

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

Request for the Establishment of a Panel by Norway

The following communication, dated 29 May 2006, from the delegation of Norway to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 17 March 2006, Norway requested 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

On 27 March 2006, Norway supplemented its initial request for consultations with a clarification of the legal basis for the request. The initial and supplemental requests for consultations of 17 March 2006 are to be read together.

Consultations were held on 12 May 2006 with a view to reaching a mutually satisfactory solution. These consultations failed to resolve the dispute.

Therefore, Norway respectfully requests, pursuant to Articles 4 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 17.4 of the *Anti-Dumping Agreement*, that the Dispute Settlement Body (DSB) establish a Panel to examine this matter. Norway asks that a special DSB meeting be held on 9 June 2006 to consider this request. Norway further requests that the Panel have standard terms of reference, as set out in Article 7.1 of the DSU.

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

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.

1. Article 5, including Articles 5.1, 5.2, 5.3 and 5.4, because, by determining that the product under consideration is fresh, chilled or frozen farmed salmon, whether or not filleted, the EC improperly initiated an investigation into a single product that consists of more than one product.
2. Article 5.4 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*.
3. Article 2, including Articles 2.1 and 2.6, because the EC made dumping determinations for a single product (fresh, chilled or frozen farmed salmon, whether or not filleted) that consists of more than one product.
4. Article 6.10 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 one of the producers included by the EC in the defective sample.
5. Articles 2.1, 2.2 and 2.2.1 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, in particular the duty to ensure that below-cost sales are rejected solely if prices do not provide for the recovery of all costs within a reasonable period of time.
6. Articles 2.1, 2.2 and 2.2.1.1, and Article VI:1 of the GATT 1994, because the EC failed to determine the normal value for the like product on the basis of each individually examined company's costs of production ("COP") plus a reasonable amount for administrative, selling and general ("SG&A") costs, and for profits, in particular by virtue of improper adjustments to the COP and SG&A costs reported by individually examined companies. The Commission also made clerical errors in its calculations of constructed normal value.
7. Article 2.2.2 because the EC rejected actual data pertaining to production and sales in determining amounts for profits and SG&A costs due to the low volume of domestic market sales of the like product and/or sub-categories of that product.
8. Article 6.8 and paragraphs 1, 3, 5, 6 and 7 of Annex II because the EC determined normal value for certain individually examined companies, in part, on the basis of facts available. In so doing, the EC failed to respect the conditions set forth in these provisions governing the use of facts available. In particular, the EC: failed to inform the relevant companies of the information required; failed to use verifiable information submitted in timely manner, even though this would not have presented undue difficulties; failed to inform them of the reasons for the rejection of information submitted; failed to provide them with an opportunity to provide further explanations within a reasonable period; failed to state, in the published determinations, reasons for rejection of the evidence and information submitted by these individual companies; and failed to take into account information submitted.
9. Article 6.8 and paragraph 1 of Annex II, and Article 9.4, by improperly applying facts available in establishing the "residual" margin of dumping that was assigned to producers and exporters that were not individually examined.
10. Article 3, including Articles 3.1, 3.2, 3.4, 3.5 and 3.6, because the EC's injury determination is made in relation to an EC domestic industry producing a single product (fresh, chilled or frozen farmed salmon, whether or not filleted) that consists of more than one product. By

failing to determine the product under consideration properly, the EC failed to examine and make an injury determination with respect to the separate EC domestic industries producing the like products.

11. Articles 3.1, 3.4 and 3.5 and Article VI:1 of the GATT 1994 because the EC failed to make a determination of injury for the relevant domestic industry, as defined in Article 4.1 of the *Anti-Dumping Agreement*. This claim has several components:
 - (a) The EC limited the EC domestic industry to certain producers of farmed salmon that cooperated fully in the investigation and that supported the complaint. The EC improperly excluded from the EC domestic industry unrelated allegedly non-cooperating producers and unrelated non-supporting producers.
 - (b) The EC examined injury to the EC domestic industry in relation to a sample of 5 EC growers of farmed salmon that did not constitute the EC producers as a whole of the like product, or a majority of them. In so doing, the EC violated Article 6.10 of the *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.
 - (c) The EC failed to include EC producers as a whole of filleted products, or a major proportion of them, in the EC domestic industry.
12. Articles 3.1 and 3.2 because the EC failed to make an objective examination, on the basis of positive evidence, of price undercutting by Norwegian imports because of a failure to examine the substantial price premium enjoyed by Scottish and Irish farmed salmon over Norwegian farmed salmon.
13. Articles 3.1 and 3.4 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.
14. Articles 3.1 and 3.5 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.
15. Article 9, including Articles 9.1, 9.2 and 9.4, because the EC failed to impose anti-dumping duties on imports of a single product and instead imposed remedies at six different levels on different products.
16. Articles 9.1, 9.2 and 9.3, 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 by the margin of dumping determined for individually examined companies; because the MIPs exceed the normal value determined for individually examined companies; and because the MIPs are determined using a flawed methodology.
17. Articles 9.1, 9.2 and 9.3, 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 determined for individually examined companies.
18. Article 9.4 because the EC established a weighted average margin of dumping for cooperating companies that were not individually examined using margins of dumping previously

determined for certain individually examined companies using facts available. The EC's weighted average margin of dumping is also tainted by calculation errors.

19. Articles 6.2 and 6.4 because the EC failed to provide timely opportunities, and in some cases any opportunity, for interested parties to see non-confidential information.
20. Article 6.5.1 because the EC failed to ensure the provision of non-confidential 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 that information.
21. Articles 6.2 and 6.7, and paragraph 7 of Annex I, because the EC failed to respect the procedures for on-the-spot investigations, in particular, it failed to inform companies of further verifiable information that was needed.
22. Articles 6.2 and 6.9 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.
23. Articles 12.2 and 12.2.2 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 of the various MIPs.

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