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Investigation No. 276 – Prepared or preserved tomatoes exported from Italy by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A.

Observations on SPCA's submissions dated 24 July 2015

14 August 2015

1. INTRODUCTION

On 19 January 2015, the Anti-Dumping Commission (the 'Commission') initiated the anti-dumping investigation No. 276 on imports of prepared and preserved tomatoes (the 'product under investigation') exported from Italy by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. ('two exporters' or 'our Clients').

The initiation of this investigation follows the filing of an anti-dumping complaint (the 'complaint') by the only Australian producer of the product under investigation, *i.e.* SPCA Ardmona (the 'Complainant' or 'SPCA'). The Complainant maintains to have suffered material injury as from 'many years' due to the exports from Italy by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A. at allegedly dumped prices.

In the framework of the current investigation, the Commission entrusted an independent expert to provide a report (the 'Report') regarding the possible existence of a 'market situation' on the Italian market for processed and prepared tomatoes ('PPT'), in order to determine whether the Italian PPT prices are suitable for comparison purposes. The non-confidential version of the Report was published on the website of the Commission on 15 July 2015.

The Complainant submitted comments on the Report, published on the Commission's website on 28 July and 3 August 2015. Our Clients submit that these comments are incorrect and misleading and thus must be disregarded, as will be demonstrated hereunder.

2. THE AMOUNT OF THE ALLEGED SUBSIDY AS CALCULATED BY THE COMPLAINANT IS INCORRECT

In SPCA's comments dated 24 July 2015 it is alleged, *inter alia,* that the figure of 776 €/he used by Dr Barker in its Report to quantify the subsidy granted under the Single Payment Scheme ('SPS') would be underestimated. According to SPCA, the Report should have used the data provided in the Complaint and, therefore, should have calculated the impact of the subsidy on the basis of an average payment of 2,802 €/he.

Our Clients submit that the above claim is ill-founded, since the methodology used by the Complainant to calculate the average subsidy of 2,802€/he is completely flawed.

2.1 The Complainant's calculation is based on an erroneous understanding of the SPS regime

The objective of the CAP reform of 2003 was to decouple the payments granted to farmers from their production. Therefore as from the year 2003, the '*ad hoc'* national funds dedicated to each agricultural product (tomatoes, olives, etc.) were progressively transferred and merged into a single national fund (the 'SPS fund')

aimed at financing the payments granted under the SPS which, as repeatedly explained, are completely decoupled (i.e. the payments are made irrespective of whether, what and how much the farmers produce). It is therefore clear that the SPS fund cannot be linked to any particular agricultural product, since the purpose of the SPS fund as from its creation is exactly that of replacing all the *ad hoc* funds dedicated to single agricultural products.

A transitory exception to the above-mentioned decoupling obligation was granted for the tomato production. In particular, according to Article 54 of Regulation No 73/2009 '*[m]ember States may retain, until 31 December 2011, up to 50 % of the component of the national ceilings referred to in Article 40 corresponding to support for the production of tomatoes*'.[1] Therefore, until 31 December 2011, EU Member States were allowed to use 50% of their old *ad hoc* fund (i.e. national ceiling) for tomatoes to grant direct payments *coupled* to the production of tomatoes, while the other 50% was immediately transferred to the SPS fund. This is acknowledged by the Complainant, which explained that '[…] *during the three years transition period (2008-2010), 50% of the subsidy was in the coupled form while the other 50% of the national ceiling moved to the single payment scheme*'.[2]

It follows that until 31 December 2011 the payments granted to tomatoes growers and coupled to production amounted to 50% of the (old) Italian national ceiling for tomatoes, *i.e.* 50% of € 183,967 million. Based on the estimate of hectares used for growing tomatoes in Italy provided by the Complainant[3], it should be concluded that during the transitory period the average coupled payment for tomatoes amounted to 1439,5 €/he (183,967 mio * 50% / 63.900 he). This is exactly *half* of what the Complainant alleges to be the average subsidy per hectare.

This clarified, it must be recalled that the above-discussed transitory period expired on 31 December 2011. In other words, as from 2012 the payments granted to tomato growers are 100% decoupled[4] since, in that year, the Italian national fund (i.e. national ceiling) for tomatoes was *fully transferred* to the SPS fund.

This undisputable fact is sufficient for concluding that the calculation provided by the Complainant is completely flawed and unreliable, since it is based on figures concerning the national *ad hoc* ceiling for tomatoes, which has been transferred into the SPS fund in 2012 and which, therefore, does not exist anymore.

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[1] Please see **Annex 1**.

[2] See Complaint, para. 18.

[3] See SPCA's submission dated 24 July 2015, para. 6.

[4] This is further confirmed by the opinion of the independent expert provided under Annex 2 to our Clients' submission dated 23 July 2015.

2.2 The Complainant's calculation fails to take into account the gradual reduction of the SPS payment

The Complainant's calculation also fails to take into account the fact that the payments granted to farmers under the SPS have been gradually reduced over the years.

Pursuant to the 2003 CAP reform, it was decided to progressively reduce the direct payments made under the European Agricultural Guarantee Fund (the so-called 'First Pillar'), and to transfer the relevant funds to the European Agricultural Fund for Rural Development ('Second Pillar'). Pursuant to this reform, payments above 5,000€ had to be reduced by 3% in 2005, 4% in 2006 and 5% in 2007 and following years. However, given the new challenges which had to be tackled through the Second Pillar (such as climate change, bio-energy, better water management etc.), it was decided to increase the rate of transfer of fund between the First and Second Pillars. As a result, the compulsory modulation rate was modified as follows: payments to farmers receiving a total contribution[5] higher than 5,000€ were reduced by 7% in 2010, 8% in 2011, 9% in 2012 and 10% in 2013. Payments of more than 300.000€ were reduced by an additional 4%.[6]

In other words, since 2005 onwards, and especially in the period 2010-2013, the direct payments granted to farmers under the SPS were gradually reduced in order to transfer the relevant funds from the First Pillar to the Second Pillar, dedicated to rural development. This circumstance cannot be overlooked, since it entails that the farmers have been granted a decreasing amount of money since 2005.

In addition, given the reduction of the total CAP budget in 2014, the sum available under the SPS fund has been further reduced. In accordance with Article 8 of Regulation 73/2009[7], the direct payments have been adjusted downwards, so that the total amount of direct payments cannot exceed the national ceiling available for the SPS. This, again, cannot be overlooked.

2.3 The Complainant fails to provide any factual evidence supporting its calculations

More importantly, it is submitted that the Complainant fails to provide any factual evidence to support its claim regarding the amount of the subsidy per hectare which – as discussed above - is based on a flawed calculation and on a wrong understanding of the applicable legislation.

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5 This figure refers to the total payment, and not to the average payment per hectare.

6 Please see the opinion of the independent expert provided under Annex 2 to our Clients' submission dated 23 July 2015. Please also see **Annex 2**.

7 According to such Article, '[…] *the total net amounts of direct payments which may be granted in a Member State* […] *shall not be higher than the ceilings set out in Annex IV to this Regulation. Where necessary, Member States shall make a linear reduction in the amounts of direct payments* […] *in order to comply with the ceilings set out in that Annex*.'

The alleged amount of subsidy granted to farmers (2,802 €/He) does not – at all – reflect the reality. As extensively demonstrated by Feger and La Doria, most farmers receive a payment well below 776 €/he, *if anything*. This is supported by *factual evidence of payments received by farmers* provided in our Clients' submission dated 23 July 2015.[8] Given the evidence provided by our Clients, it would be a serious methodological flaw to consider that each tomato grower in Italy receives in average 2,802 €/He.

2.4 The Complainant failed to provide a meaningful non-confidential summaries of the alleged subsidy impact calculation

As explained above, the Complainant's estimation of the average amount of direct payments received by the tomato growers in Italy is based on a wrong understanding of the 2003 CAP reform and of the SPS regime. As a result, the entire calculation of the alleged impact (i.e. 42%) of the direct payments on the price of raw tomatoes provided by the Complainant in its comments dated 24 July 2015 is completely flawed. Indeed it has been demonstrated that the basis of this calculation, *i.e.* the average amount of direct payments/ha, is just wrong.

In addition, it must be observed that the Complainant did not provide any description of the methodology followed for calculating the alleged subsidy margin of 42%.

Moreover, while extensively referring to a public document ('Domestic Support and Border Measures for Processed Horticultural Products, Bradey J. Rickard and Daniel A. Summer, 2007') – which would confirm its findings - the Complainant has not made available this document for public consultation.

This is a flagrant violation of Article 6.5.1 of the WTO Anti-Dumping Agreement, which requires the investigation authority to '*require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence*.'

Our Clients consider that, at the very least, a meaningful non-confidential version of SPCA's subsidy impact calculation should be made available to interested parties.

3. THE METHODOLOGY PROPOSED BY THE COMPLAINANT TO ASSESS THE IMPACT OF THE SPS IS FLAWED

According to the Complainant, the use of a flow through test in a 'market situation' assessment is '*not relevant as this test is associated with a countervailing investigation and not market situation investigations*'.[9] The Complainant therefore

[8] See confidential Annex 3.
[9] SPCA's submission dated 24 July 2015, para. 24.

suggests that the effect of the alleged market situation should be established by simply using a constructed normal value, in line with the Commission's practice.

This claim is ill-founded. Our Clients firmly submit that the pass-on analysis is not only a logical approach, but also A mandatory test under WTO law. Such analysis clearly shows that the alleged distortion in the market for raw tomatoes does not justify the use of a constructed normal value since it does not have the effect of rendering the domestic sales unfit to permit a proper comparison. In addition, it is claimed that - even accepting SPCA's approach, *quod non* - the construction of the normal value in accordance with the Commission's practice would lead to a reduction, and not to an increase, of the normal value of the two exporters. These points will be addressed hereunder.

3.1 The use of a pass-on test is mandatory under WTO law

According to the Complainant, the *'[u]se of flow through test is not relevant as this test is associated with a countervailing investigation and not market situation investigations'*.

However, with regard to the market situation assessment the WTO case-law has explicitly clarified that '[the question] *was not whether or not a 'particular market situation' existed per se. A 'particular market situation' was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison*' (emphasis added).[10]

It follows that in the case under discussion the WTO case-law requires the proof that the alleged distortion on the upstream market (raw tomatoes) had the effect of rendering the sale prices of the downstream products (PPT) unfit to permit a proper comparison. From a logical viewpoint, this assessment can only be done by proving that the alleged distortion on the upstream market for raw tomatoes is passed on to the downstream market for PPT.

In this respect it must be further noted that the WTO case law provides that an investigating authority '*may not assume that a subsidy provided to producers of the 'upstream' input product automatically benefits unrelated producers of downstream products, especially if there is evidence on the record of arm's-length transactions between the two*'.[11] Therefore, the investigating authority must '*analyse to what extent the subsidies on inputs may be included in the determination of the total amount of subsidies bestowed upon products*'.[12]

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10 GATT Panel Report, *EC – Cotton Yarn*, para. 478.

11 WTO Panel Report, *US – Softwood Lumber III*, para. 7.71. Contrary to what the Complainant alleges in paragraph 28 of its submission, the sales between the tomato growers and processors are done at arm's length, as is amply demonstrated by the significant profit margin of the tomato growers, and the very high price of tomatoes in Italy.

12 WTO Appellate Body Report, *US Softwood Lumber IV*, para. 140.

In other words, the investigating authority cannot simply assume that the subsidy granted to the manufacturers of the upstream product automatically benefits the manufacturers of the downstream product. This means that, in case the subsidy is removed, the investigation authority needs to prove whether or not the increase in the cost of production of the upstream product is passed on the manufacturers of the downstream product, i.e. the increase in the cost of production corresponds to an equivalent increase in the sale price.

In this respect, SPCA's position is clearly contradictory. Indeed, on the one hand the Complainant claims that *'[d]istortion of raw prices has been established by the report. The effect of actual increased costs when the distortion is eliminated is what must be examined for the purposes of market situation'* but, on the other hand, SPCA also claims that *'[s]peculating on the outcome as to whether the nonsubsidised input price can be passed through because of the estimated constraints of supply and demand elasticities is misplaced'*.[13]

However, it is crystal clear that in order to determine *'the effect of actual increased costs when the distortion is eliminated',* i.e. in order to calculate the adjusted input price (based on the known payment per hectare), it is necessary to carry out a pass-on analysis. In fact, in line with the WTO case law mentioned above, it cannot be simply assumed that any alleged increase in the cost of production of raw tomatoes (due to the suppression of the SPS) would be fully reflected into the raw tomatoes sale price. Indeed, the increased cost of production may be simply absorbed by the tomato growers (i.e. by reducing their profit margin). In other words, the simple assumption that any increase in the cost of production of raw tomatoes would lead to an equivalent increase in the price of raw tomatoes is methodologically wrong. Such an impact must be proved by using a pass-on analysis.

In light of the foregoing, it must be concluded that the use of the pass-on test is not only logic, but also required by the WTO case-law.

3.2 The pass-on analysis confirms that the SPS has no distorting effects

In the case at hand, in light of the significant profit margin of the tomato growers the pass-on analysis suggests that - even if it were considered that the direct payments under the SPS had an impact on the costs of production (*quod non*, since they are completely decoupled) - the suppression of such payments would merely reduce the profit margin of the tomato growers. Therefore, the alleged increase in the cost of production of raw tomatoes would not be passed-on to the downstream industry.

This is confirmed, in substance, by the conclusions of the Report which demonstrate that the alleged distortion on the upstream market for raw tomatoes produced

[13] SPCA's submission dated 24 July 2015, para. 35.

negligible effects on the downstream market for PPT. The Commission itself considered such effect to be insignificant.[14]

In this respect, the Complainant's claim that La Doria's annual report would demonstrate that *'La Doria was able to pass on the price increase, which contradicts the Report's assessment'* is to be completely disregarded as it is based on a misleading interpretation of La Doria's annual report.[15] La Doria's annual report clearly explains that '[*The CAP reform] resulted in a decrease in tomato production. The reform aimed at avoiding excessive production*'. This entails that, absent the reform, the price for raw tomatoes would have been lower than the current price, due to an excess of production. This is confirmed by La Doria's 2014 annual report, which refers to an '*higher raw material costs'* following the CAP reform. Bearing the above in mind, it is just impossible to understand how SPC may, on the one hand, claiming that the SPS distorts the market by artificially reducing the market price for raw tomatoes and, on the other hand, submitting that the alleged market distortion has entailed *'higher raw material costs'.* The foregoing simply demonstrates that in the absence of the SPS the price for raw tomatoes (and, presumably, the price for PPT) in Italy would decrease rather than increasing as claimed by SPCA. In this respect, one fails to understand what consequence may be inferred from the fact that La Doria was able to '*transfer the increased costs [of raw tomatoes] of a number of agricultural raw materials into sale prices'* given that this obviously resulted in an increased normal value for La Doria. It follows that SPCA's arguments based on La Doria's annual report are simply illogical, other than clearly contradictory.

In conclusion, even accepting that a *'particular market situation'* exists in the Italian market for raw tomatoes, *quod non*, the pass-on test clearly demonstrates that such distortion does not have the '*effect of rendering the sales themselves unfit to permit a proper comparison*', and therefore does not justify the use of a constructed normal value.

3.3 The construction of the normal value based on a benchmark price would lead to a reduction, and not to an increase, of the normal value of the two exporters

The Complainant further argues that when a distortion on the upstream market has been proven to exist, rather than relying on a pass-on analysis, the price of the input should be uplifted to a benchmark price.

In particular, the Complainant submits that *'in Silicon case, the uplifted price of one of the distorted inputs (electricity) was not, as far as can be determined, subject to a flow through test either on an accounting basis or by using an econometric approach*

[14] In our Clients' submission dated 23 July 2015 it has been further demonstrated that - even accepting the methodology followed in the Report, *quod non* - the actual pass-on effect would be even lower than that calculated in the Report.

[15] SPCA's submission dated 24 July 2015, paras. 32-34.

to assess if the final product was able to increase in price. Rather the price of electricity <u>was uplifted to a benchmark price in a constructed normal value</u>. That is the non-competitive input was seen as having an effect on the price of the like good'.[16]

It follows that, in the case at hand, an hypothetical benchmark price for raw tomatoes – based on international market prices for raw tomatoes - would need to be used to construct the normal value of the product under investigation (PPT), in line with the methodology followed in the Silicon case, where the Commission '*compared the benchmark tariff rate to tariff rates actually incurred by the Linan Group*'.[17]

As repeatedly explained, however, <u>the prices of raw tomatoes in Italy are the highest in the world</u>, i.e. they are very likely to be higher than whatever benchmark price may be identified by the Commission. Therefore, should the Commission use a benchmark price for raw tomatoes to construct the normal value, this would result to a reduction, and not to an increase, of the normal value of the two exporters.

The above is sufficient to demonstrate that SPCA's claims are illogical and contradictory.

4. CONCLUSION

In conclusion, it is submitted that:

- the Complainant's estimation of the amount of subsidy is based on a wrong calculation methodology and on a misunderstanding of the SPS legal regime. Contrary to the Complainant, the two exporters have provided *factual evidence* demonstrating that the amount of payments actually received by the farmers (*if any*) is even lower than the Report's estimation;

- the pass-on analysis used in the Report is not only a logical approach; it also fully complies with the WTO rules. A pass-on analysis *is required* to determine whether the alleged increase in cost of production of raw tomatoes would have an impact on the price of raw tomatoes;

- even accepting that a *'particular market situation'* exists in the Italian market for raw tomatoes, *quod non*, the pass-on test clearly demonstrates that such distortion does not have the '*effect of rendering the sales themselves unfit to permit a proper comparison*' and therefore does not justify the use of a constructed normal value;

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[16] SPCA's submission dated 24 July 2015, para. 24.

[17] Report 237 Silicon Metal, p.35.

- should the Commission use a benchmark price for raw tomatoes to construct the normal value, this would result to a reduction, and not to an increase, of the normal value of the two exporters.

IP/07/810

Brussels, 12 June 2007

CAP reform: Fruit and Vegetable reform will raise competitiveness, promote consumption, ease market crises and improve environmental protection

European Union agriculture ministers today reached unanimous political agreement on wide-ranging reforms to the Common Market Organisation for fruit and vegetables to bring this sector into closer line with the rest of the reformed Common Agricultural Policy. The reforms will improve the competitiveness and market orientation of the F&V sector, reduce income fluctuations resulting from crises, promote consumption and thus contribute to improved public health, and enhance environmental protection. The changes aim to encourage more growers to join Producer Organisations; offer POs a wider range of tools for crisis management; integrate the F&V sector into the Single Payment Scheme; require a minimum level of spending on environmental measures; increase EU funding of organic production and promotional measures; and abolish export subsidies for F&V. The reform will enter into force in 2008.

"I am delighted with the outcome, which will make the sector more competitive and market-orientated and hopefully encourage people to eat more fruit and vegetables," said Mariann Fischer Boel, Commissioner for Agriculture and Rural Development. "I am particularly pleased that all Member States gave the reform their backing. The old-fashioned production-linked payments will be replaced with decoupled payments. There will be incentives for producers to club together and thus become stronger. There will be specific schemes to help in times of crisis and much greater emphasis on protecting the environment. We have also introduced a number of measures to boost consumption, and will now propose a fruit and vegetable scheme for schools based on a detailed impact assessment."

Details of the reform

Producer Organisations: POs will gain greater flexibility and their rules will be simplified There will be additional support (60 percent Community co-financing rather than of 50 percent) in areas where production covered by POs is less than 20 percent, and, in particular, in the new Member States, to encourage the creation of POs. Member States and POs will develop Operational Programmes based on a national strategy.

Crisis Management: This will be organised through Producer Organisations (50 percent financed by the Community budget). Tools will include green harvesting/non-harvesting, promotion and communication tools in times of crisis, training, harvest insurance, help in securing bank loans and financing of the administrative costs of setting up mutual funds. Withdrawals can be carried out by POs with 50 percent co-financing. Withdrawals for free distribution to schools etc will be 100 percent paid by the Community. Community aid to POs will remain limited to 4.1 percent of the total value of marketed produce, but this may rise to 4.6 percent provided that the excess is used only for crisis prevention and management.

For three years, state aid may be granted to extend crisis management measures to non members who enter into a contract with a PO. Compensation for non members will be no more than 75 percent of the Community support received by PO members.

Inclusion of fruit and vegetables in the Single Payment Scheme: Land covered by fruit and vegetables will become eligible for payment entitlements under the decoupled aid scheme which applies in other farm sectors. All existing support for processed F&V will be decoupled and the national budgetary ceilings for the SPS will be increased. The total amount that will be transferred to the SPS is around €800 million. For tomatoes, Member States will be allowed to apply transitional payments for a four-year transitional period (2008-2011), provided that the coupled proportion of the payment does not exceed 50 percent of the national ceiling. For non-annual crops, they will be allowed to apply transitional payments for five years, provided that after 31 December 2010, the coupled proportion does not exceed 75 percent of the national ceiling. Member States may if they so choose postpone the distribution of fruit and vegetable entitlements for up three years.

Environmental measures: The inclusion of F&V in the SPS means that Cross Compliance (i.e. mandatory environmental standards) will be compulsory for those farmers receiving direct payments. In addition, POs must devote at least 10 percent of expenditure in each Operational Programme to environmental measures. There will be a 60 percent Community co-financing rate for organic production in each Operational Programme.

Encouraging greater consumption: Higher consumption of F&V was one of the goals identified in the Commission's White Paper on Nutrition, published in May. POs will be able to include promotion of F&V consumption in their operational programmes. There will be an additional €6 million under the general promotion regulation for the promotion of F&V targeted at children in educational establishments. There will be an €8 million budget for free distribution of F&V to schools, hospitals and charitable bodies, which will be 100 percent financed by the Community up to a limit of 5 percent of the quantity marketed by a PO. The Council asked the Commission to carry out a feasibility study into the creation of a school fruit and vegetable scheme. This work will begin as soon as possible.

Transitional soft fruit payment: To allow producers of strawberries and raspberries for processing to adapt to market circumstances, they will receive a transitional direct payment worth €230 per hectare for maximum period of 5 years for a set number of hectares. Member states may pay a national top-up so that the total shall not exceed €400/hectare.

Separate F&V payment for SAPS countries: Countries applying the Single Area Payment Scheme will be able to introduce a decoupled F&V payment to historical producers of F&V. They will have to decide by 1 November 2007 the amount to be deducted from the SAPS envelope to cover this and the criteria used for the allocation of the F&V payment.

http://ec.europa.eu/agriculture/capreform/fruitveg/index_en.htm

http://blogs.ec.europa.eu/fischer-boel

EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Modulation and other financial transfers from EAGF to EAFRD

Modulation

Modulation is a system of progressive reduction of direct payments allowing a transfer of funds from Pillar 1 (EAGF) to Pillar 2 (EAFRD). In order to achieve a better balance between policy tools designed to promote sustainable agriculture and those designed to promote rural development, this system of progressive reduction of direct payments ("Modulation") was introduced during the CAP Reform of 2003. In addition to reducing expenditure in Pillar 1, modulation also reduces the ceiling of the total expenditure allowed under markets and direct aids ceiling set in the financial perspectives. The limit the overall expenditure allowed for agriculture and rural development under Heading 2 is unchanged as the transfer from Pillar 1 to Pillar 2 is budgetary neutral.

Compulsory modulation

In 2003, it was stipulated that direct aids for farmers in EU-15 (after a franchise of € 5000) would be decreased by 3%, 4% and 5% respectively for 2005, 2006, 2007 and the following calendar years. At a 5% rate, modulation led to an annual transfer of about € 1.2 billion (in current prices) from the first pillar to the rural development envelope of the EU-15.

Since 2003 the agricultural sector has been facing new and demanding challenges (climate change, bio-energy, better water management etcetera) which had to be tackled in the framework of the rural development policy. However, the financial perspective for the period 2007 to 2013 did not provide for the financial means to reinforce the Community's rural development policy as necessary. Under these circumstances, it was decided to finance a large part of the rural development needs for the new challenges by the introduction of a gradual increase in the reduction of direct payments through modulation.

Therefore, in the framework of the Health Check reform, the modulation system was significantly changed. The main change was the introduction (from 2010 budget year onwards) of progressive modulation rates which will be applied as follow:

- The first €5.000 received by a farmer are exempted from modulation
- Any amount in excess of €5.000 will be reduced by 7%, 8%, 9% and 10% for respectively budget year 2010, 2011, 2012 and 2013.
- An additional reduction of 4% will be applied for amounts exceeding €300.000

This increase in the modulation rate led to a net additional transfer from the first pillar to the rural development envelope for the period 2010-2013 of €3.25 billion (2010: €0.48 billion; 2011: €0.69 billion; 2012: €0.91 billion; 2013: €1.2 billion).

Voluntary modulation

In addition to the compulsory modulation, the United Kingdom decided to apply a voluntary modulation of direct payments in accordance with Council Regulation (EC) No 378/2007. The total amount to be transferred to rural development for the period 2010-2013 amounts to approximately €1.4 billion.

The increase of the compulsory modulation amounts in the framework of the health check for UK was compensated by a similar reduction of the voluntary modulation amounts (€0.47 billion for the period 2010-2013).

Other financial transfers from EAGF to EAFRD

The regulation governing direct aids since the Health Check (Title VI of Regulation 73/2009) foresees three additional transfers from the first pillar to the EAFRD. A transfer for restructuring in the cotton regions (22 million € per year starting in 2010) a transfer for restructuring in the tobacco region (484 million € starting in 2011) and the possibility to transfer a certain amount (the "unspent amounts" are set out in annex III of Regulation (EC) No. 1120/2009) to the rural development envelope instead of using it to finance the specific support foreseen in article 68 of Regulation (EC) No 73/2009. Germany and Sweden have transferred their "unspent amounts" to Rural Development (€51.6 million).

Legal References

Basic Act: Regulation (EC) No 73/2009. (OJ L 30 of 31.1.2009 p. 16)

Implementing Act Regulation (EC) No 1122/2009 (OJ L 316 of 2.12.2009 p. 65)