



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade defence

Investigations IV Relations with third countries for Trade defence matters

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Subject: Australian anti-dumping investigation into imports of prepared or preserved tomatoes exported from Italy – Market situation questionnaire

The European Commission refers to an email of Friday 12 July by which the Director Operations of the Anti-Dumping Commission sent to the EU delegation in Canberra a government questionnaire with regard to the conduct of the anti-dumping investigation into imports of prepared or preserved tomatoes exported from Italy requested by the Australian producer, SPC Ardmona Operations Limited on the 17 June 2013 ('applicant').

The issuance by the Anti-Dumping Commission of this questionnaire on the "market situation", addressed to the European Commission and the Italian Government, is rather disturbing.

According to the Issues Paper on the "Suitability of domestic sales", the Anti-Dumping Commission is intending to gather information from the European Commission and the Italian Government *to investigate whether, by virtue of policy programs applying to the cultivation of tomatoes in Italy, there is a situation in the Italian domestic market for prepared or preserved tomato products that renders domestic sales unsuitable for determining normal values (i.e. that a "particular market situation" exists).*

The European Commission was already faced with a comparable situation some years ago (Anti-dumping proceeding on dried currants from Greece) and would like to reiterate its position below:

- (i) The above-mentioned questionnaire improperly imports into an anti-dumping investigation questions concerning subsidies that can be the object only of a countervailing proceeding. This is in breach of WTO rules, which state clearly that *no specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement* (Article 32.1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement")). Indeed, it is clear also from their separate existence that anti-dumping and countervailing measures are two instruments that reflect a different rationale and address situations of a different nature: on the one hand, government subsidies, on the other hand, company-driven economic practices.

- (ii) Furthermore, this questionnaire could be seen as a possible way of eluding certain fundamental principles of countervailing investigations, including procedural ones, such as consultation of governments involved (Article 13 of SCM Agreement). In any event, the Australian authorities are aware of the fact that the CAP has been significantly reformed and the new income aid for farmers – the Single Payment Scheme ('SPS') – is fully WTO compatible. Indeed, the SPS is not specific, in the terms of the SCM, it is a completely decoupled income support scheme and is in full compliance with paragraph 6 of Annex 2 of the Agreement on Agriculture. The SPS has thus no trade distorting effects or effects on production and is therefore considered a "Green-Box" measure in terms of paragraph 1 of Annex 2 of the Agreement on Agriculture.
- (iii) The Commission does not understand the relevance of the Questionnaire to this investigation given that there is no evidence of any link between the support to growers of tomatoes and the prices on the Italian market for processed tomato products, which are market-driven and reflect the free interaction between supply and demand. The Commission notes that this questionnaire might result in a reversal of the burden of proof to the detriment of EC exporters, which would be asked to fill the gaps of the applicant's arguments.

The European Commission would expect that the Anti-Dumping Commission is aware of the incongruous implications of a presumption that every time there is a suspicion of a subsidy being granted, this automatically calls into question the reliability of prices and costs in a dumping case.

The European Commission always cooperated with Anti-Dumping Commission investigations and encourages exporters to do the same. Having said this, the European Commission does not believe this questionnaire to be appropriate and does not consider the approach of the Anti-Dumping Commission to be justified under WTO rules. Your Services certainly fully realise that the implications of this questionnaire go beyond this specific case and, given that this is a matter of pure administrative discretion, urges you to withdraw it immediately and to continue the investigation in the normal way. In the meantime, the European Commission intends to continue following this matter closely, together with the Italian government, in order to ensure that EU exporters are fairly treated and that our WTO rights are fully respected.