Council Regulation (EC) No 685/2008 of 17 July 2008 repealing the anti-dumping duties imposed by Regulation (EC) No 85/2006 on imports of farmed salmon originating in Norway

COUNCIL REGULATION (EC) No 685/2008

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repealing the anti-dumping duties imposed by Regulation (EC) No 85/2006 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 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 85/2006[(2)] imposed a definitive anti-dumping duty on imports of farmed salmon originating in Norway. The definitive duty was imposed in the form of a minimum import price (MIP).

2. Request for review and initiation

(2) On 20 February 2007, the Commission received a request for a partial interim review lodged by the following Member States: Italy, Lithuania, Poland, Portugal and Spain (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 a comparison between a constructed normal value and export prices would lead to a reduction of dumping significantly below the level of the current measures. 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.

(4) Accordingly, after having consulted the Advisory Committee, the Commission on 21 April 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

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force on imports of farmed salmon 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, 267 companies provided the information requested within the specified deadline. Of these, 169 were exporting producers of farmed salmon. 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. The representatives of the Norwegian industry proposed to include into the sample (i) a producing company which did not export on its own but only via unrelated traders in Norway and (ii) two exporters but not producers of the product concerned. This could not be accepted because as far as the producing company is concerned there were no sufficient guarantees that export sales to the Community via unrelated traders could indeed be identified. As for the exporters without own production of salmon, no normal value could be established and therefore no duty could be determined for these companies.

(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. The exporting producers selected in the final sample represented almost 60 % of the reported volume of the product concerned exported to the Community.

(10) 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 four importers in the Community replied to the sampling form. Given this low number of cooperating importers no sampling was necessary in this case.

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(11) 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. In this regard, 267 producers and exporters in Norway, the representatives of the Community salmon producers and the Governments of Ireland and Scotland cooperated with the Commission and made their views known. Furthermore, four importers and the six sampled Norwegian exporting producers submitted full questionnaire replies within the deadlines set.

(12) The Commission carried out verifications at the premises of the following companies:

(a) *importers/processors/users*

— Laschinger GmbH, Bischofmais, Germany,

— Gottfried Friedrichs KG (GmbH & Co.), Hamburg, Germany,

— Rodé Vis B.V., Urk, The Netherlands,

— Hätälä Oy, Oulu, Finland;

(b) *Exporting producers in Norway (Group level)*

— Marine Harvest AS, Bergen, Norway,

— Hallvard Leroy AS, Bergen, Norway.

(13) The two largest Norwegian exporting producers, i.e. Marine Harvest AS and Hallvard Leroy AS represented over 44 % of the total production reported by the cooperating Norwegian producers and 45 % of the Norwegian exports to the Community.

(14) The information supplied by the other four companies selected in the sample was subject to an in-depth desk analysis and it was found that their costs of production and export prices were generally in line with those of the visited companies.

(15) 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

(16) The investigation of dumping covered the period from 1 January 2006 to 31 December 2006 (review investigation period or RIP).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(17) The product under review is the same as in the original investigation, i.e. farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, originating in Norway (the product concerned). The definition excludes other similar farmed fish products such as large (salmon) trout, biomass (live salmon) as well as wild salmon and further processed types such as smoked salmon.

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(18) The product is currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 19 13 and ex 0304 29 13 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets).

2. Like product

(19) 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

(20) The Norwegian producers of farmed salmon 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 based in Norway were used to calculate an export price at the level of the producer.

2. Normal value

(21) 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 farmed salmon 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.

(22) In order to determine whether domestic sales were representative, sales to unrelated traders located in Norway and owning an export licence 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.

(23) 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.

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

(25) 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 investigation period, as follows:

(26) 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.

(27) 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.

(28) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(29) 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.

(30) First, it was 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, no more reliable prices of other producers were available, the constructed normal value was used in accordance with Article 2(3) of the basic Regulation.

(31) Therefore, in accordance with Article 2(3) of the basic Regulation, the Commission instead calculated a constructed normal value as follows. Normal value was constructed by adding to each exporting producer's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(32) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.