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

COMMISSION IMPLEMENTING REGULATION (EU) 2015/309

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imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain rainbow trout originating in Turkey

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 15 thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) The European Commission ('the Commission') imposed a provisional countervailing duty on imports of certain rainbow trout originating in Turkey by Implementing Regulation (EU) No 1195/2014[(2)] ('the provisional Regulation').

(2) The Commission initiated the investigation following a complaint lodged on 3 January 2014 by the Danish Aquaculture Association ('the complainant') on behalf of producers representing more than 25 % of the total Union production of certain rainbow trout via a Notice published in the *Official Journal of the European Union* ('Notice of initiation')[(3)]. As mentioned in recital 1 of the provisional Regulation, the Notice of initiation was subject to a corrigendum published in the *Official Journal of the European Union* on 4 September 2014 ('the corrigendum')[(4)].

2. Investigation period and period considered

(3) As set out in recital 23 of the provisional Regulation, the investigation of subsidy and injury covered the period from 1 January 2013 to 31 December 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the investigation period ('the period considered').

3. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional countervailing duty was imposed ('provisional disclosure'), several interested parties made written submissions with respect to the

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/309. (See end of Document for details)*

provisional findings. The parties who so requested were granted an opportunity to be heard.

(5) The Aegean Exporters' Association ('AEA') requested a hearing with the Hearing Officer in trade proceedings ('Hearing Officer'). The hearing took place on 26 November 2014. The alleged change of the product scope by way of corrigendum, the inclusion of smoked rainbow trout in the product scope and the calculation of standing were discussed during the hearing. A second meeting with the Hearing Officer took place on 8 January 2015. In addition to the issues discussed at the hearing of 26 November 2014, the methodology applied for the injury analysis and the proposed approach with respect to undertakings were discussed.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(7) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports of rainbow trout originating in Turkey and definitively collect the amounts secured by way of provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.

(8) The comments submitted by the interested parties were considered and taken into account where appropriate.

4. **Sampling**

(9) Following the provisional disclosure, AEA referred to the corrigendum to the Notice of initiation mentioned in recital 2 and claimed that by way of that corrigendum the Commission extended the product definition. Because of the alleged extension it could not be excluded that some Turkish exporters did not come forward at initiation and did not complete the sampling form. Therefore, the sample of the exporting producers may no longer be representative. After the final disclosure the same party reiterated its comment without providing any further substantiation or explanation.

(10) Eighteen groups of exporting producers in Turkey provided the requested information and agreed to be included in the sample. The total declared export volume to the Union by these companies during 2013 accounted for the totality of exports from Turkey to the Union as set out in recital 14 of the provisional Regulation. As mentioned in recital 15 of the provisional Regulation, pursuant to Article 27(1) of the basic Regulation, the Commission selected a sample of four groups of exporting producers on the basis of the largest representative volume of exports to the Union. The sample represents 64 % of the exports of the product concerned to the Union. Therefore the sample is representative and the party's claims in this regard were rejected.

(11) In the absence of any further comments regarding sampling, recitals 9 to 17 of the provisional Regulation are confirmed.

5. **Individual examination**

(12) Eleven companies or groups of companies requested individual examination under Article 27(3) of the basic Regulation.

(13) The Commission rejected these requests as the number of exporting producers is so large that individual examination would be unduly burdensome and would prevent completion of the investigation in good time.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(14) As set out in recital 24 of the provisional Regulation, the product concerned 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 ('the product concerned').

(15) Following provisional disclosure, and as already mentioned in recital 9, one interested party claimed that the Commission had expanded the product scope of the investigation by way of corrigendum which was allegedly confirmed by Article 1(1) of the provisional Regulation. This party argued that such expansion of the product scope was unlawful. Furthermore they claimed that interested parties should have been consulted on the alleged expansion of the product scope. After the final disclosure the same party reiterated its comment without providing any further substantiation or explanation.

(16) As stated in the recital 25 of the provisional Regulation, the corrigendum did not affect the product scope, but was purely editorial. Thus, from the outset, the product scope covered portion-size rainbow trout in all various presentations. During the investigation it became apparent that the description of the different presentations within the product scope was ambiguous and that there were some inconsistencies between various language versions published in the *Official Journal of the European Union*, which required clarification. For example, a literal reading of the product scope would have entailed that live fish would be gutted. However, it appeared that all interested parties which were requested to fill in the relevant questionnaires reported all product types despite the clerical mistake and therefore it was concluded that there was indeed a common understanding that all types were included in the product scope from initiation of the current proceeding. Interested parties were informed immediately following the publication of the corrigendum by e-mail but none of them submitted any comments or claimed a violation of their rights of defence. Also, during the investigation, all presentations produced as covered by the product definition had been

reported to the Commission by the exporting producers. Therefore, the party's claims in this regard were rejected.

(17) Two interested parties reiterated that smoked trout should be excluded from the product scope. They contested the Commission conclusion set out in recital 29 of the provisional Regulation that the various presentations — 'live', 'chilled', 'frozen' or 'smoked' — covered by the definition of the product concerned shared the same basic physical, technical and chemical characteristics and referred again to two prior anti-dumping investigations concerning other fish products (large rainbow trout and salmon) concluded in 2004[(5)] and 2005[(6)] respectively where smoked products were not within the product scope. The parties brought forward information on the effects of the smoking process which allegedly changed the aforementioned characteristics. Furthermore, they reiterated that the cost structure of smoked fillets and other presentations would be significantly different and that the production process of smoked fillets involved significant smoking costs.

(18) After the final disclosure the AEA claimed that the Commission had not clarified which were the basic physical, technical and chemical characteristics of smoked and non-smoked trout that were found to be similar. The AEA further claimed that they had provided evidence showing that smoked trout had for example a different chemical structure, different sensory characters and a different nutrition value than non-smoked trout.

(19) Despite the effects of the smoking process, the Commission considered that the main basic characteristics as explained in the recital 29 of the provisional Regulation remain similar and did not justify the exclusion of the smoked products from the product scope. Contrary to what was claimed by AEA, the product, which is trout in various presentations destined for human consumption, maintains its characteristics and its basic chemical and nutritional qualities also when smoked. The information on the effects of the smoking process, that the parties had brought forward, did not provide evidence that the aforementioned basic characteristics would fundamentally change in the process of smoking. The issue was also discussed in the hearings with the Hearing Officer referred to in the recital 5. Furthermore, all categories of the product concerned, including smoked trout, are covered under chapter 3 of the Combined Nomenclature[(7)] and are clearly distinguished from preparations of fish which are covered under Chapter 16 of the same nomenclature. Regarding different cost structures, the parties concerned did not further substantiate their claim. Furthermore, as already mentioned in recital 30 of the provisional Regulation, the investigation showed that the cost structure of the smoked fillets and other presentations was indeed similar. The main cost element, making up over 50 % of the total cost of each presentation, was the farming cost, consisting essentially of feed (fishmeal and fish oil) together with the cost of energy and the cost of eggs or juveniles. In any event, the undercutting calculation has been made, as explained in recitals 112 and 113 of the provisional Regulation, by comparing prices per product type. Finally, as already explained in the recital 31 of the provisional Regulation the earlier investigations did not find or specifically conclude that smoked

products should be excluded from the product scope. The claims made in this regard were therefore rejected.

(20) After final disclosure the AEA and the Government of Turkey ('GOT') reiterated that including smoked trout in the product scope of the current investigation would be contradictory to previous practice and that the Commission did not sufficiently explain the alleged deviation from previous practice.

(21) As already explained in the recital 31 of the provisional Regulation, the earlier investigations did not find or specifically conclude that smoked products should be excluded from the product scope. Indeed, since the smoked products were not covered by the complaints of those earlier investigations, the Commission did not investigate whether they could have been included in the scope of the investigations in the hypothetical case that they would have been included in the complaint. Therefore, the claim that the current investigation deviates from previous practice is incorrect and therefore rejected.

(22) In the absence of any further comments regarding the product concerned or the like product, recitals 24 to 32 of the provisional Regulation are confirmed.

C. SUBSIDY

1. State support to investments in the aquaculture sector

(23) In the absence of any comments regarding state support to investments in the aquaculture sector, recitals 38 to 49 of the provisional Regulation are confirmed.

2. Direct and indirect subsidies to producers of trout

(24) After the provisional disclosure, one sampled exporting producer and the GOT questioned the Commission's methodology for calculating the average indirect subsidy amount by only taking into account the trout production receiving direct payments. They requested that the Commission uses the total inland water trout production figures, as published by the Turkish Statistical Institute[8] in September 2014. After final disclosure, both parties reiterated their claim. The Commission considers that the provided data on the total inland water trout production of trout in Turkey during the investigation period, despite having been submitted after the verification visits, are reliable and therefore accepted this claim.

(25) Accordingly, the average indirect subsidy amount calculated with regard to the purchases by two sampled exporting producers from unrelated suppliers was amended from TRY 0,60 to TRY 0,51 per kg calculated on a 'whole fish equivalent basis', based on the following calculation:

— Total country-wide subsidy granted as reported in the reply to the questionnaire by the GOT

— Minus the direct subsidy amount received by the sampled exporting producers (Özpekler, Kilic, GMS)

— Minus the 0,2 % fee transferred to the unions, as a legal prerequisite for receiving the direct subsidy