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

COMMISSION IMPLEMENTING REGULATION (EU) 2020/658

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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.

1.4. **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

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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

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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.