



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade Defence
The DirectorBrussels, 17.11.2015
trade.dga2.h.5(2015)5678800**Mr Dale Seymour**The Commissioner of the Anti-Dumping
Commission
GPO Box 1632
Melbourne VIC 3001
Australia

Dear Mr Seymour,

Dear Dale

I would like to thank you for your visit to Brussels on 3 November. I welcome the good cooperation between our respective services on trade defence matters, particularly in multilateral fora.

We have also discussed during your visit the specific case concerning canned tomatoes from Italy. I welcome the Anti-Dumping Commission's (ADC) decision to extend the investigation time in this very complex case. As I have indicated, we are ready to contribute and I hope that our discussion in Brussels helped to clarify some of the arguments already raised by the European Commission in previous submissions to the ADC.

As you know, this case has raised significant concerns from the very outset when you decided to investigate the EU's Green-Box agricultural support as leading to a particular market situation. Procedurally, in our view, this initiation was premature in relation to the negative findings of dumping in 2014 for the two Italian companies concerned.

On substance, while you have concluded that there was no particular market situation triggered by support to raw tomato farmers, you have questioned the competitiveness of raw tomato prices. These findings are in our view contradictory. A negative finding on the existence of a particular market situation in relation to certain inputs is incompatible with a finding of distortion of these same inputs.

In addition, the erroneous finding that input prices were not competitive is not even supported by any evidence or benchmark.¹ Indeed, Italian raw tomato prices in 2014 (95 €/tonne in South Italy) were higher than in California (70,40 €/tonne – a recognized benchmark) and certainly higher than in Australia (63,5 €/tonne)². The above information

¹ This seems to contradict your practice in other cases, for example in Report No. 237, Anti-dumping investigation on imports of Silicon Metal exported from China. Non-confidential Appendix 2, *Assessment of reasonableness of electricity costs and determination of a competitive market substitute price*.

² OEIT, European Organisation of Tomato Industries.

confirms the findings of your previous investigation, where the ADC established that prices in Italy were "*either similar or higher*"³ than tomato prices in Australia.

Further, the cost adjustment is based on an incorrect legal provision and even assumes incorrectly a 100% pass through to the tomato processors. The ADC's calculation is based on information outside the timeframe of the investigation: the amount of coupled payments in 2010, four years before the investigation period. There are no coupled payments in 2014 and no justification for any adjustment for that year.

The Australian complainant has argued that since the amount of the EU aids was based on levels of production in 2004-2006, these aids are necessarily still coupled to production in the investigation period. This is however a wrong conclusion. In fact, the use of a reference period is unavoidable in order to define a certain amount of aid per hectare of eligible land once the new system was introduced⁴ – and this is in fact allowed by the WTO Agreement on Agriculture. Entitlements are tradable and are now directly and only linked to the surface of eligible land (independent of the crop). A tomato farmer can also decide to change crop or cease production while keeping the entitlement. This is why there is no track of the actual amount currently received by specific sectors.

As we have stated on numerous occasions, our common agricultural policy was reformed and the Single Payment Scheme⁵ is now completely decoupled. It is a non-specific income support system which is fully compatible with the WTO requirements. As a Green-Box measure it has no trade distorting effects. Agricultural policy sets comprehensive conditions for farming for the sake of ensuring broad goals of food security and food quality, as well as environment protection in rural areas.

I trust that we have provided an additional insight to this case and I remain at your disposal in case you need further explanations.

Yours sincerely,



Leopoldo Rubinacci

Copy: Tamaz Maczak (TRADE C2), Benjamin Slatter (EU DEL CANBERRA), Ivano Casella (EU DEL CANBERRA), Demos Spatharis, Frederich Michiels, Gemma Serra-Blasco,

³ Final report 217. Anti-dumping investigation on processed tomatoes from Italy.

⁴ Entitlements (conditional rights to being paid EU income support) were assigned to Italian tomato farmers in 2008.

⁵ Basic Payment Scheme as from 2015.