II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 June 2001

amending Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway

(notified under document number C(2001) 1662)

(2001/544/EC)

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 Community [1], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [3], and in particular Article 13 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) On 31 August 1996, by means of two separate notices published in the *Official Journal of the European Communities*, the Commission announced the initiation of an anti-dumping proceeding [4] and an anti-subsidy proceeding [5] in respect of imports of farmed Atlantic salmon originating in Norway.

(2) These proceedings resulted in anti-dumping and countervailing duties being imposed by Council Regulations (EC) No 1890/97 [6] and (EC) No 1891/97 [7] in September 1997, in order to eliminate the injurious effects of dumping and subsidisation.

(3) In parallel to this, by Decision 97/634/EC [8], the Commission accepted undertakings from 190 Norwegian exporters and imports of farmed Atlantic salmon originating in Norway which were exported by these companies to the Community were exempted from the said anti-dumping and countervailing duties.

(4) The form of the duties was later reviewed and Regulations (EC) No 1890/97 and (EC) No 1891/97 were replaced by Regulation (EC) No 772/1999 [9].

B. FAILURE TO COMPLY WITH THE UNDERTAKING

(5) The undertakings offered by the Norwegian companies oblige them, *inter alia*, to export the product concerned to the Community at or above certain minimum price levels ('MIPs') laid down in the undertaking. These MIPs, which eliminate the injurious effects of dumping, are applicable to different 'presentations' or categories of salmon (e.g. 'gutted fish, head off', 'gutted fish, head on' etc.).

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ L 288, 21.10.1997, p. 1.
[4] OJ C 253, 31.8.1996, p. 18.
[5] OJ C 253, 31.8.1996, p. 20.
[6] OJ L 267, 30.9.1997, p. 1.
[7] OJ L 267, 30.9.1997, p. 19.
[8] OJ L 267, 30.9.1997, p. 81. Decision as last amended by Decision 2000/744/EC, OJ L 301, 30.11.2000, p. 82.
[9] OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Regulation (EC) No 2606/2000, OJ L 301, 30.11.2000, p. 61.

(6) The companies are also obliged to provide the Commission with regular and detailed information concerning their sales to the Community in a quarterly report of all sales transactions of farmed Atlantic salmon sold by them (or any of their related importers in the Community), to unrelated customers in the Community.

(7) Without prejudice to its right to revoke the undertaking pursuant to Article 8(10) of Council Regulation (EC) No 384/96, the Commission performs on-the-spot verification visits at the premises of selected companies on a regular basis in order to determine the veracity and accuracy of the information provided in these quarterly reports. In this regard, visits were made in November 2000 to several exporters in Norway.

(8) At one company visited, Haafa Fish AS (UT No 1/60, TARIC additional code 8302, 'Haafa fisk AS'), it was found that for the first and third quarters of 2000 the net weighted average sales prices for 'presentation f' (i.e. 'whole fish fillets exceeding 300 g in weight') was significantly below the MIP fixed in clause C.3 of the undertaking. In addition the net weighted average sales price for 'presentation b' (i.e. 'gutted fish, head on') during the third quarter of 2000 was also well below the MIP stipulated in the undertaking.

(9) Haafa Fish AS had also reported to the Commission several consignments of salmon apparently sold to a company in Denmark, however, the visit showed that Haafa Fish AS had prepared the invoices for these consignments on behalf of another Norwegian company which did not have an undertaking accepted by the Commission.

(10) In respect of these transactions, it was found that Haafa Fish AS did not actually pay the supplier in Norway for the goods, nor did it receive payment for them from the company in the Community. It was stated that payment for these shipments was made instead by the Community importer direct to the supplier in Norway, with Haafa Fish AS receiving what was effectively a commission from the supplier.

(11) It is considered that this type of business practice is incompatible with the obligations imposed by the undertaking since the benefit of the undertaking is only intended to cover exports made by Haafa Fish AS and not third parties from whom the Commission has not accepted an undertaking. In addition, Haafa Fish AS does not know how much was actually paid by the importer to the supplier and cannot therefore even be certain that the amount paid was at or above the MIP.

(12) It follows that in submitting quarterly undertaking reports of 'sales' to the Community which were not made by it, but by another exporter, and which did not necessarily reflect the real value of the underlying financial transactions, the company made false representations and misled the Commission with regard to its true function as the exporter capable of respecting the undertaking granted in its favour, and also as to the true nature and price level of certain sales, contrary to the requirements of the undertaking.

(13) In view of this and the price violations set out in recital, the Commission concludes that a breach of the undertaking has occurred. Accordingly, acceptance of the undertaking offered by Haafa Fish AS should be withdrawn and definitive anti-dumping and countervailing duties imposed against it.

(14) The company was informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive antidumping and countervailing duties against it. It was also granted a period within which to request a hearing and to make representations, however, no comments were received within the time limit set.

C. **CHANGES OF NAME AND OWNERSHIP**

(15) One Norwegian exporter with an undertaking, Polar Seafood Norway AS (UT No 1/140, TARIC additional code 8247), advised the Commission that the group of companies to which it belonged had been reorganised that another company within the group, Polar Salmon AS, was now responsible for exports to the Community. The company therefore requested that its name be replaced by that of Polar Salmon AS on the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

(16) Two other exporters, Hydro Seafood Norway AS (UT No 1/66, TARIC additional code 8159) and Hydro Seafood Rogaland AS (UT No 1/145, TARIC additional code 8256) advised the Commission that their ownership and names had changed, and requested that the list of companies from which undertakings are accepted be amended accordingly.

(17) Having verified the nature of the requests, the Commission considers that they are all acceptable since the modifications do not entail any substantive changes which would affect the reassessment of dumping or subsidisation. Nor do these changes affect any of the considerations on which the acceptance of the undertaking was based.

(18) Consequently, the names of Polar Seafood Norway, Hydro Seafood Norway AS and Hydro Seafood Rogaland AS should be changed to Polar Salmon AS, Marine Harvest Norway AS and Marine Harvest Rogaland AS respectively on the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

D. **CESSATION OF TRADING BY TWO NORWEGIAN COMPANIES**

(19) The Commission has also been advised that two Norwegian companies from which undertakings were accepted, Delfa Norge A/S (UT No 1/36, TARIC additional code 8134) and OK-Fish Kvalheim AS (UT No 1/134, TARIC additional code 8239) recently ceased trading and have either been wound up, or are in the process of being wound up. This information was received in the case of Delfa Norge A/S from the majority shareholder in the company and, in the case of OK-Fish Kvalheim AS, from the official liquidator. Accordingly, the names of these two companies should be deleted from the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

E. **VOLUNTARY WITHDRAWAL OF AN UNDERTAKING**

(20) Following changes in its trading patterns, Nova Sea AS (UT No 1/130, TARIC additional code 8235), advised the Commission that it wished to withdraw its undertaking. Accordingly, the name of this company should be deleted from the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

(21) In view, however, of the voluntary nature of the withdrawal, the company was advised that it could, if it so wished (and subject to certain conditions), offer an undertaking again in the future as a new exporter in accordance with Article 2 of Regulation (EC) No 772/1999.

F. **AMENDMENT OF THE ANNEX TO DECISION 97/634/EC**

(22) In view of the above changes, the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC should be amended accordingly.

(23) The Advisory Committee has been consulted on all of the above changes and has raised no objections.

(24) For the sake of clarity, an updated version of the Annex to that Decision is published herewith, showing all the exporters whose undertakings are currently in force. In parallel to this Decision, the Council, by Regulation (EC) No 1469/2001 [1] has also withdrawn the exemption from the anti-dumping and countervailing duties granted to Haafa Fish SA, Delfa Norge A/S, OK-Fish Kvalheim AS and Nova Sea AS and transferred the exemptions granted to Polar Seafood Norway AS, Hydro Seafood Norway AS and Hydro Seafood Rogaland AS to Polar Salmon AS, Marine Harvest Norway AS and Marine Harvest Rogaland AS respectively by amending the Annex to Regulation (EC) No 772/1999,

HAS DECIDED AS FOLLOWS:

Article 1

The Annex to Decision 97/634/EC is replaced by the Annex hereto.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 26 June 2001.

For the Commission

Pascal LAMY

Member of the Commission

[1] See page 1 of this Official Journal.

ANNEX

LIST OF COMPANIES FROM WHICH UNDERTAKINGS ARE ACCEPTED

Undertaking No	Company name	TARIC additional code
3	Rosfjord Seafood AS	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
15	A/S Aalesundfisk	8113
16	Austevoll Eiendom AS	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/S	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
39	Domstein Fish A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Fjord Seafood ASA	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd AS	8145
50	Fossen AS	8147

Undertaking No	Company name	TARIC additional code
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
58	Grieg Seafood AS	8300
61	Hallvard Lerøy AS	8303
62	Fjord Seafood Måløy A/S	8304
66	Marine Harvest Norway AS	8159
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas A/S	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Misundfisk AS	8202
100	Naco Trading AS	8206
101	Fjord Seafood Midt-Norge A/S	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227

Undertaking No	Company name	TARIC additional code
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Frionor AS	8314
128	Norwell AS	8316
137	Pan Fish Sales AS	8242
140	Polar Salmon AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
144	Rolf Olsen Seafood AS	8254
145	Marine Harvest Rogaland AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Prima Nor AS	8259
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276
167	Fjord Domstein A/S	8278
168	SMP Marine Produkter AS	8279

Undertaking No	Company name	TARIC additional code
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Fish AS	8102
192	Westmarine AS	8625
193	F. Uhrenholt Seafood Norway AS	A033
194	Mesan Seafood AS	A034
195	Polaris Seafood AS	A035
196	Scanfish AS	A036
197	Normarine AS	A049
198	Oskar Einar Rydbeck	A050
199	Emborg Foods Norge AS	A157
200	Helle Mat AS	A158
201	Norsea Food AS	A159
202	Salmon Company Fjord Norway AS	A160
203	Stella Polaris AS	A161
204	First Salmon AS	A205
205	Norlaks A/S	A206