II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 March 1991

terminating the anti-dumping proceeding concerning imports of Atlantic salmon originating in Norway

(91/142/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports originating in countries not members of the European Economic Community [1], and in particular Article 9 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. PROCEDURE

(1) In December 1989 the Commission received a complaint from the Scottish Salmon Board (SSB) and the Irish Salmon Growers' Association acting for producers accounting for almost the entire Community production of fresh and chilled Atlantic salmon.

The complaint included sufficient evidence of dumping and material injury to justify initiating an anti-dumping proceeding.

The Commission consequently gave notice in the *Official Journal of the European Communities* of the initiation of an anti-dumping proceeding concerning imports of Atlantic salmon falling within CN code ex 0302 12 00, originating in Norway [2], and opened an investigation.

(2) The Commission officially notified the associations of producer/exporters, the importers, the representatives of the exporting country and the complainants and gave interested parties the opportunity to make known their views in writing and request a hearing.

(3) Representatives of the producer/exporters and most Community producers made written comments. Representatives of the Norwegian producer/exporters requested and were granted a hearing.

While only one importer answered the Commission questionnaire even in part, comments were received from importers' associations in France and Denmark. The Committee of Agricultural Organizations in the European Community (COPA) and the General Committee for Agricultural Cooperation in the EEC (Cogeca) also commented.

(4) In view of the very great number of operators involved in the proceeding, both in the Community and in Norway, the Commission was obliged to resort to sampling when selecting firms on which to base its calculations. It therefore contacted

[1] OJ No L 209, 2. 8. 1988, p. 1.

[2] OJ No C 25, 2. 2. 1990, p. 6.

the Scottish Salmon Board and the Irish Salmon Growers' Association for Community producers and the Norske Fiskeoppdretteres Forening (NFF), the Fiskeoppdretteres Salgslag A/L (FOS) and the Norges Ferskfiskomsetnings Landsforening (NFOL) for Norwegian producer/exporters.

(5) The following sampling method was used:

(a) *Community producers*

The Community has about 180 production units. A representative selection of firms was made on the basis of size and geographical location.

The Scottish firms chosen for the sample and investigated account for 52 % of the volume of Scottish production, i.e. 16 000 out of a total 31 000 tonnes (1).

In Ireland, the firms chosen represent 58 % of the volume of Irish production, i.e. 3 650 out of a total of 6 300 tonnes.

(b) *Norwegian producer/exporters*

The firms involved in this proceeding, which number about 1 000, were selected on the basis of proposals from the Norwegian industry, the volume of their sales and their geographical location.

The firms investigated were selected according to the above criteria and the quality of their answers to the questionnaire.

The producers selected represent about 11 % by volume of Norwegian output (3). The firms investigated account for 40 % of the production covered by answers to the questionnaire.

The exporters investigated account for 38 % of sales to the Community, i.e. 23 000 out of 60 000 tonnes and 64 % of the sales volume covered by answers to the questionnaire.

(6) By means of its sampling, the Commission gathered and verified all the information it considered necessary to assess the facts and carried out checks at the premises of the following firms:

(a) *Community producers*

— G. Johnson Ltd, Shetland, United Kingdom,

— Golden Sea Produce Ltd, Connel, Argyll, United Kingdom,

— Hebridean Sea Farms Ltd, Isle of Lewis, United Kingdom,

— McConnel Salmon Ltd, Dunbartonshire, United Kingdom,

— Marine Harvest Ltd, Edinburgh, United Kingdom,

— Otter Ferry Salmon Ltd, Argyll, United Kingdom,

— Salar Ltd, Outer Hebrides, United Kingdom,

— Shetland Sea Farms Ltd, Shetland, United Kingdom,

— Wester Ross Salmon Ltd, Ullapool, United Kingdom.

(b) *Norwegian producer/exporters*

(i) Producers

— Jul Notnes, Skrova, Norway,

— Mowi a/s, Fyllingsdalen, Norway,

— Oylaks a/s, Midsund, Norway,

— Sanden Fiskeoppdrett, Midsund, Norway,

— Strommen Lakseoppdrett A/S, Rugsund, Norway.

(ii) Exporters

— A/S Austevoll Fiskeindustri, Storebo, Norway,

— Chr. Bjelland Seafoods A/S, Stavanger, Norway,

— Fremstad Group A/S, Trondheim, Norway,

— Hallvard Leroy A/S, Bergen, Norway,

— Karsten J. Ellingsen, Skrova, Norway,

— Manger Fiskemat A/S, Manger, Norway,

— R. Domstein & Co, Maloy, Norway,

— Salmonor A/S, Bergen, Norway,

— Skaarfish Florofryseri A/S, Floro, Norway.

(7) The dumping investigation covered the period from 1 January 1989 to 31 December 1989.

B. THE PRODUCT

(8) **Product definition**

The proceeding concerns only fresh and chilled Atlantic salmon falling within CN code ex 0302 12 00, not frozen or smoked salmon.

It is exported to the Community either whole or gutted.

(1) Estimate for 1989.

(9) **Like product**

There are three qualities for Atlantic salmon (production, ordinary and superior) regardless of whether it is farmed in Norway or on the coasts of Scotland or Ireland. Although certain slight differences, attributable mainly to fat content, may be observed in the meat depending on whether it originates in Norway, Sctoland or Ireland, the Commission considered salmon originating in the Community and Norway to possess identical physical characteristics within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

C. DUMPING

(10) **Normal value**

The usual method of calculating normal value on the basis of transactions by the producers was not considered appropriate in this case. Since the producers sell their entire output to exporters for resale on both domestic and export markets, the prices used were those of the exporters. And as practically all domestic sales by these firms were made at a loss, within the meaning of Article 2 (4) of Regulation (EEC) No 2423/88, normal value was reconstructed on the basis of the production costs of Norway's salmon farmers, to which were added their profits, the overheads of the exporters investigated and a reasonable profit margin on the resale activities (5 %).

(11) **Export price**

Because all sales of fresh salmon to the Community are made by such exporters, the dumping margin is calculated on the basis of the export price charged by these firms.

Export prices were based on the prices actually paid or payable for products sold for export to the Community.

(12) **Comparison**

For each weight category and quality, normal value was compared on a transaction-by-transaction basis with export prices at the same stage of marketing.

Where necessary, the Commission allowed for differences affecting price comparability, such as the cost of transport, insurance, handling and credit.

In this way the Commission established a dumping margin for each firm. As a percentage of total cif value, the weighted average dumping margin for all the firms investigated is 11,3 %.

D. INJURY (1)

I. Volume, market share and price of imports

(13) *Volume*

The information available to the Commission shows that imports of Norwegian farmed salmon almost trebled between 1986 and 1989, increasing from 21 596 tonnes to 58 849 tonnes.

(14) *Market share*

Apparent consumption grew steadily from 33 474 tonnes in 1986 to 96 987 tonnes in 1989, an increase of 189,74 %.

It should be emphasized that Norwegian exporters profited form the threefold increase in apparent consumption on the Community market between 1986 and 1989, maintaining their market share at about 60 %. From 1988 to 1989, they increased their market share by about 1,66 %, which means that Norwegian sales accounted for 18 000 tonnes of a 28 000-tonne increase in consumption.

(15) *Norwegian export prices*

(a) Overall trend

Statistical data shows that the cif price of imported salmon fell by 17 % from 1986 to 1989. During the investigation period, the unit price fell from ECU 6,21 a kilo to ECU 4,93 a kilo, 20,61 % down on 1988 prices.

(b) Undercutting

A quality-by-quality, month-by-month comparison on the main Community markets for Norway's salmon exports revealed the downward trend in prices during the investigation period to be reflected in substantial undercutting by the firms investigated.

(1) The Commission primarily based its calculations on information gathered and verified during the investigation. Owing to the use of a sampling technique, this approach was not always possible. Consequently, the following sources were used for recitals 15 (b), 19, 20, 21, 22 and 23 : replies from firms investigated ; for recitals 13 and 15 (a) : Eurostat statistics ; for recitals 14 and 18 : a combination of the information contained in the complaint and Eurostat statistics.

Undercutting on whole and gutted salmon ranged from 2 % to 37 % on the French market and 2 % to 33 % on the Dutch. Undercutting on the gutted salmon which accounts for the bulk of Norwegian exports to the German market ranged from 3 % to 25 %.

II. Impact on the Community industry concerned

Introductory note

(16) Since farmed salmon is a food product, no useful distinction may be made between production and sales.

As a 'fresh' product, 'harvested fish' must either be sold immediately or processed for sale in other forms. There is furthermore a limit to the time salmon may be kept at a fish farm before becoming unfit for human consumption. Stocks are therefore of no significance to this case.

To assess the impact on the Community industry of salmon imports from Norway, the Commission took account of the following factors :

(17) *Community sales*

The volume of Community sales rose from about 10 800 tonnes in 1986 to 31 000 tonnes in 1989, an increase of 187 %.

(18) *Market share*

From 1986 to 1989, the complainants' share of the Community market remained stable at around 32 %, while Community consumption increased by nearly 190 %.

However, in 1989 Community producers saw their market share down 2,3 % on the previous year, their sales having risen by only 31,59 % against an increase in Community consumption of 40,98 %.

(19) *Prices*

The Community industry cut its prices by 18,9 % between 1986 and 1989, from ECU 5,97 a kilo to ECU 4,84. Actually, prices remained stable at around ECU 6 a kilo from 1986 to 1988 : the fall occurred during the investigation period.

(20) *Financial results*

Information gathered from a representative sample of the Community industry shows that the financial situation of Community producers worsened between 1986 and 1989. All but one of the Community producers saw either a decline in profits or financial losses. This deterioration continued during the investigation period : while only one producer made losses in 1988, the following year two-thirds were showing trading deficits ranging from 0,3 % to 69 %.

(21) *Employment*

Employment in the Community industry showed steady growth until 1988, but this dipped noticeably in 1989. Small production units stabilized the number of their employees, while larger ones cut back on recruitment.

(22) *Investment*

Vigorous growth in productive investment between 1986 and 1988 gave way in 1989 to an appreciable decline in capital spending.

(23) *'Underselling'*

The investigation revealed 'underselling' of 29,6 % when the Community's production costs plus a reasonable profit margin of 15 % and the cost of transport were compared with the average cif unit price of imports from Norway.

III. Conclusions concerning injury

(24) Relatively stable and balanced until 1988, the state of the Community market in farmed salmon suddenly deteriorated in 1989. The impact of price undercutting on the French, Dutch and German markets coupled with the effect of volume (Norway held over 60 % of the Community market) forced Community producers to cut appreciably the price of sales on the Community market (down 18,10 %), leading to sometimes considerable financial losses.

Against a background of increasing consumption, the complainants were able to limit their loss of market share to 2,3 % only at the price of these financial losses.

Other indicators, such as jobs and investment, also testify to a deterioration in the situation of the Community industry in 1989.

The above findings show the existence of injury, mainly in the form of price cuts forced on Commuity producers and the worsening of their financial situation.

E. CAUSAL LINK

(25) Since exports from Norway represent over 60 % of the Community market, the downward pressure exerted by the Norwegians on prices in 1989 was injurious to the Community's still embryonic salmon industry.

(26) Although exports from other non-member countries broke on to the market between 1986 and 1989, they amounted in 1989 to only 7 138 tonnes (7,36 % of the Community market), equivalent in volume terms to only 12,13 % of Norwegian exports. These other non-member countries increased their combined market share by only 0,67 % in 1989, compared with 1,61 % for the Norwegians.

(27) Furthermore, prices for salmon imported from places other than Norway fell in line with those for imports from Norway between 1986 and 1989. The price of non-Norwegian exports remained relatively stable in the investigation period, while that of imports originating in Norway fell by 20,61 %, 11,3 % resulting from dumping.

(28) Lastly, attention was also drawn to the negative influence of dumped imports of Pacific salmon. It should be underlined that imports of frozen Pacific salmon fell by 42,6 % from 1987 to 1988 and by 33,5 % from 1988 to 1989, a decline of 61,8 % from 1987 to 1989, and that imports of fresh Pacific salmon account for only 1 % of the Community's fresh salmon consumption.

(29) It has been suggested that the Community producers' difficulties were the result of increases in their production costs, the impact of disease and storms, and increasing financing costs owing to rising interest rates.

It should be pointed out that disease and storms have also hit Norwegian salmon farming, but above all that the impact of these additional costs is relatively small in so far as these risks are generally covered by insurance.

As for financing costs, their relative share in the structure of Norwegian production costs was not found to differ significantly from that of Scottish producers, i.e. 2,8 % compared with 3,6 %, and does not account for the financial difficulties experienced by Community producers during the investigation period.

(30) In conclusion, the fall in the price of Norwegian imports is found to coincide with the injury caused to the Community industry, in view of the level of undercutting owing to dumping by Norwegian exporters and the size of their market share (60 %).

F. COMMUNITY INTEREST

(31) The decision to take defensive action against imports of Norwegian salmon must take account of the different interests existing side-by-side on this market and the characteristics of the market as determined by the type of product concerned.

(32) From the standpoint of the Community producers, certain associations drew the Commission's attention to the fact that salmon production in Scotland and Ireland has contributed greatly to the development process needed to restore the regional balance at Community level. It would therefore be regrettable if the economic fabric developing there, characterized by a large number of small and medium sized enterprises, were allowed to weaken.

(33) From the consumers' perspective, it was argued that if an anti-dumping duty were imposed on imports of Norwegian salmon, Community production would neither be able to replace supplies from Norway, since Community producers are already operating at full capacity, nor supply salmon weighing over 5 kg, since Community salmon weigh less generally.

(34) Lastly, certain users argued that the increase in the price of fresh salmon from Norway could cause the Community's processing industry to relocate, in Norway itself or elsewhere.

G. NEED FOR MEASURES

(35) In 1989 the Norwegian Government adopted a series of measures aimed at restricting the volume of salmon supplied to the market. Restrictions will apply to the award of new operating licences on the one hand, and the farming of salmon fry and samlet on the other. At the pre-marketing stage, the Norwegian industry assumed the management of a freezing programme aimed at preventing saturation of the market by channelling supply.

The combination of these measures led to an appreciable increase in prices on the Community market from the beginning of 1990.

(36) This change in the market situation should be sustained, given the Norwegian Government's stated wish to contribute to the balanced development of fresh salmon exports to the Community while respecting traditional trade flows.

Aware of the serious difficulties caused by unstable salmon prices on the Community market, the Norwegian Government has undertaken to combat factors which might disturb the balance of supply and demand, and to encourage the application of any measure likely to stabilize the market as a whole.

In the circumstances, the Commission considers it unnecessary to impose anti-dumping measures concerning farmed salmon originating in Norway.

H. TERMINATION OF THE ANTI-DUMPING PROCEEDING

(37) In the circumstances, the anti-dumping proceeding should be terminated without the imposition of trade protection measures.

(38) There was no objection from the Anti-dumping Committee to this conclusion with the exception of the United Kingdom and Ireland who expressed reservations.

(39) The complainants have been informed of the facts and main considerations underlying the Commission's intention to terminate the proceeding and have not contested them.

HAS DECIDED AS FOLLOWS:

Sole article

The anti-dumping proceeding concerning imports of Atlantic salmon originating in Norway, falling within CN code ex 0302 12 00 is hereby terminated.

Done at Brussels, 15 March 1991.

For the Commission

Frans ANDRIESSEN

Vice-President