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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 930/2003

of 26 May 2003

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ('the basic anti-dumping Regulation')⁽¹⁾, and in particular Articles 5, 9 and Article 11(3) and (7) thereof,

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

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

Whereas:

A. PROCEDURE

1. PREVIOUS INVESTIGATIONS AND EXISTING MEASURES CONCERNING NORWAY

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

prices would be prevented. Subsequently, the Council repealed and replaced Regulations (EC) No 1890/97 and No 1891/97 by a single Council Regulation (EC) No 772/1999⁽⁷⁾.

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

2. INTERIM AND EXPIRY REVIEW INVESTIGATIONS CONCERNING NORWAY

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

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

⁽³⁾ OJ L 267, 30.9.1997, p. 1.

⁽⁴⁾ OJ L 267, 30.9.1997, p. 19.

⁽⁵⁾ OJ L 267, 30.9.1997, p. 81. Decision as last amended by Decision 2003/119/EC (OJ L 47, 21.2.2003, p. 46).

⁽⁶⁾ OJ C 400, 22.12.1998, p. 4.

⁽⁷⁾ OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Council Regulation (EC) No 321/2003 (OJ L 47, 21.2.2003, p. 3).

- (4) Therefore, having determined, after consultation of the Advisory Committee, that sufficient evidence existed to justify the initiation of an interim review, the Commission announced by way of a notice (notice of initiation) published in the *Official Journal of the European Communities*⁽¹⁾, the initiation of an investigation pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19(1) of the basic anti-subsidy Regulation with regard to imports into the Community of farmed Atlantic salmon originating in Norway, covering both the form and the level of the anti-dumping and countervailing measures.
- (5) According to Article 11(7) of the basic anti-dumping Regulation and Article 22(3) of the basic anti-subsidy Regulation, when an interim review of measures is in progress at the time when measures are due to expire, the interim review must also cover those aspects, which under other circumstances, would be dealt with within the scope of an expiry review opened under Article 11(2) of the basic anti-dumping Regulation and Article 18(1) of the basic anti-subsidy Regulation. The Commission therefore had to investigate whether the expiry of the measures would be likely to result in a continuation or recurrence of dumping, subsidisation and injury. In this context, the Commission informed all interested parties of the extension in the scope of the review and sought opinions as to whether the expiry of the measures would be likely or unlikely to lead to the continuation or recurrence of dumping and injury, and/or the continuation or recurrence of subsidisation and injury.

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

- (6) On 18 July 2002, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands.
- (7) The proceeding was initiated as a result of a complaint lodged on 3 June 2002 by the EU Salmon Producers' Group (the complainant) on behalf of producers representing a major proportion of the Community production of farmed Atlantic salmon within the meaning of Article 4 of the basic anti-dumping Regulation. The complaint contained sufficient prima facie evidence of dumping and material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

4. PARTIES CONCERNED BY THE INVESTIGATIONS

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

an opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation.

- (9) A number of exporting producers and traders in Norway, Chile and the Faeroe Islands, producers and suppliers located in the Community as well as representative associations of fish importers, processors and consumers made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (10) In view of the apparent large number of exporting producers of the product concerned in Norway, Chile and the Faeroe Islands and the large number of producers of the product in the Community, the application of sampling techniques for the investigation of injurious dumping and subsidisation in the review and injurious dumping in the investigation concerning Chile and the Faeroe Islands was envisaged in the notices of initiation.
- (11) The Commission sought and verified all information it deemed necessary for the purposes of the investigations. With regard to the investigation concerning imports originating in Chile and the Faeroe Islands, this included all information deemed relevant for the determination of dumping, injury and Community interest. With regard to the investigation concerning imports originating in Norway, this included all information deemed relevant for the determination of dumping, subsidisation and injury and also the determination as to whether there was a likelihood of a continuation and/or recurrence of injurious dumping and subsidisation and the assessment of Community interest. Verification visits were carried out at the following:

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

- Ministry of Fisheries, Oslo,
- Ministry of Local Government and Regional Development, Oslo,
- Ministry of Trade and Industry, Oslo,
- Norwegian Industrial and Regional Development Fund (SND), Oslo,
- The Research Council of Norway, Oslo.

(b) **Community producers**

- Orkney Sea Farms Ltd. Glasgow, United Kingdom,
- Muirachmhainní Teo, Co. Galway, Ireland,
- Ardvar Salmon Ltd, Saffron Walden, United Kingdom,
- Hoganess Salmon Ltd, Wester Sound Salmon Ltd, Shetland, United Kingdom,
- Cro Lax Ltd, Shetland, United Kingdom,
- Bressay Salmon Ltd, Shetland, United Kingdom,

⁽¹⁾ OJ C 53, 28.2.2002, p. 10.

⁽²⁾ OJ C 172, 18.7.2002, p. 11.

- West Minch Salmon Ltd, Atlantic West Salmon Ltd, Sidinish Salmon Ltd, South Uist, United Kingdom,
- Loch Duart Ltd, Edinburgh, United Kingdom,
- Hoove Salmon Ltd, Shetland, United Kingdom,
- North Atlantic Salmon Ltd, Shetland, United Kingdom,
- Ayre Salmon Ltd, Shetland, United Kingdom.

(c) Exporters/producers and related sales companies

Norway

- Midt-Norsk Havbruk AS, Rørvik,
- Lofoten Sjøprodukter AS, Leknes,
- Follalaks AS, Nordfold,
- Terra Seafood AS, Trondheim,
- Marine Harvest Norway AS, Bergen,
- Aqua Farms AS, Bergen,
- Naco Trading AS, Bergen,
- Aalesundfisk AS, Aalesund,
- Alsaker Fjordbruk AS, Onarheim,
- Labeyrie Norge AS, Oslo.

Chile

- Marine Harvest Chile S.A., Puerto Montt,
- Salmones Multiexport Ltda, Puerto Montt,
- Pesca Chile S.A., Santiago,
- Invertec Pesquera Mar de Chiloé S.A., Santiago,
- Cultivos Yadrán S.A., and Yadrán Quellón S.A., Quellón, Chiloé Island,

The Faeroe Islands

- P/F Vestlax, and P/F Vestsalmon, Kollafjørður,
- P/F East Salmon, Klaksvík,
- P/F Faeroe Seafood, Tórshavn,
- P/F Bakkafrost, Glyvur.

(d) Related importers in the Community

- Armoric S.A., Quimper, France,
- Vensy España S.A., Málaga, Spain,
- Narvik S.A., Landivisiau, France,
- Benfumat S.A., St. Feliu de Llobregat, Spain,
- H. Van Wijnen, Krimpen a/d IJssel, Netherlands,
- A-fish Skagen AS, Skagen, Denmark,
- Labeyrie S.A., Saint Geours de Maremne, France.

(e) Unrelated importers in the Community

- Moulin de la Marche, Brittany, France.

(f) Suppliers

- Landcatch Ltd, Argyll, United Kingdom.

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

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

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

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

(16) The product is currently classifiable within CN codes 0302 12 00, 0303 22 00, 0304 10 13 and 0304 20 13, corresponding to different presentations of the product (fresh or chilled whole fish, fresh or chilled fillets, frozen whole fish and frozen fillets). All these presentations were found to be sufficiently similar for them to constitute a single product for the purpose of the proceeding.

2. LIKE PRODUCT

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

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

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

(20) The present investigations established fresh and frozen salmon to be interchangeable to a certain degree. Indeed, given the increased share of total consumption accounted for by frozen salmon in the IP, it has to be assumed that there are certain users not having cooperated in the proceeding that are able to replace fresh salmon in their production processes with frozen

salmon. At the same time, it is noted that the Community market shows a clear preference for farmed Atlantic salmon over other types of salmon such as Pacific salmon and wild salmon. This is evidenced by the volume of farmed Atlantic salmon consumed in the Community as described in recital 164. Species of salmon other than the product concerned are therefore not considered to have a significant influence on the market for farmed Atlantic salmon.

C. SAMPLING FOR DUMPING ASSESSMENT PURPOSES

(21) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic anti-dumping Regulation, exporters, producers and exporting producers were requested to make themselves known within three weeks of the initiation of the review investigation and of the anti-dumping proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of farmed Atlantic salmon. The Commission also contacted known associations of exporters/producers, the authorities of Norway and Chile, and the Home Government of the Faeroe Islands. No objections to the use of sampling were raised by these parties.

1. PRE-SELECTION OF COOPERATING COMPANIES

Chile

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

The Faeroe Islands

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

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

Norway

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

2. SELECTION OF THE SAMPLE

Chile

- (25) In Chile, as a general rule, the production and sales of the product concerned is made by integrated companies which carry out both functions. Thus, in the case of Chile only one sample of integrated exporting producers was selected. According to Article 17(1) of the basic anti-dumping Regulation, the selection of the sample was based on the largest representative volume of exports which could reasonably be investigated within the time available. Criteria that were also found to be important in the selection of the Chilean sample were representative domestic sales and significant production.
- (26) On this basis four exporting producers were chosen to constitute the sample in consultation with the Chilean Salmon and Trout Producers Association ('CSTPA') and the Chilean authorities, both of which raised no objection to the proposal of the Commission. The four companies selected in the sample represented, according to the replies to the mini-questionnaire, around 45 % of Chilean export sales to the Community, 53 % of Chilean domestic sales and 36 % of Chilean production of the product concerned.
- (27) The cooperating exporting producers, who were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with Article 9(6) of the basic anti-dumping Regulation. Some of these companies initially indicated their intention to claim an individual treatment in accordance with Article 17(3) of the basic anti-dumping Regulation in case they were not selected in the sample. However, only two substantiated claims were received within the deadline specified in the notice of initiation.
- (28) One of the two companies that submitted a claim for individual treatment, subsequently informed the Commission that it wished to withdraw its request for individual treatment because its submission (questionnaire response) had serious errors and it did not have the human resources either to correct these errors or to continue with the investigation.

- (29) The companies which finally constituted the sample and which fully cooperated with the investigation as well as the sole company that claimed individual examination were attributed their own dumping margin.
- (30) Questionnaires were sent for completion to all four sampled companies and to those companies that initially expressed their intention to claim an individual margin.

The Faeroe Islands

- (31) As was the case with Chile, the production and sales of the product concerned in the Faeroe Islands is carried out by integrated companies. Therefore, only one sample of integrated exporting producers was selected. According to Article 17(1) of the basic anti-dumping Regulation, the selection of the sample was based on the largest representative volume of exports, which could reasonably be investigated within the time available. Three exporting producers were chosen to constitute the sample in consultation with and with the consent of the Faeroe Fish Farmers Association and the Home Government of the Faeroe Islands. The three companies selected in the sample represented, according to the replies to the mini-questionnaire, around 54 % of both Faeroese production and exports to the Community of the product concerned.
- (32) None of the remaining exporting producers requested an individual treatment in accordance with Article 17(3) of the basic anti-dumping Regulation. The cooperating exporting producers, who were not finally retained in the sample, were therefore informed that any anti-dumping duty on their exports would be calculated in accordance with Article 9(6) of the basic anti-dumping Regulation.
- (33) The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin. Questionnaires were sent for completion to all sampled companies.

Norway

- (34) The samples for Norway were selected in consultation with and with the consent of the Norwegian authorities and the Norwegian Federation of Fish and Aquaculture Industries.
- (35) As was the case at the time of the investigation which led to the imposition of the original measures (original investigation), it was found that a strict distinction in functions is maintained between the farmers who grow the salmon and the traders (exporters) who sell it domestically and for export. It was therefore decided to have two samples, one for farmers and one for exporters.

- (36) As it was found impossible to impose a company specific duty which could be enforced by customs authorities, since the identity of the grower could never be checked, it was decided that the purpose of the samples would be to establish a country-wide duty. Moreover, as Regulation (EC) No 772/1999 established only one duty rate for Norway as a whole, the present investigation envisaged the review of that single duty.
- (37) As a consequence, one company which had specifically requested to be part of the sample with a view to having an individual margin, withdrew its request.
- (38) The companies were selected on the basis of the following criteria:
- For the farmers:
- (i) the significance of their production volumes; and
 - (ii) their location, so as to ensure a good geographical spread.
- For the exporters (traders):
- (i) the significance of volume of exports; and
 - (ii) their involvement in activities which are representative of the various roles played by Norwegian exporters.
- (39) The samples that were established along these lines comprised ten companies. Altogether the sampling questionnaire replies of these companies indicated that they represented 17 % of Norwegian export sales to the Community, 20 % of Norwegian domestic sales and 15 % of Norwegian production of the product concerned. Questionnaires were sent for completion to all sampled companies.
- (40) Subsequent to the disclosure, one party claimed that the Norwegian sample of exporters was unrepresentative and had led to unreliable results mainly because it included a company which was part of a multinational group with worldwide interests. It should be noted that the selection of the sample was made at the early stages of the review investigation and that interested parties had the opportunity to comment on its appropriateness at that time and chose not to do so. More importantly, no reason was advanced as to why the fact that the Norwegian exporter belonged to a multinational group made the data of that company unusable for dumping purposes. The claim of this party was therefore rejected.
- independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.
- (42) This assessment revealed that all investigated exporting producers had representative sales of farmed salmon on the domestic market during the IP.
- (43) The Commission subsequently considered whether domestically sold and exported product types had similar quality, form (fresh/chilled or frozen) and presentation (gutted fish head-on, gutted fish head-off, whole fillets, portions, etc.) and concluded that they were identical or directly comparable.
- (44) Additionally and for each product type sold by the exporting producer on the domestic market, which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic anti-dumping Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.
- (45) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic anti-dumping Regulation.
- This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the IP:
- For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs, and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.
 - For those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question.

D. DUMPING

1. CHILE

(a) Normal value

- (41) In accordance with Article 2(2) of the basic anti-dumping Regulation, the Commission first examined whether the domestic sales of farmed Atlantic salmon to

— For those product types where less than 10 %, by volume of sales, on the domestic market, were not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

(46) For certain types sold for export to the Community, domestic sales were found to have been made in the ordinary course of trade in the case of three investigated companies. Normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of Chile, during the IP, as set out in Article 2(1) of the basic anti-dumping Regulation.

(47) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All five investigated companies had sales to the Community of such product types.

(48) To construct normal value pursuant to Article 2(6) of the basic anti-dumping Regulation, the selling, general and administrative (SG&A) costs incurred and the weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the IP, was added to their own average cost of manufacturing during the IP. Where necessary, the manufacturing costs and SG&A costs reported were corrected, before being used in the ordinary course of trade test and in constructing normal values.

(b) Export price

(49) The investigation showed that the exports of certain Chilean exporting producers were made both to unrelated and to related customers in the Community. Two companies exported via unrelated traders in Uruguay and in the USA. In these cases it could however be established that the product under consideration was shipped to the Community.

(50) Therefore, for exports of the product under consideration by the exporting producers which were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic anti-dumping Regulation, on the basis of export prices actually paid or payable by the independent customers in the Community or by the independent traders located in the third countries.

(51) For sales made via their related importers, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by those

importers, including SG&A costs, and assuming a reasonable profit margin, in accordance with Article 2(9) of the basic anti-dumping Regulation.

(c) Comparison

(52) The comparison between normal value and export price was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic anti-dumping Regulation. For all investigated exporting producers allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, import charges, credit costs, after-sales costs, commissions, discounts, rebates, currency conversions have been claimed and granted where applicable and justified.

(d) Dumping margins

(53) Dumping margins, for the companies investigated, were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type.

(54) Since zero dumping margins were established for three out of the four sampled exporting producers in Chile, the dumping margin for exporting producers, which made themselves known in accordance with Article 17 of the basic anti-dumping Regulation but were not examined individually, has been established, pursuant to Article 9(6) of the basic anti-dumping Regulation, on the basis of the dumping margin of the company in the sample for which the existence of dumping was established. Moreover, due to the high overall cooperation level established, it was considered appropriate to set the residual dumping margin for non-cooperating companies at the same level.

(55) The dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

Companies in the sample

— Marine Harvest Chile SA	29,4 %
— Salmenes Multiexport Ltda	0 %
— Invertec Pesquara Mar de Chiloé SA	0 %
— Pesca Chile SA	0 %

Company for which individual treatment is granted

— Cultivos Yadrán S.A. and its related exporter Yadrán Quellón S.A	10,3 %
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All other companies	29,4 %
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2. THE FAEROE ISLANDS

(a) **Normal value**

- (56) In accordance with Article 2(2) of the basic anti-dumping Regulation, the Commission first examined whether the domestic sales of the product concerned to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.
- (57) This examination revealed that none of the investigated exporting producers had representative sales of farmed Atlantic salmon to the domestic market during the IP.
- (58) As stipulated in Article 2(3) of the basic anti-dumping Regulation, normal value was therefore to be based either on the cost of manufacturing of the companies in the sample, plus a reasonable amount for SG&A and for profits or on the basis of export prices, in the ordinary course of trade, to an appropriate third country, provided that such sales were representative.
- (59) In this respect, it was found that none of the exporting producers had representative exports sales to an individual third country. Therefore, the Commission had no other option than to base normal value on the cost of manufacturing of the companies in the sample, plus a reasonable amount for SG&A and for profits.
- (60) Given the overall absence of representative domestic sales of the product concerned but also the absence of domestic sales of other products falling within the same general category as the product, a reasonable method was sought for calculating the amounts for SG&A costs and profits to be added to the cost of manufacturing of the sampled exporting producers.
- (61) Therefore, it was decided, pursuant to Article 2(6)(c), to determine normal values for the exporting producers in the sample by adding to their own cost of manufacturing the weighted average SG&A costs and profits incurred by the sampled Chilean exporting producers on their domestic sales. This method was considered to be the most reasonable in this situation since Chile is party to the same proceeding as the Faeroe Islands and the production and sales structure of the salmon industry in this country is similar to that of the Faeroe Islands, in the sense that both in Chile and the Faeroes the salmon industry is run by large integrated companies.
- (62) Subsequent to the disclosure, one party contested this methodology and claimed that the Commission should not have used the SG&A costs and profits from Chile in

constructing the normal value for the Faeroes as the Chilean market is not comparable to the Faeroese market, neither in terms of size nor in development. It further claimed that a profit margin of 15 % should have been used as the Commission had considered this to be a proper level of profitability for the Community industry in the original investigation concerning Norway.

- (63) In addressing this argument, it should be noted that since there is no domestic market in the Faeroes Islands for the product concerned, the issue of comparability of a non-existing domestic market with another domestic market is irrelevant. Therefore, the Commission maintains that, due to the absence of a domestic market in the Faeroe Islands for the product concerned or for other similar products, the most appropriate method for determining normal values for this territory was to use the weighted average SG&A costs and profits incurred by the sampled Chilean exporting producers. As explained in recital 61, this was considered the most reasonable method due to the similar structure of the salmon industry in both territories. Regarding the claim for the level of profit used, it should be noted that the profit margin used in the original Norwegian investigation for calculating the injury margin (15 %) is not to be confused with the profit margin that should be used in constructing normal values for the dumping calculations in the current investigations. On the basis of the above the claims made by the party cannot justify an amendment to the methodology used by the Commission.

(b) **Export price**

- (64) It was established that the exports of Faeroese exporting producers were made directly to independent customers in the Community. As a consequence, and in accordance with Article 2(8) of the basic anti-dumping Regulation, the export price was established on the basis of export prices actually paid or payable.

(c) **Comparison**

- (65) The comparison between normal value and export price was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic anti-dumping Regulation.

- (66) For all investigated exporting producers allowances for differences in transport costs, ocean freight and insurance costs, credit costs, discounts and rebates have been granted where applicable and justified.

(d) Dumping margins

- (67) Dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. On the basis of this comparison, zero dumping margins were found in respect of all three companies forming the sample. Moreover, due the overall high cooperation level achieved from exporting producers in the Faeroe Islands it was considered appropriate to attribute a zero dumping margin to all other Faeroese exporting producers.

3. NORWAY

(a) General

- (68) In the original investigation the assessment of dumping was made at exporters' level because the farmers, at that time, sold all their output to Norwegian exporters and were generally unaware of the final destination of the product. As there has been no fundamental change in this situation since the original investigation, the same approach has been followed in the present investigation.
- (69) It should also be noted that, at the time of the original investigation, it was considered reasonable to select a representative sample of Norwegian farmers and to base the 'cost of acquisition', used in determining whether, for each exporter, domestic sales were profitable or not and for constructing normal value, on a weighted average of the domestic selling prices charged by the sampled farmers. The same approach has been followed in this investigation, for the reasons explained in recital 68.
- (70) Moreover, in the original investigation, the investigation of dumping was limited to two specific product types (namely fresh/chilled salmon gutted head-on of superior quality and fresh/chilled salmon gutted head-on of ordinary quality), which accounted for more than 72 % of the total exports to the Community by each of the six exporters which composed the sample. The same approach was followed in the present investigation, as these two product types were found to represent not less than 85 % of the total exports to the Community by each of the five exporters comprising the present sample.
- (71) In view of the fact that the present investigation envisaged the establishment of one single country-wide duty for Norway, a weighted average normal value and a

weighted average export price for Norway as a whole was calculated, on the basis of the information submitted by the companies included in the samples.

(b) Normal value

- (72) It was first examined whether the domestic sales of each exporter — in total and for each of the two product types considered — had been made in representative quantities or not. In this respect, it should be recalled that, in the original investigation, the quantities sold to other exporters, the final destination of which could not be determined by the seller, were disregarded. Moreover, given the specific characteristics of the Norwegian domestic market, a percentage of at least 4 % of the volume of exports of the product concerned to the Community (instead of the usual 5 %) was held as sufficient to consider domestic sales to be representative. As the situation has not fundamentally changed in this respect, both approaches have also been applied in the present investigation.
- (73) One party claimed that the Commission should not have used domestic sales representing less than 5 % of the exports to the Community, and hinted that sales to domestic customers could have been further redirected to the Community. In relation to the first claim, it is noted that the basic anti-dumping Regulation clearly provides for the possibility to use domestic sales when they represent a percentage lower than 5 %, if the prices charged are considered representative of the market concerned, in accordance with Article 2(2). Thus, as the circumstances between the original and the current investigation regarding the domestic consumption in Norway had not fundamentally changed this claim had to be rejected. As regards the second claim, the Commission checked the domestic nature of the sales taken into consideration and only used those which were made to final domestic customers.
- (74) It was found that, in the case of one exporter only, domestic sales — in total, and for each of the two product types considered — represented at least 4 % of the export sales to the Community. The other sampled exporters had either no domestic sales or domestic sales accounting for significantly less than the abovementioned percentage.
- (75) For the sole exporter for which domestic sales were found to be representative, it was then examined whether they could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic anti-dumping Regulation. In this respect, it was found that for both product types the proportion of domestic sales, by volume, sold above unit costs on the domestic market, during the IP was less than 80 % but more than 10 %.

(76) In view of the above, normal value, by product type, was calculated as the weighted average of domestic sales prices which were equal to or above unit costs only, of the product type in question.

(77) The unit cost used in determining whether the domestic sales were made in the ordinary course of trade was calculated by adding to the unit 'cost of acquisition' the unit SG&A costs incurred by the exporter in question for the domestic sales of the like product. The unit 'cost of acquisition', by product type, was obtained as the weighted average of the prices made by the companies included in the sample of farmers, when selling to independent domestic customers, and in the ordinary course of trade.

(78) As the remaining four exporters in the sample had no representative sales, normal value in their case was constructed on the basis of the 'cost of acquisition' as defined above plus a reasonable amount for SG&A costs and for profits, in accordance with Article 2(3) and (6)(c) of the basic anti-dumping Regulation. The amount for SG&A costs and the profit margin used were based on the respective amounts calculated for the sole exporter whose normal value was based on its domestic sales.

(79) One party claimed that to use the SG&A costs and profits of only one exporter was incorrect, and complained that such amounts had not been disclosed. In its opinion, the amounts used were lower in percentage than those applied in the original investigation. With regard to these claims, it is firstly noted that the party in question had not suggested any possible alternative, and that the use of the amounts observed during the investigation concerning Chile would have not given any more favourable result to that party. Moreover, there was no reason why the percentages observed during the original investigation should be applied as Article 11(9) refers to the application of the same methodology of the original investigation (when circumstances have not changed) and not to the application of the same factual data for the dumping calculations. This claim was therefore rejected. As for the disclosure of the amounts of SG&A costs and profits relating to only one exporter, these could not be disclosed for reasons of confidentiality.

(80) Finally, the normal values established as indicated above for each exporter in the sample, were weighted on the basis of the quantities sold to their respective customers in the Community, so as to arrive at an average normal value for Norway.

(c) Export price

(81) In those cases, where export sales had been made to independent customers in the Community, the export price was established, in accordance with Article 2(8) of the basic anti-dumping Regulation, on the basis of export prices actually paid or payable.

(82) In certain cases, the product was imported into the Community by a related company (transformer) in order to further process it, and sell it as smoked or marinated salmon. In these cases, reliable export prices would normally be obtained by deducting all costs incurred between importation and resale from the prices charged to the first independent customer, in accordance with Article 2(9) of the basic anti-dumping Regulation. However, it was found that the sales of all but one of these exporters to their related transformers were made at prices which were fully in line with the prices made by the sampled exporters to independent customers in the Community. In these cases, it was established that both the exporters and the related transformers were operating with reasonable profits and that the transformers did not appear to benefit from financial support of their related Norwegian exporters. It was, therefore, considered that the prices paid by these related transformers were reliable and could be used to establish the export price on the basis of prices actually paid or payable.

(83) For the sole exporter which was found to sell to its related transformers at prices which were not in line with the average prices made by the sampled exporters to independent customers in the Community, the export price was constructed in accordance with Article 2(9) of the basic anti-dumping Regulation.

(84) One party claimed that export prices should have been constructed for all the exporters. This claim was rejected because Article 2(9) of the basic anti-dumping Regulation is to be applied only when export prices are deemed to be unreliable, which was the case for one exporter only.

(85) Finally, the export prices established, as indicated above, for each exporter of the sample, were weighted on the basis of the quantities sold to the respective customers in the Community, so as to arrive at an average export price for Norway.

(d) Comparison

- (86) The average normal value and average export price obtained as indicated above were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic anti-dumping Regulation. Accordingly, in relation to the export price, allowances for differences in discounts, rebates, transport, insurance, handling, loading and ancillary costs, credit and after-sales costs as well as for the export tax applicable to exports of Norwegian salmon to the Community were granted, where applicable and supported by verified evidence. Similarly, in relation to the normal value, allowances for differences in transport, insurance, handling, loading and ancillary costs and credit costs were granted.
- (87) One party queried that the actual level of allowances granted had not been disclosed. However, the actual amounts could not be disclosed for reasons of confidentiality.

(e) Dumping margin

- (88) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic anti-dumping Regulation.
- (89) This comparison showed a zero country-wide dumping margin.
- (90) One party claimed that if the weighted average normal value had been compared with individual export transactions, as should have been done in its opinion, this would have shown the existence of dumping. For the sake of certainty, the Commission had also assessed the dumping margin of Norway by comparing the weighted average normal value with the prices of individual export transactions. The results of this exercise only showed a *de minimis* dumping margin for Norway, which meant that the weighted average normal value to weighted export price method reflected the full degree of dumping being practised. The claim was therefore rejected.
- (91) One party alleged that the calculations should have arrived at a positive determination of dumping by highlighting the fact that certain important Norwegian operators had reported losses during the IP. This party also claimed that the system of price undertakings was being circumvented by a large number of Norwegian exporters and that this was indicative of dumping. However, first of all it should be noted that the selective highlighting of the economic performance of individual companies does

not reflect the general situation of the Norwegian salmon industry seen as a whole. In fact the situation of the Norwegian salmon industry during the IP showed a mixed picture, which is commonly the case with most other industries, where certain companies report losses whilst others report profits. Moreover, as the reasons for companies reporting losses may vary (e.g. extraordinary restructuring costs, losses from investments in other products or countries), the fact alone that they were loss making during the IP does not necessarily imply that they were dumping the product concerned. With regard to the issue of the price undertakings, it is to be noted that this party did not bring any substantive evidence in support of its claim. Moreover, whilst it is acknowledged that certain undertakings were withdrawn following violations, the vast majority of such undertakings remained in place and no evidence was found in the investigation to suggest that the companies involved were not respecting them. Therefore, these claims were rejected.

(f) Likelihood of recurrence of dumping**(i) Production capacity**

- (92) All but one of the sampled Norwegian farmers were working at full capacity during the IP.
- (93) The production capacity of Norway depends on the granting of additional licences by the Norwegian government, and also on the feeding quota policies established by the authorities. The Norwegian parties have stated that any increase in the number of licenses granted and any expansion of the feed quota policy will be made according to sustainable market growth.
- (94) One party claimed that Norway would shortly increase its production capacity by over 10 %, following the issue of 90 additional production licenses by the Norwegian government in November 2002 and that this fact alone is sufficient to indicate the likelihood of further injurious dumping by Norwegian exports to the Community.
- (95) It was, however, considered that an increase in the number of production licenses alone would not necessarily lead to an increase in actual production, since the latter also depends on the level of feed quota. It was also considered that, because the length of the production cycle of the product concerned is of at least two years, any potential increase would only be felt on the Community market from the end of 2004 onwards. In the short term, therefore, such a potential increase of production capacity would not have any effect on the level of sales volumes including exports to the Community. In any event, an increase in production capacity does not imply of itself that any additional Norwegian exports would be directed to the Community at injurious prices. The claim was therefore rejected.

(ii) *Export sales to other countries (prices, volumes, dumping)*

- (96) The analysis of trends in prices and volumes to other countries was carried out both on the basis of statistical data and on the basis of data collected from the sampled companies.
- (97) The analysis on the basis of statistical data was made difficult by the fact that exports of salmon were recorded under statistical codes which do not distinguish between product types and by the fact that prices may vary significantly depending on the product type. The examination of exported quantities has shown that (between the period before the imposition of measures and the IP) exports of the product concerned from Norway to 'emerging markets', such as Russia and Poland increased very significantly. Exports to other more 'traditional markets', such as Japan, Hong Kong and Taiwan, increased in a way more comparable to exports to the Community, which is also considered a traditional market. It should therefore be expected that most of the additional exports deriving from any increased capacity would be directed towards 'emerging markets', which are in constant expansion, rather than to 'traditional' markets such as the Community, which have already reached a certain degree of stability.
- (98) Over the same period, prices have remained substantially stable in respect of the 'traditional markets', and prices of exports to non-EU countries overall were, on average, higher than those to the Community market. Prices to 'emerging markets' have somewhat decreased, as it could be expected from markets in strong expansion.
- (99) The examination of data received from the sampled companies has confirmed that exports of salmon from Norway to non-EU countries were made at prices higher, on average, than those to the Community.
- (100) In consideration of the fact that the Community has long been the major export market of salmon from Norway, it can be assumed that, should measures be repealed, the evolution in quantities exported and price behaviour would be similar to that in the case of other 'traditional markets' rather than in the case of markets such as Poland and Russia. Accordingly, should measures be repealed, prices are likely to remain stable and quantities to increase only to the same degree as they have been doing during the period following the imposition of the measures. It should also be noted that exports to the other traditional markets Japan, Hong Kong and Taiwan appear to have been made at non-dumped prices during the IP.
- (101) Subsequent to the disclosure, a number of parties claimed that the analysis carried out on the likelihood of recurrence of dumping was based on optimistic assump-

tions which could well not take place. Notably it was claimed that Poland and Russia were not genuine markets of final destination, but only markets of 'convenience' from which the salmon would be transhipped to the Community. However, the examination of trade statistics showed only insignificant shipments of the product concerned from these countries to the Community. Moreover, the parties in question have never submitted any evidence to support their allegations in this respect. Accordingly, this claim had to be rejected.

(iii) *Conclusions*

- (102) In the light of the market situation as explained above, it is considered unlikely, at least in the short run, that important quantities would flow into the Community should measures be repealed. Although it cannot be excluded that the situation could start changing from late 2004, due to the newly granted production licenses, it is considered that most of any increase in Norwegian exports would be directed towards expanding 'emerging markets' rather than to the Community. As the investigation has shown that exports of the product concerned to traditional markets, among which the Community, were made at a non-dumped level during the IP, prices can reasonably be expected to remain stable and at a non-dumped level, even in the case of increased Norwegian production, as indicated in recital 100.
- (103) It is therefore concluded that, should measures in respect of Norway be repealed, it would be unlikely that exports of the product concerned to the Community at dumped prices would recur.

E. SUBSIDIES**1. PRELIMINARY REMARKS**

- (104) It was established in the original investigation that the Government of Norway granted a number of subsidies which were found countervailable in accordance with Article 3 of the basic anti-subsidy Regulation. The programmes found to be countervailable in the original investigation were investigated in the framework of this review. In addition, it was investigated whether any other subsidy schemes conferred a benefit to producers/exporters of the product concerned.
- (105) In this respect, the Commission investigated whether Government institutions, including any public or private entity under the control of the Government of Norway, provided any financial contribution, as defined in Article 2(1) of the basic anti-subsidy Regulation, to salmon growers in Norway. It was further investigated whether the financial contributions found to exist conferred a benefit to their recipients.

(106) As in the original investigation, although a limited number of representative companies was investigated in agreement with the Norwegian authorities, it was considered appropriate to establish a single country-wide subsidy amount.

(107) The investigation also examined whether the expiry of the measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidisation.

2. AGREEMENT ON THE EUROPEAN ECONOMIC AREA (EEA AGREEMENT)

(108) The Norwegian Government repeated its argument, made in the original investigation, that the application of countervailing measures in the field of fisheries should only be considered and assessed in relation to the obligations under Protocol 9 to the EEA Agreement and in relation to the Joint Declarations on the Agreed Interpretation of Article 4(1) and (2) of the Protocol.

(109) The Norwegian Government made reference to Article 4(1) of Protocol 9 which stipulates that aid granted through State resources to the fisheries sector which distorts competition shall be abolished. In addition, reference was made to the Joint Declaration which states the following: 'While the EFTA States will not take over the "acquis communautaire" concerning the fishery policy, it is understood that, where reference is made to aid granted through State resources, any distortion on competition is to be assessed by the Contracting Parties in the context of Articles 92 and 93 of the EEC Treaty and in relation to relevant provisions of the "acquis communautaire" concerning the fishery policy and the content of the Joint Declaration regarding Article 61(3)(c) of the Agreement'. In other words, the Norwegian Government argues that the assessment of a possible distortion of competition should be based on a comparison between the aid granted by the EFTA/EEA States concerned and the aid granted by the Community, and in case where any distortion of competition is established the state aid shall be abolished.

(110) As in the original investigation, it should be recalled that Article 26 of the EEA Agreement prohibits the use of countervailing measures, unless specified in the Agreement. In this respect, Article 20 of the EEA Agreement explicitly states that provisions and arrangements that apply to fish are set out in Protocol 9. Article 4(3) of Protocol 9 expressly permits the use of countervailing measures in order to remedy the injurious effects of subsidies in the fisheries sector. Protocol 13 to this Agreement limits the use of countervailing measures to areas where the Community *acquis* is not fully integrated. This is the case as regards the fisheries sector.

3. PROGRAMMES FOUND TO BE COUNTERVAILABLE IN THE ORIGINAL INVESTIGATION

(a) Differentiated social security contributions

(111) In Norway, employers' social security contributions vary according to the zone of residence of the employee. As in the original investigation, the prevailing system consists of five geographical zones with differentiated rates. The rates vary from 14,1 % in zone 1 to 0 % of the employee's gross wage for employees resident in zone 5:

Zone 1	14,1 %
Zone 2	10,6 %
Zone 3	6,4 %
Zone 4	5,1 %
Zone 5	0 %

(112) According to the Government of Norway the zones were revised in 1999, but only minor adjustments took place. Some sectors have been taken out of the system of differentiated social security contributions, for example mining and telecommunications. These sectors have to pay 14,1 % irrespective of the location of their employees. The different rates have not changed since the original investigation.

(113) The differentiated employers' social security contribution constitutes a subsidy as defined in Article 2 of the basic anti-subsidy Regulation. The conclusions on this scheme are the same as in the original investigation.

(114) The reduction in or exemption from employers' social security contributions constitutes a financial contribution by the Government of Norway. The system constitutes Government revenue that is foregone or not collected. In exempting or reducing the employers' social security contributions, in all zones except zone 1, the Government revenue is reduced. Therefore, the scheme falls within the definition of a financial contribution in accordance with Article 2(1)(a)(ii) of the basic anti-subsidy Regulation.

(115) The scheme clearly confers a benefit to the employers in accordance with Article 2(2) of the basic anti-subsidy Regulation. In employing employees who are resident in zones 2 to 5, employers obtain a benefit compared to the situation that would exist if all employees were resident in zone 1 and were subject to the basic rate of 14,1 %. The scheme confers a *de facto* benefit to employers on the basis of their location, since most employees live in the same zone as the employer. The benefit to employers employing employees in zones 2 to 5 is the difference between the actual amount of social security contributions paid and the amount of such contributions that would have been paid if the basic rate of 14,1 % had been applied. The amount of subsidy should therefore, as in the original investigation, be measured by reference to the above basic rate of contribution.

- (116) Employers located in zones 2 to 5 pay less than the basic rate in zone 1, and therefore the benefit conferred is limited to firms located in those zones only. Hence, this subsidy is specific within the meaning of Article 3(2)(a) of the basic anti-subsidy Regulation.
- (117) As in the original investigation, the Government of Norway was not able to provide global figures for social security contributions by the salmon farming industry. Therefore the basis for the calculation of the benefit was the social security contributions of the investigated growers located in various zones. The subsidy was calculated by comparing the actual payment of social security contributions with the amount, which would have been paid if the basic rate of 14,1 % had been applied.
- (118) The difference thus obtained was considered to be the benefit to the salmon growers. The total subsidy, when expressed as a percentage of the turnover of the investigated growers (including zone 1), amounts to 0,84 %.

(b) The Norwegian Industrial and Regional Development Fund (SND)

- (119) The SND was established by Act No 97 of 3 July 1992 and started to operate on 1 January 1993. The SND is owned by the Ministry of Trade and Industry and is responsible for carrying out public policy. The objective of the SND is to promote profitable business and economic development all over Norway, by contributing towards development, modernisation and re-structuring of — and product development and new establishments in — Norwegian trade and industry, and promote activities that will provide stable and profitable employment and opportunities in areas with particular employment problems or traditionally weak economic basis.
- (120) SND provides incentives to firms in the form of grants, loans and loan guarantees.
- (i) *Grants*
- (121) The grants programmes available to salmon growers, are funded over the budgets of the Ministry of Trade and Industry and the Ministry of Local Government and Regional Developments. The programmes funded by these Ministries have been in function since 1996. Two new programmes funded by the Ministry of Fishery, NUMARIO and Grant for Developing the Marine Sector, were introduced respectively in 1997 and 2001. However, they have not been used by the salmon fish farming sector and, therefore, were not considered further.
- (122) The following programmes have been available to salmon growers:
1. Development grants.

2. Regional development grants.

- (123) Programme 2 is limited to assist certain areas while programme 1 has no geographical limitations, but is mainly operative in areas outside the assisted areas. Both programmes have been in operation since the original IP, and only some minor changes have taken place.
- (124) The SND operates several other grant programmes. However, these have not been used by the salmon fish farming sector.
- (125) It was established that the total amount of grants provided to salmon growers have decreased since the original IP.

Existence of a subsidy

- (126) The grant scheme provides a financial contribution since there is a direct transfer of funds from the Government to the beneficiaries within the meaning of Article 2(1)(a)(i) of the basic anti-subsidy Regulation. The scheme confers a benefit to salmon producers, since investment costs are reduced by the amount of the grant. The SND grants therefore constitute subsidies.

Specificity

- (127) As regards SND grants, specificity was established twofold in the original investigation:
- regional specificity and,
 - lack of objective criteria and of automatic eligibility for non-regional schemes.
- (128) With regard to the grants which are available nationwide (programme 1), no grants have been given to the salmon farming sector during the IP. Therefore the question of specificity does not arise.
- (129) With regard to programme 2, access to the subsidy is limited to enterprises, albeit not exclusively salmon producers, in certain regions and specificity therefore exists in accordance with Article 3(2)(a) and (3) of the basic anti-subsidy Regulation.

Calculation of the benefit

- (130) Although SND grants were in general used for the acquisition of fixed assets, they are recurring subsidies obtained by the beneficiaries on a regular basis. In addition, they were not granted in large, concentrated amounts, as was the case in the original IP, and the amounts of grants were relatively small. Therefore, the value of the grants can be expensed in the IP.

(131) The benefit of the grants in the IP, expressed as a percentage of the total sales value of Norwegian salmon growers, is 0,26 %. However, as further discussed in recital 153, it could not be established with certainty whether the whole amount of this subsidy was actually conferring a benefit on salmon production.

(ii) *Loans*

(132) In the original investigation the SND loan programme was found countervailable. There was a financial contribution from the Government and a benefit was conferred by providing loans at an interest rate lower than the interest rates available for similar loans in the commercial market. In addition, the SND incurred heavy losses on loans to the fish farming sector.

(133) In order to establish whether a benefit still exists for the investigated growers, the interest rate of the SND loans which was actually paid during the IP was compared with the normal commercial interest rate. The comparable commercial loan is a loan of a similar amount with a similar repayment period obtainable by the recipient from a representative private bank operating in the domestic market. The analysis revealed that the SND loan programme, including its rates, was comparable to that of the private market. Consequently, there is no benefit for the investigated growers.

(134) As to the losses incurred by the SND on loans due to non-repayments, it was found that the amount of losses was small. Moreover, the interest rate charged included a risk element for loans other than low risk loans.

(135) Consequently, no subsidy was found to be conferred under the loan programme.

(iii) *Loan guarantees*

(136) In the original investigation the SND loan guarantee programme constituted a subsidy. It should be recalled that there was a financial contribution from the SND and a benefit for the salmon growers whose loan was guaranteed to the extent that the guarantee was not made on a commercial basis.

(137) The overall losses incurred by the SND on this programme were very small since the original IP, and even nil for the entire fish farming sector (including salmon) during the IP. Moreover, it could not be established that the fees were set at a level which would not cover the amount of defaulted loans.

(138) In these circumstances, no subsidy is now conferred under this programme.

(c) **Transport subsidies**

(139) In the original investigation, the transport aid scheme was found specific and therefore countervailable. However, the subsidy found for this scheme was only 0,01 %.

(140) In the present review, it was found that only 4 out of 19 counties operated a transport aid scheme, and that the total grants to companies transporting, among other fish products, salmon, was around NOK 600 000 compared to NOK 1 420 000 in the previous investigation.

(141) The benefit of the grant was calculated as a percentage of the total sales value of salmon in the IP and the amount of subsidy was found to be negligible. Therefore, this scheme was not considered further in the context of this review.

(d) **Regional Commission for northern Norway and North Trøndelag**

(142) The investigation revealed that no new grants have been allocated to the salmon sector after 1998. Therefore, this scheme was not considered further in the context of this review.

(e) **FOS/Rødfisk**

(143) In November 1991, Rødfisk, a consortium of banks set up to conduct the liquidation of FOS, the former export monopoly organisation for salmon in Norway, received a NOK 400 million loan from the Government; this was subsequently written off and therefore became a grant. The original investigation established that the benefit of the written-off loan was passed on to salmon growers in order to settle their claims against FOS. The grant was found to be countervailable, and the benefit was allocated over a period of time reflecting the normal depreciation period for fixed assets in the industry concerned. This period ended in 1998 and therefore no subsidy is now conferred.

(144) In addition, it was established that no aid programmes as FOS/Rødfisk involving benefits for the salmon growers have been granted after the original investigation. Therefore, this scheme was not considered further in the context of this review.

4. OTHER PROGRAMMES

(145) Programmes under the Research Council of Norway (RCN) were investigated. The objective of the RCN is to support Research and Development (R&D) in various sectors in Norway. The purpose of the support scheme is to develop new knowledge through R&D. Eligible receivers of support are universities, research institutes and companies. The grants are open for proposals from all participants and are not limited to certain regions in Norway. It was established that some salmon growers received R&D support under this programme.

(146) The Government of Norway made a claim for green-light treatment for aid to companies, i.e. R&D support to user-controlled projects to producers of the product concerned, on the basis that it is granted in accordance with the criteria set out in Article 4(2) of the basic anti-subsidy Regulation. However, the support for R&D was considered not to be specific, since the programme is generally available to all sectors of the economy.

(147) Consequently, it has been concluded that R&D aid from the RCN cannot be subject to countervailing measures, since it is not specific; hence it is not considered necessary to assess the claim for green-light treatment.

(148) No other programmes were found to be countervailable. Finally, it was established that no other institutions granted financial supports which constitute a subsidy within the meaning of the basic anti-subsidy Regulation.

5. CONCLUSION ON SUBSIDIES

(149) The following schemes were found to be countervailable in accordance with the provisions of the basic anti-subsidy Regulation, with amount of subsidy, expressed *ad valorem*, as follows:

— Differentiated social security contributions	0,84 %
— Regional Development Fund (SND) — Grants	0,26 %

The total *ad valorem* amount of subsidy is 1,1 %, thus a mere 0,1 % above *de minimis*. In this context, it has also to be borne in mind that this 1,1 % *ad valorem* is only arrived at assuming that all the subsidies established for the SND grants are to the exclusive benefit of salmon production, which is, as further explained in recital 153, almost certainly not an accurate reflection of the real situation.

6. CONTINUATION OR RECURRENCE OF SUBSIDISATION

(150) In accordance with the provisions of Article 18 of the basic anti-subsidy Regulation, the Commission investigated whether the expiry of the measures would be likely to lead to a continuation or recurrence of subsidisation. This provision requires a prospective assessment of the rate of subsidisation likely to prevail in the reasonably foreseeable future, taking account of the findings for IP.

(151) It was established that the total amount of governmental support to salmon growers in Norway has decreased significantly since the original investigation. In the original investigation the total *ad valorem* amount of subsidy was 3,8 %. Several programmes found to be countervailable in the original investigation are either no longer applicable (grants under FOS/Rødfisk referred to above) or no benefit to salmon growers could be established (transport subsidies and loans/loan guarantees under the SND). Furthermore, it was established that the

Government of Norway did not introduce any new programmes which conferred a benefit to salmon growers.

(152) Only two programmes found to be countervailable in the original investigation and in the course of this review continued to confer benefits. In this context, however, the following two observations have to be borne in mind:

(153) Firstly, as far as the level of subsidisation found for differentiated social security contributions (0,84 % of benefit established to salmon growers), which is a general regional programme not particularly destined for salmon growers, has slightly decreased since the original investigation. Secondly, as regards the grants provided to salmon growers from the SND, it was confirmed that the level has also decreased from 0,48 % to 0,26 % since the original investigation. In respect of the SND, it should be pointed out that the level of grants found is almost certainly inflated, since the Government of Norway was only able to provide total amounts of support to companies involved in, amongst other activities, the production or sales of salmon. In the absence of more precise figures, these amounts were taken as the basis for the present investigation irrespective of whether the grants *de facto* benefited salmon production in particular. However, the verification visits at the premises of the investigated growers confirmed that most of the grants were in fact used for capital investments not related to salmon; e.g. warehousing for other species and packing stations not solely used for salmon. It was not possible to quantify the level of investments for products other than salmon. In any event, it is clear that a number of the grants reported do in all likelihood not directly relate to the product concerned. Therefore, even if it were assumed that all grants were related to the product concerned, the resulting subsidy found for this scheme, i.e. 0,26 % is the absolute maximum conceivable. However, bearing in mind that in reality the actual figure benefiting salmon is lower, the overall actual level of subsidisation will be below *de minimis* level.

(154) The amount of subsidy for the SND scheme is based on the amounts actually paid out to the salmon farming sector during the IP. However, the sum of the grants committed by the Government of Norway to salmon growers during the IP was significantly lower than the amount paid which led to the 0,26 % figure referred to above. Using the total amounts of grants committed to (as opposed to paid to) salmon growers during the IP, will bring the overall level of subsidisation below *de minimis*. For this reason and given that there is no indication to believe that the subsidy amount will increase, it is unlikely that there will be a continuation or recurrence of subsidisation at a level above *de minimis*. Moreover, official figures on amounts committed to and amounts paid to salmon growers in 2002 confirm that the level of subsidisation is *de minimis*.

- (155) In conclusion, it is unlikely that there will be a continuation or recurrence of subsidisation, since the current level of subsidy is very close to *de minimis*, and the rate of subsidisation likely to prevail in the reasonably foreseeable future will be below *de minimis*. The anti-subsidy proceeding should therefore be terminated.

F. COMMUNITY INDUSTRY

- (156) According to Article 11(9) of the basic anti-dumping Regulation and Article 22(4) of the basic anti-subsidy Regulation, review investigations should normally follow the same methodology as that used in the investigation which led to the duty. However, in view of certain changes in the ownership structure of the Community salmon farming industry in recent years and other factors, it is noted that the companies considered to constitute the Community industry for the purposes of the present investigations within the meaning of Article 4 of the basic anti-dumping Regulation and Article 9 of the basic anti-subsidy Regulation are not necessarily the same as those considered in the previous investigation concerning Norway which led to the imposition of the measures currently under review.
- (157) It is also noted that it was decided to exclude from the determination of the Community industry any producer related to exporters in Norway, Chile and the Faeroe Islands in accordance with Article 4(2) and Article 9(2) of the basic anti-dumping and anti-subsidy Regulations respectively. Two producers located in the Community expressed their disappointment at this interpretation. They noted that although they formed part of a multinational group which had salmon farming activities in Norway, Chile and other third countries, the ultimate parent company of the group was a Dutch based publicly quoted company. Consequently, they considered that they should be taken into account as part of the Community industry. However, for the reasons noted in the aforementioned Articles, this claim could not be accepted.
- (158) In the light of the above, it was determined that the companies which were not related to exporters in the countries under investigation represented a major proportion (over 80 %) of the Community production of farmed Atlantic salmon and therefore constituted the 'Community industry' within the meaning of Article 4(1) and Article 5(4) of the basic anti-dumping Regulation and Article 9(1) and Article 10(8) of the basic anti-subsidy Regulation.

G. INJURY

1. PRELIMINARY REMARKS

- (159) In view of the large number of producers of farmed Atlantic salmon in the Community, the application of sampling techniques was foreseen in the notice of initia-

tion for the assessment of injury in the review investigation. The selection of the sample of Community producers was based on the largest representative volume of production and sales that could be reasonably investigated within the time available, in accordance with Article 17 of the basic anti-dumping Regulation and Article 27 of the basic anti-subsidy Regulation. All Community producers of farmed Atlantic salmon were therefore requested in the notice of initiation to provide certain information concerning their activities during the period 1 July to 31 December 2001.

- (160) On the basis of the information provided to the Commission, the 17 companies listed below were initially selected for the sample:
- Gaelic Seafoods (Ireland) Ltd, Co. Galway, Ireland,
 - Johnson Seawell Ltd, Johnson Seafarms Ltd, Shetland, United Kingdom,
 - Orkney Sea Farms Ltd, Glasgow, United Kingdom,
 - Muirachmhainní Teo, Co. Galway, Ireland,
 - Ardvar Salmon Ltd, Saffron Walden, United Kingdom,
 - Hoganess Salmon Ltd, Wester Sound Salmon Ltd, Shetland, United Kingdom,
 - Cro Lax Ltd, Shetland, United Kingdom,
 - Bressay Salmon Ltd, Shetland, United Kingdom,
 - West Minch Salmon Ltd, Atlantic West Salmon Ltd, Sidinish Salmon Ltd, South Uist, United Kingdom,
 - Loch Duart Ltd, Edinburgh, United Kingdom,
 - Hoove Salmon Ltd, Shetland, United Kingdom,
 - North Atlantic Salmon Ltd, Shetland, United Kingdom,
 - Ayre Salmon Ltd, Shetland, United Kingdom.

- (161) All interested parties to the review concerning imports from Norway were informed of the sample chosen and given an opportunity to make comments. Gaelic Seafoods (Ireland) Ltd ceased trading on 21 March 2002 because of financial difficulties and took no further part in the review. Johnson Seawell Ltd and Johnson Seafarms Ltd subsequently withdrew their cooperation and also took no further part in the proceeding. It was subsequently established that Muirachmhainní Teoranta had entered into a joint venture arrangement with a company related to exporters in Norway and therefore could not be considered to be part of the Community industry. Consequently, the injury indicators discussed below have been established on the basis of the verified information provided by the remaining companies listed above in recital 160.

- (162) In view of the fact that the period considered for the assessment of injury in the investigation concerning Chile and the Faeroe Islands is the same as that used in the review investigation, interested parties to the new investigation were informed of the intention to make use of the same sample of independent Community producers, subject to the developments noted in the preceding recital. Interested parties were given the opportunity to comment on this proposed course of action. It is recalled that in accordance with Article 19(6) and Article 29(6) of the basic anti-dumping and anti-subsidy Regulations respectively, information received pursuant to either Regulation may only be used for the purposes for which it was requested. As a result, the Commission approached those sampled producers which had cooperated in the review for their written permission to use information submitted in the framework of the review to be taken into account for the purposes of the new investigation. All parties concerned gave their consent with the result that the sample established for the investigation concerning Chile and the Faeroe Islands is the same as that in the review.

2. COMMUNITY CONSUMPTION

- (163) Large scale farming of Atlantic salmon in the Community is confined to the United Kingdom (Scotland) and Ireland. Therefore, apparent consumption in the Community of farmed Atlantic salmon was established on the basis of the production figures for producers located in those two countries obtained from the Fisheries Research Services of the Scottish Executive and the Irish Sea Fisheries Board and, as far as imports and exports are concerned, on data derived from Eurostat. As was the case in the original investigations concerning Norway, certain adjustments were made to convert net weights as reported by Eurostat to round weights or 'whole fish equivalents' as it is common for comparisons in the industry to be made on this basis. Therefore the import figures for fresh, chilled and frozen salmon excluding fillets and for fresh, chilled and frozen salmon fillets were divided respectively by the conversion factors of 0,90 and 0,65. It should be noted that CN codes 0302 12 00, 0304 10 13 and 0304 20 13 may also cover other types of fish not included in the scope of this review, such as Pacific salmon and Danube salmon. However, given the origins reported, such quantities can be considered to be negligible.
- (164) On the above basis, Community consumption of farmed Atlantic salmon in the IP reached a level of almost 500 000 tonnes. This figure was almost 25 % higher than that recorded at the start of the analysis period.

Consumption	1998	1999	2000	2001 (IP)
Tonnes	396 829	457 569	470 705	487 307
Index	100	115	119	123

3. CUMULATIVE ASSESSMENT OF THE EFFECTS OF THE IMPORTS CONCERNED

- (165) The question of cumulation did not arise in this case since imports from the Faeroe Islands and Norway were not dumped and, in the case of Norway, there was no likelihood of a recurrence of dumping or subsidisation. Therefore, the term 'imports concerned' is taken to refer to imports originating in Chile only.

4. VOLUME OF THE IMPORTS CONCERNED AND MARKET SHARE

- (166) The volume of imports originating in Chile derived from Eurostat data using the methodology described in recital 163 increased from approximately 9 000 tonnes in 1998 to over 26 000 tonnes in the IP. Over the same period, the imports concerned increased their share of the Community market from 2,4 % in 1998 to 5,4 % in the IP.

	1998	1999	2000	2001 (IP)
Tonnes	9 336	8 173	12 323	26 360
Index	100	88	132	282
Market share	2,4 %	1,8 %	2,6 %	5,4 %

5. PRICES OF THE IMPORTS CONCERNED

(a) Evolution of prices

- (167) Price information for the imports concerned was derived from Eurostat data based on the import volumes established using the methodology detailed above in recital 163. This information showed that the average price of the imports concerned increased from EUR 3 per kilogram in 1998 to EUR 3,75 per kilogram in 2000 before declining in the IP to EUR 2,93 per kilogram.

	1998	1999	2000	2001 (IP)
Price per kg	3,00	3,14	3,75	2,93
Index	100	105	125	98

(b) Price undercutting

- (168) For the purposes of calculating the level of price undercutting in the IP, the prices of the sampled Community industry producers were compared to the prices of the imports from Chile. The prices of the sampled Community industry producers were taken at an ex-works (post processing) level and at levels of trade considered to be comparable to those of the imports concerned. For those sampled Community industry producers selling their fish 'in the bin' (i.e. at the farm gate without any processing) an upward adjustment of 29 pence (47 cent) per kilogram was made to reflect processing and packing costs. This adjustment was made on the basis of the costs incurred by other producers in the sample for these activities.
- (169) The investigation demonstrated that imports from Chile in the IP consisted almost entirely of frozen fillets. As this presentation of salmon was not produced and sold by the sampled Community industry producers, an adjustment was made to reflect differences between this presentation and the fresh fillets produced and sold by the sampled Community industry producers. It should be noted that all presentations of fillet accounted for only 1 % of the sales of the sampled Community industry producers by volume in the IP.
- (170) According to the complainant, fresh salmon should command a premium of some 10 % over frozen salmon. However, information collected in the investigations from both Norwegian and Faeroese cooperating exporters selling both fresh and frozen salmon of the same presentation, indicated frozen salmon to be systematically more expensive than its equivalent fresh salmon presentation. Therefore, a weighted average premium for frozen salmon was calculated on the basis of the figures collected from the Norwegian and Faeroese cooperating exporters and applied to the prices of the Chilean imports on a Community frontier customs duty paid basis. The result of the comparison showed the level of price undercutting to range between 20 % and 30 %.

6. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

(a) **Preliminary remarks***The application of sampling techniques*

- (171) In view of the time limits established by Article 5(9) and Article 11(5) of the basic anti-dumping Regulation with regard to the conduct of investigations and the large number of producers of farmed Atlantic salmon in the Community, sampling techniques were applied for the assessment of the economic situation of the Community industry. Consequently, the injury indicators presented below have been established on the basis of information obtained from a representative sample of Community industry producers as described in recital 160. At the same time, information concerning the sales on the Community market of cooperating Community industry producers not included in the sample was obtained in order to calculate the overall sales and market share of the Community industry.
- (172) It should be noted that one of the sampled companies, namely Loch Duart Ltd, began operations in 1999 when it purchased certain salmon farming operations from another company. Although the latter is not included in the sample, it is not considered that this has a material effect on the trends observed during the analysis period.

(b) **Production, production capacity and capacity utilisation**

- (173) The sampled Community industry producers increased their production during the analysis period from approximately 7 000 tonnes in 1998 to more than 15 000 tonnes in the IP. With regard to production capacity, it is recalled that in the original investigations which led to the current measures, figures for capacity were based on environmental consents issued by the Scottish Environment Protection Agency (SEPA). SEPA is a public body responsible for environmental protection in Scotland. It regulates salmon farming in Scotland by the granting of consents or licences for the discharge of waste to tidal waters. These consents normally set limits for cage sizes and biomass levels (the weight of live fish) per site at any one time. As fish from a particular cage can be harvested over an extended period of time, it could be argued that the total production of that cage may be greater than the biomass limit without the latter ever being exceeded. However, as no other reasonable basis for capacity could be found which could be applied across the sample and as there were no changes in circumstances in this regard, SEPA consents were again taken in accordance with Article 11(9) of the basic anti-dumping Regulation as the basis for calculating capacity in the present investigations. However, it is to be noted that in correspondence, SEPA confirmed that it was unable to provide information in precise tonnage terms for certain sites as this was either not available centrally or the consent was expressed in terms of cage numbers rather than fish biomass. These limitations should be borne in mind when considering the information presented below regarding capacity and capacity utilisation.

	1998	1999	2000	2001 (IP)
Production (tonnes)	7 067	8 962	11 645	15 251
Index	100	127	165	216
Production capacity (tonnes)	7 231	8 199	13 025	29 632
Index	100	113	180	410
Capacity utilisation	98 %	109 %	89 %	51 %

(c) **Stocks**

- (174) It is noted that farmed Atlantic salmon is a perishable product, which unless frozen, has a shelf life of less than two weeks. As the sampled Community industry producers do not keep stocks of fresh salmon after harvest and do not freeze their production, stock levels are not considered to be a meaningful indicator of injury in these investigations.

(d) Sales volume, market share and growth

- (175) The volume of the Community industry's sales on the Community market increased during the analysis period from approximately 10 500 tonnes in 1998 to more than 21 000 tonnes in the IP. Over the same period it progressively increased its share of the Community market from 2,7 % in 1998 to 4,3 % in the IP. This rate of increase was in excess of the growth in apparent Community consumption recorded over the same period. The volume of the sampled Community industry producers' sales on the Community market increased during the analysis period from approximately 6 000 tonnes in 1998 to more than 15 000 tonnes in the IP. The sampled Community industry producers' share of the Community market grew from 1,6 % in 1998 to 3,1 % in the IP.

	1998	1999	2000	2001 (IP)
Community industry sales (tonnes)	10 686	13 543	16 263	21 129
Of which sampled Community industry producers	6 245	8 372	10 911	15 143
Index	100	134	175	242
Community industry market share	2,7 %	3,0 %	3,5 %	4,3 %
Sampled Community industry producers	1,6 %	1,8 %	2,3 %	3,1 %

(e) Sales prices and costs

- (176) The sampled Community industry producers' average sales price increased from a figure of EUR 3,31 per kilogram in 1998 to reach a peak of EUR 3,93 in 2000. A dramatic fall in price was then observed in the IP as the average price fell back to EUR 3,13 per kilogram. Over the same period, the sampled Community industry producers were able to reduce their average cost of production by some 10 % to a figure of EUR 3,11 per kilogram.

	1998	1999	2000	2001 (IP)
Sales price (EUR per kilogram)	3,31	3,27	3,93	3,13
Index	100	99	119	95
Cost of production (EUR per kilogram)	3,47	3,14	3,53	3,11
Index	100	90	102	90

(f) Profitability

- (177) Following the imposition of measures in 1997, the sampled Community industry producers' return on net sales in the Community market, before taxes, improved to reach a level of over 10 % in 2000. However, in spite of their continued efforts to improve efficiency, the sampled Community industry producers taken as a whole suffered a marked deterioration in profitability in the IP due to the low prices prevailing on the market. It is to be noted that the sampled Community industry producers never achieved the minimum profit level of 15 % during the analysis period that was considered necessary at the time of the original investigations. It is recalled that the profit margin in the original investigations was established at this level in order to take into account the high risk nature of the industry, subject as it is to uncertain factors such as the weather, disease and escapes. It cannot be excluded that the combination of factors such as these and the restructuring and consolidation seen in the industry during recent years may in part explain the sharp movements in profitability shown below. However, in the absence of conclusive evidence to suggest that circumstances in the intervening period had changed and considering the submissions of producer associations in the Community in support of this level, the profit margin of 15 % was again used in accordance with Article 11(9) of the basic-anti dumping Regulation.

	1998	1999	2000	2001 (IP)
Profitability	- 5,1 %	3,9 %	10,2 %	0,6 %

(g) Investments and return on investments

- (178) The level of investments made by sampled Community industry producers increased during the analysis period from approximately EUR 2,5 million in 1998 to more than EUR 4,5 million in the IP. Apart from the replacement of existing assets and the acquisition of additional equipment to handle increased levels of production, the most significant items of expenditure related to the purchase of automated feed barges. These vessels are designed to supply feed on a controlled basis to salmon in cages at sea and require fewer people to oversee the feeding of the fish.
- (179) The sampled Community industry producers' return on investment, which expresses their pre-tax result as a percentage of the average opening and closing net book value of assets employed in salmon farming, was negative in 1998 reflecting their loss making situation. The return on investment was positive in the other years considered as the sampled Community industry producers were profitable.

	1998	1999	2000	2001 (IP)
Investments (EUR '000)	2 448	2 207	3 312	4 659
Index	100	282	423	595
Return on investment	- 18,3 %	16,1 %	51,4 %	2,1 %

(h) Cash flow and ability to raise capital

- (180) The sampled Community industry producers recorded a net cash inflow from operating activities during the analysis period. However, when expressed as a percentage of turnover, the net cash inflow showed a marked decline in percentage terms.
- (181) The sampled producers have experienced difficulties in raising capital from external sources such as banks and in certain cases have had to have recourse to shareholders for additional funds. Given the risks involved in the industry, traditional lenders have been reluctant to extend finance without substantial security being provided. Pressure from finance providers, coupled with short-term cash flow difficulties have meant that producers have not always been able to adhere to their optimum harvest schedules. Extended credit terms from feed producers are playing an increasingly important role in the operational financing of the industry. In some cases, feed companies are also providing funding for the purchase of feed barges. In all cases however, there are additional costs associated with such arrangements.

	1998	1999	2000	2001 (IP)
Cash flow (EUR '000)	783	1 233	2 022	403
Index	100	158	258	52
Cash flow expressed as percentage of turnover	3,8 %	4,5 %	4,7 %	0,9 %

(i) Employment, productivity and wages

- (182) The number of people employed by the sampled producers increased throughout the analysis period to reach a figure of 175 in the IP. This should be viewed in the context of the substantial increase in production that occurred over the same period as noted in recital 173. It is estimated that in the region of 250 people are employed by the Community industry as a whole.

- (183) As the rate at which employment grew was less than that at which production increased, the productivity of the sampled Community industry producers as measured by tonnes produced annually per employee increased from approximately 70 tonnes in 1998 to more than 85 tonnes in the IP.
- (184) The total wage bill of the sampled Community industry producers increased in absolute terms throughout the analysis period. The average wage level per employee also increased over the analysis period.

	1998	1999	2000	2001 (IP)
Number of employees	98	126	161	175
Index	100	129	164	179
Wages per employee (EUR '000)	27	27	31	32
Index	100	100	113	118

(j) Magnitude of dumping and recovery from past dumping and subsidisation

- (185) In view of the volume and the prices of the imports from Chile, the impact on the Community industry of the magnitude of the actual dumping margin cannot be considered to be negligible.
- (186) The economic situation of the sampled Community industry producers improved after the imposition of anti-dumping and countervailing measures against imports originating in Norway. They increased their production, sales and market share and returned to profitability in 1999. However, significant disturbances on the Community market in the IP reduced the returns of many producers and the economic situation of the sampled Community industry producers deteriorated. It is therefore considered that the sampled producers did not fully recover from past dumping and subsidisation and their economic situation continues to be weak.

7. CONCLUSION ON INJURY

- (187) In spite of the Community industry's continued efforts to improve its efficiency, as evidenced by its investment in new feeding technologies and improved productivity, it was not able to make the level of return deemed necessary for an industry of this nature in the analysis period. Although it was able to return to profits from 1999 onwards, it could not in that time build up sufficient reserves to allow it to withstand an extended period of adverse price developments such as that which occurred in the IP when imports from Chile were present on the Community market at dumped prices in large volumes. As a result of the disturbances on the Community market in the second half of the IP, a number of producers have been forced out of the market. In particular, it is noted that one of the companies initially selected for sampling, Gaelic Seafoods (Ireland) Ltd, went into administration, and two companies remaining in the sample, Hoganess Salmon Ltd and Wester Sound Salmon Ltd, were taken over by Norwegian interests after the IP. In view of their financial position, other companies have had to reconsider their production plans for future years with the result that fewer smolts were put to sea in the autumn of 2001.
- (188) It is noted that the Community industry was able to take advantage of the increase in consumption observed during the analysis period to increase its production, capacity and sales. This growth was accompanied by an increase in the level of employment and investments. However, in spite of the Community industry's efforts to improve its productivity, it was not able to counter the severe price depression in the IP. Its level of profitability declined dramatically as did its return on investment. It is therefore concluded that the Community industry has suffered material injury, characterised by price depression, falling profitability and insufficient returns on investments, within the meaning of Article 3 of the basic anti-dumping Regulation.

H. CAUSATION OF INJURY

1. INTRODUCTION

- (189) In accordance with Article 3(6) and (7) of the basic anti-dumping Regulation, it was examined whether the dumped imports originating in Chile have caused injury to the Community industry to a degree that enables it be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were examined to ensure that any possible injury caused by these other factors was not incorrectly attributed to the dumped imports.

2. EFFECT OF THE DUMPED IMPORTS

- (190) The volume of the dumped imports originating in Chile increased almost threefold in the analysis period. In absolute terms, they increased their share of the Community market during the same period from 2,4 % in 1998 to 5,4 % during the IP. Their rate of growth was most marked between 2000 and the IP when they more than doubled in volume. The dumped imports undercut the prices of the sampled Community industry producers by more than 20 %.
- (191) During the same period, the Community industry had to lower their prices on average by 5 %. Although profitability developed positively until 2000, it went then down to merely break even during the IP while the rate of return on investment was 2,1 %. However, there were also a significant number of positive developments: the Community industry was able to double its sales and expand its market share, invest in increased capacity and also reduce its cost of production by 10 %.
- (192) A more focused analysis of the developments in 2000 and the IP shows an even more complex and more ambiguous picture. The market share held by imports from Chile went from 2,6 % to 5,4 % and Chilean prices dropped from a fairly high level by 27 percentage points to slightly below their 1998 level. At the same time however, the Community industry's market share increased from 3,5 % to 4,3 %, its prices dropped by 24 percentage points, its profitability went from 10,2 % to 0,6 % and the rate of return on investment went from 51,4 % to 2,1 %.
- (193) It is recalled that imports from three Chilean companies were found not to have been dumped. If the analysis of a direct causal link were to be limited to the imports which had been found to be dumping the volume, market share and the prices of these imports on the basis of data from Eurostat and the sampling exercise would be as shown below. It should be noted that net weights have been converted to whole fish equivalents using a conversion factor of 0,65 and average prices per kg are also based on the whole fish basis and that the situation of the IP has been extrapolated for earlier years of the analysis period.

	1998	1999	2000	2001 (IP)
Volume (tonnes)	7 965	7 038	10 675	22 784
Market share	2,0 %	1,5 %	2,3 %	4,7 %
Unit price	2,98	3,09	3,66	2,62

- (194) It can be seen that the volume of these imports doubled between 2000 and the IP and that their market share also increased by the same factor. The prices of the imports were below those of the Community industry throughout the period. The level of undercutting in the IP for those sampled companies found to have been dumping exceeded 30 %. The increase in the volume of dumped imports during the IP and their significant level of price undercutting coincided with a deterioration in the situation of the Community industry in terms of its average sales price and profitability. However, in the light of certain positive developments in the situation of the Community industry as noted in recital 191 and other factors, including the limited competition between fresh and frozen salmon on the Community market, it could not be concluded with absolute certainty that the dumped imports, considered in isolation, were responsible for the material injury suffered by the Community industry.

- (195) Subsequent to the disclosure, one party argued that the Commission's understanding of the interaction between fresh and frozen salmon in the market was wrong. Although the investigation confirmed that imports of the product concerned originating in Chile were almost exclusively of frozen salmon whereas the Community industry only sold fresh salmon, this party claimed that many processors saw no difference between the two and would prefer to buy frozen salmon where its price was much lower than fresh salmon. It claimed that this was evidenced by the fact that Chilean imports had taken market share from both Norwegian and Scottish producers and would continue to do so.
- (196) In addressing these arguments, it should be recalled that it was established that there was limited competition between fresh and frozen salmon in the market during the IP. This competition was restricted to certain users which were able to use both types of salmon in their production. However, the market continued to demonstrate a marked preference for fresh salmon rather than frozen salmon. As regards the claim that Chilean imports have taken market share from both Norwegian and Scottish suppliers, it is acknowledged that Norwegian imports did lose some market share in the IP. However, the production of salmon by producers in Scotland reached record levels in the IP. During the same period, the market share of all producers in the Community and of the Community industry considered separately also increased. It was therefore evident that the party was mistaken in its claim regarding a decline in the market share of Scottish producers. In considering future developments in Chilean import volumes and market share, it should be recalled that it is normally not within the scope of an investigation according to Article 6(1) of the basic anti-dumping Regulation to consider events occurring after the IP. Therefore, the arguments of this party could not be accepted.

3. EFFECTS OF OTHER FACTORS

(a) Imports originating in other third countries

- (197) Norway is the most important player on the Community salmon market. Imports originating in Norway increased in volume terms from 1998 to 2000 before declining in the IP. As the imports grew at a slower rate between 1998 and 2000 than apparent Community consumption, their market share declined from approximately 64 % in 1998 to 60 % in 2000. In the IP, as Community consumption continued to increase whilst the volume of imports from Norway declined, their share of the Community market fell to approximately 53 %. On the basis of information obtained from Eurostat, the average price of imports from Norway remained stable in 1998 and 1999 at EUR 3,18 per kilogram before increasing in 2000 to reach EUR 3,71 per kilogram. In the IP, their average price declined to EUR 3,16 per kilogram and was close to the price level of the Community industry. Imports from Norway were found not to have undercut the prices of the Community industry.
- (198) Imports originating in the Faeroe Islands increased in volume between 1998 and 1999 before falling back in 2000. They then recorded a sharp increase in volume in the IP to reach a level of over 40 000 tonnes. It was also at this time that they gained their highest market share during the analysis period of just over 8 %. On the basis of information obtained from Eurostat, the average price of imports from the Faeroe Islands increased from EUR 3,21 per kilogram in 1998 to EUR 3,84 per kilogram in 2000. In the IP, their average price fell to below EUR 3 per kilogram. It should be recalled that imports originating in the Faeroe Islands were found not to have been dumped. However, they undercut the prices of the Community industry by some 10 %. It should finally be noted that the market share of imports from the Faeroe Islands (8,3 %) is well above that held by the Community industry and Chile (4,3 % and 5,4 % respectively).
- (199) Subsequent to the disclosure, one party questioned the way in which the Commission had considered the role played by imports from Norway and the Faeroe Islands in the assessment of injury to the Community industry. In particular, the party argued that the calculation on which the level of price undercutting for imports from Norway was based was incorrect in that the Community industry's prices did not include delivery costs to the first customer. The party also claimed that the Commission had not ascribed to imports from the Faeroe Islands the importance they deserved in assessing injury in view of their market share and level of price undercutting.

- (200) The argument concerning the calculation of price undercutting for imports from Norway had to be rejected for two reasons. Firstly, the comparison was made at similar levels of trade and for similar presentations of salmon. This was after an upward adjustment of EUR 0,47 per kg had been made to the prices of those Community industry producers selling 'in the bin' (i.e. ex-farm) to reflect ancillary transport, processing and packing costs to the first customer. Secondly, this methodology was consistent with that used in the original investigation.
- (201) The level of price undercutting for imports from the Faeroe Islands was calculated in the same manner as that for imports from Norway as described above. It is recalled that imports from the Faeroe Islands were found not to have been made at dumped prices. Their level of price undercutting therefore does not derive from dumping. The Commission has acknowledged the impact that these imports may have had on the situation of the Community industry. Ascribing even more importance in the injury assessment to imports from the Faeroe Islands would further weaken causal link between imports from Chile and the injury suffered by the Community industry.
- (202) Imports originating in remaining third countries (i.e. excluding Norway, Chile and the Faeroe Islands) increased in volume over the analysis period from approximately 9 000 tonnes in 1998 to 15 000 tonnes in the IP. Over the same period their market share increased from 2,3 % in 1998 to 3,1 % in the IP. Over 85 % of these imports by weight (on a whole fish equivalent basis) were of frozen fillets (CN code ex 0304 20 13) with the most significant origins being the People's Republic of China ('China') and the USA. The average price of all types of the product concerned from these remaining third countries increased from EUR 2,36 per kilogram in 1998 to EUR 2,57 in the IP. The prices of such imports were therefore always below the prices of the sampled Community industry producers and imports from Norway, Chile and the Faeroe Islands during the analysis period but this may be because of the nature and quality of such imports. The current investigations found no evidence of farmed Atlantic salmon being produced in China. It may therefore be the case that the salmon declared under the CN codes subject to investigation is of another species of salmon (Pacific or Danube) or processed Atlantic salmon originally farmed in another third country.

	1998	1999	2000	2001 (IP)
Norway (tonnes)	252 267	273 375	281 376	258 389
— Index	100	108	112	102
— Market share	63,6 %	59,7 %	59,8 %	53,0 %
— Average price (EUR per kg)	3,18	3,18	3,71	3,16
Faeroe Islands (tonnes)	15 187	28 236	23 962	40 414
— Index	100	186	158	266
— Market share	3,8 %	6,2 %	5,1 %	8,3 %
— Average price (EUR per kg)	3,21	3,24	3,84	2,94
Other third countries (tonnes)	9 057	11 009	14 763	15 126
— Index	100	122	163	167
— Market share	2,3 %	2,4 %	3,1 %	3,1 %
— Average price (EUR per kg)	2,36	2,24	2,50	2,57

- (203) The above shows that both the Community industry and the imports from Chile are peripheral players on the Community market. It cannot be excluded that imports from the countries indicated in recital 202 may have at least been partly responsible for the decrease in price and the injury suffered by the Community industry.

(b) Changes in the pattern of consumption

- (204) The consumption of farmed Atlantic salmon in the Community increased by 25 % during the analysis period to reach a level of almost 500 000 tonnes in the IP. The Community industry benefited from this growth in consumption to increase its production and sales. The Community industry was also able to increase its market share especially in the IP as imports from Norway declined in volume. The development of consumption is therefore not considered to have contributed to the injury suffered by the Community industry.

(c) The nature of the salmon market

- (205) It was also considered whether other factors having a bearing on the salmon market in the Community could have contributed to the injury suffered by the Community industry.
- (206) The Faeroe Fish Farming Association argued that the existence of a number of factors demonstrated that there was no causal link between imports of farmed Atlantic salmon from the Faeroe Islands and the alleged injury suffered by the Community industry. It was suggested that short-term prices were governed by factors such as weather, disease and smolt supply while long-term price trends depended upon production costs. It was argued that in view of the length of the production cycle for farmed Atlantic salmon (2 to 3 years), prices should be examined over a similar period rather than 6 months to one year. It was also argued that other types of salmon such as wild salmon and farmed Pacific salmon should be taken into account in the investigations as their supply could have an impact on the price of farmed Atlantic salmon in the Community.
- (207) Short-term factors such as disease can have an impact on supply in the salmon market. Outbreaks of diseases such as Infectious Salmon Anaemia (ISA) in the Community require the removal of fish from affected areas and an enforced fallow period of six months thereafter. ISA was detected at a number of farms in Scotland in 1998 and has also been recorded in Norway, Canada and more recently in the Faeroe Islands. The removal of fish from infected sites means that they may be harvested ahead of expectations and at weights which do not meet the requirements of certain customers. In addition, this enforced harvest reduces the total biomass of fish to be harvested in later periods. A small number of companies forming part of the Community industry were affected by suspected ISA outbreaks in 1998. This may have reduced the number of fish available to harvest in subsequent years. However, it is not considered that this situation explains the deterioration in the overall situation of the Community industry observed in the IP.
- (208) With regard to this party's second point, it is not accepted that it is incorrect to examine prices in a restricted period such as the IP. Whilst acknowledging that the life cycle of the farmed Atlantic salmon is between 2 and 3 years, product cycles cannot be seen as an excuse to engage in dumping.
- (209) With regard to the final argument raised by this interested party concerning the influence of other types of salmon on the Community market for farmed Atlantic salmon, it is to be noted that no evidence was provided in support of this argument. This argument would appear to suggest that farmed Pacific salmon and wild salmon are homogeneous in nature to farmed Atlantic salmon and substitutes for one another, a claim for which no evidence was found in the investigations. In any event, taking into account the volume of farmed salmon sold in the Community, it is believed that the quantities of the other types of salmon sold on the Community market could not have been such as to have significantly affected the Community market price for farmed Atlantic salmon.

(d) The structure of the salmon farming industry in the Community

- (210) The Faeroe Fish Farming Association drew attention to the possible effects on the Community industry of the increase in production recorded during the analysis period by other producers in the Community not forming part of the Community industry. It was suggested that the process of consolidation amongst producers in the Community meant that the Community industry, much reduced in size, now faced increased competition from larger and more numerous producers in the Community which are not part of the Community industry as defined pursuant to Article 4 of the basic anti-dumping Regulation.

- (211) The investigations confirmed that the category of producer referred to by the Faeroe Fish Farming Association accounted for the majority of farmed Atlantic salmon produced in the Community during the analysis period. These companies are generally larger in size than those companies deemed to constitute the Community industry in the present investigations and show a greater degree of vertical integration with interests in smolt rearing (the freshwater stage of the salmon life cycle), feed production and control of their own processing facilities. Taken together, they have a market share in the region of 25 %. As part of large multinational groups, often quoted on stock exchanges, they also benefit from better access to capital markets and financial support. They are better suited to plan their production to meet the specific requirements of major customers such as supermarket chains with seven day harvesting programs. They often negotiate short to medium term contracts with their major customers which normally provide some degree of protection against extreme price fluctuations on the uncontracted or spot market to which other operators are exposed.
- (212) Information gathered from transformers/smokers of the product concerned in the framework of the review investigation concerning imports from Norway further demonstrated that certain producers in the Community were influenced by the way in which the processing industry operated. The prices at which processing companies purchased the product concerned in the IP and the prices at which they sold salmon after transformation were examined. It was established that these companies purchased Community produced salmon in the IP at prices similar to or even below salmon originating in Norway. However, after transformation/smoking when the salmon was sold on, products derived from salmon produced in the Community were sold at much higher prices than products derived from salmon originating in Norway. The premium for these products derived from salmon produced in the Community was found to be in the region of 10 % over similar products derived from Norwegian produced salmon. It would therefore appear that certain transformers/smokers are able to obtain a premium for their products which is not always passed onto their suppliers. It is therefore considered that some of the injury suffered by the Community industry may be due to its lack of leverage vis-à-vis certain larger customers.

(e) Conclusion on causation

- (213) In the light of the above, it is concluded that a causal link between the imports originating in Chile and the material injury of the Community industry could not be established with the necessary degree of certainty.
- (214) The concurrence of the increase in imports from Chile and the price undercutting on the one hand, and the negative developments of the Community industry in terms of its sales prices and financial performance on the other, are not sufficient to establish a causal link in this case. Indeed, there are a number of other factors which had an impact on the Community industry and which are, when compared to the impact of the imports from Chile, of greater importance. Imports from all countries not concerned have been made at prices which were in the case of Norway at the level of those of the Community industry or, with regard to other third countries, below that level. The prices of other producers in the Community were also at this level. Thus, not only the imports from Chile, but also sales representing a further 30 % of the Community market (i.e. sales of other producers in the Community and imports from the Faeroe Islands) were made at a price level, which was clearly unsatisfactory for the Community industry. In these circumstances, it is difficult to see how the imports from Chile when taken in isolation could have had a material impact on the Community industry.
- (215) Subsequent to the disclosure, one party criticised the manner in which the issue of causation had been examined. The party argued that the Commission should have made a cumulative assessment of the effects of imports from Chile, Norway and the Faeroe Islands in accordance with Article 3(4) of the basic anti-dumping Regulation. Article 3(4) specifies a number of criteria, all of which must be satisfied, before the effects of imports from different origins can be assessed cumulatively. In the present investigations, as no dumping was found for imports from Norway and the Faeroe Islands, there was no legal basis for assessing the combined effects of imports from these origins with the dumped imports from Chile. Accordingly, this claim had to be rejected on the grounds that it is an incorrect interpretation of the provisions of the Article concerned.

- (216) However, in view of the fact that a causal link could not be excluded with absolute certainty, it was considered prudent to nevertheless examine the question whether or not the imposition of measures against imports from Chile would be in the Community interest, should one decide that such a causal link existed despite of the above evidence to the contrary.

I. COMMUNITY INTEREST

1. PRELIMINARY REMARKS

- (217) It was examined whether, despite the findings on injurious dumping, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures against imports originating in Chile. For this purpose and in accordance with Article 21(1) of the basic anti-dumping Regulation, the impact of possible measures for all parties involved in the investigations and also the consequences for those same parties of not taking measures were considered on the basis of all evidence submitted.
- (218) In order to consider the Community interest, information was requested from all interested parties, which were either known to be concerned or which made themselves known within the time limit set in the notice of initiation.
- (219) In addition to the replies received from the sampled Community industry producers, questionnaire replies were also received from the following companies:
- two other producers of farmed Atlantic salmon in the Community — Marine Harvest (Scotland) Ltd and Marine Harvest Ireland,
 - five suppliers of inputs to the Community salmon farming industry including four feed companies — Trouw (UK) Ltd, Trouw Aquaculture Ltd, Ewos Ltd and Biomar Ltd and one supplier of smolts — Landcatch Ltd in the framework of the review concerning Norway,
 - two importers/users in the framework of the review concerning Norway which are unrelated to exporters in Norway — Moulin de la Marche S.A. and Le Borvo SA and two unrelated importers/users in the framework of the investigation concerning Chile and the Faeroe Islands — Cogesal Miko and Royal Greenland Seafood A/S.
- (220) Comments were also received from the following organisations and bodies:
- The Scottish Salmon Producers' Organisation,
 - The Shetland Salmon Farmers' Association,
 - The Irish Salmon Growers' Association,
 - BEUC — The European Consumers' Organisation,
 - AIPCE/CEP — The Federation of National Organisations of Importers and Exporters of Fish,
 - The Danish Association of Fish Processing Industries and Exporters,
 - The French Syndicat National de l'Industrie du Saumon Fumé,
 - Nutreco Aquaculture,
 - SA Direct Ocean.
- (221) Information was also received from a feed supplier located outside the Community, namely Havsbrun pf of the Faeroe Islands. It was therefore considered that this information should not be taken into account for the assessment of the Community interest in the current investigation.
- (222) The complainant in the investigation concerning Chile and the Faeroe Islands submitted that the views of the Nutreco group and the Syndicat National de l'Industrie du Saumon Fumé should be discounted. It was argued that the interests of the Nutreco group were predominantly outside the EU and that the membership of the Syndicat National de l'Industrie du Saumon Fumé included a number of companies related to Norwegian concerns. It is recalled that the assessment of the Community interest, in accordance with the provisions of Article 21 of the basic anti-dumping Regulation, shall be based on an appreciation of the various interests of all parties including, *inter alia*, the domestic industry and users. Therefore, the submissions of these interested parties should be taken into account.

2. INTEREST OF THE COMMUNITY INDUSTRY

- (223) The main areas for the production of salmon in the Community are located in Scotland and Ireland where suitable conditions exist. There have been significant changes in the structure of the salmon farming industry in the Community since the original investigations with a trend towards fewer, larger companies. A number of smaller producers have either gone out of business or sold out to other operators, often large multinational groups with salmon farming interests around the world. Many of the companies constituting the Community industry have taken steps to improve their efficiency and reduce costs in the face of increased competition by entering into collaborative arrangements for feed buying. This has enabled the companies to increase their buying power vis-à-vis suppliers. At the same time, a number of the companies constituting the Community industry have also entered into arrangements for the joint marketing and sale of their production through which it is hoped their products will be differentiated on the market.
- (224) It is recalled that information gathered in the course of the review investigation concerning Norway (see recital 212) showed that Community salmon producers did not derive the full benefit of the premium that consumers paid for the finished product. It is also recalled that Chilean exports of frozen salmon only compete with Community industry fresh salmon to a limited extent. The Community industry's market share in the IP was less than 5 % whereas imports originating in countries other than Chile (Norway, the Faeroe Islands, etc.) accounted for over 60 % of Community consumption. If the imposition of measures against imports originating in Chile were to lead to a positive effect on the situation of the Community industry, this would necessitate that prices of imports of the product concerned from other sources would have to increase as well as those of producers in the Community not part of the Community industry. As a consequence, considering the relatively small market share of the Community industry vis-à-vis other suppliers on the Community market, the imposition of measures against Chile would lead to a substantial net transfer of wealth out of the Community as the market adjusts to higher prices. Whether higher prices would be borne by the consumer or shared by other intermediaries in the sales chain, the transfer of wealth to third country suppliers would greatly exceed any benefit from measures that the Community industry would derive. However, it is already highly doubtful whether any anti-dumping measures on imports from Chile would lead to such a price increase for salmon from all sources and that the Community industry would benefit at all considering the small market share of Chilean salmon.

3. INTEREST OF OTHER COMMUNITY PRODUCERS

- (225) The two other producers in the Community which cooperated in the proceedings employed nearly 800 people in salmon related activities in the IP and had a combined turnover in excess of EUR 120 million. These companies suffered a marked deterioration in their economic situation in the IP as a result of the marked disturbances on the Community market. They highlighted the important role played by salmon farming in many outlying and relatively disadvantaged areas of the Community. They noted that many problems in the market had arisen because of the imbalance between supply and demand. It was suggested that 2000 had been a good year for prices because of the combined effect of a number of factors, including disease problems in Scotland, that had restricted supply. Thereafter, over supply by many producing countries, including Scotland, had led to a sharp fall in prices. It was claimed that Community producers of salmon and their suppliers would be best served when a proper balance was established between supply and demand. This, it was argued, could be achieved by further stimulating demand and managing supply in line with that demand and by investing funds in Community producers to address competitive and regulatory differences vis-à-vis other producer countries.
- (226) Nutreco Aquaculture (the division of the Nutreco group to which both Marine Harvest companies belong) did not consider measures to be the optimal solution for the salmon industry as a whole, both for producers in the Community and for those in third countries exporting to the Community. It was noted that measures, *inter alia*, would not address the oversupply of salmon or promote the efficiency or competitiveness of EU producers.

4. INTEREST OF IMPORTERS, USERS AND CONSUMERS

- (227) The two importers cooperating in the framework of the investigation concerning Chile and the Faeroes had no opinions regarding the Community interest aspects of the investigation as sales of farmed Atlantic salmon represented an insignificant part of their overall turnover.
- (228) Representations were also received on behalf of SA Direct Ocean. This company noted that it used imported frozen salmon from Chile in its production of ready meals which were aimed at low and middle income consumers. It was suggested that these products were not in competition with fresh salmon from Scotland. Moreover, it was claimed that measures against Chile would not benefit the Community as Scottish salmon farmers could not supply frozen salmon. It was further claimed that several thousand jobs in the food processing industry would be put at risk if measures against imports from Chile were imposed.
- (229) The Federation of National Organisations of Importers and Exporters of Fish (AIPCE/CEP) expressed its opposition to any system that impacted supply and demand if it resulted in increased prices and made the obtaining of supplies more difficult. It considered that if prices were to rise above the natural level of the market, this would be negative in terms of competition for both EU industry and the consumer. The Federation provided data which showed that its members processed in excess of 60 000 tonnes of salmon per year and produced nearly 50 000 tonnes of smoked salmon. It estimated the number of people to be directly employed in the sector to exceed 10 000.
- (230) The Danish Association of Fish Processing Industries and Exporters made clear its opposition to any regulation of the market which disturbed prices and the normal rules of competition. It was suggested that the existing measures had distorted the market for salmon in the Community and led to excess profits being made in Norway. These high profits, it was claimed, had in turn encouraged over investment in the salmon farming industry and created an imbalance between supply and demand world-wide. The association highlighted the importance of the processing industry in the Community both in terms of employment and the added value it created.
- (231) The Syndicat National de l'Industrie du Saumon Fumé represents 15 companies in France involved in the production of smoked salmon. These companies employ 2 800 people and processed approximately 36 000 tonnes of fresh salmon in the IP. The association considered that the anti-dumping Regulation was not the appropriate mechanism for regulating trade in agricultural products which were subject to significant price movements and that the salmon farming industry had to manage its growth on a global basis.
- (232) The European Consumers' Organisation (BEUC) noted that the market for salmon in the Community had increased markedly, largely in its opinion as a result of increased competition from producers in Norway and more recently Chile and the Faeroe Islands. It was suggested that this competition had led to a decline in prices which had allowed European consumers to increase their intake of salmon. This fact was to be welcomed because of the perceived nutritional benefits of salmon. At the same time, it was argued that the economic interests of importers, processors and retailers of salmon in the Community far outweighed any potential short-term benefits that measures would bring to the relatively small number of independent producers remaining in the Community. As a result, BEUC expressed its opposition to measures of any kind against imports into the Community of farmed Atlantic salmon.
- (233) In the light of the comments received from the three representative associations, it was also considered whether the imposition of measures could lead certain users to relocate their production facilities to countries outside the Community. In this context it is noted that the conventional tariff applicable to imports of fresh and frozen Atlantic salmon into the Community in the IP and 2002 is 2 % whereas that for imports of smoked salmon is normally 13 %. Eurostat data for the analysis period shown in the table below indicates that almost half of all imports declared in the IP under

heading CN 0305 41 00 (Pacific, Atlantic, Danube salmon, smoked including fillets) originated in Poland with the next most important origins being Norway and the Faeroe Islands. Imports from other origins were not significant. The data would at first appear to suggest that the measures currently in place against Norway have not had an appreciable impact on the trade flows of smoked salmon. However, it should be recalled that the measures against Norway were imposed in 1997. Imports of smoked salmon in this year and 1996 should therefore also be considered in order to have a more meaningful picture. These figures show a much lower level of imports originating in Poland with 302 tonnes recorded in 1996 and 229 tonnes in 1997. The figures for imports originating in Norway for the same years were 771 and 900 tonnes respectively and for the Faeroe Islands, 566 and 493 tonnes. It is therefore apparent that the imposition of measures led to a significant increase in the volume of imports of smoked salmon from Poland which may have replaced certain production originating in Denmark as volumes from this country to the rest of the Community declined from approximately 15 500 tonnes in 1997 to 13 500 tonnes in 1998.

	1998	1999	2000	2001 (IP)
Poland (tonnes)	1 931	1 664	1 677	1 637
Index	100	86	87	85
Norway (tonnes)	1 084	975	951	920
Index	100	90	88	85
Faeroe Islands (tonnes)	594	370	453	686
Index	100	62	76	116
Total from three origins (tonnes)	3 608	3 009	3 080	3 243
Index	100	83	85	90

- (234) It is also noted that the European Community and its Member States have recently concluded a Free Trade Agreement with Chile. According to the Agreement, the conventional duty of 2 % on imports of the product concerned will be eliminated from the date on which the Agreement enters into force. As regards trade in salmon related products such as smoked salmon, it is noted that the Agreement foresees a gradual elimination of the existing tariff over a 10 year period in tandem with a system of aggregated quotas of 40 tonnes for products classified under headings 0305 41 00 (smoked) and 0305 30 30 (salted or in brine). In view of the quantities involved in this quota system, the future accession of Poland to the European Union and the proposal to discontinue measures against Norway, it is not considered that the imposition of measures against Chile will lead to a delocalisation of the salmon processing industry to third countries.
- (235) In considering the possible impact of measures on the final consumer, information submitted by the Norwegian Seafood Federation concerning retail prices in 150 supermarkets in France for Atlantic salmon fillets was taken into account. This demonstrated that, on average, prices fluctuated within a narrow band as shown in the table below. It was therefore argued that the EU consumer had not benefited from the reduction in production costs achieved by producers. This fact was echoed by the EU Salmon Producers' Group which also made the point that the Salmon Agreement and the

existing measures had had no recognisable effect on consumer prices and that the primary beneficiaries of falling producer prices appeared to be retailers and wholesalers. It would appear from these submissions that consumers of farmed Atlantic salmon are to a certain extent insulated from the extremes of price volatility on the market. It is therefore unclear as to precisely what extent consumers would be impacted by the imposition of measures against Chile as this depends partly on the pricing policy of retailers which did not cooperate in the proceedings.

	1998	1999	2000	2001 (IP)
EUR per kilogram	11,03	10,81	11,64	11,30
Index	100	98	106	102

- (236) In conclusion, whilst recognising the importance of the salmon processing sector in terms of employment and value creation, it is not considered on the basis of evidence available that the impact of measures would be such as to lead to a delocalisation of processing activities to locations outside the Community. Nevertheless, it is considered that importers/users will be disadvantaged by measures in that they will have to pay additional duties on their imports of salmon from Chile.

5. INTERESTS OF SUPPLIERS

- (237) The five cooperating suppliers made themselves known in the review concerning Norway and therefore did not comment in detail on the impact of potential measures on Chilean imports on their activities. However, two suppliers did express the opinion that measures were not the most appropriate means of addressing the situation of Community salmon producers.

6. CONCLUSION ON COMMUNITY INTEREST

- (238) It is acknowledged that the existing measures against imports from Norway initially enabled the Community industry to improve its economic situation with regard to its level of production, sales, profitability and market share. However, in the absence of a likelihood of a continuation or recurrence of dumping and subsidisation for imports from this country, measures against imports from Norway cannot be continued. Any measures limited to Chilean exports, even assuming that these were considered to cause injury, would in all probability be inefficient due to the limited price competition between fresh and frozen salmon and considering recital 212 above, the difficulties the Community industry is likely to experience in reaping the benefits of any price increase. Even if measures on Chilean exports alone were to trigger a price increase in the price of fresh salmon on the Community market to the supposed benefit of the Community industry, the resulting transfer of wealth to those producers/exporters in countries not subject to measures would outweigh the benefit accruing to the Community industry and certain other interested parties. At the same time, it is recalled that any such increase in prices would be to the detriment of importers, users and consumers.
- (239) Subsequent to the disclosure, one party criticised the manner in which the Commission had made its assessment of the Community interest. According to this party, the interests of the Community industry had not been properly taken into account. It argued that although the Community industry was small, this should not be used as an argument against its need for protective measures and that this approach contradicted the stance that had been adopted in similar situations in the past, most notably at the time when measures were originally imposed on imports from Norway.

- (240) The same party argued that the appreciation of the views of other parties to the investigations was mistaken. In particular, it suggested that the opinions expressed by those other producers in the Community which had cooperated in the investigations but which were not part of the complainant, could not be considered to be representative of the views of all other producers in the Community, many of which had not made themselves known. It claimed that Norwegian-owned salmon producers located in the Community had been instructed not to cooperate with the Commission. It claimed that 8 000 jobs were at imminent risk of disappearing if such measures were not imposed as a matter of urgency. It also expressed the view that the situation on the Community market could be expected to deteriorate further as trade defence measures in the USA could be expected to lead to an increased trade diversion of Chilean exports from that market to the Community.
- (241) It is to be noted that the assessment of the Community interest was made on the basis of all information submitted. The views of all interested parties were addressed including those which drew on the experiences of the existing measures applicable to Norwegian imports. It is not accepted that the situation in the present case is similar to that prevailing at the time of the previous investigation concerning Norway. At that time, the market share of the Community industry was determined to be over 25 % and that of Norwegian imports over 65 %. Consequently, the imposition of measures at that time covered the majority of imports of the product concerned into the Community and afforded protection to a Community industry with a significant share of the market. In the present case, the assessment of the Community interest is limited to a consideration of measures against dumped imports from Chile only. These imports accounted for market share of around 5 % in the IP and under 7 % of total imports. In addition, the market share of the Community industry has been significantly reduced to less than 5 % as the process of restructuring and consolidation in the market has continued.
- (242) Regarding the other issues raised by this party on the question of the Community interest, it has been clearly acknowledged that the Nutreco group companies were the only producers other than those in the Community industry to have cooperated in the investigations. Whilst it was not the intention to portray the views of Nutreco as representing all other salmon producers in the Community, it is to be noted that the group is one of the largest producers of salmon in the Community. As the assessment of the Community interest calls for an appreciation of all the various interests taken as a whole, it would have been inappropriate not to have given due consideration to the views expressed by Nutreco.
- (243) It is recognised that the salmon farming industry provides employment in remote areas of the Community where other employment opportunities are often limited. However, it would appear that the figure of 8 000 jobs, for which no supporting evidence has been provided, could be overstated. Figures published by the Scottish Executive show 1 257 people to have been directly employed (either full-time or part-time) in salmon production in Scotland in 2001. In view of the significantly lower production volume of farmed Atlantic salmon in Ireland, the figure for direct employment in that country is expected to be far lower. It should be underlined that the primary purpose of the anti-dumping instrument is to counter unfair trade practices. More specifically, the purpose of the Community interest test is to determine whether there are any overriding interests against the imposition of measures despite the existence of injurious dumping. This calls for an appreciation of all economic interests involved in the Community.
- (244) In considering the party's final point relating to the trade defence measures in place in the USA and their possible repercussions for the Community salmon market, it is noted that such measures were first imposed by the authorities in 1998 and not in 2001 as has been suggested. The measures were only imposed on imports of fresh salmon into the USA meaning that frozen salmon, which accounts for almost all exports from Chile to the Community, was unaffected. Moreover, the administrative review process undertaken by the authorities in the USA subsequent to the imposition of the original measures has resulted in a lowering of the level of duties for most Chilean exporters. Therefore, it is not considered that trade defence measures in the USA constitute sufficient justification for the imposition of measures in the Community against imports from Chile. In light of the foregoing, this claim and others made by the party as detailed in recitals 239 and 240 were rejected.

- (245) Therefore, on the basis of all the information submitted, it is concluded that it is not in the Community interest to apply such measures.

J. TERMINATION OF THE PROCEEDINGS

- (246) In view of the above findings it is therefore concluded that the proceedings concerning imports originating in Norway should be terminated and that the anti-dumping and countervailing measures initially adopted by Regulations (EC) No 1890/97 and (EC) No 1891/97 should be allowed to expire.
- (247) It is also concluded on the basis of the above findings that the anti-dumping proceeding concerning imports originating in Chile and the Faeroe Islands should be terminated,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon falling within CN codes ex 0302 12 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 originating in Norway are hereby terminated.

Article 2

The anti-dumping proceeding concerning imports of farmed Atlantic salmon falling within CN codes ex 0302 12 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 originating in Chile and the Faeroe Islands is hereby terminated.

Article 3

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, 26 May 2003.

For the Council

The President

G. DRYG
