Council Regulation (EC) No 805/2008 of 7 August 2008 repealing the anti-dumping duties imposed by Regulation (EC) No 437/2004 on imports of large rainbow trout originating in Norway

COUNCIL REGULATION (EC) No 805/2008

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repealing the anti-dumping duties imposed by Regulation (EC) No 437/2004 on imports of large rainbow trout 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 Articles 9 and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation (the 'original investigation'), by Regulation (EC) No 437/2004[(2)] imposed a definitive anti-dumping duty on imports of large rainbow trout ('LRT' or 'the product concerned' as defined in recital 19 below) originating in Norway. The definitive duty was imposed in the form of a countrywide *ad valorem* duty at a level of 19,9 % ('the current measures').

2. Request for review and initiation

(2) On 12 March 2007, the Commission received a request for a partial interim review lodged by several producers and exporters of LRT; i.e. Sjøtroll Havbruk AS, Lerøy Fossen AS, Firda Sjøfarmer AS, Coast Seafood AS, Hallvard Leroy AS and Sirena Norway AS ('the applicants') pursuant to Article 11(3) of the basic Regulation.

(3) The applicants have provided prima facie evidence that the basis on which the measures were established has changed and that these changes are of a lasting nature. The applicants alleged and provided prima facie evidence showing that their export prices to the Community market have increased significantly and substantially more than the domestic prices and cost of production in Norway. The applicants alleged furthermore that this would lead to a reduction of dumping significantly below the level of the current measures and therefore the continued imposition of measures at the existing levels is no longer necessary to offset dumping. This evidence was considered sufficient to justify the opening of a proceeding.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 805/2008. (See end of Document for details)*

(4) Accordingly, after having consulted the Advisory Committee, the Commission on 15 May 2007 initiated, by the publication of a notice in the *Official Journal of the European Union*[3], a partial interim review of anti-dumping measures in force on imports of LRT originating in Norway in accordance with Article 11(3) of the basic Regulation ('the notice of initiation').

(5) This review was limited in scope to the aspects of dumping, with the objective of assessing the need for the continuation, removal or amendment of the existing measures.

3. Parties concerned by the proceeding

(6) The Commission officially advised all known exporters/producers in Norway, traders, importers and associations known to be concerned, and representatives of the Kingdom of Norway, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

4. Sampling

(7) Section 5(a) of the notice of initiation indicated that the Commission may decide to apply sampling in accordance with Article 17 of the basic Regulation. In response to the request pursuant to Section 5(a)(i) of the notice of initiation, 298 companies, representing more than 70 % of the production licences in use during the IP, provided the information requested within the specified deadline. Of these, 123 were exporting LRT and/or producers of LRT. Exports were made either directly or indirectly via related and independent traders.

(8) In view of the large number of companies involved, it was decided to make use of the provisions for sampling and, for this purpose, a sample of producing companies, with the largest export volumes to the Community (exporting producers) was chosen, in consultation with the representatives of the Norwegian industry.

(9) In accordance with Article 17 of the basic Regulation, the selected sample covered the largest possible representative volume of exports that could reasonably be investigated within the time available.

(10) Requests for the determination of an individual dumping margin were submitted by the companies not selected in the sample. However, in view of the large number of requests and the large number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome within the meaning of Article 17(3) of the basic Regulation and would have prevented completion of the investigation in good time. The claims for determination of individual margins are therefore rejected.

(11) One of the exporting producers selected in the sample, declared that it was unable to complete the reply to the anti-dumping questionnaire. This exporting producer

was therefore excluded from the sample and the findings with regard to it were based on the facts available in accordance with Article 18 of the basic Regulation.

(12) The investigation has also revealed that two other exporting producers included in the sample did not export the product concerned produced by them or their related companies to the Community during the review investigation period ('RIP'). Since no export price was therefore available, no dumping margin could be established for these exporting producers.

(13) The three exporting producers included in the final sample represented around 33 % of Norwegian exports of LRT to the Community and 31 % of the production volume in Norway during the RIP which was still considered representative.

(14) As far as importers are concerned, and in order to enable the Commission to decide whether sampling is necessary, section 5(a)(ii) of the notice of initiation requested importers in the Community to submit the information specified in this section. Only three importers in the Community replied to the sampling form. Given this low number of cooperating importers no sampling was necessary in this case.

(15) The Commission sought and verified all information deemed necessary for the determination of dumping. To this end the Commission invited all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation to cooperate in the present proceeding and to fill in the relevant questionnaires.

(16) The Commission carried out verification visits at the premises of the following companies:

(a) *Producers in Norway*

— Marine Harvest AS, Bergen, Norway,

— Hallvard Leroy AS, Bergen, Norway,

— Sjotroll Havbruk AS, Bekkjarvik, Norway,

— Svanoy Havbruk AS, Svanoybukt, Norway,

— Hyen Laks AS, Hyen, Norway;

(b) *Related traders in Norway*

— Coast Seafood AS, Maloy, Norway,

— Skaar Norway AS, Floro, Norway.

(17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

5. Investigation period

(18) The investigation of dumping covered the period from 1 April 2006 to 31 March 2007 ('review investigation period' or 'RIP').

B. PRODUCT CONCERNED AND LIKE PRODUCT

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 805/2008. (See end of Document for details)*

1. Product concerned

(19) The product under review is the same as in the original investigation, i.e. large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads and gills on, gutted, weighing more than 1,2 kg each or with heads off, gilled and gutted, weighing more than 1 kg each), or in the form of fillets (weighing over 0,4 kg each), originating in Norway ('the product concerned').

(20) The product concerned is currently classifiable within CN codes 0302 11 20, 0303 21 20, 0304 19 15 and 0304 29 15 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets).

2. Like product

(21) As established in the original investigation and confirmed by this investigation, the product concerned and the product produced and sold on the domestic market in Norway were found to have the same basic physical characteristics and had the same use. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to dumping, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. DUMPING

1. General

(22) The Norwegian producers of LRT were making sales of the product concerned to the Community either directly, or via related and unrelated traders. Only identifiable sales destined for the Community market made directly or via related companies of the exporting procurers included in the sample based in Norway, were used to calculate the export price.

2. Normal value

(23) For the determination of normal value the Commission first established, for each of the exporting producers included in the sample, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(24) In order to determine whether domestic sales were representative, sales to unrelated traders located in Norway during the RIP were disregarded since the final destination of these sales could not be established with certainty. Indeed, the investigation indicated that these sales were overwhelmingly destined for export to third country markets and therefore not sold for domestic consumption.

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(25) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(26) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market during the review investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(27) An examination was also made as to whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. This was done by establishing the proportion of profitable domestic sales to independent customers of each exported product type, on the domestic market during the review investigation period, as follows:

(28) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic prices. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the RIP, irrespective of whether these sales were profitable or not.

(29) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(30) Where the volume of the profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that the domestic price of this particular type does not provide an appropriate basis for the establishment of the normal value.

(31) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied.

(32) In this regard, it was first examined whether normal value could be established on the basis of domestic prices of other producers in Norway in accordance with Article 2(1) of the basic Regulation. Since in this case, the corporate structures of the groups selected in the sample were highly complex and differed significantly from each other, which very likely had an impact on the exporting producer's sales price on the domestic market, it was considered that in this case the use of the sales prices of other producers was not appropriate because this would not give more reliable results than using each exporting producer's own data. Therefore, normal value was constructed in accordance with Article 2(3) of the basic Regulation as follows: