

**COMMISSION IMPLEMENTING REGULATION (EU) 2022/2390****of 7 December 2022****amending the definitive countervailing duty imposed on imports of certain rainbow trout originating in Türkiye by Implementing Regulation (EU) 2021/823 following a partial interim review pursuant to Article 19 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 <sup>(1)</sup> ('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 <sup>(2)</sup>, the Commission imposed definitive countervailing duties on imports of certain rainbow trout originating in Türkiye ('the original investigation').
- (2) On 4 June 2018, following a partial interim review ('the first interim review') concerning subsidisation of all exporting producers in accordance with Article 19 of the basic Regulation, by Commission Implementing Regulation (EU) 2018/823 <sup>(3)</sup> ('the first interim review Regulation'), the Commission decided to maintain the measures as established in the original investigation.
- (3) On 15 May 2020, following a partial interim review ('the second interim review') in accordance with Article 19 of the basic Regulation, by Commission Implementing Regulation (EU) 2020/658 <sup>(4)</sup> ('the second interim review Regulation'), the Commission amended the level of the countervailing duty for one exporting producer.
- (4) On 25 May 2021, following an expiry review in accordance with Article 18 of the basic Regulation ('the expiry review'), the Commission extended the measures as established in the original investigation (and as amended by Commission Implementing Regulation (EU) 2020/658) for a further five years by Commission Implementing Regulation (EU) 2021/823 <sup>(5)</sup> ('the expiry review Regulation').
- (5) The definitive countervailing duties currently in force range from 1,5 % to 9,5 %.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

<sup>(4)</sup> 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 (OJ L 155, 18.5.2020, p. 3).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2021/823 of 20 May 2021 imposing a definitive countervailing duty on imports of certain rainbow trout originating in Turkey following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 183, 25.5.2021, p. 5).

### 1.2. Initiation of a review

- (6) The Commission decided on its own initiative to initiate a partial interim review, having sufficient evidence that the circumstances with regard to subsidisation on the basis of which the existing measures were imposed had changed, and that these changes were of a lasting nature.
- (7) More specifically, significant changes on the structure and the terms of implementation of the subsidies granted by the GOT to producers of rainbow trout have taken place since 2016. These changes appeared to have led to a decrease of the direct subsidies received by Turkish rainbow trout producers.
- (8) The Commission considered that there was sufficient evidence that the circumstances with regard to subsidisation had changed significantly, that the changes are of a lasting nature and therefore that the measures should be reviewed for all exporting producers.
- (9) Having determined, after informing the Member States, that sufficient evidence existed for the initiation of a partial interim review, the Commission announced the initiation of a review under Article 19 of the basic Regulation by a Notice published in the *Official Journal of the European Union* on 20 September 2021 <sup>(6)</sup> ('the Notice of Initiation').

### 1.3. Review investigation period

- (10) The investigation of subsidisation covered the period from 1 January 2020 to 31 December 2020 ('review investigation period' or 'RIP').

### 1.4. Interested parties

- (11) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the Union industry, the known exporting producers and the Government of Türkiye ('GOT') about the initiation of the investigation and invited them to participate.
- (12) All parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties had also the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.5. Sampling of exporters

- (13) In the Notice of Initiation, the Commission stated that it might sample exporting producers in accordance with Article 27 of the basic Regulation.
- (14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in Türkiye to provide the information specified in the Notice of Initiation.
- (15) In addition, the Commission asked the Mission of the Republic of Türkiye to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (16) Thirteen exporting producers and groups of exporting producers in Türkiye provided the requested information and agreed to be included in the sample. The total declared export volume to the Union by these companies of certain rainbow trout during the review investigation period accounted for 100 % of exports from Türkiye to the Union.
- (17) In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of three exporting producers or groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The sample accounted for more than 60 % of the declared export sales to the Union during the review investigation period.

<sup>(6)</sup> OJ C 380, 20.9.2021, p. 15.

- (18) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the Turkish authorities were consulted on the selection of the sample.

#### 1.6. Comments on the sample selection

- (19) The Commission received comments from the cooperating exporters Selina Balık İşleme Tesisi İthalat İhracat ve Ticaret A.Ş. ('Selina Balık') and Kılıç Deniz Ürünleri Üretimi İhracat İthalat ve Ticaret A.Ş. ('Kilic Deniz') requesting to be included in the sample.
- (20) The Commission dealt with these requests in a Note that was placed on the open file on 22 October 2021. As the Note explained, both requests were denied because the sample had been selected on the basis of the largest representative quantity of exports that could reasonably be investigated in the time available.
- (21) Selina Balık and Kilic Deniz were not among the largest exporting producers and thus adding these companies to the sample would also not have increased significantly the representativity of the sample, but could have prevented the timely completion of the investigation.
- (22) On 11 November 2021, the Danish Aquaculture Organisation ('the DAO') representing Union producers of rainbow trout sent a submission requesting that the Commission include in the sample smaller trout farmers from Türkiye, as the subsidy schemes had changed to benefit smaller farmers more than larger ones. The DAO noted in this respect that the changes to the direct subsidy schemes, in particular the imposition of production caps, have effectively increased the subsidisation of smaller farmers.
- (23) The DAO requested the Commission thus to change the sample selection methodology, away from the largest quantity of exports that could reasonably be investigated, and to instead select a statistically valid sample that in their view would accurately represent the diversity of Turkish trout producers. The DAO, however, did not propose any specific cooperating exporter that should be included in the sample.
- (24) The Commission rejected this request since the sampling information requested from the exporters did not contain information that would allow the Commission to select the a sample in that manner.
- (25) The changes in the direct subsidy schemes, as set out in section 4 below, were reflected in the calculation of the benefit.

#### 1.7. Requests for an individual amount of countervailable subsidisation for companies not included in the sample ('individual examination')

- (26) The Commission received two requests for an individual amount of countervailable subsidisation following the initiation of the investigation under Article 27(3) of the basic Regulation. These requests were made in the form of a completed questionnaire reply.
- (27) The first request came from the company Selina Balık.
- (28) The Commission accepted their request for individual examination because it was already reviewing the company's situation in a parallel interim review concerning the same product. This interim review was initiated on 5 February 2021 <sup>(7)</sup>. However, Selina Balık withdrew their request for review and the Commission then terminated it on 10 March 2022 <sup>(8)</sup>.
- (29) Selina Balık had submitted a full questionnaire reply with the same review investigation period as the RIP (calendar year 2020) of this interim review. The company agreed that the information provided was to be used in the current review. The Commission had already largely checked the information submitted and only the remote cross-check had not been performed.
- (30) Therefore, full information was already available at the initiation of this investigation and it could not be considered too burdensome to investigate Selina Balık's situation for the purpose of the current review.

<sup>(7)</sup> OJ C 40, 5.2.2021, p. 12.

<sup>(8)</sup> OJ L 83, 10.3.2022, p. 60.

- (31) The second request came from the company Kilic Deniz.
- (32) The situation of Kilic Deniz was different from the one of Selina Balik. No questionnaire reply was available in advance and therefore collecting the necessary information and the analysis of the data provided would have been carried out completely during this investigation and in addition to the collection and analysis of data from the sampled exporting producers.
- (33) Therefore, the Commission considered that accepting this request would be unduly burdensome and would indeed prevent completion of the investigation in good time. This request for individual examination was therefore not accepted.
- (34) Following disclosure, Kilic Deniz submitted comments that their request for individual examination should have been accepted arguing that it was based on the same grounds as that of the company Selina Balik. Kilic Deniz also stated that the fact that Selina Balik had already submitted information in a parallel ongoing investigation should not be taken into consideration, as this would be discriminatory, and that for the current partial interim review the Commission received the questionnaire replies from Kılıç Deniz and Selina Balik at the same time.
- (35) As explained in recital (32), the Commission considered that the situation of both companies was different and it was therefore also justified to treat both companies differently.
- (36) The fact that there was a parallel review ongoing looking at the individual situation of Selina Balik that covered the same RIP as the current review enabled the Commission to be in the possession of the same dataset that would have been required in the current review already at an early stage.
- (37) As set out in recital (29) Selina Balik and their related companies had already submitted a questionnaire reply in their own interim review and a deficiency process on the data provided had been completed. The deficiency process involved significant resources as the questionnaire reply needed to be examined in detail and the deficient points were identified and resolved with the companies.
- (38) Since Selina Balik authorised the Commission to use the data submitted in the parallel interim review, the Commission was able to take those data fully into consideration in this review. The Commission therefore rejected the claim of discriminatory treatment.
- (39) Kilic Deniz further claimed that the Commission should have considered that their company had already experience in cooperating with anti-subsidy investigations, as it participated in the original investigation, in the second interim review and in the subsidy investigation regarding imports of sea bass and sea bream from Türkiye in 2015 which was terminated as the subsidy scheme concerned was withdrawn.
- (40) As regards this claim, the Commission noted that granting individual examination relates to the burden on the investigation, not the burden or experience of the company requesting this treatment.
- (41) Kilic Deniz also commented that they were the fourth largest exporting producer of Türkiye during the RIP and that it had more export sales to the European Union than Selina Balik, which should have been considered by the Commission in their choice for individual examination.
- (42) The Commission rejected this comment, as this is not a condition for the granting of individual examination, but rather whether a company should be included in the sample of exporters. As explained in recital (17) above, that sample had to be limited.
- (43) Kilic Deniz also requested that their amended duty of 1,5 % should be in force for five years from the date of the amendment, and therefore could not be changed by this review.
- (44) The Commission noted that Article 18(1) of the basic Regulation sets out that a definitive countervailing measure shall expire five years from its imposition. The duty levied on imports from Kilic Deniz was imposed on 28 February 2015 and so the five-year period starts from that date.

- (45) The second interim review Regulation that updated the individual duty rate of Kilic Deniz from 9,5 % to 1,5 % simply amended the table in Article 2 of the original Regulation and has no effect on the length of the measures that remain in force at a particular level. The request was therefore rejected.
- (46) Kilic Deniz also commented that their existing individual duty of 1,5 % resulting from the second interim review should be maintained regardless of the results of the current interim review, because the grounds for the initiation of both reviews were the same and the Commission has not shown that the changed circumstances with regard to Kilic Deniz in the current RIP were of a lasting nature to justify a change to its duty level.
- (47) The Commission also rejects this claim of Kilic Deniz that the grounds for review of this investigation match those of the review that led to the second interim review Regulation.
- (48) As set out in section 4 of their Notice of Initiation <sup>(9)</sup>, the grounds for the second interim review are specific to Kilic Deniz and their level of benefit received. The current review was initiated based on changes that affected all producers in Türkiye.
- (49) In recitals (285) onwards, the Commission has carried out an analysis of the lasting nature of the changed circumstances in relation to the investigation period of the original Regulation.
- (50) Such analysis is carried out on a countrywide basis, which includes also the situation of the individual exporting producers that are subject to subsidies received from the GOT. The argument that the Commission did not consider the individual situation of Kilic Deniz was therefore rejected.
- (51) Kilic Deniz also alleged that the Commission is obliged to determine an individual margin of subsidy for each known exporting producer, as the Subsidies and Countervailing Measures Agreement of the WTO does not have a sampling provision.
- (52) The Commission rejects this allegation as sampling is clearly provided for in Article 27 of the basic Regulation.
- (53) During the investigation, the Commission also made clear to all interested parties that all cooperating non-sampled exporters would receive the average duty if not granted individual examination.

#### 1.8. Replies to the questionnaires and non-cooperation

- (54) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the three sampled exporting producers and the GOT. Questionnaire replies were received from the three sampled exporting producers and the GOT. Questionnaire replies were also received from the two exporting producers requesting individual examination.

#### 1.9. Verification

- (55) The Commission sought and verified all the information deemed necessary for the determination of subsidisation.
- (56) Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with it <sup>(10)</sup>, the Commission was however unable to carry out verification visits at the premises of all companies pursuant to Article 26 of the basic Regulation.
- (57) Instead, the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies:

Exporting producers and related companies:

— Gumusdog'a group:

— Gümüşdoğa Su Ürünleri Üretim İhracat İthalat A.Ş.

— Akyol Su Ürünleri Üretim Taşımacılık Komisyon İthalat İhracat Pazarlama Sanayi Ticaret Ltd. Şti

<sup>(9)</sup> OJ C 176, 22.5.2019, p. 24.

<sup>(10)</sup> OJ C 86, 16.3.2020, p. 6.

- Yerdeniz Su Ürünleri Sanayi ve Ticaret Ltd. Şti.
  - Bengi Su Ürünleri Sanayi ve Ticaret Limited Şirketi
  - Hakan Yem Üretim Ticaret ve Sanayi Limited Şirketi
  - Ozpekler group:
    - Özpekler İnşaat Taahhüd Dayanıklı Tüketim Malları Su Ürünleri Sanayi ve Ticaret Limited Şirketi
    - Özpekler İthalat İhracat Su Ürünleri Sanayi ve Ticaret Ltd. Şti.
  - Fishark group:
    - Fishark Su Ürünleri Üretim ve Sanayi Ticaret A.Ş.
    - Fishark Gıda Sanayi Ticaret A.Ş.
    - Kemer Su Ürünleri Üretim ve Ticaret A.Ş.
  - Selina Balık group:
    - Selina Balık İşleme Tesisi İthalat İhracat Ticaret Anonim Şirketi
    - Selina Fish Su Ürünleri Ticaret Limited Şirketi
    - Ayhan Alp Alabalık Üretim ve Ticaret
- Government of Türkiye:
- Ministry of Trade, Republic of Türkiye
  - Ministry of Agriculture and Forestry, Republic of Türkiye

#### 1.10. Subsequent procedure

- (58) On 25 August 2022 the Commission disclosed the essential facts and considerations on the basis of which it intended to amend the countervailing duties in force ('the final disclosure'). All parties were granted a period within which they could make comments on the disclosure.
- (59) The comments made by interested parties were considered by the Commission and taken into account where appropriate. The parties who so requested were granted a hearing.
- (60) Following the receipt of the comments by interested parties, the Commission adapted certain essential facts and considerations and an 'additional final disclosure' was sent to all interested parties on 23 September 2022. Parties were given a time period to comment.
- (61) The GOT requested consultations with the Commission services in accordance with Article 11(10) of the basic Regulation and these were held on 4 October 2022.
- (62) Following the comments received from interested parties on the additional final disclosure, the Commission corrected two errors as described in recitals (306) and (135) and the resulting changes in the calculations were disclosed to the relevant interested parties on 6 October 2022. Parties were given additional time to comment on these changes to their subsidy calculations.
- (63) Gumusdoga, Fishark Ozpekler and Selina Balik, in its comments to the second additional final disclosure reiterated their claims already raised in the previous two disclosures. Those claims are addressed in this regulation.
- (64) Gumusdoga in addition requested and the Commission accepted a minor update in its turnover, which was subject to the correction as described in recital (306).

## 2. PRODUCT UNDER REVIEW

- (65) The product under review is certain 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 the Republic of Türkiye ('the country concerned') 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).
- (66) During the investigation the Commission became aware of the imports into the EU of peppered smoked trout fillets originating in the Republic of Türkiye. Some of these fillets were imported as product under review on which duties were paid, and some were imported under a different tariff heading (CN code 1604 19 10) on which no duties have been levied.
- (67) Both the exporting producers in Türkiye and the Union industry confirmed that they considered that peppered smoked trout fillets were included in the product scope of this and previous investigations.
- (68) The investigation has also shown that the simple addition of pepper does not deprive the smoked fillet of its main basic characteristics. Based on this and the fact that there was an agreement between the exporters and the Union industry on the product scope, the Commission concluded that 'peppered smoked fillets' are indeed included in the product scope.
- (69) On this basis the Commission considers that peppered smoked trout fillets are part of the product under review as 'smoked'. For the avoidance of doubt, duties will be levied on imports of peppered smoked trout fillets if declared under customs code CN 1604 19 10 (TARIC 1604 19 10 11).

### 3. CHANGE OF NAME

- (70) The exporter Lezita Balık A.Ş, TARIC additional code B968, informed the Commission on 9 June 2021 that it had changed its name to Abaloğlu Balık ve Gıda Ürünleri Anonim Şirketi.
- (71) The company requested the Commission to confirm that the change of name does not affect the right of the company to benefit from the anti-subsidy duty rate applied to it under its previous name.
- (72) The Commission examined the information supplied and concluded that the change of name was properly registered with the relevant authorities <sup>(11)</sup>, and did not result in any new relationship with other groups of companies which were not investigated by the Commission.
- (73) The Commission noted that the company cooperated with this review by submitting a sampling form under their new name Abaloğlu Balık ve Gıda Ürünleri Anonim Şirketi.
- (74) Accordingly, this change of name does not affect the findings of this investigation and in particular the anti-subsidy duty rate applicable to the company.
- (75) The name change should take effect as of 7 July 2020, being the date on which the company had changed its name.

### 4. SUBSIDISATION

- (76) On the basis of the subsidies investigated in the previous expiry review, the following measures, which allegedly involve the granting of subsidy programmes, were investigated:
- Support of trout production
  - Income tax reductions

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<sup>(11)</sup> The change of name was published in the Commercial Registry Journal dated 7 July 2020 numbered 10113.

- VAT and customs duty exemption on imported machinery
  - VAT exemption on domestically purchased machinery
  - Social Security Premium support programme
  - Preferential lending
  - Land allocation scheme
  - Preferential export insurance
  - Processed seafood
- (77) For the Social Security Premium support programme; the land allocation scheme and processed seafood, the Commission found that these schemes provided no benefit to the sampled exporting producer groups during the review investigation period and were therefore not further investigated.
- (78) On 11 November 2021 the DAO submitted comments on the subsidy schemes that the review would investigate.
- (79) The DAO submission noted that following subsidy schemes had changed or been updated since the last review:
- Investment grants for aquaculture
  - Processed seafood
  - rediscount credits
  - fish farming in soil ponds
  - support payments for agricultural publishing and consulting services
  - state supported insurance
  - state supported loans
  - support for agricultural investment
  - VAT exemptions on fish meal
  - Digital Agriculture Marketplace
  - COVID recovery support schemes
- (80) The Commission noted that schemes in Türkiye do indeed change from year to year. Should such a change in a scheme lead to a change in the level of benefit for the sampled companies, the Commission should ensure whether this change is a lasting change of circumstances. If so, the Commission will adjust the measures accordingly to take account of the change.
- (81) However as set out below, and also in the previous expiry review, some of the schemes listed by the DAO are either no longer in force, or do not provide a benefit to the sampled exporting producers.

#### 4.1. Direct support to producers of trout

##### 4.1.1. Description and legal basis

- (82) During the RIP, direct support to producers of trout was granted on the basis of Presidential Decree 2020/3190 ('Decree 3190')<sup>(12)</sup>. The procedures and principles regarding the implementation of the Decree were provided in Communiqué 2020/39 ('Communiqué 39') issued by the Ministry of Agriculture and Forestry<sup>(13)</sup>.
- (83) The direct support scheme covers the species rainbow trout (*Oncorhynchus mykiss*). The purpose of the scheme is to offset the costs of farming rainbow trout up to the production cap.

<sup>(12)</sup> Presidential Decree No 3190, 'Decree regarding the Agricultural Supports to be Granted in 2020', published in the Official Gazette No 31295 dated 5.11.2020.

<sup>(13)</sup> Communiqué 2020/39, published in the Official Gazette No 31321 dated 1.12.2020.



- (84) The Commission considers that the direct support scheme is designed to benefit the harvesting of trout. The sampled exporting producers both harvest their own farmed trout, and purchase trout from other farmers in Türkiye, and then process and export trout in various presentations to the European Union. These presentations, including gutted and filleted trout, make up the product under review.
- (85) The amount of support for the production of 'trout' (of any size) was set at 0,75 TL per kg up to a cap of 350 000 kg per year.
- (86) The amount of support for the production of 'over kilogram trout' was set at 1,5 TL per kg within the same cap of 350 000 kg per year. The Communique for 2020 defines 'over kilogram trout' as trout weighing over 1,25 kg each <sup>(14)</sup>.
- (87) These rates of subsidisation for the production of trout are the same rates that were in force during 2019, the review investigation period of the expiry review.

#### 4.1.2. Changes to the direct support scheme over time

- (88) Support of trout production is provided on the basis of Presidential Decrees and Communiques, which are issued yearly under Article 19 of the Agricultural Law No 5488. These Decrees and Communiques change the nature of the support each year:

Table 1

#### Direct support scheme for trout

Year	Support scheme	Support amount per kg
2016	Trout up to 250MT	0,65 TL
	Trout up to 500MT	0,325 TL
2017	Trout up to 250MT	0,75 TL
	Trout up to 500MT	0,375 TL
	Over kilogram trout (additional payment)	0,25 TL
2018	Trout up to 250MT	0,75 TL
	Trout up to 500MT	0,375 TL
	Over kilogram trout up to 250MT (additional payment)	0,25 TL
	Over kilogram trout up to 500MT (additional payment)	0,125 TL
2019	Trout up to 350MT	0,75 TL
	Over kilogram trout up to 350MT	1,5 TL
2020 (RIP)	Trout up to 350MT	0,75 TL
	Over kilogram trout up to 350MT	1,5 TL

- (89) During the original investigation, the scheme consisted of a support payment to trout farmers based on the quantity harvested of all trout regardless of any size, with the benefit per kilogram harvested paid in two separate rates based on the quantity harvested up to 500 tonnes per year.
- (90) For production year 2017, the GOT added a small payment of 0,25 TL per kilogram for trout harvested over 1 kilogram in weight, known as 'over kilogram trout'. This additional payment still applied to the product under review which can weigh up to 1,2 kilograms when harvested.

<sup>(14)</sup> Communique 2020/39, Article 4(f): Above Kilogram Trout: trout which is weighing 1,25 (one kilogram two hundred fifty grams) kilogram and over per 1 piece when harvested.

- (91) After discussion with the Commission on the definition of ‘over kilogram trout’ during the first interim review (see recitals (40) to (45) of the first interim review Regulation), the GOT redefined ‘over kilogram trout’ in 2018 as trout weighing over 1,25 kilogram when harvested.
- (92) In 2019, the GOT removed the additional extra payment for ‘over kilogram trout’ and instead split the scheme into two, a payment of 0,75 TL per kilogram for ‘trout’ (of any size), and a payment of 1,5 TL per kilogram for ‘over kilogram trout’.
- (93) The GOT also lowered the cap from 500 tonnes to 350 tonnes per year, and limited the subsidy payments to one licence per region. The production cap of 350 tonnes applies to the production of all trout within the same farming licence.
- (94) In the current review investigation period, the Commission established that two out of three of the sampled companies were farming all sizes of trout in the same facilities and under the same farming licence, and receiving both rates as a result.
- (95) During the review investigation period, trout farmers could apply for the rate corresponding to ‘trout’ (of any size) or the rate for ‘over kilogram trout’, according to the weight of the harvested trout. Due to the higher support rate for ‘over kilogram trout’, the sampled exporting producers harvesting trout weighing above 1,25 kilograms applied in most cases for the rate for ‘over kilogram trout’.
- (96) As a result, there was a doubling of ‘over kilogram trout’ subsidised production in kg and the amount of subsidy paid to trout farmers in TL under this scheme from 2019 to 2020 and a clear shift to harvesting trout at the larger size.
- (97) Taking into account both ‘trout’ (of any size) and ‘over kilogram trout’ subsidy paid, the Commission found that subsidisation by the GOT had actually increased by 59 percentage points over the period considered:

Table 2

**Changes in quantity and subsidy amounts 2017-2020**

	2017	2018	2019	2020 RIP
‘all trout’ subsidised production (kg)	62 461 873	53 390 032	48 859 007	44 991 877
‘over kilogram trout’ subsidised production (kg)	6 075 006	14 175 924	15 261 470	30 102 632
Total subsidised production (kg)	68 536 879	67 565 956	64 120 477	75 094 509
Index	100	99	94	110
‘all trout’ subsidy (TL)	42 948 500	36 900 761	35 769 405	32 547 179
‘over kilogram trout’ subsidy (TL)	5 017 996	11 953 949	22 428 846	43 742 770
Total subsidy paid (TL)	47 966 496	48 854 710	58 198 251	76 289 949
Index	100	102	121	159

- (98) Therefore, the Commission considered that the adaptation of the scheme did not change in substance the underlying subsidisation and – if anything – did increase its level. There appeared to be neither a financial nor an economic rationale for it.

#### 4.1.3. Conclusion on countervailability

- (99) The direct support payments to producers of trout amount to countervailable subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, i.e. a direct transfer of funds from the GOT to the producers of trout.
- (100) The direct subsidies are specific and countervailable within the meaning of Article 4(2)(a) of the basic Regulation as the granting authority, and the legislation pursuant to which the granting authority operates, explicitly limits access to these grants to enterprises operating in the aquaculture sector. Enterprises involved in aquaculture are expressly cited and trout is clearly designated as one of the species which benefit from this subsidy scheme.
- (101) The Commission established that the sampled exporting producers benefited from this scheme at both the 0,75 TL ('trout' of any size) per kg and 1,5 TL ('over kilogram trout') per kg rates during the RIP.
- (102) In the original investigation there was no separate rate of subsidy for the harvesting of 'over kilogram trout' and so the issue did not arise. In subsequent reviews, including the expiry review, the Commission could not establish any benefit received for the harvesting of trout over 1,25 kg, since the sampled companies did not harvest 'over kilogram trout' <sup>(15)</sup>.
- (103) In this investigation the Commission determined that two of the three sampled exporting producers farmed trout of all sizes under the same farming licence during the RIP, and therefore benefited from both rates of subsidisation.
- (104) The Commission noted that the trout are farmed in the same production facilities, being land-based ponds and cages in lakes, or at sea. Both smaller and larger trout are farmed in the same facilities, come to maturity in the same ponds, and are receiving the same food. Any trout below 1,25 kg is susceptible of becoming a trout above 1,25 kg. The only difference being that larger trout is harvested later to allow it growing to the required size.
- (105) In addition, as mentioned in recital (45) of the first interim review Regulation, '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'.
- (106) Therefore, any benefit received for the farming of larger trout is automatically connected to the farming of smaller trout as well. No matter whether a trout benefited from one or the other rate, the direct support is provided to harvesting trout, which is the product under review (live or dead and processed into several forms). Any benefit to trout is also present when sold in the form of fillets, which are not distinguished on the basis of the size of the harvested trout.
- (107) Both rates of subsidisation are conditioned on the farming of trout. The farming license's production capacities refer to trout of all sizes and the benefit deriving from both rates of support is paid to the farmer in a single payment and booked into the general income account of the company.
- (108) The Commission therefore considered that in 2020 the disbursements paid to the trout farmers amounts to the total direct support received for the farming of trout, including the product under review.

<sup>(15)</sup> Recital (41) of Implementing Regulation (EU) 2021/823.

#### 4.1.4. Subsidy amount for own production

- (109) The benefit per company was the direct support amount received on the basis of the rates concerning both the production of 'trout' (of any size) and 'over kilogram trout' during the review investigation period. The companies provided information as to the amount of the support received, and from whom and for which specific production it was received.
- (110) The direct support amount received for production of trout of all sizes under both support rates was divided by the total harvested quantity of trout to determine the subsidy amount in TL per kilogram of trout.

#### 4.1.5. Subsidy amount for purchased trout

- (111) The original investigation <sup>(16)</sup> found that the benefit of these subsidies remained also in the purchases of trout made by the sampled exporting producers from unrelated farmers in Türkiye for processing, as the product under review covers both the directly subsidised raw material, namely live trout, as well as the downstream products, such as fresh or frozen whole trout, fillets and smoked trout.
- (112) The benefit for the purchased trout was calculated in the original investigation on the basis of the total subsidy amount granted by the Turkish authorities divided by the total amount of trout production in Türkiye.
- (113) The Commission noted that in the expiry review <sup>(17)</sup> the finding that the sampled exporting producers received a benefit from the purchase of trout was confirmed. The benefit was calculated on the basis of the total subsidy amount conferred divided by the total amount of subsidised trout production in Türkiye.
- (114) However, the findings in the previous expiry review were based on overall country-wide information provided by the GOT and did not take into account the specific situation of the sampled exporting producers. In an expiry review, such detailed finding is not necessary, as an expiry review only needs to establish a likelihood of continuation or recurrence of subsidisation but no precise countervailing margins.
- (115) In this interim review, no interested party has disputed that the exporting producers continue benefitting from the subsidisation when purchasing trout from unrelated farmers. The GOT provided data regarding the level of subsidisation for 2020 for each trout farmer under both the 0,75 TL ('trout' of any size) and 1,5 TL (over kilogram trout) rates. This data was compared to the purchase listings of the three sampled exporting producers, and the Commission found as follows:
- (a) 5 % of purchases by quantity came from farmers that did not receive a subsidy, or where data could not be found;
  - (b) 49 % of purchases by quantity came from farmers where the production quantity was over the production cap of 350 tonnes per year and therefore some of their production was not subsidised; and
  - (c) 46 % of purchases by quantity came from farmers where the production quantity was under the production cap of 350 tonnes per year and therefore all of their production was considered to be subsidised.
- (116) For production in 2020, the subsidy per kilogram of trout of any size was calculated at 0,53 TL per kg if all production is taken into account, and 1,02 TL per kg if only subsidised production is taken into account.

#### 4.2. Direct support to producers of trout – comments received regarding the subsidy of production

- (117) Following disclosure, the GOT, the sampled exporting producers, Selina Balik and Kilic Deniz all made comments on the Commission's findings regarding the direct support to producers of trout.

<sup>(16)</sup> Recitals (61) to (63) of 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).

<sup>(17)</sup> Recital (39) of Implementing Regulation (EU) 2021/823.

- (118) These parties mainly disputed the inclusion in the subsidy calculation of the benefit paid to the sampled producers and Selina Balik for the harvesting of 'over kilogram trout', as this benefit had not been included in the subsidy calculations of previous investigations. They also argued that 'over kilogram trout' is not part of the product under review, nor was it included in the questionnaire intended for exporting producers.
- (119) As set out above in Section 4.1.3, the Commission confirmed the change in circumstances regarding the payment of the benefit for the harvesting of trout, in particular since the original investigation but also since the RIP of the previous expiry review. Whereas in the past direct support was granted on the basis of kilograms of production with no distinction about the size of the trout, the GOT progressively moved to a system of disbursements on the basis of different support rates depending on the size of the harvested trout. Thus, circumstances in the RIP clearly showed that trout farmers in Türkiye benefited from both rates of subsidy paid under this scheme when growing and harvesting the product under review.
- (120) Selina Balik argued that the Commission was not authorised to expand the product scope of the present review by including 'over kilogram trout'.
- (121) The Commission notes that the product scope remained the same as in previous investigations, namely the production of trout, live or dead and in several processed forms. Whether the subsidy rate is contingent upon the specific size of the harvested trout does not change its nature and operation, in the sense of benefiting the production of trout, which is then sold in various forms. This claim was therefore rejected.
- (122) Parties also disputed the Commission's findings that 'over kilogram trout' may be further processed into fillets that are included in the scope of the product under review. These parties argued that the findings as set out in recital (45) of the first interim review Regulation to which the Commission referred in the final disclosure, were not disclosed to interested parties during the first interim review and therefore parties could not comment on them. They reiterated that, in any event, no benefit had been calculated for 'over kilogram trout' in any of the previous investigations.
- (123) Parties had ample time to provide comments on recital (45) of the first interim Regulation following final disclosure in the present review. This argument was therefore rejected.
- (124) The Commission further noted that the Whole Fish Equivalent ("WFE") ratios used in this case were the same than the ones used in the original investigation. They have always clearly allowed for an 'over kilogram trout' to be processed into the product under review, as follows, noting that one fish produces two fillets:

Presentation as product under review	Whole Fish Equivalent ratio	Weight limit for whole fish
Live fish up to 1,2 kg	1,00	1,2 kg
Gutted fish, head on up to 1,2 kg	0,85	1,4 kg
Gutted fish, head off up to 1 kg	0,75	1,3 kg
Fillets fresh, chilled or frozen up to 400 g	0,47	1,7 kg
Fillets smoked, up to 400 g	0,40	2 kg

- (125) This fact was clearly noted by the exporter Selina Balik, who states in their comments to the final disclosure that 'given the intrinsic nature of the product [under review] large trout can be processed into fillets which fall into the scope of the product [under review].'
- (126) The claim that no benefit was calculated for 'over kilogram trout' in previous investigations, and that no benefit should therefore be calculated in the present review, should be rejected as the circumstances have changed. In the expiry review both sampled exporters did not receive any benefit from the 1,5 TL per kilogram harvested subsidy rate. In the RIP of this review, they did.

- (127) Two sampled exporting producers further argued that they did not produce nor sell any fillets deriving from 'over kilogram trout' during the RIP and therefore asked the Commission to revise their direct subsidy calculation accordingly by excluding 'over kilogram trout'.
- (128) The Commission noted that no evidence was provided to support this claim. In contrast, the investigation established that both of these sampled exporting producers obtained disbursements under both rates within the direct subsidy scheme for trout the review investigation period. They therefore harvested trout of all sizes. Given the Whole Fish Equivalent ratios set out in the table in recital (119), harvested 'over kilogram trout' can be processed into forms such as fillets and gutted fish. This argument was therefore rejected.
- (129) Two of the sampled exporting producers also claimed that most of the 'over kilogram trout' was exported to Russia and Japan and therefore the subsidy received for 'over kilogram trout' should not be countervailed for export sales of the product under review to the Union.
- (130) The Commission rejected this argument. As previously explained, the Commission has considered that the disbursements received under both rates of subsidy for the harvesting of trout benefit all trout that are then sold. The subsidy amount per kilogram of trout of any size exported to Russia and Japan is therefore the same as the subsidy amount per kilogram of trout of any size exported to the European Union.
- (131) Finally, the sampled exporting producers contested the Commission's findings set out in recital (96), that any benefit received for the farming of 'over kilogram trout' is automatically connected to the farming of smaller trout as well, arguing that
- the production processes for 'over kilogram trout' are significantly longer than for smaller trout and incur higher costs;
  - 'over kilogram trout' and smaller trout are competing with each other;
  - farmers cannot produce 'over kilogram trout' and smaller trout at the same time at the same farm; and
  - 'over kilogram trout' are largely produced in the Black Sea rather than in inland ponds.
- (132) The Commission notes that the production process is longer for 'over kilogram trout', which is why the subsidy at the time of harvest is 1,5 TL per kilogram rather than the standard 0,75 TL per kilo. However, trout farmers benefit from the total disbursements made under both rates of subsidy.
- (133) The assertion that 'over kilogram trout' and smaller trout compete with each other does not appear to have relevance for the allocation of benefit from the direct subsidy scheme to the product under review. Competition would simply guide the farmer to making the choice of using their ponds to harvest a specific size of trout.
- (134) Farmers produce trout in whatever size under the same farming licence, and receive a single disbursement under both rates of subsidy.
- (135) Based on comments received from the company Selina Balik following the final disclosure and the additional final disclosure, the Commission corrected clerical errors in the company's total production figures in line with the findings of the RCC.
- (136) However, Selina Balik contested that the Commission for one of the two farming companies in this group had used a different direct subsidy benefit amount than declared in their questionnaire reply. In addition, Selina Balik requested the Commission to deduct the bank charges paid for the transactions from the direct subsidy benefit amount.
- (137) Both claims are rejected. Firstly, for all producers subject to this investigation (including Selina Balik), the Commission used the verified data concerning the disbursed subsidy amounts provided by the GOT. Selina Balik did not provide any information or evidence that would justify or explain the difference between the amount declared in the questionnaire reply and the amount provided by the GOT, therefore the Commission relied on the data provided by the GOT. The latter were verified by the Commission and matched in all other cases with the data reported by the sampled companies. They were therefore consistently used as a basis for the direct subsidy benefit

calculation. Secondly, Selina Balik failed to show that the bank charges incurred were paid directly to the GOT during the RIP. The Commission therefore considers that those charges were paid to third parties (e.g. the banks) and they did not cover any adjustment allowable under Article 7(1) of the basic Regulation.

- (138) Following the additional final disclosure the GOT reiterated that 'over kilogram trout' is not product under review; that its production process is different from the one of smaller trout; and that they fall under different HS and CN codes than smaller trout. These claims were again dismissed for the reasons set out in recital (113) onwards.
- (139) In particular, the Commission considers that disbursements made for the harvesting of 'over kilogram trout' are covered by the definition of the product under review. The product under review is trout, live or dead, processed under several forms, including fillets. If the benefits granted via direct support to 'over kilogram trout' would not be accounted for, the resulting countervailing duties would not cover the entire product under review (exports to the Union of processed trout).

### 4.3. Direct support to producers of trout – comments regarding the subsidy of purchased trout

#### 4.3.1. Comments after final disclosure

- (140) Following final disclosure, the GOT, the sampled exporting producers, and the company Selina Balik disputed the calculation of the indirect benefit that the sampled exporting producers and Selina Balik received for the purchase of trout from other trout farmers in Türkiye.
- (141) These interested parties also claimed that the methodology to calculate the subsidy received for purchased trout differed from the methodology used in previous investigations, while there were no changed circumstances justifying such change in methodology. They argued that subsidies received for 'over kilogram trout' should be excluded from the calculation of the subsidy amount received in the current RIP.
- (142) Selina Balik in particular noted that there had always been farmers of trout who produced below the production cap, but this had not been used to calculate the benefit for purchased trout in previous investigations.
- (143) In previous investigations the Commission had considered that all farmers in Türkiye received the same amount of subsidy per kilogram of trout that were then purchased by the sampled exporting producers. Section 4.1.5 above explains why changed circumstances have led to a change in the Commission's methodology.
- (144) In particular interested parties noted that the Commission had been able to use farmer specific data that had been received from the GOT, but the Commission had calculated an average for the three sampled producers, and used that single figure in Turkish Lira per kilogram to calculate the benefit for trout purchased by the three sampled producers and Selina Balik.
- (145) The Commission was asked to calculate an individual figure for the four company groups based on the same dataset, instead of applying the average rate for all company groups. As the Commission had the necessary data available, the Commission accepted this claim.
- (146) Interested parties including Selina Balik also noted that the Commission's three way split of the purchases of the four company groups ('not found or not in receipt of subsidy', 'under the cap' or 'over the cap') and the calculations deriving from this split, had double counted some amounts of subsidy granted to trout farmers in Türkiye as a whole.
- (147) The Commission accepted this claim, and revised its methodology after final disclosure accordingly.

#### 4.3.2. Purchased trout – methodology disclosed in additional final disclosure

- (148) The Commission based its analysis on the list of trout farmers provided by the GOT. From that list the Commission identified whether a farmer had subsidised production above or below the production cap of 350 tonnes. This list gives the total subsidised trout production and the subsidy received in 2020 per license and per license holder on a legal entity basis.
- (149) The total production and benefit for the whole of Türkiye was given by the GOT as 144 283 000 kilograms and 76 316 948 Turkish Lira.
- (150) First, the Commission identified the farmers 'below the cap', namely those farmers that received a subsidy for a quantity produced below 350 tonnes regardless of the number of farming licenses during the RIP. It then calculated the rate of 0,966 Turkish Lira per kilogram for farmers identified as below the cap by considering their production as fully subsidised and dividing the total amount of subsidy received (37 441 048 Turkish Lira) by the total subsidised production quantity of trout (38 753 671 kilograms).
- (151) Second, the below the cap subsidised production and benefit amount was subtracted from the total country-level production and benefit amount, resulting in 105 529 329 kilograms and subsidy of 38 875 901 TL. It resulted in an average subsidy of 0,368 TL per kilogram produced for all other farmers, namely those farmers that were previously identified as producing over the cap or not receiving any subsidy.
- (152) These two rates of subsidy, being 0,966 TL per kilogram and 0,368 TL per kilogram, were then applied to the individual suppliers of the sampled exporting company groups and Selina Balik, using the classification above, and an average rate of subsidy calculated for each company group.
- (153) After the additional final disclosure, the GOT claimed that the split of the subsidy paid to farmers 'below the cap' and the remaining farmers was incorrect, and provided another split of subsidy, without providing any evidence as to where this split came from or on what basis it had been calculated. The claim was therefore rejected.
- (154) Interested parties claimed that the disclosure regarding the indirect subsidy was insufficient and that the subsidies received per supplier should be disclosed to them. This claim was rejected due to the confidential nature of the information provided by the GOT. The Commission considered the revised methodology description above, together with additional information provided to the cooperating exporting producers, as sufficient information to ensure the rights of parties.
- (155) Two exporting producers asserted that the calculation of subsidy per kilogram of purchased trout was incorrect for them, as their purchases during the RIP were in fact mainly or totally trout under 1,2 kg. They suggested that the Commission should consider that their suppliers were therefore only subsidised under the 0,75 TL per kilogram rate and recalculate the benefit on their purchased trout accordingly.
- (156) This assertion was rejected, as the evidence clearly showed that production of trout in Türkiye is subsidised based on the total amounts disbursed under both rates of subsidy to the farmers. Regardless of the size of the trout purchased by the exporting producers, the rate of subsidy per kilogram that passes through the purchased trout is based on the situation of the supplying farmer and not based on what size of trout the exporting producer purchases from that farmer.. The fact that some exporting producers do not produce over kilogram trout, does not therefore mean that its suppliers (farmers) are not subsidised under both trout sizes. As further explained in recital (160) no comments or additional evidence was received from the GOT in this respect.
- (157) After disclosure, some exporting producers disputed the method used by the Commission, and took examples of some of their suppliers in an attempt to show that the method used did not correctly categorise the trout farmer concerned.
- (158) The Commission rejected these claims, as the examples were not considered sufficiently representative and did not show therefore that the Commission's methodology was inappropriate.



- (159) The Commission therefore considered that its methodology, which relies on a mathematical comparison of data provided by the GOT, to be the most appropriate and reasonable way of splitting trout farmers into the two categories necessary to correctly identify the subsidy of purchased trout.
- (160) The methodology was also disclosed to the GOT together with all the calculations at a farmer level, and the GOT did not provide any evidence justifying to adapt the methodology applied by the Commission.
- (161) The Commission also noted that even if it would accept these examples, it could not accept mere statements from exporting producers regarding the condition of their suppliers without any verification, or supporting statements from the supplier concerned.
- (162) Fishark further claimed that the total purchased quantity used in the calculation of the indirect subsidy was incorrect, as the Commission did not take into account the total purchased quantities returned to unrelated customers.
- (163) The Commission rejected this claim because during the remote cross checks the company clarified that the transactions recorded under 'Returned sales' referred to accounting corrections of wrongly-computed purchase values and therefore did not refer to physical returns of the product under review. Fishark did not comment on this finding following the receipt of the remote crosscheck report, and did not submit any further evidence before the final disclosure, therefore this claim was rejected.
- (164) Gumusdogra and Fishark claimed after the additional final disclosure that the Commission should reintroduce the category of farmers 'not found or not in receipt of subsidy' and allocate no benefit to purchases from these farmers.
- (165) The Commission rejected this claim on the grounds that all previous investigations have found that all purchased trout are subsidised to some degree, and that the latest methodology reflects that general statement.
- (166) Selina Balik claimed that the methodology for the calculation of the indirect subsidy is incorrect as it fails to take into account the nameplate capacity indicated in each farming licence. In particular, the Commission disregarded the fact that the production volumes that can be subsidised is limited not only by the 350 000 kilogram WFE cap, but also by the nameplate capacity indicated in the relevant farming licence of each farmer.
- (167) The Commission used the subsidised production method, due to the discrepancy between the reported countrywide nameplate capacity of 244 000 tonnes and actual production of 144 000 tonnes. The subsidised production was therefore considered to provide a more reasonable method to calculate the indirect subsidy rates to be allocated to the exporting producers. The detailed findings including the classification of the companies were submitted to the GOT and no comments as regards the accuracy, nor any alternative method was submitted in the GOT's comments to the disclosures. Therefore the Commission rejected any alternative methods proposed by the exporting producers.
- (168) On this basis, the calculations were as follows:

Table 3

**Benefit per company for purchased trout 2020**

Company group	Average subsidy rate TL per kilogram
Fishark	0,614
Gumusdogra	0,791
Ozpekler	0,728
Selina Balik	0,899

Table 4

**Support for trout production**

Company group	Subsidy amount
Fishark	3,47 %
Gumusdoga	2,10 %
Ozpekler	2,75 %
Selina Balik	2,54 %

**4.4. Revenue foregone – support to investments made in the aquaculture sector***4.4.1. Description and legal basis*

(169) The Decree No 2012/3305 <sup>(18)</sup> and the implementing Communiqué No 2012/1 <sup>(19)</sup> provide the basis for State support to investments in the aquaculture sector <sup>(20)</sup> and constitute the basis of the Investment Incentives Programme of Türkiye. It includes two incentive schemes:

- Regional investment incentives, including support for VAT exemption, customs duty exemptions, tax deduction, social security premium support (employer's share), interest support, land allocation, income tax withholding and social security premium support (employee's share); and
- General investment incentives, including support for VAT exemption, customs duty exemptions and income tax withholding.

(170) Companies who cannot meet the minimum investment amount criteria under the regional investment incentives scheme can benefit from the general investments incentives scheme, which is available for all six regions defined in Decree No 2012/3305. Based on the level of economic development of the six regions the aid intensity can vary.

(171) Both the Decree and the Communiqué are still valid, and the six regions have not been changed since the original investigation.

*4.4.2. Conclusion*

(172) During the RIP, Gumusdoga benefited from income tax reductions.

(173) All three sampled companies benefited from VAT and customs duty exemptions under the regional investment incentives.

(174) As confirmed in the original investigation <sup>(21)</sup> and the expiry review <sup>(22)</sup>, the support to investments is considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, when the support takes the form of a tax incentive, that is when government revenue otherwise due is in fact forgone or not collected.

(175) The subsidy is specific and countervailable since the benefit of the subsidy is specifically limited to companies located in one of the regions listed. The access to the subsidy is further limited to certain enterprises operating in certain sectors. In addition, the subsidy does not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given the number and quality of the restrictions applicable to certain sectors, most notably those restricting the access to the subsidy to either certain types of enterprises or completely excluding certain sectors.

<sup>(18)</sup> Published on 19 June 2012, Official Gazette No 28328.

<sup>(19)</sup> Published on 20 June 2012, Official Gazette No 28329.

<sup>(20)</sup> Aquaculture production is expressly listed in Annex 2/A of Decree No 2012/3305 among the sectors which may benefit from incentives like value added tax (VAT) exemption, customs duty exemption, tax reduction, contributions to investment, social security premium support (employers' contribution, land allocation, interest rate support, income tax support and social security premium support (employees' contribution).

<sup>(21)</sup> Recitals (45) to (48) of Implementing Regulation (EU) No 1195/2014.

<sup>(22)</sup> Recitals (63) to (65) of Implementing Regulation (EU) 2021/823.

(176) Aquaculture is expressly designated in Annex 2A of the Decree 2012/3305 as one of the activities which may benefit from this type of tax exemptions. Annex 4 to the Decree lists the sectors which may not benefit from any incentive under this scheme.

#### 4.4.3. Calculation of the subsidy amount

(177) To establish the amount of the countervailable subsidy for tax exemptions, the benefit conferred on the recipients during the review investigation period was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(178) For the VAT and customs duty exemptions, the Commission identified those assets that had been purchased during the RIP and the amount of VAT or duty exempted. A cashflow benefit of two months was calculated using the short term interest rate for the RIP.

(179) Following disclosure, Gumusdoga and the GOT both requested that the Commission should not countervail VAT exemptions.

(180) The GOT claimed that the US investigation authorities did not find VAT exemptions in the investment incentive certificate scheme in Türkiye countervailable and referenced a decision of the United States, 'Countervailing Duty Investigation of Common Alloy Aluminium Sheet from the Republic of Turkey' <sup>(23)</sup>.

(181) The Commission notes that on page 17 of this document the US DOC notes that their determination is that this scheme provides no benefit, but that they were in process of gathering additional facts regarding the operation of the GOT's VAT system.

(182) The Commission also notes that the US DOC agrees with the Commission that the exempted customs duties do constitute a benefit under this scheme.

(183) The GOT argued that while the producers pay the input VAT on its purchases from suppliers, they collect output VAT on its sales to their customers; therefore the customers bear the ultimate tax burden and the VAT exemptions are thus not countervailable.

(184) Similarly, the company Gumusdoga claimed that it was able to offset its VAT payable against its VAT receivable and the only benefit in participating in the scheme was therefore to avoid up-front VAT payments and thus the administrative burden in offsetting VAT payables against VAT receivables. Therefore, they requested that no benefit should be calculated in line with previous investigations.

(185) Contrary to the comments of Gumusdoga, the Commission considered that these VAT and customs duty exemptions should be countervailed.

(186) For the reasons set out in recitals (148) to (150), the Commission, in line with the previous investigations, established that the VAT exemption scheme in Türkiye is a countervailable subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The fact that from an accounting perspective, the VAT payables are offset against receivables, does not remove the benefit in terms of cash flow, stemming from the fact that the exporting producers do not have to disburse cash upfront, and then wait to receive a refund from the tax authorities based on the processing of their monthly VAT declarations, as is the case for companies not benefiting from the scheme.

(187) Following additional final disclosure, the GOT reiterated that the VAT exemption scheme in Türkiye is not a countervailable subsidy. For the reasons set out in the above recitals, this argument was rejected.

(188) With regard to the VAT exemptions that benefited the company Gumusdoga, the Commission calculated a time gain of two months. Following final disclosure the company asked for clarification on how the Commission determined the two months period, claiming that there was only one month period for offsetting the VAT payment. As recital (42) of the provisional Regulation stated, 'the benefits obtained during the investigation period consisted only of a time gain of two months until the companies were refunded their VAT by the tax authorities'. No comments regarding this statement were made in the original investigation and the Commission has no evidence on file that the VAT system in Türkiye has changed since that time.

<sup>(23)</sup> Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Common Alloy Aluminium Sheet from the Republic of Turkey Case number C-489-840 published 7 August 2020.

- (189) Following final disclosure, Gumusdoga submitted that the Commission should allocate the tax reductions to the various products referenced in the investment support certificates on which the tax reductions were based.
- (190) This argument was rejected as the income tax reductions are income to the company and are therefore allocated over total turnover of the group.
- (191) For the countervailable subsidy for VAT and customs duty exemptions, the benefit was calculated as a cashflow benefit for purchases during the review investigation period.

Table 5

**Revenue foregone**

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	1,77 %
Ozpekler	0,00 %
Selina Balik	0,00 %

**4.5. Direct transfer of funds – supported insurance for the aquaculture sector***4.5.1. Description and legal basis*

- (192) According to the Agricultural Insurance Law No 5363 <sup>(24)</sup> and the Decree No 2018/380 <sup>(25)</sup> regarding risks, crops and regions to be covered by the Agricultural Insurance Pool and Premium Support Rates for the RIP, producers of aquaculture products may benefit from a reduced insurance premium covering losses of the fish stock and harvest of trout due to numerous possible diseases, natural disasters, accidents, etc. The support of the GOT amounts to 50 % of the insurance premium.

*4.5.2. Conclusion*

- (193) As confirmed in the original investigation <sup>(26)</sup> and expiry review <sup>(27)</sup>, the benefit conferred by this scheme takes the form of a reduction in the financial costs incurred in the life insurance coverage of aquaculture livestock.
- (194) This scheme constitutes a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct grant by the GOT to trout producers and a financial contribution because the recipients of the subsidy benefit from a favourable insurance premium, which is well below the level of insurance premiums available on the market for the coverage of comparable risks.
- (195) The scheme confers a benefit within the meaning of Article 3(2) of the basic Regulation. The benefit is equal to the difference between the premiums offered in the context of a commercial insurance policy and the subsidised premium.
- (196) The support is specific as the granting authority and the legislation pursuant to which the granting authority operates explicitly limit access to this reduced premium to enterprises operating in the agriculture sector and even explicitly target risks incurred by aquaculture producers.

<sup>(24)</sup> Articles 12 and 13, Official Gazette No 25852 of 21 June 2005.

<sup>(25)</sup> Official Gazette No 30608 of 27 November 2018.

<sup>(26)</sup> Recitals (88) to (89) of Implementing Regulation (EU) No 1195/2014 confirmed by Recital (42) of Implementing Regulation (EU) 2015/309.

<sup>(27)</sup> Recital (70) of Implementing Regulation (EU) 2021/823.

#### 4.6. Direct transfer of funds – other schemes

##### 4.6.1. Description and legal basis

- (197) During the review investigation period the sampled exporting producer Gumusdoga received direct transfers of funds from the GOT which were booked into their accounts as revenue.
- (198) The Commission requested information regarding all of the entries for 2020 into this revenue account and the company provided details for each entry. Three entries were noted to be direct transfers of funds limited to exporters as follows:
- (199) Firstly the company received funds into an account ‘Aegean Exporters’ Association Support’ which the company stated was related with the support regarding air transportation. This is regulated by the ‘Presidential Decree on the Support of Air Cargo Transportation Expenses dated 16 May 2020 Number 2552’ for May to July 2020 <sup>(28)</sup>.
- (200) Secondly the company received funds into an account ‘Ministry of Economy Export Incentives’ (‘export incentive support’). The company stated that ‘by the Decree numbered 2014/8 <sup>(29)</sup> it is aimed to support to enable companies carrying out industrial and/or commercial activities in Turkey to acquire market access certificates and ensure their participation in the global supply chain’.
- (201) Thirdly the company received funds into an account ‘Exhibition Support Income’. The company stated that this assistance is regulated by ‘Decree on Supporting Participation to Fairs in Abroad’ numbered 2017/4 published in the Official Journal dated 7 April 2017 numbered 30031. According to this Decree, exporters can claim reimbursement from the Directorate-General for Exports under the Ministry of Trade for participation in trade fairs held abroad which are qualified by the Ministry of Trade as eligible for support.

#### 4.7. Conclusion

- (202) For the first grant, the Commission considers that this is export contingent, as it is a refund of export transportation costs. Furthermore, the exporter has to sign a commitment to export and to refund the grant if the exported goods are returned to Türkiye. In addition, the scheme is specific to the exporters belonging to certain sectors, among which aquaculture is listed.
- (203) For the second grant, the Commission considers that this is also export contingent, as it is refunding expenses made on export transactions in order to access foreign markets, such as certification and quality control costs.
- (204) For the third grant, the Commission considers that this is also export contingent as it is designed for export trade promotion via trade fairs abroad.
- (205) This scheme constitutes a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct grant by the GOT to Turkish exporters. The scheme confers a benefit within the meaning of Article 3(2) of the basic Regulation.
- (206) These grants are contingent upon export performance within the meaning of Article 4(4)(a) of the basic Regulation. Some of them are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, from the documents provided by the cooperating exporting producer, they appear to be limited to certain industrial sectors, such as aquaculture. The Commission therefore considers that these grants are countervailable and specific.
- (207) The benefit is the amount of revenue received and booked in the review investigation period.
- (208) Following disclosure Gumusdoga disputed the Commission’s decision regarding the countervailability of these three grants.

<sup>(28)</sup> <http://yuksekerilim.com.tr/tr/ihracat-yuklemelerinde-devlet-navlun-destegi-hk/> (accessed 22 August 2022).

<sup>(29)</sup> Published in the Official Gazette 4.9.2014 number 29109.

- (209) For the 'Aegean Exporters' Association Support' (the first grant), Gumusdoga claimed that the scheme is not related with the product under review, as the exports of products under HS Codes 0302, 0303, 0304 to the European Union are not included in the scope of the support.
- (210) The Commission rejected this claim as the support can cover products under other HS codes that are part of the product scope of the current investigation, namely HS codes 0301 and 0305. The company also did not provide sufficient information for the Commission to examine which product groups were covered by the support received during the RIP.
- (211) Gumusdoga also claimed that this first grant is not related to the export sales destined to the Union market.
- (212) The Commission does not dispute that this scheme is not exclusive to the product under review, which is why the benefit that the company received has been taken over the total export turnover of the group and then apportioned to the product under review.
- (213) For the export incentive support (the second grant), Gumusdoga claimed that only one out of eight applications included in the calculation of benefit pertain to the product under review and to the RIP. As a consequence, it requested the Commission to review the calculation of the benefit accordingly and discard the seven applications that do not pertain to the product under review and to the RIP.
- (214) The Commission rejects this claim as the benefit has been taken as the revenue booked in the review investigation period, and has been taken over total export turnover of the group and then apportioned to the product under review.
- (215) Gumusdoga also asked the Commission to disregard the benefit deriving from the 'Exhibition Support Income' (the third grant), as this scheme is not sector or company specific nor related to the product under review or the RIP.
- (216) The Commission rejects this claim as it is export contingent and the benefit received during the RIP has been taken over the total export turnover of the group and then apportioned to the product under review.

Table 6

**Direct transfer of funds**

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	0,21 %
Ozpekler	0,09 %
Selina Balik	0,08 %

**4.8. Preferential loans**

- (217) During the original investigation and expiry review, the Commission found that trout producers were benefitting from preferential loans, including:
- Low or zero interest Agricultural Loans
  - Low interest export loans by Eximbank directly or via other banks
- (218) The Commission examined preferential lending to the sampled exporting producers during 2020, including agricultural loans, export loans, and other loan schemes, including those organised by the GOT in 2020 as a response to the COVID pandemic.

#### 4.9. Agricultural loans

##### 4.9.1. Description and legal basis

- (219) Decree No 2020/2015 provides that Agricultural Credit Cooperatives ('ACCs') and T.C. Ziraat Bankasi A.S. ('Ziraat Bankasi') can grant low interest loans and business loans to aquaculture sector producers. The trout producers can receive discounts on the applicable interest rates ranging between 10 % and 80 %. The credit upper limit is 10 000 000 TL. The Decree covers 1 January 2020 until 31 December 2022.
- (220) ACCs are private law entities established by agricultural producers (i.e. natural persons or legal entities that are engaged in agricultural production) in Türkiye in order to support their financial business needs.
- (221) Ziraat Bankasi is the Agricultural Bank of the Republic of Türkiye, a fully State-owned bank. During the original investigation, its shares were owned by the Undersecretariat of Treasury. However, since 2018, its capital has been transferred to the Turkish Wealth Fund and as found in the expiry review it remains 100 % owned by the Turkish Wealth Fund <sup>(30)</sup>.
- (222) In accordance with Article 2 of the Law No 6741 on Establishment of Turkey Wealth Fund Management Company and Amendments in Certain Laws, the Turkish Wealth Fund is an institution affiliated to the Presidency <sup>(31)</sup>.
- (223) Under Article 13(2) of the Decree of the Council of Ministers 2016/9429, the Chairman of the Board of Directors of the Fund is the President of the Republic. One of the Board Members can be assigned as the Deputy Chairman by the President of the Republic <sup>(32)</sup>.
- (224) As determined in the original investigation <sup>(33)</sup>, Ziraat Bankasi provides preferential loans to the aquaculture sector, to promote agricultural production and agribusiness. In this regard, the Council of Ministers annually determines the duration, procedures and principles of the programme and the Treasury transfers the remaining amount of the interest payment, corresponding to the discounted interest rate, to Ziraat Bankasi.
- (225) The original investigation therefore determined that Ziraat Bankasi was vested with governmental authority on the basis of Decree 2013/4271, which has been replaced with Decree 2020/2015 on the same basis.
- (226) Therefore, T.C. Ziraat Bankasi A.S. continues to be vested with governmental authority and the Commission continues to consider, as in previous investigations, that it is a public body.

##### 4.9.2. Findings

- (227) During the RIP, the cooperating sampled exporting producers had outstanding low-interest loans from Ziraat Bankasi.
- (228) Following disclosure, Gumusdoga commented that the Commission should not consider agricultural loans from Ziraat Bankasi as countervailable, as they were linked to the purchase of an insurance policy linked to the production of other products and not the product under review.
- (229) This argument was rejected as the loan was made to the company and there was no evidence that similar loans were generally available to companies in Türkiye. Moreover, the loan was not contingent on production of other products, only to the purchase of an insurance policy on a particular farm.

<sup>(30)</sup> <https://www.ziraatbank.me/en/ziraat-bank-turkey-today> (accessed 24 June 2022).

<sup>(31)</sup> <https://www.tvf.com.tr/uploads/file/law-no-6741.pdf> (accessed on 24 June 2022).

<sup>(32)</sup> <https://www.tvf.com.tr/uploads/file/decree.pdf> (accessed on 24 June 2022).

<sup>(33)</sup> Recital (67) of Implementing Regulation (EU) No 1195/2014.

#### 4.10. Export credits

##### 4.10.1. Description and legal basis

- (230) As determined in the original investigation <sup>(34)</sup> and the expiry review <sup>(35)</sup>, Türkiye İhracat Kredi Bankası A.Ş ('Eximbank') was chartered by the GOT on 21 August 1987 by Decree No 87/11914, following the order of Law No 3332 <sup>(36)</sup> on export credits and is a fully State-owned bank acting as the GOT's export incentive instrument in Türkiye's export strategy.
- (231) Eximbank has been mandated by the government to support foreign trade and Turkish contractors/investors operating overseas, in order to increase exports of Turkish businesses and to strengthen their international competitiveness.
- (232) The Commission continues to consider that Eximbank is vested with governmental authority and thus is a public body.
- (233) Law No 3332 as well as Resolution No 2013/4286 <sup>(37)</sup> on setting up the Eximbank constitute the legal basis for the export credits provided via the Eximbank.
- (234) Eximbank provides financial support (either directly or via agent banks working on a commission basis), such as export contingent pre- or post-shipment export credits and export-oriented investment credits to exporters, with the intention of increasing the competitiveness of Turkish exporters in foreign markets.
- (235) Rediscount credits are also used by Eximbank to provide cash advances to exporters based on the discounting of bills and documents related to export sales <sup>(38)</sup>. The legal basis for these credits are the 'Implementation Principles and Circular on Export and Foreign Exchange Earning Services Rediscount Credits (Rediscount Programme)' <sup>(39)</sup> and Article 45 of the Central Bank Law.
- (236) The 2020 Annual Report of the Central Bank of Türkiye (TCMB) noted that the aim of rediscount credits was 'to facilitate export companies' access to credits at favourable costs and to reinforce the CBRT's reserves.' <sup>(40)</sup>
- (237) The rediscount credits are funded by the Central Bank of Türkiye, but are channelled through the Turkish financial institutions (public as well as private banks) acting as agents of the TCMB. The interest rates are set by the TCMB, and the agent banks are remunerated via a commission charged to the recipients.

##### 4.10.2. Findings

- (238) During the RIP, the cooperating sampled exporting producers had outstanding low-interest export credits provided either directly by Eximbank or via other public or private banks acting as agents of Eximbank. The companies also benefited from rediscount credits provided by Eximbank or via other public or private banks.

#### 4.11. Other loan schemes

##### 4.11.1. Description and legal basis

- (239) Some sampled exporting producers reported other loans taken out in 2020. The Commission identified three schemes used by the sampled exporting producers, and requested information from the Government of Türkiye on the following:

— Can Suyu – Life Water

<sup>(34)</sup> Recital (69) of Implementing Regulation (EU) No 1195/2014.

<sup>(35)</sup> Recital (79) of Implementing Regulation (EU) 2021/823.

<sup>(36)</sup> Published on 31 March 1987 in the Official Gazette No 19417 (bis).

<sup>(37)</sup> Published on 23 February 2013 in the Official Gazette No 28568.

<sup>(38)</sup> <https://www.eximbank.gov.tr/en/product-and-services/credits/short-term-export-credits/rediscount-credit-program> (accessed 24 June 2022).

<sup>(39)</sup> Issued on 4 October 2016 by the Directorate-General of Banking and Financial Institutions, and the Directorate of Foreign Exchange Legislation of the CBRT.

<sup>(40)</sup> <https://www3.tcmb.gov.tr/yillikrapor/2020/en/m-2-2.html> section 2.2.4 (accessed on 1 July 2022).



- Ise Devam – Continue to Business
  - IVME Credit – Movement Credit
- (240) The Can Suyu – Life Water scheme is a general loan programme which is open to all enterprises with the commitment to continue their operations and maintain (and not reduce) the number of Social Security Institution registered employees as of the end of February 2020. The programme is a business continuity loan from the Government of Türkiye to the Kredi Garanti Fonu and the five public banks that hold shares in it.
- (241) The Ise Devam – Continue to Business scheme is another general loan programme linked to the ongoing operations in the same way as the Can Suyu – Life Water scheme. The programme is a business continuity loan from the Government of Türkiye to the Kredi Garanti Fonu and the five public banks that hold shares in it.
- (242) The IVME Credit – Movement Credit scheme is a more specific scheme for certain sectors of the economy. The scheme was announced as part of the IVME (Acceleration) Financing Package on 23 May 2019 by the Ministry of Treasury and Finance, together with three public banks, Ziraat Bankasi, Halkbank and Vakifbank <sup>(41)</sup>. The Acceleration Financing Package in turn is part of the GOT's long term economic policy for the country, set out in the New Economy Programme ('Yeni Ekonomi Programi').
- (243) The official announcement states that the programme is for 'supporting sectors which have high import dependency; foreign trade deficit; high contribution rate to employment and high exports or currency earnings'. According to the inaugural speech of the Minister of Treasury and Finance, the 'financing package adopts a product-oriented financing approach. Not only by evaluating on a sector-by-sector basis, but also by financing products with the potential to make a positive contribution to the foreign trade deficit. In this way, it will be aimed to increase the competitiveness of the relevant products in international markets and thus the export potential of strategic products will be revealed <sup>(42)</sup>'.
- (244) The main activities to be supported are 'manufacturing of raw materials and intermediate goods; machinery production and agriculture'. In the area of raw materials and imported goods, 4 main sectors were identified: chemical/medical (pharmaceutical) products, plastic and rubber products; artificial and synthetic yarns; and the paper and cardboard sectors <sup>(43)</sup>.
- (245) In the area of machinery production, a list of machine manufacturers within certain NACE codes has been established. The financing package includes loans provided to domestic machine manufacturers on the NACE code list that invest in new production or capacity increases, as well loans to domestic buyers investing in new machines produced by the same manufacturers. The package targets the following sectors:
- Electrical Machinery and Components, Computer, Electronics, Optical
  - Motor Vehicle Parts and Parts
  - Engine and Components
  - General Industrial Machinery and Components
  - Electrical Equipment <sup>(44)</sup>
- (246) Agriculture includes 'livestock and feed crop production' and these loans were granted to one sampled exporting producer during the RIP for aquaculture. The loan conditions are clearly preferential in terms of the interest rate offered.

#### 4.11.2. Findings

- (247) For the two general loan schemes Can Suyu – Life Water and Ise Devam – Continue to Business based on the level of employment in companies in February 2020, the Commission finds no evidence that these loan schemes are specific, or countervailable.

<sup>(41)</sup> <https://ms.hmb.gov.tr/uploads/2019/05/ivme-sunum.pdf> (accessed on 11 July 2022).

<sup>(42)</sup> <https://www.sondakika.com/ekonomi/haber-ivme-finansman-paketi-12078612/>

<sup>(43)</sup> <https://www.sondakika.com/ekonomi/haber-ivme-finansman-paketi-12078612/>

<sup>(44)</sup> <http://www.satso.org.tr/duyuru/5605/ivme-finansman-paketi.aspx>

- (248) However, for the IVME credit scheme, the Commission has found evidence that it is limited to specific sectors and specific activities (as set out above), and that the loan package is connected to the public banks Ziraat Bank, Halkbank and Vakifbank.
- (249) The Commission found that the sampled companies were only using IVME credit loans provided by Ziraat Bank and Halkbank. The Commission therefore has not investigated the status of Vakifbank in this investigation.
- (250) The Commission has confirmed in Section 4.5.1 above that Ziraat Bank is a public body and vested with governmental authority.
- (251) The Commission considered Türkiye Halk Bankası A.Ş. ('Halkbank') as a public body vested with government authority based on public information and also on the information that the bank itself provided as part of the reply to the government questionnaire which included copies of the 2019 and 2020 Annual Reports.
- (252) Halkbank was established by the GOT in 1933. Mustafa Kemal Atatürk, who stated, 'It is extremely essential to create an organization that will provide small business owners and large industrial enterprises with the loans they so desperately need, easily obtainable and inexpensively priced and to lower the cost of credit under normal circumstances' paved the way for the inception of Halkbank.
- (253) Halkbank is 77,9 % owned by the government through the Turkish Wealth Fund <sup>(45)</sup>. The Commission noted that all of the Members of the governing body of the Bank are or were Government officials or have served on other public bodies <sup>(46)</sup>.
- (254) For example, the Commission noted the presence on the Board of Maksut Serim, who in 2020 was a Senior Adviser to the President of the Republic of Türkiye, having been Chief Adviser to the Prime Minister of the Republic of Türkiye from 2003 to 2016.
- (255) The Commission also noted the presence on the Board of Sezai Uçarmak, who in 2020 was Deputy Minister at the Ministry of Trade.
- (256) The Commission further noted that the Articles of Association of Halkbank clearly state the specific objective of the Bank a provider of cheap access to financing to SMEs, tradesmen and artisans (Article 4(4)) with the involvement of the Council of Ministers of the Republic of Türkiye.
- (257) Article 4(5) deals with the possibility of less than 50 % of the shares of the Bank being publicly held: 'In case the percentage of publicly held shares of the Bank falls below 50 %, activities of the Bank regarding the offering of credit facilities to tradesmen and merchants as well as small and medium sized industrial enterprises shall continue in accordance with the methods and principles that shall be determined by the Council of Ministers'. <sup>(47)</sup>.
- (258) The bank was set up by the Government of Türkiye and has as its priority the needs of small and medium size enterprises ('SMEs'), tradesmen and artisans.
- (259) As Halkbank says itself, 'Since Halkbank's priority has always been providing this target audience with loans offered under the most favourable conditions, the bank deserves the distinguished place it has acquired in the hearts of the tradesmen, artisans, and SMEs.' <sup>(48)</sup>. In their 2020 and 2021 Annual Reports, Halkbank also refer on several occasions to their role as a public policy bank carrying out the priorities of the government.
- (260) According to the official Mission statement of Halkbank in its Annual reports, the bank's role is to 'support Turkey's development and growth within an awareness for social responsibility; and to be a people's bank that creates large value-added for all stakeholders'.

<sup>(45)</sup> <https://www.halkbank.com.tr/en/investor-relations/corporate-information/ownership-structure.html> (accessed on 8 August 2022).

<sup>(46)</sup> <https://www.halkbank.com.tr/en/investor-relations/financial-information/annual-reports.html> (accessed on 8 August 2022).

<sup>(47)</sup> <https://www.halkbank.com.tr/en/investor-relations/corporate-governance/articles-of-association.html> (accessed on 17 August 2022).

<sup>(48)</sup> <https://www.halkbank.com.tr/en/about-halkbank/discover/we-are-turkiyes-sme-and-tradesman-bank.html> (accessed on 16 August 2022).

- (261) This mission is carried out in practice as follows: ‘As we channelled our resources to the priorities of Turkey’s economy as part of our mission of “We are the People First, and Then a Bank,” we focused on conducting our business within an approach that respects people, society and the environment’.
- (262) For example on page 52 of the 2021 Report ‘the Bank ... extended TRY 12,1 billion in Ministry of Treasury and Finance interest-subsidized loans to 500 thousand tradesmen and artisans. Further, Halkbank continued to defer loan payments of tradesmen and artisans whose businesses suffered pandemic-driven losses pursuant to a Presidential Decree.’ <sup>(49)</sup>.
- (263) In relation to the IVME loans more specifically, General Manager Osman Arslan praised ‘the harmony and strong coordination between the institutions related to economic management to bring about successful results’, adding that ‘With our determination to achieve the targets in the New Economy Program, we will spend this year intensively in the field and make great efforts to offer the most appropriate solutions to the demands of our customers. Our loan disbursements in our innovative products such as Acceleration Financing Package, Employment-Oriented Business Loan, Economy Value Loan, Campaign Housing Loan, Campaign Consumer Loan, TLREF Indexed Loan and Domestic Production Vehicle Loan reached TL 30 billion in 2019’ <sup>(50)</sup>.
- (264) The conditions of the IVME credit involve a grace period, as well as a preferential rate which is established as a percentage surcharge (1-3 %, based on the loan duration) to the low risk state domestic debt securities (DIBS).
- (265) The interest rate for IVME loans is set out in the government’s instructions to the banks, and is set regardless of the capital cost structure of the bank, the circumstances of the borrower, or their credit worthiness. The banks are therefore considered to be acting on behalf of the government and carrying out the government’s instructions.
- (266) The Commission therefore considered that the IVME credit scheme is countervailable.

#### 4.12. Loans – Conclusion

- (267) As confirmed in the original investigation <sup>(51)</sup> and the expiry review <sup>(52)</sup>, preferential financing is considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation.
- (268) On the basis of the findings of the current investigation, the Commission concluded that the preferential financing schemes confer benefits to the recipients, as such financing is granted below market rates, namely under conditions which do not reflect market conditions for financing with a comparable maturity.
- (269) These preferential financing schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation as far as the agricultural loans are concerned, as the granting authorities or the legislation pursuant to which the granting authorities operate explicitly limit access to certain enterprises.
- (270) The export-related credits are specific within the meaning of Article 4(4)(a) of the basic Regulation, as they are contingent upon export performance.
- (271) Following disclosure, the GOT and Gumusdoga disputed the countervailing of the benefit calculated for export related credits, contingent on export performance, where the loan was provided by a private bank.
- (272) This argument was also made in the context of the previous expiry review, in recital (87) and the Commission rejected this claim in recitals (88) and (89) <sup>(53)</sup>.

<sup>(49)</sup> <https://www.halkbank.com.tr/en/investor-relations/financial-information/annual-reports.html> (accessed on 8 August 2022).

<sup>(50)</sup> <https://www.hurriyet.com.tr/ekonomi/halkbanktan-1-7-milyar-lira-kar-41447902>

<sup>(51)</sup> Recitals (75) to (78) of Implementing Regulation (EU) No 1195/2014.

<sup>(52)</sup> Recital (83) of Implementing Regulation (EU) 2021/823.

<sup>(53)</sup> Implementing Regulation (EU) 2021/823.

- (273) The Commission analysed the documentation provided by the company carefully for any evidence that these loans had been provided by private bank without any interference by the Eximbank or other public bodies, given that the company had borrowed these funds for the export of the product under review at rates well below those published for loans in Euros by the TCMB.
- (274) The documentation that the company provided did not include a loan agreement from the bank concerned or any evidence to show that the bank concerned had offered the company a particular interest rate for a particular reason.
- (275) No evidence was therefore found to show that these loans were provided on a market basis and the argument was rejected.
- (276) Moreover, the company Gumusdoga argued that the Commission was inconsistent in the methodology used to calculate the benefit on export related loans as some were not included in the calculation of the total benefit.
- (277) The Commission rejected this claim. The only reason for which certain export contingent loans issued by private banks were not included in the calculation of the total benefit is because those loans were issued in Turkish Lira.
- (278) Gumusdoga claimed that, due to its high creditworthiness, it is able to receive favourably low interest rates for its export contingent loans issued by private banks and therefore the Commission should not include the benefit derived from such loans to its calculations.
- (279) The Commission rejected this argument, as the benchmark interest rates used for the calculation of the benefit correspond to the average interest rate of all Turkish loans provided in a certain period of time and in a certain currency. This average included all types of creditworthiness.
- (280) This claim from Gumusdoga, that some export contingent loans were set at low interest rates due to their own specific conditions, was also made in the expiry review and rejected for the same reasons as above. Gumusdoga was unable to show that they received any export contingent loan at a low interest rate based on their credit rating, or based on negotiations with a bank.
- (281) The Commission considered that there is no link between the countervailability of a loan and the level of creditworthiness of a company. The benchmark interest rates were only used to determine the amount of the benefit deriving from the loans and not to determine whether a loan could be considered countervailable or not.
- (282) All the preferential financing schemes are therefore considered as countervailable subsidies.

#### 4.12.1. *Calculation of the subsidy amount*

- (283) In line with Article 6(b) of the basic Regulation, the benefit on preferential financing was calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan. As a benchmark, the Commission again applied the weighted average interest rate of commercial loans on the Turkish domestic market, based on data sourced from the TCMB<sup>(54)</sup>. This is the same benchmark used in the original investigation, and all previous reviews. The Commission allocated the benefit related to the export credits on the export sales while the agricultural loans were allocated on the total sales.
- (284) Following disclosure Gumusdoga queried the methodology used for the attribution of benefit for export contingent loans. In the disclosure, the Commission allocated benefit as follows:
- (a) Export contingent loans reported as 'not related to the product under review' had no benefit allocated to the product under review.

<sup>(54)</sup> <https://evds2.tcmb.gov.tr/index.php?/evds/portlet/K24NEG9DQ1s%3D/en> (accessed on 1 July 2022). Interest rate for commercial loans in TL (Excluding Corporate Overdraft Account and Corporate Credit Cards) for the loans received in TL and interest rate for commercial loans in EUR for the loans received in EUR.

- (b) Export contingent loans where there was no such report had all their benefit allocated to the export turnover of the product under review.
- (285) After disclosure Gumusdoga stated that all the loans coming under the heading (b) should in fact be allocated to total export turnover, as all these loans also were contingent on the export of other products. This claim relates to the same claim made by the same exporting producer in the expiry review Regulation <sup>(55)</sup>, recital (92).
- (286) In the expiry review the Commission was able to allocate the benefit from some export contingent loans to total export turnover, where there was evidence supporting doing so <sup>(56)</sup>. Given that some of these loans continued to be current in this review, the Commission was able to come to the same conclusion.
- (287) For those loans that were not examined in the expiry review, the Commission analysed the documentation that Gumusdoga provided with their questionnaire reply and subsequent submissions.
- (288) Where that documentation showed that the loan was contingent on the export of all products, the benefit was allocated over total export turnover of the group. Otherwise the benefit remained allocated over the export turnover of the product under review. Documentation provided by Gumusdoga after disclosure that could not be verified was not taken into account.
- (289) Following disclosure two sampled exporting producers noted clerical errors in the calculation of benefit, and these were corrected. The Commission also ensured that because the benchmark rate was published every Friday, the benchmark rate would apply for loans starting in the subsequent week, as was also applied in the expiry review Regulation, recital (93).
- (290) The subsidy amounts calculated for the sampled exporting producers regarding preferential lending are as follows:

Table 7

**Financing**

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	0,49 %
Ozpekler	0,36 %
Selina Balik	0,19 %

**4.13. Final amount of countervailable subsidies**

- (291) The Commission found that the aggregated amount of countervailable subsidies in accordance with the provisions of the basic Regulation were as follows:

Table 8

**Total subsidy found**

Company	Subsidy amount
Fishark	3,47 %
Gumusdoga	4,46 %
Ozpekler	3,19 %
Selina Balik	2,81 %

<sup>(55)</sup> Implementing Regulation (EU) 2021/823.

<sup>(56)</sup> Recitals (91) and (92) of Implementing Regulation (EU) 2021/823.

## 5. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (292) The investigation confirmed the significant changes of the structure and the terms of implementation of the direct subsidies granted by the GOT to producers of trout as compared to the original investigation. In particular, as already established in the previous reviews mentioned in recitals (2) and (3), the GOT introduced a legislative change by Decree No 2016/8791 <sup>(57)</sup> regarding the agricultural supports to be provided in 2016. Communiqué No 2016/33 <sup>(58)</sup> regarding aquaculture support detailed the conditions for the subsidies to be granted.
- (293) In essence, and in contrast to 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.
- (294) This legislative change was maintained in the decrees of the following years and also in Decree 3190 for the RIP mentioned in recital (57). This suggests that the change in the structure and the implementation of the direct subsidies granted by the GOT has remained in place for several years and there is no indication that the GOT intends to make further changes.
- (295) In addition, an amendment in 2019 <sup>(59)</sup> in the direct subsidy scheme limited the eligible quantity for direct subsidies to 350MT, i.e. lowered the cap in comparison to the original investigation period. The same cap was maintained in 2020 by Decree 3190. As mentioned above, the investigation did not show any indication that this practice would not continue.
- (296) The investigation also revealed as set out in recitals (57) to (72), that the GOT was increasingly subsidising trout farmers by splitting the support rates. Companies farming trout of all sizes under the same farming licence received benefits under both the 'trout' and 'over kilogram trout' subsidy rates.
- (297) The GOT's move from subsidising all trout at one rate of subsidy to subsidising both all trout and 'over kilogram trout' is considered to be of a lasting nature. The trend has been increasing rapidly during the last years, and the GOT gave no indication that this would not continue. This increase in benefits through the disbursements made under the 'over kilogram trout' support rates partly compensated for the decrease in benefits received for 'trout'. Overall, trout farmers continue receiving direct support from the GOT.
- (298) The Commission noted that the overall level of subsidy of the product under review in Turkish Lira per kilogram of exports to the EU had not dropped to the same extent as the countervailing duties calculated during the RIP. This is due to the drop in the value of the Turkish Lira against the Euro since the original investigation, and that the duty is calculated based on the subsidy in Turkish Lira per kilogram divided by the CIF value in Turkish Lira.
- (299) However, the Commission also noted that in parallel with the drop in the value of the Turkish Lira against the Euro, Türkiye also had periods of high inflation. Therefore, the value of the Turkish Lira in the country has also fallen, and the subsidy amounts paid out, which have remained constant in Turkish Lira, have dropped in real terms. The Commission therefore considered the reduction of the countervailing duty from the original investigation as a lasting change of circumstances.

<sup>(57)</sup> Turkish Decree No 2016/8791 on agricultural subsidies in 2016, dated 25 April 2016 (implemented retroactively as of 1 January 2016).

<sup>(58)</sup> The Communiqué named 'Communiqué on Aquaculture Support' numbered 2016/33 regarding the implementation of Decree No 2016/8791 was published in the Official Gazette on 3 August 2016.

<sup>(59)</sup> Presidential Decree 2019/1691 on the agricultural subsidies in 2019, dated 23 October 2019 (implemented retroactively as of 1 January 2019), published in the Official Gazette No 30928/24.10.2019.

- (300) In their submission of 11 November 2021, the DAO commented that there are constant and regular changes in the subsidy schemes in Türkiye and therefore any change in the subsidy amounts cannot be considered as lasting. Exports of trout from Türkiye still undercut the Union industry prices and still cause material injury to the Union industry. Therefore, the current review should be terminated and the level of the measures in force be maintained.
- (301) The DAO's arguments did not take into consideration the significant changes in the structure and implementation of the direct subsidy schemes as established during this investigation. The possible yearly variations in the subsidy rates did not have an impact on the conclusions that circumstances in the original investigation were substantially different and that the changes made were of a lasting nature. The arguments of DAO in this respect were therefore rejected.
- (302) The Commission therefore considered that there has been a change of circumstances and that these changes are lasting. The Commission received no comments on this after disclosure.

## 6. COUNTERVAILING MEASURES

- (303) On the basis of the conclusions reached by the Commission the anti-subsidy measures on imports of certain rainbow trout originating in the Republic of Türkiye should be amended to take account of the changed circumstances.
- (304) The anti-subsidy measures have been calculated as a percentage of the CIF value of the exports of the product under review to the European Union during the review investigation period.
- (305) Following additional disclosure, Gumusdoga asked the Commission to revise the calculation of the total turnover of the group of companies investigated to include turnover to related companies – outside this group of five companies having a direct link to their activities as regards the product under review – but which were part of the Gumusdoga group.
- (306) This request was accepted and the turnover to the companies concerned was added to the total turnover of the group.
- (307) Following disclosure, the three sampled exporting producers claimed that the Commission had incorrectly calculated the CIF value of the export sales of the product under review to the Union. They claimed that the Commission should consider the DAP invoice values as the CIF value of those sales, and claimed that the Commission had done so in previous investigations.
- (308) The Commission rejected these requests. The CIF value of the sales made to the Union was used (as set out in recital (297) above) to determine the percentage by which the import price should be increased to eliminate the effect of the subsidisation. This requires the CIF value since this is the value declared to Custom authorities on importation into the EU.
- (309) As is the Commission's standard practice, where this CIF value has not been reported, or where the delivery is at the CIF Union border, the invoice value is the basis for the determination of the CIF value. Where the invoice value includes costs after importation (for instance for sales on DAP and DDP basis) the Commission estimated the CIF value of those transactions using the evidence available. For the DDP sales and some DAP sales the CIF value was known, and was reported separately in the questionnaire replies, and was therefore used. All CIF values used have been included in the information submitted by the parties and were verified during RCC.
- (310) Given the high level of cooperation in this investigation, the Commission considered it appropriate to set the countrywide duty at the level of the highest individual duty of the sampled exporting producers.
- (311) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in Türkiye and produced by the named legal entities.

- (312) Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.
- (313) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, the change of name will be published in the *Official Journal of the European Union*.
- (314) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(60)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (315) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 25(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. In Article 1(1) of Implementing Regulation (EU) 2021/823 the text after the words 'currently falling under CN codes' is replaced by the following:

ex 0301 91 90, ex 0302 11 80, ex 0303 14 90, ex 0304 42 90, ex 0304 82 90, ex 0305 43 00 and ex 1604 19 10 (TARIC codes 0301 91 90 11, 0302 11 80 11, 0303 14 90 11, 0304 42 90 10, 0304 82 90 10, 0305 43 00 11 and 1604 19 10 11) and originating in Türkiye.

2. The table in Article 1(2) of Implementing Regulation (EU) 2021/823 is replaced with the table below:

Company	Countervailing duty (%)	TARIC additional code
Fishark Su Ürünleri Üretim ve Sanayi Ticaret A.Ş.	3,4	B985
Gümüşdogra Su Ürünleri Üretim İhracat İthalat AŞ	4,4	B964
Özpekler İnşaat Taahhüd Dayanıklı Tüketim Malları Su Ürünleri Sanayi ve Ticaret Limited Şirketi	3,1	B966
Companies listed in the Annex	4,0	
Selina Balık İşleme Tesisi İthalat İhracat Ticaret Anonim Şirketi	2,8	C889
All other companies	4,4	B999

3. The Annex to Implementing Regulation (EU) 2021/823 is replaced by the Annex to this Regulation.

<sup>(60)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).



4. The TARIC additional code B968 previously attributed to Lezita Balik A.S. shall apply to Abalıođlu Balik ve Gıda Ürünleri Anonim Şirketi as of 7 July 2020 (the date on which the company changed its name). Any definitive duty paid on imports of products manufactured by Abalıođlu Balik ve Gıda Ürünleri Anonim Şirketi in excess of the countervailing duty established in Article 1(2) of Implementing Regulation (EU) 2021/823 as regards Lezita Balik A.S. shall be repaid or remitted in accordance with the applicable customs legislation.

*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, 7 December 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

Cooperating Turkish exporting producers not sampled:

Name	TARIC additional code
Abahođlu Balık ve Gıda Ürünleri A.Ş.	B968
Alima Su Ürünleri ve Gıda Sanayi Ticaret A.Ş.	B974
Bađcı Balık Gıda ve Enerji Üretimi San ve Tic. A.Ş.	B977
Baypa Bayhan Su Urunleri San. Ve Tic. A.S.	C890
Ertug Balık Uretim Tesisi A.S. and More Su Urunleri A.S.	C891
Kemal Balıkçılık İhracat Ltd Şti.	B981
Kılıç Deniz Ürünleri Üretimi İhracat İthalat ve Ticaret A.Ş.	B965
Lazsom Su Urunleri Gıda Uretim Pazarlama Sanayi Ve Ticaret Limited Sirketi	C892
Liman Entegre Balıkçılık San ve Tic. Ltd Şti.	B982
Ömer Yavuz Balıkçılık Su Ürünleri San. Tic. Ltd Sti.	B984
Premier Kultur Balıkçılığı Yatırım Ve Pazarlama A.S	C893
Uluturhan Balıkçılık Turizm Ticaret Limited Şirketi	C894
Yavuzlar Otomotiv Balıkçılık San. Tic. Ltd Sti.	C895