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PECHE 64
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MARE 3

DECLASSIFICATION

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Subject: Agreement between Canada and Norway

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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RESTREINT

PECHE 64
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RESTREINT

OUTCOME OF PROCEEDINGS

of : Working Party on External Fisheries Policies

dated: 27 February 1995

No. prev. doc.: 4132/95 PECHE 7

Subject: Agreement between Canada and Norway

1. The President explained that the Law of the Sea Working Group would play a leading role in examining the full legal implications of the Canada-Norway Agreement but that the Working Party on External Fisheries Policy had been asked to give its opinion on the practical implications of the Agreement on the fisheries sectors of the Member States; discussion at this meeting would therefore focus on this latter point.
2. Delegations had been asked to submit their written observations, according to the COREU procedure, on the contents of the Presidency's draft *note verbale* by 24 February 1995; this deadline was now extended to 10 March 1995.
3. The Commission representative said that the Commission's legal experts had examined the Agreement with a view to giving a rapid preliminary response on the kind of problems it might present for the Common Fisheries Policy. These might be summarised as follows:-

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- Paragraph 4 of the preamble to the Agreement could be interpreted as an implication that coastal States have a "special interest" in stocks outside coastal waters;
 - Article 2 of the Agreement, concerning the prohibition of access to ports of the vessels of the two contracting parties concerned, could be interpreted to apply to any vessels including those of third countries; this was not an international conservation measure but it might be viewed as one which could force the conservation strategies of coastal States onto non-contracting parties and could have wider implications for negotiations taking place at the UN Conference on Straddling Stocks and Highly Migratory Species;
 - there was, finally, the specific question of compatibility with the 1920 Paris Treaty on Svalbard.
4. He explained that the contribution from the Commission's legal experts would be submitted to the Presidency and would be made available to delegations.
 5. The United Kingdom delegation observed that while the preceding legal analysis raised objections in principle to certain provisions in the Agreement, in practice these provisions would have little or no effect. For example, while the preamble to the Agreement indicated that Canada recognises Norway's right to protect the Svalbard zone, the Agreement itself did not apply to Svalbard.
 6. While Article II was ambiguous and might possibly be interpreted as applying to third country vessels, on a practical level this would have no effect on actual fisheries operations as Community vessels fishing in the NAFO Regulatory Area would not approach Norwegian waters.

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7. As regards Article III, Canada and Norway were at perfect liberty to agree to any measure which affected their own vessels as long as it did not affect third party vessels.
8. In conclusion, this delegation was against focusing too much attention on the Agreement, considering it likely to provoke Norway into challenging the EU's autonomous quotas, which so far they seemed disinclined to do. It considered that an informal discussion with Norway, seeking clarification, might be useful, particularly considering that the Community might need to enlist Norway as an ally in the light of developments on the Greenland Halibut allocation key in the NAFO Regulatory Area.
9. The Netherlands delegation was inclined to agree with the United Kingdom delegation that the Community should seek to avoid any conflict with Norway as this would make it ally itself even more with Canada; any challenge to the Agreement should therefore be directed to this latter party. It added that it wished to consult further with its experts on the Law of the Sea.
10. The French delegation found it difficult to accept the view that this Agreement would have no real implications for the Community's fishing interests. Canada's and Norway's recognition of the Svalbard as an exclusively Norwegian preserve was contrary to the provisions of the Law of the Sea and could challenge the EU TAC in that area; the prohibition on access to ports was in contravention of the provisions of the Paris Treaty; finally, the Agreement implied an extension of the powers of coastal States beyond the 200-mile zone.
11. This delegation took the view that clarification of the Agreement could be sought from Canada and Norway in a *note verbale*.

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12. The Spanish, Portuguese and Swedish delegations fully agreed with the Commission's view of the situation and considered it to be of the utmost importance that the Community's position be made absolutely clear. They therefore supported the approach suggested by the Presidency via COREU.

13. The Commission representative stressed that the démarche proposed would simply seek clarification of the Agreement from Norway, and implicitly, from Canada. It was important to avoid the situation whereby the Community would appear, by virtue of its silence, to accept tacitly the provisions of the Agreement.

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