COUNCIL REGULATION (EC) No 2052/98

of 24 September 1998

further amending Regulations (EC) No 1890/97 and (EC) No 1891/97 imposing definitive anti-dumping and countervailing duties 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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Articles 8(9) and 9 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 [2], and in particular Articles 13(9) and 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) In the framework of the anti-dumping and anti-subsidy investigations initiated by two separate notices published in the *Official Journal of the European Communities* [3], the Commission accepted, by Decision 97/634/EC [4], undertakings offered by the Kingdom of Norway and by 190 Norwegian exporters.

(2) 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.

(3) For the fourth quarter of 1997, 12 Norwegian exporters failed to comply with their obligation to present a report within the prescribed time limit or did not submit any report at all. These exporters did not provide any evidence of force majeure to justify such late reporting or non-reporting. On this basis, the Commission had reasons to believe that these companies had breached the terms of their undertakings.

(4) Consequently, the Commission, by Regulation (EC) No 1126/98 [5], hereinafter referred to as the 'provisional duty Regulation', imposed provisional anti-dumping and countervailing duties on imports of farmed Atlantic salmon falling within CN codes ex 0302 12 00, ex 0304 10 13, ex 0303 22 00 and ex 0304 20 13 originating in Norway and exported by the 12 companies listed in the Annex to that Regulation. By the same Regulation, the Commission deleted the companies concerend from the Annex to Decision 97/634/EC listing the companies, from which undertakings were accepted.

B. SUBSEQUENT PROCEDURE

(5) All 12 Norwegian companies subject to the provisional duties received disclosure in writing concerning the essential facts and considerations, on the basis of which these provisional duties were imposed.

(6) Within the time limit set in the provisional duty Regulation, some of the Norwegian companies concerned submitted comments in writing.

(7) Subsequent to the written submissions received, the Commission sought and examined all information it deemed necessary for the purpose of a definitive determination on the apparent violations.

(8) None of the companies, which failed to respect their reporting obligations, submitted any valid evidence of *force majeure* as would have been necessary under the terms of the undertaking in order to lawfully justify such failure.

In the absence of specific provisions in this regard in Regulation (EC) No 384/96, hereinafter referred to as the 'basic anti-dumping Regulation', and in Regulation (EC) No 2026/97, hereinafter referred to as the 'basic anti-subsidies Regulation', and in accordance with the case law of the Court of Justice, the justification invoked by each company as circumstances constituting *force majeure* can only be recognised as such where the failure was the inevitable result of an extraneous cause which could not reasonably have been foreseen or pre-empted and made it objectively impossible for the company concerned to comply with its obligations.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 288, 21. 10. 1997, p. 1.
[3] OJ C 235, 31. 8. 1996, p. 18 and OJ C 235, 31. 8. 1996, p. 20.
[4] OJ L 267, 30. 9. 1997, p. 81.
[5] OJ L 157, 30. 5. 1998, p. 82.

In this regard, all circumstances invoked by the parties concerned, e.g. the illness of staff members for a few days, or the intense activity of other fish productions, cannot be considered as circumstances constituting *force majeure.*

(9) Two out of the twelve exporters listed in Annex I, i.e. Gigante Fiskekroken A/S and Melands Røkeri Eftf. A/S [1], have notified the Commission that they have changed their names and requested that the newly named companies be allowed to enter new undertakings as newcomers. However, the Commission is of the view that a simple change of name of a company is not sufficient to bring a party within the scope of Article 2 of Council Regulation (EC) No 1890/97 of 26 September 1997 imposing a definitive anti-dumping duty on imports of farmed Atlantic salmon originating in Norway [2] or Article 2 of Council Regulation (EC) No 1891/97 of 26 September 1997 imposing a definitive countervailing duty on imports of farmed Atlantic salmon originating in Norway [3].

C. DEFINITIVE MEASURES

(10) The interested parties were informed of the essential facts and considerations, on the basis of which it was intended to confirm the withdrawal of the Commission's acceptance of their undertaking and to recommend the imposition of definitive anti-dumping and countervailing duties and the definitive collection of the amounts secured by way of provisional duties. They were also granted a period, within which to make representations subsequent to this disclosure.

(11) In view of the comments submitted, it is concluded that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic salmon originating in Norway and exported by the companies listed in Annex I.

(12) The investigations, which led to the undertakings, were concluded by a final determination as to dumping and injury by Regulation (EC) No 1890/97, and by a final determination as to subsidisation and injury by Regulation (EC) No 1891/97.

Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidies Regulation, the rate of the definitive duties for the twelve Norwegian companies should be fixed at the level of the duties established in those two Regulations.

D. DEFINITIVE COLLECTION OF PROVISIONAL DUTIES

(13) A breach of undertaking has been established in relation to the twelve exporters having violated their undertakings. Therefore, it is considered necessary that the amounts secured by way of provisional anti-dumping and countervailing duties be definitively collected at the level of the definitive duties.

(14) The Annex to Regulation (EC) No 1890/97 and the Annex to Regulation (EC) No 1891/97, exempting the parties listed therein from the relevant duty, should be amended to remove the exemption from the 12 companies listed in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 1890/97 shall be replaced by Annex II hereto.

2. The Annex to Regulation (EC) No 1891/97 shall be replaced by Annex II hereto.

Article 2

The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by Regulation (EC) No 1126/98 in relation to 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 I to this Regulation shall be definitively collected.

Article 3

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

[1] The new names are Gigante Sild A/S and Rokespesialisten A/S, respectively.
[2] OJ L 267, 30. 9. 1997, p. 1. Regulation as last amended by Regulation (EC) No 772/98 (OJ L 111, 9. 4. 1998, p. 10).
[3] OJ L 267, 30. 9. 1997, p. 19. Regulation as last amended by Regulation (EC) No 772/98 (OJ L 111, 9. 4. 1998, p. 10).

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

Done at Brussels, 24 September 1998.

For the Council
The President
N. MICHALEK

ANNEX I

List of companies subject to definitive anti-dumping and countervailing duties

UT No	Company name	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

ANNEX II

List of companies benefiting from undertakings

UT No	Company name	Taric additional code
1	A. Ovreskotnes A/S	8095
3	Agnefest Seafood	8325
5	Alsvag Fiskeprodukter A/S	8098
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
14	Arne Mathiesen A/S	8112
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
23	Atlantic King Stranda A/S	8121
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
28	Brødrene Eilertsen A/S	8126
30	Brødrene Remo A/S	8128
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/A	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134

UT No	Company name	Taric additional code
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Eurolaks A/S	8140
44	Euronor A/S	8141
46	Fiskeforsyningen A/S	8143
47	Fjord Aqua Group A/S	8144
48	Fjord Trading Ltd A/S	8145
49	Fonn Egersund A/S	8146
50	Fossen A/S	8147
51	Fresh Atlantic A/S	8148
52	Fresh Marine Company A/S	8149
53	Fryseriet A/S	8150
58	Grieg Seafood A/S	8300
60	Haafa fisk A/S	8302
61	Hallvard Lerøy A/S	8303
62	Herøy Filetfabrikk A/S	8304
64	Hirsholm Norge A/S	8306
65	Hitramat & Delikatesse A/S	8154
66	Hydro Seafood Sales A/S	8159
67	Hydrotech-gruppen A/S	8428
68	Icelandic Freezing Plants N. A/S	8165
70	Incofood A/S	8172
72	Inter Sea A/S	8174
75	Janas A/S	8177
76	Joh. H. Pettersen A/S	8178
77	Johan J. Helland A/S	8179

UT No	Company name	Taric additional code
79	Karsten J. Ellingsen A/S	8181
80	Kr. Kleiven & Co. A/S	8182
82	Labeyrie Norge A/S	8184
83	Lafjord Group A/S	8185
84	Langfjord Laks A/S	8186
85	Leica Fiskeprodukter	8187
86	Leonhard Products A/S	8423
87	Lofoten Seafood Export A/S	8188
88	Lorentz A. Lossius A/S	8189
89	Ma-vo Norge A/S	8190
90	Marex A/S	8326
92	Marine Seafood A/S	8196
93	Marstein Seafood A/S	8197
96	Memo Food A/S	8200
98	Midsundfisk A/S	8202
99	Myre Sjømat A/S	8203
100	Naco Trading A/S	8206
101	Namdal Salmon A/S	8207
104	Nergård A/S	8210
105	Nils Williksen A/S	8211
107	Nisja Trading A/S	8213
108	Nor-Food A/S	8214
111	Nordic Group A/SA	8217
112	Nordreisa Laks A/S	8218
113	Norexport A/S	8223
114	Norfi Produkter A/S	8227
115	Norfood Group A/S	8228

UT No	Company name	Taric additional code
116	Norfra Eksport A/S	8229
117	NorMan Trading Ltd A/S	8230
119	Norsk Akvakultur A/S	8232
120	Norsk Sjømat A/S	8233
121	Northern Seafood A/S	8307
122	Nortrade A/S	8308
123	Norway Royal Salmon Sales A/S	8309
124	Norway Royal Salmon A/S	8312
126	Norway Seafoods A/SA	8314
128	Norwell A/S	8316
129	Notfisk Arctic A/S	8234
130	Nova Sea A/S	8235
134	Ok-Fish Kvalheim A/S	8239
137	Pan Fish Sales A/S	8242
140	Polar Seafood Norway A/S	8247
141	Prilam Norvège A/S	8248
142	Pundslett Fisk	8251
143	Roger A/S	8253
144	Rolf Olsen Seafood A/S	8254
145	Ryfisk A/S	8256
146	Rørvik Fisk-og fiskematforretning A/S	8257
147	Saga Lax Norge A/S	8258
148	Saga Lax Nord A/S	8259
149	Salomega A/S	8260
151	Sangoltgruppa A/S	8262
153	Scanfood A/S	8264
154	Sea Eagle Group A/S	8265

UT No	Company name	Taric additional code
155	Sea Star International A/S	8266
156	Sea-Bell A/S	8267
157	Seaco A/S	8268
158	Seacom A/S	8269
159	Seacom Nord A/S	8270
160	Seafood Farmers of Norway Ltd A/S	8271
161	Seanor A/S	8272
162	Sekkingstad A/S	8273
164	Sirena Norway A/S	8275
165	Kinn Salmon A/S	8276
166	Skarpsno Mat	8277
167	SL Fjordgruppen A/S	8278
168	SMP Marine Produkter A/S	8279
171	Stavanger Røkeri A/S	8282
172	Stjernelaks A/S	8283
174	Stolt Sea Farm A/S	8285
175	Storm Company A/S	8286
176	Superior A/S	8287
177	Svenodak A/S	8288
178	Terra Seafood A/S	8289
180	Timar Seafood A/S	8294
182	Torris Products Ltd. A/S	8298
183	Troll Salmon A/S	8317
187	Vie de France Norway A/S	8321
188	Vikenco A/S	8322
189	Wannebo International A/S	8323
190	West Fish Norwegian Salmon A/S	8324
191	Nor-Fa Food A/S	8102