COMMISSION REGULATION (EC) No 1789/98

of 14 August 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 subsidised 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 an anti-dumping proceeding [4] as well as 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 subsidisation. 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 1126/98 [7], accepting undertakings offered in connection with the two abovementioned proceedings from the exporters mentioned in the Annex to the 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 that Regulation.

(5) Again 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 the 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, the details of all their sales on a transaction-by-transaction basis of farmed Atlantic salmon to unrelated customers in the Community.

(8) Besides their reporting obligations, the exporters specifically undertook to observe a precisely defined minimum price for sales of the respective presentations of salmon imported into the Community.

(9) It appeared from the reports relating to the fourth quarter of 1997 that three Norwegian exporters — Icelandic Freezing Plants N. AS, Incofood AS, and Ma-vo Norge AS — had made sales on the Community market below the minimum price stipulated in the undertaking.

[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 157, 30. 5. 1998, p. 82.
[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.

(10) All companies concerned were given the opportunity to correct any possible clerical mistakes made in the processing of their reports and in the assessment of the facts. None of the explanations provided led the Commission to believe that the undertakings were not being infringed.

(11) In addition, in trying to demonstrate that the apparent non-observance of its undertaking was due to an erroneous reporting in a single sale transaction, Icelandic Freezing Plants N. AS made submissions showing that it had reported to the Commission, for a major proportion of its sales to the Community, only the sales to its related companies instead of the sales to the first independent buyer, as was required.

C. PROVISIONAL MEASURES

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

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

D. RATE OF DUTY

(14) According to Article 8(10) of Regulation (EC) No 384/96, the rate of the anti-dumping duty is to be established on the basis of the best-information available.

(15) In this regard, and in view of recital (107) of Regulation (EC) No 1890/97, it is considered appropriate to set the rate of the provisional anti-dumping duty, for all companies concerned, at ECU 0,32/kg net product weight.

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

Under the present circumstances and in view of recital (149) of Regulation (EC) No 1891/97, it is considered appropriate that the rate of the provisional countervailing duty be set at the level of 3,8 % of the net free-at-Community-frontier price before duty.

E. FINAL PROVISIONS

(17) Decision 97/634/EC should therefore be amended accordingly, by the deletion of the exporters concerned from the list annexed to the Decision.

(18) In the interest of sound administration, a period should be fixed in which interested parties may make known their views in writing and request a hearing,

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 mean that in respect of which the competent authorities of the Member State of landing are satisfied, from 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 names of 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 that of 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, 14 August 1998.

For the Commission
Leon BRITTAN
Vice-President

ANNEX

No	Company	Taric additional code
68	Icelandic Freezing Plants N. AS	8 165
70	Incofood AS	8 172
89	Ma-vo Norge AS	8 190