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Committee on Safeguards

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NOTIFICATION UNDER ARTICLE 12.4 OF THE AGREEMENT ON SAFEGUARDS BEFORE TAKING A PROVISIONAL SAFEGUARD MEASURE REFERRED TO IN ARTICLE 6

NOTIFICATION UNDER ARTICLE 9, FOOTNOTE 2 OF THE AGREEMENT ON SAFEGUARDS

EUROPEAN COMMUNITIES

(Mandarins and other Citrus Fruits)

The following communication, dated 6 November 2003, has been received from the Delegation of the European Commission.

I enclose for your attention a notification pursuant to Article 12.4 of the Agreement on Safeguards regarding the proposal to adopt provisional safeguard measures on imports of mandarins and other citrus products, and pursuant to Article 9, footnote 2 concerning the exclusion of developing countries.

A. NOTIFICATION UNDER ARTICLE 12.4 BEFORE TAKING PROVISIONAL SAFEGUARD MEASURES

1. Specify the product subject to the proposed provisional safeguard measure

The product in respect of which it is proposed to apply provisional 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').

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 1kg, and of net content not exceeding 1kg, respectively.

2. Specify the proposed provisional safeguard measure

The proposed provisional safeguard measure consists in the establishment of temporary tariff quotas in respect of the product concerned, in excess of which an additional duty of €155 per tonne will be required to be paid. The volume of the proposed tariff quotas is 11,389 tonnes for the product concerned originating in the People's Republic of China (PRC), and 906 tonnes for the product concerned originating in all other countries. It is proposed to administer the tariff quotas on the basis of import licenses.

3. Specify the proposed date of introduction of the proposed provisional safeguard measure

The proposed date of introduction of the provisional safeguard measure is 9 November 2003.

4. Specify the expected duration of the provisional safeguard measure

The provisional safeguard measure will apply for 154 days from the date of its introduction.

5. Provide the basis for:

- (i) making a preliminary determination, as provided for in Article 6, that increased imports have caused or are threatening to cause serious injury; and

UNFORESEEN DEVELOPMENTS

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 European Union (EU: also the term 'the Community' is used interchangeably in this notification) are of Chinese origin.

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 USA (West Coast). Chinese exports to the EU were at a low level and were relatively stable.

The table below provides estimates of world-wide 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 world-wide consumption in 1998/99 is equal to 100.

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|-----------------------------------|---------|---------|---------|---------|---------|
| World-wide 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 data has been indexed. However, this is without prejudice to the decision of the European Commission under Article 9 of Council Regulation (EC) 3285/94.

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 world-wide 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 world-wide consumption by 2002/03, leaving no room for other producers. As PRC's domestic consumption has increased to only 20, the increase in Chinese production capacity and production clearly increased pressure on PRC to export very large quantities (and indeed, exports more than doubled from 48 to 104 in the period considered). These figures can be given some context by considering that Chinese exports in 2002/03 were more than three times total estimated consumption in the European Community in that year.

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 US 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 US 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.

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 grammes 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.

Chinese monetary policy, in terms of which the yuan is pegged to the US\$ at 8.28 yuan/US\$, 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 US\$ against the € since October 2000, the yuan lost around 26% of its value compared to the € making the European market all the more attractive to Chinese exporters.

In conclusion, it is the preliminary analysis of the European Commission ('the Commission') that the unforeseen development which caused the increase in imports to the EU 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 US retaliatory measures in the hormones dispute would exclude the EU product from the US, 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 US\$ 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.

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

INCREASE IN IMPORTS

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 | 1999/00 | 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 9 months data (1.10.02 to 30.06.03)

**All Community production for the 2002/03 season took place in the six month period to 31.3.03.

The following table further demonstrates the increasing trend in imports by comparing the figures for the first 9 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 | 1999/00 | 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 |

In the period between 1998/99 and 1999/00, 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.

Imports remained very high in the first 9 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.

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).

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

SERIOUS INJURY

Introduction

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.

The information in this section relates to canning seasons with extrapolations made where necessary for the period 2002/03.

Analysis of the Community Producers

(1) Consumption

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|------------------------|---------|---------|---------|---------|---------|
| Consumption (t) | 80,065 | 74,056 | 65,676 | 80,960 | 71,564 |

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.

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.

(2) Production Capacity and Capacity utilisation

| | 1998/99 | 1999/00 | 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% |

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).

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 1999/00.

Capacity utilisation fell between 1998/99 and 1999/00 (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.

(3) Total Community Production

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|-----------------------|---------|---------|---------|---------|---------|
| Production (t) | 81,869 | 75,767 | 60,462 | 60,329 | 43,331 |

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.

(4) Employment

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | Extrapolated 2002/03 |
|---------------------------------------|---------|---------|---------|---------|-------------------------|
| Employment (end of period) | 2502 | 2441 | 2462 | 2419 | 2343 |

Employment in relation to the product concerned fell in 1999/00. 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 5 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.

(5) Hours worked and Productivity

| | 1998/99 | 1999/00 | 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 |

Employment as shown above 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.

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).

(6) Cash Flow

| Financial year | 1998 | 1999 | 2000 | 2001 | 2002 |
|------------------------------|------|------|------|------|------|
| Cash Flow (index) | 100 | 95 | 93 | 196 | -49 |

Cash flow could only be examined at the level of the co-operating 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.

(7) Return on Capital Employed (ROCE)

| Financial year | 1998 | 1999 | 2000 | 2001 | 2002 |
|----------------|------|------|------|------|------|
| ROCE | 15.1 | 18.9 | 9.3 | 9.8 | 8.1 |

ROCE could also only be examined on the level of the co-operating 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.

(8) Sales volume

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | Extrapolated 2002/03 |
|--|---------|---------|---------|---------|-------------------------|
| Sales volume in the Community (t) | 63,718 | 56,483 | 45,341 | 36,156 | 33,498 |

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) Market share

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | Extrapolated 2002/03 |
|-------------------------|---------|---------|---------|---------|-------------------------|
| Market share (%) | 79% | 76% | 69% | 44% | 47% |

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.

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.

(10) Price of the like product and undercutting

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|---|---------|---------|---------|---------|---------|
| Unit prices of Community sales (€/tonne) | 826 | 790 | 925 | 827 | 790 |
| Unit prices of Chinese exports plus customs duty (€/tonne) | 732 | 773 | 910 | 790 | 703 |
| Undercutting (€/tonne) | 94 | 17 | 15 | 37 | 87 |
| Undercutting (%) | 11% | 2% | 2% | 4% | 11% |

The average price of the like product fell between 1998/99 and 1999/00 but recovered in 2000/01, increasing by 17% before falling to €827 per tonne in 2001/02 and further declining at €790 per tonne in 2002/03.

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 | 1999/00 | 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 |

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):

| | | | | | |
|-------------------------------|-----|-----|-----|-----|-----|
| Fresh Market (€/Tonne) | 547 | 498 | 571 | 557 | 527 |
| Canning | 256 | 255 | 313 | 245 | 172 |

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 5 periods examined by between 2 and 11%.

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.

(11) Profitability

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | 1.10.02/ 31.3.03 |
|---|---------|---------|---------|---------|---------------------|
| Net profit/loss on Community sales (%) | 4.0% | 0.5% | 6.8% | -1.7% | -4.0% |

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 €691 per tonne and the average price of the Community product fell to €827 per tonne. This is mirrored in the undercutting of 15.9% found for the period 01/10/01 to 31/3/03. 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.

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%.

(12) Stocks

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | Extrapolated 2002/03 |
|--------------------------|---------|---------|---------|---------|-------------------------|
| Closing stock (t) | 13,016 | 9,120 | 6,751 | 16,387 | 16,467 |

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).

(13) Conclusion

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.

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.

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 falls in Community sales

volume and prices appears to be a reduction in the Community producers' sales revenue by 29% from €41.9m in 2000/01 to €29.9m 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.

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

CAUSATION

Effect of increased imports

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.

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 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|
| Imports | 20% | 24% | 31% | 56% | 53% |
| Sales of the Community Industry | 79% | 76% | 69% | 44% | 47% |

As to prices, between 2000/01 and 2001/02, the average unit price of the imported product on the Community market fell from €792 to €691 per tonne. The average unit price of the Community product fell from €925 to €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% (€4.4m) in 2001/02. Taking account of the simultaneous fall in sales volume the actual fall in sales revenue in the Community was €12m. 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.

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.

OTHER FACTORS

- Effect of changes in consumption

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 5 year period under investigation. Consumption decreased from 80,065 tonnes in 1998/99 to 74,056 tonnes in 1999/00 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).

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.

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).

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.

Bearing in mind that profits could still be made in a situation of falling consumption, 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.

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 | 1999/00 | 2000/01 | 2001/02 | 2002/03 |
|--|---------|---------|---------|---------|---------|
| Consumption (t) | 80,065 | 74,056 | 65,676 | 80,960 | 71,564 |
| actual development | | | | | |
| 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

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.

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

- Effect of changes in export performance

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

| | 1998/99 | 1999/00 | 2000/01 | 2001/02 | Extrapolated 2002/03 |
|----------------------------|---------|---------|---------|---------|----------------------|
| Exports (in tonnes) | 21,316 | 21,672 | 14,544 | 18,099 | 19,078 |

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). 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 1999/00 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 11 above, only Community sales were taken into account.

For the reasons given above, the Commission 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.

- Effect of any excess capacity

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 1999/00 production capacity increased by 2% to 129,260 tonnes.

| | 1998/99 | 1999/00 | 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

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.

This increase in capacity contributed to a fall in capacity utilisation in 1999/00 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.

- Effect of lack of supply

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.

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 | 2,650,000e |

Table B

| Season | 1998/99 | 1999/00 | 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

- Demand for Fresh Small Citrus Fruits by the Processing Industry

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 | 1999/00 | 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 |

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% of production of small fresh citrus fruit has been withdrawn from the market.

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 re-orientating 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.

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.

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

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

- Attribution of injurious effects

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.

The Commission found, 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.

(ii) determining that there are critical circumstances where delay would cause damage which it would be difficult to repair

CRITICAL SITUATION

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.

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 period¹, 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.

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 led 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.

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.

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.

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.

Finally it is clear from the Chinese Ministry of Agriculture reports that the 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.

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.

6. Offer of consultations under Article 12.4

The European Communities offer consultations on the provisional safeguard measures at any time after the measure is taken.

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.

7. Other information

A copy of the Commission Regulation which will appear in the Official Journal of the European Communities is being submitted to the Committee. This document will also be available in the WTO Secretariat for inspection by government representatives.

B. NOTIFICATION UNDER ARTICLE 9, FOOTNOTE 2 UPON TAKING A DECISION NOT TO APPLY THOSE PROVISIONAL SAFEGUARD MEASURES TO CERTAIN PRODUCTS ORIGINATING IN DEVELOPING COUNTRIES

1. Specify the measure

The measures consist of temporary tariff quotas in excess of which additional duty requires to be paid, described in the notification under Article 12.4 above.

2. Specify the product subject to the measure

The measures apply to the products described in paragraph 1 of the notification under Article 12.4 above.

3. Specify the developing countries to which the measure is not applied under Article 9.1 of the Agreement on Safeguards, and the import shares of these countries individually and collectively

Imports of the products concerned originating in any of the developing countries specified in **Annex 1** shall not be subject to the provisional safeguard measures. The individual and collective import shares of the developing countries listed in Annex 1 are negligible (less than 1.2% on a collective basis).

4. Not applicable

Annex 1

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

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