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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1550/2006
of 17 October 2006
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 October 2006.

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

Done at Brussels, 17 October 2006.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 17 October 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	67,6
	096	40,3
	204	40,1
	999	49,3
0707 00 05	052	98,1
	096	27,7
	999	62,9
0709 90 70	052	105,4
	999	105,4
0805 50 10	052	53,0
	388	67,0
	524	61,1
	528	55,2
	999	59,1
0806 10 10	052	92,3
	066	54,3
	092	44,8
	400	191,3
	999	95,7
0808 10 80	388	80,3
	400	109,9
	512	82,4
	800	175,4
	804	101,6
0808 20 50	999	109,9
	052	104,7
	388	102,9
	720	59,6
	999	89,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1551/2006**of 17 October 2006****imposing a provisional anti-dumping duty on imports of certain frozen strawberries originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. INITIATION**

- (1) On 19 January 2006 the Commission announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of certain frozen strawberries originating in the People's Republic of China (PRC).
- (2) The proceeding was initiated as a result of a complaint lodged on 5 December 2005 by the Polish Freezing Industry Union (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of certain frozen strawberries. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. PARTIES CONCERNED BY THE PROCEEDING

- (3) The Commission officially advised the complaining Community producers, other Community producers, the exporting producers, suppliers, importers and users as well as user associations known to be concerned, and the representatives of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The complainant producers, other cooperating Community producers, exporting producers, importers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Five companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET and one company requested only IT.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 14, 19.1.2006, p. 14.

- (6) In the notice of initiation, the Commission indicated that sampling for the determination of dumping and injury in accordance with Article 17 of the basic Regulation may be applied. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all Community producers, exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 January to 31 December 2005). After examination of the information submitted, and given the low number of exporting producers in the PRC and unrelated importers which indicated their willingness to cooperate, it was decided that sampling was only necessary with regard to Community producers.
- (7) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. A total of 26 Community producers responded to the sample form. Questionnaire replies were received from eight sampled complainant Community producers, five exporting producers in the PRC, two traders related located in China, four unrelated importers and nine unrelated users in the Community. Submissions were made by one more unrelated importer and one user. Submissions were also received from three importer associations and four user associations.
- (8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:
- (a) *Community producers (all based in Poland):*
- Real SA, Siedlce
 - Chłodnia SA, Kielce
 - Polfrys Sp. z o.o., Swidwin
 - Globus Polska, Lipno
 - Przedsiębiorstwo Produkcyjno-Handlowe 'Fructodor' Sp. z o.o., Bolimow
 - Hortino Lpow Sp. z o.o., Lezajsk
 - POW Gomar, Pinczow
 - Unifreeze Sp z. o.o., Miesięczkowo
- (b) *Exporting producers in the PRC*
- Harbin Gaotai Food, Binzhou Town
 - Dalian Dili Delicious Foods, Zhuanghe City
 - Baoding Binghua Food, Baoding
 - Yantai Yongchang Foodstuff, Laiyang City
 - Dandong Junao Foodstuff, Fengcheng City

(c) *Related traders in the PRC*

- Shijiazhuang Fortune Foods, Shijiazhuang
- Shijiazhuang Golden Berry Trading, Shijiazhuang

(d) *Community users*

- Dirafrost Frozen Fruits Industry NV, Herk-de-Stad, Belgium

- (9) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following companies:

Producers in Turkey

- Fine Food Gıda Sanayi ve Ticaret A.Ş., Bursa
- Bidas Gıda Sanayi ve Ticaret A.Ş., Bursa
- Penguen Gıda Sanayi A.Ş., Bursa

3. SAMPLING

- (10) With regard to the Community producers the Commission selected, in accordance with Article 17(1) of the basic Regulation, a sample of eight companies based on the largest representative volume of production in the Community (around 14 %), which could be reasonably investigated within the time available. In accordance with Article 17(2) of the basic Regulation, the association of Community producers was consulted and raised no objection. In addition, the remaining Community producers were requested to provide certain general data for the injury analysis.

4. INVESTIGATION PERIOD (IP)

- (11) The investigation of dumping and injury covered the period from 1 January to 31 December 2005 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

5. PRODUCT CONCERNED AND LIKE PRODUCT

5.1. **General**

- (12) Frozen strawberries are normally used by the food processing industry for the production of jams, fruit juices, yoghurts and other dairy products. Only a small part is sold to the retail industry and catering industry for direct consumption. Frozen strawberries must normally be consumed within a one-year period in order to ensure that the characteristics in terms of taste and colour are preserved. The product is normally produced to standard specifications which are then altered to fit the demands of the end user.

5.2. **Product concerned**

- (13) The product concerned is 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. These CN codes are only given for information.

- (14) The investigation has shown that, despite differences in varieties, quality, size and post-processing, the different types of the product concerned all share the same basic physical and biological characteristics and are basically used for the same purposes. They are therefore considered to constitute one single product.

5.3. Like product

- (15) It has been argued by some interested parties that there are significant differences between the product concerned and the product produced by the Community industry. These differences relate mainly to the differences in the strawberry varieties and species used, the quality and the final use of the product. However, the investigation has shown that all types of the product concerned produced and sold on the domestic market of the PRC, and on the domestic market of Turkey, which served as analogue country, as well as the frozen strawberries produced and sold in the Community by the Community producers were, despite differences in some factors such as, *inter alia*, quality and post treatments, shapes and sizes, found to have the same basic physical and biological characteristics and uses.
- (16) It is therefore provisionally concluded that all types of frozen strawberries form one product and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

6. MARKET ECONOMY TREATMENT

- (17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (18) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
1. Business decisions and costs are made in response to market conditions and without State interference.
 2. Accounting records are independently audited, in line with international accounting standards and applied for all purposes.
 3. There are no significant distortions carried over from the former non-market economy system.
 4. Legal certainty and stability is provided by bankruptcy and property laws.
 5. Currency exchanges are carried out at the market rate.
- (19) In the present investigation, five exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines. Where a subsidiary or any other company related to the applicant in the PRC is an exporter of the product concerned, the related party was also invited to complete the MET claim form and visited on the spot. Indeed, it is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET.

- (20) The investigation revealed that one of the five Chinese exporting producers fulfilled all conditions to be granted MET. The remaining four claims had to be rejected.
- (21) The following table summarises the determination for each company not granted MET, against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation:

Criteria					
Company	1	2	3	4	5
1	not met	not met	not met	met	met
2	not met	not met	not met	met	met
3	met	met	met	met	met
4	met	not met	met	met	met
5	not met	not met	not met	met	met

- (22) On this basis, the following exporting producer in the PRC was granted MET:

Yantai Yongchang Foodstuff.

- (23) Regarding the four companies that could not be granted MET, three of them were found not to meet criterion 1. Two companies, although owned by private shareholders, were found to have business licences with particularly short validity terms, which made them dependent on the willingness of the authorities to issue a new business licence each time the validity of the existing business licence came to an end, thereby also leaving scope for State interference. The uncertainty about the businesses' future was also mirrored by the shareholders' reluctance to provide the companies with sufficient capital, constituting a major problem in the capital-intensive market of frozen strawberries. Regarding the third company, it was established that purchase prices of fresh strawberries, i.e. the major raw material input to produce/process frozen strawberries, were fixed for the whole season irrespective of quality and seasonal fluctuations. Therefore that company could not demonstrate that the costs of its major inputs substantially reflected market values.
- (24) Notwithstanding the fact that two companies met criterion 1 it is noted that all five companies benefited from a subsidy. All companies were found to purchase fresh strawberries from local farmers. The farmers did not pay any VAT on these strawberry sales. In turn, however, the producers of the product concerned deducted an 'implied VAT' on these purchases from the VAT liable on their sales of frozen strawberries. However, while the companies may have benefited from lower costs as a result of this mechanism, the effect on overall costs remains limited and any benefit to the companies from these lower costs could be corrected by a normal value adjustment.
- (25) None of the four companies that were not granted MET met criterion 2. In some of these cases, the accounts were not kept in a coherent manner and violated international accounting standards. Also, the audits did not point at several accounting inconsistencies or at a severe financial situation of one company. These facts shed doubts on the reliability and independence of the audits. In two other cases, accounting inaccuracies were observed which are in conflict with international accounting standards. Again, the audits did not point at these accounting law breaches. It was therefore concluded that the four companies in question could not demonstrate that they had one clear set of basic accounting records which are independently audited in line with international standards.

- (26) Three of the four companies that were not granted MET failed to meet criterion 3. In one case the land-use rights had neither been evaluated nor referred to in the balance sheet. Also, this company rented warehouses from third parties but the rent charged did not single out electricity costs. Then, an irregular depreciation practice and the evidence of barter trade regarding fixed assets were observed for the same company. In case of another company land-use rights were rented at favourable conditions and depreciation inconsistencies were also found. Regarding the third company, six out of seven loans were not secured by any guarantees. In these three cases, it was concluded that the third criterion was not met because the production costs and/or the financial situation of these companies were subject to significant distortions carried over from the former non-market economy system.

7. INDIVIDUAL TREATMENT (IT)

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

- (28) Individual treatment could be granted to the following exporting producer:

Junao Foodstuff Co., Ltd.

8. NORMAL VALUE

8.1. General methodology

- (29) In accordance with Article 2(2) of the basic Regulation, the Commission first established for the exporting producer concerned whether its total domestic sales of frozen strawberries were representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Community.
- (30) The Commission subsequently identified those product types sold domestically by the company having overall representative domestic sales that were identical or directly comparable with the types sold for export to the Community.
- (31) For each type sold by the exporting producers on its domestic market and found to be directly comparable with the type of frozen strawberries sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total volume of the comparable product type sold for export to the Community.
- (32) The Commission subsequently examined for the company concerned whether each type of the product concerned sold domestically in representative quantities could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period.

8.2. Determination of normal value for exporting producers granted MET

- (33) The determination of normal value for exporting producers granted MET was done in accordance with the methodology set out above. The investigation showed that the exporting producer granted MET had overall representative domestic sales. Furthermore, it was found that domestic prices were made in the ordinary course of trade, i.e. domestic prices could be used for all types sold by the Chinese producer.

8.3. Determination of normal value for all exporting producers not granted MET or granted IT

(a) *Analogue country*

- (34) According to Article 2(7) of the basic Regulation, normal value for companies to which MET could not be granted, was established on the basis of the prices or constructed value in an analogue country.
- (35) In the notice of initiation, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment.
- (36) Some European processors objected to this proposal, indicating that the USA was not considered an appropriate analogue country because of its different production patterns, particularly the labour costs. Questionnaires were sent to all known producers in the USA but no reply was received. The USA could therefore not be chosen as analogue country.
- (37) The Commission therefore considered alternative solutions and it was found that Turkey could be considered an appropriate analogue country. Indeed, the investigation revealed that Turkey is a competitive market for the said product with various domestic producers of different sizes. The domestic producers were found to produce similar product types as in the PRC, driven by the specifications requested by the European processors, and have similar production methods. The Turkish market was therefore deemed sufficiently representative for the purpose of establishing normal value. No objections were raised to this choice of analogue country.
- (38) All known producers in Turkey were contacted and three companies accepted to cooperate. A questionnaire was therefore sent to these producers and the data submitted in their reply was verified on the spot.
- (39) While the association representing users agreed to the choice of Turkey as an analogue country, one exporter disagreed with that choice, arguing that Turkish strawberries are of much better quality than the Chinese ones. Allegedly, they were often wild in contrast to the Chinese farmed strawberries and of different varieties.

(b) *Determination of normal value in the analogue country*

- (40) Following the choice of Turkey as an analogue country and pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET or granted IT was established on the basis of verified information received from the three producers in the analogue country, i.e. on the basis of prices paid or payable, in accordance with the methodology set out above.

- (41) The domestic sales of the three Turkish producers of the like product were found to be representative compared to the product concerned exported to the Community by the exporting producers in the PRC.
- (42) The investigation showed that their sales volumes, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume of each producer. Therefore, their domestic sales were considered to be made in the ordinary course of trade.

9. EXPORT PRICES

- (43) As the product concerned was in all cases exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

10. COMPARISON

- (44) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport and insurance, credit, commission and bank charges were granted where they were found to be reasonable, accurate and supported by verified evidence. Regarding the normal value data stemming from the analogue country, an adjustment was made regarding physical differences pursuant to Article 2(10)(a) of the basic Regulation as it was found that strawberries produced and sold in Turkey were of better quality than those exported by Chinese producers (see recital 40). Equally, Turkish strawberries were of better quality than those produced by the Community industry. This adjustment was provisionally estimated at 30 % of the Turkish sales value. This percentage reflected approximately the price difference between Turkish strawberries sold on the domestic market and that of Community industry sales prices.

11. DUMPING MARGIN

11.1. **Determination of dumping margins for the cooperating exporting producer granted MET/IT**

(a) *MET*

- (45) For the company granted MET the weighted average normal value of the product concerned exported to the Community was compared with the weighted average export price, as provided for under Article 2(11) and (12) of the basic Regulation.

On this basis the provisional weighted average dumping margin expressed as a percentage of the CIF Community frontier price duty unpaid is;

Yantai Yongchang Foodstuff Co. 0 %.

(b) *IT*

- (46) For the company granted IT, the weighted average normal value established for the analogue country was compared with the weighted average export price to the Community, as provided for under Article 2(11) of the basic Regulation.
- (47) On this basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Community frontier price duty unpaid is:

Dandong Junao Foodstuff Co. 31,1 %.

12. DETERMINATION OF DUMPING MARGINS FOR ALL OTHER EXPORTING PRODUCERS

- (48) In order to calculate the country-wide dumping margin applicable to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat and the volume of exports as reported in the questionnaire replies submitted by the exporters in the PRC. On this basis it was established that the level of cooperation was low, i.e. 37 % of the overall Chinese exports to the Community.
- (49) The dumping margin was consequently calculated as follows: The export price for cooperating exporters was established on the basis of the verified information they had provided. Secondly, an export price was established on the basis of Eurostat data, thus counting the Eurostat-reported quantity that exceeded the quantities reported by cooperating exporters. The two export prices were then weighted in accordance with their respective quantities and were compared with the weighted average normal value established for the analogue country. The use of Eurostat data was necessary in the absence of more information on export prices for determining the country-wide duty.
- (50) On this basis the country-wide level of dumping was provisionally established at 66,9 % of the CIF Community frontier price.

C. INJURY

13. COMMUNITY PRODUCTION

- (51) In the course of the present investigation it was found that frozen strawberries were manufactured in the Community by:
- 26 Community producers which were complainants or explicitly supported the complaint. None of these producers was related to any Chinese exporters or importers of the product concerned from the PRC,
 - a large number of Community producers that did not take a position on the complaint (silents) and did not cooperate with the investigation. Many of these producers are known to be related to the user/importer sector.

14. DEFINITION OF THE COMMUNITY INDUSTRY

- (52) The proceeding was initiated as a result of a complaint lodged by the Polish Freezing Industry Union (the complainant) on behalf of 25 producers representing a major proportion of the total Community production of certain frozen strawberries.
- (53) The investigation showed that the complaining Community producers together with other Community producers supporting the complaint and that replied to the sample exercise had produced around 41 100 tonnes of frozen strawberries in the IP. This represents around 29 % of the total volume of the like product produced in the Community and thus constitutes a major proportion of the Community production. The 25 complaining Community producers and the one other Community producer supporting the complaint are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. It was argued by certain interested parties that some of the 26 cooperating companies had withdrawn their support for the proceedings. However, to the contrary, none of the 26 companies has withdrawn their support.

15. SAMPLING FOR INJURY ASSESSMENT PURPOSES

- (54) As explained in recital 10 above, in view of the large number of producers of frozen strawberries in the Community, the Commission selected a sample in accordance with Article 17 of the basic Regulation consisting of eight producers that represented the largest representative volume of production that could reasonably be investigated within the time available.
- (55) The accumulated production of the eight Community producers selected for the sample that fully cooperated in the investigation was around 19 200 tonnes during the IP, or around 14 % of the estimated total Community production of frozen strawberries.

16. COMMUNITY CONSUMPTION

- (56) During the period considered the Community consumption developed as follows:

Tonnes	2002	2003	2004	IP
Community consumption	202 353	213 083	238 144	210 285
Index 2002 = 100	100	105	118	104

- (57) Community consumption was established on the basis of the total volume of production of frozen strawberries by the Community industry and other producers of the product in the Community plus imports from all third countries and excluding all exports. The figures concerning the total production of the product concerned by the Community industry and other producers in the Community derive from estimates from the relevant authorities and associations in the Member States where frozen strawberries are produced, notably IERiGEZ for Poland, FruitVeb for Hungary, Assomela for Italy and the Ministry of Agriculture in Spain. Imported and exported quantities were derived from Eurostat.
- (58) It should be noted that the consumption figures include volumes of frozen strawberries that were stocked. However, as neither reliable sales nor stock data could be obtained for all Community producers of the like product, data concerning the total production of the like product from all Community producers is considered to be the most reliable source.
- (59) As presented in the above table, the consumption of frozen strawberries in the Community has been relatively stable over the period considered with the exception of 2004 where consumption increased by 13 % in comparison to the previous year. This increase can however be explained by a combination of a return to high production level in the Community because of a good harvest and the continuation of large import volumes. In the IP the consumption stabilised at the level of the years 2002 and 2003.

17. IMPORTS INTO THE COMMUNITY FROM THE PRC

17.1. **Volume and market share of imports of the product concerned**

- (60) The evolution of imports from the country concerned, in volume and market share, has been the following:

Import volumes	2002	2003	2004	IP
PRC in tonnes	8 941	37 925	30 622	43 025
Index 2002 = 100	100	424	342	481

Source: Eurostat.

Market shares of the imports	2002	2003	2004	IP
PRC	4 %	18 %	13 %	20 %

- (61) Whereas the consumption of frozen strawberries remained relatively stable during the period considered, the imports from the country concerned have risen by around 381 % during the same period. In consequence, the estimated market share of the PRC has increased significantly during the period considered from 4 % in 2002 to 20 % in the IP.

17.2. **Prices of imports and price undercutting**

EUR/tonne	2002	2003	2004	IP
Import prices from the PRC	745	738	605	461
Index 2002 = 100	100	99	81	62

Source: Eurostat.

- (62) The above table shows the development of average import prices from the PRC. Over the period considered prices fell continuously by a total of 38 %.
- (63) A comparison of selling prices on the Community market during the IP was made between the prices of the sampled Community industry and imports from the country concerned. The relevant sales prices of the sampled Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the Chinese exporting producers net of discounts and adjusted where necessary to cif Community frontier with an appropriate adjustment for the customs clearance costs and post-importation costs.
- (64) The comparison showed that during the IP imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter by 6,0 % based on the data submitted by the cooperating exporting producers and by 6,4 % based on Eurostat data which covers all imports. From this level of undercutting and the price development of the Community industry (see recital 74), as explained below, it is clear that substantial price depression had already taken place.

18. SITUATION OF THE PRODUCERS IN THE COMMUNITY

- (65) In line with standard practice, the following recitals break down data collected in the injury investigation into two sections. The first of these relate to the Community industry represented by the eight sampled companies. The second section relates to a set of data concerning all producers of the product concerned in the Community. This data was obtained from national authorities and associations of Member States where the product concerned was produced.

18.1. Situation of the Community industry

- (66) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 2002 to the IP.
- (67) The Community industry data below is the aggregated information of the eight cooperating Community producers included in the sample. This data represents the 26 cooperating producers which submitted sampling returns.

18.1.1. Production, production capacity and capacity utilisation

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

	2002	2003	2004	IP
Production (tonnes)	26 000	16 555	26 912	19 198
Indices 2002 = 100	100	64	104	74
Production capacity (tonnes)	34 546	36 384	39 934	39 934
Indices 2002 = 100	100	105	116	116
Capacity utilisation	75 %	46 %	67 %	48 %
Indices 2002 = 100	100	60	90	64

- (69) As shown in the table above, production during the period considered decreased by 26 % while the capacity increased by 16 %. The capacity utilisation decreased over the same period by 36 %. The decrease in capacity utilisation can only partly be related to the increase in capacity. The main reason for the drop in capacity utilisation is the decrease in production, i.e. the harvest in the year in question.
- (70) Production of frozen strawberries is closely linked to the production of fresh strawberries. The size and quality of the harvest is therefore decisive for the production volume of the product concerned. The harvest of 2003 was poor leading to a decrease in production whereas the abundant harvest of 2004 led to the reverse, thereby leading to a slight increase of production levels in comparison with 2002. Between 2004 and the IP, production dropped by 29 %. However, bearing in mind that production of frozen strawberries is dependent on the size of the fresh fruit harvest, the fall in production from 2004 to the IP is not considered to be a useful injury indicator for this product.

18.1.2. *Stocks*

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

	2002	2003	2004	IP
Stocks (tonnes)	10 969	9 482	21 055	13 586
Index 2002 = 100	100	86	192	124

- (72) It should be noted that stocked frozen strawberries must normally be consumed and thus sold within a one-year period in order to ensure that the characteristics in terms of taste and colour are preserved.

- (73) Stocks have increased considerably during the period considered. The decrease in stock in the year 2003 was a result of the poor harvest that in turn had an impact on the availability of raw materials to the Community industry in this year. In 2004 stocks increased significantly due to the abundant yield of the harvest 2004. In comparison with 2002 the stocks increased by 92 % in 2004. Following this peak, stock levels returned to more normal levels in the IP but were still 24 % higher than in 2002. Between 2004 and the IP a rather massive sell off of the stocks took place to ensure that the frozen strawberries still had the required quality.

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

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

	2002	2003	2004	IP
Sales volume of sampled Community industry in tonnes	27 428	18 201	14 647	26 240
Indices 2002 = 100	100	66	53	96
Market share	13,6 %	8,5 %	6,2 %	12,5 %
Indices 2002 = 100	100	63	45	92
Average sales prices (EUR/tonne)	934	1 382	1 019	671
Indices 2002 = 100	100	148	109	72

- (75) The Community industry's sales volumes and market share went down in 2003 as a result of the lack of raw materials i.e. fresh strawberries, in that year. The sales and market share decreased even further in 2004 despite a return to normal production levels. This decrease in sales led to increased stock levels. In the IP the sales volume recovered partly from the selling-off of the stock. The return of the large sales volumes was however at the expense of the average sales price that saw a massive decrease from EUR 1 019 per tonne in 2004 to EUR 671 per tonne in the IP, i.e. by 34 %.

- (76) The average prices of the product concerned sold by the sampled Community industry decreased by 28 % in the period considered leading to a substantial price depression in the IP. As mentioned above the drop in average prices was most significant between the year 2004 and the IP where a 34 % decrease in sales prices occurred. Indeed, the massive sell off of stock from 2004 to the IP had to be made at very low prices.

18.1.4. Profitability, return on investments and cash flow

- (77) The profitability shown below relates to sales on the Community market and is expressed as return on turnover (RoT), return on investments, (ROI) and cash flow.

	2002	2003	2004	IP
Profitability on Community sales (RoT)	6,5 %	9,4 %	– 1,5 %	– 12,5 %
Indices 2002 = 100	100	144	– 23	– 191
Return on investments (RoI)	55 %	36 %	– 4 %	– 24 %
Indices 2002 = 100	100	66	– 7	– 44
Cash flow (as percentage of turnover)	2 %	3 %	– 1 %	0 %
Indices 2002 = 100	100	143	– 64	5

- (78) The RoT above shows a steep fall between 2002 and the IP. The fall corresponds to a decline of almost 300 %. This is particularly serious because the apparent reasonable profits made in 2002 and 2003 have been followed by unsustainable losses of 12,5 % in the IP.
- (79) The RoT, RoI and cash flow all show that, over the period considered, the situation of the sampled producers has deteriorated.

18.1.5. Investments and ability to raise capital

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

	2002	2003	2004	IP
Investments (EUR)	3 106 428	9 963 701	10 122 277	12 131 394
Indices 2002 = 100	100	321	326	391

- (81) Despite the negative development seen for profitability above, the Community industry has increased its investments in the product concerned in order to improve its competitiveness in respect of the product concerned. The investments were mainly made for new buildings and to update cold storage buildings and equipment. These steps have significantly contributed to improving the sampled Community industry's efficiency.
- (82) No evidence was provided to the Commission in respect of a reduced or increased ability to raise capital over the period considered.

18.1.6. *Employment, productivity and wages*

	2002	2003	2004	IP
Number of employees	390	301	445	368
Indices 2002 = 100	100	77	114	94
Productivity (tonne/employee)	67	55	60	52
Indices 2002 = 100	100	82	91	78
Wages (EUR)	2 572 050	1 644 557	2 065 347	2 182 047
Indices 2002 = 100	100	64	80	85

- (83) As seen above, the sampled Community industry adapted the number of employees in relation to the production levels. The number of employees peaked in 2004 as a result of the return to high production volumes following the low volume of 2003. Due to the decrease in production in the IP the productivity and the employment numbers declined. The cost of wages has decreased in the period considered. The decrease in productivity per employee is largely explained by the sharp drop in production as a consequence from increased imports. The investments made by the Community industry during the IP are expected to increase the efficiency and productivity of the industry in the mid and long term.

18.1.7. *Magnitude of the actual margin of dumping*

- (84) The dumping margins are specified above in the dumping section. All margins established but the one for a company that was awarded MET are clearly above *de minimis*. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

18.1.8. *Effects of past dumping or subsidisation*

- (85) The Community industry is not recovering from the effects of past dumping or subsidisation since no such previous investigations have been made.

18.2. **Macroeconomic data of Community production as a whole**

- (86) The following data concerns the Community production as a whole.
- (87) It should be recalled from the consumption data, that no official figures on total Community sales volumes are available. In order to estimate the total sales volume of producers active on the Community market, the production of the said producers was reduced by an amount for exports.

	2002	2003	2004	IP
Production volume available for sale (production minus exports) (tonnes)	139 705	108 865	145 596	124 320
Indices 2002 = 100	100	78	104	89
Market share	69 %	51 %	61 %	59 %
Indices 2002 = 100	100	74	89	86

- (88) As explained above, the above table is based on the relevant production volume minus exports. It therefore shows the quantities available for sale, which would either be sold during the same season or stocked and then sold in the following season. This data is therefore production based rather than sales based. Nevertheless, the above data would suggest a decrease over the period investigated, both in terms of total sales volume (– 11 %) and market share (– 14 %) of the Community industry as a whole.

18.3. Conclusion on injury

- (89) In the first place, it is noted that the following injury indicators showed negative trends during the period considered: sales prices and quantities, profitability, stocks, capacity utilisation, production, employment, wages, productivity, cash flow and market share. However, for the reasons given above, the trend in production and capacity utilisation are not deemed to be particularly useful indicators of injury for this product. On the contrary, positive developments were identified in respect of investments and production capacity.
- (90) It is recalled that during the period considered, the volume of dumped imports of the product concerned from the PRC has increased by over 300 % while the sales prices declined sharply (– 38 %). Moreover, in the IP, the sales prices of the Community industry were substantially undercut by those of the dumped imports of the product concerned by around 6 %.
- (91) As a consequence, during the period considered the situation of the Community industry substantially deteriorated. Stock levels increased by 24 %, reaching serious levels at the end of 2004. At the same time, sales prices and in particular sales volumes were significantly reduced in 2004. It was not until the IP that the sales volume returned to the 2002 levels but this was at the expense of reducing prices to unsustainable levels. Notwithstanding the industry's continuing investments to increase its competitiveness, this fall in prices caused profitability levels to plummet to – 12,5 % in the IP. Moreover, its cash flow and return on investment also declined, reaching negative levels in the IP.
- (92) Furthermore, over the period investigated there has been a decline in the total number of persons employed as well as productivity.
- (93) To conclude, the injury consists primarily in price depression along with an increase in stocks. This resulted in heavy losses for the Community producers during the IP.
- (94) Bearing in mind that the Community-wide consumption and market shares of the entire Community industry had to be estimated, care has been taken to restrict this aspect of the injury analysis to the Community industry included in the sample.
- (95) Taking into account all of these factors, the provisional conclusion reached is that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

D. CAUSATION

19. PRELIMINARY REMARK

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

20. IMPACT OF THE IMPORTS FROM THE PRC

- (97) It is recalled that import volumes from the PRC increased by around 380 % and their estimated market share almost quadrupled during the period considered. In addition, as has been explained at recital 62, import prices from the PRC fell by 38 % and substantial price undercutting was taking place.
- (98) The Community industry reacted to the large import volumes at sharply reduced price levels, by decreasing its sales price in 2004. Despite this decrease, the average sales price of the Chinese imports remained more than 30 % lower than the Community industry's prices. As a result, sales by the Community fell significantly in this season and left the Community producers with a very high level of stock at the end of the year. Given the limitation of cold storage capacity and, more importantly, taking into account the fact that frozen strawberries have a limited life span, the end-2004 stock had to be sold off in the IP. Given that Chinese prices in the IP had dropped further in comparison to 2004, the Community industry had again to drop its prices (by almost 24 %) in order to sell off these stocks. The sales in the IP were well below profit and are no longer sustainable. The situation of the Community industry in the IP was further aggravated by the massive increase of more than 40 % in import volumes from the PRC. It is therefore clear that there is a strong link between the significant increase in imports volumes at ever-lower prices and the injury observed with the Community industry.

21. IMPACT OF IMPORTS FROM THIRD COUNTRIES

- (99) The volume of non-Chinese imports decreased by 20 % during the period considered. It is therefore very unlikely that imports originating in other third countries, such as Morocco, could have contributed in any significant way to the injury suffered by the Community industry. On the contrary, it would appear that third country exporting producers have also lost market shares as a result of the imports from the PRC. In addition, the average prices of imports from other third countries were in the IP 78 % higher than those originating in the PRC and around 20 % higher than those of the sampled Community industry. It can therefore be provisionally concluded from the decreasing market share and their relatively high price levels that third country exporting producers' sales did not cause injury to the Community industry. The following table indicates the import volumes and average prices from imports originating in the main other third countries (i.e. Morocco and Turkey).

	2002	2003	2004	IP
Imports from Morocco (tonnes)	25 532	35 253	47 079	30 406
Index 2002 = 100	100	138	18	119
Average prices (EUR/tonne)	820	994	824	691
Index 2002 = 100	100	12	100	84
Market share	11,7 %	15,0 %	18,7 %	13,0 %
Index 2002 = 100	100	128	160	111
Imports from Turkey (tonnes)	10 503	9 312	7 089	6 121
Index 2002 = 100	100	89	67	58
Average prices (EUR/tonne)	1 394	1 659	1 514	1 337
Index 2002 = 100	100	119	109	96
Market share	4,8 %	4,0 %	2,8 %	2,6 %
Index 2002 = 100	100	82	58	54

22. IMPACT OF CHANGES IN EXPORT PERFORMANCE OF THE COMMUNITY INDUSTRY

- (100) It has also been argued that a drop in the export performance, in particular to the US market, has contributed to the injury sustained by the Community industry. According to Eurostat data, exports from the Community did indeed decrease over the period considered from around 19 000 tonnes in 2002 to 15 000 tonnes in 2005. However, when compared with the Community market, the overall importance of the exports market is relatively limited, in fact exports correspond to less than 10 % of Community consumption throughout the period considered.
- (101) In terms of the indicators where the distinction between Community and export markets cannot be made, such as production and capacity utilisation, and also investments and employment, their negative evolution clearly exceeded what could be accounted for by the decrease in export performance. As such, the negative evolution of those indicators must be seen both as a consequence of the decrease in sales in the Community market and of the decrease of export sales.
- (102) Regarding profitability, cash flow and return on investment, their negative evolution was partly a result of the Community industry being forced into very low capacity utilisation rates, due to the negative evolution of the sales volume in both the Community and export markets as mentioned above. Moreover, the sales prices of the Community industry were under strong pressure from the dumped imports which also contributed to the negative impact upon those indicators.
- (103) Therefore, even if the decreased export performance of the Community industry might have contributed to the injury suffered, the overall effect cannot be considered as significant and cannot break the causal link between the dumped imports and the injury suffered by the Community industry.

23. IMPACT OF DECREASED COMMUNITY INDUSTRY PRODUCTION AND ALLEGED DECREASE IN CONSUMPTION

- (104) It has been argued by one interested party that the poor harvests of 2002 and 2003 and the decrease in production linked to the lack of raw material, i.e. fresh strawberries, in these years are a major contributing factor causing injury to Community industry. Indeed, it is clear that the poor harvests led to decreased production. However, this is unlikely to be the main factor responsible for the injury suffered. The decreased production and sales quantities were accompanied by a fall in prices whereas usually price increases are the consequence of poor harvests and less supply. In addition, an examination of the profitability of the Community industry over the period considered demonstrates that the industry continued to be profitable up to the year 2004 when there was a significant fall in prices of imports from the PRC.
- (105) It has also been argued that there has been a decrease in consumption of the product concerned on the Community market and that this decrease rather than the occurrence of dumped imports from the PRC is the reason behind the injury suffered by Community industry. It is recalled that data on consumption in this investigation has been derived from production data and that the resulting consumption figures could be affected by the inclusion of stocks of the product. The possibility of a minor decrease in consumption in 2004 can therefore not be ruled out. Such a decrease would have had an effect on the sales volume of the Community industry. However, even if there was a decrease in consumption during the period considered, it is recalled that imports from the PRC increased by 381 % during the period considered at prices which decreased by 38 % during the period. It is therefore considered that any decrease in consumption that might have taken place cannot be the sole cause of the injury suffered.

24. IMPACT OF ALLEGED STRUCTURAL DEFICIENCIES WITH COMMUNITY PRODUCERS

- (106) It has also been argued that the problems of the Community industry are linked to structural problems of the sector including a production system whose efficiency could be improved. However, no specific evidence was provided in this respect. Even assuming the industry suffered from structural deficiencies during the period considered, it is noted that the industry continually invested in the period considered. The aim of these investments was designed to continue to improve the efficiency of the industry.
- (107) The financial results and the competitiveness of the Community industry were strong up to the emergence of large import volumes of dumped products originating in the PRC. It is again shown by the indicators examined that injury became apparent when Chinese frozen strawberries started to be imported in significant quantities at dumped prices. It is therefore provisionally concluded that any structural deficiencies that might have existed cannot have been the sole or main cause of the injury suffered.

25. IMPACT OF ALLEGATIONS RELATING TO SPECULATIVE BUSINESS DECISIONS BY COMMUNITY PRODUCERS

- (108) Some interested parties claimed that speculation in prices and supply of frozen strawberries onto the Community market had caused the injury to the Community industry and that the losses suffered consequently were self-inflicted. It has been alleged that the Polish producers maintained artificially high prices during the poor harvest of 2003 by reducing supply of frozen strawberries and that this strategy continued during the season of 2004 thus forcing the user industry to look for alternative supply in the PRC. The Community industry was then left with a substantial stock that had to be sold off at below profit prices.
- (109) The allegations pertaining to these claims on self-inflicted injury were however not further substantiated. Moreover, an analysis of the sampled Community producers' sales and stock data as detailed in sections 18.1.2 and 18.1.3 do not support these allegations. The high prices in 2003 coincided with high raw material costs due to the poor harvest of this season. Stock levels at the end of this period were also the lowest recorded during the period considered. In 2004 production recovered to the levels of 2002 and this increase was accompanied by a decrease in sales prices. Despite the decrease in sales prices, the Community industry was not able to sell off the produce in this year which resulted in a significant increase in end-of-year stock for 2004. In the IP, the Community industry was forced to decrease its sales prices further. This decrease can partly be attributed to the need to sell off stock built up in the previous year. However, the main trigger for the price reduction was the need to react to the dumped prices of PRC imports that in this year had decreased by a further 24 % as compared with 2004.
- (110) Even if it was in theory possible for the Community industry to have sold off more of its stock in 2004, this would have been at heavily loss making prices. Therefore it is clear that the Community industry was in an injurious situation in both 2004 and 2005. The main problem confronting this industry was the increased volume of dumped imports at low prices levels, undercutting the prices if the Community industry rather than any management decisions as to the timing of selling off of the product concerned from stock.

26. IMPACT OF CURRENCY FLUCTUATIONS

- (111) Another factor which was claimed to have caused the injury is the falling currency exchange rate of the US dollar (to which the Chinese renminbi is linked) against the euro. The dollar depreciation against the euro was around 34 % in the period concerned.

- (112) As regards the injury margins, the dollar depreciation may have encouraged increased imports to the Community of the product concerned. However, there is no evidence of a link between the fall in Chinese import prices to the Community market and the dollar depreciation against the euro. This is demonstrated by the fact that the fall in Chinese import prices is higher than the dollar depreciation against the euro and a year-on-year comparison shows fluctuations in the currency levels that were not reflected in the import prices. For instance in the IP the dollar depreciated against the euro by around 10 % but the fall in Chinese import prices was 24 %.

27. CONCLUSION ON CAUSATION

- (113) It should be recalled that in this case, the decrease of production along with an increase in stock together with price depression causing reduced profitability are the primary evidence of injury. Bearing in mind that the rapidly increasing imports from the PRC undercut substantially the Community industry prices, there is no indication that the above mentioned other factors could have been of such significance as to break the causal link between the imports of dumped products from the PRC and the material injury suffered by the Community industry. No further other factors have been found in the course of the investigation that could have caused material injury.
- (114) Based on the above analysis of the effects of all known factors on the situation of the Community industry, it is provisionally concluded that there is a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry.

E. COMMUNITY INTEREST

28. GENERAL CONSIDERATIONS

- (115) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping duties against imports from the country concerned. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, importers processors/users and suppliers. The Commission sent questionnaires, in particular, to importers and industrial users of frozen strawberries.

29. INTEREST OF THE COMMUNITY INDUSTRY

- (116) The Community industry has been suffering from a surge in low-priced imports of frozen strawberries from the PRC. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results during the period considered. Taking into account the nature of the injury (i.e. mainly depressed prices and deteriorating profits) and the upward trends in imports of the product concerned, a further deterioration in the situation of Community industry would be unavoidable in the absence of measures.
- (117) The investigation showed that the Community production consists of a large number of producers in the freezing industry which employs around 2 700 persons for the production and sales of the product concerned. Frozen strawberries are an important product for the Community freezing industry as a whole. For those that responded to the sampling questionnaire, the product concerned corresponded to more than 10 % of their entire business turnover. Should measures not be imposed, prices would continue to decrease and the Community producers would incur further strong losses. In view of the poor financial situation of the Community producers it can be expected that already in the short term some Community producers would be forced to cease production should measures not be imposed. Thus it is likely that those estimated 2 700 jobs would have to be reduced significantly. Moreover, if measures were not imposed it is highly likely that the various user industries will suffer a lack of supply in the medium and long term as farmers will no longer cultivate strawberries destined for the processing industry a result of depressed prices for strawberries. Effects of loss of workforce would be particularly hard felt in this sector as many of the Community industry producers are located in rural areas and have substantial importance for the employment level of the local population. Based on the above, the Community industry would obviously benefit from the adoption of anti-dumping measures.

- (118) Should anti-dumping measures be imposed, the Community producer would likely be able to increase their selling prices to a level that ensures a reasonable profit margin and to restore fair competition between Community industry and PRC exporting producers. In addition, the imposition of measures would also allow the Community industry to continue its restructuring process.
- (119) It is therefore provisionally concluded that anti-dumping measures would be in the interest of the Community industry.

30. INTEREST OF UNRELATED IMPORTERS

- (120) Four unrelated importers provided answers to the questionnaire. One additional unrelated importer and three importer associations made their views known through written and oral submissions.
- (121) Of the four companies which replied to the questionnaire, only three companies completed the section relating to the volume of imports. This volume accounts for less than 5 % of the total imports of the product concerned from the PRC during the IP.
- (122) One cooperating importer agreed with the imposition of measures provided that these would be set for a limited period of time and takes a form that allows effective competition.
- (123) Two of the cooperating importers opposed the imposition of measures and stressed that such action would not be in the interest of the Community as the problem is confined only to Poland, suggesting the interest of only one Member State's industry should be weighed against interests of several other Member States where the importers may suffer economical losses once anti-dumping duties are in place. It was furthermore held by these cooperating importers that the imposition of measures would impede their contacts with exporting producers in the PRC as well as assistance provided to these in the form of training and education.
- (124) However, the purpose of the anti-dumping measures is neither to prohibit imports nor to hamper the activities of the importers in the Community. It should be noted that all cooperating importers also purchase substantial amounts of frozen strawberries from Polish Community producers and that the activities of the companies includes the further processing of the product concerned.
- (125) Furthermore, the overall effect of the duty on the importers' performance should be minimal. Importers typically buy a huge range of different food products. Frozen strawberries usually do not represent more than 10 % of the total imports of such importers. Therefore the effect of the duty will likely be diluted.
- (126) However, bearing in mind that the importers in this sector trade with both Polish and Chinese supplies and in view of the moderate duty rate that would be imposed, the market would not be closed to imports from the PRC, the impact on importers is not expected to be substantial. Alternative sources of supply from other third countries without duties are also available (e.g. Morocco).

31. INTEREST OF USERS

31.1. Preliminary remark

- (127) Nine user companies, i.e. frozen strawberry processors, submitted questionnaire responses. However, some of these were of poor quality and lacked essential data on purchases and use of the product concerned and related costs. Submissions were also made by three associations of processors and one further processor. All user organisations and processors expressing an interest in the proceedings opposed to the imposition of measures. In total, the user companies having submitted the relevant purchase data in the questionnaire reply accounted for an additional (to the 4 % accounted for by the importers) 12 % of imports to the Community from the country concerned. The user associations having made submissions to the proceedings represent, according to their own account, through their members 170 000 tonnes or 80 % of the total frozen strawberry consumption in the Community.

31.2. The use of frozen strawberries

- (128) Frozen strawberries are characterised as a semi-finished product primarily destined for further processing although a small portion is sold to the retail industry for direct consumption. The direct consumption of frozen strawberries by the catering industry and households is estimated not to exceed 20 000 tonnes per year. The main users of frozen strawberries are processors involved in the production of jams, fruit preparations utilised primarily by the dairy industry and production of fruit drinks. The production of strawberry jam in the Community is relatively stable and is estimated at 230 000 to 250 000 tonnes per year. The estimated frozen strawberry consumption for this sector would amount to around 100 000 tonnes per year. Unlike the case for jam, jellies and marmalade production, the fruit preparation sector and, particularly, the dairy industry have seen a steady growth over the same time period. Strawberries are a popular flavour in the fruit preparation and dairy industry and hold an important part of the overall production in both of these sectors. It is estimated that some 110 000 tonnes of strawberries are consumed by the fresh dairy and ice cream industry. Whilst still of importance, strawberry flavour as part of the total production of fruit-flavoured drinks is far more limited than in the jam and fruit preparation sectors.
- (129) In summary, if we exclude the fruit preparation segment (because they are not end products sold to consumers) frozen strawberries are used primarily in the jam-making and dairy segments in roughly equal proportions.

31.3. Shortage of supply and the need for different sources of frozen strawberries

- (130) The industry sectors using frozen strawberries have indicated that the sourcing of different varieties and qualities of frozen strawberries is central to their production as recipes used by the industry generally consist of a blend of strawberries of varied sources. Different consumer preferences and demand in the EU are also factors that contribute to the industry's reliance on a wide range of sources of raw materials. Similarly, it has been held by the cooperating users that supply from a number of sources is necessary to ensure all year supply of frozen strawberries in sufficient quantities. The processing companies cooperating in the investigation have argued that the imposition of measures would lead to a lack of supply of frozen strawberries for the sector, both in terms of quantities and in terms of the different qualities needed in the production. In addition, the imposition of measures would run counter to the substantial investments carried out by the Chinese exporting producers and supported by users in view of ensuring that all applicable safety standards are met with the PRC exporting producers.
- (131) The production of frozen strawberries in the EU is mainly concentrated in Poland where production is almost exclusively focused on the freezing of the strawberry variety Senga Sengana. This variety of strawberry is appreciated by fruit-processing industry as it maintains its qualities in terms of colour and taste in the freezing process. The large storage capacity of the Polish frozen strawberry producers allow delivery to be spread all year round even though there is only one crop season for fresh strawberries each year in Poland. It appears that Polish frozen strawberries together with import sources that will not be affected by anti-dumping duties (Turkey and Morocco) are able to guarantee steady supply of all strawberry varieties required by the processing (notably jam) industry.

- (132) PRC producers started exporting frozen strawberries in increased quantities only in 2003 (recital 60). In that year, imports from the PRC increased by 324 %. It appears that all other sources of supply had provided the Community processors with the varieties and qualities they required to make according finished products. Exports from the PRC include a number of different varieties and qualities of frozen strawberries with deliveries starting in June reaching a peak in August.
- (133) As detailed above in recital 124, the purpose of anti-dumping measures is neither to prohibit imports nor to hamper the activities of the food-processing industry in the Community. The purpose of anti-dumping measures would not be to limit the all year round supply or the accessibility of different varieties needed by the food-processing industry. On the contrary, the user industry has stressed that the availability of frozen strawberries from the Community, and in particular Poland, is key to the production of a wide range of products such as jams, yoghourts and fruit preparation due to the specific characteristics of the Senga Sengana variety. It must consequently be considered to be in the interest also for the users to ensure the continuation of the Community production. In turn, the Community processors seem to be far less reliant on frozen strawberries from the PRC, given their sourcing patterns before 2002 and the fact that they also import more important quantities from other sources such as Turkey and Morocco. It can safely be concluded that considering these facts the risk of any supply shortage due to anti-dumping measures can be ruled out. It is noted in this regard that one of the main Community jam-makers has not directly imported the product concerned from the PRC.

31.4. Increased raw material cost and lack of competition

- (134) Several of the cooperating users claimed that the imposition of measures would lead to a significant cost increase, destabilise the prices of raw materials and impede competition on the European market, leaving processors with Poland as the sole source of supply of frozen strawberries. It was also argued that the increase in raw material costs for the processing industry with current market structure cannot be carried over to the retailer level of the distribution chain.
- (135) The user industry has demonstrated that the product concerned constitutes a substantial part of the cost of production of jams (around 30 % to 40 %). Nevertheless it should be recalled that jams, according to the industry's own admission generally, would consist of a blend of strawberries of different sources out of which that of Chinese origin would be limited to around 20 %. An impact analysis shows that the companies would only have to bear an increase in costs of around 2,5 %. In addition, none of the processing industries, neither the makers of jam nor those of dairy products, rely exclusively on products that incorporate frozen strawberries. On the contrary, these products typically make up merely 10 % of the total turnover of these companies. On the whole, the effect of measures is therefore only likely to have a marginal effect on the total cost of production and profitability of users.
- (136) Moreover, with the number of operators on the European market and the large volumes of imports from a range of third countries, there is no risk that competition on the European market would be impeded even in the event that exports from the PRC would decrease substantially.

31.5. Conclusion on users' interest

- (137) Considering the above, it is unlikely that anti-dumping measures would lead to a shortage of supply or to a non-competitive situation on the Community market, in particular, as Chinese frozen strawberries are likely to retain a substantial market share and there are a number of other third country exporting producers. As regards the cost impact on the users, it was found that this would only be marginal and would not materially affect the competitiveness and performance of the food-processing industry. Moreover, the user industry has pointed out that the Polish frozen strawberry production is essential to the fruit-processing industry and measures assisting in the upkeep of a viable Community production would ultimately also benefit the user industry. Therefore, it is provisionally considered that the impact on users would not be substantial.

32. INTEREST OF SUPPLIERS

- (138) No individual farmers submitted information as part of this investigation. Information relating to this sector was therefore obtained from the European Commission's Directorate-General for Agriculture and the relevant Polish agricultural authorities as Poland is the main producer in the EU of strawberries destined for freezing. Unlike production in other Member States which is focused on the fresh market, strawberries grown in Poland are almost entirely destined for freezing and further processing. Indicators show that the sector of strawberry farming is undergoing consolidation leading to fewer farms of a larger size. It is estimated that the number of commercial producers in Poland decreased from 153 000 in 1996 to 96 700 in 2002. Although it is expected that the consolidation in recent years has decreased this number even further, it is nevertheless clear that the farming of strawberries is an important economic activity for a large number of farms in Poland.
- (139) The price of fresh strawberries destined for the processing industry has traditionally fluctuated depending on the supply and the size of the harvest. From 2004 onwards the prices have however been below the cost of production resulting in losses for the farmers. The increase in cheap imports from the PRC, resulting in the Community industry having to cut its raw material costs by offering the farmers progressively lower prices, are claimed to be the main reason for this development. It is expected that, should the raw material price development continue, there is a significant risk that some farmers would stop cultivating strawberries and that there will be a shortage of supply to the processing industry. Should measures be imposed, the Community industry would probably be in a position to sell the product concerned at higher prices and thereby to offer higher prices to the suppliers of strawberries as well.
- (140) It is clear that measures would benefit the supplier sector by allowing them to operate at profitable levels.

33. CONCLUSION ON COMMUNITY INTEREST

- (141) The imposition of measures on imports of frozen strawberries originating in the PRC would clearly be in the interest of the Community industry. As regards both the importers/traders and the user industries, any impact on prices of frozen strawberries is expected only to be limited. In contrast, the losses of market share, price reductions and financial losses suffered by the Community industry including their raw material suppliers would, in the absence of taking measures, clearly be of greater magnitude.
- (142) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports frozen strawberries originating in the PRC.

F. PROVISIONAL ANTI-DUMPING MEASURES

34. INJURY ELIMINATION LEVEL

- (143) In view of the conclusions reached with regard to dumping, injury and Community interest, measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports from the PRC.

- (144) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 6,5 % of turnover based on average profit levels obtained prior to the existence of dumped imports in 2002. The high profit levels obtained in 2003 were not taken into account as prices and profit were exceptionally high in this year. Consequently, on the basis of the information available, it was preliminarily found that a profit margin of 6,5 % of turnover could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 6,5 % to the cost of production.
- (145) The necessary price increase was then determined on the basis of a comparison of the weighted average import price with the average non-injurious price. A 15,4 % allowance was added to the import prices to cover the normal customs duty (14,4 %) and importer handling charges (1 %).
- (146) Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. The investigation showed that the product concerned sold on the Community market by both exporting producers and Community industry was comparable. This calculation was therefore made on an average to average basis.
- (147) The provisional weighted average injury margins for companies granted either MES or IT status were:

Yantai Yongchang Foodstuff	18,1 %
Dandong Junao Foodstuff	12,6 %

- (148) In order to calculate the country-wide injury elimination level for all other exporters in the PRC, it should be recalled that the level of cooperation was low. Therefore, a weighted average margin was calculated on the basis of (a) the injury margin of those cooperating exporters, to which neither MET nor IT was granted and (b) the injury margin of the highest of the companies not granted MET or IT to represent the non-cooperators. The country-wide injury elimination level was 34,2 %, being the weighted average of the abovementioned two elements.

35. PROVISIONAL MEASURES

- (149) In the light of the foregoing, it is considered that in accordance with the Article 7(2) of the basic Regulation, provisional anti-dumping duties on imports of the product concerned originating in the PRC should be imposed. The anti-dumping duties should be set at the lower of the dumping and injury margins, in accordance with the lesser duty rule.

- (150) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (151) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (152) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP.
- (153) The proposed provisional anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Yantai Yongchang Foodstuff	18,1 %	0 %	0 %
Dandong Junao Foodstuff	12,6 %	31,1 %	12,6 %
All other companies	34,2 %	66,9 %	34,2 %

G. FINAL PROVISION

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

⁽¹⁾ European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 rate of the provisional anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the products described in paragraph 1, shall be as follows:

Manufacturer	Anti-dumping duty %	TARIC additional code
Yantai Yongchang Foodstuff	0	A779
Dandong Junao Foodstuff	12,6	A780
All other companies	34,2	A999

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

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

Article 2

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

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

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 17 October 2006.

For the Commission
Peter MANDELSON
Member of the Commission

COMMISSION REGULATION (EC) No 1552/2006**of 17 October 2006****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular of the Article 36,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2006/2007 marketing year are fixed by Commission Regulation (EC) No 1002/2006 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 1520/2006 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 October 2006.

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

Done at Brussels, 17 October 2006.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 55, 28.2.2006, p. 1.
⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 179, 1.7.2006, p. 36.
⁽⁴⁾ OJ L 282, 13.10.2006, p. 21.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 18 October 2006

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 ⁽¹⁾	22,40	5,10
1701 11 90 ⁽¹⁾	22,40	10,33
1701 12 10 ⁽¹⁾	22,40	4,91
1701 12 90 ⁽¹⁾	22,40	9,90
1701 91 00 ⁽²⁾	32,66	8,90
1701 99 10 ⁽²⁾	32,66	4,54
1701 99 90 ⁽²⁾	32,66	4,54
1702 90 99 ⁽³⁾	0,33	0,33

⁽¹⁾ Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).⁽²⁾ Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.⁽³⁾ Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 1553/2006**of 17 October 2006****establishing a prohibition of fishing for cod in ICES zones I and IIb by vessels flying the flag of
The United Kingdom**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2006.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2006.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2006 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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, 17 October 2006.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

⁽³⁾ OJ L 16, 20.1.2006, p. 1. Regulation as last amended by Regulation (EC) No 1262/2006 (OJ L 230, 24.8.2006, p. 4).

ANNEX

No	38
Member State	United Kingdom
Stock	COD/1/2B.
Species	Cod (<i>Gadus morhua</i>)
Zone	I, IIb
Date	28 September 2006

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 October 2006

on emergency measures applying to fishery products imported from Brazil and intended for human consumption

(notified under document number C(2006) 4819)

(Text with EEA relevance)

(2006/698/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ⁽¹⁾, and in particular Article 53(1)(b) thereof,

Whereas:

- (1) In accordance with Regulation (EC) No 178/2002, the necessary measures must be adopted where it is evident that food imported from a third country is likely to constitute a serious risk to human health, animal health or the environment and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned.
- (2) Under Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽²⁾, food business operators must ensure that the limits with regard to histamine in fishery products are not exceeded. Those limits, together with the sampling and analytical

methods, were established by Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs ⁽³⁾.

- (3) A recent Community inspection in Brazil has revealed serious hygiene shortcomings in the handling of fishery products. As a result of those shortcomings the fish is not as fresh as it should be and spoils quickly and there may be high levels of histamine in certain fish species (in particular those belonging to the families: *Scombridae*, *Clupeidae*, *Engraulidae*, *Coryfenidae*, *Pomatomidae* and *Scombrosidae*). The inspections have also revealed a limited capacity of the Brazilian authorities to carry out the necessary checks of fish, in particular to detect histamine in those species.
- (4) Excessive levels of histamine in fishery products constitute a serious risk for human health.
- (5) It is appropriate to adopt at Community level measures applicable to imports of fishery products which might be contaminated to ensure effective and uniform protection in all the Member States.
- (6) Imports into the Community of fishery products from fish species associated with a high amount of histidine, should be authorised only if it can be shown that they have been subjected to a systematic check at origin to verify that their histamine levels do not exceed the limits set by Regulation (EC) No 2073/2005.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 575/2006, (OJ L 100, 8.4.2006, p. 3).

⁽²⁾ OJ L 139, 30.4.2004, p. 55; corrected by OJ L 226, 25.6.2004, p. 22. Regulation as last amended by Commission Regulation (EC) No 2076/2005 (OJ L 338, 22.12.2005, p. 83).

⁽³⁾ OJ L 338, 22.12.2005, p. 1.

- (7) However, it is appropriate to temporarily authorise, the import of consignments that are not accompanied by the results of checks at origin, provided that Member States ensure that those consignments undergo appropriate checks on arrival at the Community border to verify that their histamine levels do not exceed the limits set by Regulation (EC) No 2073/2005. This temporary authorisation should be limited to the time that would allow the Brazilian authorities to build their own check capacity.
- (8) Regulation (EC) No 178/2002 sets up the rapid alert system for food and feed, which should be used to implement the mutual information requirement provided for in Article 22(2) of Council Directive 97/78/EC⁽¹⁾. In addition the Member States should keep the Commission informed through periodical reports of all analytical results of official controls carried out in respect of consignments of fishery products from Brazil.
- (9) This Decision should be reviewed in the light of the guarantees offered by Brazil and on the basis of the results of the tests carried out by Member States.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Scope

This Decision shall apply to fishery products of fish belonging to the families *Scombridae*, *Clupeidae*, *Engraulidae*, *Coryfenidae*, *Pomatomidae* and *Scombresoidae*, imported from Brazil and intended for human consumption.

Article 2

Analytical tests for histamine

1. Member States shall authorise the import into the Community of products referred to in Article 1 only if they are accompanied by the results of an analytical test for histamine carried out in Brazil before consignment which reveals histamine levels below the limits set by Regulation (EC) No 2073/2005. These tests must be carried out following the sampling and the analytical method referred in Regulation (EC) No 2073/2005.
2. By way of derogation from paragraph 1, Member States shall authorise the import of products referred to in Article 1 that are not accompanied by the results of the analytical test as referred to in paragraph 1 provided that the importing Member

State ensures that each consignment of those products undergoes tests to verify that the histamine levels are below the limits set by Regulation (EC) No 2073/2005. These tests must be carried out following the sampling and the analytical method referred in Regulation (EC) No 2073/2005.

Article 3

Reports

Member States shall immediately inform the Commission if tests carried out pursuant to Article 2(2) reveal histamine levels exceeding the limits set by Regulation (EC) No 2073/2005 for fishery products.

Member States shall submit to the Commission a report on all tests carried out pursuant to Article 2(2).

Member States shall use the rapid alert system for food and feed set up by Regulation (EC) No 178/2002 for the submission of that information and those reports.

Article 4

Charging of expenditure

All expenditure incurred in the application of this Decision shall be charged to the consignor, the consignee or the agent of either.

Article 5

Compliance

Member States shall immediately inform the Commission of the measures they take to comply with this Decision.

Article 6

Period of application

This Decision shall apply until 31 December 2006.

Article 7

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 16 October 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 191, 28.5.2004, p. 1).

COMMISSION DECISION**of 17 October 2006****amending Decision 2004/452/EC laying down a list of bodies whose researchers may access confidential data for scientific purposes***(notified under document number C(2006) 4857)***(Text with EEA relevance)****(2006/699/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics⁽¹⁾, and in particular Article 20(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 831/2002 of 17 May 2002 implementing Council Regulation (EC) No 322/97 on Community Statistics, concerning access to confidential data for scientific purposes⁽²⁾ aims at establishing, for the purpose of enabling statistical conclusions to be drawn for scientific purposes, the conditions under which access to confidential data transmitted to the Community authority may be granted and the rules of cooperation between the Community and national authorities in order to facilitate such access.

(2) Commission Decision 2004/452/EC of 29 April 2004 laying down a list of bodies whose researchers may access confidential data for scientific purposes⁽³⁾ has laid down a list of bodies whose researchers may access confidential data for scientific purposes.

(3) The Center of Health and Wellbeing (CHW) of the Woodrow Wilson School of Public and International Affairs at Princeton University, New Jersey, United States of America has to be regarded as a body fulfilling the required conditions and therefore has to be added to the list of agencies, organisations and institutions referred to in Article 3(1)(c) of Regulation (EC) No 831/2002.

(4) The measures provided for in this Decision are in accordance with the opinion of the Committee on Statistical Confidentiality,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2004/452/EC is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 17 October 2006.

For the Commission

Joaquín ALMUNIA

Member of the Commission

⁽¹⁾ OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 133, 18.5.2002, p. 7. Regulation as amended by Regulation (EC) No 1104/2006 (OJ L 197, 19.7.2006, p. 3).

⁽³⁾ OJ L 156, 30.4.2004, p. 1, corrected by OJ L 202, 7.6.2004, p. 1. Decision as last amended by Decision 2006/429/EC (OJ L 172, 24.6.2006, p. 17).

ANNEX

'ANNEX

BODIES WHOSE RESEARCHERS MAY ACCESS CONFIDENTIAL DATA FOR SCIENTIFIC PURPOSES

European Central Bank

Spanish Central Bank

Italian Central Bank

University of Cornell (New York State, United States of America)

Department of Political Science, Baruch College, New York City University (New York State, United States of America)

German Central Bank

Employment Analysis Unit, Directorate General for Employment, social affairs and equal opportunities of the European Commission

University of Tel Aviv (Israel)

World Bank

Center of Health and Wellbeing (CHW) of the Woodrow Wilson School of Public and International Affairs at Princeton University, New Jersey, United States of America.'
