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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 297/1999

of 8 February 1999

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) 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* [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 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) In addition, the text of the undertakings specifically provides that failure to comply with the obligation to sell the product concerned on the Community market at or above the minimum price provided for 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 provided for 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 due time limit also appeared to have sold the product concerned to the Community market at a price which was below the price provided for 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 [5], 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 eight (initially nine) companies listed in the Annex to that Regulation. By the same Regulation,

[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 131/1999 (OJ L 17, 22. 1. 1999, p. 12).
[5] OJ L 282, 20. 10. 1998, p. 57. Regulation as amended by Regulation (EC) No 131/1999 (OJ L 17, 22. 1. 1999, p. 12).

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.

(9) Within the time limit set in Regulation (EC) No 2249/98, only two of the Norwegian companies concerned submitted comments in writing. Following receipt of these written submissions, the Commission sought and examined all information it deemed necessary for the purpose of a definitive determination on the apparent violations. The Commissions's findings are set out in Regulation (EC) No 131/1999 ([1]).

(10) The parties concerned 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) None of the comments submitted have changed the conclusion that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic salmon originating in Norway and exported by the eight companies listed in Annex I to this Regulation.

C. WITHDRAWAL OF UNDERTAKINGS

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

(13) 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 and Regulation (EC) No 2026/97. 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 a new exporter in accordance with Article 2 of Regulation (EC) No 1890/97 ([2]) and with Article 2 of Regulation (EC) No 1891/97 ([3]). Any application by these parties under those Articles would be treated expeditiously. With regard to twenty one 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.

(14) 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.

(15) Following the withdrawal of their undertakings, the companies concerned are not entitled to continue to benefit from an exemption from the anti-dumping and countervailing duties and their names should therefore be removed from the Annexes to Regulations (EC) No 1890/97 and (EC) No 1891/97.

D. DEFINITIVE MEASURES

(16) 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.

(17) In accordance with Article 8(9) of Regulation (EC) No 384/96, the rate of the anti-dumping duty should be established on the basis of the findings of the investigation which led to the undertakings. In this regard, and in view of recital (107) of Regulation (EC) No 1890/97, the rate of the definitive anti-dumping duty should be set at EUR 0,32 per kilo net product weight.

([1]) OJ L 17, 22. 1. 1999, p. 12.

([2]) OJ L 267, 30. 9. 1997, p. 1. Regulation as last amended by Regulation (EC) No 2678/98 (OJ L 337, 12. 12. 1998, p. 1).
([3]) OJ L 267, 30. 9. 1997, p. 19. Regulation as last amended by Regulation (EC) No 2678/98.
([4]) OJ L 263, 26. 9. 1998, p. 3.
([5]) OJ L 252, 12. 9. 1998, p. 68.

(18) In accordance with Article 13(9) of Regulation (EC) No 2026/97, the rate of the countervailing duty should be established on the basis of the findings of the investigation which led to the undertakings. Under the present circumstances and in view of recital (149) of Regulation (EC) No 1891/97, the rate of the definitive countervailing duty should be set at the level of 3,8 %.

(19) Therefore, in accordance with Article 8(9) of Regulation (EC) No 384/96 and Article 13(9) of Regulation (EC) No 2026/97, the rate of the definitive duties for the eight Norwegian companies having violated their undertakings, and for the four companies having withdrawn their undertakings should be fixed at the level of the duties established in those two Regulations.

E. **DFINITIVE COLLECTION OF PROVISIONAL DUTIES**

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

F. **AMENDMENT OF THE ANNEXES TO REGULATION (EC) No 1890/97 AND REGULATION (EC) No 1891/97**

(21) The Annexes to Regulations (EC) No 1890/97 and (EC) No 1891/97, exempting the parties listed therein from the duty, as last amended by Regulation (EC) No 2678/98, should be amended so as to remove the exemption from the companies listed in Annex I hereto and from Fonn Egersund AS, Hirsholm Norge AS, Lorentz A. Lossius AS, and Roger AS, which withdrew their undertakings.

(22) Concerning the companies which withdrew their undertakings, it is noted that the Commission by its Regulation (EC) No 131/1999 has accordingly amended the Annex to Decision 97/634/EC accepting undertakings from the parties therein,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by Commission Regulation (EC) No 2249/98 in relation to 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 Annex I to this Regulation shall be definitively collected.

Article 4

This Regulation shall enter into force on the day following that of 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, 8 February 1999.

For the Council

The President

O. LAFONTAINE

ANNEX I

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

UT 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 119 companies exempted from the definitive anti-dumping and countervailing duties imposed by Regulations (EC) No 1890/97 and (EC) No 1891/97, as from the date of entry into force of Regulation (EC) No 297/1999

Undertaking No	Company name	TARIC additional code
1	A. Ovreskotnes AS	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
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
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

Undertaking No	Company name	TARIC additional code
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Herøy Filetfabrikk AS	8304
65	Hitramat & Delikatesse AS	8154
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
80	Kr. Kleiven & Co. AS	8182
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
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
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
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239

Undertaking No	Company name	TARIC additional code
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
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
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
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
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