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GAIN Report

Global Agricultural Information Network

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U.S. Cherries Exports to France hit by French Pesticide Ban

Report Categories:

Stone Fruit

Sanitary/Phytosanitary/Food Safety

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Report Highlights:

With the implementation of a ban on cherries imports from countries where the use of the chemical Dimethoate is legal, U.S. cherry exports to France will be prohibited in 2016. It may also create competitor opportunities in other EU markets, as the French cherry crop is likely to be lower and more expensive. The EU has not officially reacted to the French decision, but fruit importers and traders fear that France may soon implement similar domestic bans against other EU-approved pesticides or chemicals, de-facto shutting down the free movement of EU and third-country fruits and vegetables into France.

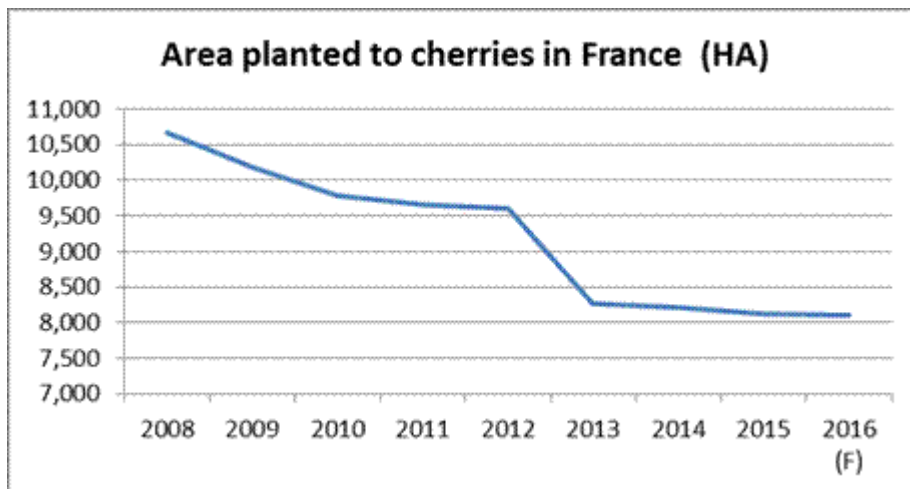
Executive Summary:

On April 22, 2016, France temporarily banned the import and sales of cherries imported from countries where the chemical product dimethoate can be used on cherries and cherry trees. It follows the ban of its use for domestic production. Dimethoate was used to fight *Drosophila suzukii*, an Asian fruit fly which causes considerable damages in cherry orchards but is suspected by France of being dangerous to human health. France imports roughly one fifth of its consumption, the bulk coming from EU countries including some (such as Spain, Italy and Spain) that have already banned dimethoate. The French prohibition will de facto suspend imports of cherries from the United States, valued at around \$1 million annually. On the other hand, as France's production is likely to be impacted by the ban on the pesticide, French cherries are likely to be scarcer and more expensive, creating opportunities for competitors on traditional French export markets such as the UK. The EU has not officially reacted to the French decision but fruit importers and traders fear that France may soon implement a similar domestic ban against other EU-approved pesticides or chemicals, de-facto shutting down the free movement of EU and third country fruit and vegetables into France.

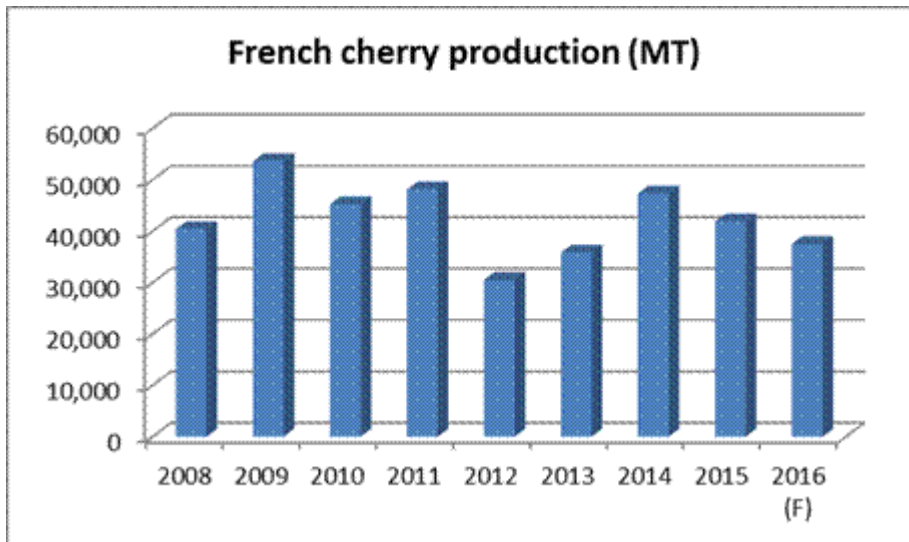
General Information:

Overview of the French cherry production and trade

France is a minor producer of cherries in the EU. Most of the production is concentrated in the south and southwest of France. French cherry orchards has been declining for years :

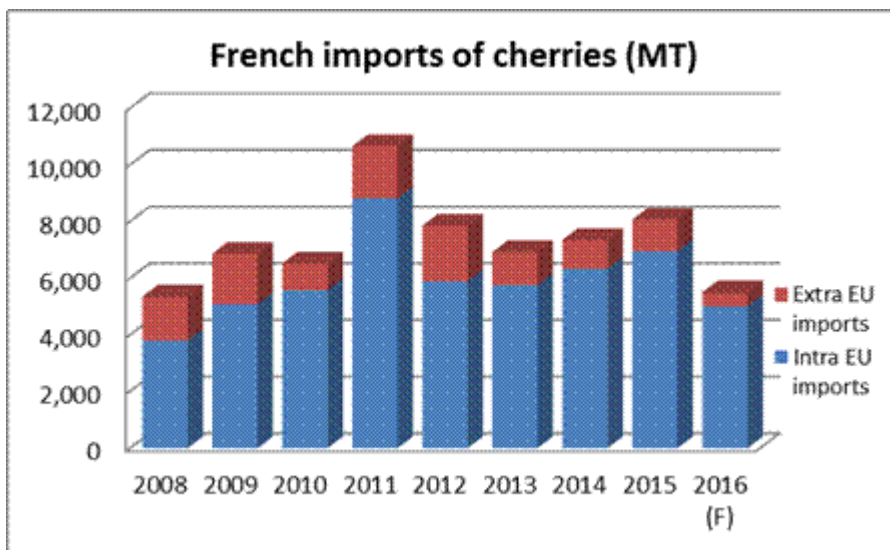


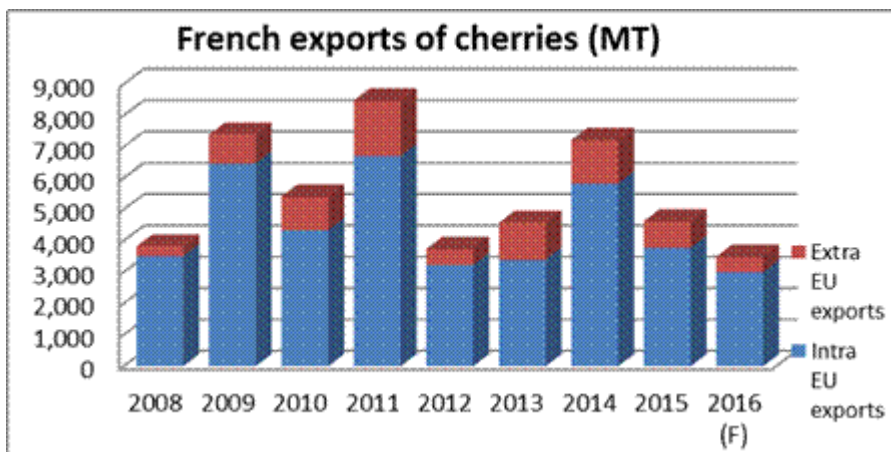
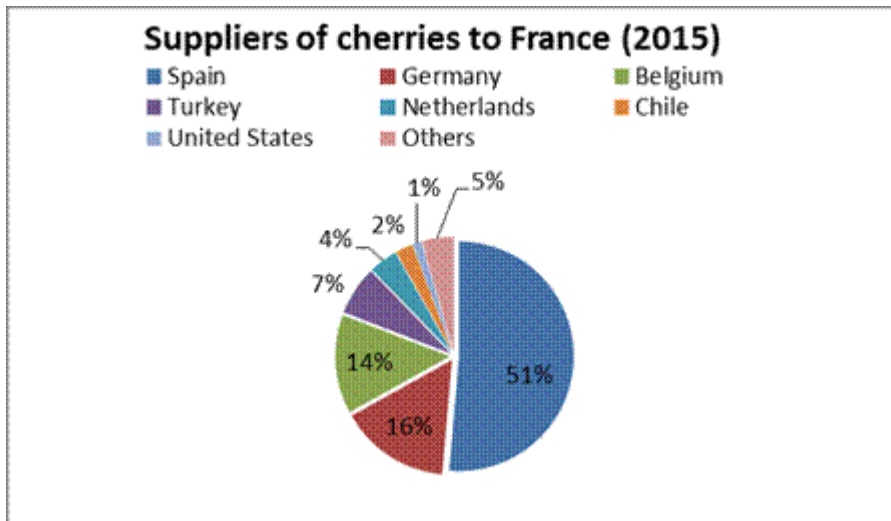
The French production has also been declining steadily over the past few years:



France is a net importer of cherries. The bulk of imports come from the EU (Spain, Belgium, and Germany) and Turkey with the United States having a niche market for late summer cherries (from mid-July to August) and Chile being the main supplier of winter cherries. Note that a significant share (50 percent) of cherries listed as imported from Netherlands are in fact U.S. (or Canadian) cherries custom cleared in the Low Countries. French imports of U.S. cherries (mainly from Oregon and Washington) are valued at about \$ 1 million annually.

France exports cherries mostly to neighboring countries, such as Germany, Belgium and UK.





France to Block Cherry Imports

On April 22 2016, France decided to ban the import and sale in France of cherries produced in countries that do not prohibit the use of insecticides using dimethoate as the active compound on cherry trees. France uses the safeguard clause permitted by Article 54 of [EU Regulation 178/2002](#) to set up such restrictions on trade.

This decision follows France the Food and Environment Safety Agency (ANSES) [decision](#) in February 2016 not to renew the approved use of dimethoate on cherries (as well as on olive, asparagus, cabbages and rose trees), due to suspected danger to the human health. Dimethoate was the active compound used in pesticides, such as Dimate BF 400 produced by the Danish Company [Cheminova A/S](#), the agrochemical branch of the U.S. chemical group [FMC](#). It was widely used to fight against the invasive fly *Drosophila suzukii*, an Asian fruit fly which appeared in France in 2010. Larvae of *Drosophila suzukii* (up to 18 generations per year) feed on the growing cherries (as well as on grapes and other summer fruits). The attacked cherry rots and rapidly spreads the rotting to neighboring fruits. The loss can be close to 100 percent on infected orchards.



source : l'Arboriculture Fruitière

Dimethoate has been recognized as one of the most effective pesticide against *Drosophila suzukii*. The French Ministry of Agriculture has exceptionally and temporarily (for 120 days starting on 04/2016) authorized 3 chemicals (cyantraniliprole from DuPont, spinosad and spinetoram from Dow) to be used on cherry trees. Apart from using pesticides, the only other efficient solution is to use nets around trees and orchards, at a cost of at least € 25,000 per hectare according to cherry producers (versus € 100 per ha for chemical treatments).

In 2009, the European Food Safety Agency (EFSA) reduced the MRL for dimethoate from 1 ppm (Codex is 2 ppm) to 0.2 ppm, a move which was confirmed in 2015. The Canadian Health Agency [confirmed](#) in 2015 the 2 ppm MRL. Technical constraints due to the fight against *Drosophila suzukii* led many products to be close to the EU MRL (in France, less than 15 percent of the cherries sampled in 2015 exceeded it).

In 2016, after a very mild and wet winter, **French cherry producers are likely to face significant losses to the fly**, which will make French cherries rarer and more expensive (due to the necessary sorting of the rotten fruits after harvest). French cherry producers started to demonstrate in March 2016 to protest against the ban and ask for a protection against what they called an unfair competition from other countries, such as Turkey which had not banned dimethoate. The cherry producers' association (joined by other fruits and vegetable organizations) went to court in March 2016 to ask the highest French Administrative Court (Conseil d'Etat) to strike down the negative opinion of ANSES of February 2016. However, the litigation may take months before reaching a legal conclusion. On March 29, France asked the EU Commission to implement emergency measures pertaining to dimethoate, i.e., an immediate ban of the compound in all EU Member States for all fruits and vegetables and an immediate ban on import and sales in the EU of cherries coming from EU countries or third countries where the use of dimethoate is legal.

Tasked by the commission, EFSA [concluded on April 12](#) that data were not sufficient to clearly exclude a risk for the consumer but insisted that the risk of exceeding the Authorized Daily Intake (ADI) was low. EFSA called for a comprehensive review of maximum residue levels.

Following the EFSA conclusions the Commission called an emergency meeting with EU Member States on April 15, 2016, to discuss the safety of the active substance. It was concluded by the Commission and the majority of the Member States that it was not appropriate to adopt emergency measures at EU level.

As the Commission did not follow the French request, France implemented a national safeguard clause through a [National Decree](#) on April 22, as authorized by Article 54 of [EU Regulation 178/2002](#). The [French decree](#) stipulates that:

"L'importation et la mise sur le marché en France de cerises fraîches destinées à l'alimentation en provenance d'Etats membres de l'Union européenne ou de pays tiers où l'utilisation de produits phytopharmaceutiques contenant la substance active diméthoate est autorisée en traitement des cerisiers sont suspendues jusqu'au 31 décembre 2016."

"Import and marketing in France of fresh cherries for food use coming from EU Member States or third countries where use of phytopharmaceutical products containing the active compound dimethoate is authorized for treatment on cherry trees are suspended until December 31, 2016. "

Organic cherries are specifically excluded from this ban and can be imported into France. Frozen and canned/preserved cherries are not/not affected by the ban which applies only to fresh cherries for food use.

So far, only Italy, Spain and Belgium have not authorized dimethoate for use on cherries. The chemical is used legally in the US. Thus, **the French legislation de facto prohibits the exports of U.S. cherries to France**, either directly or through the Netherlands, **a loss of \$1 to 2 million to U.S. cherry exporters**.

On the other hand, the French ban on dimethoate, if it reduces French production and raises French cherry prices **reducing the competitiveness of the French origin, could lead to some market opportunities for U.S. cherries** on traditional French export markets, such as Germany and the U.K.
EU Reaction to France's decision.

In line with the provisions of this Article 54, the Commission organized an additional meeting of the [PAFF Committee - Pesticides Residues section](#) on April 27-28, to discuss whether this measure should be amended, extended or abrogated. At this meeting, the Commission stated that the current measure is disproportionate as it is based on the authorization status of dimethoate in the country of origin and it would not enable those producers willing to comply with the French measures to retain access to the French market. France on the other side considers its measure proportionate as it is limited to cherries and limited in time. Five Member States asked the Commission to prepare a measure for abrogation of the French measure. Eleven Member States supported the Commission in the prioritization of the MRL review but took no clear position yet as regards the abrogation or extension of the measure. Meanwhile, the MRL review has been initiated by the Commission. One Member State supported the emergency measure as long as this remains limited to cherries only.

Arguments brought forward by Member States were the economic damage for the cherry growers, the fact that the national measures taken by France are not justified by the EFSA statement, that they disturb the free movement of goods, that they are disproportionate and discriminate producers who are able and willing to produce without dimethoate and can prove that no dimethoate is used despite an authorization in the relevant country. The Commission concluded that there is no support for an extension of the measures at EU level and will now reflect internally on the appropriate way forward.

A difficult implementation and potential legal issues

Most experts highlight the difficulties to implement the French ban and the poor legal redaction of it. France has not yet published an official list of countries authorizing or banning dimethoate. They believe that to be legally sound, the decree should instead have set a MRL level allowing imports accompanied by proper certification.

Because of the single market rules, fruits are traded freely within the EU, and imported products can be custom cleared in another member state (where dimethoate could be legal) and shipped to France without further inspection. In case of a random inspection by the French fraud office, who will be legally responsible for the non-compliance? Will it be the French wholesaler, the trader or importer or the EU shipper/importer? Analysts believe this uncertainty could lead to potential complex litigations that could end up at the French Supreme Court (Conseil Constitutionnel)

Another potential problem lies with the cherries used for processing. While the decree prohibits the imports of fresh cherries for food, it does not specifically prohibit nor authorize the imports of cherries for processing for food uses (such as jams, sugar or chocolate coated or preserved cherries).

APTUNION, one of the world leaders of sugar preserved cherries is based in Provence and processes annually 8,000 MT of bigarreaux cherries locally produced by 300 farmers. Since the local production may become uncompetitive because of the losses to *Drosophila suzukii*, it may have to close some of its facilities. It will also lose market shares to French competitors using Turkish cherries if they can be imported or to foreign competitor in Turkey or Eastern Europe. To express their anger, local producers recently cut 300 cherry trees and dumped them in front of local government offices.

What's Next?

French fruit traders and importers hope that the EU Commission will strike down the French decree as not legally founded and against EU Single market rules. However, taking France to the European Court of Justice will take years. Domestic litigation, such as the one at the Conseil D'Etat, will also take time. Traders and importers fear that if the EU commission does not react promptly, France will implement soon similar domestic bans against other EU-approved pesticides or chemicals, de-facto shutting down the free movement of EU and third countries fruits and vegetables into France.