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Email: operations1@adcommission.gov.au Non Confidential

Dear Sir/Madam

SPC has reviewed the Statement of Essential Facts No. 276 (the SEF).With the assistance of its trade consultants, Blackburn Croft & Co, SPC makes the following comments.

Key Points

- The SEF's interpretation that the national ceiling reduced to 75 % of its previous level is incorrect. Article 54(1) applies to tomatoes and there is, therefore, no reduction to the national ceiling incorporated into the Single Payment Scheme. The subsidy per hectare should be calculated using the national ceiling corresponding to tomatoes at the time it was fully transferred to the SPS divided by the hectares in 2014.

- The evaluation of flow on using the Rickard model understates the flow on effect by 50 % and must prompt the Commission to reconsider its conclusions on market prices of PPT.

- There is strong evidence to support a finding that domestic market prices have been distorted by the presence of substantial payments based on historical payments to farms growing tomatoes.

The submission elaborates on above and other key points in response to Appendix 1 - Market Situation document of the SEF.

SEF comment

The Commission has further observed that at the completion of the transition period and beginning on 1 January 2012, only 75% of the total ceiling amount for tomatoes was available for payments to growers of tomatoes under the CAP. The Commission expects that this reduction reflects the modulation component of EC Regulation 73/2009 (page 61)

SPC comment

1. The SEF attributes this assessment to Article 54(1). That Article refers to tomatoes only:

Member 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****. In this case* *and within the ceiling determined in accordance with Article 51(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers. The additional payment shall be granted to farmers producing tomatoes, under the conditions provided for in Section 8 of Chapter 1 of Title IV.*

2. The national ceiling referred to in Article 54(1) is shown in Annex X of EC Regulation 73/2009 as only relating to tomatoes. The heading on Table 1 in Annex X clearly describes the national ceilings referred to in Article 54 (1) corresponding to tomatoes. The transition period for tomatoes as adopted by Italy ended at the end of 2010.(paragraph 17 of the Application).This transition period was also noted by the Italian Ministry of Agricultural Food and Forestry Policies :

   In the case of direct payments, one of the essential aspects of the 2007 reform was the end of coupled aid for products (tomatoes, pears, peaches, prunes d'Ente and citrus fruits) paid for industrial processing and their conversion to uncoupled aid and incorporation into the single payment scheme. Under certain conditions and for certain products, Member States were also committed to choose an interim area-based payment scheme based before full integration of the direct payment scheme (Articles 54 and 96 of Regulation (EC) No 73/2009).Italy chose to use this option, providing for a gradual changeover to the single payment scheme for canned tomatoes, pears, peaches and plums for processing, choosing to make the aid payments subject to the producer's membership of a recognised producers' organisation. The interim scheme lasted three years, from 2008 to 2010, and an additional two years from 2011-2012 for plums only (for details of the application procedures, see section 6 of Annex 1). In the specific case of canned tomatoes, partial aid linked to cultivation, which was continued to 2010, prompted a drive to make substantial investments, with a production peak in 2009.[1]

3. Article 54 (2) does not relate to tomatoes but is a provision applying to other fruit and vegetable crops which are included in different national ceilings as shown in Table 2 of Annex X. That part of Annex X clearly describes the component of national ceilings referred to in Article 54(2). Therefore the observation that the national ceiling for tomatoes reduced to an amount of 75 % of the national ceiling is incorrect. SPC's submission of 24 August included attachments showing that from January 2011 the full amount of the national ceiling corresponding to tomatoes would be available.

4. SPC disagrees with the Commission's conclusion that reduction in national ceiling can be attributed to modulation. Attachments to SPC's submissions of 24th August answer any allegations that modulation has affected the historical national ceiling. It is reasonable to assume that political and economic factors and the size of the industry would mitigate any reductions of actual payments to tomato farms. In support of this the European Commission's report on the European Agricultural Guarantee Fund[2] was examined. This showed the amount of modulation charged against the transitional tomato payments (being half of the national ceiling corresponding to tomatoes of €183,967,000):

Calendar Year	**2008**	**2009**	**2010**
Modulation	0.0	0.0	0.5
Decoupled component	92	92	92

In Euro million.

[1] Evaluation of the National Strategy for Sustainable
Operational Programmes in the Fruit and Vegetable
Sector (2012) page 35 http://ec.europa.eu/agriculture/fruit-and-vegetables/country-files/it_en.htm

[2] http://ec.europa.eu/agriculture/cap-funding/financial-reports/eagf/pdf/swd-2014-275_en.pdf Annex 33

5. Despite the recording of modulation of €500,000 in 2010,this did not change the amount included in the SPS of €183,967,000 as shown in the agriregioni and Translateagri attachments to SPC's 24 August submission:

   As from January 2011 will be paid on 100 % of the amount accrued up to a maximum of 183,967,000 euro. From 2011 on they will be awarded 100 % of national ceiling in the form of entitlements (sic)

6. To understand any likely impact of modulation subsequent to the national ceiling corresponding to tomatoes being completely included in the SPS the annual reports of the EAGF [3]were examined. The total amount paid out by Italy under the heading "decoupled direct aids" increased over the transitional period (2008-2010) and also from 2011 when tomatoes were completely included in the SPS. Modulation was put on hold in 2014.[4]

Calendar Year	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Italy	3206.6	3396.9	3517.7	3679.2	3802.7	3832.2
2008-2010 Avg annual % change			4.8			
Total % change			9.7			
2008-2013 Avg annual % change						3.7
Total % change						19.5
2011-2013 Avg annual % change						2.1
Total % change						4.2

In Euro million.2013 is the latest year available.

7. This shows that the argument that decoupled direct aids have reduced because of modulation is not correct.

   Therefore there is no evidence to support the observation that modulation reduced the historical payments to tomato farms.

   SEF Comment:

   The LECA report stated that an average of €775 per hectare was paid to tomato growers under the CAP in 2011. The figure has been quoted in the article by Solazzo, as referenced in the LECA report and has been substantiated by LECA using FADN data (page 61)

   SPC comment:

8. SPC has submitted various comments highlighting concerns with use of data in LECA report. But LECA report takes its figures from Table 3 of the Solazzo paper. The source of those figures is attributed to the authors' "own elaboration-Therefore it is not clear if LECA has been able to independently substantiate the figures using FADN data that Solazzo has used in its PMP model.

[3] European Agricultural Guarantee Fund http://ec.europa.eu/agriculture/cap-funding/financial-reports/eagf/index_en.htm

[4] Exporters' Annex, UNAPROA EPR 049

SEF comment:

However, as Rickard and Sumner correctly point out, during the transition period, growers of tomatoes were also entitled to an additional Single Farm Payment (SFP) at 50% of the full base rate on support they received between 2000 and 2002 (page 61)

SPC comment:

9. The base years said to apply to tomatoes are not correct. When decoupling was introduced in Italy in 2005, tomatoes were excluded and the base years 2000 and 2002 reflect the time that EC Regulation 1782/2003 was introduced in Italy for other products. Regulation 1782/2003 was amended by EC Regulation 1182/2007 to include fruit and vegetables. In Regulation 1182/2007 provision was made for the establishment of different "representative periods" with different years. (Paragraph 21 of the Application).These base years (2004, 2005, 2006) are also confirmed in the exporters' submission.[5]

SEF comment:

They further point out that beyond 2011 growers of tomatoes will only receive one SFP under the SPS, but at the full rate of support received during 2000 to 2002. It is apparent from this evidence that while a per tonne subsidy is removed from the CAP beyond 2011, indicating that decoupling has in theory occurred, growers of tomatoes still have access to approximately €138 million, that being 75% of the full ceiling allocated to tomatoes in 2011, as part of the SPS.(page 62)

SPC comment:

10. The single farm payment which disbursed the amount under the superseded national ceiling corresponding to tomatoes commenced in 2011. The Solazzo paper correctly explains the transition period:

For processing tomato, Italy opted for the three year transition period (2008-2010) maintaining coupled payments at 50% of the national ceiling until the end of 2010. Fully decoupled payments, implemented since 2011, may partly explain the decline in tomato production. Nevertheless, thanks to the prices agreed with the processing industry, which were higher than those in the period before the reform, the reduction in output was not so large as it could have been.[6]

11. As pointed out above the national ceiling corresponding to tomatoes did not reduce to €138Million and the base years were 2004-2006.

SEF comment

Based on FADN data, the subsidy per hectare received by tomato farms in Emilia Romagna (one of the major tomato production regions in Italy and one where there is a very high degree of specialisation with almost half of the entire horticultural area covered by processing tomato) was on average €775/ha for 2011(page 63)

SPC comment:

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[5] EPR 049 Annex 1, in paragraph 3 under "Who would benefit of the decoupled aid" is shown the base period for tomatoes (2004,2005 and 2006). In paragraph 1 Annex 1 mention is made of the base years 2000,2001, and 2002 which applied to other products when direct payments were introduced in Italy in 2005

[6] Solazzo, section 2.Copy attached.

12. SPC reminds the Commission of its concerns relating to the use of the LECA/Solazzo data in determining the level of subsidy and flow on. It is asserted that the FADN data did not relate solely to the production of tomatoes, other crops are grown on tomato farms[7]. It is based on a small sample size and small number of tomato farms within the sample. Therefore the variable costs were not solely for tomatoes. LECA report made no attempt to reconcile its observations on subsidy levels to the national ceiling corresponding to tomatoes (which was not mentioned by LECA). Therefore the wrong level of subsidy was used,[8] the historical distortions in the Italian domestic market were overlooked and the presence of integrated firms in Emilia-Romagna was ignored.

13. The observation that "there is a very high degree of specialisation with almost half of the entire horticultural area covered by processing tomato" does not transform the Solazzo data (obtained to analyse the economic impact of greening measures) into an authoritative and reliable source of data on the subsidy received per hectare for growing tomatoes. Tomatoes (from a 2004 sample) are around 40 % of farm Gross Saleable Product in Emilia- Romagna[9] That same study notes the percentage of tomato on the average farm area in Emilia-Romagna is around 16 %.

    SEF Comment:

    If subsidy rates were reduced by 50% (from 43% to 21.5%), assuming certain market conditions (similar to that assumed in the LECA report), the Rickard and Sumner (2008) model estimates the flow-on increase in the cost of raw tomatoes to prepared or preserved tomato producers is 12.2%.(page 65)

    SPC comment

14. The Commission notes that the market conditions assumed in the Rickard paper are similar to the assumptions in the LECA report. However the conclusions in the Rickard analysis are significantly different from the LECA conclusions in Table 13 of the LECA report. The main reason is that Rickard has identified the correct level of subsidy (which is similar to SPC's assessment). Using a conversion of 73.07 tonnes per hectare, the €34.5 per tonne paid as it was as a production subsidy equates to €2,521 (rounded) per hectare .Hence Rickard uses a subsidy per kg of €0.0345 compared with the LECA value of €0.0106 per kg in Table 13 of the LECA report. The Commission has evaluated flow on using the Rickard (2008) model. On the assumption that there was a 50 % reduction in EU domestic support, Rickard has identified an increase in the cost of raw tomatoes to the processors of 12.2 %. But the key question to be asked is what the effect would be if the entire (100%) subsidy is removed~~.~~ In the absence of the detail required to run the Rickard model with the assumption that all EU domestic support is removed, it is reasonable to estimate that the 12.2 % increases to 24.4 % (17.7 % with flow on using elasticities from the LECA document) .To put this estimated increase of 24.4% in perspective, the AIIPA (Italian Food Products Sector Association) suggested that a 30 % increase (21.8 % with flow on using elasticities from the LECA document) in the tomato price as a possible reaction

[7] Possible Impact of the New Fruit And Vegetable Common Market Organisation Reform on the Industrial Tomato Supply Chain in Italy : Filippo Arfini, Michele Donati, Corrado Giacomini (2008),page 5 See also Solazzo Figure 3 http://tinyurl.com/p56hqek

[8] Direct EU payments are separated from complementary national payments, while decoupled payments are registered under one heading in the [FADN] farm return. In this way the connection of subsidies to production and products is very difficult :Farm Accountancy Framwork and Cost Definitions .FACEPA 2009 http://tinyurl.com/q9n7rsh

[9] Solazzo, page 12. The sample was based on 453 farms, of which 36 were processing tomato farms. The study in fn 7 sampled 97 farm types "Fruit and Vegetables" of which 67 were in Emilia-Romagna

to a decline in industrial tomato growing with full decoupling.[10] That is, even with the retention of a subsidy, Italian tomato processors have conceded that they would increase canned prices following the same approach used for the SEF's evaluation of Rickard.

SEF comment

Overlaying the market conditions for prepared or preserved tomatoes as per the LECA model (assuming 73% of the cost flows-on), a 12.2% increase in production cost leads to an 8.9% increase in prepared or preserved tomato prices (page 65)

SPC comment

15. Having identified the 12.2 % should be around 24.4 % then the theoretical increase in the price of prepared or preserved tomatoes identified by the Commission should be 17.7 % (24.4 * 72.73 %) and not 8.9 % . This adjusted flow on is significantly different from SPC's estimate of the LECA flow on price impact which is estimated to be less than 3%. SPC reiterates that for the purposes of establishing market situation, it is not the Commission's role to speculate how the market might react to a theoretical cost increase. There is, therefore no justification to make assumptions based on outdated elasticities (obtained in 1967-1975) as argued in SPC's submission of 13 August 2015.

SEF comment

However, Rickard and Sumner (2011) pointed out that the CAP payment fell by half to €17.25/ton between 2008 and 2011 (page 65)

SPC comment

16. The Rickard paper also notes tomato growers also receive a single farm payment equating to half the rate of the coupled support (SEF page 61).So the total CAP payment allocated to tomato growers did not actually reduce. Rickard refers to the transition period 2008-2011 as mentioned in Regulation 73/2009 (see paragraph 1 of this submission). But as noted in paragraph 2 of this submission (and elsewhere) Italy chose a transition period for tomatoes which commenced in 2008 and ended in 2010

SEF comment

To the extent that the CAP payments have been reduced since 2011, the estimated 8.9% flow-on impact on final prepared or preserved tomato prices is likely an over-estimate. (Page 65)

SPC comment

17. As the Italian national ceiling corresponding to tomatoes has been locked in to the SPS and has not reduced, the theoretical calculations are not likely to have been overestimated. The Commission's use of the Rickard data does not appear to have taken into account that the estimated flow on in the Rickard paper is derived from a 50 % reduction in EU domestic support.

SEF comment

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[10] fn 7 page 5

SPCA assumed a CAP payment of €2801/ha and yield of 73t/ha. This equates to a subsidy of €38/tonne (page 65)

SPC comment

18. The footnote to this comment in the SEF says that this figure was derived from the national ceiling applying in 2011 and divided by the hectares of tomatoes grown in 2011. SPC's calculation was explained in the confidential attachment to the submission of 24 July. The amount available to historical payments in 2014 is the same as available in the first year the SPS applied to tomatoes (2011: € 183,967,000). The denominator was obtained from the application (paragraph 26) which showed a chart of actual tomato hectares up to 2013 and estimated hectares in 2014 of 65,672.[11] Actual data on payments to tomato farms is available from the Italian government agency AGEA but that information has not been supplied.

SEF comment

The subsidy rate calculated by SPCA uses a different method to LECA. The LECA report calculates subsidy rate as a proportion of variable costs (net of the subsidy), whereas SPCA calculated the subsidy rate as a proportion of price received for raw tomatoes (page 66)

SPC comment

19. The variable costs and subsidy sourced from Solazzo are not solely associated with tomatoes and are therefore unreliable. SPC's own assessment of the subsidy on the raw tomato price being 42 % is similar to Rickard's 43 %.
20. SPC's analysis of the subsidy impact for the purpose of establishing market situation uses a similar starting point as Rickard. When applying €2801 per hectare in LECA's "cross check" tables (12 and 13) the subsidy impact is material.[12]

SEF comment

The exporter has submitted suggested adjustments to variables in the LECA report to arrive at alternative flow-on impacts on prepared or preserved tomatoes prices (e.g. use a higher variable cost, using gross variable costs in calculating subsidy rate, excluding transportation cost in the price of raw tomatoes). The exporters in particular referred to a report produced by SAFE, who was engaged by the exporters to estimate the variable costs of producing tomatoes (page 66)

SPC comment

21. The use of theoretical variable costs (which are not solely related to tomatoes) in assessing a subsidy impact in order to establish market situation (and this also applies to LECA) does not have a place in an investigation that should examine actual verifiable information The variable costs must be separated from other on farm costs such that the Commission can be satisfied on the effects of the subsidy on actual costs of producing tomatoes, both variable and fixed.

SEF comment

[11] The source of this figure was the industry publication Tomato News. In 2012 this showed hectares planted in tomatoes as 61,900 compared with the Commission's GAIN figure of 67,586 (SEF page 26).Rickard uses Tomato News as a source.
[12] See attached confidential attachment

The relevant evidence obtained by the Commission about the CAP underlines the potential extent to which subsidies per hectare are being paid to growers of tomatoes in Italy. The Commission notes that the key variables in all of the potential flow-on impacts modelled above are the CAP payment per hectare, and the variable cost of raw tomato production. (Page 66)

SPC comment

22. The relevant evidence obtained by the Commission is the LECA/Solazzo figure of €776, per hectare,[13] the Rickard figure of €2521, SPC's figure of €2801 and the €776 (from LECA/Solazzo) used by the exporters. The Rickard figure and SPC's figure then relates to the origin of the national ceiling figure referred to in section 6.3.4 of the SEF. The most reliable estimate of the subsidy per hectare is the national ceiling corresponding to tomatoes divided by the appropriate hectares in 2014. It is not safe to base any assessment on a subsidy figure affected by non-tomato crop subsidies[14] and on theoretical and unverifiable variable costs (which are obtained from deducting an incorrect subsidy value) .The FADN data sourced by Solazzo and used by LECA does not give "the variable cost of raw tomato production". It provides an indication of the variable costs of farm production which includes, amongst other crops, the hectares growing tomatoes.

SEF comment

Based on calculations 1-4, the Commission observed that the possible range of flow-on impacts from the CAP payments to growers of tomatoes on the final prepared or preserved tomatoes price is [ ] % - 8.9%. The Commission considers that the extremes are likely to be over and under estimates of price impact, if any (page 66)

SPC comment

23. One of the low values in the range is understood to be from LECA.[15] This amount of flow on is low because it is derived from a very low value per hectare (influenced by other crop subsidies) when compared with an actual known amount based on historical payments related to tomato hectares only. SPC is of the view that this value is unreliable and is not suitable for the purpose of the assessment of market situation.

As SPC has noted previously a movement in retail prices of a small percentage in fast moving consumer goods is significant in changing the market dynamics.

The SEF said that the 8.9 % was an overestimate because the national ceiling corresponding to tomatoes (CAP payments) was reduced. As has been explained, this reduction did not indeed occur. Therefore, the corrected 17.7 %, assuming the same elasticities, (instead of the SEF's 8.9 %) must be taken into account in the Commission's assessment of flow on.

SEF comment

Having regard to the scale of the possible price effects, if any, the Commission is of the view that there is not a situation in the market in Italy for prepared of preserved tomatoes that renders the

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[13] Solazzo, Table 3.If LECA is correct in using this value then the national ceiling corresponding to tomatoes reduces to around €51 million from €184 million.

[14]fn 9 In Emilia-Romagna, there are more alternatives to tomato, such as cereal, fodder crops for livestock and sugar beet and the tomato share of income is significant but not dominant.(page 5)

[15] The other low value would be from the exporters as that calculation uses the LECA/Solazzo subsidy value.

sales in Italy of prepared or preserved tomatoes unsuitable for use in determining normal value under subsection 269TAC (1) of the Act. (Page 67)

SPC comment

24. SPC disagrees that there could possibly be no price effects if the cost of raw tomatoes increased. Such an observation is not commercially realistic. The price of canned tomatoes in Italy has clearly been far removed from a competitive market price since support under various CAP policies has been delivered to the tomato industry. These policies have also been relevant in the supply of tomatoes to processors. In the Dumping and Subsidy Manual the effect of market distortions on domestic prices is noted:

    A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market (page 34)

25. SPC has argued that if the full raw tomato cost in Italy was in the CTMS of the domestic sellers of PPT that there would be clear evidence that domestic prices are artificially low and would not be substantially the same in a competitive market.

SPC requests the Commission to reconsider its conclusion on the effect of market distortions on domestic prices.

Having reviewed the calculations relevant to the replacement costs of raw tomatoes SPC now examines the SEF's assessment of dumping.

SEF comment

Having considered all available relevant evidence, the Commission has estimated a per hectare payment made to growers of tomatoes in Italy under the CAP. Noting that, under Article 54(2)(b) of EC Regulation 73/2009, 75% of the national ceiling for tomatoes was available to growers of tomatoes as of 1 January 2012 and having established the total hectares grown in 2012, the Commission has calculated a subsidy rate of €2041 per hectare by dividing the total hectares into the amount available under the national ceiling for tomatoes (page 26)

SPC comment

26. As demonstrated above Article 54 (2) does not apply to tomatoes and therefore there is no reduction as stated above. The evidence shows that the national ceiling corresponding to tomatoes as mentioned in Article 54(1) was fully absorbed into the SPS in 2011. This amount based on historical payments has continued and was available to the growers of tomatoes in the investigation period. The estimated hectares in 2014 from "Tomato News" is a verifiable input into the Commission's calculation.[16] This gives a subsidy rate of €2,801 per hectare in the investigation period.

This new value will increase the dumping margins set out in section 6.4 of the SEF.

Material Injury

27. SPC notes that the Commission's assessment of material injury is similar to REP 276 but based on the updated information supplied to the Commission. Accordingly SPC does not have any further comment on material injury

[16] Rickard uses Tomato News as a source

Conclusion

- The national ceiling needs to be adjusted back to €183,967,000 as used in the determination of dumping margins.

- The 2014 hectares should be used.

- The Rickard flow on effect needs to be reconsidered by the Commission in its assessment of the impact of historical payments on canned tomato prices.

- SPC does not agree with the flow on analysis assuming that the full cost of non-subsidised tomatoes would not impact on the price of PPT. The Commission's role does not extend to speculating on market behaviour. It only has to be satisfied that there has been a distortion in prices.

- The impact identified in the confidential attachment is substantial given the nature of a fast moving consumer good.

- The prices of PPT are artificially low and would not be substantially the same if the subsidy was removed.

- Without subsidies the supply of raw tomatoes for processing would affect the processing industry

- The use of academic and theoretical models should not replace the use of actual data

- The inconsistencies with the LECA model's subsidy value should be recognised

SPC is able to provide further information should this be required.

Confidential Attachment to SPC 24 September 2015 submission recalculating table 12 and 13 of LECA