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

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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(4) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) Following an anti-subsidy investigation ('the original investigation'), the Commission imposed, by means of Implementing Regulation (EU) 2015/309[(2)], definitive countervailing duties on imports of certain rainbow trout originating in Turkey ('the measures in force').

1.2. Partial interim review request

(2) On 13 March 2017, the Aegean Exporters Association ('the applicant') lodged a request for a partial interim review of the countervailing measures.

(3) The request provided evidence that a change in the implementation of the direct production subsidies introduced in 2016 resulted in a substantial decrease of the level of subsidies to trout producers in Turkey and therefore, that the measures were no longer necessary to offset the subsidisation. The applicant also argued that the change was of a lasting nature. Therefore, according to the applicant, the measures in force had to be reviewed.

1.3. Initiation of a partial interim review

(4) Having determined that sufficient evidence existed for the initiation of a partial interim review, the Commission announced, on 20 July 2017, by a notice published in the *Official Journal of the European Union* ('Notice of Initiation')[(3)], the initiation of a partial interim review pursuant to Article 19 of the basic Regulation.

1.4. Review investigation period

(5) The review investigation period covered the period from 1 July 2016 to 30 June 2017. In order to assess whether there was a decrease in subsidisation of trout producers since the original investigation, and whether the change was of a lasting nature, the Commission also analysed the evolution of the overall amounts of subsidies granted by Turkey to trout producers since the original investigation period (from 1 January to 31 December 2013).

1.5. **Parties concerned by the investigation**

(6) The Commission advised the applicant, the known exporting producers in Turkey, the Union producers, users and traders known to be concerned, associations representing Union producers and the Turkish authorities of the initiation of the partial interim review.

(7) 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.

(8) Two interested parties made a submission to defend the necessity to maintain the measures in force. One of the parties, the Danish Aquaculture Association (representing the complainant in the original investigation) was of a view that the conditions of Article 19 of the basic Regulation were not fulfilled. It claimed that the information contained in the request was incomplete and provided an inaccurate picture of the subsidisation to trout producers in Turkey and that the changes introduced by Turkey could not be considered as having 'a lasting nature'. The second party, a Spanish aquaculture association, also argued that the countervailing measures had to maintained, and argued that the prices of Turkish imports are below the prices of the Union trout producers.

1.6. **Sampling of exporting producers in Turkey**

(9) In view of the large number of exporting producers, the Commission stated, in the Notice of Initiation, that it might sample exporting producers, in accordance with Article 27 of the basic Regulation.

(10) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in Turkey to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the Republic of Turkey to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation. In total, the information specified in the Notice of Initiation was sent to more than seventy companies in Turkey.

(11) Twenty-seven exporting producers provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission provisionally selected a sample of five exporting producers/groups of producers, which included three exporting producers/groups of producers with the largest volume of exports to the Union and two smaller

exporting producers/groups of producers. The Commission deemed the proposed sample representative.

(12) The Commission invited interested parties to comment on the provisional sample. Two groups of exporting producers, the KLC Group and the Sagun Group, requested to be included in the sample. Given the large size of its exports, the Commission decided to add the KLC Group to the sample in order to duly examine the effects of the modified scheme on the sector. However, in view of the limited time available for the investigation, the Commission decided to refuse the request for the inclusion into the sample by the Group Sagun[(4)].

(13) The final sample thus consisted of the following exporting producers/groups of exporting producers and their related companies:

— ADA SU Group;

— ALIMA Group;

— GMS Group;

— KLC Group;

— Mittos Su Ürünleri;

— Özpekler Group.

(14) The final sample accounted for approximately 71 % of the volume of imports of the product under review exported to the Union during the review investigation period. The Commission considered that it was representative and would enable it to properly analyse effects of the changes by Turkey on all companies in that sector.

1.7. **Questionnaires and verification visits**

(15) The Commission sought and verified all the information deemed necessary to evaluate the impact of the change in the implementation of the direct subsidies scheme introduced by Turkey.

(16) The Commission sent questionnaires to the six sampled exporting producers/groups of producers, and to Turkey. Complete questionnaire replies were received from all those parties.

(17) The Commission carried out verifications at the premises of one of the sampled groups of exporting producers, namely the Alima Group. The Commission also carried out a verification visit at the premises of the Turkish authorities. In view of the conclusions reached in Chapter 4.3.4, the Commission decided not to visit the remaining sampled companies.

1.8. **Disclosure**

(18) On 21 February 2018, the Commission disclosed to all interested parties the essential facts and considerations of the investigation and invited them to submit written comments, and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings by 18 March 2018.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/823. (See end of Document for details)*

(19) Turkey, the applicant, the four sampled exporting producers and the Danish Aquaculture Association submitted comments after disclosure. A hearing between the Commission, Turkey and the applicant took place on 23 March 2018. A hearing between the Commission and the Danish Aquaculture Association took place on 16 April 2018.

2. PRODUCT UNDER REVIEW AND THE LIKE PRODUCT

(20) 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 within 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').

(21) The Commission concluded in the original investigation 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. SUBSIDIES COUNTERVAILED IN THE ORIGINAL INVESTIGATION

(22) In the original investigation, the Commission examined a number of measures from which the Turkish exporting producers of trout benefited or might have benefitted during the original investigation period (the year 2013) (see recital 37 of Commission Implementing Regulation (EU) No 1195/2014[(5)] imposing provisional countervailing duties).

(23) The main subsidies from which the Turkish producers of trout benefited during the original investigation period were direct subsidies granted to all trout producers on a per kg basis, and ranging from 7 % to 9,6 %. In addition, two of the companies sampled in the original investigation benefited from subsidised loans. The amount of subsidisation through subsidised loans found by the Commission was of 0,1 % for one of the companies (Kilic) and of 0,3 % for the second company (Özpekler).

(24) The Commission found that benefits of all the other investigated subsidy measures in the original investigation period were none or negligible. Therefore, the measures imposed on trout producers mainly countervailed the direct subsidies.

(25) In the original investigation period (the year 2013), direct subsidies to producers of trout were granted based on Decree No 2013/4463 of 7 March 2013 on agricultural subsidies in 2013 ('decree of 2013'). This decree related to trout produced in 2013.

(26) Under the decree of 2013, 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 a 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. Under the decree of 2013, production under each of these licences was eligible for subsidies up to the following limits: for each of its production licence, the producers of trout received 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); and no subsidy was received for the production above 500 tonnes.

4. THE RESULTS OF THE INVESTIGATION

4.1. General information

(27) Subsidies to trout production are regulated by a decree adopted by the Turkish Government on an annual basis. The decree provides for basic conditions and subsidy amounts to aquaculture production in Turkey. The procedures and principles regarding the implementation of the decree are then further determined by communiqués issued by the Ministry of Food, Agriculture and Livestock every year.

(28) Since the review investigation period covered the second half of 2016 and the first half of 2017, the Commission first looked at the amounts and conditions of subsidies given or to be given to trout producers in 2016 and 2017 (see Chapter 4.2).

(29) Second, the Commission analysed the overall evolution of the amounts of subsidies granted by Turkey since the original investigation till to date (see Chapter 4.3). Third, the Commission assessed whether there was a substantial change in the level of the subsidisation and whether the change could be considered as being of a lasting nature (see Chapter 4.4).

4.2. Subsidies granted to trout production in 2016 and in 2017

4.2.1. *Subsidies to trout production in 2016*

(30) 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 conditions of the subsidies to be granted.

(31) Whilst the amount of subsidisation per TL/kg remained at the 2013 levels, a new Article 4.16 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'.

(32) Pursuant to that Article and contrary to the situation during the original investigation period, 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