



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**imposing definitive anti-dumping measures and releasing the provisional duty
imposed on imports of certain frozen strawberries originating
in the People's Republic of China**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) Context of the proposal

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 ("the basic Regulation") in the proceeding concerning imports of frozen strawberries originating in the People's Republic of China.

- **General context**

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

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2) Consultation of interested parties and impact assessment

- **Consultation of interested parties**

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

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

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

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

3) Legal elements of the proposal

- **Summary of the proposed action**

The case was initiated 19 of January 2006 following a complaint by Community industry. The Commission sought and analysed all relevant information and on 18

October 2007 provisional anti-dumping measures were imposed as the requisite requirements on dumping, injury, causality and Community interest were fulfilled. The provisional measure took the form of ad valour duties ranging between 0% and 34.2%. Following the publication of the provisional measures the investigation in particular as concern the Community interest was deepened.

It was found that the impact on users would be more hard felt than estimated in the provisional regulation. Nevertheless, when balancing the various interests including those of Community industry and the farmers, it was concluded that there were no compelling reasons under the Community interest, not to impose measures. The investigation has revealed that prices of frozen strawberries went up by around 20% in 2006 and in order to avoid that measures burden users disproportionately it is considered that a minimum import price, hereafter "MIP", would be the most appropriate form of measure in this case. In order to take into account the difference in customs tariffs applicable when importing frozen strawberries, three different MIP, one per CN code is proposed. The MIP is combined with an enforcement clause in the form of a specific duty, to be levied in case of mis-declarations.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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

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

- **Choice of instruments**

Proposed instrument: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options

4) Budgetary implication

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (RC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Articles 9 and 10(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 18 October 2006, the Commission imposed, by Regulation (EC) No 1551/2006² ('the provisional Regulation'), a provisional anti-dumping duty on imports of certain frozen strawberries originating in the People's Republic of China ('PRC').

2. Subsequent procedure

(2) Following the imposition of a provisional anti-dumping duty on imports of certain frozen strawberries from the PRC, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

(3) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission sought and verified all information it deemed necessary. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings were modified accordingly.

¹ OJ L 56, 6.3.1996, p. 1 Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005)

² OJ L 287, 18.10.2006, P. 3

(4) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to impose definitive measures and to release the amounts secured by way of the provisional anti-dumping duty imposed by Commission Regulation (EC) No 1551/2006 (the final disclosure). The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

3. Parties concerned by the proceeding

(5) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. In addition to the verification visits undertaken at the premises of the companies mentioned in recital (8) of the provisional Regulation, it should be noted that after the imposition of provisional measures, additional on-spot visits were carried out at the premises of the following Community users and importers:

Importers/traders

- BS Foods BV, Gennep, The Netherlands
- Skogsmat AB, Karlstad, Sweden

Users/processors

- Agrana Frucht GmbH & Co KG, Gleisdorf, Austria
- Agrana, S.A. Neuilly sur Seine, France
- Dairy Fruits A/S, Odense, Denmark
- Groupe Danone, Paris, France
- Materne S.A.S., Limonest, France
- Rudolf Wild GmbH & Co. KG, Eppelheim, Germany
- Schwartauer Werke GmbH & Co KGaA, Bad Schwartau, Germany
- Yoplait France S.A.S., Boulogne, France

4. Investigation period (IP)

(6) It is recalled that the investigation period of dumping and injury ('IP') covered the period from 1 January 2005 to 31 December 2005. The examination of trends relevant for the injury analysis covered the period from 1 January 2002 to the end of the IP ('period considered').

(7) One interested party has questioned the appropriateness of the chosen investigation period claiming that the year 2005 was not representative as import prices in this year were abnormally low. However, the selection of the IP was made in accordance with Article 6(1) of the basic Regulation which provides that the IP should normally cover

a period of not less than six months immediately prior to the initiation of the proceeding. Thus, any alleged particularities concerning the year 2005 were not reflected in the choice of the IP, but were examined in the causality analysis.

- (8) Based on the above, the investigation period ('IP') as detailed recital (11) of the provisional Regulation is hereby confirmed.

5. Product concerned and like product

- (9) It is recalled that, in recital (13) of the provisional Regulation, the product concerned was defined as strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweeteners, originating in the People's Republic of China currently classifiable within CN codes 0811 10 11, 0811 10 19 and 0811 10 90.

- (10) Some interested parties have maintained that there are significant differences in terms of use and quality between different types of frozen strawberries. It was claimed for the same reason that frozen strawberries of Chinese origin were not comparable to those produced by the Community industry.

- (11) In recital (15) of the provisional Regulation, it was stated that the investigation has shown that despite differences in varieties, quality, size and post-processing, the different types of the product concerned, as well as the frozen strawberries produced and sold on the Community market by the Community industry, all share the same basic physical and biological characteristics and are basically used for the same purposes. They were therefore considered to constitute one single product. As those interested parties did not provide any additional evidence to substantiate their claim and no new facts came to light, this claim is rejected.

- (12) In the absence of any further comments regarding the product definition and the like product, the contents and provisional conclusions of recitals (12) to (16) of the provisional Regulation are hereby confirmed.

B. DUMPING

1. Market Economy Treatment

- (13) No comment was received that was apt to alter the findings on market economy treatment. Therefore, the findings set out in recitals (17) to (26) of the provisional Regulation are confirmed.

2. Individual Treatment

- (14) The three exporting producers that were denied individual treatment ('IT') argued that this decision should be reviewed. It is recalled that the three companies in question did not meet criterion (b) and (e) under Article 9(5) of the basic Regulation. Criterion (b) requires that export prices and quantities, and conditions of sale are freely determined. Criterion (e) requires that state interference is not such as to permit circumvention of measures if individual exporters are given individual rates of duty.

- (15) None of the arguments raised by the three companies in question were apt to alter the decision taken at the provisional stage. In particular, it was found that the companies

concerned were exposed to state interference which limited them in freely determining export quantities (criterion (b)).

- (16) Furthermore, state interference also prevailed to a degree which would make circumvention of measures likely if individual exporters were given individual rates of duty (criterion (e)).
- (17) In the absence of any further comments relating to the findings on IT, the findings set out in recitals (27) and (28) of the provisional Regulation are confirmed.

3. Normal Value

- (18) After publication of the provisional measures, no comment was received that was apt to alter the decision to use Turkey as an analogue country. The decision is therefore confirmed. It is recalled that for the purpose of establishing normal value, the domestic prices of Turkish strawberries had been adjusted to take account of their better quality in comparison with Chinese strawberries (see recitals 39 and 44 of the provisional Regulation).
- (19) In the absence of any further comments relating to the findings on normal value, the findings set out in recitals (29) to (42) of the provisional Regulation are confirmed.

4. Export Price

- (20) In the absence of any comments relating to the findings on export price, the findings set out in recital (43) of the provisional Regulation are confirmed.

5. Comparison

- (21) Reference is made to recital (44) of the provisional Regulation. In the absence of any comments that were apt to alter the findings stated in that recital, the provisional findings are hereby confirmed.

6. Dumping margin

- (22) In the light of the above, the dumping margins finally determined, expressed as a percentage of the CIF Community frontier price, duty unpaid, are as follows:

Yantai Yongchang Foodstuff 0%

Dandong Junao Foodstuff 31.1%

All other companies 66.9%

C. INJURY

1. Community production

- (23) In the absence of any comments submitted, the provisional findings concerning the total Community production as set out in recital (51) of the provisional Regulation are hereby confirmed.

2. Definition of the Community industry

(24) In the absence of any comments, the definition of Community industry as set out in recitals (52) and (53) of the provisional Regulation is hereby confirmed.

3. Sampling for injury assessment purposes

(25) It is recalled that in view of the large number of producers of frozen strawberries in the Community, a sample of eight producers was chosen for the assessment of injury. One interested party claimed that the sample of Community producers was not representative because all selected Community producers were located in Poland. It was held that a sample based on the largest production volume should also take into account the geographical location of producers in order to be representative.

(26) It should be recalled that recital (54) of the provisional Regulation outlines that the selection of the sample was made in accordance with Article 17(1) of the basic Regulation which provides that a sample can be chosen based on the largest representative volume of production that can reasonably be investigated within the time available.

(27) Thus, a selection of a sample based on this method would have to primarily take into account the representativity in terms of production volume. It is not required that the sample also covers a certain geographical representation; this could, but clearly does not have to be, an ancillary consideration.

(28) Furthermore, since the production of frozen strawberries is to a great extent concentrated in Poland, not only in terms of volume but also in terms of number of producers, a consideration of the geographical location would in this case not prevent the selection of a sample consisting of only Polish producers. This argument is therefore dismissed.

(29) In the absence of any further comments, the selection of the sample for injury purposes as set out in recitals (54) and (55) of the provisional Regulation is hereby confirmed.

4. Community consumption

(30) In the absence of any comments, the calculation of Community consumption as set out in recitals (56) to (59) of the provisional Regulation is hereby confirmed.

5. Imports into the Community from the countries concerned

5.1. Volume and market share of the imports concerned

(31) In the absence of any comments, the calculation of volume and market share of the imports concerned as set out in recitals (60) and (61) of the provisional Regulation is hereby confirmed.

5.2. Prices of imports and undercutting

(32) One party claimed that for the purpose of the undercutting analysis, an adjustment would have to be made taking into account the qualitative differences between the

frozen strawberries produced by the Community industry and those of the exporting producers. However, it was noted that, at the provisional stage, only certain sales transactions of the exporting producers were taken into account in the calculation of undercutting and underselling. Sales of low grade exports were disregarded because such low quality products were not produced and sold by the Community industry. In these circumstances, the adjustment claimed was not warranted. In the absence of any further comments, the prices of the imports concerned and the price undercutting findings as set out in recitals (62) to (64) of the provisional Regulation are hereby confirmed.

6. Situation of the Community industry

(33) It was claimed by some interested parties that the Community industry prices increased in 2006 to around EUR 1000 per tonne and that this should be reflected in the injury analysis. However, it should be recalled that the IP covered the period 1 January 2005 to 31 December 2005 and that the period for which trends relevant for the assessment of injury be examined, covered the period from 1 January 2002 until the end of the IP. In these circumstances, price movements after the IP have not been taken into account in the injury analysis, in accordance with the last sentence of Article 6(1) of the basic Regulation. The significance of the increase in prices in 2006 is however considered below, in section D. Causation (recitals (51)-(54)).

(34) No interested party questioned the figures or their interpretation relating to the situation of the Community industry as presented in recitals (66) to (85) of the provisional Regulation. Therefore, the findings as set out in these recitals of the provisional Regulation are hereby confirmed.

6.1. Data of Community production as a whole

(35) No interested party questioned the figures or their interpretation relating to the macroeconomic data of Community production as a whole presented in recitals (86) to (88) of the provisional Regulation. Therefore, the findings as set out in these recitals of the provisional Regulation are hereby confirmed.

7. Conclusion on injury

(36) In view of the above, it is confirmed that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

D. CAUSATION

1. Comments by the interested parties

(37) Following the imposition of provisional measures, various interested parties claimed that the material injury suffered by the Community industry was caused by other factors. A number of these claims had already been duly addressed in the provisional Regulation. Any new arguments are considered, where necessary, below.

2. Impact of imports from third countries

(38) It was claimed that no sufficient consideration was given to imports from Morocco as a cause of injury. One party questioned the interpretation of the figures under recital

(99) of the provisional Regulation, indicating that the Moroccan price charged during the IP was lower than the Community industry break-even price. It was held that this had contributed to the injury.

- (39) It is recalled that the table contained in recital (99) of the provisional Regulation demonstrates that the Moroccan price was consistently much higher than that of the Community industry. Moroccan exporters were also affected by the low priced Chinese exports and had to respond by reducing prices charged to the Community. This is confirmed by the decreasing volumes of imports of frozen strawberries originating in Morocco. This argument therefore had to be rejected

3. Impact of currency fluctuations

- (40) During the IP, the Zloty depreciated against the Euro. It was claimed by some interested parties that the price decrease suffered by the Community industry would appear less dramatic if calculations were analysed in Zloty rather than in Euros. Between 2004 and 2005, the Zloty did indeed fluctuate by around 10%. However, when assessing the trends of Community prices between these two years, the price decrease in Euro was 35 %.

- (41) Taking into account the difference between the fluctuation of the currency of around 10% and the price decrease which amounted to 35%, the depreciation of the Zloty against the Euro cannot be considered as a major cause of the decrease in Community industry prices. This argument therefore had to be rejected.

4. Impact of alleged structural deficiencies or speculative business decisions by the Community industry

- (42) Some interested parties further developed the argument already addressed in the provisional Regulation in recitals (106) to (110), that injury was self-inflicted due to poor business decisions and structural difficulties encountered by the Community industry. To this end, a report from the Commission to the Council and the European Parliament on the situation of the sector of soft fruits and cherries intended for processing and annexed staff working document on the same subject³ as well as a European Parliament resolution on the situation with regard to soft fruits and cherries intended for processing adopted on 12 October 2006⁴, were held to support these claims.

- (43) It should be noted that the Commission took account of the report in its provisional findings as evidenced by the reference in recital 138 of the provisional Regulation. While the report and the resolution provide important background information about the red fruit sector within the Community, it should be noted that they both focus on the problems facing the growers of fresh strawberries rather than the Community industry (freezers). In any event, neither the report nor the resolution concludes that

³ Report of 28 June 2006 from the Commission to the Council and the European Parliament on the situation of the sector of soft fruits and cherries intended for processing (COM(2006)0345), and annexed Commission staff working document, 'Review of the sector of soft fruits and cherries intended for processing in the EU' (SEC(2006) 838)

⁴ Text adopted at the sitting of 12 October 2006, part 2 Provisional Edition, P-6 TA PROV(2006) 10-12, PE 378/421, p 69

the problems facing the Community industry are due to structural deficiencies of the Community industry itself.

- (44) It was further claimed that Poland's accession to the EU has resulted in the relocation of Polish labour to countries with higher wages thus posing additional problems for the industry in the form of increased labour costs on the domestic market. It was also held that as a result of new border restrictions, the Community industry could no longer rely on cheaper labour from neighbouring non-EU countries. It was suggested that these developments have had significant negative effects upon such a labour intensive industry.
- (45) These developments could have led to an increase of the labour costs of the farmers. However, this possible increase relates directly to the costs of the farmers and not to the costs of the Community industry (freezers). Therefore, there is only a partial link between the increased costs of the farmers and the costs of the Community industry. Moreover according to the Commission report and staff paper as referred to in recital (42), it would appear that despite a rise in the cost of production, the sales prices of fresh strawberries decreased rather than increased after the accession of Poland to the European Union. Considering that the sales prices went down, there could not have been an effect on the Community industry of the increase in costs facing the farmers of fresh strawberries. This argument therefore has to be rejected.
- (46) One party claimed that the investments and restructuring executed by the Community industry in order to improve efficiency has negatively affected its profitability and cash flow. However, any costs encountered by the Community industry in terms of investments do not alter the fact that prices fell significantly to an injurious level during the IP and that it was the low prices that had by far the greatest impact on the profitability of the Community industry. Indeed, the investments made contributed to greater efficiency by the Community industry, as stated in recital (81) of the provisional Regulation. This argument therefore has to be rejected.
- (47) It was additionally claimed that the injury suffered by the Community industry was self inflicted because the quality of the produce was lower than that originating in Spain and California. To this end, it should be noted that Spain and California both produce predominantly for the fresh market and that there have been no indications showing that the Community industry has lost market share by comparison to these producers. Imports of frozen strawberries from the US were less than 200 tonnes during the IP and could not have had any substantial impact on the profitability of the Community industry. This argument therefore has to be rejected.
- (48) In any event, regarding the alleged structural deficiencies of the Community industry, there is no evidence demonstrating such deficiencies on the part of that industry. These claims must therefore be rejected. The conclusions reached in recitals 106 to 110 of the provisional Regulation are hereby confirmed.

5. Self-inflicted injury as a result of the price levels set by the Community industry

- (49) In the context of the allegation of speculative business decisions on behalf of the Community industry, as referred to in recital 108 and 110 of the provisional Regulation, one user claimed that prices on the Community market were not set by the Chinese imports but predominantly by the Community industry holding the highest

market share. This party thus alleged that the price decreasing trend was set by the Community industry itself and not by any dumped Chinese imports.

(50) It is clear that the Community industry retained a market share in the IP of 59%, thus maintaining a significant role as regards market prices. However, even if the Community industry's market share was high, it cannot be denied that low priced imports from the PRC that undercut the Community industry's prices by 6%, had a negative impact on the market prices. Those dumped imports exerted an overall downward price pressure on prices within the Community and also managed to considerably increase their market share from 4% in 2002 to 20% in the IP. The argument therefore has to be rejected.

6. The cyclical nature of frozen strawberries and the impact of the size of the harvest

(51) Frozen strawberries are a sensitive agricultural product and the investigation has shown that the availability of fresh strawberries is of major importance to the price of frozen strawberries. Several interested parties argued that the particularly poor harvest in 2003 was a major cause of the injury found during the IP. Some interested parties also asserted that the price of strawberries typically follows a four year cycle whereby a price increase leads to overproduction and then to a price collapse. It was claimed that 2005 marked the low point in this cycle and that the particularly low prices experienced in that year were a result of this natural fluctuation. Price variations could also be observed for a period before 2002 and this argument was further supported by the +/-20% increase in price that was seen in 2006, i.e. the year following the IP.

(52) Further analysis of prices of frozen strawberries beyond the period concerned did indicate that price fluctuations also occurred over a significant period of time prior to 2002. For example, during the campaign in 2001, the abundant harvest led to very low prices. These low prices then led to a decrease in production of fresh strawberries in the following years, allowing prices to stabilise themselves again. An analysis of the trends supports claims that prices of the product concerned follow a cyclical pattern, strongly influenced by the weather and crop size.

(53) It must however be recalled that the volume of imports from China increased by 380% at prices that decreased by 38% during the period considered and that this had a significant effect on the financial situation of Community industry that reported unsustainable losses.

(54) Even though the natural fluctuation in prices of frozen strawberries and the impact of the harvest size have certainly had a significant impact on the prices of Community industry, they cannot in themselves be considered the sole or major significant cause of the injury suffered by Community industry.

7. Conclusion on causation

(55) As concluded in recitals (97) and (98) of the provisional Regulation the investigation has shown that there was a causal link between the dumped imports from the PRC and the injury observed with the Community industry.

(56) The investigation has also shown that there is a correlation between prices of the Community industry and the price fluctuations linked to the cyclical nature as well

seasonal variations in the harvest. This conclusion is supported by data from before and during the period considered, as well as by the development after the IP.

- (57) Even though these cyclical variations may have aggravated the financial situation of the Community industry, the magnitude in the fall in prices of the Community industry, and the negative trend seen in the analysis of the situation of the Community industry as described in recital (66) to (85) of the provisional Regulation, cannot be solely attributed to the 'natural fluctuation patterns'. The analysis of the impact of the cyclical nature of the product and the size of the harvest does therefore not support the argument that these factors would have been significant enough as to breach the causal link between the dumped imports and the injury suffered by the Community industry.
- (58) On the basis of the above, and in the absence of any further comments in respect to causation, the conclusions reached in Recitals (113) to (114) of the provisional Regulation are confirmed.

E. COMMUNITY INTEREST

1. General considerations

- (59) It has been analysed whether, in light of the comments and additional elements provided by interested parties following the imposition of provisional measures, the provisional conclusion that the imposition of measures was not contrary to the Community interest remained valid. As at the provisional stage, the determination of the Community interest was based on an appreciation of all the different interests involved, i.e. those of the Community industry, importers, processors/users and farmers.
- (60) The Commission indeed contacted a significant number of interested parties to obtain their views. In addition to the Community industry, representatives of all the major user brands on the market as well as associations representing the interests of the users have been heard and additional on spot verifications have been carried out.

2. Interest of the Community industry and the upstream industry

- (61) At the preliminary stage, the investigation showed that Community production was manufactured by a large number of producers in the freezing industry which employs around 2 700 people for the production and sales of the product concerned. There is also a partial link between the situation of the freezer industry and the farmers supplying strawberries given that the latter grow only the type of strawberries destined for freezing and that the freezers constitute the only market for that product.
- (62) It is recalled that the Community producers suffered substantial injury in the period considered and reported losses of 12.5% as a consequence of the dumped imports. These losses were reported despite the fact that the Community industry reduced its costs by reducing the prices that it paid for to the farmers for fresh strawberries. The price paid for the fresh strawberries was below the farmers' cost of production and would therefore be unsustainable both for the farmers and the Community industry in the long run. Should prices of frozen strawberries again drop to below the non-injurious level the consequences would be two fold. Community industry would suffer financial losses but would also risk running out of supply of fresh strawberries in the

long term since the prices they would be able to pay the farmers would be so low that farmers would risk going out of business. It is recalled that the estimated number of commercial producers of fresh strawberries in Poland as 96.700 in 2002 out of which around 80 000 were involved in the growing of strawberries for further processing. Although it is possible that this number has decreased as a consequence of consolidation of the sector it is nevertheless clear that the farming of strawberries is an important economic activity for a large number of farms in Poland. It is argued that the sector for growing strawberries in Poland is of key importance to a number of regions in the country that are otherwise characterised by high unemployment and that the failure to impose measures would bring these unemployment figures up even higher. It has also been held that these farmers cannot switch to other more profitable crops since the soil conditions in these areas are mainly suitable for strawberry farming.

(63) As stated in the provisional Regulation (recital 139), prices paid to the farmers from 2004 and onwards have been so low that the cost of production has not been covered.

(64) In addition, as supported by the report from the Commission to the Council and the European Parliament on the situation of the sector of soft fruits and cherries intended for processing and annexed staff working document on the same subject⁵, the Polish strawberry farmers constitute a fragmented industry and it is not probable that they could reach out to markets other than the local freezing industry. Consequently, the deteriorating financial situation of the freezer industry would have a substantial impact on the farmers. The fact that after the IP market prices increased again to non-injurious levels and that Chinese import levels decreased, may cast some doubt on the necessity of measures to remedy the situation of the Community industry but there are no indications predicting that this increase would be of permanent, or even long-lasting nature.

(65) Under these circumstances it is clear that the Community industry and the farmers would benefit from the adoption of anti-dumping measures and that measures could have a stabilizing effect on the Community market. The prices of frozen strawberries would not be depressed as a result of imports of strawberries originating in the PRC. Thus, Community producers would be able to increase their prices and to obtain a reasonable profit margin. This will in all likelihood have positive effects upon the upstream industry. It is therefore concluded that the imposition of measures would be in the interest of the Community industry and the strawberry farmers.

3. Interest of unrelated importers

(66) Further to the findings at the preliminary stage of the investigation, the Commission visited two more importers of the product concerned. Those importers import the product concerned from the PRC although each of them also trades strawberries produced in the EU, which represent between 50-60% of their respective purchases. It has to be noted, however, that trading frozen strawberries only constitutes a part of their business activities and accounts for 30-50% of their overall turnover. Their

⁵ Report of 28 June 2006 from the Commission to the Council and the European Parliament on the situation of the sector of soft fruits and cherries intended for processing (COM(2006)0345), and annexed Commission staff working document, 'Review of the sector of soft fruits and cherries intended for processing in the EU' (SEC(2006) 838)

imports from the PRC represent around 14% of all imports of the product concerned. The importers are therefore considered to be representative. Both importers expressed opposition to anti-dumping measures. The investigation has shown that, given that the demand for strawberries is driven by consumer preferences which will not be affected by the imposition of anti-dumping measures, the demand for frozen strawberries is not likely to change. Thus, importers are unlikely to be affected by higher prices, as they could continue importing the same quantities as before and would in all likelihood be able to pass on a substantial part of additional costs of frozen strawberries onto the users. This is confirmed by the fact that past price differences did not affect the sales price and profit margins of the importers as they remained fairly stable.

(67) The provisional conclusion drawn in the provisional Regulation, i.e. that the effects on the importers by increased prices of imports are not expected to be substantial, is hereby confirmed.

4. Interest of users and consumers

4.1. Level of co-operation

(68) As noted in recital (127) of the provisional Regulation, the response from users and processors was limited at the outset. In the preliminary stage of the proceeding the Commission encountered difficulties in collecting and verifying data which would substantiate the claims of the user industry. After publication of the provisional Regulation, the Commission renewed therefore its efforts to encourage cooperation. Supplementary on-spot verification visits took place in the premises of eight user companies. Out of these, data that allowed for a meaningful impact assessment could be obtained from five companies. Additional information and data were collected. With this supplementary information, the Commission services undertook a new analysis of the potential effects that the imposition of measures would have upon Community users.

(69) One interested party argued that this co-operation should not be considered as it was not submitted within the time limits set in the Notice of Initiation. In that regard, it has to be noted that the co-operating companies made themselves known and provided comments on the provisional measures in accordance with the rules laid down in the Basic regulation.

(70) The information verified on-spot concerns around 9% of the overall Community level of consumption. In addition, the different user sectors were represented: producers of strawberry preparations used as input for other products (e.g. yoghurts), yoghurt producers, and producers of strawberry jam. Finally, the co-operating associations represent around 80% of the Community consumption of frozen strawberries. The recognition of such a level of representativity is consistent with the general practice. Therefore, the argument on lack of representativity had to be rejected.

4.2. Cost impact of measures

(71) The user industry claimed that the Commission should evaluate the impact of measures not only by analysing a possible price increase of imported Chinese strawberries. Measures would have a broader impact on the market including frozen strawberries from other sources.

- (72) Indeed, the deepened investigation has shown that measures will very likely provoke a more general price rise, not limited to the order of 34.2% (level of the provisional duty) for Chinese strawberries. They may also be likely to lead to a price increase for the Community industry by about 19%, up to the calculated non-injurious level. Such an overall price increase would indeed appear unavoidable because, unlike in other sectors and in view of the limitations imposed by the weather and crop results, other strategies such as market expansion in terms of volumes would appear not to be an option for the Community industry. Finally, since the Community industry and the Chinese imports combined represent about 80% of Community consumption, it is very likely that other countries exporting frozen strawberries to the Community will also increase their prices in order to follow the "price leaders".
- (73) Regarding the strawberry-related activities of the users, under these circumstances the imposition of a duty at the level set in the provisional measures would entail a cost increase of inputs for the users of on average around 6%. Indeed, quite a few of the users would be forced into a loss making position. The conclusions have been based on the strawberry-related activities, as the investigation focuses on frozen strawberries as the product concerned and does not concern other activities of the companies involved. Also for the purpose of carrying out an injury and dumping analysis it has to be ensured that like activities are being compared, i.e. activities related to product under investigation.

The table below demonstrates the impact on the costs of the verified users:

Company	Actual profit (IP) 2005 *	Profit on 2005 (IP) basis if prices of strawberries of all origins increase in accordance with the formula specified in recital 74 and resale prices do not change*	Profit as in previous column but on basis of reported actual (or increased) resale prices for 2006*	Share of strawberries products in company turnover (2005)	Overall company profitability (2005)
Company A	Between +2% and +4%	Between - 4% and- 6%	Between - 3,0% and -5,0%	Between 25% and 30%	Between +2,5% and +5,0%
Company B	Between +1,0% and +2,5 %	Between - 1,0% and - 2,5 %	Around 0 %	Between 12% and 17%	Between +4,0% and +5,5%
Company C	Around 0 %	Around - 1 %	Between +2% and +4%	Between 5% and 10%	Around 0 %
Company D	Between +12,0% and +14,0 %	Between +4%.0 and +8,0 %	Between +3.0% and +5.0 %	Between 10% and 15%	Between +5,0% and +8,0%
Company E	Between +3,0% and +5,0%	Between - 4,0% and -6,0%	Between - 7,0% and -9,0%	Between 18% and 23%	Around 1 %

*For activity related to strawberries only

- (74) The co-operating producers of strawberry preparations and jam would be the most affected by an increase of strawberry-prices. This is due to the fact that the relative importance of strawberries in the jam-recipe is far greater than that of the other ingredients. For the companies in question, the deterioration of their profit margin would be in the range of between 7 to 8 percentage points, which for two of them would trigger losses of around 5%.
- (75) For the co-operating yoghurt producers the relative importance of the cost of strawberries in their cost of production is less, since the cost for milk products is added to the recipe calculation. Nevertheless, it was found that their profit margin, on average, was quite low. Thus, even if the total cost for the production of given yoghurt only increases by 2 %, this is sufficient to turn a profit of around 1 % into a loss of around 1 %.

(76) Consequently, the impact of measures on the user industry in terms of the cost increase might be greater than estimated in the analysis leading up to the provisional measures. However, as shown below in section 4.4, this cost impact is likely to be less hard felt in the long term.

4.3. Inability to pass on cost increases in the distribution chain

(77) One user association claimed that duties would damage internationally competitive Community based users of frozen strawberries. It was claimed that the duties could not be passed onto their customers (retailers and distributors) since many users concluded long term contracts with fixed prices with these customers. These fixed prices mean that the users bear the risk of any additional price rises. Many users claimed and provided evidence that they were under price pressure from the big retailers/distributors and that it was very difficult to raise their prices. It has been held that the contracts between users and the retail sector fix the prices for periods between 6 months and a year. Therefore, the users claim that they would have no choice but to absorb the additional costs themselves. In view of the above it must be recognised that the users are likely to have to absorb the increase in cost, at least in the short term. The investigation has however also revealed that notwithstanding the negative effect of measures on the profitability for products incorporating the product concerned, the overall profitability of the user companies would remain positive for most of the users.

(78) To the extent that cost increases can be passed on, this may have a certain effect on consumer prices. Indeed fruit preparations, especially yoghurts, are part of the staple diet for a large segment of consumers. Strawberry flavour makes up around 20%-30% of the yoghurt market and notwithstanding the fact that no consumer organisations have made submissions in this respect, it cannot be excluded that a price increase, could impact on consumers, at least in the medium to long term. The same holds true for jams.

4.4. The temporary nature of impact on users

(79) Under section 4.2 and 4.3 it has been demonstrated that the imposition of measures is likely to have an impact on the cost of input materials of the users and users have furthermore asserted that this cost increase will have to be borne by themselves for the duration of the contract with the retail sector. It could however be presumed that this inability to pass on an eventual cost increase is temporary as the duration of the contracts is limited in time.

4.5. Availability of Community industry supplies

(80) It has been broadly held by the users that the supply of Polish strawberries of the Senga sengana variety is essential to the volume as well as quality of the production of the full range of products derived from frozen strawberries. Thus, the danger of deterioration of the situation of the Community industry would have a considerable negative impact upon them. It cannot be excluded that in the situation of limited availability or unavailability of the Polish strawberries on the market, the users would face serious problems in finding alternative sources of supply for the sorts of strawberries produced in Poland. In fact, it seems highly improbable that such alternative sources could be found as the users themselves stated that the quality found in Poland could not be found anywhere else. Further, it could not be excluded that in a

situation of reduced competition on the market the users would be anyway faced with the price increase.

5. Conclusion on Community interest

- (81) The investigation has shown that not only the Community producers employing around 2 700 persons but also the around 80 000 farmers that are more or less dependent on strawberries for their livelihood would benefit from the imposition of measures.
- (82) As detailed in recital (133) of the provisional Regulation, the user industry has indicated that the supply of the product concerned by Community industry is essential in order for the users to cover their full range and provide a high quality product to the market. The investigation has shown that the cyclical nature of the raw material for the Community industry, i.e. the variations in the strawberry crops has significant impact on prices which is confirmed by developments after the IP. Nevertheless, as detailed in the provisional Regulation recital (74), prices were so suppressed in the latter part of the period considered and the IP that the Community industry was forced to pay below the cost of production prices to the farmers when purchasing fresh strawberries. This resulted in the cessation of strawberry production amongst some of the farmers. Even though prices have gone up in 2006, it is clear that the supply of fresh strawberries to the Community industry, and in extension also to the users could be endangered should the low-price trend as seen in the period considered reoccur.
- (83) The deepened investigation has indeed shown that the impact of the anti-dumping duty on the users in this case would be significant. The duty would result in reduced profitability or even financial losses, some of them heavy, for a number of the users, especially since this price increase may not be transferred to the distributor/ retail level in the short term. These effects are however much less pronounced when looking at the overall profitability of the investigated users.
- (84) The user industry has argued that it is the existence of fixed price contracts with the user industry that prevents the processing industry from passing on the cost increase in case of measures to the retail sector. Considering that these contracts run for a limited period of time it must however also be presumed that the inability for the user industry to pass on the cost increase would only apply for a period of 6-12 months.
- (85) It thus appears that the imposition of definitive measures would have a material impact on users of frozen- strawberries but this impact is likely to be temporary in nature. In contrast, the adverse effects on Community industry and farmers would be of a substantial and lasting nature should measures not be imposed and the drop prices allowed to reoccur.
- (86) Based on the above it is therefore concluded that there are no compelling reasons not to impose anti dumping duties on imports of frozen strawberries originating in the PRC.

F. IMPOSITION OF DEFINITIVE MEASURES

1. Form of the definitive measures

- (87) In view of the definitive conclusions reached with regard to dumping, injury, causation, and Community interest, anti-dumping measures should be imposed in order to prevent further injury to Community industry resulting from the dumped exports.
- (88) Anti-dumping measures may take different forms. While the Commission has a large discretion when choosing the form of measures, the purpose remains to remove the effects of the injurious dumping. An ad valorem duty set in accordance with the lesser duty rule, ranging between 0% for the exporting producer granted MES, 12.6% for the exporting producer granted IT and 34.2% for all other companies was established in the Provisional Regulation.
- (89) After the adoption of provisional measures, and as pointed out in recital (51), the price of the product concerned on the Community market increased by +/-20%, in 2006, the year following the investigation period. Given that the product concerned is rather homogeneous and in order to avoid that measures burden users disproportionately in these circumstances, it is considered that a minimum import price, hereafter "MIP", would be the most appropriate form of measures in this case. Note that the purpose of the minimum import price is the same as that of the ad valorem duty, i.e. to remove the effects of injurious dumping. Under this form of duty, no duty will be payable for imports undertaken at CIF Community border price that are equal to or above the minimum import price. If imports are undertaken at a lower price, the difference between the actual and the MIP, would become payable.
- (90) As regards the level of the minimum import price, this has been established based on the same findings, notably the same margins of dumping and underselling, as set out in the provisional Regulation
- (91) In establishing the MIP, account has been taken both the dumping margins found and the amounts of duties necessary to eliminate the injury sustained by Community industry

2. Injury elimination level

- (92) In accordance with article 9(4) of the basic Regulation, the definitive duty should be set at the level of dumping or injury margins which ever is the lowest. A non injurious price or, non injurious MIP, therefore had to be established in order to apply this rule. This non injurious MIP was then compared against a company specific non-dumped MIP which was based on the normal value adjusted to the net free-at-Community – border price.
- (93) For the purpose of calculating the non injurious price, account had to be taken to the level of duties needed in order for Community industry to cover the cost of production and obtain a profit before tax that could reasonably be achieved by an industry of this type in the sector under normal conditions of competition. In the absence of any comments from interested parties the same considerations as stipulated in recital (144) of the provisional Regulation were used to determine a profit margin of 6.5%.

- (94) Frozen strawberries are imported under three different codes in the Combined Nomenclature ('CN codes') with different levels of customs duties, depending on the amount of added sugar or other sweetening matters contained in the imported goods. In order to take into account the different levels of customs duties, distinct MIPs per CN code had to be established.
- (95) As established under recital 153 of the provisional Regulation, one Chinese exporting producer was not found to export frozen strawberries at dumped price. Subsequently, no anti-dumping measure will be applied on exports by that company.
- (96) In all other cases, the non injurious MIP of 684,20 EUR, which is applicable to all Chinese exports, was found to be lower than the respective non dumped MIPs. The MIP has therefore been established at the level of the non injurious MIP for all other exports from the PRC.
- (97) Where imports are undertaken at a CIF Community border price that is equal to, or above the MIP, no duty would be payable. Conversely, if imports are undertaken at prices below the MIP, a duty corresponding to the price actually paid and the MIP will be payable.

3. Definitive Collection of the Provisional Duties

- (98) The provisional duties in the form of ad valorem duties ranging between 0 and 34.2% for the imported product which applied during the period from 19 October 2006 shall be released. The definitive collection of the ad valorem duties would be disproportionate to the removal of injurious dumping given that prices during this period was significantly above those of the MIP.

4. Enforceability of the MIP

- (99) A duty system under MIP may be more difficult to enforce and more open to mis-declaration of the customs value of the goods than other forms of the measure. Indeed, in view of the potential risk which exists for compensatory arrangements in this market sector, it is necessary to introduce a double system of measures. This double system is composed of a MIP and a fixed duty. In accordance with Article 9(4) of the basic Regulation, the fixed duty was calculated on the basis of the weighted average injury margin as this was found to be lower than the weighted average dumping margin. To ensure the effective respect of the MIP, importers should be made aware that when it is found following a post-importation verification that (i) the net-free-at-Community-frontier price actually paid by the first independent customer in the Community (post-importation price) is below the net-free-at Community frontier price before duty, as resulting from the customs declaration; and (ii) the post importation price is lower than the MIP, a fixed duty shall apply retrospectively for the relevant transactions, unless the application of a fixed duty plus the post-importation price lead to an amount (price actually paid plus fixed duty) which remains below the MIP. In such case an amount of duty equivalent to the difference between the MIP and the post importation price shall apply. Customs Authorities should inform the Commission immediately whenever indications of a mis-declaration are found.
- (100) In this context, and in order to address the concerns raised, the Commission intends to put in place two specific pillars to ensure that the measures continue to be relevant

whilst also being fully respected. Firstly, reference is made to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁶, inter alia, to Article 78, according to which the customs authorities may inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods.

(101) Secondly, in order to best guard against any possible absorption of the measures, particularly between related companies, the Commission hereby notifies its intention to immediately initiate a review under Article 12(1) of the basic Regulation and may subject importations to registration in accordance with Article 14(5) of the basic Regulation, should any evidence of such behaviour be provided.

(102) The Commission will rely, inter alia, on import surveillance information provided by national Customs Authorities, as well as information provided by Member States pursuant to Article 14(6) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweeteners, originating in the People's Republic of China and falling within CN codes 0811 10 11, 0811 10 19 and 0811 10 90.

2. The amount of the definitive anti-dumping duty in respect of Yantai Yongchang Foodstuff shall be:

Company	Definitive Duty	TARIC additional code
Yantai Yongchang Foodstuff	0,0%	A779

3. For all other companies, the amount of the definitive anti-dumping duty shall be the difference between the minimum import price fixed in paragraph 4 and the net free-at-Community-frontier price, before duty, if the latter is lower than the former. No duty shall be collected where the net free-at-Community-frontier price is equal to or higher than the corresponding minimum import price fixed in paragraph 4.

4. For the purpose of paragraph 3, the minimum import price set out in column 2 in the table below shall apply. Where it is found, following post-importation verification, that the net free-at-Community frontier price actually paid by the first independent customer in the Community (post-importation price) is below the net free-at-Community-frontier price, before duty, as resulting from the customs declaration and the post-importation price is lower than

⁶ OJ L 302, 19.10.1992, p. 1 as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).

the minimum import price, the fixed anti-dumping duty set out as appropriate in column 3 or 4 of the table below shall apply, unless the application of the fixed duty set out as appropriate in column 3 or 4 plus the post-importation price lead to an amount (price actually paid plus fixed duty) which remains below the minimum import price set out in column 2 in the table below. In such a case, an amount of duty equivalent to the difference between the minimum import price set out in column 2 in the table below and the post importation price shall apply. Where such fixed anti-dumping duty is collected retrospectively, it shall be collected net of any anti-dumping duty previously paid, calculated on the basis of the minimum import price.

CN code and presentation of strawberries	Minimum import price EUR/tonne net product weight	Fixed duty EUR/tonne net product weight, applicable to Dandong Junao Foodstuff (TARIC additional code A780)	Fixed duty EUR/tonne net product weight, applicable to all other companies (TARIC additional code A999)
Strawberries uncooked or cooked by steaming or boiling in water, frozen, containing added sugar or other sweetening matter with a sugar content exceeding 13 % by weight (CN 0811 10 11)	496,8	62,6	169,9
Strawberries uncooked or cooked by steaming or boiling in water, frozen, containing added sugar or other sweetening matter with a sugar content not exceeding 13 % by weight (CN 0811 10 19)	566,3	71,3	193,7
Strawberries uncooked or cooked by steaming or boiling in water, frozen, not containing added sugar or other sweetening matter (CN 0811 10 90)	598	75,3	204,5

5. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93⁷, the amount of anti-dumping duty, calculated on the basis of paragraphs 3 and 4 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1551/2006⁸ on imports of strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweeteners and originating in the People's Republic of China shall be released.

Article 3

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

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

Done at Brussels,

For the Council
The President

⁷ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).

⁸ OJ L 287, 18.10.2006, p. 3.