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

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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.

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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.

(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
- Przedsiebiorstwo Produkcyjno-Handlowe ‘Fructodor’ Sp. z o.o., Bolimow
- Hortino Lpow Sp. z o.o., Lezajsk
- POW Gomar, Pinczow
- Unifreeze Sp z. o.o., Miesiączkowo

(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 Gida Sanayi ve Ticaret A.S., Bursa

— Bidas Gida Sanayi ve Ticaret A.S., Bursa

— Penguen Gida Sanayi A.S., 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

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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