

COMMISSION REGULATION (EC) No 206/2005**of 4 February 2005****imposing definitive safeguard measures against imports of farmed salmon**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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⁾, as last amended by Regulation (EC) No 2474/2000⁽²⁾, and in particular Article 16 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⁽³⁾, as last amended by Regulation (EC) No 427/2003⁽⁴⁾, and in particular Article 15 thereof,

After consultations within the Advisory Committee established under Article 4 of Regulation (EC) No 3285/94 and of Regulation (EC) No 519/94 respectively,

Whereas:

1. PROCEDURE

- (1) On 6 February 2004, Ireland and the United Kingdom informed the Commission that trends in imports of farmed Atlantic salmon appeared to call for safeguard measures under Regulations (EC) No 3285/94 and 519/94; submitted information containing the evidence available as determined on the basis of Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94; and requested the Commission to take safeguard measures under those instruments.
- (2) Ireland and the United Kingdom provided evidence that imports into the European Community of farmed Atlantic salmon are increasing rapidly both in absolute terms, and relative to Community production and consumption.
- (3) They alleged that the increase in the volume of imports of farmed Atlantic salmon has, among other consequences, had a negative impact on the prices of like or directly competitive products in the Community, and on the market share held by the Community producers, resulting in damage to the Community producers.

- (4) Ireland and the United Kingdom further advised that, based on the information submitted by the Community producers, any delay in the adoption of safeguard measures by the European Community would cause damage which it would be difficult to repair, and that measures should therefore be adopted as a matter of urgency.

- (5) The Commission informed all Member States of the situation and consulted with them on the terms and conditions of imports, import trends and the evidence as to serious injury, and the various aspects of the economic and commercial situation with regard to the Community product in question.

- (6) On 6 March 2004, the Commission initiated an investigation relating to serious injury or threat thereof to the Community producers of the product like or directly competitive with the imported product, which has been defined as farmed salmon, whether or not filleted, fresh, chilled or frozen ('the product concerned')⁽⁵⁾ as explained below. The investigation period (IP) is 2003, and the period under examination in the investigation is from the beginning of 2000 to the end of 2003.

- (7) The Commission officially advised the exporting producers and importers as well as their representative associations known to be concerned, the representatives of exporting countries and the Community producers of the investigation. The Commission sent questionnaires to all these parties, to representative associations of salmon farmers in the Community, and to those parties who made themselves known within the time limits set in the Notice of Initiation. Pursuant to Articles 5 of Council Regulation (EC) No 519/94 and 6 of Council Regulation (EC) No 3285/94 the Commission also gave parties directly concerned the opportunity to make their views known in writing and to request a hearing.

- (8) On 13 August 2004, the Commission imposed provisional safeguard measures. These were referred to the Council under Articles 15(5) of Council Regulation (EC) No 519/94 and 16(7) of Council Regulation (EC) No 3285/94 and subsequently lapsed on 6 December 2004.

⁽¹⁾ OJ L 349, 31.12.1994, p. 53.

⁽²⁾ OJ L 286, 11.11.2000, p. 1.

⁽³⁾ OJ L 67, 10.3.1994, p. 89.

⁽⁴⁾ OJ L 65, 8.3.2003, p. 1.

⁽⁵⁾ OJ C 58, 6.3.2004, p. 7.

- (9) Following the publication of the provisional measures, the Commission continued its investigation with a view to reaching definitive findings. Certain governments, certain exporting producers and their representative associations, the Community producers, suppliers, processors and importers and their representative associations submitted comments in writing. The oral and written comments submitted by the parties were considered and taken into account in reaching the definitive findings. All the information which was deemed necessary for the purpose of a final determination was sought and verified. Verification visits were carried out at the premises of eight Community producers.
- (10) All cooperating parties were informed of the essential facts and considerations on the basis of which it was intended to impose definitive safeguard measures and the form of the proposed measures. They were granted the opportunity to submit comments and these were considered, and, where deemed appropriate, taken into account in the definitive findings.

2. LIST OF COOPERATING PARTIES

Producers

Ardvar Salmon Ltd, Inverness, Scotland, United Kingdom.
 Atlantic West, Western Isles HS7 5LZ, Scotland, United Kingdom.
 Hennever Salmon, West George Street, Scotland, United Kingdom.
 Pan Fish Scotland Ltd, Argyll, Scotland, United Kingdom.
 Loch Duart Ltd, Scourie By Lairg Sutherland, Scotland, United Kingdom.
 Marine Harvest (Scotland), Craigmack Road, Scotland, United Kingdom.
 Orkney Salmon Ltd, Bellshill, Scotland, United Kingdom.
 Stolt Sea Farm Ltd, Western Isles, Scotland, United Kingdom.
 West Minch Salmon Ltd, Western Isles, Scotland, United Kingdom.
 Western Isles Seafood Co Ltd, Western Isles, Scotland, United Kingdom.
 Sidinish Salmon Ltd, Western Isles, Scotland, United Kingdom.
 Creevin Salmon, Mountcharles, Ireland.
 Marine Harvest Ireland, County Donegal, Ireland.

Importers/Processors

Laschinger GmbH, Bischofsmais, Germany.
 Syndicat National de l'Industrie du Saumon Fumé, Paris Cedex 14, France.
 Vensy Espana SA, Malaga, Spain.
 SIF France, Boulogne sur Mer, France.
 Moulin de la Marche, Chateaulin, France
 Group Labeyrie, St-Vincent-De-Tyrosse, France.

Exporters

Aalesundfisk AS, Aalesund, Norway.
 Marine Harvest Norway AS, Bergen, Norway.
 Cultivos Yadrán SA, Renca, Chile.
 Invertec Pesquera Mar de Chiloe SA, Providencia, Chile.
 Marine Harvest Chile SA, Puerto Montt, Chile.
 Pesca Chile SA, Piso 6, Chile.
 Compania Pesquera Camanchaca S.A, Puerto Montt, Chile.
 Chilefood Sociedad Anonima, Montalva No 4.800, Chile.
 Fjord Seafood Chile S.A, Puerto Montt, Chile.
 Pesquera Los Fiordos Ltda, Puerto Montt, Chile.
 Salmones Pacific Star S.A, Santiago, Chile.
 Patagonia Salmon Farming S.A, Puerto Montt, Chile.
 Salmones Mainstream S.A, Puerto Montt, Chile.
 Yadrán Quellón S.A, Santiago, Chile.
 Salmones Friosur, Puerto Chabuco, Chile.
 Aguas Claras, Puerto Montt, Chile.
 Pesquera EICOSAL, Puerto Montt, Chile.
 Cultivos Marinos Chiloe, Chiloe Island, Chile.
 Patagonia Salmon farming, Puerto Montt, Chile.
 Salmones Multiexport Ltda, Puerto Montt, Chile.
 East Salmon P/F, Klaksvik, Faeroe Islands.
 Faeroe Seafood Prime, Tórshavn, Faeroe Islands.
 P/F Bakkafrost, Glyvrrar, Faeroe Islands.
 Landshandilin P/F, Tórshavn, Faeroe Island.
 Viking Seafood P/F, Strendur, Faeroe Island.
 S. A. Salmon Sp/f, Faeroe Island.
 PRG Export Limited, Gota, Faeroe Island.
 P/F Vestsalmon, Kollafjörður, Faeroe Islands.
 Samherji hf, Akureyri, Iceland.
 Nordlaks Oppdrett AS Stokmarknes, Norway.
 Seafarm Invest AS Lovund, Norway.
 Norwegian Seafood Federation, Bergen, Norway.
 The Faeroe Fish Farming Association, Tórshavn, The Faeroe Islands.

Suppliers

Ewos, West Lothian, United Kingdom.
 Havsbrun Ltd, Fuglafjörður, Faeroe Islands.
 Landcatch Ltd, Argyll, United Kingdom.

3. PRODUCT CONCERNED

- (11) The product in respect of which the Commission was informed that trends in imports appear to call for safeguard measures is farmed *Atlantic* salmon, whether or not filleted, fresh, chilled or frozen.

- (12) However, it is considered that the product concerned should be all farmed salmon. To restrict the product concerned to farmed Atlantic salmon would be to define the product concerned too narrowly. Based on the physical characteristics of different species of salmon (size, shape, taste etc), the production process, and the substitutability of all types of farmed salmon from the perspective of the consumer, it is considered that all farmed salmon is a single product. Similarly, whilst farmed salmon is sold in different preparations (whole fish gutted, whole fish head-off and gutted, fillets), these different preparations all serve the same end use and are readily capable of being substituted.
- (13) Some parties argued that frozen salmon is a different product to fresh salmon and should not be considered as part of the product concerned. One party noted that it is subject to a different classification for tariff purposes and claimed that it is intended for, and preferred by, industrial food processors and smokers, whilst consumers prefer fresh salmon. Another claimed that it is unsuitable as a raw material for salmon smoking. It was also argued that the infrastructure required by processors is different as between fresh and frozen salmon. It was also claimed that there were entirely separate markets for fresh and frozen salmon indicated by a lack of correlation between fresh and frozen salmon prices and specific instances of retailers, processors and consumer profiles which required one preparation but not the other were provided. One party claimed that the normal presentations for frozen salmon (e.g. whole fish, fillet, etc.) were different to those for fresh salmon.
- (14) However, these claims were found to be unsubstantiated. The existence of different classifications for tariff purposes is a single factor amongst others to be considered and is not in itself determinative. Processors use both fresh and frozen farmed salmon. Both fresh and frozen preparations are commonly sold at retail level and commonly at the same outlets (though some outlets only sell either fresh or frozen salmon) even if there is evidence of a small price differential. Both are available in different presentations and directly consumed by consumers. Although some consumers may prefer to purchase the product in its fresh/chilled state and other in its frozen state, and some preparations are perceived to be of higher quality than others, these preferences and perceptions are not significant. Both preparations serve the same end use and compete in the same market.
- (15) One party claimed that there is no cross-elasticity of demand between fresh and frozen salmon, and referred to the findings in Council Regulation (EC) No 930/2003 in support of this proposition. However, in fact that Regulation recognised the existence of price competition between these two products.
- (16) In consequence, the argument that frozen salmon is a different product to fresh salmon had to be rejected.
- (17) Therefore, it is considered that farmed (other than wild) salmon (whether fresh, chilled or frozen) in the different preparations described is a single product. It is currently classified 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.
- #### 4. LIKE OR DIRECTLY COMPETITIVE PRODUCTS
- (18) An examination has been undertaken to establish whether the product produced by the Community producers — i.e. farmed salmon (hereinafter referred to as 'the like product') is like or directly competitive with the imported product concerned.
- (19) In reaching a determination, the following findings in particular were taken into account.
- (a) the imported product and the Community product share the same international classification for tariff purposes at HS code level (6 digits). Furthermore, they share the same or similar physical properties such as taste, size, shape and texture. The domestic product is often marketed as a premium quality product and often enjoys a price premium at the retail level. However, 'likeness' does not require products to be completely identical, and the minor variations in quality are not sufficient to change the overall finding of likeness between the imported and domestic products;
 - (b) the imported product 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;
 - (c) the imported product and the Community product both serve the same or similar end-uses, they were, therefore, alternative or substitute products and were easily interchangeable;
 - (d) the imported product and the Community product were both perceived by consumers as alternatives to satisfy a particular want or demand, in this respect the differences identified by certain exporters and importers were simply minor variations.
- (20) Therefore, the conclusion reached is that the imported product and the Community product are 'like or directly competitive'.

5. IMPORTS

5.1. Increase in imports

5.1.1. Introduction

- (21) An examination has been undertaken based on data for the period 2000 to 2003, focussing on imports in the most recent period for which reliable data are available, to establish whether the product concerned is imported into the Community in such greatly increased quantities, absolute or relative to total Community production, and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers. One party claimed that the import increase was due to the fact that imports of wild salmon were included in the import data. However, the investigation showed that although Eurostat data does not distinguish between wild and farmed salmon, the available information (US and Canadian export statistics) indicates that imports of wild salmon to the Community have in fact decreased since 2001. Therefore, the inclusion of imports of all salmon in the Eurostat data did not cause the increase in imports observed in those data. One party also claimed that 2000 was an inappropriate base year for the analysis undertaken, claiming that salmon prices were unusually high in that year. However, the analysis focuses on the key developments in the most recent period, and changing the base year to 1999 or 2001 would not change the outcome of that analysis.

- (22) The definitive findings set out below are thus based on the data from 2000 to 2003.

5.1.2. Volume of imports

| | 2000 | 2001 | 2002 | 2003 |
|----------------------------|---------|---------|---------|---------|
| Imports | 372 789 | 379 764 | 396 772 | 455 948 |
| Year on year increase | | 2% | 4% | 15% |
| Total Community Production | 146 664 | 161 854 | 168 374 | 190 903 |
| Imports/Production | 254% | 235% | 236% | 239% |

Source: Import figures provided by Eurostat. Community production calculated from government data for Ireland and the United Kingdom and industry data for France and Latvia.

- (23) Imports increased from 372 789 tonnes in 2000 to 455 948 tonnes in 2003, an increase of 22%. Between 2002 and 2003, imports increased by 15%.
- (24) Relative to Community production, imports fell from 254% in 2000 to 235% in 2001, but have since

increased again to 239% in 2003. Although this represents a reduction compared to 2000, it is noted that following a dip in 2001, imports have increased relative to production in each year since. In addition, it is recalled that in 2003 there was an absolute increase in imports of 15%, a much higher rate of increase than in previous years.

- (25) Quarterly figures for the years 2002 and 2003 show that in 2003 quarterly imports were higher than in the same quarter in 2002, and that the highest increases (up to 20,8%) occurred in the second half of 2003.

| | Q1 2002 | Q2 2002 | Q3 2002 | Q4 2002 |
|-----------------------|------------|------------|------------|------------|
| Volume (t) | 86 753 | 96 988 | 93 375 | 119 657 |
| | Q1 2003 | Q2 2003 | Q3 2003 | Q4 2003 |
| Volume (t) | 92 667 | 108 655 | 112 862 | 141 763 |
| Year on year increase | 6,8% | 12,0% | 20,8% | 18,5% |

Source: Eurostat.

5.1.3. Conclusion

- (26) Based on the import data for the period from 2000 to 2003, it is concluded that there is a recent, sudden, sharp and significant increase in imports, both absolute and relative to production.

5.2. Prices of imports

- (27) The conditions under which imports have been made have also been considered by reference to Eurostat data. While the data includes a small quantity of wild salmon, this is considered to have had no appreciable effect on prices.
- (28) In this regard, it should be noted that between September 1997 and May 2003, a significant proportion of imports of farmed salmon from Norway (which holds around 55% of the Community market) were subject to price undertakings in the context of the then existing anti-dumping and anti-subsidy measures. 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 proposed termination of the anti-dumping and anti-subsidy measures against imports from Norway was then announced in December 2002 and those measures were terminated in May 2003. Import prices during 2002 and the first half of 2003 fell partly due to violation of, or voluntary withdrawal from, the price undertakings by some Norwegian exporters.

- (29) Import prices fell by 28,5% between 2000 and 2003. This is considered to be outwith the normal price fluctuation on the market because of the extent of the decrease in absolute terms, and because exporting producers were not earning supernormal profits in the year 2000 and the cost of production has not materially decreased between 2000 and 2003.

| | 2000 | 2001 | 2002 | 2003 |
|--------------|------|------|------|------|
| Import price | 3,55 | 2,99 | 2,87 | 2,54 |

Source: Eurostat.

- (30) Recent price developments are more clearly illustrated by quarterly data. Having remained relatively stable at between EUR 2,83 and EUR 2,93 in 2002, import prices dropped from EUR 2,87 in Q1 2003 to EUR 2,24 in Q3 2003 before making a partial recovery to EUR 2,48 in Q4 2003.

| | Q1 2002 | Q2 2002 | Q3 2002 | Q4 2002 |
|--------------|------------|------------|------------|------------|
| Import price | 2,83 | 2,93 | 2,86 | 2,85 |
| | Q1 2003 | Q2 2003 | Q3 2003 | Q4 2003 |
| Import price | 2,87 | 2,62 | 2,24 | 2,48 |

Source: Eurostat.

- (31) Eurostat data for the first semester of 2004 indicate that prices initially increased albeit remaining below their average in 2003, but then followed a downward trend. The latest available information indicates that prices are continuing to follow a downward trend and are very low. Despite some claims that prices would increase, these have not been substantiated and the current extremely low prices are confirmed by industry sources in exporting countries.

5.3. Market share of imports

- (32) The market share of imports fell from 73,5% in 2000 to 71,9% in 2001, and remained stable at about this level in 2002 (72%). In 2003, imports increased their market share from 72,0% in 2002 to 73,9%, an increase of 1,9 percentage points and their highest level in the period considered.

| | 2000 | 2001 | 2002 | 2003 |
|---------|-------|-------|-------|-------|
| Imports | 73,5% | 71,9% | 72,0% | 73,9% |

6. DEFINITION OF THE COMMUNITY PRODUCERS

- (33) Almost all production of the product concerned in the Community was in Scotland and Ireland, although there are also two producers in France and at least one in Latvia.
- (34) In the year 2003, total Community production of the product concerned was 190 903 tonnes, of which the producers which co-operated fully in the provisional stage of the investigation accounted for 85 231 tonnes, equivalent to 45% of the total Community production. They therefore represent a major proportion of total Community production within the meaning of Article 5(3)(c) of Regulation (EC) No 3285/94 and Article 15(1) of Regulation (EC) No 519/94. They are accordingly considered as the Community producers.

7. UNFORESEEN DEVELOPMENTS

- (35) Towards the end of 2002, Norwegian forecasts of their overall salmon production in 2003 were around 446 000 tonnes. By February 2003, Kontali Analyse (an industry information provider) was forecasting harvesting of 475 000 tonnes. This was 30 000 tonnes higher than Norwegian production in 2002, but it was expected that most of this increase would be directed to emerging markets such as Russia and Poland and to markets in the Far East such as Japan, Hong Kong, Taiwan and China. Growth in the Far East had been negative since 2000, but, Norway expected to reverse this decline in 2003 by opening up the Chinese market.
- (36) Infact, actual Norwegian production in 2003 was 509 000 (around 63 000 tonnes higher than had been forecast by the Norwegian Government), and harvesting was 6% higher than Kontali's harvesting forecast. Production was also 64 000 tonnes (or 14%) higher than Norwegian production in 2002. At the same time, far from reversing the decline in sales in the Far East, the rate of decline actually accelerated to -6,0%. In addition, growth in emerging markets also declined — from 47% to 32% in the case of Russia, and from 50% to 30% in the case of European countries outwith the Community. Indeed, overall global consumption grew by only 6% compared to 9% in 2002 and 14% in 2001. This, as it turned out, erroneous forecast of production, combined with the development of world consumption, was unforeseen.
- (37) In consequence, Norway experienced a serious problem of over-production, a problem which it appeared to recognise. Indeed, in August 2003, in an effort to remove excess product from the market, certain Norwegian producers considered freezing 30 000 tonnes of farmed salmon. However, this idea was later abandoned and the market continued to be over-supplied.

- (38) In addition, in December 2002 the Commission had announced its proposal to terminate anti-dumping and anti-subsidy measures against Norway. These were subsequently terminated in May 2003. The measures had in large part taken the form of minimum import prices ('MIPs'), which in effect guaranteed a minimum price for exporting producers. When the proposed withdrawal of the measures was announced, many Norwegian exporting producers either voluntarily gave up their undertakings or simply ceased to observe them. Norwegian salmon producers as a whole are heavily indebted to the Norwegian banks. As prices slid, and in the absence of MIPs, the banks lending to Norwegian producers began to take steps to reduce their exposure by demanding repayment. This created a vicious circle which led to an increase in harvesting, further pressure on prices and increased pressure to export. Although some temporary and small adjustment of import prices was to be expected as a result of the termination of the measures against Norway, the extent of the fall in prices (exacerbated by the problem of over-production) and the vicious circle which that created because of the operation of the banking system described above, were unforeseen.
- (39) During 2003, the value of the Norwegian kroner fell by 13 % relative to the euro, by 12 % relative to the Danish krone and by 14 % relative to the Swedish krone. Although currency movements are to be expected, these were relatively large and sustained fluctuations and outwith the normal range of currency fluctuations. Although the euro also strengthened by comparison to the British pound, the British pound fell by only 6 % making farmed salmon produced in the United Kingdom more expensive in the euro-zone relative to Norwegian imports than it had been at the beginning of that year. The principal importers of Norwegian farmed salmon in the Community are Denmark, Sweden, Germany and Poland. However, much of these imports are directly transported within the Community to euro-zone countries such as France and Spain. In addition, over half of the farmed salmon imported to Denmark, and almost all of that imported to Poland and other new Member States, is re-sold in the euro-zone after processing. In consequence, the fall in the value of the Norwegian kroner relative to the euro had an effect not only on Norwegian imports directly to the euro-zone, but also on imports to those countries such as Denmark and Poland which process farmed salmon to re-sell in the euro-zone. The effect of these currency movements was to make the European Community market as a whole more attractive to Norwegian exporting producers, to some extent insulating them from the effect of a decrease in their prices in euro and krone, and helping them to maintain their export revenues in their domestic currency. Nevertheless, unit prices fell even in Norwegian kroner. At the same time, these currency movements made imported salmon cheaper in the European Community and made importing more attractive to importers and users such as the processing industry. In consequence, much of the overproduction in Norway was exported to the European Community.
- (40) One party argued that overproduction abroad does not necessarily lead to increased imports to the Community. Whilst this is true in abstract terms, the investigation shows that in this specific case the overproduction did lead to an increase in imports to the Community.
- (41) It was also argued that the removal of trade measures and exchange rate fluctuations are both foreseeable. However, the profound effect of the removal of trade measures combined with relatively large and sustained fluctuations in exchange rates was not foreseeable.
- (42) Therefore it is concluded that the unforeseen development which caused the increase in imports was significant over-production in Norway (despite lower forecasts), exacerbated by the failure of the Norwegian industry to achieve forecast growth in exports to markets outwith the Community, the unexpected extent of the effects of the termination of trade defence measures against Norway and the operation of the Norwegian banking system as described above, together with the rise in the value of the euro which made the Community market an unusually attractive destination for Norwegian exports.

8. SERIOUS INJURY

8.1. Introduction

- (43) In order to make a determination of serious injury to the Community producers of the like product, an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on their situation has been undertaken. In particular, for the product concerned, an evaluation has been carried out of the development of global Community data for consumption, production capacity, production, capacity utilisation, employment, productivity, overall sales and market share. These global data are based on statistical information gathered by the United Kingdom and Ireland through comprehensive industry surveys. As concerns company specific data, these are based upon data provided by the co-operating Community producers on cash flow, return on capital employed, stocks, price, undercutting and profitability for the years 2000 to 2003.
- (44) It should be noted at the outset that in the Community salmon farming industry, as elsewhere, there is a long and relatively inflexible production cycle leading to harvesting and that, once harvested, the farmed salmon must be sold immediately since they can only be stored for a few days unless frozen. Freezing is expensive, and in any event, there is limited freezing capacity in the Community. In consequence, the level of production must be planned at least two years in advance and, once planned, cannot be altered except at the margins. Therefore, oversupply has a delayed effect on production, but an immediate and severe effect on prices.

8.2. Analysis of the situation of the Community Producers

8.2.1. Consumption

| | 2000 | 2001 | 2002 | 2003 |
|-----------------------|---------|---------|---------|---------|
| Consumption (t) | 507 705 | 527 970 | 550 943 | 618 038 |
| year on year increase | | 4,0 % | 4,4 % | 12,2 % |

- (45) Consumption of the product concerned in the Community was established on the basis of the total production by all producers in the Community and total imports of the product concerned into the Community as reported by Eurostat, less European Community exports.
- (46) Between 2000 and 2003, consumption in the Community increased by 21,7% from 507 705 tonnes to 618 038 tonnes.
- (47) It should be noted that salmon has a relatively high level of price elasticity and the markedly higher increase in consumption in 2003 can therefore be at least partially explained by the fall in prices at wholesale level.

8.2.2. Production capacity and capacity utilisation of the Community producers

| | 2000 | 2001 | 2002 | 2003 |
|----------------------|---------|---------|---------|---------|
| Capacity (t) | 340 029 | 340 294 | 339 359 | 347 671 |
| Capacity Utilisation | 43 % | 48 % | 50 % | 55 % |

- (48) 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 based on the total quantity licensed rather than the physical fish-holding capacity of the cages operated by the Community producers. The cost of applying for and maintaining licences is relatively low and therefore the cost of maintaining excess capacity is also low.
- (49) Having remained stable between 2000 and 2002, the investigation showed that theoretical production capacity increased by 2,2% between 2002 and 2003.
- (50) Capacity utilisation (i.e. the quantity of fish in the water compared the quantity licensed) increased from 43% in 2000 to 48% in 2001 and then increased further in 2003 when it reached 55%. This reflects the fact that production increased more quickly between 2000 and 2003 than licensed capacity which increased by only 2,2%.

8.2.3. Production of the Community producers

| | 2000 | 2001 | 2002 | 2003 |
|----------------|---------|---------|---------|---------|
| Production (t) | 146 664 | 161 854 | 168 374 | 190 903 |

- (51) Production (taken as fish harvested) grew by 30% from 146 664 tonnes in 2000 to 190 903 tonnes in 2003, following a single year increase of 13,7%.
- (52) It should be noted that due to the long production cycle, production is planned at least two years in advance and that, once the production cycle is commenced, production levels cannot be adjusted except at the margins.

8.2.4. Employment

| | 2000 | 2001 | 2002 | 2003 |
|----------------------------|-------|-------|-------|-------|
| Employment (end of period) | 1 269 | 1 162 | 1 195 | 1 193 |

- (53) Employment in relation to the product concerned fell by 6% from 1 269 in 2000 to 1 193 in 2003, although it followed an uneven trend with a partial recovery in 2002.

8.2.5. Productivity

| | 2000 | 2001 | 2002 | 2003 |
|--------------------------------|------|------|------|------|
| Productivity (tonnes/employee) | 115 | 139 | 141 | 160 |

- (54) Productivity has consistently increased throughout the period under consideration from 115 tonnes in 2000 to 160 tonnes in 2003. This reflects the increasing use of automated feed systems and other labour saving devices, and the strong pressure to reduce costs in the face of mounting financial losses.

8.2.6. Sales volume

| | 2000 | 2001 | 2002 | 2003 |
|----------------------------|---------|---------|---------|---------|
| Sales in the Community (t) | 134 916 | 148 206 | 154 171 | 162 090 |

- (55) Between 2000 and 2002, the Community producers' sales of the like product increased by 14,3% from 134 916 to 154 171 tonnes. This increase occurred against a background of an increase in consumption over the same period of 8,5%. Between 2002 and 2003, the Community producers' sales increased by 5,1% from 154 171 to 162 090 tonnes, notwithstanding an increase in consumption between 2002 and 2003 of 10,3%.

8.2.7. Market share

| | 2000 | 2001 | 2002 | 2003 |
|--------------|--------|--------|--------|--------|
| Market share | 26,5 % | 28,1 % | 28,0 % | 26,1 % |

- (56) The Community producers' market share increased from 26,5% in 2000 to 28,1% in 2001 and remained at about this level in 2002, but then fell by 1,9 percentage points (or 6,7%) to 26,1% in 2003, its lowest level in the period considered. This reflects the fact that imports increased not only in absolute terms, but also relative to consumption, in 2003.

8.2.8. Cash flow

| Financial year | 2000 | 2001 | 2002 | 2003 |
|-------------------|------|------|------|------|
| Cash flow (index) | 100 | -221 | -384 | -221 |

- (57) Cash flow could only be examined at the level of the co-operating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore seen as less meaningful than the other indicators shown. Nevertheless, it can be seen that there was strongly negative cashflow in 2001, 2002 and 2003.

8.2.9. Return on capital employed (ROCE)

| Financial year | 2000 | 2001 | 2002 | 2003 |
|----------------|------|------|------|------|
| ROCE | 34 | -1 | 2 | -20 |

- (58) ROCE could also only be examined on the level of the co-operating companies which produced the product concerned rather than in relation to only the product concerned itself. This indicator was therefore also seen as less meaningful than the other indicators. Nevertheless, it can be seen that ROCE fell from 34% in 2000 to close to zero in 2001 and 2002 before falling to -20% in 2003.

8.2.10. Price of the like product

| | 2000 | 2001 | 2002 | 2003 |
|--|------|------|------|------|
| Unit prices of Community sales (EUR 1 000/tonne) (*) | 3,50 | 3,23 | 3,02 | 2,79 |

(*) Prices adjusted to ex Glasgow.

- (59) The average price of the like product fell by 20,3% between 2000 and 2003, with a steady decline in prices over that period. Prices reached their lowest point (EUR 2,79/kg) in 2003.
- (60) In first semester 2004, the information available indicates that the average unit price of the Community producers' sales increased slightly, in line with the slight increase in

average import prices but then followed a downward trend. The latest information indicates that prices are again following a downward trend and are very low.

- (61) One party argued that (by reference to average annual exchange rates) price falls were less significant in pounds sterling. Nevertheless, it is the consistent practice of the Commission in trade defence cases to use the euro as the unit of currency.

8.2.11. Costs

| | 2000 | 2001 | 2002 | 2003 |
|---|------|------|------|------|
| Average cost of production per tonne (EUR/kilo) | 3,1 | 3,2 | 3,0 | 3,1 |

- (62) In addition to price development, the development of costs has also been considered. Costs have fluctuated between EUR 3,0 and EUR 3,2/kg over the period 2000 to 2003.

8.2.12. Profitability

| | 2000 | 2001 | 2002 | 2003 |
|------------------------------------|-------|--------|--------|---------|
| Net profit/loss on Community sales | 7,3 % | -3,3 % | -2,5 % | -17,1 % |

- (63) The profitability of the Community producers' sales in the Community fell from 7,3% in 2000 to -3,3% in 2001. Losses became less pronounced in 2002 (-2,5%) but then increased to -17,1% in 2003. In 2003, as imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,54/kg), the average price of the Community product also fell to its lowest level (EUR 2,79/kg). The Community producers' fall in profitability between 2000 and 2003 occurred at the same time as the price per kilo of the Community producers' product fell from EUR 3,50 to EUR 2,79.

8.2.13. Stocks

| | 2000 | 2001 | 2002 | 2003 |
|-------------------|--------|--------|--------|--------|
| Closing stock (t) | 36 332 | 39 048 | 53 178 | 43 024 |

- (64) Stocks in this context refer to live fish in the water. The Community producers, as all others, have negligible stocks of harvested fish as they have to be sold immediately. Therefore, a fall in closing stock levels indicates a decrease in the quantity of live fish being on-grown for harvesting in the future. Therefore, in this case, falling stock levels are an indicator of growing injury.
- (65) Stock levels increased from 36 332 tonnes in 2000 up to 53 178 tonnes in 2002 and then declined to 43 024 tonnes in 2003. This represents a fall in stocks between 2002 and 2003 of 19,1%.

8.2.14. *Conclusion*

- (66) The investigation shows that between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.
- (67) As to the situation of the Community producers, between 2000 and 2002, theoretical production capacity remained more or less stable, whilst production increased by 14,8 %. In consequence, capacity utilisation increased from 43 % to 50 % in this period. Stocks of live fish in the water also increased. There was some loss of employment, whereas productivity increased mostly due to greater use of automation.
- (68) Sales volumes increased by 14,3 % between 2000 and 2002 (compared to 8,5 % growth in consumption), and the Community producers' market share increased from 26,5 % to 28,0 %.
- (69) However, even in this period prices fell by 13,7 % between 2000 and 2002, and despite a small decrease in costs in 2002 (partly due to higher capacity utilisation and better productivity), this appears to have led to a fall in profitability from 7,3 % in 2000 to losses of -3,3 % and -2,5 % in 2001 and 2002. ROCE and cashflow also developed negatively in this period.
- (70) Between 2002 and 2003, the position of the Community producers worsened considerably. Although production capacity and production increased, the increase in production capacity was small (2,2 %) compared to the increase in consumption in that year. Taking account of the long production cycle, production levels are set at least two years in advance and the increase in production was in line with previously developed production plans. Increased production of itself should not therefore be seen as indicating that the Community producers were in a healthy situation in 2003. Increased production led to higher capacity utilisation and improved productivity.
- (71) All other indicators developed negatively. Stocks of fish in the water fell by 19,1 %. Despite 10,3 % growth in consumption, the Community producers' sales increased by only 5,1 % and they lost market share which fell by 6,7 %. Moreover, this loss of market share occurred against a background of falling prices, in which the Community producers were forced to cut prices in order to sell their produce. Prices fell by a further 7,6 % compared to 2002 (and were 20,3 % lower than in 2000), whilst costs increased to their average level for the four year period. This led to a sharp drop in profitability and the Community producers incurred losses of 17,1 %. These losses were reflected in an overall ROCE of -20 %. Whilst cashflow appeared to improve, this actually reflected reduction in stocks of fish in the water and an inability to re-invest.
- (72) It has been argued that injury has not been suffered by larger producers. However, it is recalled that the Community producers, by reference to which the existence of serious injury is established, include several large producers.
- (73) Taking account of all of these factors the conclusion reached is that the Community producers have suffered serious injury in terms of a significant overall impairment of the situation in their position.

9. CAUSATION

- (74) In order to examine the existence of a causal link between the increased imports and the serious injury, and ensure that injury caused by other factors is not attributed to increased imports, the injurious effects of factors considered to be causing injury have been distinguished from each other, the injurious effects have been attributed to the factors which are causing them, and, after having attributed injury to all causal factors present, it has been determined whether increased imports are a 'genuine and substantial' cause of serious injury.

9.1. Analysis of causation factors

9.1.1. *Effect of increased imports*

- (75) As shown above, between 2000 and 2003, and in particular as between 2002 and 2003, imports of the product concerned have taken place in increased quantities and high volumes onto the Community market.
- (76) Farmed salmon is essentially a commodity product, and the product concerned and the like product compete mainly on price. Whilst one party argued that imports from Chile are the price-setter, it is generally accepted that imports, particularly from Norway, are the market leader and price-setter. In consequence, even low levels of undercutting result in price depression for the Community producers.
- (77) In the current case, the most important injurious effect of increased imports was the large financial losses to the Community producers. Due to the market and price leadership of imports, increased imports drove down prices throughout the Community. Had imports increased to a lesser degree, this price pressure would also have been lower. Had demand in the Community market been such as to sustain such an increase in imports at substantially higher prices, albeit such an increase would have resulted in lower sales and market share for the Community producers, it is possible that the Community producers would not have suffered serious injury.

(78) Between 2000 and 2002, the price of imports fell by 19% and was closely followed by the Community producers' prices. Whilst the market share of the Community producers' sales in the Community increased in this period, this reflected production decisions taken in earlier years and in both 2001 and 2002 the Community producers' sales were made at a loss.

(79) Between 2002 and 2003, imports grew by 15%. The market share of imports grew from 72% to 73,9%, whilst the market share of the Community producers fell from 28% to 26,1%. Over the same period imports grew from 236% to 239% of Community production. Thus, imports appear to have increased relative to both Community production and consumption at the expense of the Community producers.

(80) However, the most important aspect of the increase in imports was its effect on the prices and profitability of the Community producers. As noted above, it is generally accepted that imports (particularly from Norway) are the price leader in the Community market for farmed salmon. The existence of undercutting has therefore been examined to establish whether indeed the low priced imports have tended to depress the prices practised by the Community producers.

(81) In order to reach a determination as to the level of undercutting, price information was examined for comparable time periods, at the same level of trade and for sales to similar customers. Based on a comparison of average ex-Glasgow prices charged by the Community producers and by exporting producers to the Community importers (CIF European Community border including customs duty), domestic prices were undercut in the three most recent years by between 3,1% and 7,1%. This appears to have resulted in price depression for the Community producers because, due to their large market share, prices are set by imports. In particular, it can be seen that the increase in imports at ever lower prices until Q3 2003 forced the Community producers to continually reduce their prices until Q3 2003 leading to the losses sustained by them in that year.

(82) A direct comparison of import prices and the Community producers' prices confirms this analysis. Import prices fell by 28,5% between 2000 and 2003, from EUR 3,62 to EUR 2,59/kg including duty. Over the same period, the average price of the like product fell by 20% from EUR 3,50 to EUR 2,79/kg, with a steady decline in prices over that period.

(83) Between 2002 and 2003, the average unit price of imports fell from EUR 2,93 to EUR 2,59/kg including duty. As imports increased to their highest level and the average price of imports fell to its lowest level (EUR 2,59/kg including duty), import prices led Community

producers' prices in a downward trend and the average price of the Community product fell to its lowest level (EUR 2,79/kg). The average unit price of the Community product (adjusted ex-Glasgow) fell from EUR 3,02 to EUR 2,79/kg, representing a fall of 8%.

| | 2000 | 2001 | 2002 | 2003 |
|--|------|------|------|------|
| Unit prices of Community sales (EUR 1 000/tonne) (*) | 3,50 | 3,23 | 3,02 | 2,79 |
| Unit prices of imports incl. customs duty (EUR 1 000/tonne) (**) | 3,62 | 3,05 | 2,93 | 2,59 |

(*) Prices adjusted to ex Glasgow.

(**) Import prices are CIF including import duty of 2%.

(84) The fall in the Community producers' prices appears to have been the main cause of a significant fall in their profitability. In 2000, when their costs per kilo were EUR 3,1 and their sales price (adjusted ex Glasgow) was EUR 3,50, the Community producers made a profit of 7,3%. In 2001 and 2002, although their capacity utilisation, production, productivity, stocks of live fish, sales and market share all increased, they incurred financial losses, reduced overall ROCE and negative overall cashflow as their sales prices (adjusted ex Glasgow) fell to EUR 3,23 and EUR 3,02 respectively and costs first slightly increased and then fell to EUR 3,2 in 2001 and EUR 3,0 in 2002, respectively. Employment also fell.

(85) In 2003, as prices (adjusted ex Glasgow) fell to EUR 2,79 under pressure from low priced imports, and with costs at their 2000 level of EUR 3,1, the Community producers incurred a loss of 17,1%. This was reflected in the negative overall ROCE and cashflow. At the same time their sales volume increased by only 5,1% compared to an increase in consumption of 10,3% and their market share fell by 1,9 percentage points, as the volume and market share of imports increased. Albeit capacity, capacity utilisation and production, productivity increased and employment remained stable, the effect of the increase in low priced imports on capacity utilisation and production and employment is delayed. That production can be expected to decrease as a result of the increase in imports is shown by the decrease in stocks of live fish in 2003.

(86) For the foregoing reasons, it is concluded that there is a correlation between the increase in imports and the serious injury suffered by the Community producers, and that the increase in low priced imports has had injurious effects on the Community producers, particularly in terms of downward pressure on prices on the Community market resulting in large financial losses to the Community producers.

9.1.2. Effect of changes in consumption in the United Kingdom

- (87) One party argued that there had been an alleged fall in consumption in the United Kingdom in 2003 and that this had caused injury to the Community producers. However, the United Kingdom market cannot be isolated from the overall Community market and European Community consumption increased by 21,7% between 2000 and 2003, and by 12,2% between 2002 and 2003. Therefore, the primary reason for the Community producers' substantial losses in 2003 is the low prices rather than an alleged fall in consumption.

9.1.3. Effect of changes in export performance

| | 2000 | 2001 | 2002 | 2003 |
|---------------------|--------|--------|--------|--------|
| Exports (in tonnes) | 11 748 | 13 648 | 14 203 | 28 813 |

- (88) The effect of variations in the level of exports has also been examined. Exports increased throughout the period considered, and indeed doubled between 2002 and 2003 as, in light of the disastrous situation on the Community market, the Community producers sought to increase their exports. It is therefore concluded, despite a claim by one party to the contrary, that the changes in the level of exports were not a cause of the serious injury suffered by the Community producers. In any event, data relating to profitability is based on data relating to Community sales only.

9.1.4. Effect of any excess capacity

- (89) Whether injurious effects may have resulted from excess capacity amongst the Community producers has also been examined. Theoretical capacity increased during the period of the investigation by 2,2% between 2000 and 2003 — by considerably less than production and consumption. In addition, as previously noted, the theoretical capacity is the total quantity of live fish for which government licences are held. The cost of applying for and maintaining licences is low. Indeed, the main cost drivers are the cost of smolts (baby fish), feed and labour. Therefore, it is concluded that the increase in theoretical capacity did not cause injurious effects to the Community producers.

9.1.5. Effect of competition amongst the Community producers

- (90) Some exporters argued that the reason behind the fall in the price of salmon on the Community market was an oversupply by the Community producers. However, imports increased by 15% in 2003 whereas the Community producers' sales in the Community increased by only 5,1%. Further, imports are the price leader in this market, not the Community producers. Indeed, an examination of the pricing behaviour of all

parties in 2002 and 2003 clearly shows that imports were consistently sold at lower prices than those of the Community producers, and that the Community producers' prices followed those of imports in a downward trend. The effect of competition amongst the Community producers balances itself amongst them — losses incurred by one are offset by gains made by another *ceteris paribus*. Therefore, it is concluded that competition amongst the Community producers was not a cause of the serious injury observed.

9.1.6. Effect of increased mortality on production costs

- (91) One 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 increased production costs and interrupted the normal production cycle for some producers. However, these phenomena were limited to a small number of farms. Further, as the table below shows, the Community producers' production costs fell in 2002 and were close to their four year average in 2003. Therefore, it is concluded that higher than normal fish mortality rates were not the cause of material injurious effects.

| | 2000 | 2001 | 2002 | 2003 |
|--|------|------|------|------|
| Average cost of production (EUR 1 000/tonne) | 3,1 | 3,2 | 3,0 | 3,1 |

9.1.7. Effect of higher production costs generally

- (92) 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. The information available suggests that whilst Norway enjoys advantages in relation to certain costs, the Community producers enjoy advantages in relation to others. Overall, it is noted that whilst the Community producers are incurring significant losses in the current market, so too are Norwegian producers. As noted in section 8.2.12, the Community producers made a loss of -17,1% in 2003. Norwegian Government data indicate that in 2003 for a sample of 148 salmon and rainbow trout farms losses were -12,1%. In addition, the Norwegian producers were operating under a heavy burden of debt, representing a significant proportion of their total costs. Their total debt (excluding equity and provisions) was 6,3 billion NOK compared to a total turnover of 5,6 billion NOK⁽¹⁾ (equalling around EUR 750 m and EUR 670 m respectively). This situation has in some cases led to the Norwegian banks effectively taking ownership of Norwegian producers. Therefore, the conclusion is that, whilst there may be small differences, any difference between the Community producers' average cost of production and that of exporting producers was not a material cause of the serious injury suffered.

⁽¹⁾ Norwegian Directorate of Fisheries Statistical Survey 2003.

9.1.8. Higher transport costs in Scotland

- (93) One party argued that there is a less developed infrastructure in remote areas of Scotland and that this increases costs and may cause injury to Community producers. In this regard, it is noted that fish farming in Norway, which is the Community market leader, is often undertaken in remote locations with relatively poor transport infrastructure.
- (94) Transport costs are not a large part of the overall cost of production of farmed salmon and vary according to the origin of goods and the destination to which they are to be delivered. Overall, there is not considered to be a significant difference in the costs of transport to the Community market as between Norway, the United Kingdom and Ireland. In addition, exporting producers (which by definition are located outside the European Community) are generally likely to have higher transport costs when selling to the Community market. Therefore, it is not considered that higher transport costs in Scotland have contributed to the injury to the Community producers.
- (95) Further and in any event, no evidence was produced to the effect that transport costs in Scotland have increased in recent years, and therefore, higher transport costs could not explain the recent increase in financial losses suffered by the Community producers.

9.1.9. Other factors

- (96) It was argued that stricter environmental and sanitary legislation in the Community, import restrictions in third countries, scientific reports on salmon and negative public relations resulting from press coverage had contributed to the injury suffered by the Community producers. No evidence was however produced in support of these arguments, nor were the arguments developed. In these circumstances, these factors cannot be taken as relevant causation factors for the serious injury to the Community producers. No other causation factors of possible relevance were identified during the definitive stage of the investigation.

9.2. Attribution of injurious effects

- (97) The increase in imports had only a limited negative effect on the quantities sold by the Community producers, although their sales and market share dropped somewhat in 2003. However, most importantly it appears that the considerable increase in imports had a devastating effect on the profitability of the Community producers, given the accompanying price drop. Given that imports (with around 70-75% of the market) enjoy the position of price-leader, the downward spiral in import prices had a considerable depressing effect on Community producers' prices. This resulted in considerable losses to the Community producers. No other factors which could have contributed to the injury apart from the increase in low priced imports were identified.

9.3. Conclusion

- (98) Therefore, having determined that no material injurious effects resulted from the other known factors, it is concluded that there is a genuine and substantial link between increased low priced imports and serious injury to the Community producers.

10. THE SAFEGUARD MEASURES

- (99) Analysis of the findings of the investigation confirms that there is serious injury and the need for definitive safeguard measures in order to remedy the serious injury suffered by the Community producers and prevent further injury to the Community producers.

10.1. Form and level of definitive safeguard measures

- (100) Community production of farmed salmon is insufficient to meet demand and it is therefore necessary to ensure that the measures taken are not such as to deny exporting producers access to the Community market. As the main cause of damage to the Community producers is the large volume imports leading to low price and causing price depression and suppression, the measures taken should be designed to remedy the serious injury and facilitate adjustment. To achieve these aims, the measures should lead to a temporary stabilisation of prices that does not unnecessarily limit supply and provides for a period during which the Community producers may adjust to future conditions of increased competition from cheap imported products.
- (101) The provisional safeguard measures took the form of tariff quotas alone. Even in the period during which the provisional measures were in force, imports of farmed salmon were continuing to enter the Community at prices which were substantially below the cost of production of the Community producers. Measures should therefore be taken which will have the effect of increasing prices to a level at which there is at least full cost recovery by the Community producers. This should facilitate adjustment by ensuring that during the period of the present measures the Community producers do not continue to sustain losses the effect of which would be to prevent them raising finance so as to take the measures necessary for adjustment and restructuring. In order to achieve an upward impact on prices, it was considered whether tariff quotas should be installed, albeit with very small safeguard tariff-free volumes. However, while this could arguably have been expected to impact on prices, such an approach was considered inappropriate since the growing market for farmed salmon should not be unduly restricted. Therefore, a price element should be established for all imports of farmed salmon to the Community. The Community producers' average cost of production has been found to be EUR 3,10 per kilo in 2003. However, the Community producers' product

normally commands a price premium over the imported product of up to around 10%. It is therefore concluded that the import price level should be established at EUR 2 850 per tonne for fresh salmon. This should permit Community producers, despite the low price element, to sell at around break-even. It was argued that minimum price undertakings in previous cases had not been respected. Whilst that may be the case, these measures do not involve undertakings but the establishment of an import price level below which duty is payable, and circumvention of which is customs fraud. In addition, some parties expressed a preference for a specific or *ad valorem* duty instead of the establishment of a minimum price for imports. However, the imposition of such a duty would take money out of the market and it is therefore considered that the establishment of a minimum price for imports represents a better solution in the medium term. Nevertheless, in order to facilitate the adaptation, it is considered appropriate that during the phasing-in as described below, a specific duty should be applied.

- (102) It has been argued that as frozen salmon commands a lower price than fresh salmon because of a slight difference in the structure of the cost of production, applying the same import price level would effectively exclude frozen salmon from the Community market. On that basis, it is argued that a lower import price level should be established for frozen salmon to take account of these different cost elements and that any price element should be lower for frozen than for fresh salmon. As there appears to be a price difference of around 4% on the market, it is considered that a lower import price level should be established for frozen salmon which reflects that difference. The import price level for frozen farmed salmon should therefore be EUR 2 736.
- (103) One party argued that having two price levels would lead to complexity for authorities and increase the likelihood of fraud at the point of entry, but these claims are not practically substantiated given the existence of penalties for customs fraud. On the other hand, it was argued that a different price regime should apply to farmed salmon depending on its intended end use (whether for processing or eventual retail sale). This would be much more difficult to control and so, for practical reasons, it was found not to be feasible in the circumstances.
- (104) As market prices are currently lower and in order to prevent market disturbances, especially for the processing industry, the price element should be phased-in over a period of time. This will allow the market to gradually adapt to the import price to be established. In this respect, it was argued both that a long period was necessary to allow processors to adapt to the price increase, and that a short period should be set given the difficult situation of the Community producers. It is considered that the phase-in period should be from the date of entry into force of definitive safeguard measures

until 15 April 2005, during which period a minimum import price of EUR 2 700 per tonne for fresh salmon and EUR 2 592 for frozen salmon should apply.

- (105) It is considered that the price element, during the definitive stage, should take the form of a variable duty. If imports are undertaken at a CIF Community border price equal to or above the import price established, no duty would be payable. If imports are undertaken at a lower price, the difference between the actual price and the import price established would become payable. This minimum price element shall be applicable at all times, both within the tariff quota as set out below, and when the threshold of the tariff quota is reached.
- (106) In order to ensure that importers respect the price element, it is considered that within a specified time limit, importers should be required to provide satisfactory evidence to the national customs authorities of the actual import price per tonne paid for imports of farmed salmon. In order to ensure that all importers respect the condition to provide satisfactory evidence and do so within the time limit, importers should be required to provide adequate security to the national customs authorities upon the importation of farmed salmon. Given the level of the proposed price element, both phase-in and definitive, for fresh and frozen farmed salmon, a security of EUR 290 per tonne (WFE) of farmed salmon imported (Group 1 — EUR 320 per tonne, Group 2 — EUR 450 per tonne) is considered to be appropriate. It was argued that this level of security is too expensive and burdensome for importers. However, it is considered that a lower level of security would not achieve its purpose given the difference between current market prices and the import price level to be established. Given the nature of the information to be provided and considerations of administrative convenience, it is considered that the time limit within which to provide satisfactory evidence should be a period of 1 year from the date of acceptance of the relevant customs declaration. The security should be released at the moment that the importer provides satisfactory evidence provided that this is done within the specified time limit. If an importer fails to provide satisfactory evidence within the time limit, the security should be definitively collected as import duties.
- (107) In order to ensure that, beyond the traditional level of imports, the Community producers can operate at a reasonable level of profitability whilst keeping the Community market open and ensuring the availability of supply to meet demand, it is in addition considered appropriate to establish tariff quotas reflecting traditional levels of imports. Beyond those quotas, an additional duty should be payable on imports. Traditional levels of imports of farmed salmon which respect the price element established can then continue without payment of any additional duty, and unlimited quantities can be imported albeit upon payment of the additional duty.

- (108) In order to preserve traditional trade flows and ensure that the Community market also remains open to minor players, the tariff quota should be divided amongst those countries/regions having a substantial interest in supplying the product concerned, and a part should be reserved to other countries. After consultation with Norway, Chile and the Faeroes which have such a substantial interest and represent substantial import shares, it is considered appropriate to assign a specific tariff quota to each of these countries. In principle, the tariff quota should be divided up based on the proportions of the total quantity of the product supplied by that country during the three year period 2001 to 2003. However, it is noted that imports from Chile fell substantially (to below 3% of imports to the Community) in the second semester 2003 due to technical reasons concerning border controls, which is approximately half of their normal share of imports to the Community. For this reason imports from Chile in 2003 are not representative and the country specific quota for Chile should instead be based on average imports in 2001, 2002 and an adjusted figure for 2003 (based on 2002 plus average import growth rates in 2003 excluding Chile) so as not to distort traditional flows of trade. In order to avoid an unnecessary administrative burden, the tariff quotas should operate on a first come first served basis.
- (109) It appears that in normal circumstances Community consumption of farmed salmon had been growing at between around 4% to 5% annually taking into account growth levels observed in the new Member States. However, data for the first semester 2004 indicates that market growth in the Community salmon market is in fact increasing, and that whilst the size of the market in the new Member States is small relative to that in the EU-15, there is evidence that the annual growth rates in the new Member States (which were of the order of 30%) have increased as a result of enlargement and are now materially higher (around 50%). In order to take account of this growth, the tariff quotas (based on average imports in 2001 to 2003) should be increased by 10%. As the salmon market is seasonal, with higher imports and sales in the second semester than the first, the tariff quotas should be seasonally adjusted. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to fillets and non-fillets actually imported are 1:0,65 and 1:0,9 respectively. If, during the application of the measures, it becomes apparent that the conversion ratio for non fillets (1:0,9) ceases to be appropriate taking account of the presentation of farmed salmon imported, currently mainly gutted head-on, the measures may be reviewed.
- (110) The additional duty should be set at a level such as to provide adequate relief to the Community producers but at the same time should not constitute an unnecessarily onerous burden on importers and users. An *ad valorem* duty is considered unsuitable as it would act as an incentive to lower import prices free of duty, and would increase in real terms if a price increase occurs. Therefore a fixed amount of duty should be set.
- (111) A minimum price element as outlined above will always be applicable to enable Community producers to sell at break-even. As also mentioned above, the minimum price element is set below the Community producers' cost of production, but as they have been able to sell at a premium of around 10% in the past, it is expected that they will continue to be able to do so and thus recover their costs of production. Should traditional trade levels be surpassed, and an additional duty thus become payable, it is considered appropriate, in application of the Community institution's traditional 'under-selling' approach, to base this additional duty on the difference between the level of the non-injurious target price of the Community producers and the minimum price element. This difference, which reflects the extent to which the price of the imported product is lower than the price which the Community producers could be expected to achieve in a non-injurious situation, after adjustment for price differences as between the imported product and the Community product, is thus considered to be a reasonable basis for fixing the level of duty. This difference was calculated on the basis of the weighted average non-injurious price per tonne of the Community product, based on the cost of production of the Community product plus a profit on turnover of 14%. This is consistent with the level of profit established as necessary in previous trade defence cases relating to salmon and reflects the meteorological, biological and escape risks faced by this industry. This non-injurious price was compared with the minimum price element. The difference between these two prices results in an initial duty payable of EUR 330 euro per tonne (WFE), which, based on the conversion ratios shown above, is equivalent to EUR 366 per tonne for other than fillets and EUR 508 per tonne for fillets.
- (112) Provision should be made for review of the measures by the Commission if circumstances should change. In order to properly take into account market developments after the imposition of the present safeguard measures, if any, it is considered to undertake a monitoring of the market and the development of prices. If the data or other information collected indicates that a definitive import price level of EUR 2 850 or EUR 2 736, as the case may be, would be inappropriate, an early review would be initiated so as to change this definitive import price level before its entry into force. Regular meetings with interested parties should take place every six months or as requested by interested parties on the basis of relevant substantiated evidence.
- (113) In conformity with Community legislation and the international obligations of the Community, the definitive safeguard measures should not apply to any product originating in a developing country as long as its share of imports of that product into the Community does not exceed 3%. In this regard, in Regulation (EC) No 1447/2004 special account was taken of the particular situation of Chile as a developing country to

the effect that imports from Chile were not covered by the provisional measures since, in the second semester of 2003, imports originating in Chile were below the 3 % threshold. Under that Regulation it was stated that the development of these imports would be closely monitored in order to ascertain whether the downward trend observed would prove to be a lasting phenomenon. However, following further investigation it is apparent that imports from Chile have now returned to around 6 % of Community imports and that the reduced level of imports in the second semester 2003 appears to have been only a temporary phenomenon. Therefore, and having regard to the fact that overall imports originating in Chile during the year 2003 exceeded the mentioned level of 3 %, the definitive safeguard measures should also apply to imports from Chile. The developing countries to which the definitive measures do **not** apply are specified in Annex 2.

10.2. Duration

- (114) The definitive measures should not last more than four years including the period of the provisional measures. The measures should enter into force on 6 February 2005 and should remain in force until 13 August 2008.

10.3. Liberalisation

- (115) In order to induce adjustment, the measures should be subject to liberalisation on a regular basis following their imposition, thereby ensuring that there is a strong incentive for the Community producers to progressively undertake the necessary restructuring and adjustment. It is considered that liberalisation should commence one year after the imposition of provisional measures, and be undertaken annually thereafter.
- (116) Liberalisation should be designed to allow the importation of increasing quantities of farmed salmon which respect the price element without the payment of additional duty thereby increasing the competitive pressure to which the Community producers are subject during the course of the measures. Similarly, in order that imports beyond the level of the tariff quota gradually become subject to a lower duty, the rate of the additional duty should be gradually reduced. Liberalisation must also take account of the expectation of market growth. Liberalisation should therefore take the form of an increase in the tariff quota together with a decrease in the level of the additional duty payable beyond the level of the tariff quota. On each occasion it is considered that the tariff quota should be increased by 10 % and the additional duty decreased by 5 % but this may be reviewed upon cause shown.

10.4. Restructuring

- (117) The purpose of definitive safeguard measures is to provide the Community producers with a limited period of time in which to restructure so as to more effectively compete with imports. In this regard, reference is made to article 20(2) of Commission Regulation (EC) No 3285/94 which prohibits any possible extension of measures if there is no evidence that the Community producers are adjusting.
- (118) The Community producers are already in the process of restructuring as a result of heavy losses which have resulted in some operators leaving the industry, as well as bankruptcies and receiverships, which have forced others to close. Significant improvements in productivity and efficiency have also been made in recent years. However, if the industry is to develop so as to maximise its competitiveness both now and in the future, it requires a period of time in which to implement an organised restructuring plan.
- (119) Key elements of the restructuring strategy developed by the relevant national authorities in collaboration with the industry include (1) implementation of site optimisation plans to relocate or merge fish farm sites to increase the size of farms over the next two to three years thereby increasing efficiency and reducing costs; (2) diversification into other species with the emergence of cod and halibut farming with sites being stocked with white fish species and increasing shellfish growing (however, due to their current financial situation these changes are being severely hampered through lack of funding); (3) the development of more sophisticated environmental carrying capacity tools so as to allow better assessment of the maximum level of consented fish farm biomass which can be permitted whilst maintaining a healthy marine ecosystem, thereby facilitating a move towards larger single farms and greater economies of scale; (4) further use of synchronised fallowing of fish farms within hydrologically linked areas together with co-ordinated sea lice treatment thereby better protecting farmed fish from sea lice infestation and disease, and enhancing smolt survival rates thereby reducing costs, (5) establishment of coordination amongst producer organisations in Ireland, the United Kingdom and Norway with a view to avoiding future problems of severe over-production.
- (120) Some progress has already been made in implementing parts of this strategy, in particular, in pursuing synchronised fallowing and co-ordinated sea lice treatment, and substantial further progress is anticipated during the period of these measures. In the event that such adjustment fails to progress sufficiently during the period of these measures, the Commission may consider such failure to be a change of circumstances within the meaning of Article 1(6) of this Regulation, requiring the review of the continued need for the measures.

11. COMMUNITY INTEREST

11.1. Preliminary remarks

- (121) In addition to unforeseen developments, increased imports, serious injury, causation and critical circumstances, it has been examined whether any compelling reasons exist which could lead to the conclusion that it is not in the Community interest to impose definitive measures. For this purpose, the impact of definitive measures on all parties involved in the proceedings and the likely consequences of taking or not taking such measures were considered on the basis of the evidence available after taking contact with the Community producers, other producers of farmed salmon in the Community, importers and processors.

11.2. Interest of the Community producers

- (122) The Community producers have a combined annual turnover of over EUR 500 million, and, in addition to the direct employment of around 1 450 which they create, are estimated to indirectly support a further 8 000 jobs in the processing and other sectors. They are part of a major growth industry which has seen production double between 1995 and 2001. They are achieving increasing efficiency in the production of a product for which there is a growing market both in the Community and globally. They are viable and competitive in normal market conditions, and show increasing productivity.

- (123) The Community producers' position is clearly in jeopardy unless the current level of low priced imports is corrected. This is evidenced by continuing reports of impending bankruptcies. The proposed measures will apply to all imports of the product concerned other than those from developing countries whose exports to the European Community are no more than 3% of imports to the Community. They would therefore apply to over 95% of such imports. Although it was argued that the price element of the measures may be difficult to enforce having regard to previous experience with price undertakings in relation to farmed salmon, it is recalled that the price element is not based on undertakings but on a variable duty to be collected by national customs authorities. Therefore, it can be anticipated that the measures would be effective and allow the Community producers prices to rise to a fair level.

11.3. Interest of the dependent industries

- (124) The areas in which salmon farming is undertaken tend to be remote — mainly on coastal areas of Western and Northern Scotland and the West coast of Ireland. There are limited employment opportunities and the economic

activity generated by salmon farming makes an important contribution to these local economies. Without that contribution, many of the small local business which supply goods and services to the Community producers and their employees would cease to be viable. It is therefore in the interests of dependent industries that effective definitive measures are taken.

11.4. Interests of producers of smolt and feed

- (125) Although one party argued the contrary, it is clearly in the interests of the major suppliers to the Community producers (such as smolt and feed producers) to have strong and predictable demand for their product at a price which allows them to make a reasonable profit.

11.5. Interest of users, processors and importers in the Community

- (126) In order to evaluate the impact on importers, processors and users of taking or not taking measures questionnaires were sent to the known importers, processors and users of the product concerned on the Community market. Importers/processors/users are normally one and the same and many are in fact related to exporting producers outside the Community, particularly in Norway. Responses were received from 6 importers/processors/users and from an association of processors. In addition, a number of processors' associations made representations to the Commission and contact was taken with certain processors and their associations.

- (127) Some argued that no measures should be taken because there had been only a short temporary fall in farmed salmon prices in the two to three months following the termination of anti-dumping measures against Norway in May 2003, and prices had since returned to normal. 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 delocalisation, stressing 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.

- (128) However, it is clear that prices have not recovered in the first semester of 2004. Import prices increased between Q4 2003 and early Q1 2004 but then fell steadily in the latter part of Q1 2004 and in Q2 2004, and the Community producers' prices followed the same trends. The Community producers' prices remain substantially below a non-injurious price. Further, the latest information indicates that prices are still following a downward trend.

- (129) The main costs incurred by processors are the cost of the raw material and employment costs, and it is true that an increase in raw material prices would increase the processors' costs. However, according to the information provided by processors, the cost of their raw material fell by 10% between 2002 and 2003, having already fallen by 18% between 2000 and 2002. In 2003, it was 26% cheaper than in 2000. At the same time, the information provided by them indicates that their selling prices have remained about the same in 2002 and 2003. All processors which provided information as to the profitability of their salmon processing operations have profitable salmon processing operations and it is considered that they can absorb a modest cost increase without any job losses or de-localisation. It is clear that current price levels of farmed salmon are unsustainable in the medium to long term. The processing industry will therefore face an increase in the cost of their raw material in the medium to long term, in any event.
- (130) As to employment, around 100 000 workers are 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.
- (131) Processors also stressed the need for traders in the principal European markets and consumers to continue to have access to good quality product at low prices. They expressed particular concern about the possibility of speculative buying immediately after the introduction of a tariff quota, and claimed that if the tariff quota is reached they might have to stop production. Finally, they stated that if measures were to be taken, they should be such as to maintain adequacy of supply and help bring price stability to the market in order that their costs could better be predicted. In this regard, whilst some maintained outright opposition to any form of measures, others indicated that if measures were to be imposed they would prefer a tariff quota system, certain expressing preference for a licensing system.
- (132) It should be noted that the measures consist of a price element which reflects cost recovery for the Community producers and tariff quotas based on average imports to the Community (including the new Member States) in the period 2001 to 2003 plus 10%, beyond which an additional duty applies. Therefore, the processing industry throughout the Community should continue to have access to an adequate supply of raw material. Although some parties argued that the measures would constitute a heavy administrative burden for the Community processors, this claim was not substantiated and it is considered that the measures constitute the minimum administrative burden consistent with efficient application.
- (133) Therefore, the disadvantages likely to be suffered by processors/users and importers, if any, are not considered such as to outweigh the benefits expected to accrue to the Community producers as a consequence of the definitive 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.

11.6. Interest of consumers in the Community

- (134) 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. Another 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).
- (135) However, as noted above, it is considered that the current market price is so low as to be unsustainable in the medium to long term, and economic operators will continue to have access to unlimited quantities of imports subject to the price element and above the level of the tariff quota, additional duty. 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 and the impact on consumers is therefore considered to be minimal. Nevertheless, the Commission will carefully monitor the effect of the measures on affordability and market growth in those Member States with a lower than average GDP,

HAS ADOPTED THIS REGULATION:

Article 1

System of tariff quotas and their additional duties

1. A system of tariff quotas is hereby opened for the period 6 February 2005 to 13 August 2008 in relation to imports into the Community of farmed (other than wild) salmon, whether or not filleted, fresh, chilled or frozen, classified 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 (hereinafter 'farmed salmon'). The volume of the tariff quotas and the countries to which they apply are specified in Annex 1. The quotas have been calculated on a whole fish equivalent basis (WFE) and conversion ratios to non-fillets (Group 1) and fillets (Group 2) actually imported are 1:0,9 and 1:0,65 respectively.

2. Wild salmon shall not be subject, or allocated, to the tariff quotas. 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. Subject to Article 4, imports of farmed salmon beyond the level of the tariff quota shall be subject to the additional duty specified in Annex 1 for the group to which they belong.

4. For the purposes of determining the level of additional duty payable, farmed salmon falling within CN codes ex 0302 12 00, ex 0303 11 00, ex 0303 19 00, ex 0303 22 00 shall fall within Group 1 in Annex 1, whilst those falling within ex 0304 10 13 and ex 0304 20 13 shall fall within Group 2.

5. The conventional rate of duty provided in Council Regulation (EC) No 2658/87⁽¹⁾, or any preferential rate of duty, shall continue to apply to imports of farmed salmon.

6. If circumstances should change, these measures may be reviewed by the Commission.

7. Upon cause shown, the rate of liberalisation of these measures may be reviewed.

Article 2

Minimum import price

1. Both within and beyond the tariff quota mentioned in Article 1 above, imports of farmed salmon are subject to a minimum import price ('MIP') which may be reviewed from time to time having regard to relevant factors including supply, demand and cost of production.

2. Imports of farmed salmon sold at a price which is less than the MIP shall be subject to a duty equivalent to the difference between the MIP for the respective products listed in annex 1 and the actual import price of those products (CIF Community border excluding customs duty).

3. From the entry into force of this Regulation until 15 April 2005, the MIP shall be EUR 2 700 per tonne whole fish equivalent (CIF Community border excluding customs duty) for fresh farmed salmon and EUR 2 592 for frozen farmed salmon. The MIP for imports in Group 1 shall be EUR 3 000 per tonne fresh and EUR 2 880 frozen, and that for imports in Group 2 shall be EUR 4 154 per tonne fresh and EUR 3 988 frozen.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

4. From 16 April 2005 until 13 August 2008, the MIP shall be EUR 2 850 per tonne whole fish equivalent (CIF Community border excluding customs duty) for fresh farmed salmon and EUR 2 736 for frozen farmed salmon. The MIP for imports in Group 1 shall be EUR 3 170 per tonne fresh and EUR 3 040 frozen, and that for imports in Group 2 shall be EUR 4 385 per tonne fresh and EUR 4 209 frozen.

5. In cases where goods have been damaged before entry into free circulation and, therefore, the price is apportioned as for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93⁽²⁾, the MIP set out in paragraph (3) or (4) as appropriate, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced MIP and the reduced net, free-at-Community-frontier price.

Article 3

Security to be provided on importation

1. For the purpose of this regulation, 'importer' shall mean the person lodging the declaration for release for free circulation, or the person on whose behalf that declaration is lodged, and 'satisfactory evidence' shall be provided by the production to the customs authority of evidence of payment of the actual import price for the salmon imported, or by results of appropriate controls carried out by customs authorities.

2. Importers of farmed salmon shall provide satisfactory evidence to the customs authorities of the actual import price per tonne paid for imports of farmed salmon.

3. Pending the provision of satisfactory evidence, the release of the goods shall be conditional upon the provision of a security to the customs authorities of EUR 290 per tonne (WFE) of farmed salmon imported (Group 1 — EUR 320 per tonne, Group 2 — EUR 450 per tonne).

4. If, within 1 year of the date of acceptance of the customs declaration for release for free circulation or within 3 months following the foreseen date of payment for the goods, whichever date is the later, the importer has not supplied satisfactory evidence as required by paragraph (2) above, the customs authorities shall immediately enter in the accounts, as duties to which the goods in question are subject, the amount of the security provided in accordance with the provisions of paragraph (3) above.

⁽²⁾ OJ L 253, 11.10.1993, p. 40.

5. If on verification the customs authorities establish that the price actually paid for the goods is below the MIP as indicated in Article 2, they shall recover the difference between that price and the respective MIP in accordance with Article 220(1) of Regulation (EEC) No 2913/92. In order to prevent the wrongful acquisition of financial advantage, compensatory interests shall be applied in accordance with the provisions in force.

6. The security provided shall be released at the moment the importer provides satisfactory evidence as required in paragraph (2) above.

Article 4

Developing countries

Imports of farmed salmon originating in one of the developing countries specified in Annex 2 shall not be subject, or allocated, to the tariff quotas laid down in Article 1 or subject to the requirements under Articles 2 or 3.

Article 5

General provisions

1. The origin of the farmed salmon to which this Regulation applies shall be determined in accordance with the provisions in force in the Community.

2. Subject to paragraph (3), any release into free circulation in the Community of farmed salmon originating in a developing country shall be subject to:

- (a) presentation of a certificate of origin issued by the competent national authorities of that country meeting the conditions laid down in Article 47 of Regulation (EEC) No 2454/93, and
- (b) the condition that the product has been transported directly, within the meaning of Article 6, from that country to the Community.

3. The certificate of origin referred to in paragraph (2)(a) shall not be required for imports of farmed salmon covered by a proof of origin issued or made out in accordance with the relevant rules established in order to qualify for preferential tariff measures.

4. Proof of origin shall be accepted only if the farmed salmon meet the criteria for determining origin set out in the provisions in force in the Community.

Article 6

Direct transport

1. The following shall be considered as transported direct to the Community from a third country:

- (a) products transported without passing through the territory of any third country;
- (b) products transported through one or more third countries other than the country of origin, with or without transshipment or temporary warehousing in those countries, provided that such passage is justified for geographical reasons or exclusively on account of transport requirements and provided that the products:
 - have remained under the supervision of the customs authorities of the country or countries of transit or warehousing,
 - have not entered into commerce or been released for consumption there, and
 - have not undergone operations there other than unloading and reloading.

2. Proof that the conditions referred to in paragraph (1)(b) have been satisfied shall be submitted to the Community authorities. That proof may be provided, in particular, in the form of one of the following documents:

- (a) a single transport document issued in the country of origin covering passage through the country or countries of transit;
- (b) a certificate issued by the customs authorities of the country or countries of transit containing:
 - a precise description of the goods;
 - the dates of their unloading and reloading or their lading or unloading, identifying the vessels used.

*Article 7***Imports in the process of shipment to the Community**

1. This Regulation shall not apply to products in the process of shipment to the Community within the meaning of paragraph (2).

2. Products shall be deemed to be in the process of shipment to the Community if they:

— left the country of origin before the date this Regulation begins to apply, and

— are shipped from the place of loading in the country of origin to the place of unloading in the Community under cover of a valid transport document issued before the date this Regulation begins to apply.

3. The parties concerned shall provide, to the satisfaction of the customs authorities, proof that the conditions laid down in paragraph (2) have been met.

However, the authorities may regard the products as having left the country of origin before the date this Regulation begins to apply if one of the following documents is provided:

— in the case of transport by sea, the bill of lading showing that loading took place before that date,

— in the case of transport by rail, the consignment note that was accepted by the railway authorities in the country of origin before that date,

— in the case of transport by road, the CMR contract for the carriage of goods or any other transport document issued in the country of origin before that date,

— in the case of transport by air, the air consignment note showing that the airline took the products over before that date.

Article 8

The Member States and the Commission shall co-operate closely to ensure compliance with this Regulation.

Article 9

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union* and apply until 13 August 2008.

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

Done at Brussels, 4 February 2005.

For the Commission

Peter MANDELSON

Member of the Commission

ANNEX II

LIST OF DEVELOPING COUNTRIES

(referred to in Article 4)

United Arab Emirates, Afghanistan, Antigua and Barbuda, Angola, Argentina, American Samoa, Anguilla, Antarctica, Aruba, Barbados, Bangladesh, Burkina Faso, Bahrain, Burundi, Benin, Brunei Darussalam, Bolivia, Brazil, Bahamas, Bhutan, Botswana, Belize, Bermuda, Bouvet Island, British Virgin Islands, British Indian Ocean Territory, Democratic Republic of Congo, Central African Republic, Congo, Côte d'Ivoire, Cameroon, Chad, Colombia, Costa Rica, Cuba, Cape Verde, Cayman Islands, Christmas Island, Cocos Islands (or Keeling Islands), Cook Islands, Djibouti, Dominica, Dominican Republic, Algeria, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Federated States of Micronesia, Falkland Islands, French Polynesia, French Southern Territories, Gabon, Grenada, Ghana, Gambia, Guinea, Equatorial Guinea, Guatemala, Guinea-Bissau, Guyana, Gibraltar, Guam, Honduras, Hong Kong, Haiti, Heard Island and McDonald Islands, Indonesia, India, Iraq, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Cambodia, Kiribati, Comoros, St Kitts and Nevis, Kuwait, Lao People's Democratic Republic, Lebanon, St Lucia, Sri Lanka, Liberia, Lesotho, Libyan Arab Jamahiriya, Morocco, Madagascar, Marshall Islands, Mali, Myanmar, Mongolia, Mauritania, Mauritius, Maldives, Malawi, Mexico, Malaysia, Mozambique, Macao, Mayotte, Montserrat, Namibia, Niger, Nigeria, Nicaragua, Nepal, Nauru, Netherlands Antilles, New Caledonia and dependencies, Niue Island, Norfolk Island, Northern Mariana Islands, Oman, Panama, Peru, Papua New Guinea, People's Republic of China, Philippines, Pakistan, Palau, Paraguay, Pitcairn, Qatar, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Seychelles, Sudan, Sierra Leone, Senegal, Somalia, Suriname, Sao Tomé and Príncipe, El Salvador, Syrian Arab Republic, Swaziland, South Georgia and South Sandwich Islands, St Helena and dependencies, St Pierre and Miquelon, Togo, Tunisia, Tonga, East Timor, Trinidad and Tobago, Tuvalu, Tanzania (United Republic of), Chinese Taipei, Tokelau, Turks and Caicos Islands, United States Minor outlying islands, Uganda, Uruguay, St Vincent and the Northern Grenadines, Venezuela, VietNam, Vanuatu, Virgin Islands of USA, Wallis and Futuna Islands, Yemen, South Africa, Zambia and Zimbabwe.
