COMMISSION REGULATION (EC) No 1126/98

of 29 May 1998

imposing provisional anti-dumping and countervailing duties on certain imports of farmed Atlantic salmon originating in Norway, and amending Decision 97/634/EC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2], and in particular Article 8(10) thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community [3], and in particular Article 13(10) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

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

(2) The Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings. As a result of this examination, it was established that definitive anti-dumping and countervailing measures should be adopted in order to eliminate the injurious effects of dumping and subsidization. All interested parties were informed of the results of the investigation and were given the opportunity to comment thereon.

(3) On 26 September 1997, the Commission adopted Decision 97/634/EC [6], as last amended by Regulation (EC) No 651/98 [7], accepting undertakings offered in connection with the two abovementioned proceedings, by the exporters mentioned in the Annex to that Decision and terminating the investigations in their respect.

(4) On the same day the Council, by Regulation (EC) No 1890/97 [8], as last amended by Regulation (EC) No 772/98 [9], imposed an anti-dumping duty of ECU 0,32 per kilo on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of the Regulation.

(5) On the same day, the Council, by Regulation (EC) No 1891/97 [10], as last amended by Regulation (EC) No 772/98, also imposed a countervailing duty of 3,8 % on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of that Regulation.

(6) The abovementioned Regulations set out the definitive findings and conclusions on all aspects of the investigations.

B. APPARENT FAILURE TO COMPLY WITH THE UNDERTAKING

(7) In order to ensure the effective implementation and monitoring of the undertakings accepted, the exporters undertook to report to the Commission, on a quarterly basis, all their sales of farmed Atlantic salmon to unrelated customers in the Community.

(8) The text of the undertakings specifically provides that failure to comply with the reporting obligations and, in particular, failure to submit the quarterly report within the prescribed time limit except in case of *force majeure*, would be construed as a breach of the undertaking.

(9) Certain Norwegian exporters have failed to comply with their obligation to present a report within the prescribed time limit or have not submitted any report at all.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 128, 30. 4. 1998, p. 18.
[3] OJ L 288, 21. 10. 1997, p. 1.
[4] OJ C 253, 31. 8. 1996, p. 18.
[5] OJ C 253, 31. 8. 1996, p. 20.
[6] OJ L 267, 30. 9. 1997, p. 81.
[7] OJ L 88, 24. 3. 1998, p. 31.
[8] OJ L 267, 30. 9. 1997, p. 1.
[9] OJ L 111, 9. 4. 1998, p. 10.
[10] OJ L 267, 30. 9. 1997, p. 19.

Those exporters were informed of the consequences of late reporting, and in particular that, should the Commission have reason to believe that an undertaking was being infringed, a provisional anti-dumping and countervailing duty might be imposed pursuant to Article 8(10) of Regulation (EC) No 384/96 and Article 13(10) of Regulation (EC) No 2026/97, respectively.

These exporters were also called upon to provide, where appropriate, evidence of any *force majeure* justifying such late submission or lack of reports, but have so far failed to provide conclusive evidence of such *force majeure*.

C. **PROVISIONAL MEASURES**

(10) Under these circumstances, there is reason to believe that the undertakings accepted by the Commission from the Norwegian exporters mentioned in the Annex to this Regulation are being infringed.

(11) In view of the difficult economic situation facing the Community industry, it is considered imperative that, pending further investigation of these apparent breaches, provisional duties be imposed.

D. **RATE OF DUTY**

(12) In accordance with Article 8(10) of Regulation (EC) No 384/96, the rate of the anti-dumping duty should be established on the basis of the best information available.

Under the present circumstances and bearing in mind that no dumping margin had been individually determined for the exporters concerned, it is considered appropriate that the rate of the provisional anti-dumping duty be set at the level of the definitive duty imposed by the Council in Regulation (EC) No 1890/97.

(13) In accordance with Article 13(10) of Regulation (EC) No 2026/97, the rate of the countervailing duty must be established on the basis of the best information available.

(14) Under the present circumstances it is considered appropriate that the rate of the provisional countervailing duty be set at the level of the definitive duty imposed by the Council in Regulation (EC) No 1891/97.

E. **FINAL PROVISIONS**

(15) Decision 97/634/EC should therefore be amended accordingly.

(16) In the interests of sound administration, a period should be fixed in which interested parties may make known their views in writing and request a hearing. Furthermore, it should be noted that all findings made for the purpose of this Regulation are based on the exporters' quarterly reports or absence thereof and are therefore provisional, and may have to be reconsidered for the purpose of any definitive duties which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping 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 and exported by the companies listed in the Annex.

2. The rate of duty applicable shall be ECU 0,32/kg net product weight.

Article 2

1. A provisional 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 and exported by the companies listed in the Annex.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be 3,8 %.

Article 3

1. The duties referred to in Articles 1 and 2 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 way of all customs and transport documents to be provided by interested parties, that it was caught at sea.

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

Article 4

The parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 5

The companies listed in the Annex to this Regulation are hereby deleted from the Annex to Decision 97/634/EC.

Article 6

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

It shall apply for a period of four months.

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

Done at Brussels, 29 May 1998.

For the Commission
Leon BRITTAN
Vice-President

ANNEX

No	Company	TARIC additional code
19	A/S Nortraders Ltd	8117
45	Fader Martin A/S	8142
55	Gigante Fiskekroken A/S	8152
59	Gunnar Klo A/S	8301
71	Inter Road A/S	8173
95	Melands Røkeri Eftf. A/S	8199
106	Niscan Corporation A/S	8212
109	Nor-Trade International	8215
125	Norway Seafarms A/S	8313
136	Oster Sea Products A/S	8241
138	Pero Food A/S	8243
186	Vest Agentur A/S	8320