# Council Regulation (EC) No 407/2007 of 16 April 2007 imposing definitive anti-dumping measures and releasing the provisional duty imposed on imports of certain frozen strawberries originating in the People's Republic of China

## COUNCIL REGULATION (EC) No 407/2007

## of 16 April 2007

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 9 and 10(2) thereof,

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

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) On 18 October 2006 the Commission imposed, by Regulation (EC) No 1551/2006[(2)] (the provisional Regulation), a provisional anti-dumping duty on imports of certain frozen strawberries originating in the People's Republic of China (PRC).

2. Subsequent procedure

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

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

(4) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to impose definitive measures and to release the amounts secured by way of the provisional anti-dumping duty imposed by Commission

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 407/2007. (See end of Document for details)*

Regulation (EC) No 1551/2006 (the final disclosure). The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

3. Parties concerned by the proceeding

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

Importers/traders:

— BS Foods BV, Gennep, The Netherlands,

— Skogsmat AB, Karlstad, Sweden;

Users/processors:

— Agrana Frucht GmbH & Co KG, Gleisdorf, Austria,

— Agrana, S.A. Neuilly-sur-Seine, France,

— Dairy Fruits A/S, Odense, Denmark,

— Groupe Danone, Paris, France,

— Materne S.A.S., Limonest, France,

— Rudolf Wild GmbH & Co. KG, Eppelheim, Germany,

— Schwartauer Werke GmbH & Co KGaA, Bad Schwartau, Germany,

— Yoplait France S.A.S., Boulogne, France.

4. Investigation period (IP)

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

(7) One interested party has questioned the appropriateness of the chosen investigation period claiming that the year 2005 was not representative as import prices in this year were abnormally low. However, the selection of the IP was made in accordance with Article 6(1) of the basic Regulation which provides that the IP should normally cover a period of not less than six months immediately prior to the initiation of the proceeding. Thus, any alleged particularities concerning the year 2005 were not reflected in the choice of the IP, but were examined in the causality analysis.

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

5. Product concerned and like product

(9) It is recalled that, in recital 13 of the provisional Regulation, the product concerned was defined as strawberries, uncooked or cooked by steaming or boiling in

water, frozen, whether or not containing added sugar or other sweeteners, originating in the People's Republic of China currently classifiable within CN codes 0811 10 11, 0811 10 19 and 0811 10 90.

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

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

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

B. DUMPING

1. Market Economy Treatment

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

2. Individual Treatment

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

(15) None of the arguments raised by the three companies in question were apt to alter the decision taken at the provisional stage. In particular, it was found that the companies concerned were exposed to state interference which limited them in freely determining export quantities (criterion (b)).

(16) Furthermore, state interference also prevailed to a degree which would make circumvention of measures likely if individual exporters were given individual rates of duty (criterion (e)).

(17) In the absence of any further comments relating to the findings on IT, the findings set out in recitals 27 and 28 of the provisional Regulation are confirmed.

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3. Normal Value

(18) After publication of the provisional measures, no comment was received that was apt to alter the decision to use Turkey as an analogue country. The decision is therefore confirmed. It is recalled that for the purpose of establishing normal value, the domestic prices of Turkish strawberries had been adjusted to take account of their better quality in comparison with Chinese strawberries (see recitals 39 and 44 of the provisional Regulation).

(19) In the absence of any further comments relating to the findings on normal value, the findings set out in recitals 29 to 42 of the provisional Regulation are confirmed.

4. Export Price

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

5. Comparison

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

6. Dumping margin

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

Yantai Yongchang Foodstuff 0 %

Dandong Junao Foodstuff 31,1 %

All other companies 66,9 %

C. INJURY

1. Community production

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

2. Definition of the Community industry

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

3. Sampling for injury assessment purposes

(25) It is recalled that in view of the large number of producers of frozen strawberries in the Community, a sample of eight producers was chosen for the assessment of injury. One interested party claimed that the sample of Community producers was not representative because all selected Community producers were

located in Poland. It was held that a sample based on the largest production volume should also take into account the geographical location of producers in order to be representative.

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

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

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

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

4. Community consumption

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

5. Imports into the Community from the countries concerned

5.1. Volume and market share of the imports concerned

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

5.2. Prices of imports and undercutting

(32) One party claimed that for the purpose of the undercutting analysis, an adjustment would have to be made taking into account the qualitative differences between the frozen strawberries produced by the Community industry and those of the exporting producers. However, it was noted that, at the provisional stage, only certain sales transactions of the exporting producers were taken into account in the calculation of undercutting and underselling. Sales of low grade exports were disregarded because such low quality products were not produced and sold by the Community industry. In these circumstances, the adjustment claimed was not warranted. In the absence of any further comments, the prices of the imports concerned and the price undercutting