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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2678/98

of 10 December 1998

amending Regulation (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], (hereinafter referred to as 'the basic anti-dumping Regulation'), and in particular Article 8(9) and Article 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] (hereinafter referred to as 'the basic anti-subsidies Regulation'), and in particular Article 13(9) and Article 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-subsidy and anti-dumping investigations initiated by two separate notices published in the *Offical Journal of the European Communities* [3], the Commission accepted, by Decision 97/634/EC [4], undertaking offered by the Kingdom of Norway and by 190 Norwegian exporters.

(2) In monitoring the reports received for the fourth quarter of 1997, it appeared that three Norwegian exporters — Icelandic Freezing Plants Norway AS, Incofood AS, and Ma-vo Norge AS — had made sales on the Community market below the minimum price stipulated in the undertaking and were therefore in breach of their obligations under the undertaking. When given the possibility to correct any possible clerical mistakes, one company made submissions showing that it had so far been reporting to the Commission sales to its related companies in the Community, instead of its resales to the first independent buyer, as required under the terms of the undertaking. These sales to related companies represented the overwhelming majority of total export sales of the product concerned to the Community made by this company.

(3) Consequently, the Commission, by Regulation (EC) No 1789/98 [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 three companies mentioned above. By the same Regulation, the Commission removed the companies concerned from the Annex to Decision 97/634/EC listing the companies from which undertakings were accepted.

B. SUBSEQUENT PROCEDURE

(4) Immediately after the imposition of the provisional duties, these three Norwegian companies received disclosure in writing of the essential facts and considerations, on the basis of which these provisional duties were imposed.

[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. Decision as last amended by Regulation (EC) No 2249/98 (OJ L 282, 20. 10. 1998, p. 57).
[5] OJ L 228, 15. 8. 1998, p. 4.

(5) One company did not submit any comments further to the Commission's disclosure document. Furthermore, the company had previously informed the Commission that on 1 January 1998 it had returned its export licence issued by the Norwegian authorities.

(6) Within the time limit set in the provisional duty Regulation, the other two companies submitted comments in writing and were granted a hearing.

(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) As regards the company having reported sales to its related parties, this further examination confirmed the provisional findings set out in recital 11 of the provisional duty Regulation. Indeed, it was established that almost the totality of the transactions reported for the fourth quarter of 1997 as well as those included in the quarterly reports submitted for the third quarter of 1997, and the first and second quarter of 1998 within the given deadlines were in fact sales to related companies in the Community and not to independent parties, it being the latter which should have been reported, in accordance with the clear terms of the undertaking. In reaction to the disclosure document sent after the provisional duties were imposed, the company claimed that it had only made a reporting error and on 15 September 1998 sent the Commission new reports for the third and fourth quarters of 1997 and for the first and second quarters of 1998. In addition, the company contended that the sales to first independent customers reported in the revised reports respected the minimum price provision. Thus, it was alleged no injury was caused to the Community industry.

(9) In its undertaking, the company undertook to send the Commission, within the given deadlines, a confidential report of all sales transactions to the first unrelated customers in the Community. Furthermore, the undertaking stipulates that failure to submit the quarterly report as required within the prescribed time limits shall be considered a violation of the undertaking, except in cases of *force majeure.* Despite these clear terms, of which the company was fully aware, it only reported transfer sales, within the given deadlines, and thus violated its reporting obligation. Indeed, transfer sales do not allow any conclusions to be reached on the actual sales prices charged to first unrelated customers, and thus do not enable the Commission to monitor the undertaking.

(10) In view of the fact that the non-compliance with the explicit reporting obligations must be construed as a breach of the undertaking, in accordance with Article 8(7) of the basic anti-dumping Regulation and Article 13(7) of the basic Anti-subsidies Regulation, it is not considered necessary to establish whether actual sales price levels infringed the minimum price provision set in the undertaking. Indeed, this could only have shown that, in addition to having breached the undertaking by reporting in a way which prevents its effective monitoring by the Commission, the minimum price set therein might have not been respected.

(11) The third company admitted that it had made a sale below the minimum price stipulated by the undertaking, this transaction representing the totality of sales of the presentation in question. However, the exporter claimed that for this transaction, which was admitted to be a special sale intended to be made with no profit, the minimum price would have been respected if unforeseen transport arrangements had not resulted in an unexpectedly low sales price. It was claimed that the goods were shipped through a border point different from the one foreseen by the company, and that they were shipped on a partial instead of a full truck load, the higher transport costs thus incurred thereby increasing the deduction per kilo for transport costs within the Community made from the delivered duty paid (DDP) price to the first independent customer, in order to obtain the Community border price.

Quite apart from the difficulty of verifying such hypothetical arguments, which were only gradually put forward in the course of successive explanations, the breach seems to result from the fact that the sale was planned too close to the minimum price level, not even yielding any profit. Given the clear terms of the minimum price obligation in the undertaking, which include the deduction for direct selling expenses in case of DDP sales, it is incumbent upon the company to make sure that the minimum price is respected regardless of whether favourable transport arrangements can be made, or otherwise.

C. DEFINITIVE MEASURES

(12) 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. The parties were also granted a period, within which to make representations subsequent to this disclosure.

(13) After having duly considered 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.

(14) The investigations which led to the undertakings were concluded by a final determination as to dumping and injury by Regulation (EC) No 1890/97 [1], and by a final determination as to subsidisation and injury by Regulation (EC) No 1891/97 [2]. 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 three Norwegian companies should be fixed at the level of the duties established in those two Regulations.

D. **DEFINITIVE COLLECTION OF PROVISIONAL DUTIES**

(15) A breach of the undertaking has been established in relation to the three exporters listed in Annex I to this Regulation. 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.

E. **UPDATING OF THE LIST OF EXPORTERS EXEMPTED FROM ANTI-DUMPING AND COUNTERVAILING DUTIES**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 1890/97 is hereby replaced by Annex II to this Regulation.

2. The Annex to Regulation (EC) No 1891/97 is hereby replaced by Annex II to this Regulation.

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 Annex I to this Regulation shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following 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, 10 December 1998.

For the Council
The President
W. SCHÜSSEL

[1] OJ L 267, 30. 9. 1997, p. 1. Regulation as last amended by Regulation (EC) No 2052/98 (OJ L 264, 29. 9. 1998, p. 17).
[2] OJ L 267, 30. 9. 1997, p, 19. Regulation as last amended by Regulation (EC) No 2052/98 (OJ L 264, 29. 9. 1998, p. 17).

ANNEX I

LIST OF COMPANIES SUBJECT TO DEFINITIVE ANTI-DUMPING AND COUNTERVAILING DUTIES

UT No	Company	Taric additional code
68	Icelandic Freezing Plants N. AS	8165
70	Incofood AS	8172
89	Ma-vo Norge AS	8190

ANNEX II

LIST OF COMPANIES BENEFITING FROM UNDERTAKINGS

UT No	Company name	Taric additional code
1	A. Øvreskotnes AS	8095
3	Agnefest Seafood	8325
5	Alsvåg	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 Remø AS	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
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnson A/S	8139
43	Eurolaks AS	8140
44	Euronor AS	8141
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
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Herøy Filetfabrikk AS	8304
64	Hirsholm Norge AS	8306
65	Hitramat & Delikatesse AS	8154
66	Hydro Seafood Sales AS	8159

UT No	Company name	Taric additional code
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr. Kleiven & Co. AS	8182
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
90	Marex AS	8326
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Midsundfisk AS	8202
99	Myre Sjømat AS	8203
100	Naco Trading AS	8206
101	Namdal Salmon AS	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
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
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Norway Seafoods ASA	8314
128	Norwell AS	8316
129	Notfisk Arctic AS	8234
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
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

UT No	Company name	Taric additional code
145	Ryfisk AS	8256
146	Rørvik Fisk- og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Saga Lax Nord A/S	8259
149	Salomega AS	8260
151	Sangoltgruppa AS	8262
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
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276
166	Skarpsno Mat	8277
167	SL Fjordgruppen AS	8278
168	SMP Marine Produkter AS	8279
171	Stavanger Røkeri AS	8282
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
177	Svenodak AS	8288
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
187	Vie de France Norway AS	8321
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Food AS	8102