COUNCIL REGULATION (EC) No 685/2008

of 17 July 2008

repealing the anti-dumping duties imposed by Regulation (EC) No 85/2006 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 and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation (the original investigation), by Regulation (EC) No 85/2006 [2] imposed a definitive anti-dumping duty on imports of farmed salmon originating in Norway. The definitive duty was imposed in the form of a minimum import price (MIP).

2. Request for review and initiation

(2) On 20 February 2007, the Commission received a request for a partial interim review lodged by the following Member States: Italy, Lithuania, Poland, Portugal and Spain (the applicants) pursuant to Article 11(3) of the basic Regulation.

(3) The applicants have provided *prima facie* evidence that the basis on which the measures were established has changed and that these changes are of a lasting nature. The applicants alleged and provided *prima facie* evidence showing that a comparison between a constructed normal value and export prices would lead to a reduction of dumping significantly below the level of the current measures. Therefore, the continued imposition of measures at the existing levels is no longer necessary to offset dumping. This evidence was considered sufficient to justify the opening of a proceeding.

(4) Accordingly, after having consulted the Advisory Committee, the Commission on 21 April 2007 initiated, by the publication of a notice in the *Official Journal of the European Union* [3], a partial interim review of anti-dumping measures in force on imports of farmed salmon originating in Norway in accordance with Article 11(3) of the basic Regulation (the notice of initiation).

(5) This review was limited in scope to the aspects of dumping with the objective of assessing the need for the continuation, removal or amendment of the existing measures.

3. Parties concerned by the proceeding

(6) The Commission officially advised all known exporters/producers in Norway, traders, importers and associations known to be concerned, and representatives of the Kingdom of Norway, 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. Sampling

(7) Section 5(a) of the notice of initiation indicated that the Commission may decide to apply sampling in accordance with Article 17 of the basic Regulation. In response to the request pursuant to Section 5(a)(i) of the notice of initiation, 267 companies provided the information requested within the specified deadline. Of these, 169 were exporting producers of farmed salmon. Exports were made either directly or indirectly via related and independent traders.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 15, 20.1.2006, p. 1.
[3] OJ C 88, 21.4.2007, p. 26.

(8) In view of the large number of companies involved, it was decided to make use of the provisions for sampling and, for this purpose, a sample of producing companies, with the largest export volumes to the Community (exporting producers) was chosen, in consultation with the representatives of the Norwegian industry. The representatives of the Norwegian industry proposed to include into the sample (i) a producing company which did not export on its own but only via unrelated traders in Norway and (ii) two exporters but not producers of the product concerned. This could not be accepted because as far as the producing company is concerned there were no sufficient guarantees that export sales to the Community via unrelated traders could indeed be identified. As for the exporters without own production of salmon, no normal value could be established and therefore no duty could be determined for these companies.

(9) In accordance with Article 17 of the basic Regulation, the selected sample covered the largest possible representative volume of exports that could reasonably be investigated within the time available. The exporting producers selected in the final sample represented almost 60 % of the reported volume of the product concerned exported to the Community.

(10) As far as importers are concerned, and in order to enable the Commission to decide whether sampling is necessary, Section 5(a)(ii) of the notice of initiation requested importers in the Community to submit the information specified in this section. Only four importers in the Community replied to the sampling form. Given this low number of cooperating importers no sampling was necessary in this case.

(11) The Commission sought and verified all information deemed necessary for the determination of dumping. To this end, the Commission invited all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation to cooperate in the present proceeding and to fill in the relevant questionnaires. In this regard, 267 producers and exporters in Norway, the representatives of the Community salmon producers and the Governments of Ireland and Scotland cooperated with the Commission and made their views known. Furthermore, four importers and the six sampled Norwegian exporting producers submitted full questionnaire replies within the deadlines set.

(12) The Commission carried out verifications at the premises of the following companies:

(a) *importers/processors/users*

— Laschinger GmbH, Bischofmais, Germany,

— Gottfried Friedrichs KG (GmbH & Co.), Hamburg, Germany,

— Rodé Vis B.V., Urk, The Netherlands,

— Hätälä Oy, Oulu, Finland;

(b) *Exporting producers in Norway (Group level)*

— Marine Harvest AS, Bergen, Norway,

— Hallvard Leroy AS, Bergen, Norway.

(13) The two largest Norwegian exporting producers, i.e. Marine Harvest AS and Hallvard Leroy AS represented over 44 % of the total production reported by the cooperating Norwegian producers and 45 % of the Norwegian exports to the Community.

(14) The information supplied by the other four companies selected in the sample was subject to an in-depth desk analysis and it was found that their costs of production and export prices were generally in line with those of the visited companies.

(15) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

5. **Investigation period**

(16) The investigation of dumping covered the period from 1 January 2006 to 31 December 2006 (review investigation period or RIP).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product under review is the same as in the original investigation, i.e. farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, originating in Norway (the product concerned). The definition excludes other similar farmed fish products such as large (salmon) trout, biomass (live salmon) as well as wild salmon and further processed types such as smoked salmon.

(18) The product is currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 19 13 and ex 0304 29 13 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets).

2. **Like product**

(19) As established in the original investigation and confirmed by this investigation, the product concerned and the product produced and sold on the domestic market in Norway were found to have the same basic physical characteristics and had the same use. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to dumping, no conclusions were reached with regard to the product produced and sold by the Community industry in the Community market.

C. **DUMPING**

1. **General**

(20) The Norwegian producers of farmed salmon were making sales of the product concerned to the Community either directly, or via related and unrelated traders. Only identifiable sales destined for the Community market made directly or via related companies based in Norway were used to calculate an export price at the level of the producer.

2. **Normal value**

(21) For the determination of normal value the Commission first established, for each of the exporting producers included in the sample, whether its total domestic sales of farmed salmon were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(22) In order to determine whether domestic sales were representative, sales to unrelated traders located in Norway and owning an export licence during the RIP were disregarded since the final destination of these sales could not be established with certainty. Indeed, the investigation indicated that these sales were overwhelmingly destined for export to third country markets and therefore not sold for domestic consumption.

(23) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(24) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(25) An examination was also made as to whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. This was done by establishing the proportion of profitable domestic sales to independent customers of each exported product type, on the domestic market during the investigation period, as follows:

(26) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, 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 cost of production, normal value was based on the actual domestic prices. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the RIP, irrespective of whether these sales were profitable or not.

(27) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(28) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(29) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied.

(30) First, it was examined whether normal value could be established on the basis of domestic prices of other producers in Norway in accordance with Article 2(1) of the basic Regulation. Since in this case, no more reliable prices of other producers were available, the constructed normal value was used in accordance with Article 2(3) of the basic Regulation.

(31) Therefore, in accordance with Article 2(3) of the basic Regulation, the Commission instead calculated a constructed normal value as follows. Normal value was constructed by adding to each exporting producer's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(32) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(33) None of the six exporting producers concerned for which the normal value had to be constructed had representatives domestic sales. Therefore, the method as described in Article 2(6) chapeau could not be used. Article 2(6)(a) could not be applied since none of the exporting producers concerned had representative domestic sales. Article 2(6)(b) was not applicable either, because sales of the general category of products on the domestic markets were found not to be made in the ordinary course of trade. Therefore, SG&A and profits were established pursuant to Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method. In this regard, and in the absence of any other more reliable information available, it was considered that a profit margin of 30 % and SG&A of 3 % would be reasonable taking into account the figures reported by the six exporting producers during the RIP regarding their domestic sales.

(34) The Norwegian exporting producers questioned the use of a profit margin of 30 % claiming that it would not correspond to any actual figures reflecting normal margins in the fish farming sector. However, there was no indication in the file that the amounts for profits established, as described above, exceeded the profit normally realised by other exporting producers on sales of products of the same general category on the domestic market of the country of origin in the RIP. Indeed, as mentioned above, the profit margin used was based on actual verified figures. This argument had therefore to be rejected.

3. **Export price**

(35) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(36) Where export sales were made via related traders, the export price was constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related traders' actual SG&A during the RIP were used. As far as profit is concerned, it was determined on the basis of information available, and in the absence of any other more reliable information, that 2 % profit was reasonable for a trader in this business sector.

(37) As mentioned above in recital (21), in cases where sales were made via unrelated traders, it was not possible to determine with certainty the final destination of the product exported. Therefore, it could not be established whether a certain sale was made to a customer in the Community or to another third country, and it was therefore decided to disregard sales to unrelated traders. The Community industry objected to this approach claiming that such sales should have been investigated alleging that salmon was sold via independent traders which entered the Community at prices below the MIP.

(38) It is recalled that, when establishing the export price, sales to the first independent customer should be taken into consideration in accordance with Article 2(8) of the basic Regulation and that therefore, in the context of the determination of dumping, re-sales prices from the first independent customers are irrelevant. This argument had therefore to be rejected.

4. **Comparison**

(39) The comparison between normal value and export prices was made on an ex-works basis.

(40) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance was made in the form of adjustments for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. On this basis, allowances were made for differences in discounts, rebate, transport, insurance, handling, loading and ancillary costs, packing, credit and import duties.

5. **Dumping**

5.1. *Sampled companies*

(41) For the exporting producers which were included in the sample, an individual dumping margin was calculated. For these companies, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.

5.2. *Non-sampled companies*

(42) Regarding those cooperating exporting producers not included in the sample, it was found that, for the bulk of their sales, their export prices were generally in line with those of the sampled exporters. In the absence of any information indicating the contrary, it was considered that the sampling results are representative for all other exporters.

5.3. *Non-cooperating companies*

(43) Given the high level of cooperation, i.e. almost 100 %, it was also concluded that the dumping margins found for the sampled cooperating exporting producers were representative for Norway.

5.4. *Dumping margins*

(44) On the basis of the above, the dumping margins expressed as a percentage of the CIF net free-at-Community-frontier price, duty unpaid are as follows:

Marine Harvest AS	– 20,3 %
Norway Royal Salmon AS	– 5,9 %
Hallvard Leroy AS	– 13,0 %
Mainstream Norway AS	– 0,8 %
Norwell AS	– 0,8 %
Polar Quality AS	– 2,7 %

(45) The weighted average dumping margin for all six exporting companies is – 16,1 %.

D. **LIKELIHOOD OF RECURRENCE OF DUMPING**

1. **General**

(46) Since the dumping found during the RIP was *de minimis*, it was further examined whether there is a likelihood of recurrence of dumping should measures be allowed to lapse, in accordance with Article 11(3) of the basic Regulation, i.e. whether the circumstances during the RIP were of a lasting nature. In this regard, the following four aspects were examined in particular: (i) evolution of the normal value; (ii) development of export volumes and prices to the Community and other third countries; (iii) production volumes and capacities in Norway; and (iv) the situation of the Norwegian industry.

2. **Evolution of the normal value**

(47) For the vast majority of export sales, (i.e. for 99 %), the normal value was constructed in accordance with Article 2(3) of the basic Regulation on the basis of the manufacturing costs of the exporting producers concerned by adding an amount for SG&A and profit. Therefore, it was considered appropriate to examine the likely evolution of the cost of production in Norway as a surrogate for domestic prices, to determine the likely evolution of the normal value.

(48) The investigation revealed that the cost structure of the Norwegian exporting producers has remained stable throughout the RIP. In fact, during the RIP, the costs of production per unit of the investigated companies were on average 20 to 25 % below the MIP.

(49) As regards their likely evolution, several factors having an influence on the level of the unit costs were examined, such as costs of feed, costs of smolt, the impact of the consolidation process of the Norwegian salmon industry and the increased use of new increasingly cost efficient technologies.

(50) It was considered that the cost of feed which represents 50 to 60 % of the total cost is a reliable indicator regarding the total cost evolution. This is also confirmed by industry analysts specialised in this sector. Certain interested parties claimed that total costs would have increased after the RIP and are likely to increase further, i.e. by at least 30 % by the end of 2008 in comparison to the beginning of the RIP mainly due to alleged increases of feed prices. They further argued that a combination of an increasing normal value with falling export prices would result in recurrence of dumping.

(51) The interested parties concerned did not submit any particular evidence substantiating the alleged anticipated increase in feed cost by 30 %. An analysis of the possible cost development could furthermore not confirm these allegations. Thus, in contrast to what was claimed by these interested parties, the investigation revealed that the verified feed costs of the Norwegian exporting producers have remained more or less stable throughout the RIP and the first three quarters of 2007. Thus, Table (1) in recital (54) only shows a slight increase of feed costs between 2006 and 2007. The investigation also revealed that the feed price increase is mainly linked to the increase of the prices of some feed components (raw materials) such as fish oil and fish meals. It should be noted that fish oil and fish meals are to a certain extent substitutable by other lower cost raw material in the fish feed composition such as vegetable oils and meals. As a consequence, feed producers would normally switch the fish feed composition in order to keep the overall feed cost as low as possible. It is therefore expected that even if the cost of certain feed components increases, this will not have a direct linear impact on the overall feed cost, i.e. if there is an increase, such an increase will be at a significantly lower pace. It should also be noted that other cost factors as described below in recitals (52) and (55) to (63) will likely have a decreasing and therefore compensatory effect on the potential increase in the feed cost.

(52) As regards smolt prices, which represent about 15 % of the total cost of farming, the investigation showed that prices have decreased as shown in Table (1) below. Although it is difficult to precisely foresee the development of smolt costs, the persistent decreasing trend shown in Table (1) below was considered as a reliable indicator allowing to reasonably conclude that the same trends will be followed in the future. In any case, the investigation did not reveal, nor did any of the interested parties claim, a significant change of smolt costs developments in the future.

(53) Since both smolt and feed costs account for at least 65 % of the total costs and that fish oil and fish meals are to a certain extent substitutable by other lower cost raw material in fish feed composition (see recital (51)), it was concluded that total costs are not likely to increase significantly in the foreseeable future.

(54) Table (1): Evolution of costs of feed and smolt in Norwegian Kroner (per kilo of salmon — Head On Gutted (HOG) (source: Kontali Analyse AS [1] (2008))

Norway	2003	2004	2005	2006	2007 E
Feed	10,36	9,41	8,90	10,08	10,65
Smolt	2,10	2,00	1,94	1,72	1,70

(55) Subsequent to disclosure, the Community industry objected to the above findings by alleging that feed costs should have been allocated by generation, as feed costs during a certain year do not affect the cost of a harvest in that specific year but the costs of a future harvest. Otherwise, findings regarding the development of feed costs would not reflect appropriately the actual situation. This had to be rejected because actual verified feed costs aggregated by generation were used in the analysis.

(56) The Community industry also objected to the conclusions that higher prices in certain feed components can be compensated by substitution. In this respect it was argued that due to an increase in prices of other feed components on the one hand and the negative impact on the quality of the salmon flesh on the other hand such substitution would be limited. Regarding the increase in costs of other feed components, this was not supported by sufficient evidence and had therefore to be rejected. It is recognised that substitution of certain feed components is limited. However, as mentioned in recital (51), it was found that substitution is indeed possible to a certain extent. On this basis it was concluded that although feed costs may increase in future, they are not likely to increase to the same extent as the costs of fish oil and fish meal. The Community industry did not submit any evidence which could reverse these conclusions.

(57) The consolidation process is another factor contributing to the stabilisation of the costs of production. It should be noted that since the year 2000 the number of companies producing 80 % of the Atlantic salmon in Norway has been reduced from 55 to 31 in 2006. Although the Norwegian fish farming sector can still be seen as fragmented, the consolidation process has positive effects on the costs of production not only of the most important producers in Norway, which were also selected in the sampling, but also for the overall sector, as confirmed by specialised industry analysts. Indeed, new synergies, integration of production activities and economies of scale have enabled producers to control the cost increase on a per unit basis, despite the important increase of production volumes.

(58) The consolidation trend is expected to continue in the future, which will very likely have a further positive impact on the costs, through economies of scale.

[1] Kontali Analyse AS is a provider of statistics, mainly for aquaculture and fishing industry (www.kontali.no).

(59) Finally, the introduction of new technologies and equipment to fish farming activities has contributed to a containment of the cost increase on a per unit basis, despite the fact that production volumes have increased (see recital (64) and following recitals).

(60) Subsequent to disclosure, the Community industry contested that production cost would have decreased arguing that consolidation as such is not necessarily a cost reducing factor. Thus, it was claimed that, according to Norwegian statistics, the medium and small sized companies in Norway would be more efficient than the large groups. It was further argued that the conclusion of cost reductions would contradict the findings in recital (92) concerning the possible consequences of an outbreak of a disease and the expected lower yield per smolt in future which both would have a cost increasing effect.

(61) It is first of all noted that recital (92) does not refer to the consequences of an outbreak of a disease but to the normal mortality rate inherent to the production of salmon which does not have any impact on the cost as such. Secondly, the expected lower yield per smolt mentioned in this recital is not due to an exceptional situation and is not considered to be significant and therefore without any substantial impact on the overall cost. Recital (92) merely attempts to show that the increase in production volume cannot be translated one to one by the increase in the smolts production since other factors have also an influence of the harvested volume, which was not disputed by the Community industry.

(62) As far as the cost reducing effect of the consolidation process is concerned, the Community industry did not submit any evidence to support their objection. The Community arguments in this respect had therefore to be rejected.

(63) In conclusion, given the above, it is considered that the normal value is not likely to increase significantly in the foreseeable future. Rather, due in particular to the ongoing consolidation process, further cost reductions may be realised even though feed prices are on an upward trend (see recital (51)). Therefore, the constructed normal value, which is based on the cost of manufacturing, is considered to be of a lasting nature.

3. **Development of export prices and production volumes in Norway**

3.1. *Evolution of the production volume in Norway and exports to the EU*

(64) As shown in Table (2) in recital (65), the Norwegian production of salmon has increased steadily in the last three years and in 2007 in particular, mainly due to favourable biological conditions and as compared to a weak production year in 2006. However, as shown in Table (3) in recital (66) concerning the estimated total consumption in the Community, the Community market for the product concerned has also increased significantly, i.e. + 9,40 % from 2006 to 2007, and based on the past trends should further grow. The development in the consumption shown in Table (3) below includes all third country imports as well as the sales of the Community industry in the Community market.

(65) Table (2): Total production of salmon in tons Whole Fish Equivalent (WFE) between 2003 and 2007 (source: Kontali Analysis: Monthly Salmon Report January No 01/2008)

Norway	2003	2004	2005	2006	2007
	508 400	537 000	572 300	598 500	723 200
Y to Y		5,63 %	6,57 %	4,58 %	20,80 %

(66) Table (3) Development in consumption (supply from all sources including the Community industry) of Atlantic salmon in the Community from 2004 to 2007 (source: Kontali Analysis: Monthly Salmon Report January No 01/2008).

Year	2003	2004	2005	2006	2007
	579 200	603 100	634 600	651 000	712 200
Y to Y		3,94 %	5,22 %	2,58 %	9,40 %

(67) In 2007, according to public statistics (Kontali Analysis), the estimated market share in the Community of Norwegian salmon reached 71 % compared to 69 % in 2006. This is, however, especially due to the decrease of imports from Chile where production levels dropped between 3 % and 5 % (depending on the sources) between 2006 and 2007, due to a disease outbreak which is anticipated to have lasting effects on productions levels at least in 2008 and the following years.

(68) On the basis of the above, it was concluded that the increasing Community market will be able to absorb a large part of the production volumes in Norway without the Norwegian production necessarily taking over significant market shares from the Community industry. Furthermore, as outlined below in recital (78) and following recitals, parts of the Norwegian production volumes are likely to be increasingly exported to other third country markets where considerable growth has been observed. Finally, the reduced Chilean presence in the Community will very likely also contribute to further reducing the risks of oversupply of exports to the Community.

(69) Subsequent to disclosure, the Community industry claimed that the situation in Chile has no significant impact for the Community market, since Chilean salmon was mainly exported to the US market and thus the supply situation in the Community market is essentially determined by Norwegian exports. The Community industry further argued that market shares from Norway in the Community increased by an additional 2 % points, while imports from Chile in the Community would have increased by 5 % at the beginning of 2008.

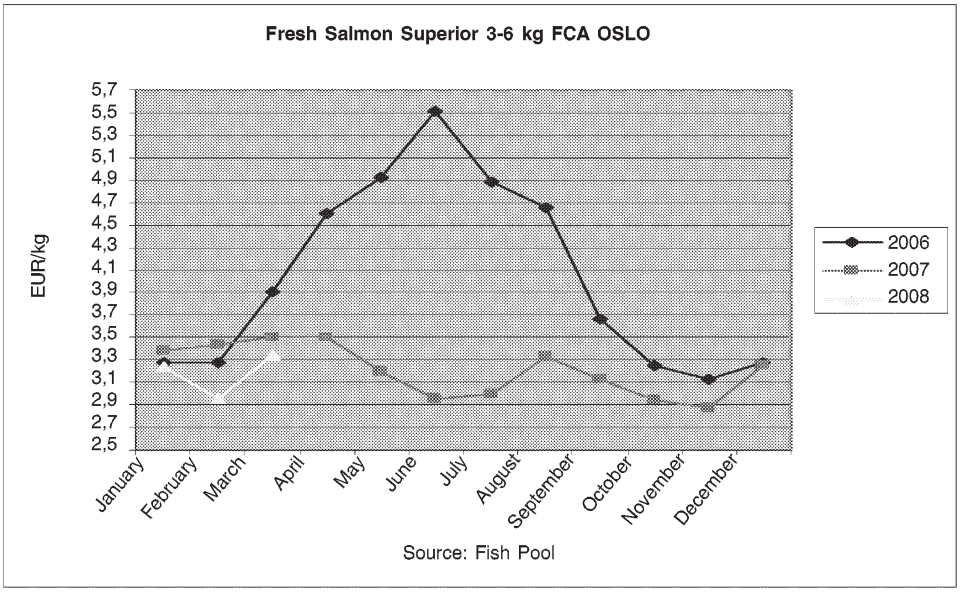
(70) It should first be noted that the data submitted by the Community industry only referred to two to three months of 2008 and therefore no meaningful conclusion can be drawn thereon. Indeed, in this kind of market, developments have to be looked at during a longer time span. Secondly, the disease situation in Chile should have an impact on the worldwide supply, which will indeed be reduced, and which will allow for Norwegian additional production volumes to be re-directed.

(71) As far as export prices to the Community are concerned, certain interested parties claimed that they have decreased significantly since the RIP and would reach a level of EUR 2,85/kg in 2008 which would result in dumping, in combination with the alleged increase in cost and thus in the normal value. This price was estimated on the basis of the average cross-section price reported on the Oslo market in 2007, i.e. EUR 3,13/kg by deducting an estimated average price decrease of between EUR 0,06/kg and EUR 0,28/kg.

(72) As far as the development of the normal value is concerned and as explained in recital (47) and following recitals, the arguments brought forward by the interested parties in question had to be rejected.

(73) As far as export prices to the Community are concerned, publicly available statistics show that the allegations of the above mentioned interested parties are not confirmed by the recent evolution of export prices as shown in Chart (1) below.

(74) Chart (1): Evolution of prices (FCA Oslo EUR/Kg of Fresh Salmon Superior — source Fish Pool) in 2006, 2007 and beginning of 2008.



(75) It follows from the above that prices to the Community in 2007 were indeed significantly lower than during large part of the RIP, i.e. in 2007 they were between EUR 2,88/kg and EUR 3,51/kg. However, the investigation established that these prices were still largely above the established cost of production and therefore also above the normal value and were therefore not considered to be made at dumped levels. Furthermore, based on the information available for the first three months of 2008, prices during that period were found to be between EUR 2,96/kg and EUR 3,35/kg, i.e. likewise, still above the established costs. Therefore, they were very likely not at dumped levels when considering that the normal value has remained stable as concluded in recital (47) and following recitals. The investigation has shown that prices continue to be influenced by the market demand but are currently set at a higher level. It is also noted that these price fluctuations are normal in this sector.

(76) The Community industry claimed that export prices after the RIP were influenced by the existence of the MIP and therefore kept at a relatively high level. They further argued that, therefore, should measures be allowed to lapse, the price level to the Community will decrease significantly. This conclusion is not confirmed by the findings of the current investigation, which showed that normal value should remain relatively stable, while the likelihood of significantly decreased export price levels to the Community was small. Latter findings were based on a thorough analysis of several aspects listed in recital (46), such as likely development of the production and export volumes from Norway to the Community and other third country markets. The Community industry did not submit any information or evidence which could devaluate the findings made in this respect.

(77) Considering the above, it was concluded that increasing imports of salmon to the Community from Norway should not be such as to create a risk of an oversupply in the Community market. Furthermore, given the situation of the cost of production and export prices to the Community, the risk of dumping appears to be remote.

3.2. *Export price and volume evolution to non-EU countries*

(78) The investigation showed that the Community is and is likely to remain the main market for Norwegian salmon, followed by Russia and Japan. In addition, there are also emerging markets for salmon where Norwegian exports have increased in the last few years, a trend which is expected to continue in the future (see recital (82) and following recitals). Indeed, the investigation has shown that Norwegian producers are prepared to supply these markets in future, since they were able to establish local customer relationships and distribution/sales operations which indicate the strong interest of the Norwegian exporting producers in these markets.

(79) Certain interested parties have argued that the Russian market has been historically volatile and that therefore it is not predictable whether demand in this market will indeed increase and whether the Norwegian exporting producers will therefore be able to export increased quantities to this market in the future. The same parties have also argued that export sales from Norway to Japan showed a falling trend over the last five years and that therefore, likewise, it is uncertain whether increased production volumes in Norway can indeed be exported to the Japanese market.

(80) However, as regards Russia, the investigation revealed that the market of around 61 000 tonnes has continued to increase and that there are no reasons to assume that it should not continue to do so in the foreseeable future.

(81) The total exports of salmon from different producer countries to Japan showed a decrease by 15 % in 2007 as compared to 2006. However, while some of the supplier countries have decreased their exports to Japan, Norway was able to increase its market share from 52 % in 2006 to 66 % in 2007 (Source: Kontali Analysis). As mentioned above in recital (67), Chile's production yield was largely affected by the disease situation and therefore export volumes in general, and thus also to Japan were significantly reduced. Norway has therefore been able to take over market shares from Chile, a situation which is expected to last at least until 2009, as already mentioned in recital (67).

(82) As shown in Table (4) in recital (85), Norwegian exports to other emerging markets of the world such as Eastern Europe (Ukraine, Belarus) and the Far East (China, South Korea, Hong Kong, Thailand) have also increased significantly and contrary to what has been claimed by the interested parties concerned, these markets will in all likelihood absorb an increasing part of the Norwegian production in the coming years.

(83) Export prices to the Community and to other third countries on a FCA Oslo basis were found to be at similar levels and it was therefore concluded that all markets are comparably attractive should there be sufficient demand. When sold as a fresh or chilled product, the product concerned is transported to the EU usually by truck. When sold to more distant destinations not accessible by truck within a certain time limit, the product concerned is transported by air.

(84) On the basis of the above, it is concluded that, other factors being equal, the deteriorating salmon production of 3 to 5 % in 2007 in Chile linked to the disease situation will contribute to the containment of global supply growth in 2008 and give market opportunities to Norwegian producers in markets such as Japan, the US and other emerging markets where Chilean producers hold significant market shares.

(85) Table (4): Market development (exports) for Atlantic Salmon from Norway — 2006 versus 2007 (volume in tons round weight) — (Source: Norwegian Seafood Export Council).

	Volume 2006	Volume 2007	Change
EU	438 569	509 273	16,1 %
Japan	26 703	28 846	8,0 %
Russia	39 998	61 248	53,1 %
USA	10 752	14 136	31,5 %
Ukraine	6 518	13 617	109 %
China	5 284	9 021	71 %
South Korea	6 037	7 613	26 %
Thailand	3 177	7 887	148 %

(86) The Community industry objected to the above findings by claiming that the development of export volumes from Norway to other third countries would have shown a different trend in the beginning of 2008, i.e. exports to these countries in absolute terms would have decreased and the total growth of exports would thus have been lower than in 2007 and lower than the export growth to the Community during the same period.

(87) The investigation has shown that import data for the beginning of 2008 depending on the source used varied significantly. Thus, Kontali Analysis showed increasing trends at a much higher degree for the same period. Furthermore, as mentioned above in recital (70), market developments should be looked at during a longer time span to show a conclusive picture. The arguments of the Community industry could not therefore devaluate the findings with regard to the development of export volumes to other third countries.

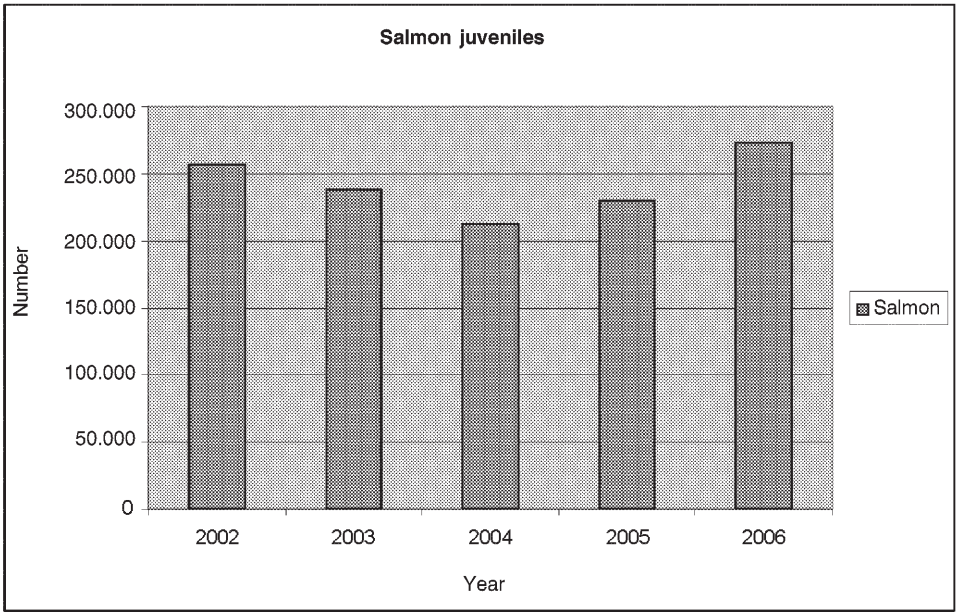
4. **Production volumes and capacities in Norway**

(88) The production level in Norway, i.e. maximum allowed biomass, is mainly determined by the number of production licenses which are granted by the Norwegian authorities, and the ability of the fish farmers to achieve the highest possible production within the limits of their licence. Other factors liable to increase the production of salmon are for example favourable biological and meteorological factors and the improvement of the fish farming processes with high-tech equipment. Conversely, the outbreak of a fish disease could harm the production significantly and lead to a decrease in harvested fish as was the case in Chile in 2007.

(89) Certain interested parties claimed that the increase in production of juvenile fish in Norway since 2006 (allegedly an increase of 20 % between 2006 and 2008) gave a strong indication that Norwegian salmon production volume would increase significantly within the next two years and thus lead to a situation of over supply. On this basis, and taking into account the particularly high yield level achieved in 2007, these parties argued that in 2008 (and beyond) production volumes in Norway will be significantly higher and largely exceed the growth of its export markets, and in particular the Community market. They alleged that should the yield improvement experienced by the Norwegian salmon industry in 2007 be repeated in 2008, the surpluses or unsold volumes could reach between 20 000 and 91 000 tonnes resulting from an estimated production level of 870 000 tonnes WFE, i.e. 150 000 tonnes more than in 2007.

(90) The investigation did not confirm the above allegations. While it is true that there was an increase in the production of juvenile fish in 2006, this increase was in line with increases of prior years and cannot be regarded as exceptional, as shown in Chart (2) below.

(91) Chart (2) Number of produced salmon juveniles (in 1 000 pieces) — (Source: SSB Norway)



(92) In addition, based on a combination of various factors such as the mortality factors, government regulations ruling maximum allowed biomass and lower yield per smolt in 2008, according to Kontali Analysis, the estimated production of salmon in 2008 should increase by merely 6 %, i.e. from 723 000 tonnes WFE in 2007 to 770 000 tonnes in 2008, i.e. 47 000 tonnes WFE. The figures regarding the smaller development in the biomass in 2008 are supported by the feed sales data which show a significant drop in 2008 compared to 2007 (source Havbruksdata and FHL).

(93) Subsequent to disclosure, the Community industry reiterated its claim that production volume in Norway is likely to increase significantly and provided some further data concerning harvest quantities, stocks and juvenile fish relating to the beginning of 2008. As above, it was considered that data relating to only two months of the year are as such inconclusive and cannot therefore devaluate the findings with regard to the development of the production volume in Norway as outlined above.

(94) Therefore, and on the basis of the information available, although production volumes in Norway are on an upward trend, a dramatic increase in production in the near future, such as claimed by the abovementioned interested parties, is not likely to occur. In addition, as outlined in recital (82) and following recitals, any increased production volumes are not likely to be exported in their totality to the Community, but a large part will be very likely directed to other third country markets where demand is increasing significantly. Finally, for the reasons outlined in recital (71) and following recitals, exports to the Community are not expected to be made at dumped prices.

5. **The situation of the Norwegian industry**

(95) Finally, the situation of the Norwegian industry in general and during the RIP in particular has been given special consideration. The investigation thus revealed that, in contrast to what was found during the original investigation, the aquaculture sector in Norway is composed of highly profitable companies. This is partly due to the large and still ongoing consolidation process which has turned the sector highly efficient and healthy. This is also reflected in the ownership structure of the companies concerned, i.e. several Norwegian and global investments and pension funds are very well represented in the exporting producers' groups. This also was not the case during the original investigation.

(96) Furthermore, the investigation revealed that Norwegian producers are meanwhile also very well established in the Community market, where they represent approximately 80 to 90 % of the total production volume in the Community. These Norwegian related companies in the Community were found to produce and sell salmon to a large extent for and on the Community market.

(97) It should also be noted that the Norwegian mother companies were themselves exporting considerable quantities to the Community.

(98) On this basis, it was considered that the Norwegian mother companies of the producing companies located in the Community would at least be equally negatively affected by any significant price decrease in the Community market due to dumped imports from Norway. Indeed, on this basis, it was not unreasonable to assume that at least economically it would not make sense for the Norwegian exporting producers to contribute to a drop of the prices of farmed salmon in the Community via dumping practices. This would directly harm the profitability of the sector and would negatively affect the companies' shares which are traded in the stock exchange and have, as mentioned in recital (95), major investment and pension funds as shareholders.

(99) On the basis of the above, it was therefore reasonable to conclude that the Norwegian exporting producers have a vested interest in avoiding situations of market price collapse and to remain profit orientated. Consequently, the risk that the dumping practices by the Norwegian exporting producers would resume in foreseeable future was considered limited.

(100) The Community industry objected to the above findings by claiming that the healthy situation of the Norwegian producers found during the RIP was not of a lasting nature and that after the RIP, these producers faced financial problems and some of them even reported losses at the beginning of 2008. The Community industry also claimed that the vast majority of Norwegian producers do not have any subsidiaries in the Community market and that on this basis it cannot be concluded that dumping would not resume. Finally, it was alleged that Norwegian producers with subsidiaries in the Community would decrease their production in the Community market and increase production in Norway should measures be allowed to lapse.

(101) As far as the financial situation of the Norwegian producers is concerned, it is noted that the losses of some of the companies were linked to their investments in Chile and the outbreak of the disease in this country. These particular circumstances only concerned a small number of the total producers in Norway. In addition, the information related only to the beginning of the year 2008 and did not allow for any overall conclusions concerning the performance of these companies throughout the whole year. As far as the Norwegian owned production in the Community is concerned, and as also admitted by the Community industry, although the number of companies having subsidiaries in the Community is limited, they represent a major part of the total Norwegian production and are therefore considered as significant. The argument that Norwegian owned production capacities in the Community will be reduced should measures be repealed was not supported by any evidence. These arguments had therefore to be rejected.

6. **Conclusion**

(102) The investigation revealed that dumping during the RIP was at *de minimis* levels. The investigation further revealed that there are no reasons to believe that the production volume in Norway will increase above the traditional growth rate and thus lead to significantly increased export volumes from Norway to the Community. The investigation also established that the risk of a significant decrease in Norwegian export prices to dumped levels is limited in the foreseeable future, mainly due to the fact that a significant over-production in Norway, which may be the main trigger for such a decline in prices, is not expected. In particular, normal value, which was found to very likely remain stable, was significantly lower than the export price during the RIP, i.e. normal variations due to the fluctuating character of the market and therefore temporary decreases in the export price are not likely to automatically result in dumping. Finally, it was considered that the changed situation of the Norwegian aquaculture sector which has become highly profitable and the shares of which are traded at the stock exchange, as well as the important presence of Norwegian owned production in the Community, have made the recurrence of dumping practices in the foreseeable future unlikely. For all of the above reasons, it was concluded that the likelihood of recurrence of dumping is low and does not warrant the continued imposition of the anti-dumping measures in force.

(103) Consequently, the current interim review should be terminated and the measures in force on imports of farmed salmon originating in the Norway should be repealed.

E. **SPECIAL MONITORING**

(104) As explained above, it is expected that market conditions, i.e. demand and supply, remain stable in the foreseeable future and that there is therefore no apparent likelihood of recurrence of dumping. Indeed, all indicators examined show that it can be reasonably expected that the export volumes to the Community will not increase significantly and that export prices remain at non-dumped levels.

(105) However, given a certain unpredictability of market conditions mainly due to the nature of the product (perishable goods), it is considered appropriate to monitor the market closely and to review the situation should there be sufficient *prima facie* evidence that market conditions have changed significantly. In such case, consideration will be given to the initiation of an investigation on an *ex officio* basis, should it be deemed necessary.

(106) The monitoring should be limited in time until the original foreseen expiry of the definitive measures imposed by Regulation (EC) No 85/2006, should they have remained in place, i.e. until 21 January 2011.

F. **DISCLOSURE**

(107) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present interim review and to repeal the existing anti-dumping duty on imports of the product concerned. All parties were given an opportunity to comment. Their comments were taken into account where warranted and substantiated by evidence,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable to imports of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 19 13 and ex 0304 29 13, originating in Norway, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96, is hereby terminated.

The definitive anti-dumping duty imposed by Regulation (EC) No 85/2006 on the abovementioned imports is hereby repealed.

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 July 2008.

For the Council
The President
E. WOERTH