COUNCIL REGULATION (EC) No 1891/97

of 26 September 1997

imposing a definitive countervailing duty on imports of farmed Atlantic salmon originating in Norway

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3284/94 of 22 December 1994 on protection against subsidized imports from countries not members of the European Community [1], and in particular Article 11 (6) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Complaint

(1) On 31 August 1996, the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-subsidy proceeding concerning imports of farmed Atlantic salmon originating in Norway and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged jointly by the Scottish Salmon Growers' Association Ltd and by the Shetland Salmon Farmers' Association, acting on behalf of their members whose collective production of farmed Atlantic salmon constitues a major proportion of the total Community output of this product.

The complaint contained sufficient evidence of subsidization of the imports concerned and of material injury resulting therefrom to justify the initiation of an anti-subsidy proceeding. Pursuant to Article 7 (9) of Regulation (EC) No 3284/94 (hereafter referred to as the 'Basic Regulation'), consultations were offered to the Norwegian authorities prior to the initiation of the investigation, and took place in Brussels from 19 to 20 August 1996. The consultations did not lead to a mutually agreed solution between the parties.

A parallel anti-dumping proceeding was initiated with regard to the same imports [3] and has been the subject of a separate investigation from the present anti-subsidy proceeding.

2. Initiation of investigations

(3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant Community producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within a set time limit.

(4) The following methodology was used for collection of relevant data:

(a) *Producers/exporters in Norway*

On 3 September 1996, the Commission forwarded a letter together with the Notice of Initiation and a copy of the non-confidential version of the complaint to the known associations representing salmon producers and exporters in Norway i.e. the Norwegian Fish Farmers' Association and the Federation of Norwegian Fishing Industry. It was explained that producers and exporters were requested to make themselves known by contacting the Commission and by providing certain information specified in paragraph 5 (a) of the Notice of Initiation ('the preliminary questionnaire').

On 5 September 1996, a meeting was organised at the request of the Norwegian producers and exporters, i.e. the two associations and their legal representative. It became clear that there are in Norway around 650 fish farmers involved in the production of salmon, and 200 to 300 exporters (although most exports to the Community are concentrated in the hands of 40 to 50 of them). The purpose of the meeting was for the Norwegian industry to explain to the Commission the great difficulty in securing cooperation from almost 1 000 operators in the salmon business even in the form of a response to the preliminary questionnaire. For this reason, in order to limit the investigation to a reasonable number of parties in accordance with Article 18 (1) of the Basic Regulation, it was agreed that only a selected number of

[1] OJ L 349, 31. 12. 1994, p. 22. Regulation as amended by Regulation (EC) No 1252/95 (OJ L 122, 2. 6. 1995, p. 2).
[2] OJ C 253, 31. 8. 1996, p. 20.
[3] OJ C 253, 31. 8. 1996, p. 18.

farmers and exporters should initially provide such a response. However, the Commission reserved the right to accept replies from other companies or to request information from companies not included in the initial selection.

Approximately 100 companies made themselves known to the Commission within the time-limit set. The Norwegian industry alleged that they accounted for 25 % of Norwegian production and 60 % of exports from Norway. The Commission sent a detailed questionnaire to all these companies ('the full questionnaire').

A total of 32 producers/exporters replied to the full questionnaire within the time-limit specified. These 32 companies were located in all regions of Norway and represented a significant part of Norwegian salmon production and exports. Due to the cooperation of the Norwegian Government, their questionnaire replies provided sufficient and adequate information to be representative of Norwegian salmon production for the purpose of certain parts of this investigation, although the coverage of production was not considered representative as regards other parts.

(b) *Community producers*

In view of the large number of producers supporting the complaint and the time limits to be complied with pursuant to Article 8 (9) of the Basic Regulation, the Commission decided to investigate injury on the basis of a representative sample of Community producers.

(5) The Commission sought and verified all the information it considered necessary for a determination of subsidization, injury resulting therefrom and Community interest, and carried out investigations at the premises of the following administrations/firms:

(a) *Government of Norway*

Ministry of Fisheries, Oslo

Ministry of Foreign Affairs, Oslo

Ministry of Local Government and Labour, Oslo

Ministry of Finance, Oslo

Norwegian Industrial and Regional Development Fund (SND), Oslo

(b) *Non-governmental entities in Norway*

Nor-Cargo, Skein

Kreditkassen, Norske Bank, Oslo

(c) *Producers in Norway*

Bolstad Fiskeopdrett AS, Eikelandsosen

E. Karstensen Fiskeopdrett AS, Batalden

Erwik's Laks og Ørret AS, Dyrvik

Finmark Stamfiskstasjon AS, Korsfjord

Hydro Seafood Mowi AS, Bergen

Hyen Laks AS, Hyen

Marius Eikremsvik AS, Skodje

Sørrollnesfisk AS, Hamnvik

Tom Hansen Fiskeopdrett AS, Rørvik

Veidholmen Fisk, Veidholmen

(d) *Exporters in Norway*

Aalesundfisk AS, Aalesund

Domstein Salmon AS, Måløy

Fresh Marine Company AS, Trondheim

Hydro Seafood Sales AS, Bergen

Møre Codfish, Aalesund

Nils Williksen AS, Rørvik

Rolf Olsen Seafood AS, Bergen

Salmonor AS, Bergen

Skaarfish Group A/S, Florø

Terra Seafood AS, Trondheim

TiMar Seafood AS, Trondheim

(e) *Community producers (UK)*

Aquascot, Alness

Ardessie, Dundonnell

Ardvar, Laing

Ayre, Mossbank

Dury, Laxo

Highland Fish Farmer, Aberdeen

Joseph Johnston, Montrose

Kames, Argyll

Kyles of Bute, Tighnabruich

Landcatch, Langbank

Marine Harvest, Edinburgh

Murray Seafood, Dunoon

North Atlantic, Vadlure Walls

Ocean Reaper, Scalloway

Shetland Norse, Lerwick

Strathaird, Inverness

(f) *Processors*

Pêcheries de Fécamp, Fécamp (France)

(6) The period used for the investigation of subsidies was 1 January 1995 to 31 July 1996 (hereinafter referred to as 'the investigation period'). However, for the investigation of certain injury indicators such as price undercutting, the investigation period was the 12 months immediately prior to the initiation of the investigation, i.e. August 1995 to July 1996.

(7) Having been informed of the Commission's provisional findings, the Norwegian exporters mentioned in the Annex to this Regulation and the Norwegian government offered undertakings pursuant to Article 10 of the Basic Regulation.

(8) The Commission subsequently completed the investigation on subsidization and injury and informed all parties of the essential facts and considerations on the basis of which it intended to recommend the imposition of definitive residual countervailing duty which would be applicable to those exporters who had either failed to offer an undertaking or who would subsequently withdraw their undertaking or otherwise fail to honour it. Pursuant to Article 21 of the Basic Regulation, interested parties were granted a period within which to make representations subsequent to the disclosure.

(9) The parties' representations were considered, and the Commission altered its conclusions where deemed appropriate.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(10) The proceeding covers farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen.

This definition excludes other similar farmed fish products such as large ('salmon') trout, other salmon species such as Pacific salmon as well as wild salmon and further processed types such as smoked salmon.

The product under consideration is currently classifiable under CN codes ex 0302 12 00, ex 0304 10 13, ex 0303 22 00 and ex 0304 20 13, corresponding to different presentations of the product (fresh or chilled whole fish, fresh or chilled fillets, frozen whole fish and frozen fillets). All these presentations were found to be sufficiently similar for them to constitute a single product for the purpose of the proceeding.

2. Like product

(11) The investigation showed that the farmed Atlantic salmon produced in Norway and sold for export to the Community is identical, that is to say, alike in all respects to the farmed Atlantic salmon produced by the Community industry and sold on the Community market. They should therefore be considered like products within the meaning of Article 1 (5) of the Basic Regulation.

C. SUBSIDIES

1. General

(a) *Basic approach*

(12) The complainant alleged that Norwegian Salmon growers have benefited from a number of subsidies granted by the Government of Norway, and that these subsidies fall within the definition of countervailability set out in Article 3 of the Basic Regulation.

(13) It was therefore investigated whether government institutions, including any public or private entity under the control of the Government of Norway, provided any financial contribution, as defined in Article 2 (1) of the Basic Regulation, to salmon growers in Norway. It was further investigated whether the financial contributions found to exist also conferred a benefit to their recipients.

(14) The Council has made an analysis of the alleged schemes, and determined whether these were countervailable in accordance with the Basic Regulation. Subsidies as defined above are countervailable unless they are non-specific or fall into one of the three 'green light' categories (R&D, regional or environmental aid). It should be noted that specificity must be assessed in the light of the criteria set out in Article 3 (2), (3) and (4) of the Basic Regulation and that subsides are non-specific only if they are generally available and their eligibility is automatic, and that the 'green light' status must be requested by the third country (no prior notifications having being made to the WTO) and must be demonstrated by its authorities on the basis of the criteria set out in Article 3 of the Basic Regulation. Since none of the countervailable subsidies in question are granted with reference to quantities manufactured or sold, and there are no export subsidies involved, the amount of each subsidy is allocated over total sales (either of the cooperating companies or the whole industry) made in the investigation period in accordance with Article 4 (3) (c) of the Basic Regulation and expressed *ad valorem*. The amount of subsidy is calculated on the basis of the 'benefit to the recipient' approach enshrined in Article 4 (2) of the Basic Regulation.

(15) In analysing the schemes, the Council is aware that in some cases not all salmon growers will have received exactly the same benefit of the subsidies found. However, since any grower can sell to any exporter, it is impossible to impose a company specific duty which could be enforced by customs authorities, since the identity of the grower could never be checked. Consequently, a single rate of subsidy has been calculated in all cases, since only a single country-wide duty is appropriate in this case. Moreover, although total sales of salmon in Norway have been used as the denominator, this does not mean that all salmon growers are considered to have been subsidized. Indeed, any im-

porters which consider that they have obtained salmon from less- or non-subsidized growers and/or exporters can request refunds of countervailing duty in accordance with Article 13 of the Basic Regulation.

(b) *Agreement on the European Economic Area (EEA Agreement)*

(16) The Norwegian Government alleged that certain subsidies should not be examined under the countervailing duty regulation, in view of the provisions of the EEA Agreement. Article 26 of the EEA Agreement prohibits the use of countervailing measures, unless otherwise specified in the Agreement. In this respect, Article 20 of the EEA Agreement explicitly states that provisions and arrangements that apply to fish are set out in Protocol 9 to the Agreement. Article 4 (3) of Protocol 9 expressly permits the use of countervailing measures in order to remedy the injurious effects of subsidies in the fisheries sector.

Protocol 13 to the Agreement limits the use of anti-subsidy measures to areas where the Community *acquis* is not fully integrated. This is the case as regards the fisheries sector. However, Norway referred to the fact that while some of the alleged subsidies were fish-specific (e.g. FOS/Rødfisk), others, for example regional aid and differentiated social security contributions, were 'horizontal' schemes which applied to all sectors in Norway. It was claimed that these subsidies, since they were subject to approval by the EFTA Surveillance Authority (ESA) on the basis of common State aid rules with those of the Community, should not be investigated under the Basic Regulation, which in the case of Norway could only apply to subsidies directed at the fisheries sector.

The Council's position is that all the alleged subsidies should be examined in the course of this investigation. The fact that certain 'horizontal' subsidies may be found countervailable in this case is an issue separate from their approval or otherwise by the ESA, and it does not prejudge their legal status under any international agreement. It does, however, pave the way for legitimate redress, by means of measures at the Community frontier, for a Community industry producing a product to which the full benefit of the EEA Agreement does not apply.

In this regard, the object and purpose of the Basic Regulation is to counteract the injurious effects of a subsidy found to be countervailable as regards the products under investigation, irrespective of whether the granting of the subsidy by the subsidizing country is, or is not, legitimate in view of the applicable international rules. Thus, application of the Basic Regulation to any of the 'horizonal' subsidies in no way contradicts their approval by the ESA and consequently their legality under the EEA Agreement. The application of the Basic Regulation merely concerns the effects of these 'horizontal' subsidies on production of salmon and on its export to the Community.

I. PROGRAMMES FOUND TO BE COUNTERVAILABLE

1. **Differentiated social security contributions**

(a) *Description of the scheme*

(17) The complainant alleged that the Norwegian social security system subsidizes the salmon industry through the applicability of different rates of employers' contributions depending on their location.

For the purpose of determining the rate of social security contributions, Norway is divided into five zones, with the following rates applicable to each zone:

zone 1	Central municipalities in southern Norway: 14,1 %
zone 2	Rural districts in southern Norway: 10,6 %
zone 3	The municipalities Frøya, Hitra, Osen, Åfjord, Roan and Smøla: 6,4 %
zone 4	All municipalities in Troms county except those in zone 5, all municipalities in Nordland county and 13 municipalities in Nord-Trøndelag county: 5,1 %
zone 5	All municipalities in Finnmark county and the northern municipalities in Troms County Municipality, Karlsøy, Kvænangen, Kåfjord, Lyngen, Nordreisa, Skjervøy and Storfjord: 0 %

Pursuant to the National Insurance Act of 17 June 1966, Norway applies a differentiated employers' social security contribution system. The scheme was introduced in 1975 as an amendment of the National Insurance Act. The programme is part of a policy to maintain and develop the more remote regions of Norway. The contribution is calculated as a percentage of the gross salary payments (see above).

The percentage applied for determining the rate of contribution depends upon the residence of the employee. All economic sectors benefit from the exemption or reduction, including the salmon industry.

The zones are established on the basis of a model consisting of 11 indictors: net migration, distances to centres of more than 5 000, 10 000 or 50 000 inhabitants, percentage of the population living in villages or towns, number of females per 100 males, percentage of the population aged 20 to 49, unemployment rate, percentage of the population receiving disability pensions, percentage of the population holding university degrees, average taxable income, percentage of population employed in primary sectors and percentage of labour force employed in selected tertiary sectors. These indicators are weighted by 0,075, except for migration, which is weighted by 0,25. This analysis was last carried out in 1988 at municipal, regional and county level.

(b) *Existence of a subsidy*

(18) An analysis of the questionnaire response and verification by the Norwegian Government revealed that the differentiated employers' social security contribution constitutes a subsidy as defined in Article 2 of the Basic Regulation.

The reduction in, or exemption from, employers' social security contributions constitutes a financial contribution by the government of Norway. The system constitutes government revenue that is foregone or not collected. In exempting or reducing the employers' social security contributions, in all zones except zone 1, the government revenue is reduced. Therefore, the scheme falls within the definition of a financial contribution in accordance with Article 2 (1) (a) (ii) of the Basic Regulation.

The scheme clearly confers a benefit to the employers in accordance with Article 2 (2) of the Basic Regulation. In employing employees resident in zones 2 to 5, employers obtain a benefit compared to the situation that would exist if all employees were resident in zone 1 and were subject to the basic rate of 14,1 %. It should be noted that 73 % of the population resides in zone 1. The benefit to employers employing employees in zones 2 to 5 is the difference between the actual amount of social security contributions paid and the amount of such contributions that would have been paid had the basic rate of 14,1 % been applied.

The Norwegian Government claimed that the scheme in question is a general tax measure, and that since the rate of contributions for each zone was set separately by central government no revenue was foregone. This argument cannot be accepted, since this kind of scheme involving different rates of contibution by region is equivalent to a system of reductions and exemptions from a basic rate and clearly confers a benefit to those enterprises which qualify for such reductions or exemptions. For this reason, the Council has determined that the amount of subsidy should be measured by reference to the highest rate of contribution.

(c) *Specificity*

(19) This subsidy is specific within the meaning of Article 3 (2) (a) of the Basic Regulation. The investigation has demonstrated that in practice almost all employees live in the same zone as the employer. Consequently, the scheme confers a *de facto* benefit to employers on the basis of their location. The scheme is specific since employers located in zones 2 to 5 pay less than the basic rate in zone 1, and therefore the benefit conferred is limited to firms located in those zones.

(d) *Calculation of the benefit*

(20) The Government of Norway did not provide global figures for social security contributions by salmon producers. Therefore the basis for the calculation of the benefit was the social security contributions of the cooperating and verified producers located in zones 2, 3, 4 or 5. The subsidy was calculated by comparing the actual payment of social security contributions with the amount which would have been paid had the basic rate of 14,1 % been applied.

One cooperating producer, which has a large number of related companies involved in the farming of the product concerned, submitted information concerning only a limited number of related companies in the group. In these circumstances, information on the social security contributions of this group was not taken into account as it was incomplete.

The difference was considered to be the benefit to the salmon producers. The total subsidy, when expressed as a percentage of the turnover of the cooperating and verified producers (including zone 1), amounts to 0,93 %.

2. The Norwegian Industrial and Regional Development Fund (SND)

(a) *The complaint*

(21) According to the complainant, the SND is the main source of finance for the fish-farming industry. Norwegian salmon growers have benefited from SND subsidy programmes such as grants, loans and loan guarantees.

(b) *Description of the scheme*

(22) The Norwegian Industrial and Regional Development Fund (known by the acronym 'SND') was established by Act No 97 of 3 July 1992. The SND is operated by the government and is controlled by the Ministry of Industry and Energy. The purpose of the SND is to promote the commercial and socio-economic development of Norwegian industry. The support is primarily targeted at small and medium-sized enterprises and regions which are economically underdeveloped.

In practice, projects are funded through a combination of loans and grants. Each applicant has to submit a financial overview of the project for which financing is requested. If financial aid is granted, a percentage of the total cost is covered by a grant and another percentage is usually covered by a loan.

The SND also guarantees commercial loans. In addition, it provides equity infusions (see recital 69).

(c) *Types of subsidy*

A. Grants

(23) The SND grant scheme is funded partly through the budget of the Ministry Industry and Energy (grants covering all regions) and partly through the budget of the Ministry of Local Government and Labour (grants to assisted areas). In the period 1986 to 1996, around Nkr 270 million was paid in grants to salmon growers and Nkr 100 million was paid to mixed/integrated enterprises (processors and preservers handling fish including salmon).

The grant scheme includes 5 types of grants:

1. development grants;
2. business development grants for SMEs in central regions;
3. investment grants in assisted areas;
4. business development grants in assisted areas;
5. regional development grants.

Grants 2, 3 and 4 are limited to certain regions in Norway while programmes 1 and 5 are available to all regions.

Existence of a subsidy

(24) The SND grant scheme clearly constitutes a subsidy within the meaning of Article 2 of the Basic Regulation.

The grant scheme provides a financial contribution since there is a direct transfer of funds to the beneficiaries within the meaning of Article 2 (1) (a) (i) of the basic Regulation. The scheme confers a benefit to salmon producers, since investment costs are reduced by the amount of the grant.

Specificity

(25) As regards SND grants, specificity is twofold:

— regional specificity, and

— lack of objective criteria and of automatic eligibility for non-regional schemes.

(26) With regard to the business development grants in central regions, investment grants in assisted areas and business development grants in assisted areas, access to the subsidy is limited to enterprises in certain regions and specificity therefore exists.

(27) With regard to the grants which are available nationwide, most SND funding is distributed to each county in Norway. Each individual county decides which projects are eligible for support. Although SND funding is in theory generally available, support is not granted on a consistent basis to eligible projects. The investigation revealed that there are no objective criteria applied in selecting projects. Since the counties have the ultimate responsibility for selection of projects, the criteria and priorities differ between counties, and even within the counties the criteria are not consistently applied. In the absence of objective criteria, it is clear that a large amount of discretion exists. The amount of discretion exercised is evident from the questionnaire reply of the Norwegian government. The response contains examples of similar applications where one is rejected while another one was accepted. Although the existence of a certain amount of discretion for granting authorities does not necessarily render a subsidy specific, the complete absence of any consistency and objective criteria in the counties as regards the selection of projects means that the non-specificity requirements of Article 3 (2) (b) of the Basic Regulation are not met. In addition, certain SND benefits have been granted in disproportionately large amounts to the fish farming sector over a number of years, which would in any event lead to a finding of specificity under Article 3 (2) (c) if the Basic Regulation as regards the SND as a whole.

(28) In conclusion, the SND grants are specific within the meaning of Article 3 (2) of the Basic Regulation. There are no objective criteria for approving

grants, and certain SND benefits have been disproportionately granted to fish farming. In addition, the grants which are restricted to certain regions are by definition specific.

Green-light claim

(29) The Norwegian government claimed green-light treatment for regional aid granted by SND in the form of investment grants in assisted areas and business development grants in assisted areas in accordance with Article 3 (8) of the Basic Regulation.

In order to assess the merits of this claim, it is necessary to analyse it in the light of the criteria set out in the abovementioned Article.

(i) Assessment

(a) *Positive elements*

(30) The grants are given within a general framework of regional aid, as defined by regulation and in Norway's regional plans.

(31) Eligible regions are designated according to their level of GDP per capita, unemployment and population density, and in total cover about 25 % of the population of Norway. These are three eligible regions, zones A, B and C. The rest of Norway is not eligible for regional aid.

(32) Aid ceilings have been established according to the level of development of each eligible region. Zone A, the least developed (covering the far north of Norway), is eligible for aid up to 50 % of eligible costs, zone B up to 30 % and zone C up to 25 %. All percentages include a supplement for small and medium-sized enterprises.

(33) The eligible regions are clearly designated contiguous geographical areas.

Norway is divided into 19 counties and 435 municipalities. All eligible regions consist of a mixture of whole counties and of groups of municipalities within counties. The county is the basic unit of analysis as regards regional aid, but many counties consist of municipalities which are in different zones, and several counties include a mixture of eligible and non-eligible municipalities. In spite of this, however, there appears to be homogeneity in the attribution of different municipalities to the different zones and the boundaries of each zone always coincide with municipality boundaries.

(b) *Negative elements*

(34) On the basis of the four elements examined above, the green light criteria set out in Article 3 (8) of the Basic Regulation are so far met. However, within the regions, aid is specific, within the meaning of the Basic Regulation.

As has already been explained, although the aid is mainly granted by central government, it is the county authorities which select recipients and disburse the aid. Since the criteria for selecting eligible companies are subjective (see recital 25), this gives rise to inconistency from county-to-county in how aid is granted, and therefore there is a lack of consistent application within each zone. In addition, certain SND benefits have been granted disproportionately to the fish farming sector. Therefore specificity exists within each assisted region.

(35) Moreover, the actual application of the criteria for selecting eligible regions is not consistent. Article 3 (8) (iii) of the Basic Regulation stipulates that one of the following criteria must be met:

— GDP per capita below 85 % of national average,

— unemployment rate at least 110 % of the national average.

It has been established, that while all eligible regions in zone A and zone B (either whole counties or groups of municipalities) meet the above GDP criteria, the situation as regards zone C is more complicated. Overall, zone C has a GDP per capita equivalent to 81,6 % of the national average, but in case of one county (Sogn og Fjordane) within zone C, neither the GDP nor the unemployment criteria are met; and the same is true of a number of other groups of municipalities which constitute the zone C region within a particular county.

(ii) Conclusion

(36) Under Article 3 (8) of the Basic Regulation, aid must be non-specific within eligible regions for the subsidy to be non-actionable. In this case, since aid within all eligible regions is specific, none of them qualify for green light treatment. As regards zone C, the fact that several eligible areas within it do not meet the GDP or unemployment criteria constitutes a second factor which in any event disqualifies zone C. Consequently, the green light claim has to be rejected.

Therefore, it is concluded that all SND grants are countervailable.

Calculation of the benefit

(37) During the verification visits to salmon growers, it was established that SND grants were in general used for the acquisition of fixed assets. Therefore, in accordance with Article 4 (3) (d) of the Basic Regulation, the value of the grant was allocated over a period reflecting the normal depreciation of fixed assets in the industry. The investigation revealed that according to general Norwegian accountancy principles productive assets are written down at an annual rate of 15 %, which results in a 7-year depreciation period. Since this practice was also followed by the salmon growers, this depreciation period was used for the allocation of the benefit of the grants.

(38) The total amount of grants made to salmon growers during the period 1 January 1989 to the end of the investigation period, (Nkr 204 million) was allocated on a straight-line basis over 7 years. The benefit for each year is increased by the commercial interest rate, thus reflecting the normal cost to the beneficiary of borrowing an equivalent amount each year. Using this method, the amount of grants attributed to the investigation period is Nkr 49 980 000 including the addition of 8,25 % annual interest, the average rate for the period concerned.

The total sales (export and domestic) of Norwegian salmon producers in the investigation period amounted to Nkr 10 460 million.

The grant amount was expressed as a percentage of the total sales value; the subsidy is 0,48 %.

B. Loans

(39) SND operates a loan programme. This programme consists of three types of loans:

— secured loans for long-term investment,

— risk capital loans for investment,

— risk capital loans for investment in assisted areas.

The criteria for eligibility are identical for the grants.

The basis for stipulating the interest rate in each case is the interest rate on government bonds plus a deposit commission of 0,4 %. The investigation showed that during the investigation period the interest rate was close to the interest rate of commercial banks. However, in the past loans were granted at an interest rate lower than tha commercial interest rate.

The SND loans are usually granted with a grace period of 1 or 2 years without any repercussion on the interest rate.

Existence of a subsidy

(40) The SND loan programme constitutes a subsidy as defined in Article 2 of the Basic Regulation.

There is a financial contribution in the provision of loans from the government and a benefit is conferred in three ways: (a) the loan is given interest-free for 1 or 2 years (depending on the amount of the loan and the repayment period); (b) the interest rate is lower than the interest for similar loans in the private market; or (c) the loans are not repaid and are forgiven by the SND.

The SND incurred losses of approximately Nkr 235 million on loans to the fish farming sector between 1989 and the end of the investigation period.

Specificity

(41) Thus, the SND loan programme is countervailable with regard to loans which fall into any of the categories above. Since the same criteria for eligibility apply as for SND grants (recitals 25 to 28), the specificity analysis for grants is applicable to loans. Furthermore, there is clear evidence of disproportionate use of this subsidy by the fish farming sector in certain years.

Calculation of the benefit

(42) As regards the preferential interest aspect of SND loans, the calculation of the benefit was done through an analysis of the SND loans with the cooperating and verified producers. The SND loans confer two types of benefit: a prefential interest rate (loans prior to 1994) and grace period (period of 1 or 2 years of interest-free loan provision).

The subsidy was calculated by comparing the interest which was actually paid with the normal commercial interest rate. The commercial interest rate was taken from the monthly interest rates of Norske Bank, the major commercial bank in Norway.

The interest benefit was divided by the term of the loan in order to calculate the annual benefit. Finally, the benefit was allocated to the investigation period. One cooperating producer, which has a large number of related companies involved in the farming of the product concerned, originally submitted information concerning only a limited number of related companies in the group. Information relating to loans received by other companies in the group was submitted after the deadline for receipt of such information. In these circumstances, information on the loans received by this group was not taken into account as it was incomplete.

Expressed as percentage to the turnover of the cooperating and verified salmon producers which received SND loans, the subsidy amounts to 0,19 %.

(43) As to the losses incurred by the SND on loans due to non-repayment, it was established that such losses were heavily concentrated in the period 1990 to 1993. Although the benefits, in the form of a relief of obligations incurred by the salmon industry, were obtained on a regular basis, attribution to the year in question is not appropriate, since the unusual concentration of losses over a short period constitutes 'special circumstances' under Article 4 (3) (e) of the Basic Regulation, and justifies allocation over time. Therefore this benefit can be characterized as a *de facto* non-recurring grant, and is allocated over the normal period of 7 years (see recital 37).

An additional argument in favour of this approach is the fact that it is reasonable to assume, in the absence of sufficient cooperation from Norwegian producers, that such large amounts of money must have been used to acquire fixed assets, since it has already been established that most SND grants are used for this purpose. With the addition of interest (using the parameters explained in recital 38) the amount attributed to the investigation period is Nkr 57 600 000. Expressed as a percentage of total sales of Norwegian salmon during the investigation period, the subsidy is 0,55 %.

Norway argued that it was unfair to consider all losses on loans as subsidies, since private banks also incurred losses, and the SND, like private banks, accepted a level of risk. The interest rate charged was meant to include a risk element. Furthermore, since most losses involved bankruptcies, the salmon growers involved usually ceased trading and therefore obtained no benefit.

It is considered that the losses constituted debt forgiveness by government, and therefore a subsidy. In any event, the SND interest rate was found to be below the commercial rate and in addition grace periods were given. Moreover, no evidence was presented that most of the SND losses concerned bankrupt companies, but even if they did, there was clear evidence that the licences had been picked up by other growers, who were effectively relieved of the debt obligation.

(44) The total subsidy under the loan programme therefore amounts to 0,74 %.

C. Loan Guarantees

(45) The SND provides two types of loan guarantees:

— loan guarantees,

— loan guarantees in assisted areas.

The guarantees are given as guarantees of collection. The loans guaranteed by SND can only be used for financing investment or working capital. The lender bank is obliged to secure the loan guaranteed by the SND according to the conditions set out in the letter of approval. Before SND makes any payment on a guarantee, substantiated proof of the debtors' insolvency is required.

It did not appear from the investigation that the SND loan guarantee has any influence on the interest rate provided by the lending bank. In addition, the company which obtains a guarantee has to pay a fee to SND equivalent to 1 % to 1,5 % of the lending amount. However, from 1989 onwards, the amount collected in fees, both as regards the scheme as a whole and the fish farming sector in particular, has been manifestly inadequate to cover the payment for defaults.

The programme was used to repay banks for loans to salmon growers which were not repaid. This resulted in effective grants to salmon growers.

Existence of a subsidy and specificity

(46) The investigation revealed that the loan guarantee programme constitutes a subsidy.

There is a financial contribution from the SND and there is a benefit for the salmon growers whose loan was guaranteed to the extent that the guarantee was not made on a commercial basis. It is clear that the fees were set at a level which would not cover, even in the long term, the amount of defaulted loans paid back to the banks: in these

circumstances, the default payments in excess of fees paid constitute grants to salmon growers. The subsidy is specific; the specificity analysis applied for SND grants (recitals 25 to 28) is also valid for loan guarantees. Furthermore, there is clear evidence of disproportionate use of this subsidy by the fish farming sector.

Calculation of the benefit

(47) Between 1989 and the end of the investigation period, losses on the scheme as regards the fish farming sector amounted to Nkr 317 million. In accordance with Article 4 (3) (b) (i) of the Basic Regulation, the fees incurred in order to qualify for the benefit were deducted from the total payments made by the SND in the loan guarantee programme. Although the loan guarantee scheme is operated on a regular basis, almost all the default payments on loan guarantees were made between 1989 and 1992, and in view of this heavy concentration this benefit can be characterized as a *de facto* non-recurring grant and should therefore be allocated over a period of seven years. In this regard, the same considerations as were used in the case of losses on SND loans apply (see recital 43). With the addition of interest using the parameters explained in recital 38, the amount attributed to the investigation period amounts to Nkr 77 890 000.

Expressed as a percentage of the total sales of Norwegian salmon during the investigation period, the subsidy is 0,74 %.

As for SND loans, Norway argued that it was unfair to consider all losses on loan guarantees as subsidies, since salmon growers had defaulted on loans on which both the SND and private banks had accepted a level of risk which had been taken into account in the interest rate charged for those loans. However, it is considered that loans from the SND were subsidized and that losses on such loans constitutes debt forgiveness. Furthermore, the fees charged for the loan guarantees were manifestly inadequate to cover long-term liabilities arising from defaulted loans.

3. Transport subsidies

(a) *The complaint*

(48) The complainant alleged that transport of salmon has been supported by a system of grants to compensate producers in remote areas for the extra freight cost arising from their geographical location.

(b) *Description of the scheme*

(49) The investigation established that Norway has set up a transport subsidy scheme through the county administrations. The scheme aims to provide aid to compensate for the long distances to the markets. The schemes are operated and financed by the counties. Only 5 of the 19 counties operated a transport aid scheme during the period of investigation. These were Møre og Romsdal, Nord-Trøndelag, Nordland, Troms and Finnmark.

The total budget for transport aid in the five counties was Nkr 74 267 402 in 1995. In Møre og Romsdal, Nord-Trøndelag, Troms and Finnmark no subsidies were granted to the transport of fresh fish. Only Nordland operated a transport aid scheme for the transport of fresh fish.

In Nordland a number of selected sectors within the processing industry are eligible for transport grants. On the basis of actual costs, the scheme is open to applications for partial compensation providing that the transport costs are significant. The maximum ceiling range is 30 to 45 % of total transport costs. Only the portion of the inland transport is eligible for transport aid.

(c) *Existence of a subsidy*

(50) The transport aid scheme constitutes a subsidy within the meaning of Article 2 of the Basic Regulation.

The scheme clearly provides a financial contribution in accordance with Article 2 (1) (a) (i) of the Basic Regulation, since up to 45 % of the transport costs are reimbursed by the counties. The programme confers a benefit to salmon producers and/or exporters since the transport expenses which are incurred under normal circumstances are reduced.

The scheme is specific within the meaning of Article 3 of the Basic Regulation. There are no clear objective criteria for granting the subsidy and the transport subsidy is not granted automatically. The county municipalities exercise great discretion in: (a) granting the subsidy; and (b) the amount of refund which is paid. The verification made it clear that even if a company fulfils the criteria for obtaining a benefit, it can be rejected without express motivation. Consequently, the transport aid scheme is specific within the territory of the county concerned and therefore countervailable.

(d) *Calculation of benefit*

(51) The total amount of grants from the transport aid scheme to companies transporting, among other fish products, salmon, was calculated. Specific figures for salmon were not provided. The amounts of grants used for the calculation were those relating to transport aid received in 1995 and 1996. The amount of grants attributed to the investigation period is Nkr 1 420 000.

The grant was expressed as a percentage of the total sales value of salmon in the investigation period. The subsidy is 0,01 %.

4. Regional Commission for northern Norway and North Trondelag

(52) The Regional Commission for northern Norway and North Trondelag is a regional policy body, whose task is elaboration of regional policy and promotion of commercial and industrial development in the region.

Funds are granted for special development measures in northern Norway and the purpose of these is to help to promote innovation and readjustment in the region's commerce and industry. The fund has been organized in programmes such as a travel and tourism programme, an industrial programme, a fisheries and aquaculture programme.

In the investigation period one grant of Nkr 800 000 was made to a project involving three companies, of which one is salmon-related.

Existence of a subsidy

(53) The grant is a direct transfer of funds from the government and therefore constitutes a subsidy. The grant clearly confers a benefit to the salmon sector. However, on an *ad valorem* basis the amount of benefit is too negligible to be taken into account.

5. FOS/Rødfisk

(a) *The complaint*

(54) The complainant alleged that the government supported salmon farmers through the Norwegian Fish Farmers' Sales Organization (FOS) and Rødfisk AS.

(b) *Description of the scheme*

(55) At the end of 1989, an imbalance occurred between demand and supply in the European salmon market. In view of the difficulties in the market, the Norwegian Association of Fish Farmers and FOS, which was the sole exporter of salmon in Norway, set up a freeze-storage programme in January 1990. The aim was to withhold a certain amount of salmon from the market in order to improve the prices. In order to finance the programme an obligatory freezing-fee of Nkr 5 per kilo was introduced. In addition, FOS took a loan from the Christiana Bank for Nkr 1,3 billion. A second loan of Nkr 600 million was given by a consortium of Norwegian banks.

In October 1991, FOS experienced serious financial problems in relation to the repayment of the loan. In addition, the county court of Trondheim decided on 28 October 1991 that the freezing-fee of Nkr 5 was illegal. These factors created serious doubts as to the ability of FOS to repay its debts to the banks and resulted in its bankruptcy in early November 1991.

As a result of the bankruptcy, the banks and the Norwegian government started negotiations to find a solution for the crisis. Before the bankruptcy, FOS had frozen 90 000 tonnes of salmon and the majority of the salmon farmers delivering salmon to FOS had outstanding invoices. The banks and the Norwegian government got together to achieve a controlled liquidation of FOS. The agreement resulted in the establishment of a company called Rødfisk which would conduct the liquidation of FOS. Rødfisk is a consortium of major Norwegian banks which were the main lenders to FOS. Rødfisk was established to deal with two major issues: the sale of the remaining stock and the repayment of fish farmers which had a claim on FOS. At the time of the bankruptcy, about 35 000 tonnes of frozen salmon remained in stock.

Rødfisk was financed by the banks and the Norwegian government. Firstly, the government provided an interest-free loan on Nkr 400 million. This loan was never repaid and eventually written off. The banks took over claims to the FOS' bankruptcy of Nkr 560 million.

The newly financed Rødfisk started repaying the salmon farmers at 49 % of their initial claim and sold the frozen salmon in non-traditional markets. Indeed, Norway concluded an agreement with the European Commission not to sell the salmon within the Community.

The investigation revealed that during 1992 Rødfisk also gave loans to salmon growers at an interest rate of 6,0 %. The commercial interest rate at that time was 11,5 %.

(c) *Existence of a subsidy*

Government grants to Rødfisk

(56) The interest-free loan of Nkr 400 million provided by the Norwegian government to Rødfisk which was subsequently written off constitutes a subsidy in accordance with Article 2 of the Basic Regulation.

The financial contribution consists of a non-recurring grant of Nkr 400 million in accordance with Article 2 (1) (a) (i) of the Basic Regulation.

The benefit for the salmon growers resulting from the use of the grants by Rødfisk is twofold: (a) partial repayment of their claim to FOS which would not have occurred under normal market conditions; and (b) the provision of loans at preferential interest rates.

Although the Nkr 400 million grant was made to Rødfisk and not directly to the salmon growers, it is reasonable to conclude that the benefit was enjoyed by the growers, since Rødfisk only existed for the purpose of resolving the outstanding problems inherited from FOS. The Nkr 400 million is considered to cover the benefits from the repayments of claims and the preferential loans.

Specificity

(57) The subsidy is clearly specific since only salmon farmers could benefit from the payments of Rødfisk.

Therefore, the non-recurring grant of Nkr 400 million is countervailable.

The Norwegian Government referred to the agreement with the European Commission (recital 55) and argued that, in view of the circumstances pertaining at the time, it was not reasonable now to return to this matter and countervail the subsidy. The Council, however, takes the view that nothing in the agreement prevents the taking of protective measures and since the effects of the subsidy are still present, there is an obligation to countervail in order to remedy any injurious effects.

Loans from banks to FOS

(58) The verification revealed that the loans advanced by the banks were made on a commercial basis. Christiana Bank was a private bank at that time and the repayment of almost all the loan was eventually secured. Although a number of banks participating in later loans to FOS and Rødfisk were State-owned for a period of time, there is no evidence they behaved in a non-commercial manner.

To the extent that certain banks were part of the government as defined in Article 1 (3) of the Basic Regulation, there was a financial contribution in the form of loans to FOS and Rødfisk. However, since the banks acted on a commercial basis, and Rødfisk repaid the loans, salmon growers derived no benefit.

Calculation of benefit

(59) Large non-recurring loans are allocated over a period of time reflecting the normal depreciation period for fixed assets in the industry concerned.

The total amount of the grant (Nkr 400 million) was allocated over a 7-year period since, as already explained with regard to SND grants, 7 years is the normal depreciation period applicable in Norway (recital 37). This resulted in an attributed amount to the investigation period of Nkr 97 940 000. As was done with SND grants, this amount was increased with the weighted average interest rate loans to the fish farming industry during the investigation period (8,25 %) since salmon growers would have paid interest if they had borrowed an equivalent amount with commercial banks.

The grant was expressed as a percentage of the total sales value of the Norwegian salmon growers in the investigation period. The subsidy is 0,94 %.

II. PROGRAMMES FOUND NOT TO BE COUNTERVAILABLE

6. The Research Council of Norway (RCN)

(60) The complainant alleged that the Research Council of Norway (RCN) spends Nkr 100 million annually on R&D work directed towards the fish farming industry through five different programmes.

The RCN's objective is to support R&D in various sectors in Norway. Eligible receivers of support are universities, research institutes and companies. It was established that salmon growers received Nkr 24 million in aid from RCN during the investigation period.

The Government of Norway had made a claim for green-light treatment for this aid, on the basis that it is granted in accordance with the criteria set out in Article 3 (7) of the Basic Regulation. It has been established that RCN supports up to 50 % of the costs for basic industrial research and 25 % of the

costs of applied research; these percentages can be increased by 10 % if an SME is involved. The costs involved fall within the definition of eligible costs specified in Article 3 (7), and the percentages are well below the upper limits of 75 % and 50 % respectively allowed by this Article.

Consequently, it has been concluded that R&D aid from the RCN is non-actionable and cannot be subject to a countervailing duty.

In addition, regardless of the issue of green-light treatment, there is no evidence that the RCN aid is specific.

7. The Seafood Export Council

(61) This body was set up in 1991 to promote Norwegian seafood in export markets, in succession to the FOS. Its expenditure has grown from Nkr 2 million in 1992 to Nkr 35 million in 1995.

It was established that the Seafood Export Council does not grant assistance to individual salmon growers or exporters, but does promote the product at trade fairs and in special promotion activities.

The Seafood Export Council is financed directly by a levy on salmon growers. Consequently, its funding is derived from a mutually agreed private source and any assistance granted does not constitute a subsidy.

8. North Norwegian Growth

(62) The complainant alleged that North Norwegian Growth, a body 30 % owned by the State and also partly owned by the State-owned SIVA, DNM and Troms County Council, provided subsidies and equity infusions within aquaculture and elsewhere.

It was established that North Norwegian Growth is a public investment company that provides resources in the form of share capital and advice to small and medium-sized firms in northern Norway with a potential for growth and profitability. The company was established in 1992. The company's activities are concentrated in the marine sector.

It is clear that North Norwegian Growth provides equity investments to companies in the north of Norway. It is State-owned, but aims at a rate of return of at least 8 to 10 % above the risk-free rate per annum. In June 1996, it made its largest investment in the salmon sector, Nkr 8,5 million in a salmon producer, giving North Norwegian Growth a 34,5 % shareholding. The analysis of this equity infusion confirmed that the involvement of North Norwegian Growth is based on a long-term perspective and that it intends to ensure an adequate rate of return on its investment. The examination of the economic assessment of the further prospects of the company appeared to justify the infusion from the point of view of a reasonable private investor. It was also established that previous equity investments in fish farming had been profitable. In addition, in cases where a market price exists for the shares of the companies involved, there is no evidence that North Norwegian Growth has paid more than this price.

Consequently, the equity infusions, while constituting a financial contribution from the government, do not appear to confer a benefit to the recipient and cannot be considered to be a countervailable subsidy.

9. Sties

(a) *The complaint*

(63) The complainant alleged that Sties Transport was a company which transports between 70 to 80 % of Norwegian salmon and has incurred losses in recent years. It alleged that there are strong indications that the loss-making activities of Sties have been financed by the Norwegian State.

(b) *Description of the scheme*

(64) Sties Thermo-Transport AS changed its name to Nor-Cargo Thermo AS from 1 June 1996 (hereafter Nor-Cargo). Nor-Cargo is a transport company which specializes in the transport of temperature-dependent goods including salmon, on a national and international basis. Nor-Cargo's share of transported Norwegian salmon fell from 50 % about 10 years ago to 36 % in 1994, 34 % in 1995 and 24 % in 1996.

Nor-Cargo made a small net profit on salmon transport in 1994 and 1995, equivalent to 4 % of turnover. The company as a whole made small losses between 1992 and 1995. The investigation revealed that these losses were covered by available funds within the company (reserves built up in the previous years) or by a group contribution from a profitable subsidiary within the Nor-Cargo group.

As regards salmon transport, Nor-Cargo explained that it is having to price close to its cost level because of the strong competition in the transport market. No specific rebates are granted to customers in the salmon industry.

Nor-Cargo is fully owned by Nor-Cargo AS, which is a private company. Nor-Cargo AS has three main shareholders: Vesteralens Dampskipsselskap (VD), Stavangerske Dampskipsselskap (SD) and Troms Fylkes Dampskipsselskap (TFD). VD and TFD are both 25 % owned by local municipalities. None of the representatives of the local municipalities is a member of the board of directors of Nor-Cargo. The verification did not uncover any evidence that national or local governments have involvement or any influence in Nor-Cargo.

(c) *Existence of a subsidy*

(65) The transport services of Nor-Cargo do not constitute a subsidy within the meaning of Article 2 of the Basic Regulation for the following reasons:

Firstly, Nor-Cargo does not fall within the definition of a government or public body as defined in Article 1 (3) of the Basic Regulation. Nor-Cargo Thermo is 100 % owned by Nor-Cargo which is a private company. Although local municipalities and State-owned firms are minority shareholders in Nor-Cargo, their holding being equivalent to about 16 %, the investigation revealed no evidence to show that these have any influence in the decision-making process of Nor-Cargo.

Secondly, Nor-Cargo has not financially contributed to the salmon producers. Their services are rendered at normal market rates. Nor-Cargo is competing as a private company in the Norwegian transport sector.

Thirdly, Nor-Cargo did not apply preferential transport rates to salmon producers and consequently did not confer a benefit to the salmon growers.

Finally, the losses of Nor-Cargo have not been covered by the government or any public body. All losses were covered by available funds within the company or were covered by a transfer of funds in the Nor-Cargo group.

Therefore, there is no subsidization involved.

10. State-owned banks

(a) *The complaint*

(66) The complainant alleged that, following the banking crisis in Norway, Norwegian State-owned banks financed losses in the salmon sector. According to the complainant, around 14 % of the loans to borrowers in this sector were written off in 1991.

(b) *Description*

(67) The Norwegian banks began to incur serious losses on loans in 1987, and in the succeeding years losses increased sharply. By 1989, eight banks had lost their full capital and were unable to meet liabilities. In early 1991, it became clear that the private bank's guarantee fund would no longer be able to meet the capital needs of the industry.

In this respect, in March 1991, the government established the Government Bank Insurance Fund (GBIF established by Act No 2 of 15 March 1991) in order to provide loans on special terms to banks' guarantee funds and ultimately take shares in the banks. In October 1991 the government established the Government Bank Investment Fund which was authorized to provide equity capital in the banks and issue loans on a commercial basis. In this respect, the government became majority shareholder in most of the major banks in Norway during 1991/1992. In the case of some banks, this government shareholding has subsequently been reduced or eliminated.

These measures were considered necessary to continue the operation of the Norwegian banking system and further provide capital to the business sector and the municipalities.

Although the GBIF exercised powers in the banks in using its voting rights, the GBIF did not interfere in the commercial operations of the banks. The allegation that the government through the GBIF used its power to favour certain industries does not seem to be correct. The investigation revealed no evidence that the banks, although fully or partially State-owned, continued operating on anything but a normal commercial basis *vis-à-vis* their customers.

(c) *Existence of a subsidy*

(68) The operation of the State-owned banks in Norway does not appear to constitute a countervailable subsidy.

The investigation revealed that there is no benefit for salmon farmers. As described above, the banks continued providing loans at commercial market rates. The interest rates which were applied to the fish-farming industry in the period of State ownership was the nominal interest rate charged on long-term government bonds (more than 11 years), plus 1,5 % to 2 %. These rates were also applicable to other industries.

The verification showed that all loans to the salmon growers were given at interest rates comparable to the national averages of interest rates of all banks to all sectors; no preferential rates were applied to the salmon sector.

The investigation did show that the banks involved incurred considerable losses on loans to fish farming during the period from 1987 onwards. The amounts of such losses increased sharply during 1990 and 1991, but losses had almost disappeared by 1994. Therefore, losses were already being incurred when the banks involved were still privately-owned and there is no evidence that the move into State ownership affected the lending practices of the banks or led to them granting loans on easier terms. In fact, losses on loans to fish farming peaked during 1990, before the government had taken shares in any of the major banks. Any losses on loans to salmon producers which coincided with the period of State ownership of the banks were due to the continuing difficulties encountered by this sector in the early 1990s (following over-production and the freezing programme set up by FOS) and did not appear to represent a departure from normal commercial practice with regard to fish farming. It is undeniable that government intervention in the banking sector enabled continuing support to be given to salmon growers, and that such support may not have been forthcoming in the absence of government intervention.

However, the losses on loans incurred during the period of State ownership were recurring benefits and would have been charged during the year in question. Consequently, any subsidy involved would no longer have had any effect. Furthermore, there is no evidence of specificity with regard to any benefits received.

11. SND equity infusions

(69) SND has invested about Nkr 120 million in companies concerned with salmon. The investigation established that SND's investment policy is based on earning an adequate return on its equity stakes, and an examination of SND's accounts shows that these operations are profitable. In addition, in cases where a market price exists for the shares of the companies involved, there is no evidence that SND has paid more than this price.

Consequently, these infusions have involved a financial contribution from the government, but no benefit appears to have accrued to salmon growers, since there is no evidence that SND's investment practice is different from that of private investors in Norway.

Therefore, the investigation has not established the existence of a subsidy.

12. Other institutions

(70) The complainant alleged that the Norwegian salmon-farming industry continues to benefit from ongoing subsidization, and a number of other government bodies and agencies, which allegedly provide subsidies, were listed.

It was established that none of the listed institutions granted financial supports which constitute a subsidy within the meaning of the Basic Regulation.

(a) *Norwegian Salmon Breeding*

(71) It was established that Norwegian Salmon Breeding provides no financial support of any kind to salmon growers. It is a continuation of the breeding organization Norske Fiskeopdretters Avlsstasjon AS (NFA AS) which was established in 1985 by the Norwegian Fishfarmers' Association, the Fishfarmers Sales Organization and the National Association of Fish Hatcheries. Norwegian Salmon Breeding was established by a merger of the NFA AS and the newly-established company Akva Gen AS at Sunndaløra. After a share placing with the participants in the fish farming industry, Norwegian Salmon Breeding held share capital totalling Nkr 21 182 000 distributed among a total of 149 shareholders. The Norwegian Industrial and Regional Development Fund (SND) is one of the shareholders.

(b) *Vesco*

(72) The National Centre for Veterinary Contract Research and Commercial Services Ltd (Vesco) is a State-owned joint stock company, wholly owned by the Royal Ministry of Agriculture. Vesco is engaged nationally and internationally in contract research for commerce and industry and the public sector. Vesco is the largest distributor of veterinary vaccines in Norway.

Vesco has derived profit from selling goods and services to the fish-farming industry, and has acted on a commercial basis and not provided countervailable subsidies to salmon farmers.

(c) *SIVA*

(73) SIVA is a State enterprise organized in conformity with the State Enterprises Act, and is wholly owned by the Norwegian State as represented by the Ministry of Local Government and Labour. SIVA's financial activities are associated with the construction and leasing of industrial properties, and initiation of and participation in the establishment of regionally-based investment companies.

SIVA contributed to the establishment of the investment company North Norwegian Growth (see recital 62), and holds 25,62 % of this company's share capital of Nkr 60,3 million. As already explained, North Norwegian Growth

carried out investments in the fish-farming industry, but SIVA made no investments or conducted other financial operations related to the fish farming sector during the investigation period.

(d) *The State veterinary laboratories*

(74) The State veterinary laboratories (SVL) comprise the governmental scientific veterinary diagnostic laboratories in Norway which consist of the Central Veterinary Laboratory in Oslo and the State regional veterinary laboratories in Sandnes, Bergen, Trondheim and Harstad. In addition to diagnostic work on animals including fish and molluscs, SVL serves as an advisory body for the agricultural authorities with regard to disease control and the administration of official regulations concerning animal and aquatic animal health. The fish-farming industry has to pay for the diagnostic service undertaken by SVL. SVL also issues health certificates to fish exporters (when required by the importing country), for which they pay a fee.

Another important fish-related activity at SVL is research on different aspects of serious disease problems that have occurred in the Norwegian fish-farming industry. The research has been financed partly through grants from the Norwegian Research Council, partly through own budget funds or funding from the industry or government to carry out certain research tasks.

The funding does not confer a benefit on salmon growers and is, for this reason, not countervailable.

(e) *The Guarantee Institute for Export Credits*

(75) The Guarantee Institute for Export Credits (GIEK) is a government agency. GIEK issues guarantees and underwrites export credits to Norwegian exporters in general. In several instances, therefore, the export of salmon to the Community has been underwritten by GIEK as part of its short-term commercial credits programme, if a credit has been granted by the Norwegian exporter to the European buyer.

The furnishing of guarantees is a financial contribution as defined in Article 2 (1) (a) of the Basic Regulation. GIEK underwrites export credits provided that the exporter pays the premium. The premium charged is presupposed to cover all the costs incurred by GIEK involved in the transaction including the risk of claims and losses. This follows from the legal framework of GIEK, which is the yearly government budget. The budget stipulates that GIEK is empowered to underwrite export credits on the condition that the operations of GIEK break even. In 1995 GIEK covered approximately Nkr 1 800 million of fish exports, and internal analysis by GIEK estimates a net profit in the range of Nkr 1,5 to Nkr 2 million.

The verification revealed that the GIEK programme complies with the OECD arrangement on guidelines for officially State supported export credits, and that the interest rate provisions of the Agreement seem to be respected. Consequently, it is compatible with the provisions of the exemption in the second subparagraph of item (k) in Annex I to the Basic Regulation ('the illustrative list of export subsidies').

In view of the fact that the GIEK programme provides for the recovery of costs involved and was profitable during the investigation period, it is concluded that there is no countervailable subsidy involved.

(f) *Joint Competence Committee for the Fisheries Industry (FFK)*

(76) The Joint Committee for the Fisheries Industry (FFK) was established on the basis of a Cooperation Agreement dated 9 October 1991 between the Norwegian Fishermen's Association, the Norwegian Fishfarmers Association, the Federation of Norwegian Fishing Industry and the Norwegian Federation of Trade Unions. FFK is a liaison body for the above organizations in the fisheries industry and the fisheries authorities represented by the Ministry of Fisheries.

The funds give no benefit for the production or export of salmon and do not benefit individual producers.

(g) *Women's Committee of the Fisheries Industry*

(77) The Women's Committee of the Fisheries Industry was established in July 1991 by the Ministry of Fisheries. The Committee administers women's funds appropriated over the Ministry of Fisheries' budget, and the Committee's work is targeted particularly at 66 municipalities in Norway that are dependent on the fisheries. The Committee's main purpose is to strengthen women's position in the fishing industry and in coastal communities. The funds are not employed to support specific enterprises.

The grant schemes do not constitute a subsidy to salmon farmers as defined in the Basic Regulation.

III. CONCLUSION ON SUBSIDIES

(78) The following schemes were found to be countervailable in accordance with the provisions of the Basic Regulation, with amount of subsidy, expressed *ad valorem*, as follows:

— Differentiated social security contributions	0,93 %
— Regional Development Fund (SND) — grants	0,48 %
— Loans	0,74 %
— Loan guarantees	0,74 %
— Transport subsidies	0,01 %
— FOS/Rødfisk (grant)	0,94 %

The total *ad valorem* amount of subsidy is 3,84 %.

D. COMMUNITY INDUSTRY

(79) The Community producers supporting the complaint represent approximately 57 % of the total Community production of the product concerned, and were therefore considered representative of the Community industry in accordance with Article 6 (1) of the Basic Regulation.

E. INJURY

1. Preliminary remarks

(80) Information was requested and obtained from all the complaining companies relating to production, sales and market share. However, in view of the large number of producers supporting the complaint and the time limits established in Article 8 (9) of the Basic Regulation, the remaining injury indicators were based on information obtained from a representative sample of Community producers.

(81) Of the 90 Community producers supporting the complaint, a sample of 16 was selected, according to geographical location and size of the companies in terms of production and sales. These companies accounted for 73 % of the output of the complainant Community industry and 42 % of total Community output.

(82) For the purpose of establishing injury in the present proceeding, data relating to the period 1992 to the period covering August 1995 to July 1996 were analysed. The geographical scope of the investigation over this period was the Community as constituted at the time of the initiation of the proceeding, i.e. the Community of 15 Member States. The injury assessment was based on the relevant economic factors as provided for by Article 5 of the Basic Regulation.

(83) It is recalled that the injurious impact of the Norwegian imports on the situation of the Community industry of farmed Atlantic salmon was first established in 1991 by a previous anti-dumping proceeding. Since then, the impact of imports from Norway has led the Commission to impose minimum import prices on a number of occasions. However, such measures appear to have had at best a short-term effect on the market.

(84) The following injury indicators should, therefore, be seen in the light of a long standing, unfavourable situation experienced by the Community industry concerned.

2. Community consumption

(85) In calculating total apparent Community consumption of farmed Atlantic salmon the following combined totals have been taken into consideration:

— the sales volume in the Community of the Community producers, as established on the basis of data provided by the Scottish Salmon Growers' Association, the Shetland Salmon Farmers' Association and the Irish Salmon Growers' Association, in combination with Eurostat for their exports outside the Community,

— the imports into the Community of the products concerned (as declared within CN codes 0302 12 00, 0303 22 00, 0304 10 13 and 0304 20 13) from Norway,

— the imports into the Community of the same products from all other third countries.

With a view to establishing consistent figures covering the enlarged Community of 15 for the whole period under examination, the total imports were based on relevant Eurostat and EFTA imports statistics. In addition, in order to ensure compatibility between the different figures, all data was converted to whole fish equivalent. For this purpose, the import figures for fresh and chilled salmon and for fresh and chilled salmon fillets were divided respectively by appropriate factors of 0,90 and 0,65.

It should be noted that CN codes 0302 12 00, 0304 10 13 and 0304 20 13 may also cover products not included in the scope of this proceeding (i.e. Pacific salmon and/or wild salmon) but for which the quantities imported can be considered, given the origins reported, as negligible.

(86) On this basis, the apparent Community consumption of farmed Atlantic salmon increased from 201 037 tonnes in 1992 to 316 866 tonnes in the last 12-month period under investigation (namely 1 August 1995 to 31 July 1996) — an increase of 58 %.

3. Volume and market share of the subsidized imports

(87) The aggregate volume of imports from Norway increased continuously and substantially from 134 338 tonnes in 1992 to 211 597 tonnes in the last 12-month period under investigation, an increase of 58 %, in line with the increase of Community consumption.

(88) The market share of the Norwegian imports in the Community declined from around 67 % in 1992 to around 62 % in 1993 and 1994 and then increased to 67 % in 1995 and the last 12-month period under investigation.

(89) The fact that Norwegian imports have, over the last four years and a half, been able, in a fast-growing market, to maintain their very high market share is in itself illustrative of the Norwegian exporters' position on the Community market. Moreover, this significant increase in Norwegian imports occurred in spite of minimum import prices imposed by the Commission during this period (see recital 123).

4. Prices of the Norwegian exports

(a) *Overall trend*

(90) Statistical data show that the cif import price of salmon originating in Norway fell continuously and overall by 27 % between 1992 and the last 12-month period under investigation (namely 1 August 1995 to 31 July 1996). Furthermore, this trend appears to indicate that the minimum import prices imposed during the period examined, were not consistently adhered to by the Norwegian exporters.

(b) *Undercutting*

(91) For the last 12-month period under investigation, the prices of the sampled Community producers were compared to the prices of Norwegian exports. For the Community producers, the prices of gutted salmon head-on were taken as a basis for comparison. These categories of salmon represented more than 65 % of the volume of sales of all types of salmon sold by the sampled Community producers and accounted for the majority of imports of Norwegian salmon.

(92) For the exporters, prices were based on sales figures provided by the Norwegian exporters having cooperated in the investigations concerning both dumping and subsidies. These prices were adjusted to a Community-frontier customs-duty-paid basis.

(93) Comparisons were made on a monthly weighted average basis. The prices of the Community producers were at ex-works level and at levels of trade known to be comparable to those of Norwegian imports. The results of the comparison showed the existence of monthly undercutting margins of up to 12 %. In addition, undercutting was found to be at its peak during the most important period of the selling season, i.e. the period immediately preceding Christmas.

(94) It should be noted that salmon is traded as a commodity in a transparent and competitive market. It is sold on a daily basis, and the suppliers have to adapt rapidly, i.e. daily or hourly, to any reduction in prices of their competitors, making it therefore difficult to assess undercutting. Consequently, the undercutting margins found should be seen in the context of continuous pressure exerted by the Norwegian imports on the market prices.

(95) Some importers argued that, in comparing prices, an upward adjustment should be made to the Norwegian prices in order to take account of the fact that the consumer is prepared to pay a premium for salmon of Scottish origin. No evidence was provided concerning this claim and in particular regarding differences in the physical characteristics of the products which could justify an adjustment in price.

5. Situation of the Community industry

5.1. *Global information*

(a) *Production*

(96) Production of the product concerned by the Community industry increased from 45 801 tonnes in 1992 to 90 206 tonnes in the last 12-month period under investigation. This growth in production resulted from increased demand and allowed the Community industry to reduce its unit cost and improve its productivity. In this respect, information obtained from the sampled companies shows that in the last 12-month period under investigation they were able to produce 2,35 times the quantity produced in 1992, with exactly the same number of workers.

(b) *Sales and market shares*

(97) The volume of sales of the Community industry on the Community market increased during the period considered from 42 535 tonnes in 1992 to 82 885 tonnes in the last 12-month period under investigation, representing an increase of 40 320 tonnes. This increase should be seen in relation to an increase in consumption of almost 116 000 tonnes in the Community in the same period.

(98) The development of sales volume compared to that of apparent Community consumption, shows that the market share held by the Community industry increased from 21,2 % in 1992 to 28,9 % in 1994, and decreased subsequently to 26,2 % in the last 12-month period under investigation.

5.2. ***Sampled information***

(c) *Capacity and capacity utilization*

(99) As regards capacity, it was found that the companies selected in the sample used different criteria for establishing capacity and, therefore, no reliable historical figures could be obtained for capacity prior to the last 12-month period under investigation. However, for this last period, figures for capacity provided by the Scottish Environment Protection Agency, an organization recently created which establishes sustainable capacity limits according to environmental requirements, were found to be reliable. On this basis, the average capacity utilization rate was found to be 59 % in the last 12-month period under investigation.

(d) *Price evolution*

(100) The prices of the sampled companies decreased by 24 % between 1992 and the last 12-month period under investigation. This reduction in price is very close to the reduction in prices of imports from Norway, indicating therefore that the Community industry was unable to resist pressure from Norwegian prices.

(101) Norwegian exporters claimed that the downward evolution of prices was exclusively due to improvement of the cost efficiency of salmon producers world wide.

(102) The Community industry has indeed increased its production and sales over the period examined, with consequent reductions in unit costs and considerable productivity gains. Yet in spite of this, the investigation has shown that the abovementioned decrease in price resulted in sufficient profitability for the Community industry. This is due to the fact that prices have fallen beyond what could have been expected following gains in productivity. While it is true that the price of salmon will decrease if the cost of production decreases, this does not explain the deterioration of the Community industry's profitability (see recital 103).

(e) *Profitability*

(103) The average profitability improved between 1992 and 1993, but decreased thereafter although the market was expanding and the costs of the Community industry were reduced. Moreover, the average profitability never reached the minimum profit level (approximately 15 % of turnover), which is considered necessary in a high-risk industry such as this (due to the uncertainty created by the risk of disease, predators and bad weather conditions) and was during the last 12-month period under investigation at its lowest point (3,3 %) since 1992. It must be underlined that a majority of the sampled Community producers were making considerable losses during the last 12-month period under investigation.

(104) Regarding profitability, the figure of 15 % which the Commission has taken into consideration as a normal profit margin was deemed excessive by the Norwegian exporters.

(105) As already mentioned above, the investigation established that a profit of 15 % on turnover is indeed necessary in this industry. Apart from the high risk nature of this industry mentioned above, this was further confirmed by examining the profit margins in the salmon industry before the occurrence of injurious subsidization, and also the profit margins that were considered as reasonable in other, comparable, Community industries such as trout farming and poultry. In all these cases the figure of 15 % was confirmed. In addition, a 15 % profit was considered as being a reasonable, albeit conservative, estimate by one Norwegian-owned Community producer. This company considered that 15 % was probably an underestimation as far as small companies were concerned. Finally, if the cumulated profit on sales made in the normal course of trade of the sampled Norwegian farmers and exporters on their domestic market is examined, it is in line with the figure of 15 %.

(f) *Employment*

(106) Employment levels for the sampled Community producers remained stable between 1992 and the last 12-month period under investigation, with the sampled companies accounting for around 1 100 jobs directly linked to the production of farmed Atlantic salmon. An estimate of the whole employment level in the Community for this industry that there were 3 300 people employed in the salmon business during the same period.

(g) *Investment*

(107) Investments increased between 1992 and the last 12-month period under investigation. However, this increase should be interpreted in the light of the specific situation of the salmon industry where more than half of the investments in the period were devoted to replacements. Furthermore, in the context of a growing industry where acquisition of up-to-date equipment is crucial, the net investment does not appear to be sufficient to make the apparent growth sustainable in the longer term.

6. Conclusion

(108) In concluding that the Community industry had suffered material injury during the period examined, account was taken of the following facts.

(109) The investigation has shown that the sampled Community producers have suffered significant price pressure over the period under consideration with a consequent significant fall in the prices of these companies. This led to a deterioration of the financial situation of the producers concerned, with insufficient profitability achieved by the sampled companies as a whole and losses by many producers. A number of companies have closed down in the recent past and, among the surviving companies in the sample, some are endangered. Furthermore, this deterioration in profitability should be seen in the light of considerable achievements in respect of productivity during the period examined. As regards market share, it should be noted that after an improvement in 1994, the market share of the Community industry is again in decline in spite of a significant increase in consumption.

(110) In the light of the foregoing analysis, it has been concluded that the Community industry has suffered material injury within the meaning of Article 5 (1) of the Basic Regulation. This conclusion is mainly based on the price pressure suffered, together with decreasing and clearly insufficient profitability of the sampled Community producers.

F. CAUSATION OF INJURY

(111) For the purpose of determining whether the injury suffered by the Community industry was caused by the subsidized Norwegian imports or whether other factors caused or contributed to that injury, the following elements were examined.

1. Causal link between the imports concerned and injury

(112) It should be noted that since the Norwegian imports of salmon were found to be dumped in the same period in which countervailable subsidies were paid to Norwegian producers, the coincidental effects of both dumping and subsidization cannot be distinguished and have therefore to be examined in conjunction.

(113) In examining whether the material injury suffered by the Community industry had been caused by the effect of the dumped and subsidized imports, it was noted, in the first instance, that the injury consisted mainly of continuous price pressure and reduced profitability for the Community producers. This coincided with a significant increase in volume of dumped and subsidized Norwegian imports of salmon. As a consequence, Norway has been able to maintain its market share at a very high level (67 %) in an expanding market. Moreover, the prices of these imports fell significantly during the period considered and undercutting of up to 12 % was found in the most important selling period. In this context, it should be recalled that the market for salmon is transparent. In such a market, any downward pressure on prices is likely to be caused by the main supplier, in this case Norway.

(114) Under these circumstances, it is concluded that the combined effects of dumping and subsidization of the Norwegian imports have caused material injury to the Community industry.

2. Other factors

(115) The trend in consumption in the Community market, the evolution and impact of imports from other third countries and the competitiveness of the Community salmon industry were analysed in order to establish whether they could have been a cause of the injury suffered by the Community industry.

(a) *Community consumption*

(116) Community consumption of Atlantic salmon increased continuously and in total by 58 % between 1992 and the last 12-month period under investigation. The injury suffered by the Community industry cannot, therefore, be attributed to any downward trend in demand.

(b) *Imports from other third countries*

(117) As regards imports from third countries not concerned by the present proceeding (mostly the Faeroes, Chile, Canada and Iceland), their overall market share was found to have decreased from 12 % to 7 % during the period considered. It was therefore concluded that the impact of these imports had been limited.

(c) *Competitiveness of the Community industry*

It should be noted that the Community producers of salmon have significantly improved their competitiveness between 1992 and the last 12-month period under investigation; the output per worker more than doubled, there was a reduction in the fish mortality rate by 23 % and an increase of 25 % in the average weight of the salmon grown. Moreover, the volume of exports of the Community industry at profitable prices increased from 3 266 tonnes in 1992 to 7 321 tonnes in the last 12-month period under investigation. On this basis, the Community industry has attained considerable efficiency in cost terms.

3. Conclusion

(118) In the light of the above, it was concluded that the dumped and subsidized Norwegian imports of salmon have, taken in isolation, caused material injury to the Community industry. Furthermore, although the rate of subsidy found was lower than the margin of dumping, the contribution of subsidization to the injury caused by the imports in question has been significant.

G. COMMUNITY INTEREST

1. General considerations

(119) On the basis of all evidence submitted, consideration was given as to whether, despite the conclusions on subsidization and consequent injury, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in the present case. For this purpose, the impact of possible measures for all parties involved in the proceedings and also the consequences for those same parties of not taking measures were assessed.

(120) In making such an appreciation, in conformity with the Basic Regulation, special consideration was given to the need to eliminate the trade-distorting effects of injurious subsidies and to restore effective competition.

2. Interest of the Community industry

(121) It should first be recalled that the Community industry of farmed Atlantic salmon has suffered from a long history of unfair trading practices attributable to Norwegian exports.

(122) Injurious dumping was established by the Commission as far back as 1991 (Commission Decision 91/142/EEC) [1], when it was decided that, despite positive findings on both dumping and injury, no measures should be imposed on the grounds that the Norwegian authorities had taken measures on a national level which, it was thought, would stabilize the market.

(123) Subsequently, minimum import prices (MIP) have been set by the Commission on several occasions over the past few years (November 1993, February 1994, March 1994) and lastly from 16 December 1995 to 13 June 1996 by Regulation (EC) No 2907/95 [2]. MIPs were justified by the fact that the volume and prices of imports were causing or threatening to cause disturbances on the market resulting in serious economic, societal or environmental difficulties and demanding the adoption of immediate measures. As opposed to anti-dumping or countervailing measures, these measures did not require a finding that the exporting country concerned had engaged in unfair trading practices. These measures failed to produce the expected effects.

(124) Against this background, it is considered that if no effective measures are taken in order to correct the injurious effects of dumped and subsidized Norwegian imports, the situation of the Community industry will continue to deteriorate to the point where, ultimately, its very existence could be at risk.

(125) It should also be recalled that the Community industry of farmed Atlantic salmon is mostly made up of small and medium-sized enterprises, located in rural and mostly less-developed regions of the Community (Objective 1 regions), where economic activity is scarce. As has been mentioned above, the Community industry has constantly improved its productivity, which is consequently not in doubt. In the course of the restructuring which has taken place, a number of small farms have been acquired by producers which are part of large groups. If no measures are taken, apart from the likelihood of a further reduction in the number of competitors in the market, the investment in improving productivity and restructuring may well prove not to have had the desired effect.

3. Interest of other Community industries

(126) A number of downstream users such as smokers and wholesalers of farmed Atlantic salmon alleged that the imposition of measures on imports of Norwegian farmed Atlantic salmon would adversely affect their activities. These users argued that if measures had the effect of reducing quantities of farmed Atlantic salmon imported from Norway, no alternative sources of supply would be available. These same users alleged that if imports of farmed Atlantic salmon from Norway were made more expensive, they would have to pass on the additional cost to the final consumer who would then

[1] OJ L 69, 16. 3. 1991, p. 32.

[2] OJ L 304, 15. 12. 1995, p. 38.

turn to other products. The argument was also made that a duty imposed on unprocessed farmed Atlantic salmon originating in Norway could lead to the expansion of the Norwegian industry processing farmed Atlantic salmon, at the expense of the Community processing industry.

(127) It should be pointed out, first of all, that the investigation has shown that the Community industry has the capacity to increase its production and it would certainly do so if it were allowed to achieve a reasonable return. Furthermore, in the event that the proposed measures would result in a reduction of the quantities of farmed Atlantic salmon being imported from Norway, alternative sources of supply are readily available, i.e. Chile, Canada, Iceland and the Faeroes.

(128) As to the pricing policy likely to be adopted by Community producers following the imposition of measures, it should be borne in mind that any increase in the prices of the Community producers is bound to be limited to what is strictly necessary for them to obtain a more reasonable return. If the Community producers were to increase their prices massively, it is indeed more than likely that other exporting countries would gain a more substantial share of the Community market. In addition, any such price increases on the part of the Community industry are bound to be limited by another factor, i.e. the availability to the consumer of farmed salmon trout, which is a product relatively similar and thus substitutable for salmon, available in the Community at a slightly lower price and which seems to have also been negatively affected by the increase of imports of subsidized farmed Atlantic salmon from Norway.

(129) As to the possibility of the Community processing industry being affected by competition of processed products from Norway, the anti-dumping and countervailing duties will be levied on the raw material, which represents only a proportion of the cost of the processed product. The limited impact of the proposed duty rates should therefore not be sufficient to justify a reduction in processing operations in the Community. Finally, most of the smokers in the Community also process and trade salmon produced in the Community as well as other products and are therefore not entirely dependent on salmon imported from Norway.

(130) It should be noted, furthermore, that in order to evaluate the likely impact that measures might have on processors in the Community, the Commision sent questionnaires to all companies which were members of three associations of traders and processors which had made themselves known and requested a hearing.

(131) In total, 93 questionnaires were sent but only one complete and verifiable reply has been received, making it thus impossible to evaluate, on a representative basis, the possible effect that the imposition of measures might have on the Community industry trading or processing farmed Atlantic salmon.

(132) Nevertheless, the information obtained so far has shown that, as far as smoked salmon is concerned the cost of the raw material, i.e. farmed Atlantic salmon represents around 45 % of the total cost of production of smoked salmon. Thus, if the cost of the raw material was increased by, for instance, 10 %, this would entail a total increase in the cost of production of smoked salmon of only 4,5 %.

(133) In addition, information obtained from various reliable sources seems to indicate that the situation of Community processors is quite diverse. There are, on the one hand, companies which produce ready meals and which are part of large groups. Since the cost of the raw material, fish is a limited proportion of the cost of the final product, these companies are unlikely to be significantly affected by the present measures. On the other hand, there are a number of companies who smoke or pickle salmon and which are more dependent on the price of the raw material. These companies would probably have to pass on part of the extra cost to the next trade level. As mentioned at recital 132, the increase in costs would be of a limited nature. In any event, information obtained so far seems to indicate that only in the case of price increases in excess of 20 % would there be a danger that consumers would turn to other products.

4. Interest of importers

(134) A number of importers have argued in general terms that any imposition of protective measures would negatively affect them.

(135) As has been shown above, it is expected that the proposed measures, while allowing the Community industry to recover from the injurious effects of subsidization, will neither affect the possibility for importers to purchase salmon from Norway or other sources, nor entail price increases in excess of what is necessary for the Community industry to be able to regain a reasonable profitability.

5. Interest of consumers

(136) Consumer representatives (BEUC) argued that protective measures would not be in the interest of the consumers in the Community, since they would entail a restriction of the products being on offer and/or price increases to the consumer.

(137) As has been shown above, the existence of alternative sources of supply, the availability of substitute products tend to demonstrate that the effect on the final consumer will be minimal, if any. In addition, it should be borne in mind that any duty will be levied on the cif import price. The impact, if any, on retail prices will therefore be considerably lessened. It should be further noted that the average yearly consumption of salmon in the Community is estimated at 0,8 kilograms per capita, which suggests that the overall impact on consumers will be very small.

6. Conclusion

(138) Once all the above aspects had been carefully examined, it was concluded that it is in the Community interest to impose countervailing measures on imports of farmed Atlantic salmon originating in Norway since there are no compelling reasons which would lead to the conclusion that it is not in the Community interest to impose such measures.

H. COUNTERVAILING MEASURES

1. Level of countervailing measures

(139) In accordance with the relevant provisions of the Basic Regulation, it was examined whether the measures should be less than the amount of subsidy found, if such lesser measures would be adequate to remove the injury to the Community industry.

(140) In this respect, it is considered that any measures imposed should allow the Community industry to achieve prices they would have obtained in the absence of subsidized imports. In the absence of any information to the contrary, it can be assumed that such prices would cover its cost of production and a reasonable profit. In order to achieve this, the prices of imports should be increased accordingly.

(141) For the purposes of calculation of the necessary price increase, the prices of subsidized imports should be compared to selling prices reflecting the cost of production of the Community industry plus a reasonable level of profit. In this respect, a profit margin of 15 % was considered to be the minimum profit level necessary to make this sector viable. In determining this profit level, account was taken of the fact that this is a high-risk industry given, *inter alia*, the length of the production process (18 to 24 months); the risk of disease, predators and bad weather conditions which occur frequently in this industry; the un-predictability of prices of a product traded as a commodity; the very short shelf-life of the product. It was also found that a sufficient profit margin was needed in order for Community producers to have access to financing, which is particularly crucial for this industry to be able to remain competitive in a rapidly growing market.

On this basis, the weighted average export prices for those product types used in the determination of price undercutting (see recital 91) were compared, for the last 12-month period under investigation, on a free-at-Community-frontier level, after adjusting where appropriate for freight, customs duties and post importation costs, with the weighted average selling prices charged by the selected Community producers concerned, increased, where appropriate, to cover production cost plus the abovementioned profit margin of 15 %.

Level of duties

(142) It was considered that duty could cover the difference between these prices. For the reasons set out in recital 15, a single rate of duty for all imports originating in Norway is appropriate.

(143) In order to determine the level of the duty, the price increases thus established have been expressed as a percentage of the weighted average, free-at-Community-frontier, value of the imported goods.

(144) This comparison showed an injury elimination level of 12,28 %. Since this margin is higher than the subsidy margin as established, the rate of the countervailing duty should be established on the basis of the latter.

2. Undertakings

(145) As mentioned in recital 7, having been informed of the Commission's provisional findings, the Norwegian Government and the Norwegian exporters mentioned in the Annex to this Regulation offered undertakings pursuant to Article 10 of the Basic Regulation.

(146) Having examined these undertakings, the Commission found them to be acceptable, since they would eliminate the injurious effects of subsidization pursuant to Article 10 (1) of the Basic Regulation.

(147) The Commission consulted the Advisory Committee on the acceptance of these undertakings and no objections were raised. The undertakings offered by Norway and by the exporters listed in the Annex to this Regulation were accepted by Commission Decision 97/634/EC [1] and the investigation should therefore be terminated without the imposition of definitive duties in respect of these exporters.

3. Definitive countervailing duties

(148) Notwithstanding the acceptance of the undertakings offered by a large number of Norwegian exporters, residual duties should be imposed on imports of the product concerned originating in Norway in order to cover all Norwegian exports of the product concerned to the Community and also to underpin the undertakings by discouraging their circumvention. Moreover, the level of the duty to be imposed in case of a breach or withdrawal of undertakings should be determined.

(a) *Level of duty*

(149) The definitive countervailing duty, to be imposed on imports of farmed Atlantic salmon exported by companies which have not offered any undertaking, or in case of breach or withdrawal of undertakings is 3,8 %.

(b) *Implementation and management of the duties*

(150) For the purpose of ensuring an effective implementation of the duties, taking account of the large number of exporters having given undertakings, the Commission should be entitled, after consulting the Advisory Committee, to amend, by Regulation, the Annex to this Regulation so as to be able, if necessary, to extend the exemption from the payment of the duties to any new exporters who may offer acceptable undertakings,

HAS ADOPTED THIS REGULATION:

Article 1

1. (a) A definitive countervailing duty is hereby imposed on imports of farmed (other than wild) Atlantic salmon falling within CN codes ex 0302 12 00 (Taric code: 0302 12 00*19), ex 0304 10 13 (Taric code: 0304 10 13*19), ex 0303 22 00 (Taric code: 0303 22 00*19) and ex 0304 20 13 (Taric code: 0304 20 13*19) originating in Norway.

(b) This duty shall not apply to wild Atlantic salmon (Taric codes: 0302 12 00*11, 0304 10 13*11, 0303 22 00*11, 0304 20 13*11). For the purpose of this Regulation, wild Atlantic salmon shall be that in respect of which the competent authorities of the Member State of landing are satisfied, by means of all customs and transport documents to be provided by interested parties, that it was caught at sea.

2. The rate of duty applicable to the net free-at-Community price, before duty, shall be 3,8 % (Taric additional code 8900), with the exception of imports of farmed Atlantic salmon exported by the companies listed in the Annex, which shall be exempted from the duty.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Where any new exporter in the exporting country in question provides sufficient evidence to the Commission that it did not export the goods described in Article 1 (1) during the investigation period, the Commission, after consulting the Advisory Committee, may where appropriate amend, by Regulation, the Annex in order to extend the exemption from the payment of the duties to the new exporter.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 September 1997.

For the Council

The President

J. POOS

[1] See page 81 of this Official Journal.

ANNEX

	Company name	Taric code
1.	A. Øvreskotnes AS	8095
2.	A.B.A. AS	8096
3.	Agnefest Seafood	8325
4.	Alamar AS	8097
5.	Alsvåg Fiskeprodukter AS	8098
6.	Altafjord Oppdrett AS	8099
7.	Aqua Export AS	8100
8.	Aqua Partner AS	8101
9.	Aqua Supply AS	8107
10.	Aquatrade AS	8108
11.	Arctic Group International AS	8109
12.	Arctic Product AS	8110
13.	Arctic Superior AS	8111
14.	Arne Mathisen AS	8112
15.	AS Aalesundfisk	8113
16.	AS Austevoll Fiskeindustri	8114
17.	AS Keco	8115
18.	AS Møre Codfish Company	8116
19.	AS Nortraders Ltd	8117
20.	AS Refsnes Fiskeindustri	8118
21.	AS West Fish Sales Ltd	8119
22.	Astor AS	8120
23.	Atlantic King Stranda AS	8121
24.	Atlantic Seafood AS	8122
25.	Atlantis AS	8123
26.	Borkowski & Røsnes AS	8124
27.	Brødrene Aasjord AS	8125
28.	Brødrene Eilertsen AS	8126
29.	Brødrene Karlsen AS	8127
30.	Brødrene Remø AS	8128
31.	Christiansen Partner AS	8129
32.	Clipper Seafood AS	8130
33.	Coast Seafood AS	8131
34.	Companhia do Bacalhau Lda AS	8132
35.	Dåfjord Laks AS	8133
36.	Delfa Norge AS	8134
37.	DM Direkte Markedsføringsbyrå	8135
38.	DNHS Fishing Company AS	8399
39.	Domstein Salmon AS	8136
40.	E. Slorer Jacobsen & Co. AS	8137
41.	Ecco Fisk & Delikatesse	8138
42.	Edvard Johnsen AS	8139
43.	Eurolaks AS	8140
44.	Euronor AS	8141
45.	Fader Martin AS	8142
46.	Fiskeforsyningen AS	8143
47.	Fjord Aqua Group AS	8144
48.	Fjord Trading Ltd AS	8145
49.	Fonn Egersund AS	8146
50.	Fossen AS	8147
51.	Fresh Atlantic AS	8148
52.	Fresh Marine Company AS	8149
53.	Fryseriet AS	8150
54.	Frøya Fiskeindustri AS	8151
55.	Gigante Fiskekroken AS	8152
56.	Gje-vi AS	8153
57.	Gjendemsjø Fisk AS	8299
58.	Grieg Seafood AS	8300
59.	Gunnar Klo AS	8301
60.	Haafa fisk AS	8302
61.	Hallvard Leroy AS	8303
62.	Herøy Filetfabrikk AS	8304
63.	Herøy Lakseoppdrett AL	8305
64.	Hirsholm Norge AS	8306
65.	Hitramat & Delikatesse AS	8154
66.	Hydro Seafood Sales AS	8159
67.	Hydrotech-gruppen AS	8161
68.	Icelandic Freezing Plants Norway AS	8165
69.	Imperial Salmon Co. AS	8171
70.	Incofood AS	8172
71.	Inter Road AS	8173
72.	Inter Sea AS	8174
73.	J. Meinert AS	8175
74.	Jan og Einar Martinussen AS	8176
75.	Janas AS	8177
76.	Joh. H. Pettersen AS	8178
77.	Johan J. Helland AS	8179
78.	Karl Storm Andersen Eft AS	8180
79.	Karsten J. Ellingsen AS	8181
80.	Kr. Kleiven & Co. AS	8182
81.	Kurt F. Løseth & Co. AS	8183
82.	Labeyrie Norge AS	8184
83.	Lafjord Group AS	8185
84.	Langfjord Laks AS	8186
85.	Leica Fiskeprodukter	8187
86.	Leonhard Products AS	8423
87.	Lofoten Seafood Export AS	8188
88.	Lorentz A. Lossius AS	8189
89.	Ma-vo Norge AS	8190
90.	Marex AS	8326
91.	Marinco AS	8191
92.	Marine Seafood AS	8196
93.	Marstein Seafood AS	8197
94.	Master Seafood AS	8198
95.	Melands Røkeri Eftf. AS	8199
96.	Memo Food AS	8200
97.	Midtco AS	8201
98.	Misundfisk AS	8202
99.	Myre Sjømat AS	8203
100.	Naco Trading AS	8206
101.	Namdal Salmon AS	8207
102.	Nature Sea-lect Ltd	8208
103.	Neptun Stavanger AS	8209
104.	Nergård AS	8210
105.	Nils Williksen AS	8211
106.	Niscan Corporation	8212
107.	Nisja Trading AS	8213
108.	Nor-Food AS	8214
109.	Nor-Trade International	8215
110.	Nordhav AS	8216
111.	Nordic Group ASA	8217
112.	Nordreisa Laks AS	8218

	Company name	Taric code
113.	Norexport AS	8223
114.	Norfi Produkter AS	8227
115.	Norfood Group AS	8228
116.	Norfra Eksport AS	8229
117.	NorMan Trading Ltd AS	8230
118.	Nornir Group AS	8231
119.	Norsk Akvakultur AS	8232
120.	Norsk Sjåmat AS	8233
121.	Northern Seafood AS	8307
122.	Nortrade AS	8308
123.	Norway Royal Salmon Sales AS	8309
124.	Norway Royal Salmon AS	8312
125.	Norway Seafarms AS	8313
126.	Norway Seafoods ASA	8314
127.	Norwegian Salmon AS	8315
128.	Norwell AS	8316
129.	Notfisk Arctic AS	8234
130.	Nova Sea AS	8235
131.	NTC Norwegian Taste Company AS	8236
132.	Ocean Superior Products AS	8237
133.	Oddvin Bjørge AS	8238
134.	Ok-Fish Kvalheim AS	8239
135.	Omega Sea AS	8240
136.	Oster Sea Products AS	8241
137.	Pan Fish Sales AS	8242
138.	Pero Food AS	8243
139.	Polar Gigante AS	8246
140.	Polar Seafood Norway AS	8247
141.	Prilam Norvège AS	8248
142.	Pundslett Fisk	8251
143.	Roger AS	8253
144.	Rolf Olsen Seafood AS	8254
145.	Ryfisk AS	8256
146.	Rørvik Fisk-og fiskematforretning AS	8257
147.	Saga Lax Norge AS	8258
148.	Sagalax Nord AS	8259
149.	Salomega AS	8260
150.	Sandanger AS	8261
151.	Sangoltgruppa AS	8262
152.	Scan-Mar AS	8263
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
159.	Seacom Nord AS	8270
160.	Seafood Farmers of Norway Ltd AS	8271
161.	Seanor AS	8272
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