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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 930/2003

of 26 May 2003

terminating the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway and the anti-dumping proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands

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 ('the basic anti-dumping Regulation') ([1]), and in particular Articles 5, 9 and Article 11(3) and (7) thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ('the basic anti-subsidy Regulation') ([2]), and in particular Articles 14, 19 and Article 22(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. PREVIOUS INVESTIGATIONS AND EXISTING MEASURES CONCERNING NORWAY

(1) In September 1997 the Council, by Regulations (EC) No 1890/97 ([3]) and No 1891/97 ([4]), imposed definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway. By Decision 97/634/EC ([5]), the Commission accepted undertakings from a large number of exporters/producers from Norway to respect, *inter alia*, certain minimum import prices. In December 1998, the Commission announced by way of a notice published in the *Official Journal of the European Communities* ([6]) the initiation of an ex officio investigation pursuant to Article 11(3) of Regulation (EC) No 384/96 and Article 19(1) of Regulation (EC) No 2026/97 in order to review the possibility of a change in the form of the duties so that imports of salmon at injurious prices would be prevented. Subsequently, the Council repealed and replaced Regulations (EC) No 1890/97 and No 1891/97 by a single Council Regulation (EC) No 772/1999 ([7]).

(2) In parallel to the abovementioned anti-dumping and countervailing duties and undertakings, an agreement known as the 'Agreement on a solution to the salmon case' (Salmon Agreement) was signed between the Commission and the Norwegian government providing for supporting measures to be managed within the framework of regular contacts between the signatories.

2. INTERIM AND EXPIRY REVIEW INVESTIGATIONS CONCERNING NORWAY

(3) On the basis of the information received by the Commission within the framework of the Salmon Agreement and information obtained from various other sources in 2001, the Commission considered there to be sufficient grounds to warrant the initiation of a further interim review of the existing measures. In particular, it appeared that the form of the measures (including the undertakings) was no longer appropriate to remove the injurious effects of dumping and subsidisation given the disturbances present in the Community market. It also appeared, given the evidence provided by the Norwegian authorities concerning normal value and the available information on export prices to the Community, that the dumping margins established may have changed significantly. Furthermore, in the light of information received from the Norwegian authorities concerning changes to the export tax and certain information received from Community producers of farmed Atlantic salmon, it was considered appropriate to review in parallel the effectiveness of the form and level of the countervailing measures. Finally, given other information concerning developments in the ownership structure of salmon producing companies in the Community and production costs and the resale prices of Norwegian imports, whose volume was substantial, it was considered necessary to review the findings relating to injury in respect of the anti-dumping and countervailing measures.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
([2]) OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).
([3]) OJ L 267, 30.9.1997, p. 1.
([4]) OJ L 267, 30.9.1997, p. 19.
([5]) OJ L 267, 30.9.1997, p. 81. Decision as last amended by Decision 2003/119/EC (OJ L 47, 21.2.2003, p. 46).
([6]) OJ C 400, 22.12.1998, p. 4.
([7]) OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Council Regulation (EC) No 321/2003 (OJ L 47, 21.2.2003, p. 3).

(4) Therefore, having determined, after consultation of the Advisory Committee, that sufficient evidence existed to justify the initiation of an interim review, the Commission announced by way of a notice (notice of initiation) published in the *Official Journal of the European Communities* [1], the initiation of an investigation pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19(1) of the basic anti-subsidy Regulation with regard to imports into the Community of farmed Atlantic salmon originating in Norway, covering both the form and the level of the anti-dumping and countervailing measures.

(5) According to Article 11(7) of the basic anti-dumping Regulation and Article 22(3) of the basic anti-subsidy Regulation, when an interim review of measures is in progress at the time when measures are due to expire, the interim review must also cover those aspects, which under other circumstances, would be dealt with within the scope of an expiry review opened under Article 11(2) of the basic anti-dumping Regulation and Article 18(1) of the basic anti-subsidy Regulation. The Commission therefore had to investigate whether the expiry of the measures would be likely to result in a continuation or recurrence of dumping, subsidisation and injury. In this context, the Commission informed all interested parties of the extension in the scope of the review and sought opinions as to whether the expiry of the measures would be likely or unlikely to lead to the continuation or recurrence of dumping and injury, and/or the continuation or recurrence of subsidisation and injury.

3. INITIATION OF AN ANTI-DUMPING PROCEEDING CONCERNING CHILE AND THE FAEROE ISLANDS

(6) On 18 July 2002, the Commission announced by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands.

(7) The proceeding was initiated as a result of a complaint lodged on 3 June 2002 by the EU Salmon Producers' Group (the complainant) on behalf of producers representing a major proportion of the Community production of farmed Atlantic salmon within the meaning of Article 4 of the basic anti-dumping Regulation. The complaint contained sufficient prima facie evidence of dumping and material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

4. PARTIES CONCERNED BY THE INVESTIGATIONS

(8) The Commission officially advised the exporting producers and importers/traders known to be concerned as well as their associations, the authorities of Norway and Chile, and the Home Government of the Faeroe Islands, users, suppliers and Community producers of the initiation of the investigations. 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 notices of initiation.

(9) A number of exporting producers and traders in Norway, Chile and the Faeroe Islands, producers and suppliers located in the Community as well as representative associations of fish importers, processors and consumers 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.

(10) In view of the apparent large number of exporting producers of the product concerned in Norway, Chile and the Faeroe Islands and the large number of producers of the product in the Community, the application of sampling techniques for the investigation of injurious dumping and subsidisation in the review and injurious dumping in the investigation concerning Chile and the Faeroe Islands was envisaged in the notices of initiation.

(11) The Commission sought and verified all information it deemed necessary for the purposes of the investigations. With regard to the investigation concerning imports originating in Chile and the Faeroe Islands, this included all information deemed relevant for the determination of dumping, injury and Community interest. With regard to the investigation concerning imports originating in Norway, this included all information deemed relevant for the determination of dumping, subsidisation and injury and also the determination as to whether there was a likelihood of a continuation and/or recurrence of injurious dumping and subsidisation and the assessment of Community interest. Verification visits were carried out at the following:

(a) **The Government of Norway and other entities in Norway**

— Ministry of Fisheries, Oslo,

— Ministry of Local Government and Regional Development, Oslo,

— Ministry of Trade and Industry, Oslo,

— Norwegian Industrial and Regional Development Fund (SND), Oslo,

— The Research Council of Norway, Oslo.

(b) **Community producers**

— Orkney Sea Farms Ltd. Glasgow, United Kingdom,

— Muirachmhainní Teo, Co. Galway, Ireland,

— Ardvar Salmon Ltd, Saffron Walden, United Kingdom,

— Hoganess Salmon Ltd, Wester Sound Salmon Ltd, Shetland, United Kingdom,

— Cro Lax Ltd, Shetland, United Kingdom,

— Bressay Salmon Ltd, Shetland, United Kingdom,

[1] OJ C 53, 28.2.2002, p. 10.
[2] OJ C 172, 18.7.2002, p. 11.

— West Minch Salmon Ltd, Atlantic West Salmon Ltd, Sidinish Salmon Ltd, South Uist, United Kingdom,

— Loch Duart Ltd, Edinburgh, United Kingdom,

— Hoove Salmon Ltd, Shetland, United Kingdom,

— North Atlantic Salmon Ltd, Shetland, United Kingdom,

— Ayre Salmon Ltd, Shetland, United Kingdom.

(c) **Exporters/producers and related sales companies**

Norway

— Midt-Norsk Havbruk AS, Rørvik,

— Lofoten Sjøprodukter AS, Leknes,

— Follalaks AS, Nordfold,

— Terra Seafood AS, Trondheim,

— Marine Harvest Norway AS, Bergen,

— Aqua Farms AS, Bergen,

— Naco Trading AS, Bergen,

— Aalesundfisk AS, Aalesund,

— Alsaker Fjordbruk AS, Onarheim,

— Labeyrie Norge AS, Oslo.

Chile

— Marine Harvest Chile S.A., Puerto Montt,

— Salmones Multiexport Ltda, Puerto Montt,

— Pesca Chile S.A., Santiago,

— Invertec Pesquera Mar de Chiloé S.A., Santiago,

— Cultivos Yadran S.A., and Yadran Quellón S.A., Quellón, Chiloé Island,

The Faeroe Islands

— P/F Vestlax, and P/F Vestsalmon, Kollafjørður,

— P/F East Salmon, Klaksvík,

— P/F Faeroe Seafood, Tórshavn,

— P/F Bakkafrost, Glyvrar.

(d) **Related importers in the Community**

— Armoric S.A., Quimper, France,

— Vensy España S.A., Málaga, Spain,

— Narvik S.A., Landivisiau, France,

— Benfumat S.A., St. Feliu de Llobregat, Spain,

— H. Van Wijnen, Krimpen a/d Ijssel, Netherlands,

— A-fish Skagen AS, Skagen, Denmark,

— Labeyrie S.A., Saint Geours de Maremne, France.

(e) **Unrelated importers in the Community**

— Moulin de la Marche, Brittany, France.

(f) **Suppliers**

— Landcatch Ltd, Argyll, United Kingdom.

(12) The investigation of dumping and subsidisation in the review investigation concerning Norway covered the period 1 January to 31 December 2001 ('IP'). This same period was exceptionally taken for the investigation of dumping in the anti-dumping proceeding concerning Chile and the Faeroe Islands in order to allow for a combined analysis of injury and causation for all the proceedings. The examination of trends in the context of the analysis of injury for both investigations covered the period from January 1998 to the end of the IP (analysis period).

(13) In accordance with Article 20 of the basic anti-dumping Regulation and Article 30 of the basic anti-subsidy Regulation, all parties concerned were informed of the essential facts and considerations on the basis of which it was intended to propose the termination of the investigations. They were also granted a period within which to make representations subsequent to this disclosure.

(14) The Commission continued to seek and verify all information it deemed necessary for its investigations. The written comments submitted by the parties were considered, and where appropriate, the findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

(15) The product under consideration is farmed Atlantic salmon, whether or not filleted, fresh, chilled or frozen. The definition excludes other similar farmed fish products such as large (salmon) trout, other salmon species such as Pacific salmon as well as wild salmon and further processed types such as smoked salmon.

(16) The product is currently classifiable within CN codes 0302 12 00, 0303 22 00, 0304 10 13 and 0304 20 13, corresponding to 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.

2. LIKE PRODUCT

(17) It was considered whether the product produced in Norway, Chile and the Faeroe Islands and sold for export to the Community was identical, that is to say alike in all respects to the farmed Atlantic salmon produced in the Community and sold on the Community market within the meaning of Article 1(4) and (5) of the basic anti-dumping and anti-subsidy Regulations respectively.

(18) One party contended that fresh and frozen salmon should be distinguished for the purpose of the investigation on the basis that frozen salmon, which is not produced in large quantities in the Community, had distinct customers and markets from fresh salmon. It was noted that in a previous Commission investigation of farmed Atlantic salmon initiated in 1990, which was subsequently terminated without the imposition of measures, frozen salmon had been excluded from the scope of the investigation. Similarly, attention was drawn to the fact that authorities in the United States of America (USA) have consistently made the distinction between fresh and frozen salmon in the context of anti-dumping and countervailing investigations relating to salmon. This party suggested that the freezing of salmon added significant value-added to the final product which was appreciated by certain users in the processing industry. Frozen salmon, it was argued, was a further processed product that used fresh salmon as its raw material. It was claimed that consumers in the Community showed a clear preference for fresh salmon and that this was reflected in the price premium that they were prepared to pay. In view of these considerations, it was argued that frozen Atlantic salmon could not be considered to be a like product to that produced in the Community and should therefore be excluded from the investigation.

(19) In assessing whether the product concerned should be deemed to be alike to farmed Atlantic salmon produced in the Community, it was initially considered whether the various types and presentations of farmed Atlantic salmon, i.e. fillets or whole fish, fresh or frozen, shared the same basic physical, technical and/or chemical characteristics. Arguments concerning practice in the USA and in the prior investigation, which was terminated without measures, were not considered relevant in this context. Indeed, it is recalled that in the most recent investigations which led to the imposition of measures against imports into the Community of farmed Atlantic salmon originating in Norway, it was determined that the product concerned included whole fish, gutted fish and various types of portion and fillets, whether fresh, chilled or frozen and that such presentations of salmon constituted a single product which itself was deemed to be alike in all respects to that produced in the Community and sold on the Community market. It was not considered that the freezing of salmon was sufficient to alter the basic characteristics of the product. Rather than adding value to the product that was appreciated by certain users, it was considered that one of the main reasons for freezing the product was to facilitate its transport to the Community. Consequently, references to frozen salmon as a further processed product derived from fresh salmon in the same way that wine is produced from grapes were not found to be reasonable in the context of the present investigations.

(20) The present investigations established fresh and frozen salmon to be interchangeable to a certain degree. Indeed, given the increased share of total consumption accounted for by frozen salmon in the IP, it has to be assumed that there are certain users not having cooperated in the proceeding that are able to replace fresh salmon in their production processes with frozen salmon. At the same time, it is noted that the Community market shows a clear preference for farmed Atlantic salmon over other types of salmon such as Pacific salmon and wild salmon. This is evidenced by the volume of farmed Atlantic salmon consumed in the Community as described in recital 164. Species of salmon other than the product concerned are therefore not considered to have a significant influence on the market for farmed Atlantic salmon.

C. SAMPLING FOR DUMPING ASSESSMENT PURPOSES

(21) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic anti-dumping Regulation, exporters, producers and exporting producers were requested to make themselves known within three weeks of the initiation of the review investigation and of the anti-dumping 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 in the production and/or selling of farmed Atlantic salmon. The Commission also contacted known associations of exporters/producers, the authorities of Norway and Chile, and the Home Government of the Faeroe Islands. No objections to the use of sampling were raised by these parties.

1. PRE-SELECTION OF COOPERATING COMPANIES

Chile

(22) 59 entities in Chile, composing 42 individual companies or groups of related companies (companies), came forward and provided the requested information within the time limit set for this purpose. They represented almost 100 % of total exports of the product concerned from Chile to the Community. However, only 28 were producers reporting exports to the Community during the IP which could be taken into account in the selection of the sample. As to the remaining fourteen companies, eight were traders that could not be taken into account in the selection of the sample, three were producers with no exports to the Community during the IP and the remaining three companies were transformers with no production of the product concerned.

The Faeroe Islands

(23) 26 companies in the Faeroe Islands, grouped in thirteen groups of related companies, came forward and provided the requested information within the time limit set for this purpose. All of these companies expressed a wish to cooperate in the investigation. They represented 100 %

of total exports of the product concerned from the Faeroe Islands to the Community. Out of the thirteen groups, seven indicated both production and exports to the Community during the IP. These seven groups were taken into account in the selection of the sample.

Norway

(24) 228 companies in Norway replied to the sampling mini-questionnaire within the time limit set for this purpose. They represented close to 100 % of total Norwegian exports of the product concerned to the Community.

2. SELECTION OF THE SAMPLE

Chile

(25) In Chile, as a general rule, the production and sales of the product concerned is made by integrated companies which carry out both functions. Thus, in the case of Chile only one sample of integrated exporting producers was selected. According to Article 17(1) of the basic anti-dumping Regulation, the selection of the sample was based on the largest representative volume of exports which could reasonably be investigated within the time available. Criteria that were also found to be important in the selection of the Chilean sample were representative domestic sales and significant production.

(26) On this basis four exporting producers were chosen to constitute the sample in consultation with the Chilean Salmon and Trout Producers Association ('CSTPA') and the Chilean authorities, both of which raised no objection to the proposal of the Commission. The four companies selected in the sample represented, according to the replies to the mini-questionnaire, around 45 % of Chilean export sales to the Community, 53 % of Chilean domestic sales and 36 % of Chilean production of the product concerned.

(27) The cooperating exporting producers, who were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with Article 9(6) of the basic anti-dumping Regulation. Some of these companies initially indicated their intention to claim an individual treatment in accordance with Article 17(3) of the basic anti-dumping Regulation in case they were not selected in the sample. However, only two substantiated claims were received within the deadline specified in the notice of initiation.

(28) One of the two companies that submitted a claim for individual treatment, subsequently informed the Commission that it wished to withdraw its request for individual treatment because its submission (questionnaire response) had serious errors and it did not have the human resources either to correct these errors or to continue with the investigation.

(29) The companies which finally constituted the sample and which fully cooperated with the investigation as well as the sole company that claimed individual examination were attributed their own dumping margin.

(30) Questionnaires were sent for completion to all four sampled companies and to those companies that initially expressed their intention to claim an individual margin.

The Faeroe Islands

(31) As was the case with Chile, the production and sales of the product concerned in the Faeroe Islands is carried out by integrated companies. Therefore, only one sample of integrated exporting producers was selected. According to Article 17(1) of the basic anti-dumping Regulation, the selection of the sample was based on the largest representative volume of exports, which could reasonably be investigated within the time available. Three exporting producers were chosen to constitute the sample in consultation with and with the consent of the Faeroe Fish Farmers Association and the Home Government of the Faeroe Islands. The three companies selected in the sample represented, according to the replies to the mini-questionnaire, around 54 % of both Faeroese production and exports to the Community of the product concerned.

(32) None of the remaining exporting producers requested an individual treatment in accordance with Article 17(3) of the basic anti-dumping Regulation. The cooperating exporting producers, who were not finally retained in the sample, were therefore informed that any anti-dumping duty on their exports would be calculated in accordance with Article 9(6) of the basic anti-dumping Regulation.

(33) The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin. Questionnaires were sent for completion to all sampled companies.

Norway

(34) The samples for Norway were selected in consultation with and with the consent of the Norwegian authorities and the Norwegian Federation of Fish and Aquaculture Industries.

(35) As was the case at the time of the investigation which led to the imposition of the original measures (original investigation), it was found that a strict distinction in functions is maintained between the farmers who grow the salmon and the traders (exporters) who sell it domestically and for export. It was therefore decided to have two samples, one for farmers and one for exporters.