



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.08.1999
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Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation (EC) No 772/1999 imposing definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By Regulation (EC) No 772/1999, 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 the Norwegian exporters from which the Commission, by Decision 97/634/EC, had accepted individual price undertakings. These companies are listed in the Annex to the aforementioned Decision.
2. By Regulation (EC) No 929/1999, the Commission imposed provisional anti-dumping and countervailing duties on four Norwegian exporters which had apparently violated their undertakings in relation to the third reporting quarter of 1998.
3. Having been given an opportunity to comment and having investigated further, one of these four companies was found **not** to have violated its undertaking and the Commission has repealed the provisional duties imposed against this company. With regard to the the remaining three companies, it has been definitively established that they failed to comply with their obligations under the terms of their undertakings and consequently, it is proposed that the Council impose definitive duties against them.
4. In addition, four other Norwegian companies have claimed that they are “new exporters” within the meaning of the basic anti-dumping Regulation and have offered undertakings. Having investigated the matter, the Commission has accepted the undertakings and the companies have been added to the list of companies benefiting from an exemption to the duties.
5. Two other companies from which undertakings had previously been accepted advised the Commission they had changed their names and requested that these changes be reflected in the list of companies benefiting from an exemption to the duties. The requests were found to be acceptable and the list should be amended accordingly.

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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 Community¹, as last amended by Regulation (EC) No 905/98² 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 Community³, and in particular Articles 13(9) and 15 thereof,

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

Whereas:

A. PROVISIONAL DUTIES

- (1) Within the framework of the anti-dumping and anti-subsidy investigations initiated by two separate notices published in the *Official Journal of the European Communities*⁴, the Commission accepted, by Decision 97/634/EC⁵, undertakings offered by the Kingdom of Norway and by 190 Norwegian exporters.
- (2) The text of the undertakings provides that failure to submit a quarterly report of all sales transactions to the first unrelated customer in the Community within a prescribed time-limit except in case of *force majeure* would be construed as a violation of the undertaking, as would non-compliance with the obligation to sell the product concerned on the Community market at or above the minimum prices foreseen in the undertaking.

¹ OJ L 56, 6.3.1996, p. 1.

² OJ L 128, 30.4.1998, p. 18.

³ OJ L 288, 21.10.1997, p. 1.

⁴ OJ C 235, 31. 8.1996, p. 18, and OJ C 235, 31.8.1996, p. 20.

⁵ OJ L 267, 30.9.1997, p. 81.

- (3) For the third quarter of 1998, one Norwegian company did not present a report within the prescribed time limit, another Norwegian exporter appeared to have sold the product concerned to the Community market at a price which was below the price foreseen in its undertaking. Two other exporters appeared to have made misleading declarations as to the identity of the exporter and the identity and nature of the sales reported.
- (4) The Commission therefore had reason to believe that these four companies had breached the terms of their undertakings and consequently, by Regulation (EC) No 929/1999⁶ (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 four companies listed in Annex II of that Regulation. By the same Regulation, the Commission deleted the companies concerned from the Annex to Decision 97/634/EC, which listed the companies from which undertakings were accepted.

B. SUBSEQUENT PROCEDURE

- (5) All four 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. They were also given an opportunity to submit comments and request a hearing.
- (6) Within the time limit set in the provisional duty Regulation, all the Norwegian companies concerned submitted comments in writing and one requested a hearing, which was granted. Following these submissions, the Commission sought and examined all information it deemed necessary for the purpose of a definitive determination on the apparent violations.
- (7) In this regard, the Commission's investigation established that one of the companies against which provisional measures had been imposed had not violated its undertaking and that it should be reinstated on the list of companies benefiting from an exemption to the anti-dumping and countervailing measures. The exporter was informed of the essential facts and considerations on the basis of which it was intended to reinstate the Commission's acceptance of its undertaking.

As concerns the other three companies subject to provisional measures, they 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.

⁶ OJ L 115, 4.5.1999, p. 13.

- (8) The Commission's findings in this respect are set out more fully in Regulation (EC) No [number]⁷.
- (9) None of the comments submitted, however, have changed the conclusion that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic salmon originating in Norway and exported by the three companies listed in Annex I to this Regulation.

C. DEFINITIVE DUTIES

- (10) 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 a final determination as to subsidization and injury by Regulation (EC) No 1891/97. While both these Regulations were repealed by Regulation (EC) No 772/1999⁸, the facts and considerations established therein remain valid (recital 19 of Regulation (EC) No 772/1999 refers).
- (11) In accordance with Article 8 (9) of Regulation (EC) No 384/96 and Article 13(9) of Regulation (EC) No 2067/97 respectively, the rate of the anti-dumping duty and the countervailing duty must be established on the basis of the facts established within the context of the investigation which led to the undertaking. In this regard, and in view of recital 107 of Regulation (EC) No 1890/97 and recital 149 of Regulation (EC) No 1891/97, it is considered appropriate that the definitive anti-dumping and countervailing duty rates be set at the level, and in the form imposed by Regulation (EC) No 772/1999.

D. DEFINITIVE COLLECTION OF PROVISIONAL DUTIES

- (12) A breach of undertaking has been definitively established in relation to the three exporters which have violated their undertakings. It is therefore considered necessary that, in relation to these exporters, the amounts secured by way of provisional anti-dumping and countervailing duties be definitively collected at the level of the definitive duties.

E. AMENDMENT OF THE ANNEX TO REGULATION (EC) NO 772/1999

- (13) By Regulation ■■■/1999, the Commission accepted undertakings from four new exporters, F.Uhrenholt Seafood Norway AS, Mesan Seafood AS, Polaris Seafood AS and Scanfish AS. Pursuant to Article 2 of Regulation (EC) No 772/1999, the Commission also extended the exemption from the anti-dumping and countervailing duties to these companies by adding their names to the Annex to that Regulation.
- (14) Two Norwegian exporters already on the list of companies from which undertakings are accepted, informed the Commission that their names had

⁷ OJ L, [number], [date], p. [page]
⁸ OJ L 101, 16.4.1999, p. 1.

changed from Herøy Filetfabrikk AS to Atlantis Filetfabrikk AS and from SL Fjordgruppen AS to Fjord Seafood Leines AS and requested that these changes be reflected in the list of companies benefiting from the exemption from payment of anti-dumping and countervailing duties. The Commission has verified that there were no changes in the corporate structures which would call for a more detailed examination of the appropriateness of these companies maintaining their undertakings.

- (15) Accordingly, in view of all the above, the Annex to Regulation (EC) No 772/1999 exempting the parties listed therein from the duty, should be amended so as to remove the exemption from the companies listed in Annex I hereto. The Annex should also be updated to take account of the exemption extended by Regulation ■■■/1999 to F.Uhrenholt Seafood Norway AS, Mesan Seafood AS, Polaris Seafood and Scanfish AS, and of the change of name of Herøy Filetfabrikk to Atlantis Filetfabrikk AS and of SL Fjordgruppen AS to Fjord Seafood Leines AS.

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 772/1999 is hereby replaced by Annex II hereto.

Article 2

The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by Regulation (EC) No 929/1999 in relation to farmed (other than wild) Atlantic salmon falling within CN codes ex 0302 12 00 (Taric codes: 0302 12 00*21, 0302 12 00*22, 0302 12 00*23 and 0302 12 00*29), ex 0303 22 00 (Taric codes: 0303 22 00*21, 0303 22 00*22, 0303 22 00*23 and 0303 22 00*29), ex 0304 10 13 (Taric codes: 0304 10 13*21 and 0304 10 13*29) and ex 0304 20 13 (Taric codes: 0304 20 13*21 and 0304 20 13*29) originating in Norway and exported by the companies listed in 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 Brussels,

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 |
|-------|------------------------|-----------------------|
| 14 | Arne Mathisen A/S | 8112 |
| 28 | Brødrene Eilertsen A/S | 8126 |
| 99 | Myre Sjømat AS | 8203 |

ANNEX II

List of companies exempted from the definitive anti-dumping and countervailing duties

| UT No | Company Name | Taric additional Code |
|-------|-----------------------------|-----------------------|
| 3 | Agnefest Seafood | 8325 |
| 7 | Aqua Export A/S | 8100 |
| 8 | Aqua Partner A/S | 8101 |
| 11 | Arctic Group International | 8109 |
| 13 | Artic Superior A/S | 8111 |
| 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 |
| 31 | Christiansen Partner A/S | 8129 |
| 32 | Clipper Seafood A/S | 8130 |
| 33 | Coast Seafood A/S | 8131 |
| 35 | Dafjord Laks A/S | 8133 |
| 36 | Delfa Norge A/S | 8134 |
| 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 |
| 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 | Atlantis Filetfabrikk AS | 8304 |
| 66 | Hydro Seafood Norway AS | 8159 |
| 67 | Hydrotech-gruppen AS | 8428 |
| 72 | Inter Sea AS | 8174 |
| 75 | Janas AS | 8177 |
| 76 | Joh. H. Pettersen AS | 8178 |

| UT No | Company Name | Taric additional Code |
|-------|--------------------------------------|-----------------------|
| 77 | Johan J. Helland AS | 8179 |
| 79 | Karsten J. Ellingsen AS | 8181 |
| 80 | Kr Kleiven & Co. AS | 8182 |
| 82 | Labeyrie Norge AS | 8184 |
| 83 | Lafjord Group AS | 8185 |
| 85 | Leica Fiskeprodukter | 8187 |
| 87 | Lofoten Seafood Export AS | 8188 |
| 92 | Marine Seafood AS | 8196 |
| 93 | Marstein Seafood AS | 8197 |
| 96 | Memo Food AS | 8200 |
| 98 | Misundfisk AS | 8202 |
| 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 |
| 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 |
| 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 |
| 144 | Rolf Olsen Seafood AS | 8254 |
| 145 | Ryfisk AS | 8256 |
| 146 | Rørvik Fisk-og fiskematforretning AS | 8257 |
| 147 | Saga Lax Norge AS | 8258 |
| 148 | Prima Nor AS | 8259 |
| 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 |

| UT No | Company Name | Taric additional Code |
|-------|----------------------------------|-----------------------|
| 157 | Seaco AS | 8268 |
| 158 | Seacom AS | 8269 |
| 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 |
| 167 | Fjord Seafood Leines AS | 8278 |
| 168 | SMP Marine Produkter AS | 8279 |
| 172 | Stjernelaks AS | 8283 |
| 174 | Stolt Sea Farm AS | 8285 |
| 175 | Storm Company AS | 8286 |
| 176 | Superior AS | 8287 |
| 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 |
| 192 | Westmarine AS | 8625 |
| 193 | F.Uhrenholt Seafood Norway AS | A033 |
| 194 | Mesan Seafood AS | A034 |
| 195 | Polaris Seafood AS | A035 |
| 196 | Scanfish AS | A036 |