COMMISSION REGULATION (EC) No 82/1999

of 13 January 1999

imposing provisional anti-dumping and countervailing duties on certain imports of farmed Atlantic salmon originating in Norway and amending Decision 97/634/EC

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(10) 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(10) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 31 August 1996, the Commission announced, by two separate notices published in the *Official Journal of the European Communities*, the initiation of an anti-dumping proceeding [4] as well as an anti-subsidy proceeding [5] in respect of imports of farmed Atlantic salmon originating in Norway.

(2) The Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings. As a result of this examination, it was established that definitive anti-dumping and countervailing measures should be adopted in order to eliminate the injurious effects of dumping and subsidisation. All interested parties were informed of the results of the investigation and were given the opportunity to comment thereon.

(3) On 26 September 1997, the Commission adopted Decision 97/634/EC [6], as last amended by Regulation (EC) No 2249/98 [7], accepting undertakings offered in connection with the two above-mentioned proceedings from the exporters mentioned in its Annex and terminating the investigations in their respect.

(4) On the same day, the Council, by Regulation (EC) No 1890/97 [8], as last amended by Regulation (EC) No 2678/98 [9], imposed an anti-dumping duty of ECU 0,32 per kilo on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies, from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of that Regulation.

(5) Again on the same day, the Council, by Regulation (EC) No 1891/97 [10], as last amended by Regulation (EC) No 2678/98, also imposed a countervailing duty of 3,8 % on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies, from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of that Regulation.

(6) The above-mentioned Regulations set out the definitive findings and conclusions on all aspects of the investigations.

B. APPARENT FAILURE TO COMPLY WITH THE UNDERTAKING

(7) In order to ensure the effective implementation and monitoring of the undertakings accepted, the exporters undertook to report to the Commission, on a quarterly basis, the details of all their sales on a transaction by transaction basis of farmed Atlantic salmon to unrelated customers in the Community.

(8) The text of the undertakings specifically provides that failure to comply with the reporting obligations and, in particular, failure to submit the quarterly report within the prescribed time limit except in case of *force majeure*, would be construed as a violation of the undertaking.

(9) Nine Norwegian exporters have failed to comply with their obligation to present a report within the prescribed time limit and one exporter has not submitted any report at all for the second quarter of 1998.

[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 253, 31. 8. 1996, p. 18.
[5] OJ C 253, 31. 8. 1996, p. 20.
[6] OJ L 267, 30. 9. 1997, p. 81.
[7] OJ L 282, 20. 10. 1998, p. 57.
[8] OJ L 267, 30. 9. 1997, p. 1.
[9] OJ L 337, 12. 12. 1998, p. 1.
[10] OJ L 267, 30. 9. 1997, p. 19.

These exporters were informed of the consequences of late or no reporting, and in particular that, should the Commission have reasons to believe that an undertaking is being violated, a provisional anti-dumping and countervailing duty may be imposed pursuant to Article 8(10) of Regulation (EC) No 384/96 and Article 13(10) of Regulation (EC) No 2026/97, respectively.

These exporters were also invited to provide evidence of any *force majeure* justifying the late submission or the lack of reports, but have so far failed to provide conclusive evidence of such *force majeure*.

(10) Besides their reporting obligations, the exporters specifically undertook to respect a precisely defined minimum price for sales of the respective presentations of salmon imported into the Community.

(11) In monitoring the reports relating to the second quarter of 1998, it appeared that the two exporters Brødrene Remo A/S and SMP Marine Produkter AS had made sales on the Community market below the minimum price foreseen in the undertaking.

(12) These two companies were given an opportunity to correct any possible clerical mistakes made in the processing of their reports and to comment on any erroneous assessments of their reports. However, the explanations given by these companies did not reveal any such circumstances.

C. PROVISIONAL MEASURES

(13) Under these circumstances, there are reasons to believe that the undertakings accepted by the Commission from the Norwegian exporters mentioned in the Annex to this Regulation are being violated.

(14) It is, therefore, considered imperative that, pending further investigation of these apparent violations, provisional duties be imposed.

D. RATE OF DUTY

(15) In accordance with Article 8(10) of the Regulation (EC) No 384/96, the rate of the anti-dumping duty must be established on the basis of the best information available.

(16) In this regard, and in view of recital 107 of Regulation (EC) No 1890/97, it is considered appropriate to set the rates of the provisional anti-dumping duty for all companies concerned at EUR 0,32/kg net product weight.

(17) In accordance with Article 13(10) of Regulation (EC) No 2026/97, the rate of the countervailing duty must be established on the basis of the best information available.

(18) Under the present circumstances and in view of recital 149 of Regulation (EC) No 1891/97, it is considered appropriate that the rate of the provisional countervailing duty be set at the level of 3,8 % of the net free-at-Community-frontier price before duty.

E. FINAL CONSIDERATIONS

(19) Decision 97/634/EC should therefore be amended accordingly, by the deletion of the exporters concerned from the list annexed to that Decision. For the sake of clarity, an updated version of this Annex should be published, showing the exporters whose undertakings remain in force.

(20) In the interest of sound administration, a period should be fixed in which interested parties may make known their views in writing and request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on 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.

2. The rate of duty applicable is EUR 0,32/kg net product weight.

Article 2

1. A provisional countervailing duty is hereby imposed on 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.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, is 3,8 %.

Article 3

1. The duties referred to in Articles 1 and 2 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 the present Regulation, wild Atlantic salmon shall be that in respect of which the competent authorities of the Member State 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. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 4

The parties concerned may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 5

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

Article 6

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply for a period of four months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1999.

For the Commission
Leon BRITTAN
Vice-President

ANNEX I

List of companies, on which provisional duties are imposed

No	Company	TARIC additional code
1	A. Ovreskotnes AS	8095
5	Alsvag Fiskeprodukter A/S	8098
30	Brødrene Remo A/S	8128
65	Hitramat & Delikatesse AS	8154
80	Kr Kleiven & Co. AS	8182
98	Midsundfisk AS	8202
126	Norway Seafoods ASA	8314
153	Scanfood AS	8264
159	Seacom Nord AS	8270
168	SMP Marine Produkter AS	8279
171	Stavanger Røkeri AS	8282
191	Nor-Fa Food AS	8102

ANNEX II

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List of companies benefiting from undertakings

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

No	Company	TARIC additional code
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
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
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

No	Company	TARIC additional code
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
88	Lorentz A. Lossius AS	8189
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
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
130	Nova Sea AS	8235

No	Company	TARIC additional code
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
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

No	Company	TARIC additional code
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'