hours worked during the season should be seen as the main employment indicator. As shown in the above table, the Community industry has progressively improved its productivity. In the IP, productivity achieved its best level in the whole period. As a result the number of hours worked to produce 1 tonne of finished product decreased from 17 in 2002/03 to 15,5 in the IP (– 9 %). The number of employees peaked during the IP as a result of the return to high production volumes following the low volumes manufactured in 2005/06. This was matched also by more hours worked during the IP season. Indeed, productivity achieved by the Community industry in the IP confirms the efforts made to further improve its efficiency in front of the massive inflow of dumped imports from China.

**Wages**

(80) It has to be noted that data on wages, expressed in absolute figures, are not meaningful, due to high fluctuations of the production level. The cost of wages per tonne produced is more indicative and shows that, notwithstanding a natural increase of the wage per hour due to inflation, the gains of productivity allowed the Community industry to decrease the wage per tonne produced by 3 percentage points.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Wages (EUR) | 5 022 165 | 3 927 820 | 4 558 624 | 3 350 390 | 5 317 744 |
| *Index* | *100* | *78* | *91* | *67* | *106* |
| Wages per tonne produced (EUR) | 161 | 171 | 158 | 207 | 155 |
| *Index* | *100* | *106* | *98* | *129* | *97* |

**Magnitude of dumping**

(81) The country-wide provisional dumping margin specified in recital (50) above is clearly above *de minimis* level. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

**Effects of past dumping or subsidization**

(82) There is no evidence of past dumping or subsidization for this product. However, it should be noted that the Community industry is recovering from the effects of the greatly increased quantities of imports that caused it serious injury and which led the Commission to impose both provisional and definitive safeguard measures in 2003 and in 2004 (see recital (4)). As mentioned above in recitals (57) and (70), these safeguard measures helped the industry to slightly improve their position notwithstanding some stock-piling in 2003/2004, and, in the absence of injurious dumping, would have been expected to generate a much more substantial overall improvement of the situation of the Community industry.

### 5.6. **Conclusion on injury**

(83) The above analysis of the situation of the Community industry has to be seen in the light of the fact that there existed a much larger number of Community producers and a significantly larger production capacity at the beginning of the period. According to Reg 658/2004 and notice C 322/06 capacity then reached ca. 129 000 MT. The aforementioned restructuring of the sector led to a drop in production capacity of over 45 %. In this context, and due also to the existence of safeguard measures, it would have been expected that the remaining four producers would have experienced an overall improvement, whereby they would have, *inter alia*, taken up a significant proportion of the sales lost by the companies exiting the market, substantially increased production and capacity utilisation, and enjoyed much more enhanced price/cost differentials that allowed for profits to be accrued.

(84) To the contrary, production has increased only by 9 %, capacity utilisation remained low (and increased only because of a drop in capacity itself) and sales volumes remained weak notwithstanding a concentration in the sector, with stocks increasing by no less that 66 %. Losses have continued (– 4,3 %) and return on investment has become even more negative (– 28,9 %), notwithstanding continuing investments to further increase its competitiveness and a 9 % productivity rise.

(85) It is recalled that, during the period considered, the volume of dumped imports of the product concerned from the PRC had increased by almost 10 % whilst the sales price was practically the same as in 2002, notwithstanding the increase in the cost of raw materials. Moreover, in the IP, the sales prices of the Community industry were substantially undercut by those of the dumped imports of the product concerned.

(86) Taking into account all of these factors, the provisional conclusion reached is that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

## 6. **CAUSATION**

### 6.1. **Preliminary remark**

(87) In accordance with Article 3(6) and (7) of the basic Regulation, it was also examined whether there is a causal link between the dumped imports from the PRC and the injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that any possible injury caused by these other factors was not attributed to the dumped imports.

### 6.2. **Impact of the imports from the PRC**

(88) It is recalled that import volumes from the PRC continued to constitute no less that 70 % of the Community market. In practice, given their clear market dominance, the impact of Chinese imports is unmistakably a major cause of the deterioration of the situation of the Community industry.

(89) This is even more so given the fact that Chinese prices have continued to significantly undercut those of the Community industry — and to be made at levels significantly below Community industry costs, indicating a predatory intent. The Community industry reacted to the large import volumes at very low price levels, by trying to maintain a reasonable market share and capping their prices. They were, thus, unable to achieve normal profitability.

(90) It is therefore clear that there is a strong causal link between the significant increase in imports volumes at ever lower prices and the injury suffered by the Community industry.

### 6.3. **Impact of imports from other third countries**

(91) The volume of non-Chinese imports represented less than 2 % in the IP of total EU imports. It is for this reason that their impact (if any) is considered marginal. It has been alleged that such imports were in fact re-sales of Chinese products. This is reinforced by the absence of sufficient production in other countries, as demonstrated by the lack of an appropriate analogue country (see recitals (40)-(41) above).

### 6.4. **Impact of changes in export performance of the Community industry**

(92) As can be seen from the table below, exports made by the Community industry decreased over the 'period considered'.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Export Sales Volume (tonnes) | 15 376 | 6 959 | 3 638 | 2 630 | 2 344 |
| *Index (2002 = 100)* | *100* | *45* | *24* | *17* | *15* |

(93) The Community industry once supplied the product concerned to the USA as a traditional market. Today, however, the main source of exports to the USA (and indeed to most importing countries) is China, which appears to follow a similar strategy of dumping and significant undercutting of Community industry exports to the USA.

(94) Even if the Community industry had maintained similar levels of exports volumes and prices, the sheer degree of the penetration of the Chinese imports, as well as the size of price undercutting, point to a significant material impact of the aforesaid imports upon the situation of the Community industry. Rather than breaking the causal link, the drop in export performance by the Community industry might be considered as a prediction of what would well happen to Community sales of industry if the pressure of dumped imports continues.

### 6.5. **Impact of currency fluctuations**

(95) Another factor which the Community industry) claimed to have caused injury is the falling currency exchange rate of the Chinese RMB against the Euro. Between October 2002 and September 2007 there was a fall of more than 40 % in the exchange rate of the US Dollar to the Euro. As the Chinese RMB is pegged against the US Dollar, this gave Chinese exports a competitive advantage over European exports of the product concerned. To this purpose it is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the levels of those prices.

### 6.6. **Supply and price of raw materials**

(96) Several parties have claimed that injury is not caused by dumped imports but by insufficient supply and high prices of raw materials as a result of a bad harvest. The injury investigation period includes a number of different harvests, with lower and higher raw material production — and prices. However, these fluctuations are not correlated to the general situation of the Community industry as can be seen, for example, from the table below. In fact, the situation of the Community industry has deteriorated *throughout* the period considered regardless of raw material supply and prices. This points to the existence of other explanatory factors for injury.

| | 2002/03 | 2003/04 | 2004/05 | 2005/06 | IP |
|---|---|---|---|---|---|
| Unit cost of raw materials (EUR/tonne) | 120,8 | 143,7 | 163,2 | 204,5 | 155,9 |
| Pre-tax Profit Margin (see recital (76)) | – 3 % | – 17,6 % | – 17,3 % | – 12,6 % | – 4,3 % |

(97) On these grounds, there is no indication that this factor is of such a nature that it could have broken the causal link between the dumped imports from China and the deterioration of the situation of the Community industry.

### 6.7. **Investments**

(98) Some parties claimed that the situation of the Community industry is a result of overinvestment. This allegation appears however to be unfounded. Investments made by the Community industry mainly concern improvement of machinery in order to increase efficiency. These investments contributed to productivity gains which would tend to compensate potential short term unit costs increases. These investments can not therefore be considered as a factor having contributed to injury. Therefore, this argument is rejected.

### 6.8. **Quality differences**

(99) Some parties claimed that the situation of the Community industry is a result of the lower quality of Community products. As explained above in recitals (18) to (21), the Commission closely examined comparability of products and found that both Community product and Chinese product are alike. The differences encountered between the two products were minor and did not support the allegation. In any event, if any, such minor differences would appear to favour the Chinese products, leading to higher undercutting and underselling. Therefore, this argument is rejected.

### 6.9. **Conclusion on causation**

(100) In conclusion, it is confirmed that the material injury of the Community industry, which is characterized by weak sales, low utilisation of capacity and negative financial results was caused by the dumped imports concerned. Indeed, the effect of other imports, of export performance of the Community industry, of currency fluctuations, of supply of raw materials, of quality differences or of investments on the Community industry's negative developments was only limited, if any.

(101) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community Industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

## 7. **COMMUNITY INTEREST**

### 7.1. **General considerations**

(102) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping duties against imports from the PRC. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, importers and suppliers.

### 7.2. **Interest of the Community industry**

(103) The Community industry has been suffering from injurious dumped imports of the product concerned from the PRC. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results during the period considered. The imposition of safeguard measures (see recital (4)) allowed for some partial mitigation of the effects of Chinese imports. Taking into account the nature of the injury (i.e. recurrent losses, loss of domestic sales), a further and substantial deterioration in the situation of Community industry would be unavoidable in the absence of measures.

(104) The investigation showed that the Community production consists of four producers in the prepared or preserved citrus fruits (namely mandarins, etc.) industry, which employs around 2 000 workers for the production and sales of the product concerned. The product concerned corresponded to approximately 30 % of their output. Should measures not be imposed, prices would continue to decrease and the Community producers would incur further big losses, which would be unsustainable in the medium to long-term. In addition, this would result in negative effects for the remaining activity of the companies concerned. In view of the investment made in production systems, it can be expected that some Community producers would be unable to recover their investments should measures not be imposed. Based on the above, the Community industry would obviously benefit from the adoption of anti-dumping measures.

(105) Should anti-dumping measures be imposed, the Community industry would in all likelihood be able to increase its selling prices to a level that ensures a reasonable profit margin.

(106) It is therefore provisionally concluded that anti-dumping measures would be in the interest of the Community industry.

### 7.3. **Interest of unrelated importers**

(107) Certain importers opposed measures. However, others, and in particular the six unrelated importers which were sampled and provided answers to the questionnaire, agreed with the principle of imposing measures given the need to maintain a dual source of supply in a product subject to potential harvest-linked production fluctuations. They also underlined the need for stability of the market.

(108) The Commission also analysed the data submitted by the cooperating importers in reply to the questionnaires. In all cases, the activity of importing the product concerned from China represents only a minor proportion of their total activity. Any measure on imports of the product concerned from China is therefore not likely to have such an impact on the situation of the importer sector as to be over-proportional to the benefits accrued by the Community industry.

### 7.4. **Interest of users**

(109) It is recalled that the product concerned, which is used primarily as a food for private consumption as a dessert or accompaniment, is mainly sold to the retail sector. When presented in larger containers, the product is mainly sold directly to the catering industry which absorbs 25 % of the consumption. However, no catering company cooperated in the investigation.

(110) Both the retail sector and the catering industry purchase, in the framework of their current activity, a wide range of products, among which the product concerned represents only a minor proportion of their needs and, as a consequence, of their costs. Any measure on imports of the product concerned from China is therefore not likely to have such an impact on the situation of the user sector as to be disproportional to the benefits accruing to the Community industry.

(111) In addition it is recalled that, in the short and medium term, non-imposition of measures could well lead to the scaling down or outright termination of Community industry activity. This would imply that only one source of supply would exist — and one which in addition is subject by nature to harvest-linked fluctuations. This would not be in the interest of users.

(112) No submission pointing to the contrary was received during the investigation.

### 7.5. **Interest of consumers**

(113) No cooperation was forthcoming from consumer organisations. Even with large impacts on prices, the product concerned is such a small proportion of household food expenditure that the impact on consumers would be negligible.

(114) In addition it is recalled that, in the short and medium term, non-imposition of measures could well lead to the scaling down or outright termination of Community industry activity. This would imply that only one source of supply would exist — and one which, in addition, is subject by nature to harvest-linked fluctuations. This would not be in the interest of consumers.

### 7.6. **Interest of suppliers**

(115) The increase in dumped imports from the PRC is prejudicial to suppliers and the measures are in their interest. The volume of raw material they supply to Community producers is an important source of their turnover. Significant disruption of agricultural activity in the Spanish region concerned would occur if production were to cease, particularly because canning is the major outlet for certain varieties of citrus given their taste and texture.

### 7.7. **Conclusion on Community interest**

(116) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC.

## 8. **PROVISIONAL ANTI-DUMPING MEASURES**

### 8.1. **Injury elimination level**

(117) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain an overall profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. A pre-tax profit margin of 6,8 % was used provisionally for this calculation. This was the profit that the sector achieved prior to the increase in imports which led to a serious injury of the industry. It is considered that this level of profit is representative of the Community industry's profitability that would be achieved for the product concerned in the absence of injurious dumping.

(118) The necessary price increase was then determined on the basis of a comparison of average import price, as established for the price undercutting calculations (see recitals (62) to (64)), with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the aforementioned profit margin. The difference resulting from this comparison, when expressed as a percentage of the total cif import value, amounted per company to the following levels which are less than the dumping margin found:

— Yichang Rosen Foods Co., Ltd., Zhejiang 91 %

— Huangyan No.1 Canned Food Factory Zhejiang, Huangyan 44,6 %

— Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen 81,6 %

— Co-operating exporting producers not included in the sample 81,1 %

— All other companies 91 %.

8.2. **Provisional measures**

(119) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed at the level of the lowest of the dumping margin and the injury elimination level found, in accordance with the lesser duty rule. Since the injury elimination level is lower than the dumping margin in all cases, the former should be the basis for the overall level of the measures.

(120) The purpose of anti-dumping measures is to remove the effects of the injurious dumping. The form of measures is an integral element to this end. Depending on the specificities of the product in question and its market, the form of the measures should be defined so as to be effective in removing the aforesaid effects.

(121) With regard to the present case and as alleged by both Community producers and a significant number of importers, the specificities of the product and of the market that must be taken into account are the following.

(122) The form of the measures should avoid the phenomena which have been detected in the course of the safeguards investigation/measures, as well as by the current investigation. These phenomena, which showed a certain determination to undermine any measures wherever possible, are set out below.

(123) A first phenomenon was a process of stockpiling in the new Member States just before accession, as mentioned above. Prior to enlargement of the EU in 2004, Chinese exporters shipped important quantities of the product concerned to the future Member States; these goods thus entered the Community market without being subject to safeguard measures when these Member States joined the EU.

(124) A second phenomenon was the introduction of new product types which nominally fell outside the safeguard measures, but which shared the same physical and technical characteristics. As explained in recitals 14 above, these are now part of the product concerned by the current anti-dumping case.

(125) A third phenomenon was that of price compensation. EU operators tend to source not only the product concerned, but different kind of processed food products from Chinese traders.

(126) This implies the risk that the effect of a classical measure such as an *ad valorem* duty might be compensated via higher prices charged for other imported food products. In light of the above, a measure is needed whose form minimises such phenomena which would significantly impair the effectiveness of the measures. Under these circumstances, the duty should be imposed in the form of a specific amount per tonne in order to ensure the efficiency of the measures and to discourage any absorption of the anti-dumping measure through a decrease in the export prices. This amount results from the application of the injury elimination margin to the export prices used in the calculation of the dumping during the IP for each company during the IP. As far as the specific duty for all co-operating exporting producers not included in the sample is concerned, it is calculated as an average of the respective data from each of the sampled companies. The specific duty for all other companies is the highest individual duty of the companies in the sample. On these grounds specific duty amounts to the following:

| | Fixed duty (EUR/ton) |
|---|---|
| Yichang Rosen Foods Co., Ltd., Zhejiang | 482,2 |
| Huangyan No.1 Canned Food Factory Zhejiang, Huangyan | 330 |
| Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen | 440,7 |
| Co-operating exporting producers not included in the sample | 455,1 |
| All other companies | 482,2 |

(127) The individual company anti-dumping specific duties specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(128) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(129) The variance of the individual duty rates is significant and there are a number of exporting producers. All these elements may facilitate attempts to re-channel the export flows through the traditional exporters benefiting from the lowest duty rates. Consequently, should the exports by one of the companies benefiting from lower individual duty rates increase by more than 30 % in volume, the individual measures concerned would be considered as being likely to be insufficient to counteract the injurious dumping found. Consequently, and provided that the requisite elements are met, an investigation may be initiated in order to correct appropriately the measures in their form or level.

(130) In view of the foregoing, and also of the comments made both by Community industry and a number of importers concerning the modalities of the form of the measures, this matter may be revisited at definitive stage, if warranted.

(131) It is recalled that by Regulation (EC) No 1295/2007 of 5 November 2007, the Commission made imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China subject to registration in view of the possible retroactive application of anti-dumping measures, pursuant to Article 7(1) of the basic Regulation. Community industry has requested the retroactive application of measures. This matter is under examination. At this stage, it is noted that available statistics of imports of the product concerned from China did increase by more than 60 % in the period November 2007 to February 2008 as compared to the same period in the preceding years (from 16 300 tonnes to 27 300 tonnes). This increase was accompanied with a 4 % decrease of the average price of the corresponding imports.

## 9. **FINAL PROVISION**

(132) In accordance with Article 7(7) of the basic Regulation, provisional measures should be imposed for a period of six months.

(133) In the interest of sound administration, a period should be fixed within which the interested parties which made them-selves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

*Article 1*

A provisional 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).

*Article 2*

The rate of the provisional anti-dumping duty applicable to the products described in Article 1 produced by the following manufacturers shall be as follows:

| Company | EUR/tonne net product weight | TARIC additional code |
|---|---|---|
| Yichang Rosen Foods Co., Ltd., Yichang, Zhejiang | 482,2 | A 886 |
| Huangyan No.1 Canned Food Factory, Huangyan, Zhejiang | 330 | A 887 |
| Zhejiang Xinshiji Foods Co., Ltd. and related producer Hubei Xinshiji Foods Co., Ltd., Sanmen, Zhejiang | 440,7 | A 888 |
| Co-operating exporting producers not included in the sample as set out in the Annex | 455,1 | A 889 |
| All other companies | 482,2 | A 999 |

*Article 3*

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 [1], the amount of anti-dumping duty, calculated on the basis of Article 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

2. The release for free circulation in the Community of the product referred to in Article 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

*Article 4*

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 5*

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Regulation (EC) No 1295/2007.

Data collected regarding products which were entered for consumption not more than 90 days prior to the date of entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

*Article 6*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply for a period of six months.

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

Done at Brussels, 4 July 2008.

*For the Commission*
Peter MANDELSON
*Member of the Commission*

[1] OJ L 253, 11.1.1993, p. 3. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

*ANNEX*

**Co-operating exporting producers not included in the sample**

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

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

Huangyan No.2 Canned Food Factory, Huangyan, Zhejiang

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

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