COMMISSION REGULATION (EC) No 1964/2003

of 7 November 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 [1], as last amended by Regulation (EC) No 2474/2000 [2], and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83 [3], as last amended by Regulation (EC) No 427/2003 [4], and in particular Articles 5 and 6 thereof,

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

Whereas:

1. PROCEDURE

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

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

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

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

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

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

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

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

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

(8) The Government of the People's Republic of China (PRC), certain exporting producers and their representative associations, Community producers and importers and their representative associations, and associations representing mandarin producers in the Community, submitted comments in writing. All interested parties who requested a hearing within the time limit set and who indicated that they were likely to be affected by the result of the proceeding and that there were particular reasons why they should be heard, were granted such a hearing. The oral and written comments submitted by the parties were considered and taken into account in reaching the provisional findings. The Commission sought and verified all the information which it deemed necessary for the purpose of a provisional determination. Verification visits were carried out at the premises of six Community producers and four importers as well as at the premises of their representative associations, and at the premises of a supplier of fresh produce to the Community producers.

2. **LIST OF COOPERATING PARTIES**

Producers

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

La Joya Export SA; Burriana, Castellón, Spain

Agriconsa; Algemesi, Valencia, Spain

Conservas y Frutas, SA; Mula, Murcia, Spain

Halcon Foods SA; Campos del Rio, Murcia, Spain

Alcurnia Alimentación SL; Molina de Segura, Murcia, Spain

Marin Gimenez Hnos. SA; Caravaca, Murcia, Spain

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

Importers

Wydra International GmbH, Reinbek, Germany

EDEMA Zentral AG, Hamburg, Germany

Hüpeden and Co. GmbH, Hamburg, Germany

Wünsche International GmbH, Hamburg, Germany

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

Rewe Zentral AG, Cologne, Germany

Henry Lamotte GmbH, Bremen, Germany

MCM Foods BV, Rotterdam, Netherlands

WS China Import GmbH, Hamburg, Germany

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

Exporters

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

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

Huangyan Mingqiang Foods Co., Ltd, Zhejiang, China

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

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

Jinhua Iceman Foods Co., Ltd, Zhejiang, China

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Zhejiang Xinshiji Foods Co., Ltd, Zhejiang, China

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

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

Raw material suppliers

Narvill Cooperativa V., Vilavella, Castellón, Spain

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

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

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

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

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

3. **THE EU MANDARIN MARKET**

(9) Mandarins are harvested in winter, with the harvesting and canning season starting about the beginning of October and finishing around the end of January in the following year. The fresh produce is destined to the fresh fruit market, for juicing or for canning. Practice in the mandarin canning industry is to use the season (the period from 1 October in one year to 30 September in the following year) as the basis for comparisons, and the Commission has adopted this practice in its analysis. As all production for the season is completed by the end of January, the production data provided for 2002/03 is complete and no extrapolation was necessary. However, the other economic data for the most recent season (2002/03), has been extrapolated based on the data available for the first nine months of that season.

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

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

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

4. **PRODUCT CONCERNED**

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

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

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

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

(17) Satsumas, clementines and other small citrus fruit are commonly known by the collective name 'mandarin'. Most of these different varieties of fruit are suitable to be used as fresh produce or for juicing or canning. They are similar, and indeed fresh mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids all fall under a single CN code at six digit level (0805 20).

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

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

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

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

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

(19) That argument is rejected. The Commission's analysis is that there is a difference between canned mandarins and other canned fruit. The fresh fruit from which they are manufactured have different CN codes at the six-digit level to that for fresh mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids. Whilst it is true that canned mandarins and other canned fruit fall within HS code 2008, so too do products as diverse as peanut butter and prepared or preserved ginger. The taste, texture and shape and colour of the products are different. They have different levels of vitamins and minerals and fulfil different dietary requirements. The principal end-uses of the products are also different. This finding is further confirmed by the fact that the production process in relation to each product is different (depending on whether or not the fruit requires to be dried, peeled, chopped, sliced or segmented).

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

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

5. LIKE OR DIRECTLY COMPETING PRODUCTS

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

(23) The imported product concerned is produced in different qualities. Those with around 10 % or less broken fruit segments are referred to as 'fancy'. All others are referred to as 'standard'. Some cooperating exporters and importers alleged that canned mandarins originating in PRC were of better quality than those of EU origin because they were peeled by hand, claiming that imports from PRC usually contained a lower percentage of broken segments. However, whilst the majority of imports originate in PRC, there is conflicting evidence as to the quality/perceived quality of the product concerned and the like product.

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

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

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

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

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

(c) the imported product and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable;

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

Given that 'likeness' does not require to be completely identical products, these minor variations are not sufficient to change the overall finding of likeness between the imported and domestic products.

(25) In light of the foregoing, the Commission has reached the preliminary conclusion that the imported product and the Community product are 'like'.

6. **DEFINITION OF THE COMMUNITY PRODUCERS**

(26) All production of the product concerned in the Community was made in Spain. The eight producers (canners) in the Community which cooperated fully in the provisional stage of the investigation are:

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

La Joya Export SA; Burriana, Castellón, Spain

Agriconsa; Algemesi, Valencia, Spain

Conservas y Frutas SA; Mula, Murcia, Spain

Halcon Foods SA; Campos del Río, Murcia, Spain

Alcurnia Alimentación SL; Molina de Segura, Murcia, Spain

Marin Giménez Hnos. SA; Caravaca, Murcia, Spain

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

(27) These companies 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 43 331 tonnes, of which the producers abovementioned accounted for 35 331 tonnes, equivalent to over 80 % of the total Community production. They represent 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.

(28) Two further companies which previously produced canned mandarins in the Community went bankrupt in April 2002 as imports reached their highest levels. They provided certain information in the context of the investigation but were unable to provide the resources to cooperate fully within the deadlines set.

7. **UNFORESEEN DEVELOPMENTS**

(29) After the conclusion of the Uruguay round, a series of events occurred which led to a sharp increase in imports of the product concerned, particularly from PRC. This series of events (described below) could not have been foreseen at the time of conclusion of the Uruguay round. It should be noted that the analysis focuses exclusively on PRC, as more than 98 % of imports of the product concerned into the EU are of Chinese origin.

(30) Until the mid-1990's, 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.

(31) The table below provides estimates of worldwide consumption and of PRC's production capacity, production, exports and domestic consumption for the canning seasons 1996/97 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 domestic production capacity, Chinese production, Chinese domestic consumption and Chinese exports requested that this be treated as confidential. Pending a decision on this request and for the purposes of the preliminary determination the Commission has indexed them. However, this is without prejudice to the Commission's decision under Article 9 of Council Regulation (EC) No 3285/94.

(32) 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 two thirds total estimated worldwide consumption in that year.

(33) 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.

(34) A change in consumer preferences can also be observed. Traditionally, there was a consumer perception that canned mandarins are an expensive product, and there was a consumer preference for small can sizes (312 grammes). The larger can sizes were only purchased by the catering trade (e.g. bakeries which would use mandarins for decorating cakes). As from 2001/02 consumer preferences have changed and the larger can size (850 grammes) is increasingly purchased by consumers. Indeed, since 2001 retail sales of the large can size have increased by around 10 % per annum. This development may have assisted certain large importers/retailers to obtain very low prices from Chinese exporters and import and resell large quantities of Chinese satsumas in 850 gramme cans at very low prices. This change in consumer preference was unforeseen, and was one further unexpected factor which led to the sharp increase in Chinese imports, in particular between 2000/01 and 2001/02, and its continuing high level.

(35) Chinese monetary policy, in terms of which the yuan is pegged to the United States dollar at 8,28 yuan/USD, despite perceived differences in the relative values of the two currencies, has also encouraged exports. This has made it much more likely that the product concerned is exported rather than being sold on the Chinese domestic market. Further, following the unexpected fall in the value of the United States dollar against the euro since October 2000, the yuan lost around 26 % of its value compared to the euro making the European market all the more attractive to Chinese exporters.

(36) In conclusion, it is the Commission's preliminary analysis that the unforeseen development which caused the increase in imports to the Community consists of a number of concurrent factors: the unprecedented increase in Chinese production capacity (which exceeds 2002/2003 estimated world consumption) 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.

(37) The developments described above, each of which has contributed to the very large increases in exports to the Community from PRC, will be investigated further by the Commission at the definitive stage of this proceeding.

8. **INCREASED IMPORTS**

8.1. **Introduction**

(38) The Commission has undertaken a preliminary examination of 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 is available in absolute terms and relative to production. The table below shows the development of imports in absolute terms and against total Community production for each of the years 1998/99 to 2002/03.

Table

	1998/99	1999/2000	2000/01	2001/02	2002/03
EU imports from third countries	16 347	17 573	20 335	44 804	38 066 (*)
Total Community production	81 869	75 767	60 462	60 329	43 331 (**)
Imports/Production	20 %	23 %	34 %	74 %	88 %

(*) A simple mathematical extrapolation (n/9*12) based on the first nine months data (1.10.2002 to 30.6.2003)
(**) All Community production for the 2002/03 season took place in the six-month period to 31.3.2003.

(39) The following table further demonstrates the increasing trend in imports by comparing the figures for the first nine months of each season (i.e. October to June). The figures confirm that the imports in the final period represent a large increase (around 100 %) over the figures for 2000/01 and before.

Nine-month comparison (October to June)	1998/99	1999/2000	2000/01	2001/02	2002/03
Volume in tonnes	12 156	12 425	14 535	30 640	28 474
Index — 1998/99 = 100	100	102	120	252	234

8.2. **Volume of imports**

(40) In the period between 1998/99 and 1999/2000, imports increased by around 7 %, from 16 347 tonnes to 17 573 tonnes. 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.

(41) Imports remained very high in the first nine months of 2002/03, but the above tables show that, using a simple extrapolation, imports may fall to 38 066. While recent intelligence suggests that imports will reach a higher figure than the above extrapolated figure, no reliable data is yet available to confirm this.

(42) The ratio of imports to total Community production increased from around 20 % in 1998/99 to around 34 % in 2000/01 and to around 74 % in 2001/02. Imports are expected to further increase to around 88 % of total Community production in the most recent canning season (2002/03).

(43) It is the Commission's preliminary conclusion that the increases in imports relative to domestic production can be considered recent, sudden, sharp and significant.

9. **SERIOUS INJURY**

9.1. **Introduction**

(44) In order to make a provisional 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 has undertaken a preliminary 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 has 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.

(45) As explained at section 3 the information in this section relates to canning seasons with extrapolations made where necessary for the period 2002/03.

9.2. **Analysis of the Community producers**

9.2.1. *Consumption*

	1998/99	1999/2000	2000/01	2001/02	2002/03
Consumption (t)	80 065	74 056	65 676	80 960	71 564

(46) Consumption of the product concerned in the Community was provisionally established on the basis of the 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.

(47) 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). The data extrapolated for the current season (2002/03) indicate a 12 % decline in consumption in that period compared to 2001/02, with consumption closer to its 1999/2000 level.

9.2.2. *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 %	34 %

(48) The Commission has undertaken a preliminary analysis of the Community producers production capacity. For the sake of clarity, the capacity figures given are full season (1 October to 30 September in the following year) production capacities. It should be noted that the like product is produced from November until January using production facilities some of which can be used for processing other fruit and vegetables during the remaining part of the year. However, from November until January there are no other fruits or vegetables which are available for processing in the regions concerned (Valencia and Murcia, Spain).

(49) The preliminary investigation showed that overall estimated theoretical production capacity remained more or less stable throughout the period of the investigation with only one increase recorded. That increase (of 2 %) occurred between 1998/99 and 1999/2000.

(50) 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 appears to be 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 34 % (a fall of 13 percentage points) in the current season. This sharp fall in capacity utilisation appears to reflect the fall in production in the same period.

9.2.3. *Total Community production*

	1998/99	1999/2000	2000/01	2001/02	2002/03
Production (t)	81 869	75 767	60 462	60 329	43 331

(51) Total Community production fell between 1998/99 and 2001/02 from 81 869 tonnes to 60 329 tonnes. Thereafter, production fell by a further 28 % in the last season (2002/03) to its lowest level in the period under examination.

9.2.4. *Employment*

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

(52) 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 a large majority of the workforce are seasonal workers. For this reason, this table should be considered in conjunction with the following table on hours worked.

9.2.5. *Hours worked and productivity*

	1998/99	1999/2000	2000/01	2001/02	2002/03
Hours worked	943 844	987 871	821 478	859 539	625 764
Productivity (hours worked/ tonne)	15,9	16,8	15,6	16,8	17,7

(53) Employment as shown above at section 9.2.4 relates to full time workers. However, the real impact on employment in the Community is more apparent from hours worked which also 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.

(54) In general, a steady decline in the number of hours worked can be observed, with a sharp fall in the most recent period. Productivity has fallen 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).

9.2.6. *Cash flow*

Financial year	1998	1999	2000	2001	2002
Cash flow (index)	100	95	93	196	– 49

(55) Cash flow could only be examined at the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore seen as less meaningful than the other indicators shown above and is shown in terms of the most recent financial years (the calendar year). Nevertheless, it can be seen that cashflow was substantially reduced in the most recent period.

9.2.7. *Return on capital employed (ROCE)*

Financial year	1998	1999	2000	2001	2002
ROCE	15,1	18,9	9,3	9,8	8,1

(56) ROCE could also only be examined on the level of the cooperating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore also seen as less meaningful than the other indicators. Nevertheless, it can be seen that ROCE was substantially reduced in the most recent period.

9.2.8. *Sales volume*

	1998/99	1999/2000	2000/01	2001/02	Extrapolated 2002/03
Sales volume in the Community (t)	63 718	56 483	45 341	36 156	33 498

(57) 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.

9.2.9. *Market share*

	1998/99	1999/2000	2000/01	2001/02	Extrapolated 2002/03
Market share	79 %	76 %	69 %	44 %	47 %

(58) The Community producers market share fell from 79 % to 69 % between 1998/99 and 2000/01, and then to 44 % in 2001/02. The fall in 2001/02 demonstrates the increasing market penetration of imports in that period, which occurred despite the fact that Community producers lowered their prices by 17 % between 2000/01 and 2001/02. Although this fall in prices was from a relatively high level it occurred at a time when Chinese prices fell at a comparative rate and also from a high level.

(59) 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). The Community producers' market share subsequently slightly recovered to 47 % in the current season (2002/03) but this is thought to relate to the impact of the opening of this investigation which reduced import volumes slightly.

9.2.10. *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	790
Unit prices of Chinese exports plus customs duty (EUR/tonne)	732	773	910	790	703
Undercutting (EUR/tonne)	94	17	15	37	87
Undercutting	11 %	2 %	2 %	4 %	11 %

(60) The average price of the like product fell between 1998/99 and 1999/2000 but recovered in 2000/01, increasing by 17 % before falling to EUR 827 per tonne in 2001/02 and further declining at EUR 790 per tonne in 2002/03.

(61) The difference in prices can be explained in terms of several factors. On one hand a cost element; i.e. raw material, labour, capacity to share the fixed cost in an environment of decreasing production and, on the other hand; a price competition element represented by the prices offered by the exporters. It is significant that, during the 2000/01 season when there were rumours of a low overall crop volume in PRC and the price of exports increased steadily, the Community producers were able to adjust their prices in the same range. The following table gives the trends of the main cost elements:

Index of cost of canned mandarins	1998/99	1999/2000	2000/01	2001/02	2002/03
Raw material (fresh product)	100	100	122	96	67
Labour cost	100	106	99	106	112
Fixed costs	100	96	112	122	142
Total costs	100	99	109	106	104

(62) Furthermore, as regards the price of the fresh product destined to be processed, this is the result of annual contracts between the canners and the farmers established at the beginning of the season. For comparison we have shown the price obtained by the producers for mandarins sold as fresh product and for canning (the latter excludes the effect of the CAP scheme referred to in recital 9):

Fresh market (EUR/tonne)	547	498	571	557	527
Canning	256	255	313	245	172

(63) In order to reach a preliminary determination as to 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 11 %.

(64) The Commission notes that, throughout the whole period of the investigation, the price of imports was clearly below the price of the Community product. The table indicates that the sharp increase in imports at low prices in 2001/02 forced the Community producers to reduce their prices, which together with the reduction in sales volume in the Community (despite an increase in consumption) lead to a sharp reduction in sales revenues and profitability, and the losses sustained by the Community producers in that year.

9.2.11. *Profitability*

	1998/99	1999/2000	2000/01	2001/02	1.10.2002/ 31.3.2003
Net profit/loss on Community sales	4,0 %	0,5 %	6,8 %	– 1,7 %	– 4,0 %

(65) 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 the period to 31 March 2003, and the highest in 2000/01. In 2001/02, as imports increased to their highest level in the four and a half-year period, the average price of imports fell to EUR 691 per tonne and the average price of the Community product fell to EUR 827 per tonne. This is mirrored in the undercutting of 15,9 % found for the period 1 October 2001 to 31 March 2003. This fall in prices taken together with the fall in sales volume appears to have caused the Community producers profitability to fall from 6,8 % to (- 1,7 %), and this trend has continued into a worse loss making situation (- 4 %) in the current season.

(66) Underselling reflects the extent to which the price of the imported product is lower than the price level which the Community producers could be expected to achieve in a non-injurious situation. The level of underselling was provisionally calculated on the basis of the weighted average non-injurious price per tonne of the Community product. This price was provisionally calculated by taking the respective cost of production for the Community product to which was added a profit margin of 6,83 %. 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 October 2001 to March 2003. 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 around 22 %.

9.2.12. *Stocks*

	1998/99	1999/2000	2000/01	2001/02	Extrapolated 2002/03
Closing stock (t)	13 016	9 120	6 751	16 387	16 467

(67) Stock levels fell between 1998/99 and 2000/01, but then increased significantly in 2001/02 and remained high in 2002/03. 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 appears to be chiefly attributable to that fall in sales volume. For reasons of consistency, the figure for the period ended 30 September 2003 has been calculated based on expected sales in the second half of that season. It is likely that stocks will be high at the end of the period (30 September 2003), representing 38 % of the production (27 % in the previous season).

9.2.13. *Conclusion*

(68) The data shows that whilst production capacity increased slightly, 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 then recovered to close to its previous level before declining again, the data shows negative developments for sales, market share, prices and profitability and an increase in stocks in the most recent periods.

(69) In particular, the Commission notes that whilst, in 2001/02, as imports reached their highest level for five years (44 804 tonnes), the Community producers' sales volume in the Community reached a low level (36 156 tonnes) and the level of profitability fell to (- 1,7 %). This occurred against the background of a concurrent increase in consumption in that year. Against such a background, whilst imports could have been expected to increase in line with consumption 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.

(70) This combination of factors appears to be reflected in the economic indicators pertaining to the Community producers. The Community producers have lost market share, which reached its lowest level for five years in 2001/02. Their capacity utilisation has fallen sharply in the period to 31 March 2003 as the Community producers have reduced production apparently in order to reduce the high stock levels recorded at the end of 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 fall in Community sales volume and prices appears to be a reduction in the Community producers' sales revenue by 29 % from EUR 41,9 million in 2000/01 to EUR 29,9 million in 2001/02. At the same time, the profitability of the Community producers fell from 6,8 % to (- 1,7 %). The Community producers have thereafter incurred losses (- 4,0 %) in the period to 31 March 2003.

(71) Taking account of all of these factors the Commission has reached the preliminary conclusion that the Community producers have suffered serious injury.

10. **CAUSATION**

(72) 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.

10.1. **Analysis of causation factors**

10.1.1. *Effect of increased imports*

(73) 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.

(74) In the period 2000/01 to 2001/02, the market share of imports grew from 31 % to 56 %, whilst the market share of the Community producers fell from 69 % to 44 %. Over the same period, imports have grown from 34 % to 74 % of Community production. Thus, it appears that imports have also increased relative to production, at the expense of the Community producers.

Market share	1998/99	1999/2000	2000/01	2001/02	2002/03
Imports	20 %	24 %	31 %	56 %	53 %
Sales of the Community industry	79 %	76 %	69 %	44 %	47 %

(75) As to prices, between 2000/01 and 2001/02, the average unit price of the imported product on the Community market fell from EUR 792 to EUR 691 per tonne. The average unit price of the Community product fell from EUR 925 to EUR 827 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 million) in 2001/02. Taking account of the simultaneous fall in sales volume the actual fall in sales revenue in the Community was EUR 12 million. This reduction 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.

(76) For the foregoing reasons, it is the Commission's preliminary conclusion 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.

10.1.2. *Effect of changes in consumption*

(77) The Commission has carried out a preliminary 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 71 564 tonnes in the current season (2002/03). The fall in consumption from 1998/99 to 2000/01 was due to a fall in EU sales of the Community producers, because some producers had reduced or ceased production. This had an immediate impact on the level of consumption because the market was only supplied from two main sources (i.e. from Spain and PRC).

(78) The Commission notes that whilst consumption fell to possibly its lowest level for the four and a half-year period 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.

(79) 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).

(80) 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 in line with the falls in consumption.

(81) Bearing in mind that profits could still be made in a situation of falling consumption, as explained at recital 78, 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.

(82) 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 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	71 564
Market share (simulation — held at 1998/99 level)	80 %	80 %	80 %	80 %	80%
EU sales volume simulation (*)	63 718	58 936	52 267	64 430	56 953
Actual EU sales volume	63 718	56 483	45 341	36 156	33 498

(*) Simulated as if the Community industry market share had been maintained at the 1998/99 level.

(83) The above table shows that if the Community producers' market share had been maintained at its 1998/99 level, the Community producers would have been much more successful in terms of sales volume. This shows that it was not the development of consumption that impacted on the Community producers, but loss of market share to imports.

(84) For the reasons given above, it is concluded that developments in consumption were not responsible for any of the injury observed.

10.1.3. *Effect of changes in export performance*

(85) The Commission also examined the effects of a fall in exports.

	1998/99	1999/2000	2000/01	2001/02	Extrapolated 2002/03
Exports (in tonnes)	21 316	21 672	14 544	18 099	19 078

(86) 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 US importers anticipating the application of US countermeasures in the hormones dispute as discussed at recital: 33). Between 2000/01 and 2001/02, exports recovered to 18 099 tonnes and to 19 078 tonnes in the 2002/03 season. Over the five-year period, exports decreased by around 2 300 tonnes, although the principal reduction occurred between 1999/2000 and 2000/01 (the year in which the Community producers were most profitable). Since 2000/01, exports have actually increased. In particular, in the most recent period, between 2000/01 and 2002/03 exports have increased largely because of the resolution of the hormones trade dispute without retaliatory measures by the US against exports of the product concerned from the Community. This increase in exports has not contributed to the injurious effects suffered by the Community producers.

It should also be noted that in the calculation of profitability at section, only Community sales were taken into account.

(87) For the reasons given above, it is concluded that whilst there might be some link between the fall in exports and the injurious effects observed in the earlier part of the four and a half-year period, there is no such link in the latter part of the period.

10.1.4. *Effect of any excess capacity*

(88) The Commission has further 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.

	1998/99	1999/2000	2000/01	2001/02	2002/03
Capacity tonnes	126 760	129 260	129 260	129 260	129 260
Production tonnes (actual)	81 869	75 767	60 462	60 329	43 331
Production tonnes (simulation (*))	81 869	81 869	81 869	81 869	81 869
Capacity utilisation (actual)	65 %	59 %	47 %	47 %	34 %
Capacity utilisation (simulation (*))	65 %	63 %	63 %	63 %	63 %

(*) Simulated as if the Community industry production had been maintained at the 1998/99 level.

(89) The above table shows that if the Community industry production volume had been maintained at its 1998/99 level, the Community industry would have also maintained a high utilisation rate. However, since actual production and utilisation rates were much lower than those simulated it is clear that it is the reduction in production rather than the small increase in capacity which has caused the serious injury.

(90) 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. Given the very minor increase in capacity, and that without it capacity utilisation would not have followed a substantially different pattern, the Commission concludes that the very minor increase in capacity did not cause any injurious effects to the industry.

10.1.5. *Effect of lack of supply*

(91) 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 preliminary examination of the EU market in fresh small citrus fruit, it is the Commission's provisional determination that there was adequate supply to meet the demand from the processing industry.

(92) Table A shows actual production of fresh small citrus fruit (clementines, mandarins and satsumas) in the years 1998 to 2002, whilst Table B shows forecast production together with withdrawals from the market in each of the seasons 1998/99 to 2002/03.

Table A

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

Table B

Season	1998/99	1999/2000	2000/01	2001/02	2002/03
Forecast production (*)	2 299 500	2 804 900	2 520 000	2 481 000	2 626 700
Withdrawals	43 313	99 958	74 195	43 341	14 329
Withdrawals as % of production	1,9 %	3,5 %	3,0 %	1,8 %	N/A

(*) *Source:* CLAM.

10.1.6. *Demand for fresh small citrus fruits by the processing industry*

(93) 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 C.

Table C

Season	1998/99	1999/2000	2000/01	2001/02	2002/03
Satsumas	110 000	105 000	95 000	95 000	65 000
Clementines	10 000	5 000	0	0	0

(94) As tables A and C illustrate, the supply of small fresh citrus fruit on the EU market appears to be far greater than the demand of the processing industry. Indeed, in each year under examination for which statistics are currently available, supply appears to have outstripped demand both for fresh produce and for use as raw material for processing and at least 1,8 % or production of small fresh citrus fruit has been withdrawn from the market.

(95) Nevertheless, the processing industry is in competition with other purchasers of fresh satsumas and clementines and its ability to compete hampered by the fall in prices achieved for the like product as a result of the increase in imports of the product concerned at low prices in recent years. This has two direct consequences. First, 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.

(96) It should be 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 9 636 tonnes to 16 387 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.

(97) Therefore, the Commission has reached the provisional determination that lack of supply did not contribute to the injury suffered by the Community producers.

10.1.7. *Other factors*

(98) No other causation factors were identified by the Commission services or raised by interested parties during the provisional investigation.

10.2. **Attribution of injurious effects**

(99) 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 did not identify any other factors which could have contributed to the injury apart from the increase in imports.

(100) 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 volumes, 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.

10.3. **Conclusion**

(101) After having determined that no injurious effects resulted from the other known factors, the Commission has reached the preliminary conclusion that there is a genuine and substantial link between increased imports and serious injury to the Community producers.

11. **CRITICAL SITUATION**

(102) The Commission has made a preliminary determination that critical circumstances exist in which delay would cause damage to the Community producers which it would be difficult to repair. As indicated above, the Commission has reached the preliminary conclusion that the Community producers are suffering serious injury. In particular, they have already suffered a decline, notably in production, sales volume, unit prices and profitability as a result of increased imports of the product concerned.

(103) In relation to the like or directly competing product, production has fallen by 28 % between 2000/01 and 2002/03. Sales in the Community have fallen by 26 % in the same period [1], and the Community producers' market share has also declined. Profitability declined sharply in this period, and in many cases sales are being made at a loss.

(104) Available information relating to the performance of the Community producers in the third quarter of 2002/03 indicates that production, sales and profitability continue to decline. The Community producers are clearly already in a weak position. The increase in imports has lead to oversupply on the Community market; falls in sales volumes and prices, losses, and serious injury. This situation is made worse by the apparent fall in consumption in the most recent period, compared to 2001/02.

[1] This percentage is based on the assumption that sales in the full year 2002/03 will be double those for the six-month period to 31 March 2003.

(105) Therefore, it can be anticipated that without the application of import restrictions to the EU market, imports of the products concerned into the Community will continue at a high level, and the Community producers will continue to sustain losses and be forced into bankruptcy. This process has already begun. Two Spanish firms previously involved in the production of canned mandarins went bankrupt in April 2002, and it is highly likely that others will follow.

(106) In consequence, temporary or permanent closure of production facilities will be difficult to avoid. These closures are likely to affect production not only of the like product, but also of other products produced using the same facilities. The social impact in the regions concerned (principally Valencia and Murcia), would be substantial. The negative impact would also extend to those activities which are dependent on the Community producers affected by the measure.

(107) The very high level of imports to the EU market together with the extremely negative consequences of a continuation of imports at this level demand immediate measures by Community producers to increase sales revenues and stem anticipated losses, including closing production facilities and laying off employees. The damage caused to the Community producers by taking such action would be difficult to repair. If such action is to be avoided, provisional safeguard measures must be taken.

(108) Finally it is clear from the Chinese Ministry of Agriculture reports that a large-scale programme to improve the productivity of the land producing fresh citrus fruit is currently under way. This is expected to be achieved using improvements in technology and by replacing low volume and low quality trees with improved varieties. In addition, it is expected that further improvements in productivity will be achieved simply as a result of past tree-planting programmes which have not yet reached full maturity.

11.1. **Conclusion**

(109) Therefore, bearing in mind the poor economic situation of the Community producers and the continuing and increasing threat posed by the Chinese exporting producers the Commission considers that there exists a critical situation in which any delay in the adoption of provisional safeguard measures would cause damage which it would be difficult to repair. The bankruptcy of two producers already confirms that a critical situation exists. The Commission, therefore, concludes that provisional safeguard measures should be adopted without delay.

12. **COMMUNITY INTEREST**

12.1. **Preliminary remarks**

(110) The purpose of safeguard measures is to remedy serious injury which has occurred as a result of unforeseen developments 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, causation and critical circumstances, 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 provisional measures. For this purpose, the impact of possible provisional measures on all parties involved in the proceedings and the likely consequences of taking or not taking provisional measures, were considered on the basis of the evidence available.

12.2. **Interest of the Community producers**

(111) 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 clearly be put in jeopardy should a continuation of the current high level of imports at low prices not be prevented by the imposition of provisional safeguard measures. The continuation of the current level of imports may lead to a number of them withdrawing from production of canned mandarins or ceasing their activities entirely.

12.3. **Interests of producers of fresh small citrus fruit in the Community**

(112) 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. In the absence of these conditions, many of the fresh fruit producers will be unable to remain in business in the medium to long term. 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.

12.4. **Interest of users and importers in the Community**

(113) In order to evaluate the impact on importers and users of taking or not taking measures, the Commission sent questionnaires to the known importers and users of the product concerned on the Community market. Nine responses were received from importers, but none was received from users other than those related to importers. On the spot investigations took place at the premises of four importers of the product concerned.

(114) The importers 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.

(115) In this respect, it should be noted that the provisional measures proposed consist of a tariff quota which reflects a level higher than the traditional level of imports. Therefore, disadvantages likely to be suffered by users and importers, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the proposed provisional measures, which are considered the minimum necessary to prevent further deterioration in the situation of the Community producers.

12.5. **Interest of consumers in the Community**

(116) 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.

13. **GENERAL CONSIDERATION**

(117) Moreover, by reason of the increased imports of the product concerned (as described in recitals 38 to 110) 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 Regulation (EC) No 2699/2000 [2], is affected by serious disturbance likely to jeopardise the achievement of the objectives set out in Article 33 of the Treaty (as described in recitals 45 et seq.). The conditions set under Article 22 of Regulation (EC) No 2201/96, if applicable, are therefore fulfilled.

[1] OJ L 297, 21.11.1996, p. 29.
[2] OJ L 311, 12.12.2000, p. 9.

14. **FINAL CONSIDERATIONS**

(118) The preliminary analysis of the findings of the investigation confirms the existence of a critical situation and the need for provisional safeguard measures in order to prevent further injury to the Community producers which it would be difficult to remedy.

14.1. **Form and level of provisional safeguard measures**

(119) In order to keep the Community market open and ensure the availability of supply to meet demand it is appropriate to establish a system of tariff quotas, in excess of which an additional duty is required to be paid, so that even imports in excess of the tariff quotas can still enter the Community, albeit upon payment of an additional duty. That additional duty should be set at a level such as to provide adequate relief to the Community producers and has been calculated on the basis of a target price at which the Community producers would achieve a profit of 6,8 % on turnover less the average import price in the period 2001/02 to 2002/03 at the same level of trade adjusted to CIF Community border customs duty included. This profit level has been based on an assessment of actual profits achieved in the period 1998/99 to 2001/02. The level of underselling has been calculated at 22 %. In terms of a fixed duty, the duty payable should therefore be EUR 155 per tonne.

(120) In order to maintain access to the Community market, the tariff quota 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 the years 1999/2000 to 2001/02. The tariff quotas should therefore be based on the average volume imported in these years (27 570 tonnes). 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. However, bearing in mind the duration of the provisional measures explained below (154 days) and the necessity to exclude developing countries whose exports to the Community market do not exceed 3 % of EU imports of the product concerned, the overall amount of the tariff quotas should be 11 632 tonnes.

(121) 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 to 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.

(122) On the basis outlined the amount of the quota assigned to PRC would be 11 389 tonnes for a period of 154 days, whilst the amount assigned to all other countries for that period would be 243 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 Community consumption (or 906 tonnes for 154 days), giving an overall total volume of 12 295 tonnes the tariff quotas for a period of 154 days.

(123) In conformity with Community legislation and the international obligations of the Community, the provisional 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 %.

(124) The provisional determination made by the Commission shows that the only developing country which does not meet the requirements to benefit from the abovementioned derogation is PRC. The developing countries to which the provisional measures do **not** apply should therefore be specified and this is done in the Annex.

14.2. **Administration of the tariff quotas**

(125) Certain importers and their associations have requested that a system be introduced which would allow traditional 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.

(126) 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 inviting importers who have imported or wish to import the product concerned to provide certain detailed information on their past imports and anticipated future imports ([1]). On the basis of the information provided in response to that notice, 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').

(127) The Commission has examined this request taking account of the following considerations:

— in the critical circumstances which exist and given that the canning season has already started, it is considered that provisional measures should be put in place with the least possible delay,

— 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 as importers seek to ensure that their imports are not subject to safeguard duty, and might subsequently collapse when importers reach or exceed the level of imports necessary to fulfil their orders (so-called '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 provisional measures,

— 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 provisional 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.

(128) 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 (so called '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 (so called 'other importers'), should have the opportunity to apply for a licence to import a quantity of the product concerned free of additional duty.

([1]) OJ C 236, 2.10.2003, p. 30.

(129) In order that the opportunity to import the product concerned free of additional duty can be fairly and equitably distributed, a system of licences should 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 325/2003 [2].

(130) 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. 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 canning seasons 1999/2000, 2000/01 and 2001/02. 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.

(131) 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 and maintain competition a minimum of 15 % of the tariff quota for goods originating in PRC should be made available to 'other importers'. Therefore, traditional trade flows of imports from PRC can best be maintained by assigning only 85 % of the tariff quota for goods originating in PRC as individual tariff quotas to the traditional importers, with the remaining 15 % being reserved to 'other importers'.

(132) Therefore, licences for 85 % of the tariff quota 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 remaining 15 % of the tariff quota 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 canning seasons 1999/2000, 2000/01 and 2001/02. The most appropriate objective criteria for other importers are 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).

(133) 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 above mentioned) 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.

[1] OJ L 152, 24.6.2000, p. 1.
[2] OJ L 47, 21.2.2003, p. 21.

(134) 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.

14.3. **Duration**

(135) The provisional measures should not last more than 154 days. The measures should enter into force on 9 November 2003 and should run for a period of 154 days unless definitive measures are imposed or the investigation is terminated without measures before that time,

HAS ADOPTED THIS REGULATION:

Article 1

System of tariff quotas

1. A system of tariff quotas is hereby opened for the period from the date of entry into force of this Regulation until 10 April 2004 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 the tariff quotas shall be 11 389 tonnes for canned mandarins originating in the People's Republic of China (PRC), and 906 tonnes for canned mandarins originating in all other countries.

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. Imports of those canned mandarins which are made without presentation of a licence relating to the country from which those canned mandarins originate shall be subject to an additional duty of EUR 155 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) 'importer' means an operator, natural or legal person, individual or group having imported into the Community, in one or more of the canning seasons 1999/2000 to 2001/02, 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;

(c) 'traditional importer' means an importer who has imported an average of 500 tonnes or more of canned mandarins per canning season into the Community in the canning seasons 1999/2000, 2000/01 and 2001/02, irrespective of the origin of those imports;

([1]) OJ L 256, 7.9.1987, p.1. Regulation as last amended by Commission Regulation (EC) No 2176/2002 (OJ L 331, 7.12.2002, p. 3).

(d) 'reference quantity' means the maximum quantity of canned mandarins imported per canning season by a traditional importer during one of the canning seasons 1999/2000, 2000/01 and 2001/02;

(e) 'other importers' means importers who are not traditional importers;

(f) '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.

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 EUR 150 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 the following entry 'licence valid only until 10 April 2004'.

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(b) and (c).

2. Licence applications may be lodged during seven working days from the date of entry into force of this Regulation.

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 Article 1(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 1964/2003'.

Article 6

Allocation of the tariff quotas

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

(a) 85 % to traditional importers;

(b) 15 % to other importers.

If these quantities are 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. The information referred to in paragraph 1 shall be notified by no later than 12.00 (Brussels time) on the ninth working day from the day of entry into force of this Regulation.

3. 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 by no later than the 24th working day from the date of entry into force of this Regulation. 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.

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

3. 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 the Annex 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:

(a) presentation of a certificate of origin issued by the competent national authorities of that country meeting the conditions laid down in Article 47 of Regulation (EEC) No 2454/93; and

(b) the condition that the product has been transported directly, within the meaning of Article 11, from that country to the Community.

3. The certificate of origin referred to in paragraph 2(a) 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

Direct transport

1. The following shall be considered as transported direct to the Community from a third country:

(a) products transported without passing through the territory of any third country;

(b) products transported through one or more third countries other than the country of origin, with or without trans-shipment or temporary warehousing in those countries, provided that such passage is justified for geographical reasons or exclusively on account of transport requirements and provided that the products:

(i) have remained under the supervision of the customs authorities of the country or countries of transit or warehousing;

(ii) have not entered into commerce or been released for consumption there; and

(iii) have not undergone operations there other than unloading and reloading.

2. Proof that the conditions referred to in paragraph 1(b) have been satisfied shall be submitted to the Community authorities. That proof may be provided, in particular, in the form of one of the following documents:

(a) a single transport document issued in the country of origin covering passage through the country or countries of transit;

(b) a certificate issued by the customs authorities of the country or countries of transit containing:

(i) a precise description of the goods;

(ii) the dates of their unloading and reloading or their lading or unlading, identifying the vessels used.

Article 12

Imports in the process of shipment to the Community

1. This Regulation shall not apply to products in the process of shipment to the Community within the meaning of paragraph 2.

2. Products shall be deemed to be in the process of shipment to the Community if they:

— left the country of origin before the date this Regulation begins to apply, and

— are shipped from the place of loading in the country of origin to the place of unloading in the Community under cover of a valid transport document issued before the date this Regulation begins to apply.

3. The parties concerned shall provide, to the satisfaction of the customs authorities, proof that the conditions laid down in paragraph 2 have been met.

However, the authorities may regard the products as having left the country of origin before the date this Regulation begins to apply if one of the following documents is provided:

— in the case of transport by sea, the bill of lading showing that loading took place before that date,

— in the case of transport by rail, the consignment note that was accepted by the railway authorities in the country of origin before that date,

— in the case of transport by road, the CMR contract for the carriage of goods or any other transport document issued in the country of origin before that date,

— in the case of transport by air, the air consignment note showing that the airline took the products over before that date.

Article 13

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

Article 14

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply until 10 April 2004.

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

Done at Brussels, 7 November 2003.

For the Commission
Pascal LAMY
Member of the Commission

ANNEX

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, 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, 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, São 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, Vietnam, Vanuatu, Samoa, Yemen, South Africa, Zambia and Zimbabwe.