Commission Regulation (EC) No 628/2005 of 22 April 2005 imposing a provisional anti-dumping duty on imports of farmed salmon originating in Norway

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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. PROCEDURE

1.1. Measures repealed

(1) On 6 March 2004, the Commission initiated a safeguard investigation, pursuant to Council Regulations 3285/94[(2)] and 519/94[(3)], concerning imports of farmed salmon. On 5 February 2005 the Commission imposed, by Regulation (EC) No 206/2005[(4)] definitive safeguard measures which took the form of tariff quotas combined with a minimum price for imports. The definitive safeguard measures apply from 6 February 2005, and are subject to gradual liberalisation during the period of their application. On 23 April 2005, the Commission repealed Commission Regulation (EC) No 206/2005 by Commission Regulation (EC) No 627/2005[(5)].

1.2. Initiation

(2) In parallel to the safeguard investigation, on 8 September 2004 a complaint concerning imports of farmed salmon originating in Norway was lodged by the EU Salmon Producers' Group (the complainant) representing a major proportion of the Community production of farmed salmon.

(3) This complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the opening of a proceeding.

(4) On 23 October 2004 the proceeding was opened by the publication of a notice of initiation[(6)]

1.3. Investigation period

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 628/2005. (See end of Document for details)*

(5) The investigation of dumping and injury covered the period from 1 October 2003 to 30 September 2004 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2001 to 30 September 2004 ('period considered'). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

1.4. Parties concerned by the proceeding

(6) The Commission officially advised the complainant, Norwegian producers, traders, importers, suppliers and users known to be concerned, as well as associations known to be concerned and representatives of Norway, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(7) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. To this end, the Commission sent questionnaires to all parties known to be concerned and to all the other exporters that made themselves known within the deadlines set out in the notice of initiation. In this regard, the following interested parties cooperated with the Commission and made their views known: 102 Norwegian exporters and traders; 24 Community producers; one association of Community producers; 15 importers users and processors; four users' associations; one consumer's association; and two suppliers. Verification visits were carried out at the premises of the following companies:

(a) *Producers in the Community*

— Celtic Atlantic Salmon Ltd (Killary), Renvyle, Co Galway, Ireland.

— Hoove Salmon Ltd, Whiteness Shetland, United Kingdom.

— Loch Duart Ltd, Scourie By Lairg, Sutherland, Scotland, United Kingdom.

— Orkney Sea Farms Ltd, Glasgow, United Kingdom.

— West Minch Salmon Ltd, Sidinish Salmon Ltd, Benbecula, Western Isles, United Kingdom.

— Wester Ross Salmon, Inverness, United Kingdom.

(b) *Exporters*

— Marine Harvest Bolga AS, N-8158 Bolga, Norway.

— Fjord Seafood Norway AS, Toftsundet, N-8900 Brønnøysund, Norway.

— Pan Fish Norway AS, Grimmergata 5, N-6002 Ålesund, Norway.

— Stolt Sea Farm AS, Postboks 370, Sentrum, N-0102, Oslo, Norway.

— Follalaks AS, N-8286 Nordfold, Norway.

— Nordlaks Oppdrett AS, Boks 224, N-8455 Stokmarknes, Norway.

— Hydrotech AS, Bentnesveien 50, N-6512 Kristiansund, Norway.

— Grieg Seafood AS, Postboks 234, N-5804 Bergen, Norway.

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— Seafarm Invest AS, N-8764 Lovund, Norway.

— Sinkaberg-Hansen AS, Postboks 134, N-7901 Rorvik, Norway.

(c) *Importers/Processors/Users*

— Labeyrie, St. Vincent de Tyrosse, France.

— Laschinger GmbH, Bischofsmais, Germany.

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

(9) In the notice of initiation, the Commission indicated that in view of the apparent large number of exporters of the product concerned in Norway and the large number of producers of the product in the Community, the application of sampling techniques was envisaged in this investigation.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(10) The product concerned is farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen. 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.

(11) 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 10 13 and ex 0304 20 13 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets). Based on the physical characteristics, the production process and the substitutability of the product from the perspective of the consumer, it was found that all farmed salmon constitutes a single product. The different presentations all serve the same end use and are readily capable of being substituted between each other. Therefore, they are considered to constitute a single product for the purpose of the proceeding.

2.2. Like product

(12) The investigation showed that the basic physical characteristics of farmed salmon produced and sold by the Community industry in the Community, farmed salmon produced and sold on the domestic Norwegian market, and farmed salmon imported into the Community from Norway are the same and that they have the same use.

(13) In reaching this determination, the following findings in particular were taken into account:

— the product concerned and the Community product share the same international classification for tariff purposes. Furthermore, they share the same or similar physical properties such as taste, size, shape and texture;

— the product concerned and the Community product were sold via similar or identical sales channels, price information was readily available to buyers and

the product concerned and the product of the Community producers competed mainly on price;

— the product concerned and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable.

(14) It was therefore provisionally concluded that the product concerned and the farmed salmon produced and sold on the domestic market of Norway, as well as the farmed salmon produced and sold in the Community by the Community industry have the same basic physical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. General

(15) Although most Norwegian producers of farmed salmon sold the product concerned to the Community via traders, it was possible to make the dumping assessment at the level of the producers. Indeed, following changes in the structure of the Norwegian salmon industry, it was found that most Norwegian producers of farmed salmon were making sales of the product concerned either direct to the EU, or were able to identify sales made via unrelated traders and destined for the EU market. It was therefore possible to arrive at both a normal value and an export price at the level of the producer.

3.2. Sampling

(16) Section 5.1(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 5.1(a)(i) of the notice of initiation, 102 companies provided the information requested within the specified deadline. Of these, 38 were producers of farmed salmon, which also exported the product concerned to the EU (the 'exporting producers'). Sales were either made direct or via unrelated traders.

(17) 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 companies, with the largest export volumes to the EC was chosen, in consultation with the Norwegian authorities. There were some issues that could not be resolved with the Norwegian authorities, in particular concerning the exclusion from the sample of certain exporters with relatively low export volumes to the EC of the product concerned. The requests made by the Norwegian authorities would have meant that the principle for selection of the sample, i.e. to include as many companies that could reasonably be investigated within the time available with the largest possible representative volume of exports, would not have been respected. Therefore those claims could not be accepted. The sample comprises the ten largest Norwegian exporting producers, representing almost 80 % of the export volume to the Community of all co-operating exporting producers.

(18) Following verification, for two companies included in the sample it was not possible to conclude on the basis of the information provided that sales of farmed

salmon had been made to unrelated parties at arms length prices. In these circumstances, it is provisionally concluded that, pending the provision of sufficient information by these companies, these companies should not be given an individual dumping margin, but should be allocated the weighted average margin of those companies for which an individual margin could be established. However, it should be noted that the Commission will continue to investigate this issue at the definitive stage of the proceeding, and may revert to use of facts available in accordance with Article 18 of the basic Regulation, should the necessary information not be made available by the companies concerned.

3.3. Normal value

(19) 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.

(20) For the exporting producers having overall representative domestic sales, the Commission subsequently identified the types of farmed salmon sold domestically which were identical or directly comparable to the types sold for export to the Community.

(21) For each of those types, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community.

(22) 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.

(23) In cases where the sales volume of a type of farmed salmon, sold at a net sales price equal to or above its 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 its cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

(24) Where the volume of profitable sales of a type of farmed salmon represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average of profitable sales of that