

COMMISSION IMPLEMENTING REGULATION (EU) 2020/658**of 15 May 2020****amending Implementing Regulation (EU) 2015/309 imposing a definitive countervailing duty and collecting definitively the provisional duty on imports of certain rainbow trout originating in Turkey following an interim review pursuant to Article 19(4) of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 19 thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Commission Implementing Regulation (EU) 2015/309 ⁽²⁾ ('the original Regulation'), the Commission imposed definitive countervailing duties on imports of certain rainbow trout originating in Turkey ('the measures in force'). The duties ranged from 6,9 % to 9,5 %.
- (2) On 4 June 2018, following a partial interim review concerning subsidisation of all exporting producers, the Commission decided to maintain the measures as originally established (Commission Implementing Regulation (EU) 2018/823 ⁽³⁾). It found that the legislative change in the Turkish legislation on subsidies to trout producers that was subject to the review did not justify revising the countervailing duties to all trout producers in Turkey. However, it was observed that the impact of the legislative change differed at individual company level and depended on the specific situation of each of the companies ⁽⁴⁾.

1.2. Request for a partial interim review

- (3) On 5 June 2018, one of the exporting producer in Turkey, 'BAFA Su Ürünleri Yavru Üretim Merkezi Sanayi Ticaret AŞ', part of the Kiliç Group ('the applicant'), lodged a request for a partial interim review limited in scope to the examination of subsidisation as far as it is concerned.
- (4) The applicant argued that the circumstances with regard to the subsidisation in Turkey on which the existing measures were based in relation to it have changed, and that the changes were of a lasting nature in so far the applicant was concerned.

1.3. Initiation of a partial interim review

- (5) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 22 May 2019, by a notice published in the *Official Journal of the European Union* ('Notice of Initiation') ⁽⁵⁾, the initiation of the partial interim review pursuant to Article 19(1) of the basic Regulation, limited in scope to the examination of subsidy as far as the applicant is concerned.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) 2015/309 of 26 February 2015 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain rainbow trout originating in Turkey (OJ L 56, 27.2.2015, p. 12).

⁽³⁾ Commission Implementing Regulation (EU) 2018/823 of 4 June 2018 terminating the partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey (OJ L 139, 5.6.2018, p. 14).

⁽⁴⁾ Recital (49) of Implementing Regulation (EU) 2018/823.

⁽⁵⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey (OJ C 176, 22.5.2019, p. 24).

1.4. Review investigation period

- (6) The review investigation period ('the RIP') covered the period from 1 January 2018 to 31 December 2018.

1.5. Interested parties

- (7) In the Notice of Initiation, the Commission invited interested parties to participate in the investigation. In addition, it specifically informed the applicant, the Union industry (the producers association) and the Turkish authorities of the initiation of the partial interim review.
- (8) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.
- (9) The Danish Aquaculture Association, the producers association representing the complainant in the original investigation ('the DAO') made a submission. It was of the view that the changes implemented by the Turkish authorities to the legal framework could not be considered being of a lasting nature and that the amount of subsidies to trout producers, including to the applicant, was still high. It also considered that the applicant could not request the Commission to review its subsidy rate based solely on the depreciation of the Turkish lira, and that the Commission should take into consideration other subsidy schemes to trout producers that the applicant could benefit from. The DAO considered that the Commission should take into consideration also other factors such as the fact that the Turkish import prices considerably undercut the Union prices.
- (10) The Commission recalled that the request for the interim review was not based only on the depreciation of the Turkish lira as claimed by the DAO. Rather, the main reason for the review request was the claim that the level of subsidies to the applicant decreased after the legislative change in Turkey in 2016. Second, it also observed that the review was limited in scope to the assessment of the level of subsidisation as far as the applicant is concerned. The level of undercutting (that related to an assessment of an injury to the Union industry) was not subject of this review. Accordingly, the Commission assessed the level of subsidies with respect to the applicant as well as the lasting nature of the changes below in recitals (30) to (57).
- (11) Following disclosure and additional disclosure, the DAO reiterated its view that the fluctuation of a currency could not be considered as a change of the lasting nature and the Commission should have considered how much the depreciation contributed to the evolution of the subsidisation level.
- (12) The Commission accepted that the exchange rate for the currency in Turkey fluctuated since the original investigation, and that as such, the exchange rate fluctuation could not be considered as a change of a lasting nature. However, it disagreed with DAO that it should have treated the exchange rate of the original investigation as the 'reference' in consideration in order to evaluate an effect of its fluctuation on the calculation of the amount of subsidisation calculation. While currency fluctuations inevitably affect the new subsidy calculation for the applicant, the reason for the recalculation is the impact of the legislative change of 2016 on the applicant. The Commission therefore rejected the claim.

1.6. Questionnaire and verification visit

- (13) The Commission sought and verified all the information deemed necessary to evaluate the impact on the applicant of the legal changes to the implementation of the direct subsidy scheme on the applicant.
- (14) The Commission sent a questionnaire to the applicant (including the related companies) and to the Turkish authorities. Complete questionnaire replies were received from both of these parties. The Commission verified the information provided in the questionnaire reply at the premises of the applicant.

1.7. Disclosure

- (15) On 27 February 2020, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to propose to amend the duty rate applicable to the applicant. Interested parties were given the opportunity to comment by 12 March 2020, and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission considered the comments made by the interested parties and took them into consideration where appropriate. Following disclosure, the Commission held a hearing with the applicant on 12 March 2020.

- (16) After having assessed the comments submitted by the parties after disclosure, the Commission made an additional disclosure on 3 April 2020. It informed all the interested parties of its intention to amend the duty rate to the applicant proposed in the initial General Disclosure Document. Interested parties were given the opportunity to comment on the newly proposed facts and considerations by 8 April 2020, and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission considered the new comments made by the interested parties and took them into consideration where appropriate.

2. PRODUCT UNDER REVIEW AND THE LIKE PRODUCT

2.1. Product under review

- (17) The product under review is rainbow trout (*Oncorhynchus mykiss*):
- live weighing 1,2 kg or less each, or
 - fresh, chilled, frozen and/or smoked:
 - in the form of whole fish (with heads on), whether or not gilled, whether or not gutted, weighing 1,2 kg or less each, or
 - with heads off, whether or not gilled, whether or not gutted, weighing 1 kg or less each, or
 - in the form of fillets weighing 400 g or less each,
 - originating in Turkey and currently falling under CN codes ex 0301 91 90, ex 0302 11 80, ex 0303 14 90, ex 0304 42 90, ex 0304 82 90 and ex 0305 43 00 (TARIC codes 0301 91 90 11, 0302 11 80 11, 0303 14 90 11, 0304 42 90 10, 0304 82 90 10 and 0305 43 00 11) ('the product under review').
- (18) As in the original investigation, the Commission found that the products produced in the Union and the products produced in Turkey are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Original investigation

- (19) Subsidies to trout production in Turkey are regulated by a decree adopted by the Turkish Government on an annual basis. The decree provides for the basic conditions and subsidy amounts to aquaculture production in Turkey. The procedures and principles regarding the implementation of the decree are further provided for by communiqués issued by the Ministry of Food, Agriculture and Livestock every year.
- (20) In the original investigation, subsidies were granted on the basis of Decree No 2013/4463 of 7 March 2013 on agricultural subsidies in 2013 and published in the Official Gazette No 28612 on 8 April 2013 ('decree of 2013'). The decree related to trout produced in 2013.
- (21) Under the decree, subsidies were granted to all producers of trout possessing a valid production licence relating to a fish farming unit. A production licence could relate to production in the sea, in a dam, or to a production situated inland. A trout producer could have several production licences (fish farming units) situated in the same dam or in the same area in the sea.
- (22) The production under each of these licences was eligible for subsidies up to the following limits: 0,65 Turkish Lira ('TL') per kg of trout for the production up to 250 tonnes a year; for the production from 251 to 500 tonnes, trout producers received half of the amount (0,325 TL/kg). No subsidy could be received for the production above 500 tonnes.
- (23) In the original investigation period, the applicant had 13 fish farming units ('farms') (corresponding to 13 licences). It benefitted from subsidies for 11 of its farming units.

3.2. Findings in Implementing Regulation (EU) 2018/823

- (24) In Implementing Regulation (EU) 2018/823, the Commission assessed the legislative change of 2016 and its impact on the overall level of subsidisation of trout producers in Turkey.

- (25) It found that in 2016 subsidies to producers of trout were granted on the basis of Decree No 2016/8791 ⁽⁶⁾ regarding the agricultural supports to be provided in 2016 ('decree of 2016'). Furthermore, Communiqué No 2016/33 ⁽⁷⁾ regarding aquaculture support detailed the conditions for the subsidies to be granted.
- (26) Whilst the amount of subsidisation per TL/kg remained at the 2013 levels, a new Article 4.16 of the Decree of 2016 excluded from the subsidy farms with licences that were 'situated in the same potential area determined by the Ministry, in the same dam reservoir or in the regionalised dam reservoir located in the same zone'.
- (27) Pursuant to that Article and contrary to the situation during the original investigation, in the case where a trout producer had more than one production licence (or 'fish farming unit') in the same potential zone in the sea, as defined by the Ministry, in the same reservoir (dam), or in the same reservoirs located in the same regions, which belonged to the same person or the same enterprise/company, those licences or fish farming units were regarded as one single licence or unit belonging to that company, and the direct subsidy was to be paid according to that interpretation.
- (28) The Commission, however, concluded that this limitation did not substantially affect the overall level of subsidies received for an important part of the trout producers in Turkey as a whole. Moreover, since the Turkish government had introduced new subsidies, based on the budgetary forecast for the following years, the Commission concluded that the decrease in subsidies overall may only be temporary and could not be considered as a lasting change.
- (29) At the same time, the Commission observed that the impact differed at individual company level depending on the specific situation related to the production of each company. The trout production in Turkey is based on family businesses and it is a fragmented sector mainly composed of small and medium-sized enterprises. For these small companies, if they had one or little farms in the same area, the number of licences for which it could receive subsidies would remain the same. However, as of 2016, companies, which had more than one licence in the same region or zone under the old regime, could only receive direct subsidies for one of them. Therefore, while most of the (small) companies were affected only to a limited extent or not at all by the 2016 reform, companies or groups of companies like the applicant were likely to be affected by the change more substantially.

3.3. Impact of the legislative change on the applicant and other subsidies received by the applicant in the review investigation period ('RIP')

3.3.1. Direct subsidies to the applicant

- (30) In 2018, subsidies to producers of trout were granted on the basis of Decree No 2018/11460 ⁽⁸⁾ regarding the agricultural support to be provided in 2018 ('decree of 2018'). Furthermore, Communiqué No 2018/24 ⁽⁹⁾ regarding aquaculture support detailed the conditions for the subsidies to be granted. As confirmed in the original investigation, those measures amount to countervailable subsidies (see recitals (61) to (62) of Commission Implementing Regulation (EU) No 1195/2014 ⁽¹⁰⁾). The Commission revised the amount of subsidisation conferred on the applicant during the RIP.
- (31) In the RIP (2018), the applicant had 11 farming units. The farms were situated in 3 different regions. Before the legislative change, the applicant would be eligible to receive subsidies for all of its 11 farms (see recital (22)). However, as a consequence of the legislative change in 2016 and in line with the legislation in force during the RIP, it was only eligible to receive subsidies for the product under review for one farm per each region.

⁽⁶⁾ Turkish Decree No 2016/8791 on agricultural subsidies in 2016, dated 25 April 2016 (implemented retroactively as of 1 January 2016).

⁽⁷⁾ The Communiqué named 'Communiqué on Aquaculture Support' numbered 2016/33 regarding the implementation of Decree No 2016/8791 was published in the Official Journal on 3 August 2016.

⁽⁸⁾ Turkish Decree No 2018/11460 on agricultural subsidies in 2018, dated 2 February 2018 (implemented retroactively as of 1 January 2018).

⁽⁹⁾ The Communiqué named 'Communiqué on Aquaculture Support' numbered 2018/24 regarding the implementation of Decree No 2018/11460 was published in the Official Journal on 29 May 2018.

⁽¹⁰⁾ Commission Implementing Regulation (EU) No 1195/2014 of 29 October 2014 imposing a provisional countervailing duty on imports of certain rainbow trout originating in Turkey (OJ L 319, 6.11.2014, p. 1).

- (32) In the RIP, the applicant thus benefitted from subsidies only for 2 of its 11 farms ⁽¹¹⁾, up to the limits mentioned in the decree of 2018 below (compared to 11 farms that would have been eligible for subsidies under the legislation in place before 2016).
- (33) The amounts of subsidies during the RIP were the following: up to the production of 250 tonnes, the subsidy was set at 0,75 TL/kg; between 250 tonnes and 500 tonnes, the subsidy was set at 0,375 TL/kg and no subsidies was granted for the production above 500 tonnes ⁽¹²⁾.
- (34) Following the same methodology as established in the original investigation, for the own farmed fish, the total benefit for the applicant was the average direct subsidy amount received during the RIP. For the purchased fish, the benefit was calculated on the basis of the total subsidies granted by the Turkish authorities and divided by the total amount of trout production in Turkey. The calculation of the benefit resulted in an *ad valorem* subsidy rate of 1,44 %.
- (35) Following disclosure, the applicant claimed that the support scheme for 'Good farming practices' was terminated in 2019 and that the Commission thus should not take it into consideration for the calculation of the indirect subsidy. The applicant also argued that the level of the administration fee to be deducted from the subsidy amount was not 0,2 % but 2 %.
- (36) The Commission accepted these two claims and recalculated the subsidy rates accordingly. The calculation of the benefit resulted in a new *ad valorem* subsidy rate of 1,42 %.
- (37) The applicant also argued that the Commission should have considered that the eligibility criteria changed in 2019. According to the new conditions, a farmer could benefit 0,75 TL/kg for a maximum of 350 tonnes of production. Compared to 2018, the maximum benefit per fish licence thus decreased. The Commission considered that it should base its calculations only on the verified data from the RIP. It therefore rejected the claim.
- (38) Following disclosure, the DAO also referred to the new eligibility conditions for the direct subsidies in 2019. According to the DAO, in 2019, a farmer producing between 250 and 350 tonnes could receive more subsidies than in 2018. The DAO thus requested the Commission to determine if in 2019, the applicant could purchase the fish from these farmers, and thus indirectly benefit from more subsidies than in 2018.
- (39) The Commission first recalled that in 2019, the maximum subsidy amount to be received per fish licence decreased (see recital (37)). Therefore, farmers farming more than 350 tonnes of trout received less subsidies per fish licence. If the applicant had purchased fish from these farmers, it would have thus benefitted from less subsidies than in 2018. Secondly, as it was the case in the RIP, the calculation of the indirect subsidies had to be based on an average subsidy per ton of purchased fish. Such average could not reflect the situation of each individual farmer from which the applicant bought fish. The Commission therefore rejected the claim.

3.3.2. Support for breeding trout in hatcheries protected from diseases

- (40) In 2018, the Turkish authorities introduced a new support scheme for breeding trout in hatcheries protected from diseases. This new scheme was not examined in the original investigation. The conditions and the amounts of the support were specified in the decree of 2018 and Communiqué No 2018/24 (see recital 30).
- (41) If a company operates a hatchery for trout that fulfils certain safety criteria, it could benefit from the subsidy of 60 TL per piece for a maximum of 10 000 pieces (maximum amount of subsidy to be received was 600 000 TL per year).
- (42) The Commission considered that the support (in the form of a direct grant) constituted subsidies for trout production similar to direct subsidies, namely a financial contribution conferring a benefit according to Articles 3 (1)(a)(i) and 3(2) of the basic Regulation. Since the support was granted to the trout producers, the Commission concluded that the scheme was specific within the meaning of Article 4(2)(a) of the basic Regulation. The benefit consisted in direct grants to trout producers fulfilling the eligibility criteria.
- (43) It thus concluded that the support could be considered as a countervailable subsidy.

⁽¹¹⁾ In one of the regions the applicant farmed a trout over 1,2 kg (product not concerned by the investigation) and it did not use the farm to farm trout falling within the scope of the product concerned. That is why it benefitted from subsidies for 2 out of the 3 eligible regions.

⁽¹²⁾ The ceilings were introduced by legislation adopted in 2017.

- (44) During the verification visit, the company's production manager mentioned that the company had invested and would further invest into an equipment in order to become eligible for the subsidy in the years to come. However, the company's CEO and the legal representatives refuted that information claiming that such decision was subject to an approval of board members and was in any case not foreseen.
- (45) Given the clear and unambiguous information by the production manager on investment measures taken in the past and contradictory statements of the company's representatives during the verification visit, the Commission considered it likely that the company would benefit in the future from the scheme and calculated a maximum benefit, expressed as an *ad valorem* subsidy rate of 0,72 %. It communicated its intention to the parties in the General Disclosure Document.
- (46) Following disclosure, the Turkish authorities and the applicant objected to the Commission's intention expressed in the disclosure document to countervail the scheme. They submitted that the applicant did not qualify for the scheme and had not made any application to the Government with regard to the scheme. There was also no payment by the Government to the applicant in either 2018 or 2019 under the scheme. The Turkish government also pointed out that the scheme was in any event limited to three years.
- (47) The applicant further submitted on 23 March 2020 an official letter to rebut the Commission's doubts on whether it would likely benefit from any subsidy under the scheme in the future. The applicant undertook not to make any investment until 2025 to become eligible under the scheme. Furthermore, in case the investment is made in 2025 or afterwards, no application will be made by any related company of the Kiliç Group under this scheme.
- (48) Following the submission of the letter by the applicant, the DAO submitted that the letter was a self-constituted piece of evidence that the Commission should not take into consideration. It argued that in addition, the applicant did not make any commitments vis-à-vis other subsidy schemes.
- (49) Based on the above facts the Commission re-assessed whether it was likely that the applicant will receive benefits under the scheme in the future. It was reassured by the Government's comments that the applicant was not eligible under the scheme and had not made any application during the RIP or 2019. Moreover, it took note of the company's letter of 23 March 2020 not to become eligible at least until 2025. With regard to the DAO's argument that the letter was a self-constituted piece of evidence that arrived after disclosure only, the Commission took the view that the letter was submitted upon disclosure, i.e. in due time in exercise of the applicant's rights and thus, its substance cannot be disregarded. Moreover, the Commission has a duty to assess all comments received in earnest, otherwise the purpose of disclosure would be frustrated. The letter amounts to a firm commitment by the applicant and relates to the assessment the likelihood of receiving compensatory benefits under this scheme in the future. Therefore, the fact that the letter does not mention other subsidy schemes is irrelevant. Against that background, the Commission decided not to countervail this scheme.
- (50) After the additional disclosure, the DAO restated that the Commission has the duty to take into account factors relating to a period subsequent to the investigation period, and that the Commission should have confirmed its original assessment by including the support in the calculation. The DAO particularly objected to the Commission decision to take the letter from the applicant as a reliable evidence. It argued that the board decision was not binding and could be changed any time. In its view, it constituted a breach of the fundamental legal principle according to which a company shall not be allowed to create an evidence in its own favour, against the information from the verification visit on investment measure taken in the past.
- (51) The Commission considered that the decision not to countervail the scheme was not based solely on the letter of commitment by the applicant but also on other factual evidence such as the information from the Government that the applicant did neither apply for the support nor was it eligible under the scheme. The Commission re-iterated its duty to assess all the information and evidence received after disclosure, and in this context, the fact the applicant made the commitment for the purpose was not decisive for the assessment of the likelihood that the applicant benefits from the scheme in the future. It further recalled that it was undisputed that the applicant had not made all the necessary investment to become eligible for support under the scheme. The Commission thus rejected the claim.
- (52) Finally, as the issue of countervailing any support for breeding trout in hatcheries protected from diseases had become moot, the Commission did not enter into DAO's comments on the proper calculation of the future benefits of this scheme.

3.3.3. Subsidised loans

- (53) During the RIP, the applicant benefitted from six preferential loans, to finance working capital. The loans were granted by the Agricultural Bank of the Republic of Turkey (Türkiye Cumhuriyeti Ziraat bankasi or 'Ziraat Bankasi') for loans relating to agricultural production specifically and by Türk Eximbank ⁽¹³⁾ for loans linked to the export activities. It line with the findings with the original investigation ⁽¹⁴⁾, and since no evidence was provided that the situation had changed, the Commission established that both banks implement the State policy and are public bodies within the meaning of the basic Regulation.
- (54) The relevant legal basis were Decree 2018/11188 (Ziraat Bank Low Interest Investment and Operation Loan on Agricultural Production) and Rediscount program of Türk Eximbank ⁽¹⁵⁾.
- (55) The benefit to the applicant consisted in providing lower interest rates than the one normally available on the market. The Commission allocated the benefit related to the rediscount program on the export sales while the other subsidised loans for the Group's entire production were allocated on the total sales. The total benefit of the six loans resulted in an *ad valorem* subsidy rate of 0,15 %.
- (56) Following disclosure, the applicant claimed that for one of the contested loans it had to pay a commission while the benchmark loan was free of the commission. It argued that the Commission should have reduced the benefit accordingly. The Commission found that for a fair comparison, calculations had to be on comparing the interest rates only, free of any other banking charges on any side, for the actual or the benchmark loan. The Commission thus rejected the claim.
- (57) Furthermore, the applicant contested that the Commission had used the same benchmark to establish a benefit for two of the countervailed loans that had been granted in different periods. In addition, it submitted that the interest rate for one of the contested loans was set on a monthly (and not the yearly) basis and therefore, the interest rate the applicant received was set at a market rate. The Commission accepted both the claims. This resulted in a new *ad valorem* subsidy rate for these loans of 0,13 %.

3.4. New countervailing rates for the applicant

- (58) The total benefit to the applicant resulted in an *ad valorem* subsidy rate of 1,55 %:

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|------------------|---------------|
| Direct subsidy | 1,42 % |
| Subsidised loans | 0,13 % |
| Total | 1,55 % |

- (59) The above conclusions relate to the specific situation of the applicant and thus do not affect the level of the subsidy rates for companies listed in the annex of the original Regulation.
- (60) After disclosure and the additional disclosure, the Turkish authorities argued that the Commission should have recalculated the subsidy rate to 'all other companies'. The Commission rejected the argument. It reiterated that the partial interim review and its findings on significant decrease of the subsidy level related to the applicant only. The Commission also recalled that the findings vis-à-vis all other Turkish trout producers remained unchanged. In this respect, the Commission further noted that, as stated in the Notice of Initiation (Section 5), if any interested party considers that a review of the measures applicable to it is warranted, that party may request a review pursuant to Article 19 of the basic anti-subsidy Regulation.

⁽¹³⁾ The programme can be implemented directly by Türk Eximbank or with an involvement of private banks.

⁽¹⁴⁾ See Recitals (67) and (69) of the Commission Implementing Regulation (EU) No 1195/2014.

⁽¹⁵⁾ Details are provided within Implementation Principles and Circular on Export and Foreign Exchange Earning Services Rediscount Credits (Rediscount Programme).

- (61) Following disclosure the Turkish authorities submitted that if the Commission disregarded the benefit under 'Support for breeding trout in hatcheries protected from diseases', the total *ad valorem* subsidy rate was *de minimis*. It repeated this claim after the additional disclosure. The Commission recalled that the *de minimis* threshold is 1 % but for developing countries, it is 2 %. It further recalled that for the application of Article 14(5), a country is considered as a developing country if it is listed in Annex II of Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1) ⁽¹⁶⁾. As Turkey is not included in the list of eligible countries under that Regulation the Commission rejected the claim.

3.5. Significant change of circumstances and lasting nature of the legislative change

- (62) The above findings relating to the specific situation of the applicant confirmed the findings of Implementing Regulation (EU) 2018/823, summarised in recitals (24) to (29) above. While the above Regulation assessed the overall situation vis-à-vis all trout producers in Turkey (i.e. a situation of an average trout producer), it also found that following the legislative change in 2016, some trout producers received substantially less subsidies (recital 49 of Implementing Regulation (EU) 2018/823).
- (63) The Commission concluded that this was the case of the applicant. It first observed that the newly calculated *ad valorem* subsidy rate of 1,55 % represented a significant decrease compared to the rate of 9,5 % established in the original investigation.
- (64) Second, the applicant could not benefit from many other subsidy schemes to fully compensate the decrease of the direct subsidy ⁽¹⁷⁾.
- (65) Furthermore, the legislative change that led to the decrease of the number of fish farms was introduced in 2016 and it remained in place in the RIP (2018) and in 2019 ⁽¹⁸⁾, i.e. already for a period of 4 years. The Turkish Government has not communicated to the Commission any plans to reinstitute the pre-2016 eligibility criteria. Therefore, the Commission considered the change from 2016 as the lasting change in the sense of Article 19(4) of the basic Regulation.
- (66) After disclosure and the additional disclosure, the DAO contested the Commission's finding that the decrease in subsidies received by the applicant was of a lasting nature. In its view, the Commission should have assessed the lasting nature of the subsidisation system as a whole and should not have focused on the 2016 change in one of the subsidy schemes only. The DAO further argued that after 2016, the Turkish authorities kept introducing new subsidy schemes to compensate the decrease in subsidisation due to the 2016 change, namely subsidies for closed system production, subsidies for trout over 1 kg, subsidies for good farming practices and subsidies for fish labelling. The DAO also argued that the Commission did not take into account in its calculation the new eligibility conditions of the 'Support breeding trout in hatcheries protected from diseases' and the increase in 2019 of the maximum amount to be received. Moreover, the DAO considered that any new investment by the applicant to reach the support would be done by a subsidised government loan.
- (67) As explained above, the Commission assessed not only the effect of the legislative change of 2016 on the applicant but also any new subsidy scheme that the applicant could benefit from in the RIP and after. It found that the applicant was not eligible to receive any subsidies for closed system production scheme since its trout production is situated in dam reservoirs and not in a closed system fulfilling the eligibility requirements. The Commission also found that the subsidies for fish labelling and for good farming practices were terminated in 2018 and in 2019 respectively. Moreover, the Commission found and verified that the subsidy for trout over 1 kg was to benefit trout over 1,2 kg, i.e. the trout which does not fall under the definition of the product concerned. Finally, as explained in

⁽¹⁶⁾ Commission Implementing Decision 2014/918/EU of 16 December 2014 terminating the anti-subsidy proceeding concerning the imports of polyester staple fibres originating in the People's Republic of China, India and Vietnam (OJ L 360, 17.12.2014, p. 65), recital (76), footnote 3.

⁽¹⁷⁾ As explained in recitals (32) to (41), the benefit from the Support for breeding trout in hatcheries protected from diseases and from subsidised loans increased the subsidy rate for the Kiliç Group only by 0,72 % and it did not thus compensate the decrease in the direct subsidies.

⁽¹⁸⁾ In 2019, the maximum amount of subsidies per licence was 0,75 TL/kg for a maximum of 350 000 kg. Compared to 2018 it represented a decrease in the overall the maximum amount to be received per fish licence.

recitals (40) to (52), the applicant did not benefit from the support for breeding hatcheries protected from diseases in the RIP and there was no likelihood that the applicant would receive such support until 2025. In view of the re-assessment of new information as explained in recitals (46) and (47), the Commission concluded that the applicant would not benefit in the future of any subsidy from the scheme 'Support breeding trout in hatcheries protected from diseases'.

- (68) The Commission also considered that the claim that the applicant would finance any new equipment from a subsidised loan was based on a possibility rather than on any concrete evidence. The Commission therefore rejected the argument.
- (69) Based on the above the Commission maintained that pursuant to Article 19(4) of the basic Regulation and based on the above findings, the circumstances with regard the subsidisation changed significantly and the decrease of direct subsidies is of a lasting nature in so far the applicant is concerned.

3.6. Conclusion

- (70) It follows from the above that the countervailing duty for the applicant should be amended as set out in Section 3.4.
- (71) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽¹⁹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Implementing Regulation (EU) 2015/309 is amended as follows as far as the applicant is concerned:

| Company | Countervailing duty | TARIC additional code |
|---|---------------------|-----------------------|
| BAFA Su Ürünleri Yavru Üretim Merkezi Sanayi Ticaret AŞ | 1,5 % | B965 |

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 2020.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁹⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).