Commission Regulation (EC) No 1447/2004 of 13 August 2004 imposing provisional safeguard measures against imports of farmed salmon

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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 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94[(1)], as last amended by Council Regulation (EC) No 2474/2000[(2)], and in particular Articles 6 and 8 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) 3420/83[(3)], as last amended by Regulation (EC) No 427/2003[(4)], and in particular Articles 5 and 6 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

1. PROCEDURE

(1) On 6 February 2004, Ireland and the United Kingdom informed the Commission that trends in imports of farmed Atlantic salmon appeared to call for safeguard measures under Regulations (EC) No 3285/94 and 519/94; submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94; and requested the Commission to take safeguard measures under those instruments.

(2) Ireland and the United Kingdom provided evidence that imports into the European Community of farmed Atlantic salmon are increasing rapidly both in absolute terms, and relative to Community production and consumption.

(3) They alleged that the increase in the volume of imports of farmed Atlantic salmon has, among other consequences, had a negative impact on the prices of like or directly competitive products in the Community, and on the market share held by the Community producers, resulting in damage to the Community producers.

(4) Ireland and the United Kingdom further advised that, based on the information submitted by the Community producers, any delay in the adoption of safeguard measures by the European Community would cause damage which it would be difficult to repair, and that measures should therefore be adopted as a matter of urgency.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1447/2004. (See end of Document for details)*

(5) The Commission informed all Member States of the situation and consulted with them on the terms and conditions of imports, import trends and the evidence as to serious injury, and the various aspects of the economic and commercial situation with regard to the Community product in question.

(6) On 6 March 2004, the Commission initiated an investigation relating to serious injury or threat thereof to the Community producers of the product like or directly competitive with the imported product, which has been defined as farmed salmon, whether or not filleted, fresh, chilled or frozen ('the product concerned')[(5)], as explained below.

(7) The Commission officially advised the exporting producers and importers as well as their representative associations known to be concerned, the representatives of exporting countries and the Community producers of the investigation. The Commission sent questionnaires to all these parties, to representative associations of salmon farmers in the Community, and to those parties who made themselves known within the time limits set in the Notice of Initiation. Pursuant to Articles 5 of Council Regulation (EC) No 519/94 and 6 of Council Regulation (EC) No 3285/94 the Commission also gave parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(8) Certain governments, certain exporting producers and their representative associations, the Community producers, suppliers, processors and importers and their representative associations submitted comments in writing. The oral and written comments submitted by the parties were considered and taken into account in reaching the provisional findings. All the information which was deemed necessary for the purpose of a provisional determination was sought and verified. Verification visits were carried out at the premises of eight Community producers.

(9) All parties were informed of the essential facts and considerations on the basis of which it was intended to impose provisional safeguard measures and the form of the proposed provisional measures. They were granted the opportunity to submit comments and these were considered, and, where deemed appropriate, taken into account in the preliminary findings.

2. LIST OF COOPERATING PARTIES

Producers

Ardvar Salmon Ltd, Inverness, Scotland, United Kingdom.

Atlantic West, Western Isles HS7 5LZ, Scotland, United Kingdom.

Hennover Salmon, West George Street, Scotland, United Kingdom.

Pan Fish Scotland Ltd, Argyll, Scotland, United Kingdom.

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

Marine Harvest (Scotland), Craigcrook Road, Scotland, United Kingdom.

Orkney Salmon Ltd, Bellshill, Scotland, United Kingdom.

Stolt Sea Farm Ltd, Western Isles, Scotland, United Kingdom.

West Minch Salmon Ltd, Western Isles, Scotland, United Kingdom.

Western Isles Seafood Co Ltd, Western Isles, Scotland, United Kingdom.

Sidinish Salmon Ltd, Western Isles, Scotland, United Kingdom.

Creevin Salmon, Mountcharles, Ireland.

Marine Harvest Ireland, County Donegal, Ireland.

Importers/processors

Laschinger GmbH, Bischofsmais, Germany.

Syndicat National de l'Industrie du Saumon Fumé, Paris Cedex 14, France.

Vensy España SA, Malaga, Spain.

SIF France, Boulogne sur Mer, France.

Moulin de la Marche, Chateaulin, France.

Exporters

Aalesundfisk AS, Aalesund, Norway.

Marine Harvest Norway AS, Bergen, Norway.

Cultivos Yadran SA, Renca, Chile.

Invertec Pesquara Mar de Chiloe SA, Providencia, Chile.

Marine Harvest Chile SA, Puerto Montt, Chile.

Pesca Chile SA, Piso 6, Chile.

Compañia Pesquera Camanchaca SA, Puerto Montt, Chile.

Chilefood Sociedad Anonima, Montalva No 4.800, Chile.

Fjord Seafood Chile SA, Puerto Montt, Chile.

Pesquera Los Fiordos Ltda, Puerto Montt, Chile.

Salmones Pacific Star SA, Santiago, Chile.

Patagonia Salmon Farming SA, Puerto Montt, Chile.

Salmones Mainstream SA, Puerto Montt, Chile.

Yadran Quellon SA, Santiago, Chile.

Salmones Friosur, Puerto Chabuco, Chile.

Aguas Claras, Puerto Montt, Chile.

Pesquera EICOSAL, Puerto Montt, Chile.

Cultivos Marinos Chiloe, Chiloe Island, Chile.

Patagonia Salmon Farming, Puerto Montt, Chile.

Salmones Multiexport Ltda, Puerto Montt, Chile.

East Salmon P/F, Klaksvik, Faeroe Islands.

Faroe Seafood Prime, Torshavn, Faeroe Islands.

P/F Bakkafrost, Glyvrar, Faeroe Islands.

Landshandilin P/F, Torshavn, Faeroe Islands.

Viking Seafood P/F, Strendur, Faeroe Islands.

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S. A. Salmon Sp/f, Faeroe Islands.

PRG Export Limited, Gota, Faeroe Islands.

P/F Vestsalmon, Kollafjørdur, Faeroe Islands.

Samherji hf, Akureyri, Iceland.

Norwegian Seafood Federation, Bergen, Norway.

The Faeroe Fish Farming Association, Tórshavn, The Faeroe Islands.

Suppliers

Ewos, West Lothian, United Kingdom.

Havsbrun Ltd, Fuglafjordur, Faeroe Islands.

Landcatch Ltd, Argyll, United Kingdom.

3. PRODUCT CONCERNED

(10) The product in respect of which the Commission was informed that trends in imports appear to call for safeguard measures is farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen.

(11) It is considered that to restrict the product concerned to farmed Atlantic salmon would be to define the product concerned too narrowly. Based on the physical characteristics of different species of salmon (size, shape, taste etc.), the production process, and the substitutability of all types of farmed salmon from the perspective of the consumer, it is considered that all farmed salmon is a single product. Similarly, whilst farmed salmon is sold in different preparations (whole fish gutted, whole fish head-off and gutted, fillets), these different preparations all serve the same end-use and are readily capable of being substituted.

(12) Some parties argued that frozen salmon is a different product to fresh salmon and should not be considered as part of the product concerned. One party claimed that it is preferred by processors whilst consumers prefer fresh salmon. Another claimed that it is unsuitable as a raw material for salmon smoking. These claims were found to be unsubstantiated. Processors use both fresh and frozen farmed salmon and it was found that any differences are minimal. Further, both preparations serve the same end-use. Therefore, this argument had to be rejected.

(13) Therefore, it is considered that farmed (other than wild) salmon (whether fresh, chilled or frozen) in the different preparations described is a single product. It is currently classified 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.

4. LIKE OR DIRECTLY COMPETITIVE PRODUCTS

(14) A preliminary examination has been undertaken to establish whether the product produced by the Community producers (hereinafter referred to as ‘the like product’) is like or directly competitive with the imported product concerned.

(15) In reaching a preliminary determination, the following preliminary findings in particular were taken into account.

(16)

(17) Therefore, the preliminary conclusion reached is that the imported product and the Community product are 'like or directly competitive'.

5. IMPORTS

5.1. Increase in imports

5.1.1. Introduction

(18) A preliminary examination has been undertaken based on data for the period 2000 to 2003, focusing on imports in the most recent period for which data are available, to establish whether the product concerned is imported into the Community in such greatly increased quantities, absolute or relative to total Community production, and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers. One party claimed that the import increase was due to the fact that imports of wild salmon were included in the import data. Eurostat data does not distinguish between wild and farmed salmon. However, the available information (US and Canadian export statistics) indicates that imports of wild salmon to the Community are small and have, in any event, decreased over the period 2000 to 2003. One party also claimed that 2000 was an inappropriate base year, claiming that salmon prices were unusually high in that year. However, the analysis focuses on the key developments in the most recent period, and changing the base year to 1999 or 2001 would not change the outcome of that analysis.

(19) The provisional findings set out below are thus based on the data from 2000 to 2003.

5.1.2. Volume of imports

	2000	**2001**	**2002**	**2003**
Imports (t)	372 789	379 764	396 772	455 948
Year-on-year increase		2 %	4 %	15 %
Total Community production (tonnes)	146 664	161 854	168 374	180 593
Imports/ production (t)	254 %	235 %	236 %	252 %

Source: Import figures provided by Eurostat. Community production calculated from government data for Ireland and the United Kingdom and industry data for France and Latvia.