EUROPEAN COMMISSION
Directorate-General for Trade

Directorate H - Trade defence
Investigations IV Relations with third countries for Trade defence matters

Brussels, 21 December 2015

ANTI-DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT ON IMPORTS OF PREPARED OR PRESERVED TOMATOES EXPORTED FROM ITALY BY FEGER AND LA DORIA

Written submission of the European Commission on documents

EPR 276 - Nr 068 and 070

Following a review of the complainant's submissions Nr 068 and Nr 070, the European Commission notes that some of the issues raised by the Australian producer may be misleading and has therefore decided to submit certain clarifications.

The European Commission finds that despite the alleged further evidence presented by the complainant, there are in fact no new elements contributing to the investigation. On the contrary, some information may be adding confusion to the complexity of the case. In particular, some isolated references to EU Regulations are clearly misinterpreted.

Before going into the details, the European Commission recalls that the facts under assessment clearly demonstrate that no price distortion either in the raw tomato or in the processed tomato markets in Italy could be found simply because it does not exist.

Indeed, several elements justify the conclusion that there is no particular market situation (independent expert´s report and findings of the previous investigation) and this has been correctly reflected in the Statement of Essential Facts of the current investigation.

In parallel, there is positive and clear evidence showing that input prices are not distorted since prices paid by Italian tomato processors are amongst the highest in the world, even higher than tomato prices in Australia (presumably paid by the complainant). This is in essence contradictory to the finding of the Anti-dumping Commission that input prices are distorted by the mere existence of an income support mechanism. No positive evidence[1] of any kind supports such a conclusion. In this sense, the complainant's assertions[2] that higher prices are not indicative of a competitive nature defy both logic and fact.

[1] As required by WTO law and confirmed by jurisprudence.
[2] Point 3 EPR 216 Nr 070.

Under these circumstances of -no input distortion and no particular market situation- there can be no justification for any input cost adjustments. On this basis, trying to approximate an income support amount to growers -which is clearly not passed through as evidenced by the high prices of raw tomatoes- is not even relevant to the case.

Notwithstanding the above, the European Commission considers that it is important to clarify some of the interpretations made by the complainant in the above-mentioned submissions. It is not intended to go through each and every claim since in most of the cases, explanations were already given in previous submissions. Nevertheless, the European Commission would like to refer to some of the incorrect assumptions/interpretations as a matter of example. The correct information, based on EU law is the following:

1. **The Italian ceiling corresponding to tomatoes is no longer available to tomato farmers since 2011. It was therefore not available during the investigation period.** Point 1 to 3 and 6 EPR 216 Nr 068 and Point 7 EPR 216 Nr 070

   The national component for tomatoes in Italy (EUR 183 mn) was completely transferred to the Single Payment Scheme envelope as from January 2011[3], when the transition period for decoupling for tomatoes was finalised.

   In this regard, the Decree of the Italian Minister of Agriculture from October 2013 submitted by SPC[4] refers to a completely different issue, i.e. the valuation method of the entitlements from the National Reserve[5] and not yet assigned to any hectare. This valuation is based amongst other factors on the Italian overall national ceiling. This ceiling is used as a historical reference which does not mean that the ceiling per component (e.g. tomatoes) is used in 2014. Hence, assuming that the ceiling component for tomatoes is still applicable in any way is incorrect and misleading.

   The same applies to Article 40 of Council Regulation (EC) 73/2009, which refers to the overall national ceiling and not at all to the ceiling for tomatoes. Overall national ceilings were kept at the time of decoupling in order to guarantee the split amongst countries after decoupling.

   As explained in previous submissions, the claim that the amount of the EU aids in the investigation period is still coupled to tomato production (and therefore identifiable through Council Regulation (EC) 73/2009) because they are based on levels of production in 2004-2006 is wrong and based on a gross misunderstanding of the issue. In fact, the use of a reference period is unavoidable in order to define a certain amount of aid per hectare of eligible land when the new system was introduced[6] – which is in fact allowed by the WTO Agreement on Agriculture.

[3] SPC´s submission refers to the moment of full decoupling of the tomato component of the national ceiling. As explained, it represents no evidence of the situation in 2014.
[4] EPR 276 Nr 068
[5] The National Reserve would be equivalent to the amount below the ceiling available to grant new entitlements.
[6] Entitlements (conditional rights to being paid EU income support) were assigned to Italian tomato farmers in 2008.

2. **There are no different payment entitlements for different crops**
   Point 5 EPR 216 Nr 068 and Point 6 and 7 EPR 216 Nr 070

   The assertion to the opposite is incorrect and cannot be deduced from Commission Regulation (EC) Nr. 1122/2009 as intended by the complainant.

   The Information & Reporting system related to SPS entitlements is necessary because payment entitlements are assets with a value that can be transferred amongst farmers. As foreseen in Article 7 of the above-mentioned Regulation, this database has to ensure traceability only through the following elements: holder, value, date of allocation, date of last activation, origin (i.e. purchase, lease, inheritance or other) and few others.

   The above system does not trace the sector generating the value of the entitlement for the very reason that this is not relevant for activating entitlements. Hence, the cross-check between areas and entitlements need to match so the aid can be granted. A hectare without entitlement or an entitlement without a hectare would lead to no payment.

3. **There is no obligation to show contracts with tomato processors in order to activate historical entitlements.**
   Point 1.4 EPR 216 Nr 068 and Point 5, 6 and 7 EPR 276 Nr 070

   Such an obligation would not be in line with the Council Regulation (EC) 73/2009. The activation of entitlements can be done with any type of eligible hectare. In this sense, the attachments to SPC latest submission[7] are totally irrelevant to the facts under investigation. They completely deviate from the issue and they do not relate to the investigation period.

The European Commission hopes that the elements above have shed some light to the real nature of the Single Payment Scheme mechanism as applicable in 2014. It also trusts that the Australian authorities will assess this case in full neutrality and compliance of the WTO provisions.

The European Commission remains at your disposal in case the ADC needs further explanations.

[7] EPR 276 Nr 070