

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

Committee on Anti-Dumping Practices

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UNITED STATES IMPOSITION OF ANTI-DUMPING DUTIES ON IMPORTS OF FRESH AND CHILLED SALMON FROM NORWAY

Request by Norway for Establishment of a Panel under Article 15:5 of the Agreement

Addendum

The following communication, dated 14 October 1991, has been received from the Permanent Delegation of Norway.

Issues to be reviewed by Anti-Dumping Panel

The Norwegian Government considers that the duties imposed by the United States on imports of fresh and chilled Atlantic salmon from Norway are in contravention of the United States' obligations under the relevant provisions of the Anti-Dumping Code and constitute a case of nullification or impairment of the benefits accruing to Norway.

Important issues of the case include the following:

- I. The United States failed to satisfy itself that the written petition requesting the salmon anti-dumping investigation was filed on behalf of the domestic industry, in violation of Article 5:1.
 - A. It appears that the United States authorities did not make any investigation, at any time, to determine whether the petitioners in the Fresh Atlantic Salmon from Norway investigation had standing.
 - B. Therefore, the United States violated the Code by not satisfying itself of the petitioners' standing to bring an action prior to initiating the investigation.
- II. The United States' calculation of cost in this case resulted in an arbitrary number rather than "the cost of production" (Article 2:4).

- A. The United States did not rely on "the cost of production" as the measure of normal value, but instead relied on an overstated estimate based on a failure to use statistically valid sampling methods; use of distorted averaging techniques; failure to calculate the cost of production to take into account the perishability of the product; and by adding arbitrarily amounts for profit and costs.
- III. The United States, in its calculation of the margin of dumping, failed to provide for equitable and open procedures, contrary to the intent of the Code as stated in its preamble and as required by specific Articles of the Code.
- A. The United States, by comparing average "cost of production" and individual export prices, did not effect a fair comparison, or ensured price comparability, in violation of Article 2:6.
 - B. By failing to consider the exporters' acquisition costs the United States failed to provide equitable and open procedures.
 - C. The United States, i.a. by not taking into account the perishability of the product, arbitrarily disregarded sales to third countries without due consideration of whether such sales were in the ordinary course of trade, in violation of Article 2.
 - D. The United States failed to give Norwegian interested parties an ample opportunity to present necessary evidence, and penalized Norwegian exporters for the United States' failure to give that opportunity to parties unrelated to those exporters, in violation of Article 6:1.
- IV. The United States failed to demonstrate that domestic industry suffered material injury through the effects of the dumping it found to exist, in violation of Article 3.
- A. The United States did not make an objective examination of information regarding i.a. volume of imports, market shares and prices as well as of relevant economic factors.
 - B. The United States' assessment of injury in anti-dumping investigations requires that, if the domestic industry is materially injured, the subject imports (some or all of which are dumped) need be only a cause of material injury, rather than requiring that the allegedly dumped imports, through the effects of the dumping itself, cause material injury by themselves.
 - C. In the present case the United States failed to consider the effects of the allegedly dumped imports separately from the effects of other factors, thus attributing injury caused by other factors to the allegedly dumped imports. The United States made one collective determination concerning material injury for both a countervailing duty case and the anti-dumping case.

- D. The United States did not assess all relevant economic factors and failed to demonstrate that the impact of the allegedly dumped imports was to cause material injury.

- V. The United States did not take into account i.a. the Norwegian freezing programme and exchange rate developments and allowed anti-dumping duties to remain in force longer than necessary to counteract the alleged dumping, in violation of Article 9:1.
 - A. At the time the United States made its injury determination. Prices for Norwegian Atlantic salmon on the US market had increased substantially due i.a. to the Norwegian freezing programme. The United States failed to consider this new market situation.

In conclusion, the United States' action in its anti-dumping investigation, and subsequent imposition of duties, violated its obligations under the Code. The United States denied Norway most-favoured-nation treatment. These actions of the United States have nullified and impaired the benefits accruing to Norway under the Code.