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EUROPEAN COMMUNITIES – ANTI-DUMPING MEASURE ON FARMED SALMON FROM NORWAY

Request for Consultations by Norway

The following communication, dated 17 March 2006, from the delegation of Norway to the delegation of the European Communities and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the European Communities ("EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("*Anti-Dumping Agreement*") with respect to Council Regulation (EC) No. 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway.[1] This measure confirms, and incorporates reasoning from, Commission Regulation (EC) No. 628/2005 of 22 April 2005,[2] as amended by Commission Regulation (EC) No. 1010/2005 of 1 July 2005.[3]

Norway considers that the measure is inconsistent, at least, with the following provisions of the *Anti-Dumping Agreement* and the GATT 1994:

1. Article 5.4 of the *Anti-Dumping Agreement* because the EC initiated the investigation without ensuring that the application for an investigation was "made by or on behalf" of the relevant "domestic industry", as defined in Article 4.1 of that *Agreement*;

2. Article 6.10 of the *Anti-Dumping Agreement* because the EC determined an individual margin of dumping for a selection of producers that neither constituted a statistically valid sample nor represented the largest percentage of the volume of exports from Norway that could reasonably be investigated; and because the EC failed to determine an individual margin of dumping for each of the producers included in the defective sample;

3. Articles 2.1 and 2.2 of the *Anti-Dumping Agreement* because the EC examined the sufficiency of domestic sales in the ordinary course of trade on the basis of sub-categories of the like product;

[1] Official Journal of the European Union, L15/1, published 20 January 2006.
[2] Official Journal of the European Union, L104/5, published 23 April 2005.
[3] Official Journal of the European Union, L170/32, published 1 July 2005.

4. Articles 2.1, 2.2 and 2.2.1 of the *Anti-Dumping Agreement* because the EC excluded certain domestic sales as not in the ordinary course of trade by reason of price and/or volume without respecting the conditions in those provisions;

5. Articles 2.1, 2.2 and 2.2.1.1 of the *Anti-Dumping Agreement*, and Article VI:1 of the GATT 1994, because of the EC's failure to determine the normal value for the like product on the basis of the costs of production plus a reasonable amount for administrative, selling and general costs, and for profits;

6. Article 2.2.2 of the *Anti-Dumping Agreement* because the EC rejected actual profits data due to the low volume of domestic market sales of the like product and/or sub-categories of that product; and because the EC substituted an imputed profits margin that is not consistent with the conditions set forth in that provision;

7. Article 6.8 and Annex II of the *Anti-Dumping Agreement* because the EC determined normal value for certain individually examined companies on the basis of facts available without respecting the conditions set forth in those provisions, *inter alia*: failing to inform the relevant companies of the information required; failing to inform them of deficiencies in information provided; and failing to provide them with an opportunity to remedy deficiencies within a reasonable period.

8. Article 6.8 and Annex II, and Article 9.4, of the *Anti-Dumping Agreement* because the EC determined a residual margin of dumping on the basis of facts available for certain companies not individually examined that the EC treated as "non-cooperating";

9. Article 6.8 and Annex II, and Article 9.4, of the *Anti-Dumping Agreement* because the EC determined the weighted average ("all others rate") and the residual margin of dumping for companies not individually examined using margins of dumping previously determined for individually examined companies using facts available;

10. Article 3.1 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because the EC failed to make a determination of injury, on the basis of positive evidence, relating to the relevant domestic industry, as defined in Article 4.1 of the *Anti-Dumping Agreement*; and Article 6.10 of that *Agreement*, if applicable to injury determinations, because the EC made a determination of injury solely for selected domestic producers without complying with the conditions in that provision;

11. Articles 3.1 and 3.2 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, of the volume of dumped imports from Norway because the EC treated all imports from Norway as dumped; and of price undercutting by Norwegian imports because of a failure to examine the substantial price premium Scottish and Irish farmed salmon enjoy over Norwegian farmed salmon;

12. Articles 3.1 and 3.4 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry, including those listed in Article 3.4;

13. Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, that dumped imports are, through the effects of dumping, causing injury; and because the EC failed to ensure that injury caused to the domestic industry by other factors was not attributed to dumped imports;

14. Articles 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Article VI:2 of the GATT 1994, because the EC imposes variable anti-dumping duties by reference to minimum import prices ("MIPs") in an amount that is not limited or related to the margin of dumping; because the MIPs exceed normal value; because the MIPs are determined using a flawed methodology, including incorrect whole fish equivalent conversion factors, excessive amounts for processing costs and profits, and the use of three-year average exchange rates;

15. Articles 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Article VI:2 of the GATT 1994, because in certain circumstances the EC imposes variable and fixed anti-dumping duties that exceed the margin of dumping;

16. Article 9.4 of the *Anti-Dumping Agreement* because the EC imposes variable and fixed anti-dumping duties on companies that are not individually examined without respecting the conditions in that provision;

17. Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* because the EC failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defense of their interests;

18. Article 6.5.1 of the *Anti-Dumping Agreement* because the EC failed to ensure the provision of summaries of confidential information relating to the domestic industry or, where provided, failed to give summaries in sufficient detail to enable a reasonable understanding of the substance of that information;

19. Articles 6.2 and 6.7, and Annex I, of the *Anti-Dumping Agreement* because the EC failed to respect the procedures for on-the-spot investigations;

20. Articles 6.2 and 6.9 of the *Anti-Dumping Agreement* because the EC failed to inform interested Norwegian parties in timely manner, and in some cases at all, of the essential facts forming the basis for the decision to apply definitive measures, thereby depriving them of the opportunity to defend adequately their interests;

21. Articles 12.2 and 12.2.2 of the *Anti-Dumping Agreement* because the EC failed to set forth, in sufficient detail, the findings and conclusions reached on all issues of fact and law material to the determinations of dumping, injury and causation, as well as to the determination the various MIPs; and

22. In consequence, Articles 1 and 18.1 of the *Anti-Dumping Agreement* because an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and in accordance with the provisions of the *Anti-Dumping Agreement*.

The EC's measure, therefore, nullifies and impairs benefits accruing to Norway under the *Anti-Dumping Agreement* and the GATT 1994.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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