

**COMMENTS OF**

**“ÖZPEKLER İNŞAAT TAAHHÜT DAYANIKLI TÜKETİM MALLARI  
SU ÜRÜNLERİ SANAYİ ve TİCARET LTD. ŞTİ.”**

**REGARDING THE STATEMENT OF ESSENTIAL FACTS ON  
TRANSITION REVIEW OF COUNTERVAILING MEASURES ON  
CERTAIN RAINBOW TROUT ORIGINATING IN TURKEY “CASE  
TS0002”**

**NON-CONFIDENTIAL VERSION**

**13 JULY 2021**

**1. INTRODUCTION:**

1. The Statement of Essential Facts on Transition Review of Countervailing Measures on Certain Rainbow Trout Originating in Turkey “Case TS0002” was disclosed on 25 June 2021.
2. “Özpekler İnşaat Tahhüt Dayanıklı Tüketim Malları Su Ürünleri Sanayi ve Ticaret Ltd. Şti.” and its trading related company “Özpekler İthalat İhracat Su Ürünleri Sanayi ve Ticaret Limited Şirketi” (herein after referred as ““ÖZPEKLER””) as an exporting producer of the product concerned responded to the questionnaire and fully cooperated in this transition review process with the Department for International Trade – Trade Remedies Investigations Directorate.
3. However, ““ÖZPEKLER”” was disappointed about the essential facts. In this respect, kindly asks to the Department for International Trade – Trade Remedies Investigations Directorate its comments below.

**2. NO INJURY ON THE UK DOMESTIC INDUSTRY**

4. In the transition review process, Trade Remedies Investigations Directorate did not examine whether there was an injury on the domestic industry in the original investigation period.
5. Trade Remedies Investigations Directorate stated that *“In the competition section, we found that revoking the measure may lead to increased imports from Turkey (positive competition effect) that could lead to a loss of market share for UK producers”*.
6. However, Trade Remedies Investigations Directorate did not refer to the level of imports of the product concerned before the imposition of the measure. Before the imposition of the countervailing duty there is very limited export sales of the product concerned to the UK. Therefore, this limited export sales of the product concerned is not able to cause a material injury on the UK domestic industry and the level of imports of the product concerned originating in Turkey is not related with the imposition of the measure.
7. In this respect, Özpekler kindly asks to the Trade Remedies Investigations Directorate to examine the imports of the product concerned before the imposition of the measure and afterwards to see the impact of the countervailing measures on imports of Turkey to make a fair and objective analysis.

**3. NO ANALYSIS OF SUBSIDY SCHEMES AFTER IMPOSITION OF THE COUNTERVAILING MEASURES by THE EU COMMISSION**

8. It was noted that the changes on the subsidy schemes after the imposition of the measures by the European Commission and their impact on the current subsidy

amount were not taken into account and analyzed by the Trade Remedies Investigations Directorate.

**3.1. GENERAL INFORMATION ON DIRECT SUBSIDY SCHEME**

9. "Direct subsidies" per kg of trout produced are provided to producers under the main subsidy scheme.
10. In the original investigation period (2013) the level of subsidy per kg of trout was set at 0,65 TL/kg for production up to 250 tons a year. Half of this amount (0,325 TL/kg) was granted for production quantities between 251-500 tons/year and no subsidies were granted for production quantities above 500 tons. The subsidy was granted to producers of the product concerned having a license from the Ministry of Food, Agriculture and Livestock.
11. The following legal provisions provide for direct subsidies during the investigation period (2013): Turkish Decree No 2013/4463 on agricultural subsidies in 2013, dated 07 March 2013 and published in the Official Journal No 28612 on 8 April 2013 (applying retroactively as of 1 January 2013).
12. The government of Turkey has been providing direct subsidies to rainbow trout since 2003. In 2003 and 2004 it was applied 0,40 TL/Kg. without limitation on the production quantity. In 2005 this subsidy amount per Kg. increased to 0,60 TL/Kg. without limitation on the production quantity. Between 2006-2012 the subsidy amount per Kg. was applied as 0,65 TL/Kg. without limitation on the production quantity. Since 2012 until 2016 the subsidy amount was limited as 0,65 TL/Kg. for the production up to 250 tons and half of this amount 0,325 TL/Kg. between 250 to 500 tons for each trout farm facility and no subsidy was provided for the production over 500 tons.
13. In 2017, the direct subsidy amount was increased to 0,75 TL/Kg. for the production up to 250 tons and half of this amount 0,375 TL/Kg. between 250 to 500 tons for each trout farm facility and no subsidy was provided for the production over 500 tons.
14. In 2018, the direct subsidy amount applied as 0,75 TL/Kg. for the production up to 250 tons and half of this amount 0,375 TL/Kg. between 250 to 500 tons for each trout farm facility and no subsidy was provided for the production over 500 tons as applied in 2017.
15. In 2019, the direct subsidy amount applied as 0,75 TL/Kg. for the production up to 350 tons for each trout farm facility and no subsidy was provided for the production over 350 tons.
16. In 2020, as implemented in 2019, the direct subsidy amount is applied as 0,75 TL/Kg. for the production up to 350 tons for each trout farm facility and no subsidy was provided for the production over 350 tons.

17. In the original investigation, the countervailing duty for “ÖZPEKLER” was determined mainly based on the “direct subsidy scheme”. Total subsidy amount calculated for “ÖZPEKLER” is 6,7% and 6,4% comes from the direct subsidy and remaining 0,3% comes from the preferential loans.
18. In this regard, the amendment in the “direct subsidy scheme” is essential for the determination of the current subsidy amount and level of countervailing duty for the applicant exporting producer “ÖZPEKLER”.

**3.2. THE AMENDMENT IN THE DIRECT SUBSIDY SCHEME IN 2016 IS “LASTING IN NATURE”**

19. In 2016, the level of direct subsidy per kg of rainbow trout did not change. However, the Ministry of Food, Agriculture and Livestock changed the structure and the terms of implementation of the direct subsidy scheme in 2016. This amendment in the direct subsidy scheme should be considered as having a “lasting in nature” for “ÖZPEKLER”.
20. Turkish Decree No 2016/8791 on agricultural subsidies in 2016, dated 25 March 2016 published in the Official Journal No 29703 on 5 May 2016 (implemented retroactively as of 1 January 2016).
21. The Communiqué named “Communiqué on Aquaculture Support” numbered 2016/33 regarding the implementation of Decree No 2016/8791 was published in the Official Journal dated 3 August 2016.
22. The related provisions of the Decree regarding the direct subsidy to the aquaculture industry are as follows:

*“(16) According to per kg. defined below direct subsidy is paid directly to producers of aquaculture products provided that they are registered to the aquaculture producer registry system.*

*If there is more than one fish farming unit in the same potential zone in the sea defined by the Ministry, in the same reservoir (dam) or in the reservoirs located in the same regions which belong to the same person or to the same enterprise/company, those units are regarded as a single unit belong to that enterprise/company and the direct subsidy is paid according to that interpretation. In this respect, for subsidy calculation, the maximum total amount of production for such a unit is 500.000 kg. The direct payment is made based on the full amount stated below for production of up to 250.000 kg. and based on the 50% of the full amount for production between 250.001 and 500.000 kg.*

*To get the maximum benefit from the current water supply that exists in our country, with the goal of ensuring production of aquaculture products and diversified fish species, a direct payment is provided to producers using the closed system production”.*

Number	Aquaculture Industry Support		TL/Kg.
1	Trout	Up to 250.000 kg. (including 250.000 kg.)	0,65
		250.001 - 500.000 kg.	0,325
2	New Species	Up to 250.000 kg. (including 250.000 kg.)	1,00
		250.001 - 500.000 kg.	0,50
3	Oyster		0,05
4	Closed System Production		0,50

23. According to this Article and contrary to the situation during the original investigation period, in case a trout producer had more than one production license (or 'fish farming units') 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 this interpretation.

24. The related provision of Article 5 "Aquaculture Support" of the Communiqué states that :

*"ç) When calculating the amount, which an establishment can benefit from the product support;*

*1) If the same real person and legal entities have more than one fish farming establishment located within the same potential area in the seas, in the same dam lake or dam lakes separated to within the same region defined by the Ministry, these fish farming establishments are considered as a single fish farming establishment.*

*2) In terms of support, regarding more than one fish farming establishment which belongs to the same real person and legal entities within the same potential area in the seas, in the same dam lake or dam lakes separated to within the same region defined by the Ministry, the facility owners prior to the publication date of the Decree regarding Agricultural Supports to be made in 2016 is considered as basis. Transfers regarding such facilities made after 5/5/2016, which is the publication date of the decree, are excluded from the support.*

*3) The establishment which is able to benefit from aquaculture support is limited annually with 500.000 kg as mentioned in the Cabinet Decree no. 2016/8791, and for the part up to 250.000 kg (250.000 kg included) the total of the unit price, and for the part from 250.001 to 500.000 kg (500.000 kg included) 50% of the unit price is considered"*

25. Ministry of Food, Agriculture and Livestock clearly highlighted to continue implementing "direct subsidy scheme" as it was established by the Decree No 2016/8791 on agricultural subsidies in 2016, dated 25 March 2016 published in the Official Journal dated 5 May 2016 numbered 29703 and by the "Communiqué on

Aquaculture Support” published in the Official Journal dated 3 August 2016 and numbered 2016/33 regarding implementation of the Decree No 2016/8791.

26. In 2017, 2018, 2019 and 2020 the Ministry of Agriculture and Forestry keeps the same practice regarding direct subsidy scheme in the related Decrees and Communiqués.
27. In the partial interim review investigation initiated<sup>1</sup> by the European Commission, it was confirmed that the amendment in the direct subsidy scheme in 2016 is “lasting in nature”. In the Conclusion Notice<sup>2</sup> regarding this investigation, the European Commission stated that *“Furthermore, the legislative change that led to the decrease of the number of fish farms was introduced in 2016 and it remained in place in the RIP (2018) and in 2019(18), i.e. already for a period of 4 years. The Turkish Government has not communicated to the Commission any plans to reinstitute the pre-2016 eligibility criteria. Therefore, the Commission considered the change from 2016 as the lasting change in the sense of Article 19(4) of the basic Regulation”*.
28. In this respect, this amendment in the implementation of direct subsidy scheme in 2016 is “lasting in nature” and significantly decreased the “total direct subsidy amount” for “ÖZPEKLER” as the subsidy amount received by Turkish trout producers decreased significantly as a result of this amendment. “ÖZPEKLER” which has significant purchases from other independent suppliers in Turkey has impacted indirectly as a result of transferred subsidy from other suppliers of trout.

### **3.3. THE AMENDMENT IN THE DIRECT SUBSIDY SCHEME IN 2019 IS LASTING IN NATURE**

29. In 2019, the direct subsidy amount was limited with 0,75 TL/Kg. for the production up to 350 tons for each trout farm facility and no subsidy was provided for the production more than 350 tons.
30. Ministry of Agriculture and Forestry keeps this imitation in 2020 also with 0,75 TL/Kg. for the production up to 350 tons for each trout farm facility and no subsidy was provided for the production more than 350 tons.
31. According to the letter drafted by Ministry of Agriculture and Forestry, General Directorate of Fishery and Aquaculture dated 09 December 2020 attached herewith in Annex-1 Ministry of Agriculture and Forestry indicated that it will apply this limitation up to 350 tons or less than that for the following years. In this respect, this practice is “lasting in nature”.

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<sup>1</sup> Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey (OJ C 176, 22.5.2019, p. 24).

<sup>2</sup> Notice of Conclusion of a partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey (18.5.2020 L 155/10, page 10, p.66).

32. As it is noted by the authorities of the European Commission, the letter refers to the amendment in the direct subsidy scheme in 2016 and 2019 and its impact with respect to decrease on the number of total recipients benefited from the direct subsidy and the total amount of the direct subsidy received by Turkish trout producers.
33. By referring to the amendment in the direct subsidy scheme, Ministry of Agriculture and Forestry states that *"It is planned to continue these practices that reduce the subsidy amount per kg. and the supported quantity in 2020 and in the following years"*.
34. This practice leads to decrease in the total subsidy received for a farm which has 500 tons capacity or more.
35. For instance a farm which has 500 tons or more capacity is eligible to receive direct subsidy  $250.000 \times 0,75 = 187.500$  TL. +  $250.000 \times 0,375 = 93.750$  = 281.250 TL. before 2019. Currently, it receives direct subsidy  $350.000 \times 0,75 = 262.500$  TL. It means that the total direct subsidy received decreased by 18.750 TL. for each farm which has more than 500 tons production.
36. In terms of 2019, [CONFIDENTIAL] out of [CONFIDENTIAL] total trout farms of "ÖZPEKLER" have 500 tons or more capacity. In this respect, the direct subsidy received by "ÖZPEKLER" decreased  $18.750 \times [\text{CONFIDENTIAL}] = [\text{CONFIDENTIAL}]$  TL.

**3.4. THE IMPACT OF THE AMENDMENT IN 2016 and 2019 DIRECT SUBSIDY SCHEME ON ÖZPEKLER**

37. "ÖZPEKLER" has remarkable quantity purchases of the product concerned from other Turkish suppliers as noted from the original responses of "ÖZPEKLER".
38. As a result of this amendment in the direct subsidy scheme made in 2016 and 2019, the subsidy amount of "ÖZPEKLER" decreased significantly. Based on the calculation made by the authorities of the European Commission, the subsidy amount for "ÖZPEKLER" decreased significantly to 3,2% form 6,7%.
39. Please find attached in Annex-2 of the Conclusion Notice of the European Commission regarding this expiry review investigation. As the investigation period is the same for the expiry review investigation conducted by the European Commission and for the transition review investigation conducted by the UK, the subsidy amount calculated by the EU Commission is also valid for the UK transition review investigation.

**4. CALCULATION OF INDIVIDUAL SUBSIDY AMOUNT FOR ÖZPEKLER**

40. At the outset of the investigation it was stated by the authorities of the Trade Remedies Investigations Directorate that individual subsidy amount will be determined for the cooperating companies. For that reason, taking into account he subsidy amount decreased significantly “ÖZPEKLER” fully cooperated in this investigation process.
41. At the later stage, Trade Remedies Investigations Directorate asked whether ““ÖZPEKLER”” would like to get an individual subsidy amount as a result of this investigation process. ““ÖZPEKLER”” provided its request to get an individual subsidy amount to the Trade Remedies Investigations Directorate on the date of 30 April, 2021 with an official letter.
42. However, despite its fully cooperation during the investigation process, the current subsidy amount was not calculated for ““ÖZPEKLER””. Therefore, “ÖZPEKLER” is disappointed for this outcome.
43. In the Statement of Essential Facts it is stated that *“In light of the low levels of imports of the goods subject to review from Turkey, we have used our discretion to conclude that it is not appropriate to recalculate the countervailing amount under regulation 99A(2)(a)(i) of the Regulations”*.
44. As indicated in our response “ÖZPEKLER” since its establishment in 1988, it has never exported product concerned to the UK. However, having no export sales to the UK, does not prevent the investigating authority of the UK to determine an individual subsidy amount for “ÖZPEKLER” based on the data and information provided within the questionnaire response.
45. The data and information provided by “ÖZPEKLER” to the Trade Remedies Directorate was also provided to the European Commission within the expiry review investigation and this data and information enable Trade Remedies Investigations Directorate to make a calculation and determine current subsidy amount for “ÖZPEKLER”.
46. Please take note that the investigation period is the same for the expiry review investigation initiated by the European Commission and for the transition of investigation initiated by the UK which is 2019.
47. The European Commission determined current subsidy amount for “ÖZPEKLER” as 3,2% of CIF Value. Please find attached the Conclusion Notice of the European Commission as Annex-2.
48. The investigating authority should be impartial, objective and fair. Having said that *“.. we have used our discretion to conclude that it is not appropriate to*



*recalculate the countervailing amount under regulation 99A(2)(a)(i) of the Regulations” is not fair, objective and impartial”.*

49. It should be also taken into account that there should be a difference between cooperating and non-cooperating companies. This approach of the investigating authority of the UK makes the cooperation futile and rewards non-cooperation.

## **5. CONCLUSION**

50. Based on the facts and evidences, the current subsidy amount of “ÖZPEKLER” decreased significantly as a result of the amendment in the direct subsidy scheme made in 2016 and 2019 from 6,7% to 3,2% as calculated by the European Commission in the expiry review investigation.
51. Despite the European Commission did not revise the subsidy amount in the expiry review investigation, please take note that it will initiate a “partial interim review investigation” soon upon the application of “ÖZPEKLER”.
52. Non-calculation of the subsidy amount by the Trade Remedies Directorate is not fair and objective. The data provided by “ÖZPEKLER” enables calculation of the subsidy amount.
53. Based on the facts and evidences “ÖZPEKLER” kindly asks to the UK Trade Remedies Directorate to calculate the individual subsidy amount for “ÖZPEKLER”. If it is not the case to impose the subsidy amount determined by the European Commission in the expiry review investigation.
54. “ÖZPEKLER” kindly asks to the UK Trade Remedies Directorate to take into account comments in this submission.

### **ANNEX:**

**Annex-1:** Letter of the Ministry of Agriculture and Forestry, General Directorate of Fishery and Aquaculture dated 09 December 2020

**Annex-2:** Final Notice of the European Commission