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C-403-802
Sunset Review
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August 30, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Fresh and Chilled Atlantic Salmon from Norway

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty ("CVD") order covering fresh and chilled Atlantic salmon from Norway. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On February 25, 1991, the Department of Commerce ("the Department") issued a final determination in the CVD investigation, covering the period September 1, 1989, through February 28, 1990. The following six programs were found to confer countervailable subsidies on Norwegian producers/exporters of subject merchandise: (1) *Regional Development Fund Loans and Grants*; (2) *National Fishery Bank of Norway Loans*; (3) *Regional Capital Tax Incentive*; (4) *Reduced Payroll Taxes*; (5) *Advance Depreciation of Business Assets*; and (6) *Government Bank of Agricultural Grants*. The Department found a net subsidy of 2.27 percent ad valorem for all Norwegian producers/exporters of subject merchandise.

On March 13, 2000, after conclusion of the first sunset review, the Department published a notice of continuation of the CVD order on fresh and chilled Atlantic salmon from Norway. See Notice of Continuation of Antidumping Duty and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon from Norway, 65 FR 13358 (March 13, 2000). No additional reviews have been conducted.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act"), the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("SCM").

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, the domestic interested parties[1] state that they have no information concerning any actions by the Government of Norway ("GON") to suspend or terminate any of the six programs found by the Department to provide a countervailable subsidy. They assert that, because there have been no administrative reviews of the CVD order, the Department has not examined the programs further, and no respondent participated in the first sunset review, the GON presumably continues to subsidize producers/exporters of subject merchandise.

The domestic interested parties also note that the European Commission ("EC"), in a 1996 CVD investigation, determined that the GON conferred countervailing subsidies amounting to 3.84 percent ad valorem on producers/exporters of fresh Atlantic salmon (see March 4, 2005, Substantive Response of domestic interested parties at 22). The domestic interested parties note that the EC's findings, which investigated subsidies provided to Norwegian salmon farmers between January 1, 1995, and July 31, 1996, demonstrate that the GON has continued to

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[1] Heritage Salmon Company, Inc. and Atlantic Salmon of Maine.

subsidize its domestic salmon farming industry and the amount of these subsidies has increased since the Department's 1991 final affirmative determination. Id.

Department's Position

There have been no administrative reviews of this order and no evidence has been submitted to the Department demonstrating the termination of the countervailable programs. Moreover, the Department did not receive a response from the GON and/or any respondent interested party. While the domestic interested parties' reference to the EC investigation is informative, we do not view it as dispositive. Nor do we view as dispositive, the EC's termination of its anti-subsidy proceeding as the result of an expiry review, the results of which published in May 2003 in the Official Journal of the European Union.[2] Rather, given that the EC does not appear to have addressed all of the same programs investigated by the Department, absent argument or evidence to the contrary, we find that the countervailable programs continue to exist. Therefore, because countervailable programs continue to exist and be used, and the foreign government and other respondent interested parties did not participate in this review before the Department, the Department concludes that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties assert that the Department normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail should be the country-wide rate of 2.27 percent, the rate set forth in the original investigation.

Department's Position

As noted above, there have been no administrative reviews of the order nor did we receive a response from the GON or any respondent interested party. Thus, we find that there have not been substantive changes made to the programs found to be countervailable. Furthermore, there are no other U.S. countervailing duty proceedings involving Norway. Therefore, since there is no evidence that changes have been made to any of the Norwegian subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net

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[2] COUNCIL REGULATION (EC) No 930/2003 of 26 May 2003 terminating the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway and the anti-dumping proceeding concerning imports of farmed Altantic salmon originating in Chile and the Faeroe Islands, L 133/1, (29 May 2003).

countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 2.27 percent for all producers and exporters of subject merchandise from Norway.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000. The following programs are not subsidies described in Article 3 of the SCM. However, they could be subsidies descried in Article 6.1 of the SCM if the amount of the subsidy exceeds 5 percent, as measured in accordance with Annex IV of the SCM. They could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record for the Department to make such a determination.

We are providing the ITC with the following program descriptions.

Regional Development Fund Loans and Grants (RDF). The *RDF* provides loan guarantees, long-term loans, and investment and business development grants to producers and exporters located only in specified regions of Norway to strengthen the economic base and to increase employment in regions with low levels of economic activity.

National Fishery Bank of Norway Loans (NFB). The *NFB* provided loans for the financing of fish farms from 1974 through 1987, including long-term loans for investment in production equipment and buildings.

Regional Capital Tax Incentive. The aim of the *Regional Capital Tax Incentive* is to encourage investment in regions of Norway with a weak industrial base and considerable unemployment. Funds set aside by the taxpayer under this program are deducted from taxable income (at a maximum amount of 15 percent), and must then be invested in capital assets for use in the taxpayer's own business.

Reduced Payroll Taxes. This program aims at encouraging employment of persons living in underdeveloped regions of Norway. Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. However, since 1975, the amount of contributions have been geographically differentiated depending on the municipality in which the employee resides.

Advance Depreciation of Business Assets. This program encourages investment in less-developed areas of Norway by allowing companies located in selected districts of the country to claim a higher rate of depreciation in the year in which capital assets are acquired. Eligible companies, depending on their location, are allowed to take a first-year deduction of either 25 or 40 percent. After this initial deduction, the producer is then allowed to take the standard deduction on the remainder of the depreciable value of the asset.

Government Bank of Agriculture. The Bank administers the Norwegian Fund of Development in Agriculture which was established to create supplemental income and employment for farmers. The Bank provides both long-term loans and interest-free loans and grants to all agricultural producers throughout Norway; however, there are maximum levels of assistance which differ by region.

Final Results of Review

As a result of this review, we find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Producer/Exporter	Net Countervailable Subsidy (%)
All Producers/Exporters from Norway	2.27

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)