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COUNCIL REGULATION (EC) No 85/2006

of 17 January 2006

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway

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COUNCIL REGULATION (EC) No 85/2006

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed 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]) (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) Following the initiation ([2]) of an anti-dumping investigation on 23 October 2004, the Commission, by Regulation (EC) No 628/2005 ([3]), imposed provisional anti-dumping duties on imports of farmed salmon originating in Norway (Regulation imposing a provisional anti-dumping duty or provisional Regulation). The provisional anti-dumping duties which took the form of *ad valorem* duties ranging between 6,8 % and 24,5 % for the imported products applied as of 27 April 2005.

(2) On 1 July 2005, by Regulation (EC) No 1010/2005 ([4]) (amending Regulation), the Commission changed the form of the provisional measures by replacing the *ad valorem* duties by a minimum import price (MIP) of EUR 2,81 per kilogram whole fish equivalent (WFE) and extended the duration of the provisional measures for a further three months, by amending the Regulation imposing a provisional anti-dumping duty.

1.2. Subsequent procedure

(3) Following the publication of the Regulation imposing a provisional anti-dumping duty, parties received disclosure of facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

(4) Following the publication of the amending Regulation, all parties were informed of the essential facts and considerations on which the amendment of the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

(5) Similarly, all parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping measures

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ C 261, 23.10.2004, p. 8.
([3]) OJ L 104, 23.4.2005, p. 5.
([4]) OJ L 170, 1.7.2005, p. 32.

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and the modalities on the collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

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

(7) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. In addition to the verification visits undertaken at the premises of the companies mentioned in recital 7 of the Regulation imposing a provisional anti-dumping duty, it should be noted that after the imposition of provisional measures, additional on-spot visits were carried out at the premises of the following Community users and associations of Community users:

— Norlax, Outrup, Denmark,

— SIF France, Boulogne-sur-Mer, France,

— Association of Danish Fish Processing Industries and Exporters, Copenhagen, Denmark,

— Bundesverband der Deutschen Fischindustrie und des Fischgroßhandels, Hamburg, Germany,

— Polish Association of Fish Processors, Koszalin, Poland,

— Syndicat national du saumon et de la truite fumés, Paris, France.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(8) Since no comments were received regarding the product concerned and like product, the contents and provisional conclusions of recitals 10 to 14 of the provisional Regulation are hereby confirmed.

3. **DUMPING**

3.1. **Sampling**

(9) As outlined in recital 18 of the provisional Regulation, it was provisionally not possible for two companies to be given an individual dumping margin at that time. However, as indicated, the Commission continued to investigate this issue at the definitive stage of the proceeding. The two companies concerned have subsequently provided the necessary information to allow an individual definitive determination to be made for them.

(10) In the absence of any further comments on sampling, the provisional conclusions as set out in recitals 16 and 17 of the provisional Regulation are definitively confirmed.

3.2. **Normal value**

(11) Following disclosure of the provisional determinations, no comments were received concerning the methodology used to determine the normal value for Norwegian exporters. Accordingly, the provisional conclusions in this respect, as set out in recitals 19 to 31 of the provisional Regulation are definitively confirmed.

(12) A number of comments were, however, made in respect of the treatment of certain cost items when constructing normal value in line with the methodology set out in recital 26 of the provisional Regulation.

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3.2.1. *General remarks*

(13) Where constructed normal value was used, the Commission calculated the costs involved in producing the product concerned during the IP. Where costs could be attributed directly, the actual costs were taken into account. Where this was not possible, costs were allocated on the basis of the historical allocation utilised by the company concerned, where such information was available and demonstrated by the company; or in the absence of such information, on the basis of turnover, in line with Article 2(5) of the basic Regulation.

(14) Where certain cost elements could not be directly calculated for the IP, such costs were assessed on the basis of the most recently available audited accounts.

3.2.2. *Extraordinary expenses*

(15) At the provisional stage, the Commission included all extraordinary expenses applicable to the product concerned, which had been reported by companies during the IP. These extraordinary expenses relate to a number of company-specific costs, but typically include write-downs of tangible assets, closure of farming facilities, slaughtering and processing plants, and severance payments to employees. Several companies challenged this treatment on two grounds. Firstly, it was claimed that extraordinary costs should not be included at all, as they were said to be non-recurring costs which should be completely excluded from the normal cost of production for salmon. Secondly, were it considered that these costs should be included, then there should be some allocation of these costs over the true period of time to which they relate, e.g. the useful life of a processing plant when the extraordinary expense relates to such an asset.

(16) In respect of the claim that the totality of all extraordinary expenses should be excluded, the Commission notes that the salmon industry in Norway has been restructuring for a number of years. Accordingly, extraordinary costs have been reported by many of the companies over a number of financial years. It is, therefore, clear that the extraordinary costs in question are not isolated non-recurring costs restricted to a few companies. Rather, they appear to be systemic costs associated with the production of salmon. To exclude all of these costs would result in an understatement in the true cost of production, thus this claim had to be rejected.

(17) In respect of the second claim, the Commission notes that the extraordinary costs that were included for the provisional determinations equal those costs actually declared by the companies during the IP, on the basis of financial decisions taken by those companies. The Commission, therefore, followed the approach taken by the companies themselves.

(18) It is, however, true that allocation of the costs over a period of time would remove any undue effect caused by the timing of the decisions of the companies to report these costs. Ideally, all extraordinary costs reported for each separate asset should be allocated over the useful life of that asset to arrive at an average annual cost. However, it is to be noted that none of the companies concerned carried out this exercise. Instead, the Commission has decided to take the extraordinary costs reported by companies in the sample during the last three years, based on the most recently available financial statements, and to allocate one third of these costs to salmon production in the IP, on the basis of turnover. Three years was considered an appropriate time period as this is the average length of time that it takes to grow a salmon from a smolt to a harvestable salmon.

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3.2.3. *Write-down of licences and financial expenses*

(19) Several companies also claimed that write-downs of salmon farming licences and financial expenses should not be included in the cost of production of salmon. In respect of the write-down valuation of licences, it is noted that a valid licence is a legal requirement in Norway in order to farm salmon. In respect of the write-down of financial expenses, it is noted that these expenses relate mainly to the deployment of free-cash, frequently via loans to related companies also involved in the salmon industry, and that the companies concerned are not financial investment companies.

(20) For these reasons, the Commission confirms that these write-downs relate to expenses that are incurred and must be borne by the companies concerned. It is further confirmed that these costs should be attributed to the prime business activities including salmon farming, thus the claim is rejected. As with extraordinary expenses, it was also considered appropriate to have one third of all costs incurred by the relevant companies in the last three years allocated to salmon production, on the basis of turnover.

3.2.4. *Write-down of biomass*

(21) Two companies in the sample claimed that write-downs of the values of biomass should not be included in the cost of salmon production. It was claimed that these write-downs refer to accounting adjustments based on the projected future sales value of salmon, and are not a true cost.

(22) Where the companies were able to demonstrate that these write-downs were indeed simply a result of changing market values and not due to any other factor, such as escapes, mortality or disease, the Commission concluded that these costs should not be included for the normal value calculation, and to this extent the claim of the sampled companies was accepted.

3.2.5. *Transfer price of raw materials*

(23) It was claimed that the profit margin of the related companies should be deducted when assessing the cost of raw materials purchased from such parties. It was argued that this approach would be consistent with the approach taken for integrated companies, where only the production cost, net of profit, is included in the cost calculation of finished products. In this case, the claim centres mainly on the purchases of smolt from companies related to those in the sample.

(24) In response to this claim, it must be noted that the Community institutions were not in a position to verify the cost of production of the smolt, as this information was not provided by the companies. Accordingly, any profit, or indeed loss, on these related inter-company sales could not be assessed. Moreover, there was no evidence to suggest that the use of these transfer prices affected the reliability of the constructed normal value for salmon. Accordingly, this claim had to be rejected.

3.2.6. *Feed costs*

(25) It was claimed for some companies that too high a feed cost had been used. In particular, it was claimed that the feed cost in relation to fishes which die prior to harvesting was included in both the feed cost of harvested fish, as well as entered into the costs associated with mortality.

(26) This claim was examined, and where it was found that such feed costs had been included twice, the necessary adjustment was made to remove this double counting.

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3.3. **Export price**

(27) In the absence of comments on the determination of the export price, the provisional conclusions as set out in recitals 32 to 34 of the provisional Regulation are definitively confirmed.

3.4. **Comparison**

(28) In the absence of comments on the comparison of normal value and export prices, the provisional conclusions as set out in recital 35 of the provisional Regulation are definitively confirmed.

3.5. **Dumping margin**

3.5.1. *Sampled companies*

(29) Definitive individual dumping margins have been established for all 10 companies in the sample, following the methodology outlined in recital 36 of the provisional Regulation, adjusted where necessary to take account of the claims outlined in recitals 11 to 26 of this Regulation.

3.5.2. *Non-sampled companies*

(30) In the absence of comments on the determination of the dumping margin for non-sampled companies, the provisional conclusions as set out in recitals 38 and 39 of the provisional Regulation are definitively confirmed.

3.5.3. *Non-cooperating companies*

(31) Similarly, in the absence of comments on the determination of the dumping margin for non-cooperating companies, the provisional conclusions as set out in recitals 40 and 41 of the provisional Regulation are definitively confirmed.

3.5.4. *Dumping margin*

(32) On this basis, the definitive dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Company	Definitive dumping margin
Marine Harvest Norway AS, Postbox 4102 Dreggen, N-5835 Bergen	11,2 %
Fjord Seafood Sales AS and Fjord Seafood Norway AS, Toftsundet, N-8900 Brønnøysund	15,0 %
Pan Fish Norway AS, Grimmergata 5, N-6002 Ålesund	17,7 %
Stolt Sea Farm AS, Grev Wedels plass 5, N-0151 Oslo	10,0 %
Follalaks AS, N-8286 Nordfold	20,0 %
Nordlaks Oppdrett AS, Boks 224, N-8455 Stokmarknes	0,8 %
Hydrotech AS, Bentnesveien 50, N-6512 Kristiansund	18,0 %
Grieg Seafood AS, C. Sundtsgt 17/19, N-5804 Bergen	20,9 %
Sinkaberg-Hansen AS, Postbox 134, N-7901 Rørvik	2,6 %
Seafarm Invest AS, N-8764 Lovund	11,2 %
Weighted average for cooperating companies not included in the sample	14,8 %
Residual margin	20,9 %

(33) In accordance with Article 9(3) of the basic Regulation, it is concluded that the dumping margin for Nordlaks Oppdrett AS is *de minimis*, as its margin of dumping is below 2 %.

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4. INJURY

4.1. Definition of Community production and Community industry

(34) Following disclosure of the provisional findings, a large number of claims and allegations concerning the assessment of Community production, the definition of the Community industry and the selection of the sample of Community producers was received. The Commission thus deepened the injury investigation and carried out additional analysis on data provided by all Community producers. In addition, where necessary, more detailed information was requested from all the companies forming the Community industry at provisional stage. This has allowed to establish the final determinations for the Community production, the Community industry and to strengthen the accuracy and consistency of the data used for assessing all the injury indicators.

(35) Several exporting producers and producers related to Norwegian exporters repeated their claim that they should be included in the definition of the Community production.

(36) The Commission re-examined all the arguments, which were already raised at provisional stage, in support of the claim. However, in the light of the provisions of Article 4(1) of the basic Regulation, it was considered, that the relationship between these related producers and the exporters or importers of the dumped product was such as to cause the related producers concerned to behave differently from non-related producers.

(37) Indeed, it is recalled that five producers located in the EU, which are part of large Norwegian groups involved in the production and sales of the product concerned, provided written submissions and submitted questionnaire replies. The written submissions largely mirrored the arguments raised by Norwegian producers in the context of the investigation. Although it was found that these EU companies also suffered from the price depression and lost market share in view of dumped imports from Norway, they opposed the initiation of investigation and the imposition of any anti-dumping measures. It is considered that this behaviour is largely influenced by their relationship to exporters in the country concerned. Consequently, in accordance with the basic Regulation the output of these other producers was not taken into consideration when calculating Community production. The findings set out in recital 44 of the provisional Regulation are therefore confirmed.

(38) The further investigation confirmed that the estimated total Community production of the product concerned was around 22 000 tonnes during the IP.

(39) With regard to Community industry, the detailed analysis of the data received from the salmon industry indicated that some companies either did not produce salmon any longer, or they did not produce it during the IP, or they exclusively produced certain types of salmon, or that they fell into receivership during the IP, or did not provide data in the format requested. This led to the conclusion that only data supplied by 15 Community producers which were complainants or which explicitly supported the complaint could be taken into account for the definition of the Community industry. This had an impact on the macroeconomic injury indicators, established on the level of the whole Community industry, in particular, production, production capacity, capacity utilisation, sales volume, market share, employment and productivity. The revised data is described in detail in recitals 61 to 75 below.

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(40) The further investigation showed that the 15 cooperating complaining Community producers had produced around 18 000 tonnes of salmon during the IP. This represents around 82 % of the estimated total Community production of the product concerned, as established in recital 38 above, in other words it constitutes a major proportion of the Community production. The complaining Community producers are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

4.2. **Sampling for injury assessment purposes**

(41) It is recalled that in view of the large number of producers of farmed salmon in the Community, the application of sampling techniques was foreseen in the notice of initiation for the assessment of injury.

(42) In the submissions received after disclosure of the provisional findings some interested parties claimed that the sample of Community producers was not representative. It has been alleged that some companies are specialised and fully dependent on the production of organic salmon, which is different from conventional salmon and that the injury indicators have not been established in an accurate manner.

(43) The Commission carried out additional analysis of data provided by Community producers, including all producers forming the sample. The additional analysis confirmed that the core production of the Community producers remained conventional salmon. However, where it was found that the sampled companies produced organic salmon, it was considered that organic salmon should be disregarded in this investigation given that organic salmon has in general a higher cost of production and a higher sales price. Therefore, all the injury indicators discussed below have been re-assessed, by excluding organic salmon from the analysis.

4.3. **Injury investigation and sampling techniques**

(44) Some exporting producers observed that some injury indicators were established on the basis of the information verified at the level of the sample and some on the basis of data collected at the level of the Community industry as a whole. On this basis, they alleged that the injury analysis has not been established in an objective manner.

(45) This allegation has to be rejected. In case of sampling, it is established practice to assess and analyse the microeconomic or performance-related injury indicators at the level of the sampled Community industry and to assess and analyse the macroeconomic injury indicators on the basis of information collected at the level of the entire Community industry.

(46) It is recalled that the analysis of injury is based on:

(a) the injury indicators, such as sales prices, stocks, profitability, return on investment, cash flow, investments, ability to raise capital and wages, which were established on the basis of the information verified at the level of the sample; and

(b) the other injury indicators, such as production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the margin of dumping which were established on the basis of data collected at the level of the Community industry as a whole.

(47) The information mentioned supra (b) can be obtained from different sources, such as the complaint and questionnaire replies from individual producers and can be cross-checked

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with data available from producer associations or government sources. The exporting producers did not substantiate or explain how and why the injury investigation using the two sources mentioned supra (a) and (b) was not objective or which injury factor was not objectively examined. On this basis, their claim had to be rejected.

(48) Some interested parties further claimed that the approach chosen by the Commission to establish the injury may lead to unrepresentative results because at provisional stage data from one company selected for the sample, Celtic Atlantic Salmon, was only used for the purpose of calculating undercutting and underselling, but not for establishing the other injury indicators. After having carefully considered this claim and deepened the investigation, it was considered that the undercutting and underselling should be established by excluding this company from the sample because this producer did not produce farmed salmon during the period considered and therefore some of the data and information requested in the questionnaire was simply not available for that producer. However, the exclusion of the data submitted by this company did not lead to significantly different undercutting or underselling calculations.

(49) On this basis, it is confirmed that the injury indicators as well as undercutting and underselling calculations at definitive stage are now established on the basis of the verified information provided by the other five producers in the Community, listed in recital 7 of the provisional Regulation.

(50) The further investigation showed that the accumulated production of the five Community producers which were selected for the sample and fully cooperated in the investigation was around 48 % of the Community industry's production of farmed salmon supporting the complaint. It is therefore confirmed that the selection of the sample of Community producers was based on the largest representative volume of production that could be reasonably investigated within the time available in accordance with Article 17 of the basic Regulation and that the sample is fully representative.

4.4. **Information available for inspection by interested parties**

(51) Some Norwegian exporting producers further claimed that most of the Community producers' files available for inspection by interested parties were not complete. They observed that some Community producers (including companies in the sample) did not reply to the sampling form intended for the selection of a sample of Community producers. Furthermore, they argued that two companies selected in the sample did not reply to the anti-dumping questionnaire intended for Community producers in the format requested. The exporting producers therefore concluded that their selection in the sample was not warranted and thus that the sample was unrepresentative.

(52) It is recalled that in the light of the comments received during the investigation and after disclosure of provisional findings, the Commission deepened its investigation and requested all parties to complete their files in view of Article 19 of the basic Regulation. Companies which did not provide the requested information or which did not give more detailed precisions were excluded from the investigation. In this context, it should be recalled, however, that all sampled companies have been investigated on the spot and that any missing information was provided during the investigation. The completed files in public versions were also made available to all interested parties, some of which inspected them several times. It is therefore considered that the selection of those Community producers was warranted and that the sample of Community producers is representative.

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4.5. **Community consumption**

(53) In the absence of any submissions on consumption, the provisional findings as described in recitals 50 to 53 of the provisional Regulation are confirmed.

4.6. **Imports into the Community from the country concerned**

(54) In the absence of any new information or evidence submitted, the provisional findings concerning the imports into the Community from Norway (volume, market share and average prices) as set out in recitals 54 to 59 of the provisional Regulation are hereby confirmed.

4.7. **Price undercutting**

(55) For the purposes of calculating the level of price undercutting during the IP, the methodology used at provisional stage was also used at definitive stage. The weighted average sales prices of the five companies selected in the sample of Community producers were compared to the weighted average export prices of the sampled exporting producers from Norway on a type-by-type basis. This comparison was made for comparable types of farmed salmon and at the same level of trade, namely for sales to the first independent customer. The comparison was made after deduction of rebates and discounts and the prices of the imports were CIF Community frontier, adjusted for customs duties.

(56) The prices of the sampled Community producers were taken at an ex-works level, i.e. excluding transport costs and at levels of trade comparable to those of the imports concerned. For those sampled Community producers which sold their fish at the farm gate with a deduction of a fee paid to a processing factory, an upward adjustment was made to reflect processing and packing costs in order to make their prices comparable to those of other producers in the sample and to the imports subject to investigation. This adjustment was made on the basis of the actual fee paid to the processing facility or on the basis of the costs incurred by other producers in the sample for these activities.

(57) As a result, the price comparison exercise showed that prices of salmon originating in Norway were significantly undercutting the Community industry prices on the Community market during the IP. The average undercutting margin, when expressed as a percentage of the Community industry's prices, was established at around 12 %, i.e. there was, as at the provisional stage, substantial undercutting

4.8. **Situation of the Community industry**

(58) It is recalled that in recital 89 of the provisional Regulation, it was provisionally established that the Community industry had suffered material injury within the meaning of Article 3 of the basic Regulation.

(59) Several interested parties questioned the interpretation of the figures relating to the situation of the Community industry as presented in recitals 63 to 89 of the provisional Regulation. They stated that the figures did not show any material injury because some injury indicators, such as production, production capacity, sales volume and stocks showed positive trends. At the same time, whilst they admitted that the business perspectives of the Community industry are not very positive, they considered that overall this should not lead to the conclusion that the Community industry has suffered material injury.

(60) In view of these claims, the Commission continued its investigation of injury. It is recalled that as mentioned at recital 40 above, 15 complaining Community producers now constitute

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the Community industry and, as mentioned at recital 49, five complaining Community producers were selected for the sample. On this basis, the following findings are made.

4.8.1. *Production, production capacity and capacity utilisation*

(61) The production, the production capacity and the capacity utilisation of the Community industry as a whole developed as follows:

Table 1

Production, production capacity and capacity utilisation

	2001	2002	2003	IP
Production (tonnes)	17 448	18 879	18 612	18 271
Index	*100*	*108*	*107*	*105*
Production capacity (tonnes)	32 445	36 900	39 442	39 342
Index	*100*	*114*	*122*	*121*
Capacity utilisation	54 %	51 %	47 %	46 %
Index	*100*	*95*	*88*	*86*

Source: Community industry.

(62) As shown in the table above, production of the Community industry overall increased by 5 % during the period considered. Production first increased by 8 % between 2001 and 2002 but it subsequently decreased by around 1 %, and further decreased again by 2 % in the IP, remaining below the level of 2002. The trends observed are in line with those found at the provisional stage.

(63) During the period considered production capacity increased by 21 %. The main increase took place in 2002 (+ 14 %). It is recalled that farmed salmon production in the Community is effectively limited by government licences specifying the maximum amount of live fish, which may be held in the water at any place at any point in time. Thus, the above capacity figures reflect a theoretical capacity based on the total quantity licensed rather than the physical fish-holding capacity of the cages or other production material operated by the Community industry. It is therefore considered that these capacity figures are not decisive in the analysis, as the actual production capacity is lower.

(64) Capacity utilisation first decreased by 5 % between 2001 and 2002 and further decreased in 2003 by around 7 % and during the IP by around 2 %.

4.8.2. *Sales volume, market shares, average unit prices in the EC and growth*

(65) The figures below represent the Community industry's sales to independent customers on the Community market.

Table 2

Sales volume, market shares, average unit sales prices in the EC

	2001	2002	2003	IP
Sales volume (tonnes)	15 719	16 185	18 142	16 825
Index	*100*	*103*	*115*	*107*
Market share	2,98 %	2,94 %	2,97 %	2,77 %
Index	*100*	*99*	*100*	*93*

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	2001	2002	2003	IP
Average unit sales prices (EUR/kg)	3,03	3,00	2,64	2,77
Index	*100*	*99*	*87*	*91*

Source: Community industry questionnaire replies with regard to sales volume and market share. Sampled Community industry questionnaire replies with regard to average unit sales prices on ex-farm level.

(66) The Community industry's sales volumes have increased between 2001 and the IP by 7 %. In other words, the Community industry was able to increase its sales volume by around 1 100 tonnes. This performance should also be seen in the light of the increase in Community consumption which was as high as 80 000 tonnes in the same period.

(67) Because of the fact that the Community industry did not fully benefit from the market growth, its market share overall decreased during the period considered (– 7 %). It first decreased between 2001 and 2002, subsequently slightly increased in 2003, and sharply decreased again during the IP, remaining far below the market share of the year 2001. Given the limited market share of the Community industry, every loss, be it even little, has a large impact on its economic situation.

(68) In the period 2001 to the IP the Community industry's average sales prices decreased by 9 %. The main price decrease occurred between 2002 and 2003.

(69) Over the period considered the Community consumption grew by 15 % and the Community industry increased it sales volume by 7 %. However, during the same period Community sales prices decreased (– 9 %) as well as the Community industry's market share (– 7 %). At the same time, the imports from Norway increased by around 35 % and the gain in market share of the low-priced dumped imports was as high as 8,6 percentage points. This confirms that the Community industry only participated to a very small degree in the growth of the market over the period considered.

4.8.3. *Profitability, return on investments and cash flow*

(70) Profitability on EC sales represents the result on sales of farmed salmon on the Community market by the sampled Community producers. Return on investments and cash flow could be measured at the level of the narrowest group of products, which included the like product, pursuant to Article 3(8) of the basic Regulation. In this context, it should be recalled that farmed salmon represented over 95 % of the economic activity of the sampled Community industry.

Table 3

Profitability, return on investments and cash flow

	2001	2002	2003	IP
Profitability on EC sales	8,0 %	– 6,9 %	– 9,0 %	– 5,0 %
Return on investment	38,9 %	–18,0%	–26,2%	– 21,1 %
Cash flow (000 EUR)	2 749	– 53	827	984

Source: Sampled Community industry.

(71) As shown in the above table, the Community industry made a positive result with regard to profitability in 2001 at a level of 8,0 %. Between 2001 and 2002 the profitability turned negative, with a decrease as high as 14,9 percentage points, resulting in a loss of 6,9 %. Since this point in time the Community industry

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remained loss-making. It should be noted that the situation deteriorated further between 2002 and 2003 with a loss of 9 % on turnover, in other words a further loss of 2,1 percentage points. During the IP, demand for salmon was sustained and in coincidence with the publication of provisional safeguard measures the Community industry could increase its sales prices by around 5 % between 2003 and the IP. This led to a reduced loss, which, however, remained significant (– 5 %). From the beginning to the end of the period considered, the decrease in profitability was 13 percentage points.

(72) During the period considered the return on investments and cash flow followed a negative trend similar to that of profitability.

4.8.4. *Employment and productivity*

Table 4

Employment and productivity

	2001	2002	2003	IP
Number of employees	227	247	238	221
Index	*100*	*109*	*105*	*97*
Productivity (tonne/employee)	76,9	76,4	78,2	82,7
Index	*100*	*100*	*101*	*108*

Source: **Community industry.**

(73) Between 2001 and the IP employment directly linked with the production of farmed salmon by the Community industry (overall) decreased by 3 %. An increase took place between 2001 and 2002 (+ 9 %) and can be explained by the increase in production realised during the same period. As the above table shows, the increase in employment which occurred in 2002 could not be maintained because of the worsening of the economic situation of the Community industry. A greater use of automation was also noticeable during the period considered. The employment figures directly linked with the production of farmed salmon of Community producers which are not related to Norwegian exporters must be seen in the light of Community interest discussed below at recital 112.

(74) As a result of the increase in production and the decrease of employment, the Community industry was able to increase its productivity during the period considered by 8 %.

4.8.5. *Wages*

Table 5

Wages

	2001	2002	2003	IP
Wages (000 EUR)	4 517	4 147	3 941	3 915
Index	*100*	*92*	*87*	*87*

Source: **Sampled Community industry.**

(75) In view of the worsening of the economic situation of the Community industry, wages had to be decreased by 13 % during the period considered. The figure of total wages reflects a reduced employment but also shows a reduction in average wages per head employed in the industry.

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4.8.6. *Other injury indicators*

(76) The further investigation had no impact on the other injury indicators. Therefore, the provisional findings in respect of stocks, investments, ability to raise capital, recovery from past dumping and magnitude of the actual margin of dumping as set out in recitals 68, 78, 79, 83 and 84 of the provisional Regulation are confirmed.

4.9. **Conclusion on injury**

(77) During the period considered whilst the Community market was characterised by a sustained increase in demand as consumption grew by 15 % or by 80 000 tonnes, the price level of dumped imports was depressed with a decrease of 16 % during the same period. Low-priced dumped imports of salmon from Norway, the main exporting country, have taken place continuously in high and increasing volumes onto the Community market (+ 35 %). As a result, Norwegian market share increased by 17 % or by 8,6 percentage points. Between 2002 and 2003 the increase in import volume from Norway (+ 20 %) and the price decrease (– 13 %) were particularly pronounced. The investigation showed that since then prices for salmon have remained at a very low level on the Community market.

(78) As to the economic situation of the Community industry, an overall examination of the injury indicators shows that it gradually deteriorated during the period considered. While some factors showed a positive trend during the period considered (production, capacity, sales volumes), most indicators developed negatively: sales prices (– 9 %), market share (– 7 %), profitability (– 13 percentage points), employment (– 3 %), wages (– 13 %), as well as cash flow and return on investment. The economic situation of the Community industry mostly deteriorated in the period between 2002 and 2003.

(79) As regards the overall positive development of production (+ 5 %) and sales volumes (+ 7 %), it was found that these increases occurred in a period of increased demand on the Community market (+ 15 %). However, the Community industry only benefited from the market growth to a minor extent and this only allowed avoiding higher losses of market shares during the IP.

(80) Furthermore, it is worth noting that the increase in sales volume by the Community industry occurred when prices were significantly falling on the Community market. This has led to a significant fall in profitability from a positive situation (8,0 % in 2001) to significant losses for the rest of the period considered. Return on investments and cash flow followed a trend similar to that of profitability. Also, wages have suffered during the period considered (– 13 %).

(81) It should be noted that the main decreases in profitability (– 2,1 percentage points) and sales prices (– 12 %) took place between 2002 and 2003.

(82) Taking account of all of these factors, the definitive conclusion reached is that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

5. CAUSATION

5.1. **Effect of imports originating in other third countries**

(83) Several interested parties questioned the interpretation of the figures relating to the imports originating in third countries, as presented in recitals 94 to 99 of the provisional Regulation. They stated that the figures did show a causal link between the low-priced imports from some third countries and the situation of the

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Community industry. These parties claimed that the total average import price from all third countries other than Norway and the average import prices of some countries were below the import price from Norway. It was further alleged that the Commission failed to prove that wild salmon did not have any impact on the situation of the Community industry and that wild and farmed salmon are not interchangeable.

(84) It is noted that none of the interested parties questioned the figures relating to the prices and absolute quantities of imports originating in other third countries, but rather their interpretation. It was also not disputed that the import statistics do not distinguish between farmed salmon and wild salmon and that the price of wild salmon is lower than that of farmed salmon.

(85) It is thus important to recall that there is no distinction between farmed salmon and wild salmon in the import statistics. However, it has been found that the taste of wild salmon is significantly different from that of farmed salmon. More importantly, the investigation showed that contrary to farmed salmon, wild salmon is practically not offered in the market for sale as a fresh product but it is mostly sold in tins and cans. It is clear that these products are not directly competing with each other on the market. This explains why the price of wild salmon is lower compared to farmed salmon and why these products are not interchangeable for users and consumers. Finally, it is noted that none of these interested parties submitted evidence with regard to the alleged interchangeability of wild and farmed salmon. On this basis, their claims had to be rejected.

(86) When looking at the overall average prices of some countries in isolation, e.g. USA and Canada, they seem to be below the import price from Norway. However, on the basis of information gathered during the investigation, the majority of imports from the USA and Canada consists of wild salmon, which, as explained above, is cheaper than and not interchangeable with farmed salmon. In view of the findings made in recital 85 above, it is unlikely that imports from these two countries could have had a significant impact on the situation of the Community industry.

(87) As regards other exporting countries not concerned, it was observed that whilst the average import price from Chile was above the level of those of the Community industry, during the IP import price from the Faeroe Islands was lower than those charged by the Norwegian exporting producers on the Community market. This, however, should not hide the fact that the import volumes from Chile and the Faeroe Islands have decreased by 7 % (or – 1 895 tonnes) and 8 % (or – 3 397 tonnes) respectively during the period considered, whereas imports from Norway increased by 35 % (or + 93 366 tonnes). These developments should also be seen in the light of the development of consumption which increased by 15 % during the same period.

(88) In addition, in the period between 2001 and 2003, when the situation of the Community industry deteriorated the most, the development of imports from Chile and the Faeroe Islands showed some similarities to the development of the fortunes of the Community industry. Whilst the import volumes from Chile have significantly decreased by 26 % (or – 6 987 tonnes) and imports from the Faeroe Island only increased by 2 %, namely much less than the increase in consumption (16 %), imports from Norway increased by 31 % (or + 82 631 tonnes) during the same period. In view of the above, it is to be noted that whilst it cannot be entirely excluded that the presence of low-priced salmon from these two countries affected the Community market, it does not breach the causal link between the increased presence of high

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volumes of dumped imports from Norway and the injury suffered by the Community industry.

5.2. **Effect of changes in export performance of the Community industry**

Table 6

Export volumes of the Community industry

	2001	2002	2003	IP
Exports (tonnes)	184	212	386	484
Index	*100*	*116*	*210*	*263*

Source: **Community industry.**

(89) The further investigation also uncovered certain variations in the level of exports of the Community industry and led to the results shown in the table above.

(90) Some interested parties argued that the export performance of the Community industry has been negatively affected by import restrictions imposed by the USA on farmed salmon during the year 2003. They concluded that any injury caused by a weak export performance may not be attributed to Norwegian imports.

(91) In this context, it should be noted that no evidence with regard to the US import restrictions was submitted. If any, these restrictions did not have any material effect on the export activity of the Community industry. Furthermore, the export activity of the Community industry was of a limited nature during the period considered. It represented around 1 % of Community industry production in 2001 and less than 3 % during the IP. Contrary to what is suggested, the above table clearly shows that exports of the Community industry have significantly increased during the period considered. In the light of these findings and in view of the difficult situation on the Community market, the material injury suffered by the Community industry cannot be attributed to any change in the level of its exports.

(92) In any event, it is noted that data relating to prices and profitability used in the injury assessment are based on the Community industry's sales to unrelated Community customers only. Therefore, the argument that the change of export performance of the Community industry had an injurious effect on the Community industry, which was not further substantiated, had to be rejected.

5.3. **Effect of a scientific publication on sales volume and sales price of the Community industry**

(93) An interested party argued that the publication of a scientific study which found that the Scottish salmon had allegedly a very high level of contamination could have caused significant losses of sales volumes and could have had a negative impact on the Community industry's sales prices during the period considered.

(94) However, the investigation showed that production and domestic sales, as well as the export sales volume of the Community producers increased during the period considered.

(95) Based on the above facts and given that the claim was not further substantiated, it had to be rejected.

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5.4. **Effect of increased mortality on production and sales volumes**

(96) One interested party repeated the argument that higher than normal fish mortality rates in Ireland and disease outbreaks in the United Kingdom and Ireland in 2002 and 2003 could have caused a significant loss of production and sales volumes to the Community industry.

(97) However, the investigation showed that the above phenomena were limited to a small number of farms and did not have an appreciable effect on the overall sales and production figures in the Community given that the affected quantities were small. Indeed, as explained above and in recitals 62 and 65, production and sales volume of the Community increased in 2002 and 2003.

(98) Therefore, and since the claim was not further substantiated, this argument had to be rejected.

5.5. **Conclusion on causation**

(99) On the basis of the above facts and considerations and in the absence of evidence or any other substantiated comments on causation, the conclusions drawn in this respect in recitals 90 to 111 of the provisional Regulation are hereby confirmed.

6. COMMUNITY INTEREST

6.1. **Preliminary remark**

(100) It is recalled that the analysis of Community interest at provisional stage had to be based on the low level of cooperation of processors (users). The Commission therefore continued the Community interest investigation by encouraging processors (users) to submit further meaningful replies to questionnaires, by carrying out additional on-spot investigations at the premises of users and user associations mentioned above at recital 7 and by collecting further information.

(101) Furthermore, after disclosure of the provisional findings, numerous claims were received from interested parties, in particular from processors and processors' associations, which required a further analysis, in particular with regard to the impact of any measures on their activity and with regard to the form of the measure.

(102) It should also be noted that, following disclosure of the Commission's intention to change the form of the provisional duty, generally positive reactions on the change to a minimum import price in the form of a variable duty (MIP) were received.

6.2. **Interest of the Community industry**

(103) Some interested parties argued that given the low employment in the Community industry on the one hand and the high employment in the user industries on the other hand, alternative options of supporting the Community industry other than imposing anti-dumping measures should be taken.

(104) In this context, it is noted that possible alternative options and anti-dumping measures have different legal contexts and different purposes. It is recalled that the Community industry has been suffering from low-priced dumped imports of farmed salmon from Norway. In view of the nature of the injury suffered by the Community industry, it is considered that, in the absence of measures, a further deterioration in the situation of the Community industry is unavoidable. Not adopting measures will most likely entail further injury and in the medium term potentially the disappearance of that industry, bearing in mind the losses occurred during the period considered. Therefore, on the basis of the findings in the IP, the Community industry is

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considered to be in jeopardy unless the low level of the dumped import prices is corrected. Given that a finding of injurious dumping has been made, the appropriate action is the imposition of anti-dumping measures and alternative options are therefore not relevant.

(105) If no anti-dumping measures are imposed, the threat of having large quantities of dumped Norwegian salmon on the Community market will increase. This situation will not provide the required long-term stability which is essential for the salmon farmers in the Community to recover from current dumping practices and will jeopardise all restructuring efforts undertaken by the Community industry so far. In view of the large number of farms which closed down in recent years in the EU, it is considered that, without any measures to eliminate injurious dumping, there is a high risk that the Community industry will disappear in the medium term.

(106) If definitive anti-dumping measures are imposed, those would reinstate fair trading conditions on the market and allow the Community industry to benefit from its restructuring efforts made in recent years. Under these conditions, the Community industry will be able to remain a viable producer offering high quality farmed salmon and will likely be able to expand. In particular, it is also expected that the Community industry will return to a profitable situation as was the case in 2001. In the meantime, in view of the capacities left over by farms which were forced to close down during the period considered, it should not be excluded that the Community industry could double its market share.

(107) The viability of the Community industry will have several positive effects for users and consumers of salmon. The high quality products offered by the Community industry will continue to be available to all users and consumers. It is also reasonable to assume that after restructuring and with an increased market share the Community industry will also be able to better control its costs and profit from economies of scale, which it has not been able to do in view of the pressure it has been facing from dumped imports. This will materialise into a strengthening of the financial situation of the Community industry, more effective competition and stable salmon prices to the benefit of all parties on the Community market.

(108) It should finally be borne in mind that a number of Community producers are located in remote and rural areas of the EU where the direct and indirect employment of salmon producers is extremely important for the local Community. This employment is likely to disappear if the Community industry is not protected against low-priced dumped imports from Norway. Should measures be imposed, to the contrary, it is to be expected that with the expected improvement in the situation of the Community industry as outlined above, employment levels will also increase.

(109) In the absence of any further substantiated comments submitted with respect to the interest of the Community industry, the findings as set out in recitals 113 to 116 of the provisional Regulation are hereby confirmed.

6.3. **Interest of unrelated importers and processors (users)**

(110) Following disclosure of the provisional findings and further investigation as mentioned above in recital 100, a number of claims were received from processors of farmed salmon. Some additional cooperation was received from importers and processors as a result of the further investigation. The companies now submitting meaningful replies at the definitive stage of the proceeding represent around 18 % of total imports

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from Norway during the IP and roughly 11 % of consumption (compared with 9 % and 6 % respectively at provisional stage).

(111) Importers and processors (users) considered that *ad valorem* duties would increase their costs, reduce their sales volume and profitability and may lead to job losses and even delocalisation. They also argued that employment in the fish processing sector is far higher than in the fish farming industry, which nevertheless in some cases provides employment in regions of low employment. Processors also stressed the need for consumers and traders to continue to have access to good quality farmed salmon at low prices. However, they generally considered the MIP as a more acceptable form of the measure compared to an *ad valorem* duty.

(112) The main costs incurred in smoking or otherwise processing salmon are those related to the purchase of salmon and employment. As to employment, during the further investigation different figures have been presented to the Commission in a number of studies or submissions. These studies and submissions are only of limited use for the purpose of this investigation. In this context, it should be noted that the studies submitted refer to periods of time other than the IP, do not exactly cover the product concerned and partly use different parameters not covered by this investigation. Therefore, the Commission also undertook to carry out on-spot visits to relevant associations. On the basis of all the information gathered, the best estimate indicates that around 7 500 workers are employed directly in the salmon processing sector in the Community.

(113) Following the further investigation it was found that farmed salmon represents around 48-54 % and wages around 6-12 % of the total costs of processors. Under normal market conditions (i.e. reasonable raw material price and good retail price), processors expect operating profits ranging between 5 and 12 %. This has been confirmed by the cooperating processors which reported data on profitability. The further investigation showed that profit can be even higher in good times. At the end of the distribution chain, retailers may expect a profit margin ranging between 6 and 11 %.

(114) The worries expressed by the users industry are legitimate as they fear a negative impact of the proposed measures on their costs leading to a reduced profitability. However, under the current circumstances and in view of the proposed MIP, any impact on the users' costs is likely to be small or non-existent.

(115) In a best case scenario, market conditions will remain as they are currently, i.e. prices will remain at a level well above the MIP. In such a case the MIP will have no impact at all on the costs of users. Where imports are undertaken at a CIF Community border price equal to or above the MIP established, no duty would be payable.

(116) In a worst case scenario with the imposition of measures, the cost of users' raw material will be set at the level of the MIP, namely at the level of the actual costs incurred by producers plus reasonable profit for deliveries on the Community market. Although this scenario does not reflect current market conditions, it is considered that in such a case it cannot be excluded that the imposition of anti-dumping duties will have some negative impact on importers and processors as duties, if any, would be directly payable at the time of import whatever the level of the import price. However, in this context it is recalled that the measure proposed is in the form of a MIP which is a floor price intended only to ensure that Community producers can sell their salmon in the Community at prices, on the basis of the lesser duty rule, that will allow them to cover their costs and allow for a margin of profit that they could normally

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expect in the absence of dumped imports. Duties will only be collected, in possible exceptional cases, when the free-at-Community-frontier price of Norwegian imports falls below the MIP and then only at a level equivalent to the difference between the import price and the MIP. In addition, the whole salmon market from production to deliveries to consumers will be governed by fair competition. These conditions will allow for costs to be duly reflected on the sales prices at each level of the distribution chain. Users may also expect an increased possibility of supplies from EU sources and from other third countries, once the market will be recovering from the effects of injurious dumping. Indeed, when all operators in the market enjoy sound market conditions governed by fair trade, the largest choices of products and qualities are available from various sources of supply. Prices being set according to market signals should have a positive impact on the production and distribution chains, allowing more price and cost stability and predictability.

(117) If no measures are imposed and if the price for Norwegian exports were permitted to drop back to previously dumped low levels, users may be allowed to profit from unfairly dumped imports for a while. The market, however, will not sustain this situation for a long time. Salmon prices to users will be below the costs of producers for deliveries on the Community market. If dumping is allowed to recur, Norwegian imports representing around 60 % of Community consumption will prevent exports from non-dumped third country sources. Users will not have the choice of obtaining alternative supplies and quality. The fact that prices will not be set according to market signals will lead to price volatility and negative influence on final products to consumers. This may ultimately affect processors' profitability.

(118) Therefore, the application of a MIP will on the one hand have only minor cost implications for importers and processors. Indeed, whilst market prices remain above the MIP, there will be no financial implications at all. On the other hand, it is considered that such market conditions should also prevent any delocalisation as import duties on processed salmon are high. Therefore, the processing industry in the Community should continue to have access to an adequate supply of raw material.

(119) As set out in recital 140 below, the Commission undertakes to monitor the developments in the farmed salmon market in the Community. Where on the basis of this monitoring, there is *prima facie* evidence that the existing measure is no longer necessary or sufficient to counteract injurious dumping, the Commission may consider initiating a review on the basis of Article 11(3) of the basic Regulation and conducting the investigation expeditiously. This will allow the Commission to react quickly, should market prices fall for a longer period of time below the level of the MIP.

(120) There has been some debate with interested parties on the question of future employment levels. However, as with the analysis of the cost implication of the measures, there is no evidence that the impact on employment in this sector by any anti-dumping measure on imports of salmon from Norway will be anything other than small.

(121) The further investigation confirmed that the MIP and its proposed level is the most appropriate form of the measure (see below at recital 128). Therefore, with a MIP the disadvantages likely to be suffered by importers/processors/users, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the anti-dumping measures which are considered the minimum necessary to remedy the serious injury suffered and prevent further serious deterioration in the situation of the Community producers. In

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addition, it should be noted that separate sources of supply from other third countries also remain available.

(122) In the absence of any further substantiated comments submitted with respect to the interest of unrelated importers and processors (users), the findings as set out in recital 128 of the provisional Regulation are hereby confirmed.

6.4. **Interest of producers of smolt and feed, suppliers and producers in the EC related to Norwegian producers/importers**

(123) In the absence of any substantiated comments submitted with respect to the interests of producers of smolt and feed, suppliers and producers in the EC related to Norwegian producers/importers, the findings as set out in recitals 117 to 121 of the provisional Regulation are hereby confirmed.

6.5. **Interest of consumers**

(124) As the product concerned is a consumer product, the Commission informed various consumer organisations of the opening of an investigation. A response was received from one party which claimed that the nutritional beneficial effects of salmon are widely recognised and that artificially increasing the price would make good nutrition choices more difficult for consumers. Concern was also expressed that any increase in prices would make farmed salmon less affordable and stifle market growth in those Member States with a lower than average gross domestic product per head (GDP).

(125) It is considered that if anti-dumping measures are imposed, economic operators will continue to have access to unlimited quantities of imports, albeit at fair prices. Further, given the magnitude of the margins between the whole fish ex-farm and the retail price of processed salmon products, it is considered that the measures are unlikely to have a material effect on retail prices, since it is unlikely that the full price increase, if any, will be passed on to consumers. Indeed, at current market prices which are well above the MIP, there would be no impact at all. The impact on consumers, even in a worst case scenario, is therefore likely to be small. In addition, loss-making price levels are probably not sustainable in the medium to long term. On that basis, it is not expected that anti-dumping measures would have any significant negative consequences for consumers.

6.6. **Conclusion on Community interest**

(126) In view of the conclusions drawn in the provisional Regulation and taking into account the submissions made by the various parties and the results of the further investigation, it is concluded that there are no compelling reasons not to impose definitive anti-dumping measures against dumped imports of farmed salmon originating in Norway. The conclusion as set out in recital 131 of the provisional Regulation is therefore confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. **Form of the definitive measures**

(127) In view of the definitive conclusions reached with regard to dumping, injury, causation and Community interest, anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports. Account has been taken of both the dumping margins found and the amounts of duty necessary to eliminate the injury sustained by the Community industry. It has been found that all injury margins were above 2,0 % and could therefore not be considered as *de minimis*. The weighted average injury

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margin, which was below the weighted average dumping margin, was found to be 14,6 %.

(128) However, following disclosure of facts leading to the adoption of the amending Regulation, some interested parties explicitly rejected *ad valorem* duties and welcomed the introduction of a MIP. Therefore, in light of these comments received and the findings of the further investigation, the MIP as the appropriate form of the measure is confirmed.

7.2. **Injury elimination level**

(129) In accordance with Article 9(4) of the basic Regulation, the definitive duty should be set at the level of the dumping or injury margins, whichever is the lower. In order to apply this rule, a non-injurious MIP was established. In order to verify this method, company specific non-dumped MIPs were also calculated on the basis of normal value, adjusted to the net free-at-Community-border price. These were compared with the non-injurious MIP calculated according to the methodology set out at recital 131. In all cases it was found that the non-injurious MIP was lower than the non-dumped MIP.

(130) In calculating non-dumped MIPs, a conversion from Norwegian kroner to euro had to be made. At the provisional stage, the Commission used three-year average currency exchange rates for this conversion. Several companies claimed that the correct rate should be that which applied during the IP. In response to this claim, the Commission again notes that three years is the average production cycle for salmon. As a number of important costs which are included in the normal value are incurred over this production cycle, the Commission considers that three-year average rates are appropriate when calculating non-dumped MIPs. The claim is, therefore, rejected.

(131) As regards the level of the non-injurious price necessary to remove the effects of the injurious dumping, the findings of the further investigation had to be taken into account. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding a profit margin of 8 % on turnover to the cost of production. The cost of production was cross-checked on the basis of the average unit sales price of the sampled Community industry (2,77 EUR/kg) and the average loss of sampled Community industry (5 % loss) during the IP. The profit margin of 8 % was established on the basis of the profit achieved during the year 2001 (see Table 3) and is a strict minimum which the Community industry could expect to obtain in the absence of injurious dumping.

(132) Farmed salmon is commonly traded in different presentations (gutted head on, gutted head off, whole fish fillets, other fillets or fillet portions). Therefore, a non-injurious minimum import price level had to be established for each of these presentations, to reflect the added costs incurred in preparing each of them. In

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this respect, the different minimum import prices are based on the findings in this investigation. They are essentially derived from the conversion factors, as contained in Council Regulation (EC) No 772/1999 ([1]), and also used in this investigation. With regard to the whole fish fillets and fillets cut in pieces, processing costs were taken into account.

(133) Where imports are undertaken at a CIF Community border price equal to or above the minimum import price established, no duty would be payable. If imports are undertaken at a lower price, the difference between the actual price and the minimum import price established would become payable. As imports from Norway made at prices at or above the MIP will remove the effects of the injurious dumping, it is appropriate that the MIP should apply to all imports from Norway except for one company, for which a *de minimis* dumping margin has been found as outlined in recital 33 above.

8. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(134) In view of the magnitude of the dumping margins found for the exporting producers in Norway and in light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, as amended by Regulation (EC) No 1010/2005, should be definitively collected to the extent of the amount of definitive duties imposed. In so far as the definitive duties are lower than the provisional duties, only amounts secured up to the level of the definitive duties should be definitely collected.

(135) The provisional anti-dumping duties which took the form of *ad valorem* duties, ranging between 6,8 % and 24,5 %, for the imported products which were imposed by Regulation (EC) No 628/2005 and applied during the period from 27 April 2005 to 4 July 2005 shall however be released. The collection of the *ad valorem* duties would be disproportionate to the removal of injurious dumping given that during this period market prices were significantly above the MIP which was introduced in view of unprecedented and unforeseeable market developments. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1010/2005 on imports of farmed salmon originating in Norway shall be definitively collected, by taking account of the MIP finally imposed. The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1010/2005 on imports of farmed salmon originating in Norway in excess of the definitive rate shall be released.

9. ENFORCEABILITY OF THE MIP

(136) Following disclosure, it was argued that a MIP may be more difficult to enforce and more open to misdeclaration of the customs value of the goods than other forms of the measure. Indeed, in view of indications that some circumvention of the MIP occurred since it was imposed on 1 July 2005 and the potential which exists for compensatory arrangements in this market sector, it is necessary to introduce a double system of measures. This double system is composed of a MIP (see recitals 129 to 133 above) and a fixed duty. In accordance with Article 9(4) of the basic Regulation, the fixed duty was calculated on the basis of the weighted average injury margin as this was found to be lower than the weighted average dumping margin. To ensure the effective respect of the MIP, importers should be made aware that when it is found following a post-importation verifi-

([1]) OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Regulation (EC) No 321/2003 (OJ L 47, 21.2.2003, p. 3).

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cation that (i) the net free-at-Community-frontier price actually paid by the first independent customer in the Community (post-importation price) is below the net free-at-Community-frontier price, before duty, as resulted from the customs declaration; and (ii) the post-importation price is lower than the MIP, a fixed duty shall apply retrospectively for the relevant transactions, unless the application of the fixed duty plus the post-importation price lead to an amount (price actually paid plus fixed duty) which remains below the MIP. In such a case, an amount of duty equivalent to the difference between the MIP and the post-importation price shall apply. Customs authorities should inform the Commission immediately whenever indications of a misdeclaration are found.

(137) In this context, and in order to address the concerns raised, the Commission intends to put in place three specific pillars to ensure that the measures continue to be relevant whilst also being fully respected. Firstly, reference is made to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1], *inter alia*, to Article 78, according to which the customs authorities may inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods.

(138) Secondly, in order to best guard against any possible absorption of the measures, particularly between related companies, the Community institutions hereby notify their intention to immediately initiate a review under Article 12(1) of the basic Regulation and to subject importations to registration in accordance with Article 14(5) of the basic Regulation, should any evidence of such behaviour be provided.

(139) The Community institutions will rely, *inter alia*, on import surveillance information provided by national customs authorities, as well as information provided by Member States pursuant to Article 14(6) of the basic Regulation.

(140) Finally, the Commission undertakes to monitor the developments in the farmed salmon market in the Community. Where on the basis of this monitoring, there is *prima facie* evidence that the existing measure is no longer necessary or sufficient to counteract injurious dumping, the Commission may consider initiating a review on the basis of Article 11(3) of the basic Regulation and conducting the investigation expeditiously,

HAS ADOPTED THIS REGULATION:

Article 1

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1. A definitive anti-dumping duty is hereby imposed on imports of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 (hereinafter farmed salmon) originating in Norway. Salmon backbones, composed of a fishbone partly covered with flesh, being an edible

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).

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by-product of the fishing industry, and falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, shall not be covered by the definitive anti-dumping duty provided that the flesh attached to the backbone represents not more than 40 % of the salmon backbone weight.

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2. Wild salmon shall not be subject to the definitive anti-dumping duty. For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member State, where the customs declaration for free circulation is accepted, are satisfied, by means of all appropriate documents to be provided by interested parties, that it was caught at sea for Atlantic or Pacific salmon or in rivers for Danube salmon.

3. The amount of the definitive anti-dumping duty in respect of Nordlaks Oppdrett AS shall be:

Company	Definitive duty	TARIC additional code
Nordlaks Oppdrett AS, Boks 224, N-8455 Stokmarknes	0,0 %	A707

4. For all other companies (TARIC additional code A999), the amount of the definitive anti-dumping duty shall be the difference between the minimum import price fixed in paragraph 5 and the net free-at-Community-frontier price, before duty, if the latter is lower than the former. No duty shall be collected where the net free-at-Community-frontier price is equal to or higher than the corresponding minimum import price fixed in paragraph 5.

5. For the purpose of paragraph 4, the minimum import price set out in column 2 in the table below shall apply. Where it is found following post-importation verification that the net free-at-Community-frontier price actually paid by the first independent customer in the Community (post-importation price) is below the net free-at-Community-frontier price, before duty, as resulted from the customs declaration and the post-importation price is lower than the minimum import price, the fixed anti-dumping duty set out in column 3 of the table below shall apply, unless the application of the fixed duty set out in column 3 plus the post-importation price lead to an amount (price actually paid plus fixed duty) which remains below the minimum import price set out in column 2 in the table below. In such a case, an amount of duty equivalent to the difference between the minimum import price set out in column 2 in the table below and the post-importation price shall apply. Where such fixed anti-dumping duty is collected retrospectively, it shall be collected net of any anti-dumping duty previously paid, calculated on the basis of the minimum import price.

Presentation of farmed salmon	Minimum import price EUR/kg net product weight	Fixed duty EUR/kg net product weight	TARIC code
Whole fish, fresh, chilled or frozen	2,80	0,40	0302 12 00 12, 0302 12 00 33, 0302 12 00 93, 0303 11 00 93, 0303 19 00 93, 0303 22 00 12, 0303 22 00 83
Gutted, head-on, fresh, chilled or frozen	3,11	0,45	0302 12 00 13, 0302 12 00 34, 0302 12 00 94, 0303 11 00 94, 0303 19 00 94, 0303 22 00 13, 0303 22 00 84

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Presentation of farmed salmon	Minimum import price EUR/kg net product weight	Fixed duty EUR/kg net product weight	TARIC code
Other (including gutted, head-off), fresh, chilled or frozen	3,49	0,50	0302 12 00 15, 0302 12 00 36, 0302 12 00 96, 0303 11 00 18, 0303 11 00 96, 0303 19 00 18, 0303 19 00 96, 0303 22 00 15, 0303 22 00 86
Whole fish fillets and fillets cut in pieces, weighing more than 300 g per fillet, fresh, chilled or frozen, skin on	5,01	0,73	0304 10 13 13, 0304 10 13 94, 0304 20 13 13, 0304 20 13 94
Whole fish fillets and fillets cut in pieces, weighing more than 300 g per fillet, fresh, chilled or frozen, skin off	6,40	0,93	0304 10 13 14, 0304 10 13 95, 0304 20 13 14, 0304 20 13 95
Other whole fish fillets and fillets cut in pieces, weighing 300 g or less per fillet, fresh, chilled or frozen	7,73	1,12	0304 10 13 15, 0304 10 13 96, 0304 20 13 15, 0304 20 13 96

6. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 [1], the amount of anti-dumping duty, calculated on the basis of paragraph 4 and 5 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 628/2005, prior to the entry into force of Regulation (EC) No 1010/2005, on imports of farmed salmon originating in Norway shall be released.

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1010/2005 on imports of farmed salmon originating in Norway shall be definitively collected in accordance with the following rules:

(a) the amounts secured in excess of the definitive duties shall be released;

(b) where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

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

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).

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