



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.09.1998  
COM(1998) 531 final

Proposal for a

COUNCIL REGULATION (EC)

**further amending Regulations (EC) No 1890/97 and (EC) No 1891/97 imposing  
definitive anti-dumping and countervailing duties on imports of farmed Atlantic  
salmon originating in Norway**

(presented by the Commission)



## EXPLANATORY MEMORANDUM

1. By Regulations (EC) No 1890/97 and (EC) No 1891/97, the Council imposed definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon from Norway, except where this product is exported by one of 190 Norwegian exporters from which the Commission, by Decision 97/634/EC, had accepted individual price undertakings.
2. By Regulation (EC) No 772/98, the Council amended on 9 April 1998 the above Regulations to impose definitive anti-dumping and countervailing duties on 24 Norwegian exporters which had been found to have violated their undertakings in relation to the first reporting quarter (third quarter 1997).
3. The Commission, by Regulation (EC) No 1126/98, imposed provisional anti-dumping and countervailing duties on twelve exporters, which had failed to respect their reporting obligations for the fourth quarter of 1997. Having been given an opportunity to comment immediately after the imposition of these duties, none of the companies concerned was able to provide any evidence of *force majeure* for its late reporting or lack of it.
4. Therefore, the Commission concluded that these companies violated their undertakings, which should be revoked. All parties concerned were accordingly informed and given an opportunity to comment, without that leading the Commission to change its findings.
5. Consequently, for the twelve companies having violated their undertakings, definitive anti-dumping and countervailing duties should be imposed.
6. In accordance with Article 8 (9) of Regulation (EC) No 384/96 and with Article 13 (9) of Regulation (EC) No 2026/97, the rate of the definitive anti-dumping and countervailing duty to be imposed should be established on the basis of the findings of the investigations, which led to the undertakings. In this regard, it is considered appropriate to set the rate of the definitive anti-dumping duty at 0.32 ECU per kilo net product weight, and the rate of the definitive countervailing duty at the level of 3.8%.

of

**further amending Regulations (EC) No 1890/97 and (EC) No 1891/97 imposing  
definitive anti-dumping and countervailing duties on imports of farmed Atlantic  
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<sup>1</sup>, as last amended by Regulation (EC) No 905/98<sup>2</sup> of 27 April 1998, and in particular Articles 8(9) and 9 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<sup>3</sup>, and in particular Articles 13(9) and 15 thereof,

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

Whereas:

---

<sup>1</sup> OJ L 56, 6.3.1996, p. 1.

<sup>2</sup> OJ L 128, 30.4.98, p. 18.

<sup>3</sup> OJ L 288, 21.10.1997, p. 1.

## A. PROVISIONAL MEASURES

- (1) In the framework of the anti-dumping and anti-subsidy investigations initiated by two separate notices published in the Official Journal of the European Communities<sup>4</sup>, the Commission accepted, by Decision 97/634/EC<sup>5</sup>, undertakings offered by the Kingdom of Norway and by 190 Norwegian exporters.
- (2) The text of the undertakings specifically provides that failure to comply with the reporting obligations and, in particular, failure to submit the quarterly report within the prescribed time-limit except in case of *force majeure*, would be construed as a violation of the undertaking.
- (3) For the fourth quarter of 1997, twelve Norwegian exporters failed to comply with their obligation to present a report within the prescribed time limit or did not submit any report at all. These exporters did not provide any evidence of *force majeure* to justify such late reporting or non-reporting. On this basis, the Commission had reasons to believe that these companies had breached the terms of their undertakings.
- (4) Consequently, the Commission, by Regulation (EC) No 1126/98<sup>6</sup>, hereinafter referred to as the "provisional duty Regulation", imposed provisional anti-dumping and countervailing duties on imports of farmed Atlantic Salmon falling within CN codes ex 0302 12 00, ex 0304 10 13, ex 0303 22 00 and ex 0304 20 13 originating in Norway and exported by the twelve companies listed in the Annex to that Regulation. By the same Regulation, the Commission deleted the companies concerned from the Annex to Decision 97/634/EC listing the companies, from which undertakings were accepted.

---

<sup>4</sup> OJ C 235, 31. 8.1996, p. 18, and OJ C 235, 31.8.1996, p. 20.

<sup>5</sup> OJ L 267, 30.9.1997, p. 81.

<sup>6</sup> OJ L 157, 30.5.1998, p. 82.

## B. SUBSEQUENT PROCEDURE

- (5) All twelve Norwegian companies subject to the provisional duties received disclosure in writing concerning the essential facts and considerations, on the basis of which these provisional duties were imposed.
- (6) Within the time limit set in the provisional duty Regulation, some of the Norwegian companies concerned submitted comments in writing.
- (7) Subsequent to the written submissions received, the Commission sought and examined all information it deemed necessary for the purpose of a definitive determination on the apparent violations.
- (8) None of the companies, which failed to respect their reporting obligations, submitted any valid evidence of *force majeure* as would have been necessary under the terms of the undertaking in order to lawfully justify such failure.

In the absence of specific provisions in this regard in Regulation (EC) No 384/96, hereinafter referred to as the “basic Anti-dumping regulation”, and in Regulation (EC) No 2026/97, hereinafter referred to as the “basic Anti-subsidies regulation”, and in accordance with the case law of the Court of Justice, the justification invoked by each company as circumstances constituting *force majeure* can only be recognised as such where the failure was the inevitable result of an extraneous cause which could not reasonably have been foreseen or pre-empted and made it objectively impossible for the company concerned to comply with its obligations.

In this regard, all circumstances invoked by the parties concerned, e.g. the illness of staff members for a few days, or the intense activity of other fish productions, cannot be considered as circumstances constituting *force majeure*.

- (9) Two out of the twelve exporters listed in Annex I, i.e. Gigante Fiskekroken AS and Melands Røkeri Eftf. AS<sup>7</sup>, have notified the Commission that they have changed their names and requested that the newly named companies be allowed to enter new undertakings as newcomers. However, the Commission is of the view that a simple change of name of a company is not sufficient to bring a party within the scope of Article 2 of Regulation (EC) No 1890/97<sup>8</sup> and Article 2 of Regulation (EC) No 1891/97<sup>9</sup>.

### C. DEFINITIVE MEASURES

- (10) The interested parties were informed of the essential facts and considerations, on the basis of which it was intended to confirm the withdrawal of the Commission's acceptance of their undertaking and to recommend the imposition of definitive anti-dumping and countervailing duties and the definitive collection of the amounts secured by way of provisional duties. They were also granted a period, within which to make representations subsequent to this disclosure.
- (11) In view of the comments submitted, it is concluded that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic Salmon originating in Norway and exported by the companies listed in Annex I.
- (12) The investigations, which led to the undertakings, were concluded by a final determination as to dumping and injury by Regulation (EC) No 1890/97, and by a final determination as to subsidisation and injury by Regulation (EC) No 1891/97.

---

<sup>7</sup> The new names are Gigante Sild AS and Rokespesialisten AS, respectively.

<sup>8</sup> OJ L 267, 30.9.1997, p. 1 as last amended by Regulation (EC) No /98, OJ L. of .1998, p. .

<sup>9</sup> OJ L 267, 30.9.1997, p. 19 as last amended by Regulation (EC) No /98, OJ L. of .1998, p. .

Therefore, in accordance with Article 8(9) of the basic Anti-dumping regulation and Article 13(9) of the basic Anti-subsidies regulation, the rate of the definitive duties for the twelve Norwegian companies should be fixed at the level of the duties established in those two regulations.

#### **D. DEFINITIVE COLLECTION OF PROVISIONAL DUTIES**

- (13) A breach of undertaking has been established in relation to the twelve exporters having violated their undertakings. Therefore, it is considered necessary that the amounts secured by way of provisional anti-dumping and countervailing duties be definitively collected at the level of the definitive duties.
- (14) The Annexes to Regulation (EC) No 1890/97 and Regulation (EC) No 1891/97, as last amended by Regulation (EC) No /98, exempting the parties listed therein from the duty, should be amended to remove that exemption from the twelve companies listed in Annex I to the present Regulation,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The Annex to Regulation (EC) No 1890/97 is hereby replaced by Annex II.
2. The Annex to Regulation (EC) No 1891/97 is hereby replaced by Annex II.



*Article 2*

The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by Regulation (EC) No 1126/98 in relation to farmed (other than wild) Atlantic salmon falling within CN codes ex 03021200 (Taric code: 03021200\*19), ex 03041013 (Taric code: 03041013\*19), ex 03032200 (Taric code: 03032200\*19) and ex 03042013 (Taric code: 03042013\*19) originating in Norway and exported by the companies listed in the Annex I to this Regulation shall be definitively collected.

*Article 3*

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities. This Regulation shall be binding in its entirety and directly applicable in all Member States.

**Done at Luxembourg,**

**For the Council**

**The President**

ANNEX I

List of companies subject to definitive anti-dumping and countervailing duties

UT No	Company Name	Taric additional code
19	A/S Nortraders Ltd	8117
45	Fader Martin AS	8142
55	Gigante Fiskekroken AS	8152
59	Gunnar Klo AS	8301
71	Inter Road AS	8173
95	Melands Røkeri Eftf. AS	8199
106	Niscan Corporation AS	8212
109	Nor-Trade International	8215
125	Norway Seafarms AS	8313
136	Oster Sea Products AS	8241
138	Pero Food AS	8243
186	Vest Agentur AS	8320

## ANNEX II

## List of companies benefiting from undertakings

UT No	Company Name	Taric additional Code
1	A. Ovreskotnes AS	8095
3	Agnefest Seafood	8325
5	Alsvag Fiskeprodukter A/S	8098
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
14	Arne Mathiesen A/S	8112
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
23	Atlantic King Stranda A/S	8121
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
28	Brødrene Eilertsen A/S	8126
30	Brødrene Remo A/S	8128
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/A	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134

<b>UT No</b>	<b>Company Name</b>	<b>Taric additional Code</b>
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Eurolaks AS	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd. AS	8145
49	Fonn Egersund AS	8146
50	Fossen AS	8147
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
53	Fryseriet AS	8150
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Herøy Filetfabrikk AS	8304
64	Hirsholm Norge AS	8306
65	Hitramat & Delikatesse AS	8154
66	Hydro Seafood Sales AS	8159
67	Hydrotech-gruppen AS	8428
68	Icelandic Freezing Plants N. AS	8165
70	Incofood AS	8172
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181

UT No	Company Name	Taric additional Code
80	Kr. Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
84	Langfjord Laks AS	8186
85	Leica Fiskeprodukter	8187
86	Leonhard Products AS	8423
87	Lofoten Seafood Export AS	8188
88	Lorentz A. Lossius AS	8189
89	Ma-vo Norge AS	8190
90	Marex AS	8326
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Midsundfisk AS	8202
99	Myre Sjømat AS	8203
100	Naco Trading AS	8206
101	Namdal Salmon AS	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
117	NorMan Trading Ltd. AS	8230

<b>UT No</b>	<b>Company Name</b>	<b>Taric additional Code</b>
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Norway Seafoods ASA	8314
128	Norwell AS	8316
129	Notfisk Arctic AS	8234
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
143	Roger AS	8253
144	Rolf Olsen Seafood AS	8254
145	Ryfisk AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Saga Lax Nord A/S	8259
149	Salomega AS	8260
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268

UT No	Company Name	Taric additional Code
158	Seacom AS	8269
159	Seacom Nord AS	8270
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276
166	Skarpsno Mat	8277
167	SL Fjordgruppen AS	8278
168	SMP Marine Produkter AS	8279
171	Stavanger Røkeri AS	8282
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
177	Svenodak AS	8288
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd. AS	8298
183	Troll Salmon AS	8317
187	Vie de France Norway AS	8321
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Food AS	8102

ISSN 0254-1475

COM(98) 531 final

# DOCUMENTS

EN

03 02 11

Catalogue number : CB-CO-98-536-EN-C

ISBN 92-78-39233-2

---

Office for Official Publications of the European Communities

L-2985 Luxembourg

15