

II

(Non-legislative acts)

REGULATIONS

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

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⁾ 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 (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 definitely the provisional duty imposed on imports of certain rainbow trout originating in Turkey, (OJ L 56, 27.2.2015, p. 12.)

⁽³⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in Turkey, (OJ C 234, 20.7.2017, p. 6).

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 be 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 ⁽¹⁾.
- (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.

⁽¹⁾ The size of exports of the Group Sagun to the Union in the RIP represented approximately one third of the exports to the Union by the KLC 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.
- (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 ⁽¹⁾ 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).

⁽¹⁾ 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).

- (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 counterbalanced 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 ⁽¹⁾ regarding the agricultural supports to be provided in 2016 ('decree of 2016'). Furthermore, Communiqué No 2016/33 ⁽²⁾ 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 regions, which belonged to the same person or the same enterprise/company, those licences or fish farming units were

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

⁽²⁾ 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.

regarded as one single licence or unit belonging to that company, and the direct subsidy was to be paid according to that interpretation. The applicant argued that because of this Article, the volume of production eligible for the subsidies decreased and resulted in a significant decrease of subsidies received by trout producers. However, the Commission observed that this condition had two limitations.

- (33) First, the investigation showed that, according to the information provided by Turkey, the limitation provided for in Article 4.16 of the decree of 2016 only related trout production situated in dam reservoirs or in the sea, but not to the land production, which represented according to the information provided by Turkey around 20 % of all the trout production ⁽¹⁾. After disclosure, Turkey also confirmed that 65 % of the total production facilities (farms) are situated inland and only 35 % of production facilities (farms) are situated in dam reservoirs or in the sea.
- (34) Accordingly, the limitation provided for in Article 4.16 of the decree of 2016 did not have any impact on 20 % of the trout production, nor on 65 % of production facilities or farms. This was for instance the case for one of the sampled companies, Mittos, which had its own trout farm situated inland. Also, another sampled group of companies, the Özpekler group, had farms situated in different dam reservoirs. Consequently, according to the information provided by these companies/groups of companies (and verified at Government level), both were eligible to receive subsidies for the same number of production licences (six in one case, and three in the other case) in 2015 (before the legislative change) and in 2016 (when the new legislation was already in force). Therefore, the legislative change did not have any significant impact on those companies.
- (35) Second, the limitation applied per legal entity that is in the case of a group composed of related companies, each of the company could apply for subsidies up to the limits set in the decree. This meant that if a group of companies was composed of different legal entities having their production farms (licences) in the same zone, each company of the group could benefit from the subsidies on a separate basis even if it had farms in the same zone with its other related company. Turkey confirmed that this was the case of one of the sampled group, Alima Group. Both related companies within this group were eligible to ask subsidies although their farms were situated in the same zone.
- (36) Because of these features, the overall impact of the limitation did not reduce the number of recipients significantly. According to the information provided by Turkey, the number of farm licences eligible for the direct subsidy decreased from 947 farm licences in 2015 to 837 farm licences in 2016, and to 817 in 2017. As explained in recital 34, on an individual basis, while for some of the companies there was a decrease in the number of eligible licences between 2015 and 2016, for some of them, like for instance for the Özpekler Group or Mittos, the number of eligible licences remained the same before and after the change.
- (37) In addition to the legislative change introduced by Article 4.16 of the decree of 2016, with the same decree Turkey also implemented a new direct subsidy for closed system productions from 1 January 2016 ⁽²⁾. Article 4.16 of the decree stipulated that the goal was 'to benefit from the water resources available in the country in maximum level, purposing to ensure the cultivation of aquaculture products and different species at the locations where the water is restricted'.
- (38) The subsidy for closed system production could also be granted to producers of other fish species stipulated in the decree, such as sea bream and sea bass. The amount of the subsidy was set at 0,5 TL per kg of fish produced within this system, irrespective of the type of fish species produced.

4.2.2. Subsidies to be granted for the trout production of 2017

- (39) In line with the practice of adopting each year new decrees and communiqués governing the subsidies to trout producers, in 2017 the decree of 2016 was replaced by Decree No 2017/10465 ⁽³⁾ regarding the agricultural supports to be provided in 2017 ('the decree of 2017'). Furthermore, Communiqué No 2017/38 ⁽⁴⁾ regarding aquaculture support detailed conditions of the subsidies to be granted.

⁽¹⁾ At verification the Turkish authorities mentioned that 30 % of trout production was the land production and 70 % of the production was the production in dam reservoirs or in the sea. This information was corrected after disclosure.

⁽²⁾ 'A full controlled aquaculture system based on the principle of reuse in the cultivation system after being subjected to some processes like elimination of the water used during the production and elimination of excretion and food residues using series of mechanical and biological means, oxygen enrichment in respect of quality and chemical structure, evaporation of carbon dioxide, treatment with ozone and/or UV, and allowing less water utilization and ensuring an output higher than the unit volume, better growing and the possibility to benefit more from the food and having place and kind freeness and possibility to obtain products with less environmental impacts.' (Communiqué from Ministry of Food and Agriculture No 2016/33, Article 4 ç).

⁽³⁾ Turkish Decree No 2017/10465 on agricultural subsidies in 2017 dated 5 June 2017 (implemented retroactively as of 1 January 2017).

⁽⁴⁾ The Communiqué named 'Communiqué on Aquaculture Support' numbered 2017/38 regarding the implementation of Decree No 2017/10465 was published in the Official Journal on 14 October 2017.

- (40) The decree of 2017 maintained the provisions of Article 4.16 on the number of eligible licences. At the same time it introduced an increase of the amount of direct subsidies to trout production. The new amounts of subsidies were the following:
- up to the production of 250 tons, the subsidy was set at 0,75 TL/kg (compared to 0,65 TL/kg in 2016);
 - between 250 tons and 500 tons, the subsidy was set at 0,375 TL/kg (compared to 0,325 TL/kg in 2016);
 - no subsidies for the production above 500 tons.
- (41) The decree of 2017 also introduced new subsidies. According to the information provided by Turkey, those new subsidies partially replaced and complemented the direct subsidies countervailed in the original investigation and aimed to support the consumption of fish in Turkey, fulfilment of environmental standards, fight against diseases and food quality, diversification and traceability. The new subsidies were the following:
- Subsidies to trout over 1 kg;
 - Subsidies for fish labelling;
 - Subsidies for good farming practices.
- (42) The aim of subsidies for production of trout exceeding 1 kg was to promote product diversification. The subsidy amount was set at 0,25 TL/kg up to the production of 250 ton and half of the amount (0,125 TL/kg) for the production between 250 and 500 tons. The limitation of the eligibility criteria provided for in Article 4.16 and explained in recitals 32 to 35 also applied for this type of subsidy.
- (43) After disclosure, Turkey and the applicant argued that the subsidy for trout over 1 kg related to the product concerned only if its weight lies between 1 and 1,2 kg. They argued that the trout weighing over 1,2 kg did not fall under the definition of the product concerned anymore. Moreover, according to Turkey, the Ministry of Agriculture will limit the subsidy to trout weighing over 1,25 kg in the upcoming Communiqué defining the conditions of the subsidy schemes for the production of 2018. Therefore, the subsidy for trout over 1 kg should not be taken into account when assessing the evolution of subsidy amounts to trout producers in both 2017 and 2018.
- (44) The Commission agreed that a trout sold in the form of a whole fish weighing 1,2 kg or more was not the product concerned. Hence, subsidies given to a production of such fish, which would exclusively serve a different market, are not countervailable under the current measures.
- (45) However, production of trout weighing between 1 kg and 1,2 kg had been benefiting from the scheme in 2017 and fell under the product scope. Moreover, Article 4(f) of the Communiqué No 2017/38 grants the subsidy to a fish farmer 'when harvested'. Even if Turkey intended to restrict the subsidy for trout over 1,25 kg in 2018, there is no legal criterion in the decree excluding the subsidy when the trout is sold in another form. According to the information received, it is a common practice in the industry to process some of the big harvested trout and to sell it as the product concerned, for instance in the form of fillets. Therefore, the corresponding amount of the subsidy scheme benefits the product concerned. Furthermore, in its analysis the Commission can only rely on relevant final legislative and administrative acts fully in effect in the exporting country. Since the Communiqué defining the conditions for 2018 is not yet adopted, the intended conditions explained by Turkey cannot be taken into account at this stage. The Commission therefore refused to exclude this scheme from its overall analysis, and rather refined its findings with respect with the economic effect of the scheme (see recital 67).
- (46) Subsidies for fish labelling aimed to promote fish traceability and fish quality. The subsidy amount was 0,02 TL/pcs for the production up to 250 ton and half of the amount (0,01 TL) for the production between 250 and 500 tons. The limit applied per production licence. The limitation of the eligibility criteria provided for in Article 4.16 and explained in recitals 32 to 35 also applied for this type of subsidy. The subsidy for fish labelling could be granted also to producers of other fish species stipulated in the decree such as sea bream and sea bass. Interested parties did not contest that finding after disclosure.
- (47) Subsidies for good farming practices related to the fulfilment of some standards linked to the environment, food safety, welfare of fish and traceability. To be eligible for the subsidy, each company had to undergo an audit.

After the audit was completed, a certificate could be issued. The institutes controlling the fulfilment of the standards had to be certified by the Ministry. The deadline for application for companies to be eligible for the production of trout produced in 2017 was 31 March 2018. The subsidy amount was set at 0,25 TL/kg up to 250 ton of production. The limit applied per legal entity. Interested parties did not contest that finding after disclosure.

4.2.3. Conclusion

- (48) After the legislative change introduced by Article 4.16 of the decree of 2016, the volume of the trout production eligible for direct subsidies appears to have decreased. However, according to the information provided by Turkey as well as the information available on the record, the actual impact of the legislative change of 2016 in terms of volume and value of the eligible production in comparison with the system in force prior to the entry into force of that decree was difficult to determine, and depended on the production volumes produced under each of the licences.
- (49) The impact also differed at individual company level depending on the specific situation related to the production of each company. 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. However, other companies with inland production (such as Mittos), or operating in different zones or regions (such as the Özpekler group) received direct subsidies at an equal or even higher level than prior to 2016 because they had more than one licence. In addition, since the limitation of Article 4.16 of the decree of 2016 applied per legal entity, the impact of the legislative change on a company group depended also on its structure. Therefore, while the groups of companies like GMS Group and KLC Group were the most affected by the legislative change, companies or groups of companies like Alima, Mittos and Özpekler and all the small companies representing more than 65 % of the companies were affected only to a limited extent or not at all.
- (50) Moreover, the Commission observed that in 2017, the actual amount of direct subsidies to trout producers increased (see recital 40). The decrees of 2016 and 2017 also introduced a number of new subsidies from which trout producers can benefit (see Chapters 4.2.1 and 4.2.2).
- (51) Therefore, while the limitations introduced in 2016 may have led to a decrease in subsidisation via the direct subsidies, Turkey simultaneously introduced new subsidies and/or amended existing subsidy measures. An important question was thus whether the increased amount of the direct subsidies and the newly introduced subsidies would not compensate for the limitation introduced in the decree of 2016. If this would be the case, the overall level of subsidisation could be equal or higher than the level of subsidisation calculated at the time of imposition of the original countervailing duties. Even if one producer received less benefit from the direct subsidies in 2016 because its various licences or fish farming units were considered as one, this change might not necessarily have had the effect of decreasing the overall level of subsidisation compared to situation before the legislative change in 2016 (see recitals 62 to 65).
- (52) Therefore, the Commission considered that it had to assess the impact of all subsidy measures that the trout producers in Turkey might have benefited from (or may benefit from in the future) as well as the overall level of subsidisation at a national scale. Hence, it did not examine the specific effects of the change of legislation in the investigation period for each of the sampled companies individually, but it rather made an assessment at a global level, whilst confirming its conclusions by reference to the information provided by the sampled exporting producers.
- (53) After disclosure, Turkey and the applicant argued that the Commission should have recalculated subsidy margins for the sampled companies on an individual basis. The Commission disagreed with the argument. The applicant requested to re-assess the decrease of the level of subsidies to all trout producers in Turkey following the legislative change in 2016. Absent the long lasting change of circumstances at national level, the Commission considered it inappropriate to calculate corresponding individual subsidy amounts. The changes made did not appear to be sufficient to demonstrate that the amount of subsidisation was altered substantially and was of a lasting nature. Moreover, the examination of the level of subsidisation at national level as well as the estimated subsidy amounts in 2018 confirmed the same conclusion.

4.3. Evolution of the subsidies granted to trout production at national level

4.3.1. Subsidies granted to trout producers between 2013 and 2016

- (54) Between 2013 and 2016, the amounts of subsidies granted to producers of trout were the following:

Table

Direct subsidies to producers of trout

	Production year			
	2013 (original investigation period)	2014	2015	2016
Subsidy amount (TL)	62 992 720	53 599 382	50 093 952	39 762 389
<i>Index</i>	100	85	80	63
Volume of production (in tons)	128 059	112 345	106 598	104 356
<i>Index</i>	100	88	83	81

Source: Information provided by Turkey.

- (55) Between 2013 and 2016, the total amount of subsidies to trout production decreased by 37 %.
- (56) The biggest decrease (20 %) in the amount of subsidies occurred between 2013 and 2015, that is to say before the legislative change introduced in the decree of 2016. The decrease between those years was in line with the decrease in production of trout (17 %) in the same period.
- (57) The decrease in the amount of subsidies between 2015 and 2016 (before and after the change) was of 20,6 %.

4.3.2. Subsidies granted by Turkey in 2016

- (58) In 2016, the total actual amounts of direct subsidies granted to trout producers amounted to 39 762 389 TL.

4.3.3. Subsidies granted by the Turkey in 2017

- (59) The implementation of all of the subsidy measures of which the trout producers could benefit in 2017 was not yet finalised at the time of the verification. Therefore, the Commission based its preliminary findings on the budget for 2017 forecast for each of the measures at a global level.
- (60) The budget dedicated for direct subsidies in 2017 amounted to 52 500 000 TL. According to the preliminary information provided by Turkey at the time of the verification, 90 % of the budget was to be spent (47 250 000 TL).
- (61) In addition, the following budget was planned for the new subsidy measures introduced in 2017:
- Closed system production – 500 000 TL
 - Fish labelling – 10 000 000 TL
 - Good farming practices – 2 000 000 TL
 - Over 1 Kg trout production – 1 875 000 TL
- (62) The budget for closed system production, fish labelling and good farming principles included also subsidies for production of other species such as sea bream and sea bass. Based on the statistics provided by Turkey regarding total aquaculture production volume of 2016, the production of trout within the eligible fish production represented 41,2 %.
- (63) Based on the forecast budget, the spending ratio of 90 % and the fact that some of the measures were to benefit production of species other than trout, the Commission first estimated that the overall amount of subsidies to trout producers in 2017 could overpass 50 million TL. That estimate was based on the information provided by Turkey, according to which 90 % of the budget for the direct subsidies was expected to be spent. In addition,

the Commission applied the same percentage of budget spending to evaluate the subsidy amounts of the additional subsidy measures introduced in 2017 (see recital 61). Finally, for the budgetary lines including other eligible fish species (that is subsidies for closed system production, over 1 kg trout, fish labelling and good farming practices), the Commission applied the ratio of 41,2 % representing the trout production within the eligible fish production.

- (64) After disclosure, Turkey and the applicant argued that none of the Turkish trout producers benefitted from the subsidy for either closed system production or fish labelling in 2017 mainly because of the initial investment costs and impracticability of the two measures. The maximum benefit for good farming practices in 2017 could only be 592 250 TL and 83 % of the planned budget was actually spent compared to the 90 % initially estimated by the Turkish authorities.
- (65) The Commission agreed to reassess the overall amount of subsidies to trout producers based on the actual amounts received by trout producers in 2017 accordingly. Based on these new amounts of subsidy measures, the overall amount of subsidies to trout producers was around 48,5 million TL in 2017.
- (66) Furthermore, Turkey argued that the subsidy scheme for trout over 1kg should not be included in the calculation of the benefit for trout producers. According to its calculations presented in the hearing, the amount of subsidies given to the production of the product concerned would then amount to around 43 million in 2017.
- (67) However, the Commission observed that this scheme may benefit three different types of trout: (1) trout between 1 and 1,2 kg (2) trout over 1,2 kg which may end up as the product concerned after processing and (3) trout over 1,2 kg serving a different market than the product concerned. In the absence of precise figures on how to allocate the budget of the subsidy, the Commission was unable to calculate the precise amount for each of the three types. In any case, even assuming that 100 % of this subsidy would go to the third type only and thus have no impact on the product concerned, the overall conclusion would not change. Indeed, the amount of 43 million TL in 2017 would still represent an increase of 4 million TL compared to 2016. Such an increase would neutralise a significant part of the impact of the 2016 decrease identified by the applicant as the change justifying the review of the measures.

4.3.4. Conclusion

- (68) Between the original investigation period (2013) and 2016, the subsidies to trout producers decreased by 37 %. The decrease in the subsidy amounts since 2013 was however not only related to the legislative change in 2016 but it was also a result of the overall decrease in trout production (see Table in recital 54). After 2016, the level of subsidies to trout producers increased again.
- (69) In 2017, the total amount of the subsidies to trout producers reached between 43 and 48,5 million TL. The Commission therefore concluded that the amount of subsidies after 2016 is approaching the amount before the legislative change.
- (70) The Commission thus concluded that the decrease of existing subsidies after the legislative change in 2016 was temporary and that the overall subsidy amounts as well as the level of production support per ton have increased again since 2016.

4.4. Lasting nature of the changes

- (71) In view of the conclusions reached in Chapter 4.3.4 the Commission therefore maintained that the decrease in subsidisation of trout producers in 2016 was only temporary. It also maintained that, since the conditions and amounts of subsidies were reviewed by Turkey on an annual basis, the introduced changes could not be considered as long lasting, in particular because:

- the amount of direct subsidy per ton increased in 2017;
- four new types of subsidy measures were introduced in 2017;
- and a new subsidy to fight diseases of juvenile fish (baby fish) was introduced in 2018.

Further, the Commission estimated that the total subsidies to trout producers may reach up to 56 million TL in 2018, i.e. around 6 million TL above the amount of 2015 – which is the year before the legislative change ⁽¹⁾.

⁽¹⁾ The estimation was done on the basis of the volume of production of 2017 by applying spending ratio of 83 % of 2017. For measures that were foreseen to benefit other species the Commission applied ratio of 43,6 % representing the share of trout production within the eligible species.

- (72) After disclosure, Turkey and the applicant argued that the subsidy to fight diseases for juvenile production introduced in 2018 did not relate to the product concerned. They however did not substantiate their claim. In the Commission's view, there was no particular reason why the subsidy would not relate to the product concerned. Strikingly, even the Ministry of Agriculture presented the new subsidy measure as a subsidy to trout producers at the verification. The Commission therefore rejected the claim.
- (73) After disclosure, Turkey and the applicant also argued that the subsidies for closed production and the fish labelling should be excluded from the assessment because they were not used in 2017 and because it was costly and impracticable to use them (see recital 64). The Commission observed in this respect that the subsidy amount for fish labelling was 0,02 TL/piece for production up to 250 tons in 2017 but seemed to increase to 0,03 TL/piece in 2018 ⁽¹⁾. It thus seems that Turkey is making the measures more attractive. Therefore, the Commission rejected the argument that these new subsidy measures should be excluded from the estimates of the subsidies in 2018 and near future.
- (74) Moreover, according to the information at the Commission's disposal, the trout producers need to make initial investments and/or undergo audits in order to align their business practices with the eligibility criteria of the newly introduced subsidy measures. Therefore, even if the budget for those measures is not spent in the first year(s) of application, it is likely that it will be used to a higher extent in the following years once the companies have rendered their activities eligible for funding.
- (75) Turkey and the applicant finally argued that the Commission should have taken into account the depreciation of the Turkish lira of 90 % over the past years. According to them, the depreciation was of a lasting nature.
- (76) The Commission disagreed with the claim. The depreciation of the Turkish lira, a freely convertible currency with a fluctuating exchange rate, cannot be attributed to Turkey. Moreover, currency exchange rates may follow a certain trend over a given period of time but may also be reversing in different period of time. The necessary stability and predictability is therefore missing to constitute a change of circumstance of a lasting nature.

4.5. Conclusion

- (77) In view of those considerations, the Commission maintained that the system of implementation of direct subsidies is characterised with constant changes in the legal basis, the eligibility criteria and in the actual amounts of subsidisation. Even if the actual amounts of 2018 depart from the Commission's estimates, the system of implementation of subsidy measures is constantly changing so such changes cannot be deemed to be of a lasting nature. In this context, the Commission also maintained that the decrease in subsidisation established between 2013 and 2016 was only of a temporary nature as the subsidy amounts for 2017 and 2018 were estimated to reach a comparable level of subsidisation as in 2013. Consequently and contrary to the assertion made by the applicant, the Commission concluded that the decrease observed in 2016 could not be considered as having a lasting nature.

5. TERMINATION OF THE PARTIAL INTERIM REVIEW

- (78) On the basis of the conclusions reached by the Commission on the changes in the implementation of the direct subsidies to trout producers in Turkey and in the absence of a lasting nature of those changes, the request for a partial interim review was considered unfounded and the partial interim review investigation should therefore be terminated.
- (79) Therefore, the measures in force imposed by Implementing Regulation (EU) 2015/309 should be maintained.
- (80) All parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the investigation. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into considerations where warranted.

⁽¹⁾ Turkish Decree No 2018/11460 on agricultural subsidies in 2018 dated 21 February 2018 (implemented retroactively as of 1 January 2018).

- (81) The Regulation is 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 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in Turkey is hereby terminated without amending the level of the countervailing measures in force.

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, 4 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ 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).