# Commission Regulation (EC) No 1010/2005 of 30 June 2005 amending Regulation (EC) No 628/2005 imposing a provisional anti-dumping duty on imports of farmed salmon originating in Norway

## COMMISSION REGULATION (EC) No 1010/2005

## of 30 June 2005

## amending Regulation (EC) No 628/2005 imposing a provisional anti-dumping duty on imports of farmed salmon originating in Norway

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. EXISTING MEASURES

(1) Following the initiation[(2)] of an anti-dumping investigation on 23 October 2004, the Commission imposed on 23 April 2005 by Regulation (EC) No 628/2005[(3)] provisional anti-dumping duties on imports of farmed salmon originating in Norway (Regulation imposing a provisional duty).

(2) The provisional anti-dumping duties which took the form of *ad valorem* duties ranging between 6,8 % and 24,5 % of the value of the imported products apply as of 27 April 2005.

2. FORM OF THE PROVISIONAL ANTI-DUMPING MEASURES

(3) Anti-dumping measures may take different forms. For example, whereas the actual amount of an *ad valorem* duty varies in response to the import prices, the effect of a minimum import price is static in nature. The purpose of both forms of measures is to eliminate the injurious effects of dumping. When choosing the form of the measure, the Commission has a wide discretion. In previous investigations of farmed salmon, duties based on a minimum import price sufficient to remove the effects of injurious dumping were the preferred form of the measures.

(4) However, in imposing provisional measures in the current case, the Commission provisionally considered that a minimum import price might be difficult to enforce and be more open to circumvention than other forms of measures. Therefore, in this investigation, provisional measures were originally imposed in the form of *ad valorem* duties.

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Regulation (EC) No 1010/2005. (See end of Document for details)*

(5) After the adoption of provisional measures, the Community market has seen a significant, unprecedented and unforeseeable rise in market prices for farmed salmon. The situation is aggravated by the fact that salmon is to a large extent traded as a fresh product with a short shelf-life. Thus, the excessive variations of market prices cannot be offset by stocking sufficient quantities of the product.

(6) In the specific circumstances of this case, the original considerations for not imposing minimum import prices are no longer present. Indeed, currently there is minimal risk that a minimum import price will be evaded, contrary to some experience in the past. However, the volatility now observed in the market would also suggest that this dramatic development is not of such a lasting nature as to put into question the findings of dumping and injury made with regard to the investigation period.

(7) Under these circumstances, it is considered appropriate to change the form of the measures to a minimum import price. As stated above, the purpose of the minimum price is the same as that of an *ad valorem* duty, i.e. to remove the effects of the injurious dumping.

(8) 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.

(9) As regards the level of the minimum import price necessary to remove the effects of the injurious dumping, the present amendment does not change the findings and methodology used in the Regulation imposing a provisional duty, in particular as set out in recitals 132 to 134 of that Regulation.

(10) As imports from Norway made at prices at or above the minimum import price will remove the effects of the injurious dumping, it is appropriate that the minimum price should apply to all imports from Norway.

(11) Farmed salmon is commonly traded in different presentations (gutted head on, gutted head off, whole fish fillets, other fillets or fillet portions). Therefore, when amending the existing duties into their new form, 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 this respect, the different minimum import prices are based on the findings in previous anti-dumping investigations of the product concerned, as well as the findings in this investigation. They are essentially derived from the conversion factors, as contained in Council Regulation (EC) No 772/1999[(4)], and also used in this investigation.

(12) The exporting producers should be aware that if it is found that the measures are not effective, in particular, if the minimum import price is manipulated, absorbed or circumvented, the Commission may, after consulting the Advisory Committee, further amend Regulation (EC) No 628/2005, where appropriate, in order to ensure the effectiveness of the measures.

3. DURATION OF THE MEASURES

(13) The provisional anti-dumping measures were originally imposed for a period of six months. Exporting producers representing a significant percentage of the trade involved have requested an extension of the provisional measures for a further period not exceeding three months.

(14) Therefore, and in accordance with Article 7(7) of the basic Regulation, it is decided to extend the duration of the provisional measures until 22 January 2006, inclusive.

4. FINAL PROVISION

(15) In the interest of sound administration, and having regard to the fact that time-limits for comments had already been set in the Regulation imposing a provisional duty, a period should be fixed, within which the interested parties which made themselves known within the time-limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 1 of Regulation (EC) No 628/2005 is hereby replaced by the following:

1. A provisional 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.

2 Wild salmon shall not be subject to the provisional 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 provisional anti-dumping duty shall be the difference between the minimum import price fixed in paragraph 4 and the 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 corresponding minimum import price fixed in paragraph 4.

4 For the purpose of paragraph 3, the following minimum import price shall apply per kilogram net product weight:

| **Presentation of farmed salmon** | **Minimum import price EUR/kg net product weight** | **TARIC code** |
|---|---|---|
| Whole fish, fresh, chilled or frozen | 2,81 | 0302 12 00 120302 12 00 330302 12 00 930303 11 00 |