COMMISSION REGULATION (EC) No 131/1999

of 21 January 1999

amending Regulation (EC) No 2249/98 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 last amended by Regulation (EC) No 905/98 [2], and in particular Article 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,

After consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) Within the framework of the anti-dumping and anti-subsidy investigations initiated by two separate notices published in the *Official Journal of the European Communities* [4], the Commission accepted, by Decision 97/634/EC [5] as last amended by Regulation (EC) No 82/1999 [6], undertakings offered by 190 Norwegian exporters and the Kingdom of Norway.

(2) The text of the undertakings provides that failure to submit a quarterly report of all sales transactions to the first unrelated customer in the Community within a prescribed time limit except in case of *force majeure*, would be construed as a violation of the undertaking.

(3) For the first quarter of 1998, eight Norwegian companies either did not 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.

(4) The text of the undertakings also provides that failure to comply with the obligation to sell the product concerned on the Community market at or above the minimum price stipulated in the undertaking would be construed as a violation of the undertaking.

(5) In this regard, for the fourth quarter of 1997, one Norwegian exporter appeared to have sold the product concerned to the Community market at a price which was below the price stipulated in the undertaking. In addition, one of the Norwegian exporters which failed to submit its quarterly report for the first quarter of 1998 within the time limit, also appeared to have sold the product concerned to the Community market at a price which was below the price foreseen in the undertaking

(6) The Commission therefore had reason to believe that these nine companies had breached the terms of their undertakings.

(7) Consequently, the Commission, by Regulation (EC) No 2249/98 [7], 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 nine companies listed in the Annex to that Regulation. By the same Regulation, the Commission deleted the companies concerned from the Annex to Decision 97/634/EC, which listed the companies from which undertakings were accepted.

B. SUBSEQUENT PROCEDURE

(8) All nine 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. They were also given an opportunity to submit comments and request a hearing.

[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 235, 31. 8. 1996, p. 18, and OJ C 235, 31. 8. 1996, p. 20.
[5] OJ L 267, 30. 9. 1997, p. 81.
[6] OJ L 8, 14. 1. 1999, p. 8.
[7] OJ L 282, 20. 10. 1998, p. 57.

(9) Within the time limit set in the provisional duty Regulation, only one of the Norwegian companies concerned submitted comments in writing. Following receipt of this written submission, the Commission sought and examined all information it deemed necessary for the purposes of a definitive determination on the apparent violation. Comments were also submitted by a company not subject to an undertaking concerning NorMan Trading Ltd AS.

(10) Of the nine companies subject to the provisional measures, only one company, Norwell AS, requested a hearing.

(11) 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.

(12) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account in the definitive findings.

C. DEFINITIVE FINDINGS

(13) During the hearing, Norwell AS reiterated that the violation of its undertaking had occurred as a result of the deduction of certain credit notes, causing its average selling price to the Community to fall below the minimum import price for the last quarter of 1997. However, the company claimed mitigating circumstances in that the credit notes were issued in respect of a 'one-off' quality claim for a consignment of fish which arrived in abnormally poor condition at the premises of the buyers in the Community. This poor quality of the fish resulted in the company granting significant rebates to its customers. While admitting that the effect of the credit notes has been to reduce the company's average sales price from above the minimum import price to a level which is below that price, the company argued that, at the time when the sales price was negotiated, the issue of such credit notes for such an amount could not have been foreseen.

(14) Credit notes for quality claims would also justify a reduction of the customs value which, if the measure was not an undertaking but a variable duty, would lead to a proportional reduction of the applicable duties. To ensure, therefore, full equivalence of anti-dumping and countervailing measures whether taken in the form of duties or undertakings, the Commission considered that credit notes for genuine, substantiated quality claims should not lead to a violation finding.

(15) In view of the above, and with sufficient evidence now presented and verified which supports the claim of Norwell AS concerning the abnormally poor quality of this particular consigment, it is concluded that definitive measures should not be imposed on this company.

(16) As regards NorMan Trading Ltd AS, against which provisional duties were imposed, it was claimed by another Norwegian company that this company ceased trading in September 1997, was wound up, and had some of its activities transferred to the company which made the submission. Accordingly, as no comments were received on the violation findings and, as the company may no longer exist, the name of this company should be removed from the list of Norwegian exporters which are exempted from the definitive anti-dumping and countervailing duties.

(17) With regard to the remaining companies which failed to respect their reporting obligations, as mentioned above, none of them have claimed subsequent to disclosure that *force majeure* had prevented them from submitting their quarterly reports within the due period. Similarly, no further comments were received from the company which, in addition to failing to submit its report on time, also exported the product concerned to the Community at levels which were below the minimum price. Accordingly, definitive measures should be imposed against these companies.

D. WITHDRAWAL OF UNDERTAKINGS

(18) In monitoring the undertakings submitted by the Norwegian exporters, the Commission found over a period of time that a number of exporters had no sales to the European Community for consecutive reporting quarters. On verification, some of these companies also declared that they had not exported during the reference period of the original investigations which led to the present anti-dumping and countervailing measures, and that they have no binding contractual obligations to do so in the near future.

(19) The Commission informed the parties concerned of these findings and pointed out that, in view of these facts, the companies did not qualify as exporters within the meaning of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic anti-dumping Regulation') and Regulation (EC) No 2026/97 (hereinafter referred to as 'the basic anti-subsidies Regulation'). Furthermore, it was made

known to these parties that to maintain the undertakings in force under these circumstances would be administratively cumbersome for the Commission in terms of monitoring.

These parties were also informed that they could offer again, when the relevant conditions are met, an undertaking as new exporters in accordance with Article 2 of Council Regulation (EC) No 1890/97 ([1]) as last amended by Regulation (EC) No 2678/98 ([2]), and with Article 2 of Council Regulation (EC) No 1891/97 ([3]), as last amended by Regulation (EC) No 2678/98. Any application by these parties under those Articles would be treated expeditiously. With regard to 21 companies which consequently withdrew their undertakings, the Council, by Regulation (EC) No 2039/98 ([4]), imposed definitive anti-dumping and countervailing duties on these companies and the Commission, accordingly, by Decision 98/540/EC ([5]), amended Decision 97/634/EC.

(20) Subsequent to these amendments, three more companies, namely Hirsholm Norge AS, Lorentz A. Lossius AS and Roger AS withdrew their undertakings voluntarily. In addition, having been informed of an apparent reporting violation by the Commission, another company, Fonn Egersund AS, also withdrew its undertaking.

(21) As a result of the withdrawal of their undertakings, these four companies are not entitled to continue to benefit from an exemption to the anti-dumping and countervailing duties, and their names should therefore be removed from the list of companies from which undertakings have been accepted.

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

(22) In parallel with this Regulation, the Commission is 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 eight companies which are subject to the provisional duty imposed by the provisional duty Regulation.

(23) 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 reinstatement of the undertakings given by Norwell AS, in respect of which the provisional duty should be repealed.

(24) To take account of these changes and of the above-mentioned withdrawals of undertakings, the Annex to Decision 97/634/EC listing the parties from which undertakings are being accepted, should be accordingly amended,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 2249/98 is hereby replaced by Annex I.

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 Norwell AS, undertaking No 128 (TARIC additional code: 8316) shall be released.

Article 2

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

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, 21 January 1999.

For the Commission
Leon BRITTAN
Vice-President

([1]) OJ L 267, 30. 9. 1997, p. 1.
([2]) OJ L 337, 12. 12. 1998, p. 1.
([3]) OJ L 267, 30. 9. 1997, p. 19.
([4]) OJ L 263, 26. 9. 1998, p. 3.
([5]) OJ L 252, 12. 9. 1998, p. 68.

ANNEX I

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

Undertaking No	Company name	TARIC additional code
84	Langfjord Laks AS	8116
86	Leonhard Products AS	8423
90	Marex AS	8326
117	NorMan Trading AS	8230
129	Notfisk Arctic AS	8234
149	Salomega AS	8260
166	Skarpsno Mat	8277
177	Svenodak AS	8288

ANNEX II

List of the 107 companies from which undertakings are accepted, as updated by Regulation (EC) No 131/1999

Undertaking No	Company	TARIC additional code
3	Agnefest Seafood	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Arctic 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
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

Undertaking No	Company	TARIC additional code
42	Edvard Johnsen 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
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
66	Hydro Seafood Sales AS	8159
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
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197

Undertaking No	Company	TARIC additional code
96	Memo Food AS	8200
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
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
128	Norwell AS	8316
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

Undertaking No	Company	TARIC additional code
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
151	Sangoltgruppa AS	8262
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
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
167	SL Fjordgruppen AS	8278
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
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