I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 772/1999

of 30 March 1999

imposing definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway and repealing Regulations (EC) No 1890/97 and (EC) No 1891/97

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 Article 11(3) 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 Article 19 thereof,

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

Whereas:

1. PREVIOUS PROCEDURE

(1) By Regulations (EC) No 1890/97 [3] (hereinafter 'the anti-dumping Regulation') and 1891/97 [4] (hereinafter 'the countervailing Regulation'), definitive anti-dumping and countervailing duties (hereinafter 'the duties') were imposed on imports of farmed (other than wild Atlantic salmon from Norway (hereinafter 'salmon'), with the exception of imports of salmon exported by the companies from which undertakings had been accepted by the Commission. The rate of the definitive anti-dumping duty was set at EUR 0,32 [5] per kilo net product weight, and the rate of the definitive countrvailing duty at the level of 3,8 % *ad valorem* applicable to the net free-at-Community-frontier price, before duties.

(2) By Decision 97/634/EC [6], the Commission accepted an undertaking from the Kingdom of Norway and price undertakings from 190 Norwegian exporters.

(3) Pursuant to Article 8(9) and (10) of Regulation (EC) No 384/96 (hereinafter 'the basic anti-dumping Regulation') and Article 13(9) and (10) of Regulation (EC) No 2026/97 (hereinafter 'the basic countervailing Regulation'), provisional [7] and/or definitive [8] anti-dumping and countervailing duties have been imposed on imports of salmon exported by a number of companies which have either violated or withdrawn their undertakings. The duty rates applied in all these cases are those mentioned in recital 1 above.

2. REVIEW INVESTIGATION

(4) In the course of the monitoring of the price undertakings by the Commission, it became apparent that the effectiveness of the different measures was being undermined as, under certain circumstances, certain exporters which were not subject to the price undertakings were able to sell salmon on the Community market at injurious prices, even after payment of the duties. This situation increased the

[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 L 267, 30.9.1997, p. 1. Regulation as last amended by Regulation (EC) No 297/1999 (OJ L 37, 11.2.1999, p. 1).
[4] OJ L 267, 30.9.1997, p. 19. Regulation as last amended by Regulation (EC) No 297/1999.
[5] In accordance with Article 2(1) of Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1), every reference in a legal instrument to the ecu shall be replaced by a reference to the euro at a rate of EUR 1 to ECU 1.
[6] OJ L 267, 30.9.1997, p. 81.
[7] Regulation (EC) No 82/1999 (OJ L 8, 14.1.1999, p. 8).
[8] Regulation (EC) No 772/98 (OJ L 111, 9.4.1998, p. 10). Regulation (EC) No 2039/98 (OJ L 263, 26.9.1998, p. 3). Regulation (EC) No 2052/98 (OJ L 264, 29.9.1998, p. 17). Regulation (EC) No 2678/98 (OJ L 337, 12.12.1998, p. 1). Regulation (EC) No 297/1999 (OJ L 37, 11.2.1999, p. 1).

risk that other exporters which were bound by undertakings would almost be forced to lower their prices to compete with these comparatively cheap imports would therefore act in violation of their undertakings. With more than 80 % of salmon being exported by companies bound by undertakings, this would therefore undermine the overall effectiveness of the existing measures.

(5) Therefore, the Commission announced, by notice published in the *Official Journal of the European Communities* [1], the initiation of an *ex officio* investigation pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19(1) of the basic countervailing Regulation in order to review the possibility of a change in the form of the duties so that imports of salmon at injurious prices would be prevented.

(6) The Commission advised the producers, exporters and importers known to be concerned, the representatives of the exporting country, the producing and exporting industries in Norway, and the complainant Community producers of the initiation of the review investigation. In the notice of initiation, the Commission already indicated that, for low priced imports, the form of the duties might be changed to a variable duty at the level published in that notice. Interested parties were given an opportunity to make their views known in writing and to request a hearing within a set time limit. Several parties made comments in writing but no hearings were requested.

3. APPRAISAL OF THE CURRENT MARKET SITUATION

(7) It should first be recalled that the product concerned by the proceeding is farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen, currently classified under CN codes ex 0302 12 00, ex 0304 10 13, ex 0303 22 00 and ex 0304 20 12, corresponding to fresh or chilled whole fish, fresh or chilled fillets, frozen whole fish, and frozen fillets, respectively.

(8) In monitoring the undertakings, the Commission found that during the second half of 1998, the price level reported for exports of salmon gradually deteriorated, on a weekly basis, to a level which was below the non-injurious price level established during the investigations which led to the anti-dumping and countervailing measures. This development is confirmed by the Norwegian export statistics and by wholesale selling prices found in the Community. The prices of salmon imports from Norway were therefore lower than could have been expected after the imposition of the original measures and under normal market conditions.

(9) The monitoring of the undertakings and the present investigation have shown that the downward price pressure towards an injurious level was caused, to a large extent, by Norwegian exporters not bound by price undertakings which started to sell salmon at prices which, even after payment of the duties, are below the non-injurious price level. Indeed, as was established during the investigations which led to the anti-dumping and countervailing measures, salmon is traded as a commodity in a relatively transparent and competitive market.

Under these market conditions, increasing sales of salmon on the Community market at prices below the non-injurious price levels set in the undertakings would make it more and more difficult for exporters bound by undertakings to continue to respect their price obligations. Consequently, these exporters find themselves under pressure to act in breach of their undertakings by selling at an injurious price level, or face a situation where their market share is lost to other exporters which sell outside the framework of the undertakings at an injurious price level. The Community industry, the Norwegian Government and the Norwegian producers and exporters associations all shared this assessment.

(10) In addition, comments received from certain Norwegian exporters on the findings of the present review investigation also corroborate this assessment. All parties which made submissions following the initiation of the present investigation confirmed that the measures had not led to the intended price stabilisation, and most of them supported the need to review the form of the duties.

(11) It is therefore concluded that, in their current form, the duties are not having the intended effect, notably as regards underpinning the undertakings, which were initially accepted from all known exporters and thus constitute the principal measure adopted to counteract injurious dumping and subsidisation.

4. REVISION OF THE FORM OF DUTIES

(12) It is the purpose of anti-dumping or countervailing measures to eliminate injurious dumping or subsidisation respectively. The choice of the appropriate form of anti-dumping or countervailing duties for achieving this purpose depends on the circumstances of the case under consideration.

[1] OJ C 400, 22.12.1998, p. 4.

(13) Since the early 1990s, the Community salmon market has suffered recurrent crises caused by abnormally low import prices. Therefore, on the basis of Council Regulation (EEC) No 3687/91 of 28 November 1991 on the common organisation of the market in fishery products [1], the Community, starting with Regulation (EEC) No 3270/91 [2], repeatedly established minimum prices, initially for Atlantic salmon and, since March 1994, for farmed Atlantic salmon. In December 1995, on the basis of Articles 112(1) and 113(3) of the Agreement on the European Economic Area [3], a safeguard measure in the form of a floor price was imposed on farmed Atlantic salmon by Commission Regulation (EC) No 2907/95 [4]. Customs investigations revealed that, over the whole period, the declared values on importation frequently did not correspond with the prices actually charged by the Norwegian exporters to independent EU customers [5]. It was noted, that this happened particularly where salmon was traded between related parties in Norway and the Community.

(14) Based on the above experience, it was decided in 1997 to impose the anti-dumping duty in the form of a specific duty, and the countervailing duty in the form of an *ad valorem* duty in order to ensure the effectiveness of these duties. Given the prevalence of trade between related parties, these duties should, in principle, be maintained to prevent circumvention of the duties.

(15) However, the present investigation has shown that these duties leave open the possibility for exporters not bound by undertaking to export salmon at very low prices, which is likely to prejudice respect for the undertakings and thus their continued general use.

(16) The current form of the duties should therefore be partially revised in order to deal with such low priced imports and thereby ensure that all salmon originating in Norway is imported at a non-injurious price level. Consequently, in circumstances where the existing duties would be insufficient to ensure a non-injurious import price, the anti-dumping duty should be replaced by a minimum price and become a variable duty.

(17) Salmon is commonly traded in different presentations (gutted head-on, gutted head-off, whole fish fillets, other fillets or fillet portions, or off-cuts or trimmings). Therefore, when translating the existing duties into their new form, a non-injurious minimum price level had to be established for each of these presentations with a view to ensuring a level of protection similar to the minimum prices set in the undertakings. The different minimum prices are essentially derived from the weight conversion factor relevant to each presentation by reference to its whole fish equivalent. The presentations and the corresponding weight conversion rates and minimum price levels were published in the Annex to the Commission notice announcing the initiation of the present investigation. No comments have been received in this respect.

5. DURATION OF THE REVISED DUTIES

(18) It should be recalled that according to Article 11(2) of the basic anti-dumping Regulation and Article 18(1) of the basic countervailing Regulation, the revision of the form of the duty resulting from the present investigation does not change the normal duration of the anti-dumping and countervailing measures since the review has not covered issues of dumping and injury.

6. REPLACEMENT OF REGULATION (EC) No 1890/97 AND REGULATION (EC) No 1891/97

(19) The separate anti-dumping and countervailing Regulations were adopted following the initiation of two separate investigations concerning imports of dumped and subsidised salmon [6]. In order to simplify the application of the duties, it is appropriate to replace those Regulations by a single Regulation. However, the facts and considerations established in the anti-dumping and countervailing Regulations remain valid as constituting the facts and considerations of the present Regulation,

[1] OJ L 354, 23.12.1991, p. 1. Regulation as replaced by Regulation (EC) No 3759/92 (OJ L 388, 31.12.1992, p. 1).
[2] OJ L 308, 9.11.1991, p. 34. Regulation as last amended by Regulation (EEC) No 992/92 (OJ L 105, 23.4.1992, p. 14).
[3] OJ L 1, 3.1.1994, p. 3.
[4] OJ L 304, 16.12.1995, p. 38.
[5] In March 1996, it became known that the minimum or floor prices imposed had failed to half the continued decline in the price of salmon to a level below the minimum import price — European Parliament, resolution on the crisis in the EU salmon market (OJ C 65, 4.3.1996, p. 212).
[6] OJ C 253, 31.8.1996, p. 18 and p. 20.

HAS ADOPTED THIS REGULATION:

Article 1

1. (a) Definitive countervailing and anti-dumping duties are hereby imposed on imports of farmed (other than wild) 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.

(b) These duties shall not apply to wild Atlantic salmon (TARIC codes 0302 12 00*11, 0304 10 13*11, 0303 22 00*11 and 0304 20 13*11). For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member States of landing are satisfied, by means of all customs and transport documents to be provided by interested parties, that it was caught at sea.

2. (a) The rate of the countervailing duty applicable to the net free-at-Community-frontier prices, before duty shall be 3,8 % (TARIC code 8900.

(b) The rate of the anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be EUR 0,32 per kilogram net product weight (TARIC code 8900). However, if the free-at-Community-frontier price, including the countervailing and anti-dumping duties, is less than the relevant minimum price set out in paragraph 3, the anti-dumping duty to be collected shall be the difference between that minimum price and the free-at-Community-frontier price, including the countervailing duty.

3. For the purpose of paragraph 2, the following minimum prices shall apply per kilogram net product weight:

Presentation of salmon	Minimum price EUR/kg net product weight	TARIC code
Whole fish, fresh or chilled	2,925	0302 12 00*21
Gutted, head-on, fresh or chilled	3,25	0302 12 00*22
Gutted, headless, fresh or chilled	3,65	0302 12 00*23
Other, fresh or chilled, including 'steaks'	3,65	0302 12 00*29
Whole fish, frozen	2,925	0303 22 00*21
Gutted, head-on, frozen	3,25	0303 22 00*22
Gutted, headless, frozen	3,65	0303 22 00*23
Other, frozen, including 'steaks'	3,65	0303 22 00*29
Whole fish fillets, more than 300 g each, fresh or chilled	5,19	0304 10 13*21
Other fish fillets or fillet portions, 300 g or less each, fresh or chilled	6,55	0304 10 13*29
Whole fish fillets, more than 300 g each, frozen	5,19	0304 20 13*21
Other fish fillets or fillet portions, weighing 300 g or less each, frozen	6,55	0304 20 13*29

4. These duties shall not apply to imports of farmed Atlantic salmon exported by the companies listed in the Annex to this Regulation.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Where any new exporter in the exporting country in question provides sufficient evidence to the Commission that it did not export the goods described in Article 1(1) during the original investigation period, the Commission, after consulting the Advisory Committee, may where appropriate amend by Regulation the Annex in order to extend the exemption from the payment of the duties to the new exporter.

Article 3

1. Regulation (EC) No 1890/97 shall be repealed.

2. Regulation (EC) No 1891/97 shall be repealed.

3. References to Regulation (EC) No 1890/97 and Regulation (EC) No 1891/97 shall be construed as references to this Regulation, where appropriate.

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, 30 March 1999.

For the Council

The President

K.-H. FUNKE

ANNEX

List of the 119 companies exempted from the definitive anti-dumping and countervailing duties as from the date of entry into force of Regulation (EC) No 297/1999

UT 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/S	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

UT No	Company name	TARIC additional code
58	Grieg Seafood AS	8300
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

UT No	Company name	TARIC additional code
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
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