COMMISSION REGULATION (EC) No 1628/2003

of 17 September 2003

imposing a provisional anti-dumping duty on imports of large rainbow trout originating in Norway and the Faeroe Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 [1] of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Regulation (EC) No 1972/2002 [2], (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 19 December 2002, the Commission announced by way of a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of large rainbow trout originating in Norway and the Faeroe Islands.

(2) The proceeding was initiated following a complaint lodged in November 2002 by the Finnish Fish Farmers' Association and the Åland Islands Fish Farmers' Association (the complainant) on behalf of producers representing a major proportion, in this case more than 30 %, of the total Community production of large rainbow trout. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised producers/exporters and importers known to be concerned as well as their associations, the authorities of Norway, the Home Government of the Faeroe Islands, users and Community producers 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) A number of producers/exporters in Norway and the Faeroe Islands, as well as producers and importers in the Community made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) In view of the apparent large number of producers/exporters of the product concerned in Norway and the Faeroe Islands and the large number of Community producers of the like product, sampling was envisaged in the notice of initiation for the determination of dumping and injury. Sampling was also envisaged in the notice of initiation in respect of importers of the product concerned into the Community.

(6) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resultant injury and Community interest. Verification visits were carried out at the following companies:

(a) *Sampled Community producers*

— Viviers de France, Castets, France,

— Napapiirin Kala Oy, Vanttauskoski, Finland,

— Savon Taimen Oy, Rautalampi, Finland,

— Flisö Fisk Ab, Mariehamn, Finland,

— Saaristomeren Kala Oy, Uusikaupunki, Finland,

— Linnatien Lohi Ky, Kuivaniemi, Finland,

— Kames Fish, Kilmelford, United Kingdom;

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 318, 19.12.2002, p. 2.

(b) *Sampled producers in Norway*

— Firda Sjøfarmer AS, Byrknesøy,

— Hydroteck AS, Kristiansund,

— Sjøtroll Havbruk AS, Bekkjarvik;

(c) *Sampled exporters in Norway*

— Coast Seafood AS, Måløy,

— Hallvard Lerøy AS, Bergen,

— Sirena Norway AS,Florø;

(d) *Sampled exporting producers in the Faeroe Islands*

— P/F PRG Export and its related producer P/F Luna, Gøta,

— P/F Vestsalmon and its related producer P/F Vestlax, Kollafjørður;

(e) *Related importers in the Community*

— Vestlax Hirtshals AS, Hirtshals, Denmark;

(f) *Unrelated importers in the Community*

— Lohikunta, Turku, Finland,

— Kesko Food Ltd, Helsinki, Finland.

(7) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from January 1999 to the end of the IP (analysis period).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **General**

(8) Rainbow trout is a species of fish originally native to North America. It is not native to European waters and does not naturally breed in Europe. Therefore, rainbow trout sold on the Community market is generally of farmed origin. The farming of large rainbow trout in the Community, as well as in Norway and the Faeroe Islands, is regulated at national level by means of licences, as is common for most aquacultural activities. The production cycle of farmed rainbow trout begins with the adult fish spawning in fresh water. The young fish (or smolt) are then ongrown in fresh, brackish or salt water principally in large cages or pens. In general, the production cycle lasts between two and three years.

2. **Product concerned**

(9) The product concerned is large rainbow trout (*Oncorhynchus mykiss*) whether fresh, chilled or frozen, whether in the form of whole fish (with heads on and gills, gutted, weighing more than 1,2 kg or with heads off, gilled and gutted, weighing more than 1 kg) or in the form of fillets (weighing over 0,4 kg) originating in Norway and the Faeroe Islands and normally declared under CN codes 0302 11 20, 0303 21 20, 0304 10 15 and 0304 20 15 (the product concerned). Before 1 January 2003, the product concerned was normally declared under CN codes ex 0302 11 90, ex 0303 21 90, ex 0304 10 11 and ex 0304 20 11. The CN classification corresponds to the different presentations of the product (fresh or chilled whole fish, fresh or chilled fillets, frozen whole fish and frozen fillets). All these presentations were found to be sufficiently similar for them to constitute a single product for the purpose of the proceeding.

3. **Like product**

(10) The product concerned produced and exported to the Community from Norway and the Faeroe Islands and that produced and sold on the Community market by Community producers are similar in all their essential physical characteristics and in their uses. Moreover, no differences were found between the product concerned as exported and large rainbow trout, which were produced and sold on the exporters' domestic market. In this regard, it is to be noted that there is no domestic market for the product concerned in the Faeroe Islands.

(11) It is therefore provisionally concluded that, in accordance with Article 1(4) of the basic Regulation and for the purpose of this investigation, all types of large rainbow trout produced in the Faeroe Islands, those produced and sold in Norway and those produced and sold by the Community industry on the Community market are alike to those exported from Norway and the Faeroe Islands to the Community.

C. **SAMPLING FOR THE DETERMINATION OF DUMPING**

(12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, pursuant to Article 17 of the basic Regulation, producers/exporters were requested, in accordance with Article 17(2), to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies involved in the production and/or selling of large rainbow trout. The Commission also contacted known associations of producers/exporters, the authorities of Norway and the Home Government of the Faeroe Islands. These parties raised no objections to the use of sampling.

Norway

(13) 141 companies came forward and provided the requested information within the time limit set for this purpose. They represented practically all Norwegian exports of the product concerned to the Community in the IP.

(14) It was apparent from the companies' replies to the sampling exercise that, in general, a clear distinction in functions exists between farmers (producers) who produce large rainbow trout and traders (exporters) who sell it domestically and for export. In most instances, producers sell the majority of their production to Norwegian exporters and are generally unaware of the final destination of the product and of its final price. At the same time, it is recognised that Norwegian exporters are in most cases traders. They do not necessarily cover the whole domestic market as producers may make some direct sales to customers on the domestic market. Exporters generally act independently of the producers in that the prices at which they sell the product concerned do not systematically bear a direct relationship to the costs incurred by the producers in the farming of large rainbow trout.

(15) For this reason, a representative sample of exporters was selected in order to be in a position to identify the goods exported to the Community and the prices at which they were exported. Also, in order to have a complete overview of the Norwegian domestic market and to be able to verify that the prices in such a domestic market were actually made in the ordinary course of trade, it was considered necessary to also select a sample of producers so that their costs of production and sales on the domestic market could also be taken into account.

(16) The selection of samples was made in consultation with, and with the consent of the Norwegian Seafood Federation and the Norwegian Seafood Association. The samples of producers and exporters were established primarily based on the significance of production and export volumes respectively.

(17) The samples that were established comprised six companies: three producers and three exporters. On the basis of their replies to the sampling return, these companies represented approximately 35 % of Norwegian production of the product concerned and 40 % of Norwegian export sales to the Community. Questionnaires were sent to all sampled companies.

(18) The Norwegian Seafood Federation, the Norwegian Seafood Association as well as all cooperating Norwegian companies, whether or not retained for the sample, were informed of the choice of the samples and given the opportunity to make comments. These parties were also informed of the possibility that a single country-wide dumping margin might be established. None of the parties objected either to the choice of the samples or the possible determination of a country-wide margin.

The Faeroe Islands

(19) 24 individual companies (15 of which belonged to larger groups) came forward and provided the requested information within the time limit set for this purpose. Only eight of the 24 companies indicated exports of the product concerned to the Community during the IP. Together, these eight companies accounted for all such exports.

(20) The production and sales of the product concerned in the Faeroe Islands is carried out by vertically integrated groups of companies that both produce and export the product concerned. Therefore, only a sample of exporting producers was selected. In accordance with Article 17(1) of the basic Regulation, the selection of the sample was based on the largest representative volume of exports, which could reasonably be investigated within the time available.

(21) Two exporting producers were chosen to constitute the sample in consultation with and with the consent of the Faeroe Fish Farmers' Association. The two companies selected in the sample represented, according to the replies to the sampling exercise, approximately 45 % of Faeroese production and a similar percentage of Faeroese exports to the Community of the product concerned. Questionnaires were sent for completion to both sampled companies.

(22) None of the remaining exporting producers requested an individual treatment in accordance with Article 17(3) of the basic Regulation. The cooperating exporting producers, which were not finally retained in the sample, were therefore informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. These companies were given an opportunity to make comments in relation to the samples. However, no comments were received.

D. **DUMPING**

1. **Norway**

(a) *General*

(23) The investigation confirmed the distinction in functions between producers and exporters referred to in recital 14. In cases where production and export are distinct functions performed by different companies, it is practically impossible to identify the producer of the exported goods in question, and in any case, the producer of such exported goods cannot be deemed to be responsible for the level of the export price eventually charged for their goods by the exporters. As a result of this situation, it was concluded that the establishment of individual dumping margins would be impracticable and that a single country-wide dumping margin should be established for Norway.

(24) Accordingly, it was decided that a weighted average normal value and a weighted average export price would be calculated for Norway as a whole. These would be based on the information submitted by the sampled exporters and producers.

(b) *Normal value*

(25) In considering normal value, it is noted that Article 2(2) of the basic Regulation provides for it to be based on sales of the like product on the domestic market where they are representative and made in the ordinary course of trade.

(i) Representativity of sales volume

(26) The Commission examined whether the domestic sales of each exporter had been made in representative quantities. In this respect, it is noted that any quantities sold to other exporters, the final destination of which could not be determined by the sampled exporter, were disregarded.

(27) It was established that the overall domestic sales of each of the three sampled exporters were representative in that their volume exceeded 5 % of their overall sales of the product concerned to the Community.

(28) It was then examined whether the domestic sales of each sampled exporter were representative for each product type i.e. whether the domestic sales of each product type exceeded 5 % of the sales volume of the same product type to the Community. The elements taken into account in defining the product types were the quality of the product concerned (superior, ordinary or other), its conditioning (fresh/chilled or frozen) and its presentation (whole fish gutted head on, whole fish gutted head off or in fillets). The investigation established that each of the sampled exporters had representative domestic sales for only certain product types. For these product types, it was then examined for each exporter whether such domestic sales were made in the ordinary course of trade as described below. For the remaining product types where domestic sales were not representative, normal value had to be constructed.

(ii) Ordinary course of trade test and cost of acquisition

(29) In determining whether the domestic sales of the sampled exporters were made in the ordinary course of trade, and for the reasons explained in recitals 14, 24 and 25, information gathered from the sampled producers concerning their costs and selling prices was taken into account. Therefore, for each product type sold by the exporters, a 'cost of acquisition' was established in the following manner.

(30) The sampled producers' profitable domestic sales to independent customers were used to calculate the cost of acquisition for the sampled exporters for each product type. Sales by producers to customers known to them as traders were not taken into account in this calculation, as in the majority of cases, the products were not destined for domestic consumption.

(31) In cases where it was found that domestic sales to independent customers by product type were not profitable, the Commission based the cost of acquisition on each sampled producer's cost of production for each product type plus a reasonable amount for selling, general and administrative costs (SG & A) and profits. These amounts were determined, in accordance with Article 2(6) of the basic Regulation, on the basis of the SG & A and profits of the profitable sales made by the producer concerned since less than 80 % but more than 10 % of such sales were profitable.

(32) The results of the above exercise were then weighted by the quantities sold domestically by the producers to independent customers to give an overall cost of acquisition for each product type sold by the sampled producers.

(33) At the same time, the investigation revealed that fillet product types exported to the Community by the sampled exporters (and in most cases also sold by them on the domestic market) were not produced by the sampled producers. Therefore, the Commission based the cost of acquisition for these fillet product types on the weighted average cost of acquisition established for fresh, gutted head on superior quality fish (the most sold type of product). This cost was then increased to reflect the percentage difference between the exporters' domestic selling prices for the fillet product types and for fresh, gutted head-on superior quality fish.

(34) On the basis of information concerning the cost of acquisition as calculated in recitals 30 to 33, the proportion of domestic sales made in the ordinary course of trade was then determined for each exporter overall and in respect of each product type where the sales were found to be representative. For this purpose, the average selling price by product type was compared to its unit cost, which was calculated by adding to the cost of acquisition for each product type, the SG & A costs of the exporter in question incurred in all domestic sales of the product concerned.

(iii) Calculation of normal value

(35) In cases where the sales volume of a product type, sold at a net sales price equal to or above the unit cost, 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 unit cost, normal value was based on the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.