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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 625/2005
of 22 April 2005
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 April 2005.

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

Done at Brussels, 22 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to Commission Regulation of 22 April 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

<i>(EUR/100 kg)</i>		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	112,8
	204	98,4
	212	118,7
	624	168,0
	999	124,5
0707 00 05	052	139,7
	204	60,1
	999	99,9
0709 90 70	052	100,3
	204	32,6
	999	66,5
0805 10 20	052	50,6
	204	46,8
	212	56,8
	220	48,5
	400	51,4
	624	59,0
	999	52,2
0805 50 10	052	42,8
	388	67,6
	400	58,9
	528	64,2
	624	62,2
	999	59,1
0808 10 80	388	86,3
	400	128,6
	404	108,7
	508	69,7
	512	74,2
	524	68,1
	528	63,1
	720	81,7
	804	104,1
	999	87,2
0808 20 50	388	83,7
	512	66,3
	528	67,0
	720	32,9
	999	62,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 626/2005
of 22 April 2005
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products⁽¹⁾,

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream⁽²⁾, and in particular Article 2 thereof,

Whereas:

- (1) Article 2 of Regulation (EC) No 2771/1999 lays down that buying-in is to be opened or suspended by the Commission in a Member State, as appropriate, once it is observed that, for two weeks in succession, the market price in that Member State is below or equal to or above 92% of the intervention price.

- (2) Commission Regulation (EC) No 592/2005⁽³⁾ establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by Slovakia and the United Kingdom pursuant to Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 592/2005 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Belgium, Denmark, Cyprus, Hungary, Malta, Greece, Luxembourg, the Netherlands, Austria, Slovenia, Finland and the United Kingdom.

Article 2

Regulation (EC) No 592/2005 is hereby repealed.

Article 3

This Regulation shall enter into force on 23 April 2005.

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

Done at Brussels, 22 April 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

⁽³⁾ OJ L 98, 16.4.2005, p. 19.

COMMISSION REGULATION (EC) No 627/2005**of 22 April 2005****revoking Regulation (EC) No 206/2005 imposing definitive safeguard measures against imports of farmed salmon**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94⁽¹⁾, and in particular Article 21(2)(b), thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) No 3420/83⁽²⁾, and in particular Article 18(2)(b), thereof,

Whereas:

PROCEDURE

- (1) On 6 March 2004, the Commission initiated a safeguard investigation on imports of farmed salmon into the Community. On 4 February 2005, the Commission imposed definitive safeguard measures by Commission Regulation (EC) No 206/2005⁽³⁾.
- (2) On 23 October 2004, the Commission initiated an anti-dumping investigation on imports of farmed salmon originating in Norway. On 22 April 2005, the Commission adopted provisional anti-dumping measures by Commission Regulation (EC) No 628/2005⁽⁴⁾.

CONSIDERATIONS

- (3) The imposition of definitive safeguard measures on imports of farmed salmon of all origins followed an investigation covering the period 2000 to 2003.

Having reached a provisional determination that, in the period from 1 October 2003 to 30 September 2004, imports from Norway have continued to increase and that there is injurious dumping, the Commission adopted provisional anti-dumping measures against imports of farmed salmon from Norway.

- (4) Imports of farmed salmon from Norway in the year ending 30 September 2004 represent around 60 % of the Community market and around 75 % of overall imports into the Community. In Regulation (EC) No 206/2005, the Commission had found that the considerable increase in imports had a devastating effect on the profitability of the Community producers, given the accompanying price drop. The provisional anti-dumping measures in relation to imports of farmed salmon originating in Norway would eliminate the unfair price element in these imports. It can also be expected that they will slow down the quantitative import increase originating in Norway, the largest source of imports into the Community. Therefore, in the particular circumstances of this case, it is considered that anti-dumping measures are sufficient to address the injury which the community industry is suffering, and it is no longer necessary to maintain the safeguard measures, which should therefore be repealed at the same time as the anti-dumping measures enter into force,

HAS ADOPTED THIS REGULATION:

Sole Article

Regulation (EC) No 206/2005 is hereby revoked.

This Regulation shall enter into force on 27 April 2005.

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

Done at Brussels, 22 April 2005.

For the Commission

Peter MANDELSON

Member of the Commission

⁽¹⁾ OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).

⁽²⁾ OJ L 67, 10.3.1994, p. 89. Regulation as last amended by Regulation (EC) No 427/2003 (OJ L 65, 8.3.2003, p. 1).

⁽³⁾ OJ L 33, 5.2.2005, p. 8.

⁽⁴⁾ See page 5 of this Official Journal.

COMMISSION REGULATION (EC) No 628/2005**of 22 April 2005****imposing a provisional anti-dumping duty on imports of farmed salmon originating in Norway**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Measures repealed**

- (1) On 6 March 2004, the Commission initiated a safeguard investigation, pursuant to Council Regulations 3285/94⁽²⁾ and 519/94⁽³⁾, concerning imports of farmed salmon. On 5 February 2005 the Commission imposed, by Regulation (EC) No 206/2005⁽⁴⁾ definitive safeguard measures which took the form of tariff quotas combined with a minimum price for imports. The definitive safeguard measures apply from 6 February 2005, and are subject to gradual liberalisation during the period of their application. On 23 April 2005, the Commission repealed Commission Regulation (EC) No 206/2005 by Commission Regulation (EC) No 627/2005⁽⁵⁾.

1.2. Initiation

- (2) In parallel to the safeguard investigation, on 8 September 2004 a complaint concerning imports of farmed salmon originating in Norway was lodged by the EU Salmon Producers' Group (the complainant) representing a major proportion of the Community production of farmed salmon.
- (3) This complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the opening of a proceeding.
- (4) On 23 October 2004 the proceeding was opened by the publication of a notice of initiation⁽⁶⁾

1.3. Investigation period

- (5) The investigation of dumping and injury covered the period from 1 October 2003 to 30 September 2004 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2001 to 30 September 2004 ('period considered'). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1, as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 349, 31.12.1994, p. 53.

⁽³⁾ OJ L 67, 10.3.1994, p. 89.

⁽⁴⁾ OJ L 33, 5.2.2005, p. 8.

⁽⁵⁾ See page 4 of this Official Journal.

⁽⁶⁾ OJ C 261, 23.10.2004, p. 8.

1.4. Parties concerned by the proceeding

- (6) The Commission officially advised the complainant, Norwegian producers, traders, importers, suppliers and users known to be concerned, as well as associations known to be concerned and representatives of Norway, of the opening of the proceeding. 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 notice of initiation.
- (7) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. To this end, the Commission sent questionnaires to all parties known to be concerned and to all the other exporters that made themselves known within the deadlines set out in the notice of initiation. In this regard, the following interested parties cooperated with the Commission and made their views known: 102 Norwegian exporters and traders; 24 Community producers; one association of Community producers; 15 importers users and processors; four users' associations; one consumer's association; and two suppliers. Verification visits were carried out at the premises of the following companies:
- (a) *Producers in the Community*
- Celtic Atlantic Salmon Ltd (Killary), Renvyle, Co Galway, Ireland.
 - Hoove Salmon Ltd, Whiteness Shetland, United Kingdom.
 - Loch Duart Ltd, Scourie By Lairg, Sutherland, Scotland, United Kingdom.
 - Orkney Sea Farms Ltd, Glasgow, United Kingdom.
 - West Minch Salmon Ltd, Sidinish Salmon Ltd, Benbecula, Western Isles, United Kingdom.
 - Wester Ross Salmon, Inverness, United Kingdom.
- (b) *Exporters*
- Marine Harvest Bolga AS, N-8158 Bolga, Norway.
 - Fjord Seafood Norway AS, Toftsundet, N-8900 Brønnøysund, Norway.
 - Pan Fish Norway AS, Grimmergata 5, N-6002 Ålesund, Norway.
 - Stolt Sea Farm AS, Postboks 370, Sentrum, N-0102, Oslo, Norway.
 - Follalaks AS, N-8286 Nordfold, Norway.
 - Nordlaks Oppdrett AS, Boks 224, N-8455 Stokmarknes, Norway.
 - Hydrotech AS, Bentnesveien 50, N-6512 Kristiansund, Norway.
 - Grieg Seafood AS, Postboks 234, N-5804 Bergen, Norway.
 - Seafarm Invest AS, N-8764 Lovund, Norway.
 - Sinkaberg-Hansen AS, Postboks 134, N-7901 Rorvik, Norway.
- (c) *Importers/Processors/Users*
- Labeyrie, St. Vincent de Tyrosse, France.
 - Laschinger GmbH, Bischofsmais, Germany.
- (8) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (9) In the notice of initiation, the Commission indicated that in view of the apparent large number of exporters of the product concerned in Norway and the large number of producers of the product in the Community, the application of sampling techniques was envisaged in this investigation.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (10) The product concerned is farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen. The definition excludes other similar farmed fish products such as large (salmon) trout, biomass (live salmon) as well as wild salmon and further processed types such as smoked salmon.
- (11) The product is currently classifiable within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 corresponding to different presentations of the product (fresh or chilled fish, fresh or chilled fillets, frozen fish and frozen fillets). Based on the physical characteristics, the production process and the substitutability of the product from the perspective of the consumer, it was found that all farmed salmon constitutes a single product. The different presentations all serve the same end use and are readily capable of being substituted between each other. Therefore, they are considered to constitute a single product for the purpose of the proceeding.

2.2. Like product

- (12) The investigation showed that the basic physical characteristics of farmed salmon produced and sold by the Community industry in the Community, farmed salmon produced and sold on the domestic Norwegian market, and farmed salmon imported into the Community from Norway are the same and that they have the same use.
- (13) In reaching this determination, the following findings in particular were taken into account:
- the product concerned and the Community product share the same international classification for tariff purposes. Furthermore, they share the same or similar physical properties such as taste, size, shape and texture;
 - the product concerned and the Community product were sold via similar or identical sales channels, price information was readily available to buyers and the product concerned and the product of the Community producers competed mainly on price;
 - the product concerned and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable.
- (14) It was therefore provisionally concluded that the product concerned and the farmed salmon produced and sold on the domestic market of Norway, as well as the farmed salmon produced and sold in the Community by the Community industry have the same basic physical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. General

- (15) Although most Norwegian producers of farmed salmon sold the product concerned to the Community via traders, it was possible to make the dumping assessment at the level of the producers. Indeed, following changes in the structure of the Norwegian salmon industry, it was found that most Norwegian producers of farmed salmon were making sales of the product concerned either direct to the EU, or were able to identify sales made via unrelated traders and destined for the EU market. It was therefore possible to arrive at both a normal value and an export price at the level of the producer.

3.2. Sampling

- (16) Section 5.1(a) of the notice of initiation indicated that the Commission may decide to apply sampling in accordance with Article 17 of the basic Regulation. In response to the request pursuant to Section 5.1(a)(i) of the notice of initiation, 102 companies provided the information requested within the specified deadline. Of these, 38 were producers of farmed salmon, which also exported the product concerned to the EU (the 'exporting producers'). Sales were either made direct or via unrelated traders.
- (17) In view of the large number of companies involved, it was decided to make use of the provisions for sampling and, for this purpose, a sample of companies, with the largest export volumes to the EC was chosen, in consultation with the Norwegian authorities. There were some issues that could not be resolved with the Norwegian authorities, in particular concerning the exclusion from the sample of certain exporters with relatively low export volumes to the EC of the product concerned. The requests made by the Norwegian authorities would have meant that the principle for selection of the sample, i.e. to include as many companies that could reasonably be investigated within the time available with the largest possible representative volume of exports, would not have been respected. Therefore those claims could not be accepted. The sample comprises the ten largest Norwegian exporting producers, representing almost 80% of the export volume to the Community of all co-operating exporting producers.
- (18) Following verification, for two companies included in the sample it was not possible to conclude on the basis of the information provided that sales of farmed salmon had been made to unrelated parties at arms length prices. In these circumstances, it is provisionally concluded that, pending the provision of sufficient information by these companies, these companies should not be given an individual dumping margin, but should be allocated the weighted average margin of those companies for which an individual margin could be established. However, it should be noted that the Commission will continue to investigate this issue at the definitive stage of the proceeding, and may revert to use of facts available in accordance with Article 18 of the basic Regulation, should the necessary information not be made available by the companies concerned.

3.3. Normal value

- (19) For the determination of normal value the Commission first established, for each of the exporting producers included in the sample, whether its total domestic sales of farmed salmon were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5% of its total export sales volume to the Community.
- (20) For the exporting producers having overall representative domestic sales, the Commission subsequently identified the types of farmed salmon sold domestically which were identical or directly comparable to the types sold for export to the Community.
- (21) For each of those types, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered 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 type exported to the Community.
- (22) An examination was also made as to whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question.

- (23) In cases where the sales volume of a type of farmed salmon, sold at a net sales price equal to or above its cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above its cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (24) Where the volume of profitable sales of a type of farmed salmon represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- (25) Finally, where the volume of profitable sales of any type of farmed salmon represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (26) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value was used, pursuant to Article 2(3) of the basic Regulation. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to each exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.
- (27) The actual domestic profit margin was considered reliable when the total domestic sales volume of the company concerned could be regarded as representative as compared to the volume of export sales to the Community. For companies with overall representative sales, the profit margin was determined on the basis of domestic sales of those types that were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 22 to 25 was applied.
- (28) Where these criteria were not met, the Commission next considered whether a weighted average profit margin of the other companies with representative sales in the ordinary course of trade in Norway could be used, or the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products of the company concerned in their domestic market, could be used. Finally, where none of these approaches was possible, the domestic profit margin was established in accordance with Article 2(6)(c) of the basic Regulation.
- (29) Five companies had overall representative sales but it was found that for only one company were certain types of the product concerned, which were also exported, sold on the domestic market in the ordinary course of trade. For the remaining types of farmed salmon exported by these companies, normal value had to be constructed following the methodology explained in recital 26. Three companies were found not to have overall representative domestic sales of farmed salmon. Therefore, normal value had to be constructed for all types of the product concerned produced by these companies following the methodology explained in recital 26.
- (30) As indicated in recital 29, in respect of domestic profit margin, it was found that only one exporting producer had domestic sales of farmed salmon in the ordinary course of trade. As this was not considered sufficiently representative, a domestic profit of 8 % on turnover was provisionally taken in line with the approach outlined in recital 28. Such a profit margin was considered the minimum level that would be achievable for a viable industry. In addition, it should be noted that the domestic profit used was in the same order as that achieved by the company that did have domestic sales in the ordinary course of trade. This profit margin also seems to be the absolute minimum in view of the significant investment both in time and resources required to farm salmon, which have a three year growing cycle from smolt to harvestable fish. The Commission will continue to consider the issue of domestic profit in light of this investment burden, combined with the level of current interest rates in Norway and may revise its decision at the definitive stage.

- (31) For determination of a reasonable amount for SG&A, the Commission considered that the company specific information provided by exporting producers could provisionally be used at this stage. However, it should be noted that a number of issues, on which the appropriateness of this approach depends, still need to be clarified and further verified. The Commission will continue to investigate this issue and may decide to revise its approach at the definitive stage.

3.4. Export price

- (32) In all cases where the product concerned was exported to the Community by way of sales to independent customers, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (33) Where sales were made via a related importer in the Community, the export price was constructed on the basis of the resale prices of the importer to independent customers. Adjustments were made for all costs incurred between importation and resale by the related company, including SG&A expenses, and a reasonable profit margin of 5% on turnover, in accordance with Article 2(9) of the basic Regulation.
- (34) Where export sales were made via a related trader in Norway, the export price was established on the basis of the resale price paid by the first independent buyer in the Community.

3.5. Comparison

- (35) The normal value and export prices 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 prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport and insurance, credit, commission, bank charges, packing, customs duties and rebates were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. Adjustments were also made where the export sales were made via a related company located in Norway, pursuant to Article 2(10)(i) of the basic Regulation.

3.6. Dumping margin

3.6.1. *Sampled Companies*

- (36) For eight of the exporting producers which were included in the sample, an individual dumping margin could be calculated. For these companies, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation. Where exporting producers are related, the provisional dumping margin expressed as a percentage of the CIF import price at the Community border has been calculated as the weighted average of the dumping margins of the related companies, in line with the Community's policy for related exporting producers. Such a circumstance arose in respect of two companies in this investigation.
- (37) The remaining two exporting producers for which it was not possible to establish an individual dumping calculation, as outlined in recital 18, were also attributed a provisional dumping margin at the level of the weighted average of the individual dumping margins provisionally established for the parties in the sample.

3.6.2. *Non-Sampled Companies*

- (38) Companies which co-operated, but which were not selected in the sample, and which are not related to any of the companies included in the sample, were attributed a provisional dumping margin at the level of the weighted average of the individual dumping margins provisionally established for the parties in the sample, i.e. 25,1%.

- (39) Companies which co-operated, but which were not selected in the sample, and which are related to any of the companies included in the sample, were provisionally attributed a provisional dumping margin at the same level as that attributed to the sampled company to which they are related.

3.6.3. Non-Cooperating Companies

- (40) In order to calculate the residual dumping margin, i.e. the dumping margin for exporters in Norway which did not cooperate or did not make themselves known, the Commission first established the level of co-operation. A comparison was made between the total imports of the product concerned originating in Norway calculated on the basis of Eurostat and the actual data received from exporting producers in Norway which indicated their willingness to be included in a sample. On this basis, it was established that the level of co-operation was high, i.e. almost 80 % of the overall Norwegian exports of farmed salmon to the Community.
- (41) From the information available, it was concluded that these companies did not dump at a level lower than any of the companies included in the sample. The residual dumping margin was consequently set at the level of the highest individual dumping margin established for a cooperating company. On this basis, the residual level of dumping was provisionally established at 44,0 % of the CIF Community frontier price.

3.6.4. Dumping Margin

- (42) On this basis, the provisional dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Company	Provisional dumping margin
Marine Harvest Bolga AS, N-8158 Bolga, Norway	21,9 %
Fjord Seafood Norway AS, Toftsundet, N-8900 Brønnøysund, Norway	37,7 %
Pan Fish Norway AS, Grimmergata 5, N-6002 Ålesund, Norway	25,4 %
Stolt Sea Farm AS, Postboks 370, Sentrum, N-0102, Oslo, Norway	13,9 %
Follalaks AS, N-8286 Nordfold, Norway	24,5 %
Nordlaks Oppdrett AS, Boks 224, N-8455 Stokmarknes, Norway	6,8 %
Hydrotech AS, Bentnesveien 50, N-6512 Kristiansund, Norway	21,9 %
Grieg Seafood AS, Postboks 234, N-5804 Bergen, Norway	22,9 %
Weighted Average	22,5 %
Residual Margin	37,7 %

4. INJURY

4.1. Definition of Community production and Community industry

- (43) During the IP, farmed salmon was manufactured in the Community by

— Community producers which were not related to Norwegian exporters or importers and which were complainants or explicitly supported the complaint;

- Community producers which were not related to Norwegian exporters or importers, and which did not take a position on the complaint ('silents');

 - Several other producers which were found to be related to Norwegian exporters or importers ('related').
- (44) Several of the other producers related to Norwegian exporters or importers made themselves known and requested to be included in the definition of the Community production. They also defined themselves as Community industry. However, this claim was rejected on the basis of the provisions of Article 4(1) of the basic Regulation. It was considered, in particular, that the relationship between these related producers and the exporters or importers of the dumped product could be such as to cause the producers concerned to behave differently from non-related producers. Consequently, the output of these other producers was not taken into consideration when calculating Community production.
- (45) The investigation showed that the complaining Community producers had produced around 20 000 tonnes of salmon during the IP. This represents around 90 % of the estimated total Community production of the product concerned. This constitutes a major proportion of the Community production. The complaining Community producers are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

4.2. Sampling for injury assessment purposes

- (46) In view of the large number of producers of farmed salmon in the Community, the application of sampling techniques was foreseen in the notice of initiation for the assessment of injury. The selection of the sample of Community producers was based on the largest representative volume of production that could be reasonably investigated within the time available, in accordance with Article 17 of the basic Regulation.
- (47) On the basis of the information provided to the Commission, the six Community producers listed above in recital 7 were initially selected for the sample and were asked to reply to a questionnaire. Verifications at the premises of these companies were carried out. The investigation showed that Celtic Atlantic Salmon Ltd did not produce farmed salmon within the whole period considered and therefore was not in a position to provide all the data and information requested in the questionnaire. Celtic Atlantic Salmon Ltd was established as a company in January 2004 after having purchased certain assets of a salmon producing company which was in receivership and could only provide data with regard to the IP. Consequently, the injury indicators discussed below as from recital 63 have been established on the basis of the verified information provided by the other five companies listed above in recital 7. However, data from Celtic Atlantic Salmon Ltd were used for the purpose of calculating undercutting and underselling.
- (48) The accumulated production of the five Community producers selected for the sample that fully co-operated in the investigation was at around 8 300 tonnes during the IP, or around 37 % of the estimated total Community production of farmed salmon.
- (49) The analysis of injury is based on (a) the performance injury indicators such as sales prices, stocks, profitability, return on investment, cash flow, investments, ability to raise capital and wages, which were established on the basis of the information verified at the level of the sample and (b) the other injury indicators, such as production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the margin of dumping which were established on the basis of data collected at the level of the Community industry as a whole.

4.3. Community consumption

- (50) During the period considered the Community consumption developed as follows:

Table 1

Community consumption

	2001	2002	2003	IP
Tonnes	527 970	550 943	611 101	607 904
Index	100	104	116	115

Source: Eurostat and data for Ireland, United Kingdom, France. All figures relate to EU 25.

- (51) Community consumption was established on the basis of the total production by all producers in the Community plus imports from all third countries minus European Community exports. Production by all producers established in the Community was established on the basis of data provided by the countries where production is located, i.e. Ireland, United Kingdom and France. Imported and exported quantities were derived from Eurostat.
- (52) It should be noted that large scale farming of farmed salmon in the Community is confined to the United Kingdom (Scotland) and Ireland. Certain adjustments were made to convert net weights as reported by Eurostat to round weights or 'whole fish equivalents' (WFE) ⁽¹⁾ as it is common for comparisons in the industry to be made on WFE basis. Therefore, unless otherwise indicated, the figures for fresh, chilled and frozen salmon excluding fillets and for fresh, chilled and frozen salmon fillets were, depending on the presentation of the salmon, divided by the conversion factors of 0,90 and 0,65 respectively, i.e. the commonly accepted conversion factors by the salmon industry.
- (53) The above table shows that consumption increased between 2001 and 2003 by 16%. In the IP consumption remained nearly on the same level as in 2003, with a slight decrease of 0,5%. Overall the increase of consumption over the period considered was as high as 15%.

4.4. Imports into the Community from the country concerned

4.4.1. Volume of the imports concerned

- (54) During the period considered the volume of the imports from Norway derived from Eurostat data using the methodology described in recital (51) above developed as follows:

Table 2

Volume of imports concerned

	2001	2002	2003	IP
Tonnes	269 126	294 481	351 757	362 492
Index	100	109	131	135

Source: Eurostat.

⁽¹⁾ WFE is commonly defined as the weight of a fish which has been starved and bled after slaughter.

- (55) The above table shows that the volume of imports of farmed salmon from Norway increased by 35 % during the period considered. The increase was as high as 31 % between 2001 and 2003 and it further increased by 3 % between 2003 and the IP. In other words, while consumption increased by nearly 80 000 tonnes during the period considered, Norwegian exporters were able to increase their sales on the Community market by 93 000 tonnes, which represents more than the total increase of consumption.

4.4.2. Market share of the imports concerned

- (56) The market share held by exporting producers in Norway developed as shown below:

Table 3

Market share of the imports from Norway

	2001	2002	2003	IP
	51 %	53,5 %	57,6 %	59,6 %
<i>Index</i>	100	105	113	117

Source: Eurostat, Community production and exports calculated from data for Ireland, United Kingdom, France and Latvia.

- (57) As was the case for the imports, Norwegian market share has continuously increased during the period considered. Overall, the market share based on import volumes increased by 17 % or 8,6 percentage points during the period considered. The increase between 2002 and the IP was as high as 6,1 percentage points.

4.4.3. Average prices of dumped imports

- (58) The price evolution of dumped imports from Norway sold on the Community market is shown below.

Table 4

Average price of dumped imports from Norway (EUR/kg)

	2001	2002	2003	IP
	3,13	3,04	2,64	2,64
<i>Index</i>	100	97	84	84

Source: Eurostat.

- (59) Over the period considered the average price of dumped imports decreased by 16 %. The above table also shows a clear coincidence in time between the fall in price which plummeted downwards in 2003 and the surge of dumped imports on the Community market evidenced in recital 54.

4.4.4. Price undercutting

- (60) For the purposes of calculating the level of price undercutting during the IP, the weighted average sales prices of the sampled Community industry producers were compared to the weighted average export prices of the sampled exporting producers from Norway. This comparison was made for comparable types of farmed salmon and at the same level of trade, namely for sales to the first independent customer. The comparison was made after deduction of rebates and discounts and the prices of the imports were CIF Community frontier, adjusted for customs duties.

- (61) The prices of the sampled Community industry producers were taken at an ex-works level, i.e. excluding transport costs and at levels of trade considered to be comparable to those of the imports concerned. For those sampled Community industry producers which sold their fish at the farm gate with a deduction of a fee paid to a processing factory, an upward adjustment was made to reflect processing and packing costs in order to make their prices comparable to those of other producers in the sample. This adjustment was made on the basis of the costs incurred by other producers in the sample for these activities or on the basis of the actual fee paid to the processing facility.
- (62) The results of the comparison on a weighted-average to weighted average basis showed that during the IP the products concerned originating in Norway were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, at around 15 % on average.

4.5. Situation of the Community industry

- (63) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the State of the Community industry during the period considered.

4.5.1. Production, production capacity and capacity utilisation

- (64) The production, the production capacity and the capacity utilization of the Community industry as a whole developed as follows:

Table 5

Production, production capacity and capacity utilisation

	2001	2002	2003	IP
Production (tonnes)	18 118	20 621	19 387	20 536
<i>Index</i>	100	114	107	113
Production capacity (tonnes)	36 994	37 112	41 862	43 662
<i>Index</i>	100	100	113	118
Capacity utilisation	49 %	56 %	46 %	47 %
<i>Index</i>	100	113	95	96

Source: Community industry.

- (65) Production of the Community industry first increased by 14 % between 2001 and 2002. It subsequently decreased by 6 %, but increased again by 5 % in the IP, although remaining below the level of 2002. As shown in the table above, production overall increased by 13 % during the period considered.
- (66) During the period considered production capacity increased by 18 %. The main increase took place in 2003 (+ 13 %). It should be noted that farmed salmon production in the European Community is effectively limited by government licences specifying the maximum amount of live fish which may be held in the water at any place at any point in time. Capacity figures given are theoretical capacity based on the total quantity licensed rather than the physical fish-holding capacity of the cages and other production material operated by the Community industry. It is therefore considered that these capacity figures are not very meaningful in the analysis.

- (67) Capacity utilisation first increased by 13 % between 2001 and 2002 but decreased in 2003 by around 18 % and remained more or less stable in the IP.

4.5.2. Stocks

- (68) It should be noted that farmed salmon is practically not stocked by the Community industry, but sold immediately after harvesting to downstream industries. Therefore the evaluation of stocks does not appear to be a relevant factor in examining the economic situation of the Community industry.

4.5.3. Sales volume, market shares, average unit prices in the EC and growth

- (69) The figures below represent the Community industry's sales to independent customers on the Community market.

Table 6

Sales volume, market shares, average unit sales prices in the EC

	2001	2002	2003	IP
Sales volume (tonnes)	17 556	18 684	18 997	19 925
<i>Index</i>	100	106	108	113
Market Share	3,33 %	3,38 %	3,11 %	3,28 %
<i>Index</i>	100	102	93	99
Average unit sales prices (EUR/kg)	3,03	3,00	2,61	2,84
<i>Index</i>	100	99	86	94

Source: Community industry with regard to sales volume and market share. With regard to average unit sales prices sampled Community industry on ex-farm level.

- (70) The Community industry's sales volumes have increased between 2001 and the IP by 13 %. In other words, the Community industry was able to increase its sales volume by 2 300 tonnes. This performance should also be seen in the light of the increase in Community consumption which was as high as 80 000 tonnes in the same period.
- (71) The market shares of the Community industry overall decreased during the period considered (-1 %). It first increased between 2001 and 2002, then sharply decreased in 2003, and increased again in the IP remaining slightly below the market share of the year 2001. Given the small market share of the Community industry, it should be noted that every loss, be it even little, has a large impact on the Community industry.
- (72) In the period 2001 to the IP the Community industry's average sales prices decreased by 6 %. The main decrease took place between 2002 and 2003 (-13 percentage points), while between 2003 and the IP, prices recovered to some extent (+8 percentage points).
- (73) Over the period considered the Community consumption grew by 15 % and the Community industry increased its sales volume by 13 %. However, during the same period Community sales prices decreased (-6 %) as well as market share (-1 %). At the same time the imports from Norway increased by around 35 % and the gain in market share of the low-priced dumped imports was as high as 8,6 percentage points. This meant that the Community industry did not fully participate in the growth of the market over the period considered.

4.5.4. Profitability, Return on Investments and Cash Flow

- (74) Profitability on EC sales represents the profit generated by sales of farmed salmon on the Community market. Return on Total Assets and Cash Flow could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 3(8) of the basic Regulation. In this context it should be noted that farmed salmon represented over 95 % of the economic activity of the sampled Community industry.
- (75) Moreover, the Return on investments has been calculated on the basis of Return on total assets since the companies constituting the Community industry are mainly, if not exclusively, active in the production and sales of the product concerned. For the purpose of this investigation, the return on investments is expressed as the profit in percent of the net book value of investments.

Table 7

Profitability, Return on Investments and Cash Flow

	2001	2002	2003	IP
Profitability on EC Sales	7,2 %	-2,9 %	-6,2 %	-4,0 %
Return on Investment	36,7 %	-15,5 %	-20,7 %	-21,4 %
Cash Flow (000 EUR)	3 331	-11	951	698

Source: Sampled Community industry.

- (76) During the year 2001, the Community industry was profitable at 7,2 %. Between 2001 and 2002 the profitability turned negative with a decrease of 10,1 percentage points. Since this point of time the Community industry remained loss making. It should be noted that the situation deteriorated even more between 2002 and 2003 with a loss of 6,2 % (or 3,3 percentage points). The sustained demand for salmon during the IP allowed the Community industry to slightly increase its sales prices and reduce its loss, which however remained significant (-4 %). From the beginning to the end of the period considered the decrease in profitability was as high as 11,2 percentage points.
- (77) During the period considered the return on investments and cash flow followed a trend similar to that of profitability.

4.5.5. Investments and ability to raise capital

Table 8

Investments and ability to raise capital

	2001	2002	2003	IP
Investments (000 EUR)	1 407	1 301	1 101	2 249

Source: Sampled Community industry.

- (78) Investments made by the Community increased during the period considered. They first decreased in 2002 and 2003, before increasing in the IP. To a certain extent, these investments can be explained by the sustained demand which has characterized the period considered. It was also found that a considerable part of the investments were made to maintain the existing production tools or to replace equipments at the end of their life cycle. Furthermore, the Community industry has been making considerable efforts to improve its competitiveness on this market in recent years. Steps to improve their efficiency and reduce costs in the face of increased competition have been taken by entering into joint arrangements for feed buying for example, or engaging into joint marketing and sales. Finally, the Community industry has also been under a process of consolidation. There have been significant changes in the structure of the salmon farming industry in the Community with a trend towards fewer companies. A number of smaller producers have either gone out of business or sold out to other producers, which invested in these companies.

- (79) During the period considered, it was found that the Community industry started to have more difficulties in raising capital. The Community industry's ability to raise capital should also be seen in the light of the evolution of the cash flow of the Community industry which was negative during the IP. It is also clear that the losses accumulated by the Community industry and the level of sales prices during the period considered played a negative role when looking for outside sources of financing.

4.5.6. *Employment and Productivity*

Table 9

Employment and Productivity

	2001	2002	2003	IP
Number of employees	254	272	269	265
<i>Index</i>	100	107	106	104
Productivity (tonne/employee)	71,3	75,8	72,1	77,5
<i>Index</i>	100	106	101	108

Source: Community industry.

- (80) Between 2001 and the IP employment by the Community industry (overall) increased by 4%. This increase took place, however, between 2001 and 2002 (+ 7%) and can be explained by the increase in production realised during the period considered. As the above table shows, the increase in employment which occurred in 2002 could not be maintained because of the market situation and was followed by a decrease in 2003 and the IP.
- (81) Although employment increased slightly, the Community industry was able to increase its productivity during the period considered. Given the level of production and the level of personnel employed, productivity increased by 8% during the period considered.

4.5.7. *Wages*

Table 10

Wages

	2001	2002	2003	IP
Wages (000 EUR)	4 620	4 223	4 015	3 765
<i>Index</i>	100	91	87	81

Source: Sampled Community industry.

- (82) Wages had to be decreased by 19% during the period considered.

4.5.8. *Recovery from past dumping*

- (83) It should be noted that between September 1997 and May 2003 a significant proportion of imports of farmed salmon originating in Norway has been subject to price undertakings in the context of the then existing anti-dumping and anti-subsidy measures. While the Community industry was profitable in 2001, in the course of 2002, violations of these price undertakings by certain Norwegian exporting producers began to undermine the effectiveness of that instrument and caused price falls. The current investigation shows that prices of the exporting producers in Norway have decreased by 16% as from 2001. The major price decreases occurred as from 2002, when the violations of the undertakings then in force began to increase. Under these circumstances, it is considered that recovery from past dumping has not been possible.

4.5.9. *Magnitude of the actual margin of dumping*

- (84) The impact on the Community industry of the magnitude of the actual margin of dumping, which is also significant, cannot be considered to be negligible given the volume and the prices of the imports concerned.

4.6. **Conclusion on injury**

- (85) The investigation shows that between 2001 and the IP imports of the product concerned have taken place continuously in increased quantities and high volumes onto the Community market (+ 35 %), especially between 2002 and 2003. During the same period the average prices of dumped imports have decreased continuously by 16 %, plummeting downwards between 2002 and 2003 and since then staying at a very low level. It was found that Norwegian market share increased by 17 % or 8,6 percentage points during the period considered.
- (86) As to the situation of the Community industry, an examination of the above indicators shows that between 2001 and the IP, it gradually deteriorated. While some factors showed a positive trend during the period considered (production, production capacity, sales volumes), most indicators developed negatively (sales prices, market share, profitability, cash flow, return on investment, wages).
- (87) As regards the positive development of production and sales volumes, it was found that these increases only allowed the Community industry to regain lost market shares during the IP and to maintain the regained market share. Production capacity was considered to be of limited relevance as capacity figures are theoretical based on the total quantity licensed rather than the physical fish-holding capacity. In consequence, capacity utilisation decreased from 49 % to 47 % in this period, whereas productivity increased mostly due to greater use of automation (+ 8 %). During the period considered the Community market was characterized by a sustained demand as consumption grew by 15 % or by 80 000 tonnes. Although the Community industry managed to increase its production and sales volumes by both 13 %, it just managed to maintain its market share. In the same time Norwegian exporters managed to increase their sales by 93 000 tonnes and gained considerable market share.
- (88) Moreover, the increase in sales volume by the Community industry occurred at the expense of falling prices. This has led to a fall in profitability from a positive into a negative, loss making situation (7,2 % in 2001 to losses of -2,9 %, -6,2 % and -4,0 % in 2002, 2003 and the IP respectively). Return on investments and Cash Flow followed a trend similar to that of profitability. Also wages have suffered during the period considered (-19 %).
- (89) Taking account of all of these factors, the provisional conclusion reached is that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

5. CAUSATION

5.1. **Preliminary remarks**

- (90) In order to reach its provisional conclusion as to whether there is a causal link between the dumped imports and the injury suffered by the Community industry, the Commission first examined in accordance with Article 3(6) of the basic Regulation, the impact of the dumped imports from the country concerned on the situation in that industry.
- (91) Secondly, in accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports. Known factors other than dumped imports which could at the same time be injuring the Community industry, were also analysed in order to ensure that possible injury caused by other factors was not attributed to the dumped imports.

5.2. **Effect of the dumped imports from the country concerned**

- (92) The link between the injury suffered by the Community industry and the dumped imports is demonstrated in particular by the following coinciding developments: from 2001 until the end of the IP the volume of imports of Norwegian farmed salmon into the Community increased by 35 % and their market share rose to 59,6 %, meaning a gain of 8,6 percentage points at the expense of the Community industry. Norwegian prices decreased by 16 % within the period considered.

- (93) This development of Norwegian imports coincided with large financial losses of the Community producers. Indeed, the developments of the imports from Norway coincided with the significant declining trend of the main economic indicators pertaining to the Community industry from 2001 to the end of the IP. Between 2002 and the IP, when prices from Norway decreased by around 13 % sales prices decreased by 5 % and the loss of market share of the Community industry was as high as 3 %. As a result, the Community industry incurred losses during the IP and in the two years preceding the IP. As it is generally accepted that imports from Norway, particularly due to their large volumes, are the price leader in the Community market for farmed salmon, this situation shows that the Community industry was subject to strong price pressure exacerbated by dumped imports on the Community market. The effect of the price pressure is further evidenced by the price undercutting practised by the Norwegian exporting producers and the prices of the Community industry, which were depressed to a considerable extent during the IP.

5.3. Effect of other factors

5.3.1. Effect of imports originating in other third countries

- (94) The imports from third countries not concerned by this investigation showed the following development during the period considered:

Table 11

Imports originating in other third countries

	2001	2002	2003	IP
Total other third countries than Norway (Tonnes)	82 082	106 154	108 157	117 994
<i>Index</i>	100	129	132	144
Market share	15,5 %	19,3 %	17,7 %	19,4 %
Average price (EUR per kg)	2,86	2,34	2,15	2,23
USA (Tonnes)	5 011	26 359	27 233	24 624
<i>Index</i>	100	526	543	491
Market share	0,9 %	4,8 %	4,5 %	4,0 %
Average price (EUR per kg)	2,35	1,73	1,57	1,69
Canada (Tonnes)	593	3 592	6 490	6 940
<i>Index</i>	100	605	1094	1170
Market share	0,1 %	0,7 %	1,1 %	1,1 %
Average price (EUR per kg)	2,90	1,89	1,72	1,77
Chile (Tonnes)	26 442	28 669	19 455	24 547
<i>Index</i>	100	108	74	93
Market share	5,0 %	5,2 %	3,2 %	4,0 %
Average price (EUR per kg)	2,93	2,36	2,60	2,89
Faeroe Islands (Tonnes)	40 505	37 075	41 202	37 108
<i>Index</i>	100	92	102	92
Market share	7,7 %	6,7 %	6,7 %	6,1 %
Average price (EUR per kg)	2,95	2,78	2,50	2,57

Source: Eurostat.

- (95) The table above shows the imports volumes, market shares and average price of imported farmed salmon from all countries other than Norway and also individually for the traditional importers, i.e. USA, Canada, Chile and the Faeroe Islands.
- (96) It should be noted that the import statistics do not distinguish between farmed salmon and wild salmon. However, on the basis of information gathered during the investigation, it appears that the vast part of imports from USA and Canada consists most of wild salmon, so that it is unlikely that imports from these two countries could have a significant impact on the situation of the Community industry.
- (97) The above table also shows that import prices from Chile were above the level of those of the Community industry during the IP and that farmed salmon prices varied significantly among other third countries. Import prices from the Faeroe Islands were lower than those charged by the Norwegian exporting producers but it must be noted that the import volumes from Chile and Faeroe Islands have decreased by 7 % and 8 % respectively during the period considered.
- (98) These developments should be seen in the light of the development of consumption and the dumped imports from Norway. As shown in recital 51 above, consumption increased by 15 % during the period considered and consumption in the IP remained nearly on the same level as in 2003, with a slight decrease of 0,5 %. As explained in recital 55 above, the imports from Norway increased by around 35 % during the period considered and the increase between 2003 and the IP was around 3,1 %.
- (99) Given the above, it is therefore provisionally concluded that imports into the Community from other third countries could not be a determining reason for the material injury suffered by the Community industry.

5.3.2. *Effect of changes in the pattern of consumption*

- (100) The consumption of farmed salmon in the Community increased by 15 % during the period considered to reach a level of almost 608 000 tonnes in the IP. The Community industry benefited from this growth in consumption to increase its production and sales volume. The development of consumption is therefore not considered to have contributed to the injury suffered by the Community industry.
- (101) It has been argued that there had been an alleged fall in consumption in the United Kingdom and that this had caused injury to the Community producers. However, the United Kingdom market cannot be isolated from the overall Community market and the increased consumption found for the Community market during the period considered. A reduction in demand for farmed salmon within a certain part of the Community, while total demand is increasing, cannot be seen as the cause of the deteriorated economic situation of the Community industry. Therefore, it was provisionally found that changes in the pattern of consumption did not contribute to the material injury suffered by the Community industry.

5.3.3. *Effect of changes in export performance of the Community industry*

Table 12

Export volumes of the Community industry

	2001	2002	2003	IP
Exports (tonnes)	169	211	348	423

Source: Community industry.

- (102) The effect of variations in the level of exports of the Community industry has also been examined. Exports increased by 150 %. In the light of the difficult situation on the Community market, the Community industry sought to increase their exports, which nevertheless did not rise to more than around 2 % of their overall production and sales. It is therefore provisionally concluded that any changes in the level of exports were not a cause of the material injury suffered by the Community industry. In any event, it is noted that data relating to profitability is based on data relating to Community sales to unrelated Community customers only.

5.3.4. Other producers in the Community related to Norwegian producers/importers

- (103) It has been examined whether injury to the Community industry has been caused by other producers in the EC related to Norwegian producers. As mentioned in recital 44 these companies were not included in the definition of Community industry on the basis of Article 4(1) of the basic Regulation.
- (104) Five producers in the Community related to Norwegian producers/importers submitted a meaningful reply to the questionnaire. These producers represented approximately 54 % of other producers in the Community related to Norwegian producers/importers.

Table 13

Sales volume, market share and average sales prices to unrelated customers of producers in the EC related to Norwegian producers/importers

	2001	2002	2003	IP
Sales to unrelated customers in the EC (Tonnes)	67 983	71 879	76 175	72 255
<i>Index</i>	100	105	112	106
Market share	12,8 %	13,0 %	12,4 %	11,9 %
Average price (EUR per kg)	2,90	2,84	2,73	2,76

Source: Questionnaire replies of producers in the EC related to Norwegian producers/importers.

- (105) The above table shows that on the basis of the questionnaire replies, sales volumes of the five cooperating companies have increased during the period considered by 6 %, and that the decrease of their prices was around 5 %, generally in line with the developments of the Community industry. Moreover, it was also found that their market share decreased by around 1 percentage point during the period considered, which is also in line with the development for the Community industry, and that their sales prices were above the level of those of Norwegian exporting producers (around 5 % during the IP). In the same period of time Norwegian exporters managed to increase their sales by 93 000 tonnes and gained market share. However, it appears that the detriment of the economic situation of the producers in the EC related to Norwegian producers/importers may not have been as pronounced as the economic situation of the Community industry.
- (106) It is therefore provisionally considered that the producers in the EC related to Norwegian producer-s/importers did not in any significant way contribute to the material injury suffered by the Community industry.

5.3.5. Effect of increased mortality on production and sales volumes

- (107) One interested party argued that higher than normal fish mortality rates in Ireland and disease outbreaks in the United Kingdom and Ireland in 2002 and 2003 could have caused a significant loss of production and sales volumes. However, it was found that these phenomena were limited to a small number of farms and could not have an appreciable effect on overall figures. As shown at recitals 64 and 69, production and sales volume of the Community industry increased during the period considered. Therefore, it is provisionally concluded that higher than normal fish mortality rates were not the cause of material injurious effects.

5.3.6. *Effect of smaller less efficient producers in the EC and higher cost of production*

- (108) It was argued that the Norwegian industry has lower production costs than the Community producers and that this, and a failure by the Community producers to reduce production costs, is a reason for increased imports and serious injury. On the basis of the information available, it was found that whilst Norway enjoys advantages in relation to certain costs (e.g. medicines, feed, environmental regulatory cost), the Community producers enjoy advantages in relation to others (e.g. labour). Overall, it is noted that whilst the Community producers are incurring significant losses in the current market, so too are Norwegian producers, as evidenced *inter alia* by Norwegian government data and the dumping investigation. It was therefore provisionally found that the argument that Community producers were less efficient than the Norwegian exporters was not substantiated and that this could not be a cause of the injurious situation of the Community industry.

5.3.7. *Effect of regulatory constraints in the UK*

- (109) An interested party argued that regulatory constraints in the UK relating to environmental controls and fish health standard, biomass consent, medication approval system and approval of locations is a reason for reducing the competitiveness of the Community industry and a reason for the serious injury suffered by the Community industry. No evidence was however produced in support of these arguments, nor were the arguments developed, nor did the verification of UK companies point to any indications in this respect. In these circumstances, these factors cannot be taken as relevant causation factors for the serious injury to the Community producers. On the contrary, it can be argued, that stricter environmental and sanitary legislation in the Community increases the attractiveness of a product in view of modern consumers.

5.4. **Conclusion of Causation**

- (110) On the basis of the above, it is provisionally concluded that there is a causal link between the dumped imports and the material injury suffered by the Community industry. This conclusion is based on the fact that there were significant increases in volumes and market shares of dumped imports, which also undercut considerably the prices of the Community industry, from Norway. Moreover, there is a striking coincidence in time between the sharp rise of dumped imports made at decreasing prices and the deterioration of the financial situation of the Community industry leading to the loss making situation of the Community industry.
- (111) No other factors have been found which could have affected in a significant way the situation of the Community industry. It is also provisionally concluded that imports into the Community from other third countries could not be a determining reason for the material injury suffered by the Community industry.

6. **COMMUNITY INTEREST**

6.1. **General considerations**

- (112) In accordance with Article 21(1) of the basic Regulation it has been examined whether, despite the conclusion on injurious dumping, compelling reasons existed that could lead to the conclusion that it would not be in the Community interest to introduce anti-dumping measures against imports from the country concerned. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders/processors/users as well as the consumers of the product concerned. The Commission sent questionnaires in particular to the Community industry, producers in the EC related to Norwegian producers/importers, importers, processors, users, suppliers of the product concerned and a consumer organisation.

6.2. **Interest of the Community industry**

- (113) The Community industry has been suffering from low priced imports of farmed salmon from Norway. The objective of the eventual adoption of anti-dumping measures is to re-establish fair competition on the Community market between the Community industry and their exporting counterparts in Norway. In view of the nature of the injury suffered by the Community industry, it is considered that, in the absence of measures, a further deterioration in the situation of the Community industry is unavoidable. Not adopting measures will most likely entail further injury and in the medium term, potentially the disappearance of that industry, bearing in mind the losses occurred during the period considered. Therefore, on the basis of the findings in the IP, the Community industry position is in jeopardy unless the current level of low dumped import prices is corrected. This is evidenced by continuing reports of impending bankruptcies.

- (114) The Community industry has been making considerable efforts to improve its competitiveness on this market in recent years. 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 during the last years with a trend towards fewer, larger companies. A number of smaller producers have either gone out of business or sold out to other companies in the Community, which invested in these production sites. Many of the companies constituting the Community industry have taken steps to improve their efficiency and reduce costs in the face of increased competition e.g. by raising smolts, improving feeding equipment and by entering into joint 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. This will strengthen their position in the market.
- (115) If however anti-dumping measures are taken, these would reinstate fair trading conditions and warrant the efforts made by the Community industry in the last years. Under these conditions the Community industry will be able to remain a viable producer of farmed salmon. The main effect of measures will be that the below cost selling of the Community industry will cease. However, given the other sources of supply, the Community industry has only a very limited possibility to increase prices. They could mainly redress their situation by increased sales volumes and consequently increased economies of scale. Moreover, the investor confidence to the business will return and the market will become stable.
- (116) Accordingly, it is provisionally concluded that the adoption of anti-dumping measures would be in the interest of the Community industry.

6.3. Interests of producers of smolt and feed

- (117) It is also in the interests of the major suppliers to the Community producers (such as smolt and feed producers) to have a strong and predictable demand for their product at a fair price which allows them to make a reasonable profit. If the Community industry's situation does not improve, many of the smolt producers will have to reduce their sales and profitability and in some cases may be threatened in their ability to continue trading. The same applies to feed producers. Therefore, it is in the interests of the smolt producers and feed producers for anti-dumping measures to be taken.

6.4. Interest of producers in the EC related to Norwegian producers/importers

- (118) In order to evaluate the impact of measures on producers in the EC related to Norwegian producers/importers, questionnaires were sent to the known companies of the product concerned on the Community market. Five companies submitted meaningful replies.
- (119) These companies employed nearly 738 people in salmon related activities in the IP and had a combined turnover in excess of around EUR 250 million. These producers did either not express their view or were against the imposition of measures.
- (120) As shown in recital 104, these companies also suffer from the price depression caused by the Norwegian exporting producers. It is recalled, that the cooperating producers related to Norwegian exporters/importers increased their sales volumes by 6% or by around 4 200 tonnes but they still lost market share. In the same time, Norwegian exporters managed to increase their sales by 93 000 tonnes and gained market share. Therefore, it is considered that the imposition of anti-dumping measures will also improve the economic situation of the producers in the EC related to Norwegian producers/importers.
- (121) Anti-dumping measures which reinstall fair trading conditions are therefore also in the interest of these producers.

6.5. Interest of unrelated importers and processors (users)

- (122) In order to evaluate the impact on importers and processors of taking or not taking measures, questionnaires were sent to the known importers and processors of the product concerned on the Community market. The Commission also informed various organisations of importers, processors and users of the opening of the investigation. Several organizations made their views known.
- (123) It was found that importers and processors (users) are normally one and the same and many are in fact related to exporting producers outside the Community, particularly in Norway. Meaningful responses were received from 8 importers/processors/users. These companies represented around 9 % of total imports from Norway during the IP and roughly 6 % of consumption. Thus, their data give some indication, although it is by far not certain that they are fully representative for the whole user industry.
- (124) Importers and processors stressed that any increase in prices would increase their cost base, reduce their sales and profitability and may lead to job losses and even de-localisation. They also argued that employment in the fish processing sector is far higher than in the fish farming industry and in some cases provides employment in areas of low employment.
- (125) In this respect it was found that importers and processors may have to pay higher prices if they continue to buy Norwegian merchandise, because they would have to pay an anti-dumping duty. However, they do not have to bear all price increases because it is likely that they can pass on the increase to some degree to the subsequent steps in the distribution chain and consumers.
- (126) The main costs incurred by processors are the costs of the raw material and employment costs. It is true that an increase in raw material prices would increase the costs for processing. On the basis of the three most meaningful replies it was found that farmed salmon represents around 54 % of the total cost of production. These processors bought farmed salmon during the IP both in the Community (around 15 % of their purchases) and from Norway (around 83 % of their purchases). Therefore it is concluded that around 45 % of their total cost will be exposed to a duty. In this context it should also be noted that, according to the information provided by importers and processors, the costs of their raw material fell by 14 % during the period considered. During the IP, it was 9,1 percentage points cheaper than in 2001. At the same time, the information provided by them indicates that their selling prices have remained about the same in 2002 and 2003, with decreasing trend towards the IP. However, due to the low level of cooperation of users in this respect, the empirical basis is rather limited and one should be cautious in drawing conclusions for the user industry as a whole. It is also noted that only two companies reported on profitability.
- (127) As to employment, according to the replies received to the questionnaires, around 3 400 workers were employed in the fish processing sector in the Community although only a small proportion of those are concerned in processing farmed salmon. No evidence was found that the possible measures would lead to a decrease in the level of employment in the Community.
- (128) Therefore, the disadvantages likely to be suffered by importers/processors/users, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the anti-dumping measures, which are considered the minimum necessary to remedy the serious injury suffered and prevent further serious deterioration in the situation of the Community producers. In addition, it should be noted that other sources of supply from other third countries also remain available.

6.6. Interest of consumers

- (129) As the product concerned is a consumer product, the Commission informed various consumer organisations of the opening of an investigation. A response was received from one party to the effect that the beneficial effects of salmon are widely recognised and that artificially increasing the price would make good nutrition choices more difficult for consumers and damage the economic viability of importers, processors and retailers of farmed salmon. It was also claimed that the measures may prevent them from importing and continuing to sell frozen farmed salmon. Concern was also expressed that any increase in prices would make farmed salmon less affordable and stifle market growth in those Member States with a lower than average gross domestic product per head (GDP).
- (130) It is considered that if anti-dumping measures are imposed, economic operators will continue to have access to unlimited quantities of imports, albeit at fair prices. Further, given the magnitude of the margins between the whole fish ex-farm and the retail price of processed salmon products, it is considered that the measures are unlikely to have a material effect on retail prices, since it is unlikely that the whole price increase will be passed on to consumers. The impact on consumers is therefore considered to be minimal. In addition, loss-making price levels are probably not sustainable in the medium to long term. The interest of consumers appears therefore overall to be best served by stable prices and a sustainable market.

6.7. Conclusion on Community Interest

- (131) On the basis of the above facts and considerations it is provisionally concluded, that there are no compelling reasons not to impose anti-dumping duties.

7. PROVISIONAL ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (132) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (133) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (134) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained provisionally by adding a profit margin of 7,2% on turnover to the cost of production. This profit margin was provisionally established on the basis of the profit achieved during the year 2001 and is a strict minimum which the Community industry could expect to obtain in the absence of injurious dumping. This issue will be further investigated after the imposition of provisional measures and after receipt of any subsequent comments by interested parties.
- (135) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value.

7.2. Provisional measures

- (136) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not, in accordance with Article 7(2) of the basic Regulation, be higher than the injury margin calculated above.
- (137) The individual company anti-dumping duty rates specified in this document were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this document with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (138) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (139) On the basis of the above, the provisional duty rates are:

Company	Dumping Margin	Injury Margin	Anti-Dumping duty
Marine Harvest Norway AS,	21,9 %	15,3 %	15,3 %
Fjord Seafood Norway AS	37,7 %	13,5 %	13,5 %
Pan Fish Norway AS	25,4 %	16,1 %	16,1 %
Stolt Sea Farm AS	13,9 %	14,2 %	13,9 %
Follalaks AS	24,5 %	27,7 %	24,5 %
Nordlaks Oppdrett AS	6,8 %	14,6 %	6,8 %
Hydrotech AS	21,9 %	15,3 %	15,3 %
Grieg Seafood AS	22,9 %	17,2 %	17,2 %
Weighted Average	22,5 %	16,0 %	16,0 %
Residual Margin	37,7 %	27,7 %	24,5 %

7.3. Final Provision

- (140) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

⁽¹⁾ European Commission, Directorate-General for Trade, Direction B, B-1049 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00, ex 0304 10 13 and ex 0304 20 13 (TARIC codes 0302 12 00 19, 0302 12 00 38, 0302 12 00 98, 0303 11 00 18, 0303 11 00 98, 0303 19 00 18, 0303 19 00 98, 0303 22 00 19, 0303 22 00 88, 0304 10 13 19, 0304 10 13 98, 0304 20 13 19 and 0304 20 13 98) (hereinafter 'farmed salmon') originating in Norway.

2. Wild salmon shall not be subject to the provisional anti-dumping duty. For the purpose of this Regulation, wild salmon shall be that in respect of which the competent authorities of the Member State where the customs declaration for free circulation is accepted are satisfied, by means of all appropriate documents to be provided by interested parties, that it was caught at sea for Atlantic or Pacific salmon or in rivers for Danube salmon.

3. The rate of the provisional anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Anti-Dumping Duty	TARIC Additional Code
ALSAKER FJORDBRUK AS, N-5694 ONARHEIM, NORWAY	16,0%	A663
ÅMØY FISKEOPPDRETT AS, N-4152 VESTRE ÅMØY, NORWAY	16,0%	A663
AMULAKS AS, N-8286 NORDFOLD, NORWAY	24,5%	A645
AQUA AS, C/O RØRVIK FISK, N-7900 RØRVIK, NORWAY	16,0%	A663
ARCTIC SEAFOOD AS, N-8432 ALSVÅG, NORWAY	16,0%	A663
ARNØY LAKS AS, N-9193 LAUKSLETTA, NORWAY	16,0%	A663
AUSTEFJORDEN SMOLT AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0%	A663
BALDER SJØFARM AS, N-8286 NORDFOLD, NORWAY	24,5%	A645
BINDALSLAKS AS, POSTBOKS 134, N-7901 RØRVIK, NORWAY	16,0%	A663
BOGNØY FISKEOPPDRETT AS, P.O.BOX 93 SLÅTTAUG, N-5851 BERGEN, NORWAY	16,0%	A663
BOLAKS AS, N-5640 EIKELANDSOSEN, NORWAY	16,0%	A663
BR. KARLSEN, BEDDINGEN 14, N-7014 TRONDHEIM, NORWAY	16,0%	A663
BRATTØYFISK AS, N-6520 FREI, NORWAY	16,0%	A663
BREMNES SEASHORE AS, N-5430 BREMNES, NORWAY	16,0%	A663
BRIILLIANT FISKEOPPDRETT AS, N-5444, ESPEVÆR, NORWAY	16,0%	A663
BRU EIGEDOM AS, SANDVIKSODENE 66, N-5035 BERGEN, NORWAY	16,0%	A663
CENTRE FOR AQUACULTURE COMPETENCE AS, HUNDSNES, N-4130 HJELMELAND, NORWAY	15,3%	A641
EDELFAARM AS, ØKSENGÅRD, N-8250 ROGNAN, NORWAY	16,0%	A663
EDELFIK AS, HAMNEGATA 1, N-6900 FLORØ, NORWAY	16,0%	A663
EMILSEN FISK AS, LAUVØYA, N-7900 RØRVIK, NORWAY	16,0%	A663

Company	Anti-Dumping Duty	TARIC Additional Code
ESPEVÆR FISKEOPPDRETT AS, N-5444, ESPEVÆR, NORWAY	16,0 %	A663
ESPEVÆR SAMDRIFT AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0 %	A663
FEØY FISKEOPPDRETT AS, N-5548 FEØY, NORWAY	16,0 %	A663
FINNMARK STAMFISKSTASJON AS, LERRESFJORD, N-9536 KORSFJORDEN, NORWAY	24,5 %	A645
FINNØY FISK AS, NÅDEN, N-4160 FINNØY, NORWAY	15,3 %	A641
FJELBERG FJORDBRUK AS, N-5694 ONARHEIM, NORWAY	16,0 %	A663
FJORD AQUA GROUP AS, BENTNESVEIEN 50, N-6512 KRISTIANSUND N, NORWAY	16,0 %	A663
FJORD FORSØKSSTASJON HELGELAND AS, TOFTSUNDET, N-8900 BRØNNØYSUND, NORWAY	13,5 %	A642
FJORD SEAFOOD NORWAY AS, TOFTSUNDET, N-8900, BRØNNØYSUND, NORWAY	13,5 %	A642
FLAKSTADVÅG LAKS AS, FLAKSTADVÅG, N-9395 KALDFARNES, NORWAY	16,0 %	A663
FLOKENES FISKEFARM AS, FLOKENES, N-6983 KVAMMEN, NORWAY	16,0 %	A663
FOLLALAKS AS, N-8286 NORDFOLD, NORWAY	24,5 %	A645
FOSSEN AS, P.O.BOX 93 SLÅTTHAUG, N-5851 BERGEN, NORWAY	16,0 %	A663
FRØFISK AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0 %	A663
G. ESPNES FISKEOPPDRETT AS, N-7266 KVERVA, NORWAY	16,0 %	A663
GRIEG SEAFOOD AS, POSTBOKS 234, SENTRUM, N-5804 BERGEN, NORWAY	17,2 %	A648
GRIEG SEAFOOD ROGALAND AS, POSTBOKS 234, SENTRUM N-5804 BERGEN, NORWAY	17,2 %	A648
HAMNEIDET LAKS AS, N-9181 HAMNEIDET, NORWAY	16,0 %	A663
HARDANGERFISK AS, PB. 143, N-5604 ØYSTESE, NORWAY	16,0 %	A663
HAVFANGST AS, DYRSFJORD, N-9130, HANSNES, NORWAY	16,0 %	A663
HELLESUND FISKEOPPDRETT AS, LANGHOLMSUND, N-4770 HØVÅG, NORWAY	16,0 %	A663
HELLFJORDLAKS AS, JENNSKARET, N-8475, STRAUMSJØEN, NORWAY	16,0 %	A663
HENDEN FISKEOPPDRETT AS, POSTBOKS 53, N-6539 AVERØY, NORWAY	16,0 %	A663
HJARTØY LAKS AS, POSTBOKS 371, NESTTUN N-5853, BERGEN, NORWAY	16,0 %	A663
HØLLALAKS AS, POSTBOKS 603, N-8301 SVOLVÆR, NORWAY	15,3 %	A641
HYDROTECH AS, BENTNESV. 50, N-6512 KRISTIANSUND N, NORWAY	15,3 %	A647
HYEN LAKS AS, KLEPPENES, N-6829 HYEN, NORWAY	16,0 %	A663
JENSEN ALFRED AS, N-9394 KALDFARNES, NORWAY	16,0 %	A663
K. ENOKSEN FISKEOPPDRETT AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0 %	A663
KLEIVA FISKEFARM AS, N-9455 ENGENES, NORWAY	16,0 %	A663
KOBBEVIK OG FURUHOLMEN AS, N-5392 STOREBØ, NORWAY	16,0 %	A663
KRISTOFFERSEN EGIL & SØNNER AS, JENNSKARET, N-8475, STRAUMSJØEN, NORWAY	16,0 %	A663

Company	Anti-Dumping Duty	TARIC Additional Code
KVAMSDAL FISKEOPPDRETT AS, POSTBOKS 371, NESTTUN N-5853, BERGEN, NORWAY	16,0%	A663
KVITVA AS, SØRROLLNES, N-9450, HAMNVIK, NORWAY	16,0%	A663
LANDØY FISKEOPPDRETT AS, VÆRLANDET, N-6986 VÆRLANDET, NORWAY	16,0%	A663
LANGFJORDLAKS AS, N-9540 TALVIK, NORWAY	16,0%	A663
LARSEN SEAFOOD AS, N-8740 NORD-SOLVÆR, NORWAY	16,0%	A663
LERØY MIDNOR AS, N-7246 HESTVIKA, NORWAY	16,0%	A663
LINGALAKS AS, LINGAVEGEN 206, N-5630 STRANDEBARM, NORWAY	16,0%	A663
LOVUNDLAKS AS, N-8764 LOVUND, NORWAY	16,0%	A663
LUND FISKEOPPDRETT AS, N-7818 LUND, NORWAY	16,0%	A663
MARINE HARVEST BOLGA AS, N-8158 BOLGA, NORWAY	15,3%	A641
MARINE HARVEST NORWAY AS, POSTBOKS 4102, DREGGEN, N-5835 BERGEN, NORWAY	15,3%	A641
MARØ HAVBRUK A/S, N-6914 SVANOYBUKT, NORWAY	16,0%	A663
MÅSØVAL FISHFARM AS, N-7266 KVERVA, NORWAY	16,0%	A663
MÅSØVAL FISKEOPPDRETT AS, N-7266 KVERVA, NORWAY	16,0%	A663
MIDT-NORSK HAVBRUK AS, HANSVIKA, N-7900 RØRVIK, NORWAY	16,0%	A663
NORDLAKS OPPDRETT AS, BOKS 224, N-8455 STOKMARKNES, NORWAY	6,8%	A646
NORDLAKS PRODUKTER AS, BOKS 224, N-8455 STOKMARKNES, NORWAY	6,8%	A646
NORD-SENJA FISKEINDUSTRI AS, N-9373 BOTHAMN, NORWAY	16,0%	A663
NYE VESTSTAR AS, N-5392 STOREBØ, NORWAY	16,0%	A663
NYGÅRD LAKS AS, N-5640 EIKELANDSOSEN, NORWAY	16,0%	A663
OSLAND HAVBRUK AS, N-5962 BJORDAL, NORWAY	16,0%	A663
PAN FISH NORWAY AS, GRIMMERGATA 5, N-6002 ÅLESUND, NORWAY	16,1%	A643
PROSJEKT OMEGA AS, HAMNEGATA 1, N-6900 FLORØ, NORWAY	16,0%	A663
PUNDSLETT LAKS AS, PUNDSLETT, N-8324 DIGERMULEN, NORWAY	16,0%	A663
QUATRO LAKS AS, N-5640 EIKELANDSOSEN, NORWAY	16,0%	A663
RAMSØY FISKEOPPDRETT AS, BENTNESVN. 50, N-6512 KRISTIANSUND N, NORWAY	15,3%	A641
RANGØY EINAR AS, POSTBOKS 53, N-6539 AVERØY, NORWAY	16,0%	A663
RIOL AS, FROVÅGHAMN, N-9392 STRONGLANDSEIDET, NORWAY	16,0%	A663
ROGALAND FJORDBRUK AS, N-5694 ONARHEIM, NORWAY	16,0%	A663
RONG LAKS AS, POSTBOKS 371, NESTTUN N-5853, BERGEN, NORWAY	16,0%	A663
RONGEVÆR FISKEOPPDRETT AS, BØVÅGEN, N-5937 BØVÅGEN, NORWAY	16,0%	A663
RØVÆR FJORDBRUK AS, N-5549 RØVÆR, NORWAY	16,0%	A663
SALMAR FARMING AS, N-7266 KVERVA, NORWAY	16,0%	A663
SANDNES FISKEOPPDRETT AS, N-6967 HELLEUNIK, NORWAY	16,0%	A663
SANDVÆRFISK AS, POSTBOKS 34, N-8764 LOVUND, NORWAY	15,3%	A641

Company	Anti-Dumping Duty	TARIC Additional Code
SANDVOLL HAVBRUK AS, N-5835 BERGEN, NORWAY	15,3%	A641
SEAFARM INVEST AS, N-8764 LOVUND, NORWAY	15,3%	A641
SEANOR SALMON AS, POSTBOKS 371 NESTTUN N-5853 BERGEN, NORWAY	16,0%	A663
SELØY SJØFARM AS, SELØY, N-8850 HERØY, NORWAY	13,5%	A642
SELSØYVIK HAVBRUK AS, POSTBOKS 17, N-8196 SELSØYVIK, NORWAY	16,0%	A663
SENJA SJØFARM AS, GJØVIKA, N-9392 STONGLANDSEIDET, NORWAY	16,0%	A663
SFI MELØ AS, POSTBOKS 34, N-8764 LOVUND, NORWAY	15,3%	A641
SINKABERG-HANSEN AS, POSTBOKS 134, N-7901 RØRVIK, NORWAY	16,0%	A663
SIRIUS SALMON SA, BOKS 224, N-8455 STOKMARKNES, NORWAY	6,8%	A646
SJURELV FISKEOPPDRETT AS, FJORDVEIEN 255, N-9100, KVALØYSLETTA, NORWAY	16,0%	A663
SKJELBULAKS AS, N-8136 NORDARNØY, NORWAY	16,0%	A663
SNEKVIK SALMON AS, GJENGSTØ, N-7200 KYRKSÆTERØRA, NORWAY	16,0%	A663
SØMNA FISKEOPPDRETT AS, POSTBOKS 34, N-8764 LOVUND, NORWAY	15,3%	A641
SØRROLLNESFISK AS, N-9450 HAMNVIK, NORWAY	16,0%	A663
STEINVIK FISKEFARM AS, N-6939 EIKEFJORD, NORWAY	16,0%	A663
STETTEFISK AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0%	A663
STØLE DANIEL FISKEOPPDRETT AS, STØLEV. 2, N-5514 HAUGESUND, NORWAY	16,0%	A663
STOLT SEA FARM AS, POSTBOKS 370, SENTRUM, N-0102 OSLO, NORWAY	13,9%	A644
SULEFISK AS, N-6924 HARDBAKKE, NORWAY	16,0%	A663
SUNNHORDLAND FJORDBRUK AS, N-5694 ONARHEIM, NORWAY	16,0%	A663
TOFTØYSUND LAKS AS, N-5694 ONARHEIM, NORWAY	16,0%	A663
TOMBRE FISKEANNLEGG AS, N-5640 EIKELANDSOSEN, NORWAY	16,0%	A663
TOMMA LAKS AS, N-8723 HUSBY, NORWAY	15,3%	A641
TORRIS PRODUCTS LTD. AS, POSTBOKS 34, N-8764 LOVUND, NORWAY	15,3%	A641
TRI AS, POSTBOKS 100, N-9531 KVALFJORD, NORWAY	16,0%	A663
TYSNES FJORDBRUK AS, N-5694 ONARHEIM, NORWAY	16,0%	A663
VEGA SJØFARM AS, N-8980 VEGA, NORWAY	15,3%	A641
VESTVIK MARINEFARM AS, OLAV TRYGGVASON'S GT 40, P.O.BOX 2608, SENTRUM, N-7414 TRONDHEIM, NORWAY	16,0%	A663
VIKNA SJØFARM AS, V/TERJE BONDØ, SØRTUNET 2, N-7900 RØRVIK, NORWAY	16,0%	A663
WENBERG FISKEOPPDRET, LEIVSER N-8200 FAUSKE, NORWAY	16,0%	A663
WILSGÅRD FISKEOPPDRETT AS, N-9381 TORSKEN, NORWAY	16,0%	A663
ALL OTHER COMPANIES	24,5%	A999

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

This Regulation shall enter into force on 27 April 2005.

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 22 April 2005.

For the Commission
Peter MANDELSON
Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 April 2005

concluding consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement

(2005/321/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000⁽¹⁾, and in particular, Article 96 thereof,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement⁽²⁾ and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The essential elements referred to in Article 9 of the Cotonou Agreement have been violated.
- (2) On 20 July 2004, pursuant to Article 96 of the Cotonou Agreement, consultations started with the ACP countries and the Republic of Guinea. On that occasion the Guinean authorities gave specific undertakings designed to remedy problems identified by the European Union and to implement them during a period of intensive dialogue lasting three months.
- (3) At the end of this period some substantive initiatives had been taken in respect of some of the undertakings referred to above and some undertakings had been met; nevertheless several important measures concerning essential elements of the Cotonou Agreement have not yet been taken,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with the Republic of Guinea pursuant to Article 96 of the Cotonou Agreement are hereby concluded.

Article 2

The measures specified in the annexed letter are hereby adopted as appropriate measures within the meaning of Article 96(2)(c) of the Cotonou Agreement.

Article 3

This Decision shall enter into force on the day it is adopted. It shall be published in the *Official Journal of the European Union*.

This Decision shall expire on 14 April 2008. It shall be reviewed regularly at least every six months.

Done at Luxembourg, 14 April 2005.

For the Council
The President
L. FRIEDEN

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 317, 15.12.2000, p. 376.

ANNEX

Sir,

The European Union attaches great importance to the provisions of Article 9 of the Cotonou Agreement. The ACP-EU partnership is founded on respect for human rights, democratic principles and the rule of law; these being essential elements of the Agreement and thus forming the basis for relations between us.

In this spirit, the European Union has been concerned by the deterioration of democracy and the rule of law, particularly after the constitutional referendum in 2001 and the parliamentary elections (2002) and presidential elections (2003). The European Union has also been concerned at the lack of respect for human rights and fundamental freedoms and the lack of good administrative, political, economic and financial governance.

It considered that the political situation in Guinea constituted a violation of the essential elements set out in Article 9 of the Cotonou Agreement. In view of this Article and the political deadlock in Guinea, it decided on 31 March 2004 to open consultations under Article 96 of the Agreement in order to thoroughly review the situation and find a remedy if possible.

These consultations began in Brussels on 20 July 2004. On that occasion several fundamental issues were addressed, and you were able to present your point of view and your analysis of the situation in your country. You also presented a memorandum containing an action plan for consolidating democracy, respect for human rights, the rule of law and good governance.

Following the submission of that report a joint follow-up mission (EU Presidency and the Commission) went to Conakry and, in collaboration with EU Member States' representatives on the spot, evaluated implementation of the undertakings.

The European Union notes that the Guinean authorities showed great willingness both to continue and step up talks and to facilitate the EU follow-up mission. It also finds that you have taken promising initiatives in relation to some undertakings. In particular:

Your government has shown willingness to resume political dialogue with political representatives with a view to revising electoral arrangements. The official ceremony marking the resumption of dialogue took place on 31 August 2004 and an inter-party coordination office was set up to facilitate dialogue.

The Government confirmed its decision to organise local elections in June 2005 and to step up decentralisation. A number of draft legislative texts are being drawn up.

The Government has confirmed its decision to organise parliamentary elections within the time limits set by the Constitution, i.e. in June 2007. However, the Government is willing to consider the possibility of bringing forward the election date.

The Government also confirmed a timetable for liberalisation of the airwaves, which will take effect in June 2005.

Finally, the Government confirmed sectoral reforms in the field of macroeconomic management together with a timetable for implementation.

These initiatives will undoubtedly improve respect for human rights and fundamental freedoms in your country. However, most of the undertakings are to be implemented over an extended period and it will be necessary to monitor the implementation of some of them over time, in particular in order to ensure the consolidation of democracy. In this connection, the European Union is anxious for the measures listed in your progress report on implementation of the memorandum of 30 September 2004 to be taken, in particular:

1. Continuing national dialogue in order to review electoral arrangements and operational requirements in accordance with the Declaration on the Principles Governing Democratic Elections in Africa adopted by the African Union in Durban in 2002⁽¹⁾, with a view to guaranteeing transparent and democratic electoral procedures.
2. Continuing and consolidating the undertaking to comply with the laws on human rights and fundamental freedoms, in particular to allow political parties to exercise their rights and prerogatives to hold meetings, to demonstrate and to obtain access to State radio and television broadcasting.
3. Liberalising the electronic media according to the timetable presented to the EU follow-up mission in October 2004 to allow private electronic media to be set up before the local elections.
4. Organising local and parliamentary elections in line with the amended electoral arrangements.
5. Continuing decentralisation.
6. Continuing measures to enhance macroeconomic management and sectoral reforms.

Following the consultations, and in the light of the undertakings given thus far and the measures still to be implemented, it has been decided that the following appropriate measures under Article 96(2)(c) of the Cotonou Agreement will be adopted.

1. Cooperation financed from the unexpended balances of the sixth, seventh and eighth European Development Funds will continue for implementation of the undertakings given by Guinea in the context of these consultations, in particular decentralisation, liberalisation of the media and good economic governance.
2. Cooperation financed from Envelope B of the ninth European Development Fund will also continue for implementation of the programmes directly aimed at improving the living conditions of the most disadvantaged sections of the population or victims of the subregional political crisis.
3. Programmes to strengthen civil society (including non-organised forms), respect for and reinforcement of democracy, human rights and good governance and the emergence or consolidation of free media may also be supported.
4. Contributions to regional projects will be considered on a case-by-case basis.
5. Humanitarian operations, trade cooperation and trade-linked preferences will be continued.
6. Support will be provided for preparation of the elections, either from the unexpended balances of the sixth, seventh and eighth European Development Funds or from Envelope B of the ninth European Development Fund once electoral arrangements guaranteeing a transparent and democratic electoral process based on the Declaration on the Principles Governing Democratic Elections in Africa have been established.

⁽¹⁾ OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, AHG Declaration 1 (XXXVIII).

7. Envelope A of the ninth EDF, has been reduced by EUR 65 million in line with the decision taken by the European Commission in the context of the mid-term reviews. The Cooperation Strategy and National Indicative Programme will be finalised with due regard for the situation in the country and these new financial perspectives. These documents will be signed and implemented once sufficient progress has been noted in the implementation of the undertakings given by Guinea, in particular as regards the preparation and holding of free and transparent local and parliamentary elections. The European Union will base its assessment on the following criteria in particular:

- (a) whether free and transparent local elections have been held and duly elected local authority executives have taken office;
- (b) whether electoral arrangements and operational requirements for parliamentary elections (including the date of the elections), based on the Declaration on the Principles Governing Democratic Elections in Africa have been established within the framework of political dialogue with the opposition forces.

Regular reviews will have to be conducted by the Presidency of the European Union and the European Commission, the first to be held within the next six months.

The European Union will continue monitoring the situation in Guinea closely for a period of 36 months. An enhanced political dialogue within the framework of Article 8 of the Cotonou Agreement will be conducted with your government with a view to consolidating democracy and the rule of law in particular through the holding of parliamentary elections as well as respect for human rights and fundamental freedoms.

The European Union reserves the right to amend the appropriate measures should the undertakings given by the Guinean authorities increase in pace or, alternatively, break down.

I have the honour to be, Sir, yours faithfully,

For the Council

For the Commission

COMMISSION

COMMISSION DECISION

of 26 February 2005

on the request presented by the United Kingdom pursuant to Article 9 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy

(notified under document number C(2005) 411)

(Only the English, French and Dutch texts are authentic)

(2005/322/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁽¹⁾, and in particular Article 9 thereof,

Whereas:

- (1) On 27 January 2005, the United Kingdom consulted the Commission pursuant to Article 9 of Regulation (EC) No 2371/2002 on the extension of a domestic ban on pair trawling for bass within the 12 miles limit off the south-west coast of England to vessels of other Member States having fishing access to this area, with a view to reducing the by-catch of cetaceans as an interim step until more effective, coordinated action at Community level is possible. When presenting this request, the authorities of the United Kingdom referred to their concerns about levels of by-catch of common dolphins in the bass pair trawl fishery and to the Commission decision to reject their case for an emergency closure of this fishery in the Western Channel (ICES division VIIe)⁽²⁾.
- (2) According to Article 17(2) of Regulation (EC) No 2371/2002, French and Belgian vessels are authorised to fish for demersal species in the 6 to 12 mile area and would therefore be concerned by the draft measures proposed by the United Kingdom.
- (3) In accordance with the conditions stipulated in Article 9 of Regulation (EC) No 2371/2002, the United Kingdom

has communicated its request to the concerned Member States. Within the deadline of five working days laid down in Article 9 of Regulation (EC) No 2371/2002, the Commission has received written comments from France, inviting the Commission not to accept the United Kingdom's request.

- (4) The Commission is concerned by the by-catch of cetaceans, which are protected by Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁽³⁾, observed in some fisheries and is fully committed to reduce as much as possible the number of such animals drowning in fishing gear. Community action has been taken recently through Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98⁽⁴⁾.
- (5) The abovementioned Regulation provides for observers to be placed on vessels conducting pair trawl fisheries as from 1 January 2005. The issue of cetacean by-catch in pelagic pair trawling is a complex one and was specifically addressed as part of the comprehensive scientific review and advice given by the International Council for the Exploration of the Sea (ICES) on cetacean by-catch in fisheries⁽⁵⁾. ICES indicated that 'other fisheries than pair trawling for bass also catch dolphins' and that 'there is a need for a comprehensive monitoring of the numerous trawl fisheries active in this region before we can be precise about mitigation requirements'. ICES considered in particular that a 'ban on pelagic pair trawling for bass' would be an 'arbitrary measure, unlikely to achieve the desired goal'. A prohibition on the use of pair trawls to target sea bass in the United Kingdom inshore waters in the Western Channel is likely to result in a redistribution of fishing effort into adjacent areas, without necessarily reducing the by-catch of common dolphins.

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ Commission Decision of 24 August 2004 on the request presented by the United Kingdom pursuant to Article 7 of Regulation (EC) No 2371/2002 — C(2004) 3229

⁽³⁾ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁴⁾ OJ L 150, 30.4.2004, p. 12.

⁽⁵⁾ Reports of the ICES Advisory Committee on Ecosystems (ACE), 2002 and 2003, available at <http://www.ices.dk>

- (6) Although pursuant to Article 9 of Regulation (EC) No 2371/2002 a Member State may take measures in order to minimise the impact of fishing activities on marine ecosystems, according to the scientific information available the proposed measure is not likely to contribute to that objective.
- (7) This reasoning was one of the reasons for the Commission decision to reject the United Kingdom's request for emergency action to ban pelagic trawling for bass in the Western Channel in August 2004. Since then, no new scientific information has been made available that could justify a change in this analysis.
- (8) The Commission considers that the issue of cetacean by-catch in pelagic trawls should be addressed in an effective and coordinated manner, based on sound scientific understanding of the nature and the scale of the problem. In order to achieve this, the Commission is financially supporting scientific studies and research to develop mitigation measures for by-catch of cetaceans in pelagic trawl fisheries or to update the scientific estimates of the abundance of small cetaceans in European Atlantic waters. These studies and research projects, in combination with data on by-catch of cetaceans in a large number of fisheries that will be made available through the Community observer programme, are designed to provide, within a reasonable timeframe, a technical basis for targeted and effective management measures to limit the effects of fishing on

cetaceans. As soon as this information becomes available, the Commission will propose, where appropriate, necessary measures in close cooperation with all interested parties.

- (9) In conclusion, the request submitted by the United Kingdom cannot be accepted,

HAS ADOPTED THIS DECISION:

Article 1

The request submitted by the United Kingdom under Article 9 of Regulation (EC) No 2371/2002 to extend the closure of the pair trawl fishery for bass within 12 miles of the south-west coast of England to vessels of other Member States is rejected.

Article 2

This Decision is addressed to the Kingdom of Belgium, the French Republic and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 26 February 2005.

For the Commission

Joe BORG

Member of the Commission

COMMISSION DECISION

of 21 April 2005

on the safety requirements to be met by the European standards for floating leisure articles for use on or in the water pursuant to Directive 2001/95/EC of the European Parliament and of the Council

(notified under document number C(2005) 1209)

(Text with EEA relevance)

(2005/323/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety⁽¹⁾, and in particular Article 4(1)(a),

Whereas:

- (1) Directive 2001/95/EC lays down an obligation for producers to place only safe products on the market.
- (2) According to that Directive a product is to be presumed safe as far as the risks and risk categories covered by relevant national standards are concerned when it conforms to voluntary national standards transposing European standards.
- (3) According to Directive 2001/95/EC, European standards should be established by European standardisation bodies. Such standards should ensure that products satisfy the general safety requirement of the Directive.
- (4) The Member States and the Commission, in close cooperation with the European standardisation bodies and after consultation of stakeholders, have identified floating leisure articles for use on or in the water as a group of products for which European standards should be drawn up on the basis of a mandate to be given by the Commission pursuant to Directive 2001/95/EC. The floating leisure articles identified exclude those floating articles covered by Council Directive 88/378/EEC⁽²⁾ concerning the safety of toys, by Council Directive 89/686/EEC⁽³⁾ relating to personal protective equipment and by Directive 94/25/EC of the European Parliament and of the Council⁽⁴⁾ relating to recreational craft.

(5) Safety requirements for those products should be drawn up in the light of those consultations and discussions with Member States authorities.

(6) The measures provided for in this Decision are in accordance with the opinion of the Committee set up under Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

*Article 1***Products and product definition**

This Decision applies to the floating leisure articles for use on or in the water set out in Part I of the Annex, which are not covered by any product-specific EU legislation. In particular, floating leisure articles covered by Directive 88/378/EEC, by Directive 89/686/EEC and by Directive 94/25/EC are excluded from this Decision.

*Article 2***Safety requirements**

The safety requirements for the products referred to in Article 1 are set out in Part II of the Annex.

*Article 3***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 21 April 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 11, 15.1.2002, p. 4.

⁽²⁾ OJ L 187, 16.7.1988, p. 1. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

⁽³⁾ OJ L 399, 30.12.1989, p. 18. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁴⁾ OJ L 164, 30.6.1994, p. 15. Directive as last amended by Regulation (EC) No 1882/2003.

ANNEX

Safety requirements for floating leisure products for use on or in the water

PART I

Product definition

The floating articles covered by this Decision are leisure articles for use on or in the water whose floatation is ensured by buoyancy through inflation or inherent buoyant materials. These articles are not covered by any product-specific EU legislation, which are used on and in the water for leisure activities such as playing in the water, water sports, boating, diving and learning to swim, beyond the most typical and traditional products in that sector. Some of those products have been established on the European market for years whereas others are new, with new products appearing constantly.

Most of these products are in part modified traditional core products or derived from them and further developed. Increasingly, often land-based playground equipment is being adapted for use on the water.

These new products aim at increasing pleasure and entertainment but also to increase speed or to enhance action and thrill with new adventurous activities such as 'tubing' and 'white water rafting'.

Floating leisure articles covered by Directive 88/378/EEC concerning the safety of toys, by Directive 89/686/EEC relating to personal protective equipment and by Directive 94/25/EC relating to recreational craft are excluded from this Decision.

Floating articles covered by this Decision must be classified by their intended use, means of propulsion and design, in the following classes:

Class A: Floating articles intended for static positional use on or in the water. Position of user upon the buoyant structure. Intended for both single and collective use, mainly passive. Normally no mechanical means of propulsion. Devices may be designed in a way which provides floating stability, or may have to be balanced by the user.

Articles designed for protective functions, covered by Directive 89/686/EEC, are excluded. The same way, articles designed or clearly intended for individual use in play by children in shallow water, covered by Directive 88/378/EEC, are excluded.

Class B: Floating articles which are intended for static use. Position of the user is inside a buoyant structure which develops around the user's body (relatively tight fit). Devices may provide a body-holding system or the user may be expected to hold himself by the arms and hands. Body-holding system might be an integrated seat, straps or other means of holding regardless of the body posture (sitting, standing, lying, kneeling, etc.). User's body is more or less immersed. Normally the upper part (chest upwards) is out of the water. Intended for both single and collective use. Normally no mechanical means of propulsion.

Articles designed for protective functions, covered by Directive 89/686/EEC, are excluded. The same way, articles designed or clearly intended for individual use in play by children in shallow water, covered by Directive 88/378/EEC, are excluded.

Class C: Floating articles for dynamic use, i.e. application at high speed. Position of user is upon or inside the buoyant structure. There may be a cockpit or seat or other means to give hold to the user. The device is towed behind external means of propulsion. User is required to manage floating stability and safe course behind the towing devices.

Class D: Floating articles for active use i.e. climbing, jumping and any connected activity. No distinct position of user. Intended for both single and collective use. Normally no mechanical means of propulsion. Articles designed for protective functions, covered by Directive 89/686/EEC, are excluded. The same way, articles designed or clearly intended for individual use in play by children in shallow water, covered by Directive 88/378/EEC, are excluded.

Class E: Inflatable boats with buoyancy less than 1 800 N and a hull length of more than 1,2 m and less than 2,5 m, measured according to the appropriate harmonised standards intended for sports and leisure purposes as defined in Directive 94/25/EC. Single and collective use. Position of user inside the buoyant structure (wide cockpit).

PART II

A. Risks

The main risks associated with these products are drowning and near-drowning accidents.

Other risks associated with the specific products which can also cause more or less serious injuries include risks related to the product design, such as drifting away, loosing hold, fall from high height, entrapment or entanglement above or below water surface, sudden loss of buoyancy, capsizing, cold shock, as well as the risks inherent to their use, such as collision and impact, and risks linked to winds, currents and tides.

B. General safety requirement

The products must comply with the general safety requirement referred to in Directive 2001/95/EC and be 'safe' within the meaning of Article 2(b) thereof.

C. Specific safety requirements

In application of the general safety requirement referred to in Directive 2001/95/EC, the following must be taken into account, as a minimum:

C.1. Requirements on the product design

Safety by design must be given priority compared to safety through instructions. Materials used and workmanship must correspond to the state of the art, taking into account the expected use of the articles and eventual consequences for the health of the user and the environment.

The following must be considered, as a minimum:

- (a) floating stability in accordance with the intended and foreseeable use;
- (b) minimum buoyancy and, in case of inflatable articles, residual buoyancy after failure of one air chamber. Additionally retention of function where appropriate and in particular where collective use is intended or likely;
- (c) means of getting hold during use, easy gripping;
- (d) easy escape in case of capsizing, avoidance of any other forms of entrapment or entanglement regarding parts of the human body;
- (e) means to facilitate re-embarkation in particular where collective use is intended as well as means of getting hold when in the water in an emergency;
- (f) presence of a reliable quick release for products moved (towed) at high speed;

C.2. Warnings and information in respect of a cautious use of the product

The presentation and illustration of the product, conspicuous and clear labelling, as well as any warnings and instructions for its use, must be fully coherent and easily and clearly understood by the consumer and must not play down risks to potential users, especially children.

Labelling (including pictograms) related to warnings or appropriate sizing must be visible during use. Pictograms directly related to very serious risks must be accompanied by the corresponding text. Essential information regarding the performance and limitations of the product must be presented in a way to inform the potential user before buying. Special attention must be given to information related to risks in relation to children. As a minimum, the following must be considered:

- (a) Any requisite limitation on use concerning, for example: number of users, total weight, risks linked to winds, currents and tides, specifications on distance from shore, height, speed, the interaction with other products or objects, where it is reasonably foreseeable that the product will be used with other products or in vicinity to dangerous objects (safety distances); additionally, the foreseeable misuse of the product must also be considered.
 - (b) All products must have the warning 'ATTENTION: No protection against drowning. Swimmers only!'
 - (c) Recommendation regarding the use of adequate personal protective equipment (PPE) against drowning and for impact resistance, where appropriate.
 - (d) Instructions on inflation and pressure conditions, maintenance, repair, storage and disposal taking account of the specific characteristics of these products and of their use, situations of repeated use over long periods and the aging process.
 - (e) Products intended for categories of consumers at risk when using the product, in particular children, non-swimmers and in some cases the elderly, must have specific warnings.
-

**ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY
FOR MIGRANT WORKERS**

DECISION No 200

of 15 December 2004

**concerning the methods of operation and the composition of the Technical Commission on Data
Processing of the Administrative Commission on Social Security for Migrant Workers**

(Text with EEA relevance)

(2005/324/EC)

THE ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR
MIGRANT WORKERS,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to Article 81(d) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community⁽¹⁾, under which the Administrative Commission shall foster and develop cooperation between Member States by modernising procedures for the exchange of information, in particular by adapting the information flow between institutions for the purpose of telematic exchange, taking account of the development of data processing in each Member State, with a view to expediting the award of benefits;

1. The Administrative Commission on Social Security for Migrant Workers sets up the Technical Commission on Data Processing provided for in Article 117c(1) of Regulation (EEC) No 574/72. It shall be called 'the Technical Commission'.

2. The Technical Commission shall have the functions laid down in Article 117c(2) of Regulation (EEC) No 574/72.

3. The mandate with regard to the specific tasks of the Technical Commission shall be set by the Administrative Commission on Social Security for Migrant Workers, who may modify these tasks as required.

Having regard to Article 117c(1) of Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community⁽²⁾, under which the Administrative Commission shall set up and determine the methods of operation and composition of a Technical Commission, which shall, pursuant to Articles 117, 117a and 117b, deliver reports and a reasoned opinion before decisions are taken;

Article 2

The Technical Commission shall adopt its reports and reasoned opinions where necessary on the basis of technical documents and studies. It can request from national administrations any information it deems necessary for appropriate accomplishment of its tasks.

Taking account of the consequences of the enlargement of the European Union on 1 May 2004 on the functioning of the Technical Commission,

Article 3

1. The Technical Commission shall be composed of two members from each Member State, one of whom shall be nominated as the standing member, with the other designated as his deputy. The nominations from each Member State shall be forwarded to the Secretary-General of the Administrative Commission by the government representative for the Member State on the Administrative Commission.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100, 6.4.2004, p. 1).

⁽²⁾ OJ L 74, 27.3.1972, p. 1. Regulation as last amended by Regulation (EC) No 631/2004.

2. Reports and reasoned opinions shall be adopted by simple majority of all members of the Technical Commission, each Member State having a single vote that shall be cast by the standing member or in his absence by his deputy. The reports or reasoned opinions of the Technical Commission must indicate whether they were reached unanimously or by simple majority. They must, should there be a minority, set out conclusions or reservations of the minority.

3. A representative of the Commission of the European Communities or a person designated by him shall act in a consultative capacity within the Technical Commission.

Article 4

The office of Chairman of the Technical Commission shall be held each half-year by either the standing member or another designated official belonging to the State whose representative on the Administrative Commission holds the office of Chairman of that Commission for the same period. The Chairman of the Technical Commission shall report on the activities of the Technical Commission as required by the Chairman of the Administrative Commission.

Article 5

The Technical Commission may set up ad hoc working groups to consider specific issues. The Technical Commission shall describe the tasks to be taken forward by such working groups, the timetable for completion of those tasks and the financial implications of its action in the work programme mentioned in Article 7.

Article 6

The Secretariat of the Administrative Commission shall prepare and organise the meetings of the Technical Commission and draw up the minutes thereof.

Article 7

The Technical Commission shall submit a detailed work programme to the Administrative Commission for its approval. The Technical Commission shall also report each

year, to the Administrative Commission, on its activities and achievements in relation to the work programme and with any proposals for amending it.

Article 8

Any proposed action of the Technical Commission involving expenses to be borne by the Commission of the European Communities is subject to the approval of the representative of that institution.

Article 9

The languages of the Technical Commission shall be the same as those recognised as official languages of the Community institutions in accordance with the Article 290 of the Treaty establishing the European Community.

Article 10

The supplementary rules laid down in the attached Annex shall also apply to the Technical Commission.

Article 11

This Decision shall replace the Decision No 169 of the Administrative Commission⁽¹⁾.

Article 12

This decision shall be published in the *Official Journal of the European Union*.

It shall apply from 1 March 2005.

The Chairman of the Administrative Commission

C.-J. VAN DEN BERG

⁽¹⁾ OJ L 195, 11.7.1998, p. 46.

ANNEX

SUPPLEMENTARY RULES OF THE TECHNICAL COMMISSION**1. Attendance at meetings**

- (a) If the Chairman in office is prevented from attending a meeting of the Technical Commission, his deputy shall act as chairman.
- (b) Members may be accompanied at the meetings of the Technical Commission by one or more additional experts where this is necessary because of the nature of the subjects to be dealt with. Each delegation may, as a rule, consist of not more than four persons.
- (c) The representative of the Commission of the European Communities or a member of the Secretariat or any other person designated by the Secretary-General of the Administrative Commission shall attend all meetings of the Technical Commission or its ad hoc working groups. Those meetings may furthermore be attended, where this is relevant to the question to be dealt with, by a representative of other departments of the Commission of the European Communities.

2. Voting

- (a) When a standing member of the Technical Commission holds the office of Chairman, his deputy shall vote in his place.
- (b) Any member present when a vote is taken who abstains from voting shall be invited by the chairman to state his reasons for abstaining.
- (c) When the majority of members present abstain, the proposal put to the vote shall be considered as not having been taken into consideration.

3. Agenda

- (a) The provisional agenda of each meeting of the Technical Commission shall be drawn up by the Secretariat in consultation with the chairman of the Technical Commission. Before proposing to include an item in the agenda, the Secretariat may, where this appears necessary, ask the delegations concerned to make their views on this question known in writing.
- (b) The provisional agenda shall, in principle, comprise items for which a request submitted by a member or by the representative of the Commission of the European Communities and, where appropriate, notes relating to it have been received by the Secretariat at least 20 working days before the beginning of the meeting.
- (c) The provisional agenda shall be sent at least 10 working days before the beginning of each meeting to the members of the Technical Commission, the representative of the Commission of the European Communities, and any other person expected to be attending the meeting. The documents relating to the items on the agenda shall be sent to them as soon as they are available.
- (d) At the beginning of each meeting the Technical Commission shall approve the agenda of the meeting. A unanimous vote of the Technical Commission is required for the inclusion in the agenda of any items other than those appearing on the provisional agenda. Except in cases of urgency, members of the Technical Commission may reserve their final position until the following meeting with regard to items appearing on the provisional agenda for which they have not received the relevant documents in their own language five working days before the beginning of the meeting.

4. Ad hoc working groups

- (a) Ad hoc working groups shall be presided over by an expert designated by the Chairman of the Technical Commission in consultation with the representative of the Commission of the European Communities or, failing this, by an expert representing the State whose representative on the Administrative Commission holds the office of Chairman of that Commission.
- (b) The chairman of the ad hoc working group shall be summoned to the meeting of the Technical Commission in the course of which the report of that ad hoc working group is discussed.

5. Administrative matters

- (a) The Chairman of the Technical Commission may give the Secretariat any instructions for meetings to be held and for the performance of activities that are within the scope of the functions of the Technical Commission.
 - (b) The Technical Commission shall be convened by a letter of convocation sent to the members and the representative of the Commission of the European Communities 10 working days before the meeting by the Secretariat in consultation with the Chairman of the Technical Commission.
 - (c) Minutes are to be recorded for each meeting and are, in principle, to be approved at the following meeting.
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CORRIGENDA**Corrigendum to Commission Regulation (EC) No 607/2005 of 18 April 2005 amending, for the fourth time, Council Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)**

(Official Journal of the European Union L 100 of 20 April 2005)

On page 18, in point 2(c):

for: 'Lukic, Milan. Date of birth: 6.9.1967. Place of birth: Visegrad, Bosnia and Herzegovina. Nationality: (a) Bosnia and Herzegovina, (b) possibly Serbia and Montenegro.'

read: 'Lukic, Sreten. Date of birth: 28.3.1955. Place of birth: Visegrad, Bosnia and Herzegovina. Nationality: Serbia and Montenegro.'
