COMMISSION REGULATION (EC) No 651/98

of 23 March 1998

amending Council 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, amending Commission Regulation (EC) No 2529/97 imposing provisional anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway with regard to certain exporters and amending Commission Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidies proceedings concerning imports of farmed Atlantic salmon originating in Norway

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 amended by Regulation (EC) No 2331/96 [2], and in particular Articles 7 and 8 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 thereof,

Having regard to 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 [4], and in particular Article 2 thereof,

Having regard to Council Regulation (EC) No 1891/97 of 26 September 1997 imposing a definitive countervailing duty on imports of farmed Atlantic salmon originating in Norway [5], and in particular Article 2 thereof,

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* [6], the Commission had accepted, on 26 September 1997, by Decision 97/634/EC [7], undertakings offered by the Kingdom of Norway and by 190 Norwegian exporters. These undertakings apply to all sales invoiced by these exporters since 1 July 1997.

Subsequent to the acceptance of these undertakings, the Commission had reasons to believe that 29 exporters were failing to comply with the terms of these undertakings:

— it appeared from their reports relating to the third quarter 1997 that six Norwegian exporters had made sales on the Community market below the minimum price stipulated in the undertaking for each presentation of the product concerned,

— 23 Norwegian exporters failed to comply with their obligation to submit their report relating to the third quarter 1997 within the prescribed time limit, or did not submit such report at all. These exporters did not provide any evidence of *force majeure* to justify such late reporting.

(2) Consequently, the Commission, by Commission Regulation (EC) No 2529/97 [8], 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 originating in Norway and exported by the companies listed in Annex I to that Regulation.

B. SUBSEQUENT PROCEDURE

(3) All Norwegian companies concerned by the provisional duties received disclosure in writing concerning the essential facts and considerations on the basis of which these duties were imposed.

(4) Within the time limit set in the Provisional Duty Regulation, most of the Norwegian companies concerned submitted comments in writing.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 288, 21. 10. 1997, p. 1.
[4] OJ L 267, 30. 9. 1997, p. 1.
[5] OJ L 267, 30. 9. 1997, p. 19.
[6] OJ C 235, 31. 8. 1996, pp. 18 and 20.
[7] OJ L 267, 30. 9. 1997, p. 81.
[8] OJ L 346, 17. 12. 1997, p. 63.

(5) Subsequent to the written submissions received, the Commission sought and verified all information it deemed necessary for the purpose of a definitive determination on the apparent violations, and carried out verification visits at the premises of the following companies in Norway:

— Fresh Marine Company AS (Taric additional code 8149), and

— Seanor AS (Taric additional code 8272).

C. DEFINITIVE FINDINGS

(6) During the subsequent procedure, four companies could provide satisfactory evidence demonstrating that the provisional findings resulted *inter alia* from erroneous or unclear reporting on the part of the companies concerned. In fact, the actual average sales prices of these companies for the respective presentations of the product concerned were such that they did not violate the minimum price as stipulated in the undertaking.

(7) One of the companies which apparently had failed to send its undertaking report within the time limit set could finally provide evidence that despite the adverse *prima facie* evidence initially available, it had in fact delivered its report in time to the local post office.

(8) For the aforementioned five exporters therefore, the breach of their undertakings provisionally established cannot be definitively confirmed. Consequently, following the exporters' confirmation that they intend to continue to adhere to their undertakings, the *status quo ante* should be re-established as regards these companies' undertakings.

(9) Therefore, for the following five companies, the provisional measures are to be repealed, the amounts secured by way of provisional duty are to be released, and their undertakings reinstated.

UT No	Company name
47	Fjord Aqua Group A/S
52	Fresh Marine Company A/S
76	Joh. H. Pettersen A/S
120	Norsk Sjømat A/S
161	Seanor A/S

(10) Parties were informed of the essential facts and considerations on the basis of which it was intended to repeal the provisional anti-dumping and countervailing duties and reinstate their undertakings. No further comments were received.

(11) None of the other companies which failed to respect their reporting obligations submitted any valid evidence of *force majeure* as allowed by the undertaking.

In the absence of specific provisions in this regard in the basis anti-dumping and anti-subsidies regulations, 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.

In this regard, all circumstances invoked by the parties concerned, e.g. the holidays of a responsible person, misunderstanding about the scope of the undertakings, loss of time management software, erroneous filing of correspondence, cannot be considered as circumstances constituting *force majeure*.

(12) On the basis of the foregoing it is concluded that two Norwegian exporters have breached their obligation to respect the minimum price. In addition, 22 other Norwegian exporters have breached the reporting requirements of their undertakings.

(13) 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.

D. NEWCOMERS

(14) Following the imposition of definitive anti-dumping and countervailing duties, several com-

panies made themselves known to the Commission claiming to be new exporters, and offered undertakings.

(15) In this regard, one such company, Nor-Fa Food AS could demonstrate that if had not exported to the Community during the investigation period relevant for the investigations which led to the current anti-dumping and countervailing measures. This company could show that it was not related to any of the exporters or producers in Norway which are subject to the anti-dumping and countervailing measures on farmed Atlantic salmon. Finally, it demonstrated that it had entered into irrevocable contractual obligation to export a significant quantity of farmed Atlantic salmon to the Community.

The undertaking offered is identical in its terms to those previously accepted from other Norwegian exporters of farmed Atlantic salmon, and it is considered that the acceptance of an undertaking in these terms from this exporter will be sufficient to remove the injurious effects of dumping.

Since the exporter has agreed to provide the Commission with regular and detailed information on its exports to the Community, it is concluded that the correct observance ot the undertaking can be effectively monitored by the Commission.

(16) The undertaking offered by this company is therefore considered acceptable. The company was informed of the essential facts and considerations on which the acceptance of the undertaking be based. The Advisory Committee was consulted and no objections were raised as to the acceptance of the untertaking offered. Therefore, pursuant to Article 2 of Regulation (EC) No 1890/97 and Article 2 of Regulation (EC) No 1891/97, the Annexes to these two Regulations should be amended to extend the exemption from the payment of the anti-dumping and countervailing duties to this new exporter.

E. AMENDMENT OF THE ANNEX TO DECISION 97/634/EC

(17) The Commission is in parallel to this Regulation submitting a proposal for a Council regulation imposing definitive anti-dumping and countervailing duties on farmed Atlantic salmon originating in Norway and exported by the other 24 companies which are subject to the provisional duty imposed by the Provisional Duty Regulation and for which the breach of the undertaking has been confirmed by the definitive findings made.

In addition, certain companies informed the Commission, that their name had been changed or that their name as shown in the Annex to Decision 97/634/EC is not correct. Where a company has changed its name, the Commission verified that there was no change in the corporate structure which would call for a more detailed examination of the appropriateness of maintaining its undertaking.

The Annex to Decision 97/634/EC accepting undertakings in the context of the present anti-dumping and anti-subsidies proceedings should be amended to take account of the acceptance of the undertaking by the newcomer Nor-Fa Food AS, the change of name of Skaarfish Group AS, the correction of the name indicated for West Fish Sales Ltd and the reinstatement of the undertakings given by the companies in respect of which the provisional duty is being repealed. In the interests of clarity, the full Annex, as revised, is annexed hereto at Annex II,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 2529/97 is hereby replaced by Annex I hereto.

2. The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by that Regulation 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 following companies shall be released.

UT No	Company name	Taric additional code
47	Fjord Aqua Group A/S	8144
52	Fresh Marine Company A/S	8149
76	Joh. H. Pettersen A/S	8178
120	Norsk Sjømat A/S	8233
161	Seanor A/S	8272

Article 2

The Annex to Decision 97/634/EC is hereby replaced by Annex II hereto.

Article 3

The following company shall be added to the Annex to Regulation (EC) No 1890/97 and the Annex to Regulation (EC) No 1891/97:

UT No	Company name	Taric code
191	Nor-Fa Food AS	8102

Article 4

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, 23 March 1998.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

No	Company name	Taric additional code
6	Altafjord Oppdrett A/S	8099
9	Aqua Supply A/S	8107
10	Aquatrade AS	8108
18	A/S Møre Codfish Company	8116
34	Compania do Bacalhau Lda A/S	8132
38	DNHS Fishing Company A/S	8399
56	Gje-vi A/S	8153
57	Gjendemsjø Fisk A/S	8299
63	Heroy Lakseoppdrett AL	8305
73	J. Meinert A/S	8175
74	Jan og Einar Martinussen A/S	8176
78	Karl Storm Andersen Eft A/S	8180
91	Marinco A/S	8191
94	Master Seafood	8198
102	Nature Sea-lect Ltd	8208
103	Neptun Stavanger A/S	8209
110	Nordhav A/S	8216
127	Norwegian Salmon A/S	8315
132	Ocean Superior Products A/S	8237
135	Omega Sea A/S	8240
139	Polar Gigante A/S	8246
170	Starfish	8281
184	Uniprawns A/S	8318
185	Vareberg's Røykeri	8319

ANNEX II

UT No	Company name	Taric additional code
1	A. Ovreskotnes AS	8095
2	A.B.A. A/S	8096
3	Agnefest Seafood	8325
4	Alamar A/S	8097
5	Alsvag Fiskeprodukter A/S	8098
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
12	Arctic Product A/S	8110
13	Artic Superior A/S	8111
14	Arne Mathisen A/S	8112
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
19	A/S Nortraders Ltd	8117
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
25	Atlantis A/S	8123
26	Borkowski & Rosnes A/S	8124
27	Brodrene Aasjord A/S	8125
28	Brodrene Eilertsen A/S	8126
29	Brodrene Karlsen A/S	8127
30	Brodrene 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
37	DM Direkte Markedsforingsbyra	8135

UT No	Company name	Taric additional code
39	Domstein Salmon A/S	8136
40	E. Slorer Jacobsen & Co. A/S	8137
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	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
58	Grieg Seafood AS	8300
59	Gunnar Klo AS	8301
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
67	Hydrotech-gruppen AS	8428
68	Icelandic Freezing Plants N. AS	8165
69	Imperial Salmon Co. AS	8171
70	Incofood AS	8172
71	Inter Road AS	8173
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

UT No	Company name	Taric additional code
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
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
95	Melands Røkeri Eftf. AS	8199
96	Memo Food AS	8200
97	Midtco AS	8201
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
106	Niscan Corporation AS	8212
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
109	Nor-Trade International	8215
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
118	Nornir Group AS	8231
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

UT No	Company name	Taric additional code
124	Norway Royal Salmon AS	8312
125	Norway Seafarms AS	8313
126	Norway Seafoods ASA	8314
128	Norwell AS	8316
129	Notfisk Arctic AS	8234
130	Nova Sea AS	8235
131	NTC Norwegian Taste Company AS	8236
133	Oddvin Bjørge AS	8238
134	Ok-Fish Kvalheim AS	8239
136	Oster Sea Products AS	8241
137	Pan Fish Sales AS	8242
138	Pero Food AS	8243
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	Saga Lax Nord A/S	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
162	Sekkingstad AS	8273
163	Sigerfjord-Fisk AS	8274
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276

UT No	Company name	Taric additional code
166	Skarpsno Mat	8277
167	SL Fjordgruppen AS	8278
168	SMP Marine Produkter AS	8279
169	Sotra Fiskeindustri AS	8280
171	Stavanger Røkeri AS	8282
172	Stjernelaks AS	8283
173	Stokfish Norway AS	8284
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
177	Svenodak AS	8288
178	Terra Seafood AS	8289
179	Thorleif E. Ellingsen AS	8293
180	Timar Seafood AS	8294
181	Toget International AS	8297
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
186	Vest Agentur AS	8320
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