# Council Regulation (EC) No 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway

## COUNCIL REGULATION (EC) No 85/2006

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## imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway

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[(1)] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) Following the initiation[(2)] of an anti-dumping investigation on 23 October 2004, the Commission, by Regulation (EC) No 628/2005[(3)], imposed provisional anti-dumping duties on imports of farmed salmon originating in Norway (Regulation imposing a provisional anti-dumping duty or provisional Regulation). The provisional anti-dumping duties which took the form of *ad valorem* duties ranging between 6,8 % and 24,5 % for the imported products applied as of 27 April 2005.

(2) On 1 July 2005, by Regulation (EC) No 1010/2005[(4)] (amending Regulation), the Commission changed the form of the provisional measures by replacing the *ad valorem* duties by a minimum import price (MIP) of EUR 2,81 per kilogram whole fish equivalent (WFE) and extended the duration of the provisional measures for a further three months, by amending the Regulation imposing a provisional anti-dumping duty.

1.2. Subsequent procedure

(3) Following the publication of the Regulation imposing a provisional anti-dumping duty, parties received disclosure of facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

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(4) Following the publication of the amending Regulation, all parties were informed of the essential facts and considerations on which the amendment of the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission.

(5) Similarly, all parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive anti-dumping measures and the modalities on the collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, taken into account for the definitive findings.

(7) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. In addition to the verification visits undertaken at the premises of the companies mentioned in recital 7 of the Regulation imposing a provisional anti-dumping duty, it should be noted that after the imposition of provisional measures, additional on-spot visits were carried out at the premises of the following Community users and associations of Community users:

— Norlax, Outrup, Denmark,

— SIF France, Boulogne-sur-Mer, France,

— Association of Danish Fish Processing Industries and Exporters, Copenhagen, Denmark,

— Bundesverband der Deutschen Fischindustrie und des Fischgroßhandels, Hamburg, Germany,

— Polish Association of Fish Processors, Koszalin, Poland,

— Syndicat national du saumon et de la truite fumés, Paris, France.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(8) Since no comments were received regarding the product concerned and like product, the contents and provisional conclusions of recitals 10 to 14 of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Sampling

(9) As outlined in recital 18 of the provisional Regulation, it was provisionally not possible for two companies to be given an individual dumping margin at that time. However, as indicated, the Commission continued to investigate this issue at the definitive stage of the proceeding. The two companies concerned have subsequently provided the necessary information to allow an individual definitive determination to be made for them.

(10) In the absence of any further comments on sampling, the provisional conclusions as set out in recitals 16 and 17 of the provisional Regulation are definitively confirmed.

3.2. Normal value

(11) Following disclosure of the provisional determinations, no comments were received concerning the methodology used to determine the normal value for Norwegian exporters. Accordingly, the provisional conclusions in this respect, as set out in recitals 19 to 31 of the provisional Regulation are definitively confirmed.

(12) A number of comments were, however, made in respect of the treatment of certain cost items when constructing normal value in line with the methodology set out in recital 26 of the provisional Regulation.

3.2.1. General remarks

(13) Where constructed normal value was used, the Commission calculated the costs involved in producing the product concerned during the IP. Where costs could be attributed directly, the actual costs were taken into account. Where this was not possible, costs were allocated on the basis of the historical allocation utilised by the company concerned, where such information was available and demonstrated by the company; or in the absence of such information, on the basis of turnover, in line with Article 2(5) of the basic Regulation.

(14) Where certain cost elements could not be directly calculated for the IP, such costs were assessed on the basis of the most recently available audited accounts.

3.2.2. Extraordinary expenses

(15) At the provisional stage, the Commission included all extraordinary expenses applicable to the product concerned, which had been reported by companies during the IP. These extraordinary expenses relate to a number of company-specific costs, but typically include write-downs of tangible assets, closure of farming facilities, slaughtering and processing plants, and severance payments to employees. Several companies challenged this treatment on two grounds. Firstly, it was claimed that extraordinary costs should not be included at all, as they were said to be non-recurring costs which should be completely excluded from the normal cost of production for salmon. Secondly, were it considered that these costs should be included, then there should be some allocation of these costs over the true period of time to which they relate, e.g. the useful life of a processing plant when the extraordinary expense relates to such an asset.

(16) In respect of the claim that the totality of all extraordinary expenses should be excluded, the Commission notes that the salmon industry in Norway has been restructuring for a number of years. Accordingly, extraordinary costs have been reported by many of the companies over a number of financial years. It is, therefore, clear that the extraordinary costs in question are not isolated non-recurring costs restricted to a

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few companies. Rather, they appear to be systemic costs associated with the production of salmon. To exclude all of these costs would result in an understatement in the true cost of production, thus this claim had to be rejected.

(17) In respect of the second claim, the Commission notes that the extraordinary costs that were included for the provisional determinations equal those costs actually declared by the companies during the IP, on the basis of financial decisions taken by those companies. The Commission, therefore, followed the approach taken by the companies themselves.

(18) It is, however, true that allocation of the costs over a period of time would remove any undue effect caused by the timing of the decisions of the companies to report these costs. Ideally, all extraordinary costs reported for each separate asset should be allocated over the useful life of that asset to arrive at an average annual cost. However, it is to be noted that none of the companies concerned carried out this exercise. Instead, the Commission has decided to take the extraordinary costs reported by companies in the sample during the last three years, based on the most recently available financial statements, and to allocate one third of these costs to salmon production in the IP, on the basis of turnover. Three years was considered an appropriate time period as this is the average length of time that it takes to grow a salmon from a smolt to a harvestable salmon.

3.2.3. Write-down of licences and financial expenses

(19) Several companies also claimed that write-downs of salmon farming licences and financial expenses should not be included in the cost of production of salmon. In respect of the write-down valuation of licences, it is noted that a valid licence is a legal requirement in Norway in order to farm salmon. In respect of the write-down of financial expenses, it is noted that these expenses relate mainly to the deployment of free-cash, frequently via loans to related companies also involved in the salmon industry, and that the companies concerned are not financial investment companies.

(20) For these reasons, the Commission confirms that these write-downs relate to expenses that are incurred and must be borne by the companies concerned. It is further confirmed that these costs should be attributed to the prime business activities including salmon farming, thus the claim is rejected. As with extraordinary expenses, it was also considered appropriate to have one third of all costs incurred by the relevant companies in the last three years allocated to salmon production, on the basis of turnover.

3.2.4. Write-down of biomass

(21) Two companies in the sample claimed that write-downs of the values of biomass should not be included in the cost of salmon production. It was claimed that these write-downs refer to accounting adjustments based on the projected future sales value of salmon, and are not a true cost.

(22) Where the companies were able to demonstrate that these write-downs were indeed simply a result of changing market values and not due to any other factor, such as escapes, mortality or disease, the Commission concluded that these costs should not

be included for the normal value calculation, and to this extent the claim of the sampled companies was accepted.

3.2.5. Transfer price of raw materials

(23) It was claimed that the profit margin of the related companies should be deducted when assessing the cost of raw materials purchased from such parties. It was argued that this approach would be consistent with the approach taken for integrated companies, where only the production cost, net of profit, is included in the cost calculation of finished products. In this case, the claim centres mainly on the purchases of smolt from companies related to those in the sample.

(24) In response to this claim, it must be noted that the Community institutions were not in a position to verify the cost of production of the smolt, as this information was not provided by the companies. Accordingly, any profit, or indeed loss, on these related inter-company sales could not be assessed. Moreover, there was no evidence to suggest that the use of these transfer prices affected the reliability of the constructed normal value for salmon. Accordingly, this claim had to be rejected.

3.2.6. Feed costs

(25) It was claimed for some companies that too high a feed cost had been used. In particular, it was claimed that the feed cost in relation to fishes which die prior to harvesting was included in both the feed cost of harvested fish, as well as entered into the costs associated with mortality.

(26) This claim was examined, and where it was found that such feed costs had been included twice, the necessary adjustment was made to remove this double counting.

3.3. Export price

(27) In the absence of comments on the determination of the export price, the provisional conclusions as set out in recitals 32 to 34 of the provisional Regulation are definitively confirmed.

3.4. Comparison

(28) In the absence of comments on the comparison of normal value and export prices, the provisional conclusions as set out in recital 35 of the provisional Regulation are definitively confirmed.

3.5. Dumping margin

3.5.1. Sampled companies

(29) Definitive individual dumping margins have been established for all 10 companies in the sample, following the methodology outlined in recital 36 of the provisional Regulation, adjusted where necessary to take account of the claims outlined in recitals 11 to 26 of this Regulation.