II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 August 2002

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

(2002/743/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 (the product concerned) originating in Norway.

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

(3) In parallel to this, by Decision 97/634/EC [8], as last amended by Decision 2002/157/EC [9], the Commission accepted undertakings from 190 Norwegian exporters and imports of the product concerned to the Community by these companies 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 [10], as last amended by Regulation (EC) No 322/2002 [11].

(5) Following indications that the existing measures may not be achieving their intended results, an interim review of the measures [12] was initiated in February 2002 pursuant to Article 11(3) of Council Regulation (EC) No 384/96 (the basic Anti-Dumping Regulation) and Article 19(1) of Council Regulation (EC) No 2026/97 (the basic Anti-Subsidy Regulation).

(6) Having reason to suspect that certain companies were not observing the terms of their undertakings, by Regulation (EC) No 452/2002 [13] (the Registration Regulation) and pursuant to Article 14(5) of the basic Anti-Dumping Regulation and Article 16(4) of the basic Anti-Subsidy Regulation, the Commission made imports by Norwegian companies with undertakings subject to registration. The duration of the Registration Regulation was extended for a further period by Regulation (EC) No 1008/2002 [14]. Consequently, in the event of a finding

[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.
[9] OJ L 51, 22.2.2002, p. 32.
[10] OJ L 101, 16.4.1999, p. 1.
[11] OJ L 51, 22.2.2002, p. 1.
[12] OJ C 53, 20.2.2002, p. 10.
[13] OJ L 72, 14.3.2002, p. 7.
[14] OJ L 153, 13.6.2002, p. 9.

of a breach or withdrawal of an undertaking, duties may be levied retroactively on goods entered into free circulation in the Community from the date of the breach or withdrawal of the undertaking.

B. BREACHES OF THE UNDERTAKINGS

1. Obligations of companies with undertakings

(7) The undertakings offered by the Norwegian companies oblige them, *inter alia*, to export the product concerned to the Community at or above certain minimum import 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 the product concerned (e.g. 'presentation b — gutted fish, head-on'). A degree of flexibility is built into the MIPs whereby an exporter can make some export transactions for the product concerned at prices below the MIP (i.e. down to 85 % of the MIP), as long as the net weighted average sales price for all transactions in the quarter for the presentation concerned is at or above the MIP.

(8) The terms of the undertakings also oblige the companies to provide the Commission with regular and detailed information in the form of a quarterly report of their sales to the Community (or resales by any related parties in the Community) of farmed Atlantic salmon. It is stipulated in Clause E.10 of the undertakings that such reports are to be received by the Commission no later than 30 days from the end of each quarter.

(9) Pursuant to Article 8(7) of the basic Anti-Dumping Regulation, the Commission performs on-spot verification visits on a regular basis at the premises of selected companies in order to determine the veracity and accuracy of the information provided in their quarterly reports.

2. Nordic Group ASA

(10) At one company visited, Nordic Group ASA (UT No 1/111, TARIC Additional Code 8217), it was found that the net weighted average sales prices for 'presentation b' salmon during one quarter of 2001 was significantly below the MIP fixed in clause C.3 of its undertaking.

(11) As a breach of the undertaking had occurred, the company was informed of the essential facts and considerations on the basis of which it was intended to withdraw the Commission's acceptance of its undertaking and also that of a related company (see recital 18), and to recommend the imposition of definitive anti-dumping and countervailing duties. A period was granted within which representations could be made both in writing and orally. Comments received were taken into account where appropriate.

(12) While Nordic Group ASA did not deny that the weighted average sales price of 'presentation b' salmon for the quarter in question was below the MIP level, it was, however, claimed that there were mitigating circumstances for this. It was stated that employees of Nordic Group ASA had verbal instructions concerning the use of the salmon undertaking's '15 % flexibility' clause (see recital 7) and that great care was to be taken to ensure that sales to a customer below the MIP were counterbalanced by sales above the MIP. In this regard, it was claimed that one employee wilfully disobeyed this instruction over a period of time between January and March 2001 and it was the action of this person which led to the breach of the undertaking. The employee concerned not only sold salmon below prices necessary to achieve compliance with the quarterly MIP, but also issued credit notes against the instructions of the company. Nordic Group ASA therefore argued that the action of this person was beyond the control of the company and that the breach was the consequence of *force majeure*.

(13) It was also stated that the company became suspicious of the actions of the employee in question in the early part of 2001 following unexpectedly low margins being achieved on sales to the country in the Community for which that person was responsible. Based on these suspicions, the employee was confronted and placed under 'administrative surveillance' from mid-February 2001 until the person's final departure from the company on 31 March 2001. It was established, however, that during this period of administrative surveillance, the employee continued to make sales to the Community at prices which contributed to the average price for the period falling below the MIP.

(14) It was the view of the company that it could not be held responsible for the actions of its employee vis-à-vis the non-respect of the MIP for the quarter in question. The Commission does not share this view as it is considered that a company must normally be held responsible for its employees' actions carried out in the course of his or her employment. In the present case, the company detected problems with regard to its sales prices early in the quarter and confronted the person concerned and placed the employee under scrutiny. However, despite this, the company continued to make sales at prices which were not in conformity with the undertaking, therefore the claim that *force majeure* occurred cannot be accepted.

(15) It was also submitted that there should exist a reasonable relationship between action taken by the Community institutions within the framework of the present system of price undertakings for farmed Atlantic salmon originating in Norway and the intended aims of these measures. In this regard it was argued that this was '… probably a one-time incident …' unique to Nordic Group ASA, and that such a situation would be unlikely to occur again in the salmon industry. In consequence, the company submitted, that if the Commission were to take no action with regard to the price violation, this would not lead to a deterioration in the overall market prices and therefore the effectiveness of the system of undertakings currently in force for the product concerned.

(16) The Commission does not share this view and considers that since an individual undertaking was offered by the company concerned, it is obliged to respect that undertaking and to take effective measures to ensure its compliance. Indeed, it is only through each company observing its undertakings on an individual basis (or having acceptance withdrawn if they do not), that the collective system of undertakings can function. In addition, given the nature and transparency of the Community market for salmon, the argument of Nordic Group ASA that the actions of a single company in selling below the MIP does not have a more general 'knock on' effect on market prices is not considered to be accurate.

(17) The arguments presented by the company do not alter the Commission's initial view that a breach of the undertaking occurred as it failed to demonstrate that the violation was due to *force majeure*. In any event, the issue of proportionality is not relevant to the decision to impose a duty as any breach of the undertaking is sufficient ground for its withdrawal

(18) It is also noted that Nordic Group ASA has a fully owned subsidiary company in Norway called Northern Seafood A/S and that this company also has an undertaking accepted by the Commission (UT No 1/121, TARIC Additional Code 8307). In order to make the action to be taken against a company which has been found to have committed a price violation effective, and to prevent it in the future from simply channelling its exports through its related company with an undertaking, it is considered appropriate to withdraw the undertakings of the violating company and its related companies and to impose definitive anti-dumping and countervailing duties against them. Nordic Group ASA was advised of this but made no comment.

(19) In the light of the above, the names of Nordic Group ASA and Northern Seafood A/S should be deleted from the Annex to Decision 97/634/EC which lists the companies from which undertakings are accepted.

3. **Norexport A/S, Nor-Fa Fish AS and Norfra Eksport A/S**

(20) It was also found that the net weighted average sales prices for 'presentation b' salmon sold to the Community during certain quarters of 2001 by three other Norwegian companies, Norexport A/S (UT No 1/113, TARIC Additional Code 8223), Nor-Fa Fish AS (UT No 1/191, TARIC Additional Code 8102) and Norfra Eksport A/S (UT No 1/116, TARIC Additional Code 8229) were also below the MIP fixed in clause C.3 of their undertakings.

(21) As breaches of the undertakings appeared to have occurred, the companies were informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertakings might be withdrawn (preliminary disclosure) and the imposition of definitive anti-dumping and countervailing duties in their place. A period was granted within which representations could be made both in writing and orally, however, only one of these companies submitted comments and requested a hearing.

(22) During the hearing, the company confirmed that the weighted average sales price of presentation b salmon for the quarter in question was below the MIP level. It was, however, claimed that there were mitigating circumstances for this as the prices of its Norwegian competitors were also, allegedly, below the MIPs and that this was the only way it could sell to the Community.

(23) The fact that there are indications that other companies may be breaching their undertakings does not mean that a company has *carte blanche* not to respect its undertaking. Accordingly a breach of the undertaking by the company concerned has occurred.

(24) As concerns the other two companies which received preliminary disclosure, one also confirmed that it had sold salmon at prices below the MIPs and the other did not respond.

(25) Accordingly, breaches of the undertakings were considered to have occurred and the three companies were therefore informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertakings would be withdrawn and of the recommendation to impose definitive anti-dumping and countervailing duties against them (final disclosure). No new facts or legal comments were received subsequent to the final disclosure.

(26) Accordingly, the names of Norexport A/S, Nor-Fa Fish AS and Norfra Eksport A/S should be deleted from the Annex to Decision 97/634/EC which lists the companies from which undertakings are accepted.

4. **Sangoltgruppa A/S**

(27) For one quarter of 2001, another Norwegian company, Sangoltgruppa A/S (UT No 1/151, TARIC Additional Code 8262) failed to present its sales report within the due deadline. It should be noted that the company had received a reminder by fax just prior to the deadline for submitting the report that its report had not yet been received by the Commission.

(28) As a breach of the undertaking appeared to have occurred, the company was informed of the essential facts and considerations on the basis of which the Commission's acceptance of its undertaking might be withdrawn and a recommendation made to impose definitive anti-dumping and countervailing duties against it (i.e. preliminary disclosure). The company was also granted a period within which to make representations subsequent to this disclosure both in writing and orally.

(29) It was stated in writing that a change in the company's ownership had occurred and that the new owners did not realise that they had an obligation to report their sales, however, no evidence was provided which showed that the late submission of the report was caused by reasons beyond the control of the company. It was therefore considered that the company had taken insufficient steps to ensure compliance with its undertaking and that a breach of the undertaking by Sangoltgruppa A/S had occurred.

(30) The company was informed of the essential facts and considerations on the basis of which the Commission's acceptance of its undertaking would be withdrawn (i.e. final disclosure) and of the recommendation to impose definitive anti-dumping and countervailing duties against it and was granted a further period within which to make representations subsequent to this disclosure.

(31) The company subsequently reiterated that it had been sold during 2001 by its owner (Company A), to another Norwegian company (Company B). This was followed later in 2001 by the re-sale of Sangoltgruppa A/S to another company (Company C), which is related to Company A.

(32) As Sangoltgruppa A/S was owned by Company A when it failed to submit the report in time and that this breach occurred before Sangoltgrupa A/S was purchased by its current owner, it was claimed that the new owner should not lose the benefit of the undertaking due to the failure of the previous owner of the company to respect the undertaking. In this regard, the company cited a case held before a WTO Panel and the WTO Appellate Body (US — CVD on UK bismuth steel, WT/DS138/R, 23 December 1999) where, it was argued, the European Communities had taken a contradictory position to the one being considered in the present case involving Sangoltgruppa A/S.

(33) In this regard, it should be remembered that the price undertaking in question was accepted from the limited company, Sangoltgruppa A/S, which has a legal personality, and not from Companies A, B or C. Indeed, whilst it is a normal fact of commercial life that the ownership of a limited liability company can change as different shareholders buy or sell stakes in that company, despite these changes in the shareholding, the legal identity of the company remains the same. It is therefore the legal person, Sangoltgruppa A/S, which has the obligation to respect the undertaking, regardless of who constitutes the shareholders of the company at any given time. As concerns the argument that this approach is inconsistent with the arguments made by the European Communities in WTO case referred to above, it should be recalled that the case in question involved the granting in the past of aid to a State owned, nationalised company which was then sold off to the private sector. It was argued by the European Communities that a private purchaser of a company at fair market value obtains no benefit from aid previously granted to the seller and that any benefit stream established for the purposes of allocating the benefit granted to the previous owner ceases to apply. It follows that any comparison of these circumstances to the circumstances of the take-over of Sangoltgruppa A/S, and its failure to respect the undertaking is incorrect.

(34) Moreover, it should be stressed that if the company's reasoning were to be considered as valid, this would mean that the change of ownership of Sangoltgruppa A/S, while not affecting its corporate name, was such as to entail substantive changes which would clearly affect the considerations on which the acceptance of the undertaking was originally based. In accordance with the Commission's consistent practice in this respect, and despite the absence of a change of name, the likely result of such a conclusion would be that the supposedly 'new' company (i.e. under new ownership), could not continue to keep the undertaking previously accepted by the Commission, a result with which Sangoltgruppa A/S would also presumably not have agreed.

(35) The company then submitted that the wording of the undertakings means that the Commission is not obliged to impose anti-dumping and countervailing duties whenever there is a violation of a formal nature, as is the case here, and that it has discretionary powers in this regard. It was also argued that as the breach was of a minor nature and that as '… no harm has been caused to the Community industry as a result of this procedural violation', the Commission's discretion should be exercised and duties should not be imposed particularly as to do so would be punitive in its view.

(36) It should first be pointed out that in accordance with Article 8(7) of the basic Anti-Dumping Regulation and Article 13(7) of the basic Anti-Subsidy Regulation, failure to comply with the obligation to provide relevant information (e.g. non-compliance with any of the reporting requirements) '… shall be construed as a breach of the undertaking'. Furthermore, in accordance with Article 8(9) of the basic Anti-Dumping Regulation and Article 13(9) of the basic Anti-Subsidy Regulation, a definitive duty shall be imposed, in case of a breach of the undertaking. It is considered that these Articles underline the 'stand alone' importance of the reporting obligation. This is further emphasised by the clear and precise language of the undertakings themselves in which the reporting obligation is set out.

(37) In the present case, however, whilst it was not disputed that the sales report was submitted after the due deadline by Sangoltgruppa A/S, and whilst *force majeure* was claimed by the company as having occurred, no evidence was provided which showed that the late receipt of the report in question was caused by reasons beyond the control of the company. It is therefore considered that the conditions for applying the *force majeure* criteria not have been met.

(38) As concerns the argument that formal violations (stemming from failure to observe the reporting obligations) are of a secondary nature to price violations, the Commission does not share this opinion. In particular in a proceeding such as the present case where many individual price undertakings are simultaneously in force, the timely submission of undertaking reports by all the parties concerned in the correct format is the key for effective monitoring by the Commission. In these circumstances, compliance with the reporting formalities must be regarded as forming part of the primary obligations of the undertakings, in so far as those formalities are not only intended to simplify administrative procedures, but are also necessary for the proper functioning of the undertaking system as a whole.

(39) It follows with regard to the question of whether harm has been done to the Community industry by the company concerned that, as breaches of a formal nature put the efficacity of the undertakings system into jeopardy (a system set up to specifically defend the Community salmon producers from injurious dumping and subsidisation), the Commission must consider that the violation is detrimental to those producers. In any event, the supposed gravity of the breach or its consequences for Community producers is not relevant to the decision to impose a duty as any breach of the undertaking is sufficient ground for its withdrawal.

(40) As concerns whether the reimposition of duties is 'punitive', it should be recalled that undertakings should have the same effect as duties in removing the injurious effects of dumping or subsidisation. Accordingly, the reimposition of duties in case of a breach of an undertaking is not a 'punishment', but a way of restoring and ensuring the effectiveness of the anti-dumping and anti-subsidy measures originally imposed.

(41) In its submission, the company also referred to the action taken in Commission Decision 2002/157/EC [1] whereby a new undertaking was accepted from a Norwegian company (Gje-Vi AS) which had acceptance of its original undertaking withdrawn in 1998, and Council Regulation (EC) No 322/2002 [2] which exempted the said company from the anti-dumping and anti-subsidy duties.

(42) It was argued that the circumstances surrounding the acceptance of the new undertaking from this company (*inter alia*, changed circumstances, different internal management structure and no reason to believe that the same breach would re-occur if a new undertaking were to be accepted) reflect the situation in Sangoltgruppa A/S after its most recent change of ownership. Because of these alleged parallels, it was submitted that there was no need to withdraw acceptance of Sangoltgruppa A/S's undertaking.

(43) In this regard, it should be recalled that Gje-Vi AS had requested a partial interim review pursuant to Article 11(3) of the basic Anti-Dumping Regulation and Article 19(1) of the basic Anti-Subsidy Regulation and that the Commission's decision as to whether or not acceptance of another undertaking from that company would be appropriate were based on the verified findings of that review. In addition, the review in question was initiated after a period of more than three years had elapsed since acceptance of the original undertaking had been withdrawn and that the company was able to prove that the circumstances had changed and that it had introduced new management controls, etc. (see Regulation (EC) No 322/2002, recitals 10 and following).

(44) In the case of Sangoltgruppa A/S, no such review investigation has been carried out and no reasonable time period as required under the basic Anti-Dumping and Anti-Subsidy Regulations has elapsed since the violation occurred. Therefore, as the Commission is not in a position to make any determination as to what the company might or might not do in the future, the argument of the company on this point must be rejected.

(45) Accordingly, the name of this company should be deleted from the Annex to Decision 97/634/EC.

[1] OJ L 51, 22.2.2002, p. 32.
[2] OJ L 51, 22.2.2002, p. 1.

5. **Kr Kleiven & Co A/S, Seaco A/S and Mesan Holding AS**

(46) Three other Norwegian companies with undertakings namely Kr Kleiven & Co A/S (UT No 1/80, TARIC Additional Code 8182), Seaco A/S (UT No 1/157, TARIC Additional Code 8268) and Mesan Holding AS (UT No 1/194, TARIC Additional Code A034), failed to present their sales reports for one or more quarters of 2001. It should be noted that all the companies had received reminders by fax just prior to the deadline for submitting the reports that their reports had not yet been received by the Commission.

(47) As breaches of their undertaking appeared to have occurred, the companies were informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertakings might be withdrawn and a recommendation made to impose definitive anti-dumping and countervailing duties against them. The companies were also granted a period within which to make representations subsequent to this disclosure both in writing, and orally, however, none of them responded.

(48) In the absence of any information to the contrary, breaches of the undertakings are therefore considered to have occurred and, accordingly, the companies were informed of the essential facts and considerations on the basis of which the Commission's acceptance of their undertakings would be withdrawn and of the recommendation to impose definitive anti-dumping and countervailing duties against them. No responses were received from any of the companies in this regard.

(49) It is therefore considered appropriate to withdraw acceptance of the undertaking of these companies and to impose definitive anti-dumping and countervailing duties against them. Accordingly, the names of Kr Kleiven & Co A/S, Seaco A/S and Mesan Holding AS should be deleted from the Annex to Decision 97/634/EC.

6. **Johan J. Helland A/S**

(50) Another Norwegian company with an undertaking, Johan J. Helland A/S (UT No 1/77, TARIC Additional Code 8179), failed to present its sales reports for one reporting period of 2001 within the due time limit.

(51) As a breach of its undertaking appeared to have occurred, the company was informed of the essential facts and considerations on the basis of which the Commission's acceptance of its undertakings might be withdrawn and a recommendation made to impose definitive anti-dumping and countervailing duties against it. The company was also granted a period within which to make representations subsequent to this disclosure both in writing and orally. The company made a written submission, but did not request to be heard.

(52) It was not disputed that the report was submitted late but the company claimed that the late submission of the report was caused due to internal problems, however, no evidence was provided which demonstrated that these reasons were caused by circumstances beyond its control. Consequently, a breach of its undertaking has occurred.

(53) It is therefore considered appropriate to withdraw acceptance of the undertaking of this company and to impose definitive anti-dumping and countervailing duties against it. Accordingly, the name of Johan J. Helland A/S should also be deleted from the Annex to Decision 97/634/EC.

7. **Oskar Einar Rydbeck**

(54) In order to allow the effective monitoring of the undertakings accepted within the framework of the measures, parties are required by Clause E.11 of their undertakings to '… cooperate in providing whatever information is considered necessary by the European Commission for the purpose of ensuring compliance with this undertaking …'.

(55) In this regard, the Commission considers it necessary to update its records periodically concerning parties in Norway with undertakings and any relationships these parties may have, directly or indirectly, with other parties in Norway and/or the European Union.

(56) Accordingly, a short questionnaire was sent to all parties with undertakings requesting details of such relationships. In view of the importance of this information to the Commission, the parties were clearly warned that non-submission of the information requested within the deadline set would be considered as a breach of the undertaking. In such a case, and in accordance with Article 8(9) of the basic Anti-Dumping Regulation and Article 13(9) of the basic Anti-Subsidy Regulation, parties were advised that the Commission would propose withdrawing acceptance of their undertakings and imposing anti-dumping duties and countervailing duties in their place.

(57) In this regard, Oskar Einar Rydbeck, a sole proprietor (UT No 1/198, TARIC Additional Code A050) failed to submit at all the information requested. As a breach of the undertaking appeared to have occurred, Mr Rydbeck was informed of the essential facts and considerations on the basis of which the Commission's acceptance of its undertaking might be withdrawn and a recommendation made to impose definitive anti-dumping and countervailing duties against him. He was also granted a period within which to make representations subsequent to this disclosure both in writing, and orally, however, he did not respond.

(58) As no evidence was provided by Mr Rydbeck which showed that the non-submission of the information considered necessary by the Commission was caused by reasons beyond his control, a breach of the undertaking has therefore occurred. He was therefore informed of the essential facts and considerations on the basis of which the Commission's acceptance of his undertaking would be withdrawn and of the recommendation to impose definitive anti-dumping and countervailing duties against it, however, no response was received.

(59) It is therefore considered appropriate to withdraw acceptance of the undertaking of this exporter and to impose definitive anti-dumping and countervailing duties against it. Accordingly, the name of Oskar Einar Rydbeck should also be deleted from the Annex to Decision 97/634/EC.

(60) It should also be noted that the Norwegian company Norexport A/S mentioned in recitals 20 and following also failed to fulfil its undertaking obligations by not providing the information requested concerning relationships with other parties. Accordingly, in addition to the breaches set out concerning price violations, Norexport A/S is also considered to have breached its undertaking in respect of Clause E.11 thereof as well.

C. NEW EXPORTERS AND CHANGES OF NAME

1. New exporters

(61) Since the original imposition of definitive anti-dumping and countervailing duties, certain Norwegian companies have made themselves known to the Commission, claiming to be new exporters, and requested, in accordance with Article 2 of Regulation (EC) No 772/1999 in conjunction with Article 11(4) of Regulation (EC) No 384/96 and Article 20 of Regulation (EC) No 2026/97, that the exemption to the duties be extended to them.

(62) In this regard, seven such exporters, Athena Seafoods AS, Norsk Havfisk A/S, Rodé Vis International AS, Seaborn AS, Triton AS, Nordlaks Produkter AS and Codfarms AS all demonstrated that they had not exported the product concerned to the Community during the investigation period which led to the current anti-dumping and countervailing duties.

(63) The companies also showed that they are not related to any of the companies in Norway which are subject to anti-dumping and countervailing duties. In addition, they provided evidence that they had entered into irrevocable contractual obligations to export a significant amount of the product concerned to the Community.

(64) The companies have offered undertakings which are identical to those previously accepted from other Norwegian companies exporting farmed Atlantic salmon originating in Norway. By doing so, they have all agreed, *inter alia*, to respect the minimum import prices laid down therein and to provide the Commission with regular and detailed information concerning their exports to the Community.

(65) Since the undertakings offered by the companies concerned can be monitored by the Commission in the same way as those already in place, and they eliminate the injurious effects of dumping and subsidisation, the offers are considered acceptable. The companies have all been informed of the essential facts, considerations and obligations upon which this acceptance is based.

(66) Notwithstanding the fact that the anti-dumping and anti-subsidy measures are currently subject to an interim review, the names of Athena AS, Norsk Havfisk AS, Rodé Vis International AS, Seaborn AS, Triton AS, Nordlaks Produkter AS and Codfarms AS should nevertheless be added in the meantime to the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

2. Changes of name

(67) Four Norwegian exporters with undertakings, Borkowski & Rosnes A/S (UT No 1/26, TARIC Additional Code 8124), Fjord Seafood ASA (UT No 1/43, TARIC Additional Code 8140), Sea-Bell A/S (UT No 1/156, TARIC Additional Code 8267) and Astor A/S (UT No 1/22, TARIC Additional Code 8120), advised the Commission that the groups of companies to which they belonged had been re-organized and that other companies within their respective groups were now responsible for exports of salmon to the Community. Borkowski & Rosnes A/S therefore requested that its name be replaced by that of Rossa Salmon AS on the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC, and the names of Fjord Seafood ASA, by that of Fjord Marin Sales AS, Sea-Bell A/S by that of Sea Bell Salmon AS and Astor A/S by that of Midnor Processing AS on the same list.

(68) The Commission considers after verification that the requests are all acceptable since the modifications do not entail any substantive changes which would affect the re-assessment of dumping or subsidisation, nor do they affect any of the considerations on which the acceptance of the undertaking was based.

(69) Consequently, the names of Borkowski & Rosnes A/S, Fjord Seafood ASA, Sea-Bell A/S and Astor A/S should be changed to Rossa Salmon AS, Fjord Marin Sales AS, Sea Bell Salmon AS and Midnor Processing AS respectively on the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC.

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

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

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

(72) 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.

(73) In parallel to this Decision, the Council, by Regulation (EC) No 1593/2002 [1] has also withdrawn the exemption from the anti-dumping and anti-subsidy duties granted to Nordic Group ASA, Northern Seafood A/S, Norexport A/S, Nor-Fa Fish AS, Norfra Eksport A/S, Sangoltgruppa A/S, Kr Kleiven & Co A/S, Seaco A/S, Mesan Holding AS, Johan J. Helland A/S and Oskar Einar Rydbeck; granted exemption from those duties to Athena Seafoods AS, Norsk Havfisk A/S, Rodé Vis International AS, Seaborn AS, Triton AS, Nordlaks Produkter AS and Codfarms AS, and changed the names of Borkowski & Rosnes A/S, Fjord Seafood ASA, Sea-Bell A/S and Astor A/S to Rossa Salmon AS, Fjord Marin Sales AS, Sea Bell Salmon AS and Midnor Processing AS respectively, by amending the Annex to Council Regulation (EC) No 772/1999.

E. **RETROACTIVE COLLECTION OF DUTIES**

(74) As mentioned previously, imports of the product concerned are currently subject to registration by customs authorities, thus allowing the possibility of retroactive collection of anti-Dumping and anti-subsidy duties in cases of breach or withdrawal of undertakings.

(75) However, as the breaches of the undertaking by the various companies set out in this Decision all occurred prior to the entry into force of the Registration Regulation, as extended (and were identified by the Commission with final disclosure thereof notified to the companies concerned also before entry into force of the Registration Regulation), it has been decided not to impose duties retroactively in this particular case,

HAS DECIDED AS FOLLOWS:

Article 1

1. The undertakings offered by the following companies: Athena Seafoods AS, Norsk Havfisk A/S, Rodé Vis International AS, Seaborn AS, Triton AS, Nordlaks Produkter AS and Codfarms AS in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway are hereby accepted.

2. The acceptance of undertakings offered by the following exporters: Nordic Group ASA, Northern Seafood A/S, Norexport A/S, Nor-Fa Fish AS, Norfra Eksport A/S, Sangoltgruppa A/S, Kr Kleiven & Co A/S, Seaco A/S, Mesan Holding AS, Johan J. Helland A/S and Oskar Einar Rydbeck in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway is hereby withdrawn.

Article 2

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

Article 3

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, 14 August 2002.

For the Commission

Pascal LAMY

Member of the Commission

[1] See page 22 of this Official Journal.

ANNEX

LIST OF COMPANIES FROM WHICH UNDERTAKINGS ARE ACCEPTED

UT 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	Midnor Processing AS	8120
24	Atlantic Seafood A/S	8122
26	Rossa Salmon AS	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 Marin Sales AS	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
51	Fresh Atlantic AS	8148

UT No	Company name	TARIC additional code
52	Fresh Marine Company AS	8149
56	Gje-Vi AS	8153
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
79	Karsten J. Ellingsen AS	8181
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
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
112	Nordreisa Laks AS	8218
114	Norfi Produkter AS	8227
115	Norfood Group AS	8228
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Frionor AS	8314

UT No	Company name	TARIC additional code
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	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
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea Bell Salmon AS	8267
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 Seafood Sales AS	8278
168	SMP Marine Produkter AS	8279
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

UT No	Company name	TARIC additional code
193	F. Uhrenholt Seafood Norway AS	A033
195	Polaris Seafood AS	A035
196	Scanfish AS	A036
197	Normarine AS	A049
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
206	Atlantis AS	A257
207	Cape Fish AS	A258
208	Athena Seafoods AS	A379
209	Norsk Havfisk AS	A380
210	Rodé Vis International AS	A381
211	Seaborn AS	A382
212	Triton AS	A383
213	Nordlaks Produkter AS	A386
214	Codfarms AS	A400