



Brussels, 18 September 2024

**APPLICATION FOR THE IMPOSITION OF DUMPING AND
COUNTERVAILING DUTY NOTICES IN RESPECT OF PREPARED OR PRESERVED TOMATO
PRODUCTS EXPORTED TO AUSTRALIA FROM ITALY**

**Submission by the European Commission following the
pre-initiation consultations held on 17 September 2024**

1. INTRODUCTION

European Commission thanks the Australian Anti-Dumping Commission for the opportunity of holding pre-initiation consultations pursuant to Article 13 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) on 17 September 2024.

Unfortunately, this is not the first time that the Australian authorities target canned tomatoes from Italy in a trade defence investigation. The first measures date back from 1992.

At the outset, the European Commission would like to point out that the recent application for an AD/AS investigation, lodged by the Australian industry, is rather weak with regards to evidence showing the existence of countervailable subsidisation, as it will be explained below.

Moreover, EU decoupled support to agriculture qualifies as "Green Box" compatible, i.e. fully in line with the relevant criteria of Annex 2, paragraph 1 of the WTO Agreement on Agriculture. EU decoupled support is thus **not trade distorting** under WTO rules. It is available to all EU farmers and therefore it is **not specific** in the sense of the WTO ASCM.

2. WEAK EVIDENCE AT INITIATION

Indeed, evidence at initiation concerning subsidisation is rather weak. Most of the evidence is taken from previous antidumping investigations and is outdated. The data from 2013 and 2015 is **too far in time and cannot be used as evidence in an eventual investigation in 2024.**

In a decade, the market situation has changed considerably, and the EU Common Agricultural Policy (CAP) has undergone several profound reforms.

Furthermore, the Anti-Dumping Commission already assessed in 2016, based on the same evidence recently submitted, whether the EU decoupled payments to farmers had an effect on tomato prices in Italy. After a determination that tomato prices in Italy were found not to be “competitive market costs”¹ for EU processors (or otherwise distorting) due to subsidisation, the Anti-Dumping Commission adjusted the normal values of Italian exporters to reflect EU subsidies and increasing the dumping margins. After this decision was contested by Italy, the **Australian Anti-Dumping Review Panel (ADRP)** reversed the finding.

Moreover, there was evidence showing that prices of tomatoes in Italy were the highest in Europe and one of the highest worldwide, hence no price distortions due to CAP decoupled payments could be demonstrated. This continues to be the case, with current prices of tomatoes paid by tomato processors to farmers in Europe being the highest worldwide (estimation of 141USD/t vs. worldwide average 122 USD/t in 2024)².

If the Anti-Dumping Commission initiates an anti-subsidy investigation, it will have to demonstrate that any payments to farmers have been **passed-through** to processors of canned tomatoes and that **prices of tomatoes paid by processors are below market prices due to subsidies**. In this regard, the **Anti-Dumping Commission cannot ignore the evidence that European tomato prices are amongst the highest in the world, and hence any CAP payments are not reflected in the price of tomatoes**.

As regards the extensive reference made in the application to alleged US findings of subsidies in the context of the review on pasta, the EU fails to see the relevance of these elements for the present case considering that prepared or preserved tomatoes and pasta are two different products with different marketing and value chains. Moreover, a criterion to countervail subsidies is that the payments are specific. However, CAP payments are totally decoupled from production and the type of product.

3. CAP PAYMENTS

As the reference period covers the previous programming period (2014-2022) of the Common Agricultural Policy (CAP) as well as the current one (2023-2027), the European Commission would like to recall that the EU notified to the WTO on 7 August 2023 the essential elements of the reformed direct support schemes, rural development, sectoral interventions, and common market organisation policies under the 2023-2027 CAP (see DS:2 Notification **G/AG/N/EU/88**). The European Commission refers to this notification in relation to the allegations contained in the application.

It is also important to underline that, as acknowledged in the application itself, neither of the Australian investigations INV 217 and INV 276 concluded that the payments under various domestic support programs, which were the object of the past investigations, **operated in a manner which would have distorted competitive market conditions and would have led the Commission to consider that it could not use normal values**. The Commission recalls that payments made under the EU’s Common Agricultural Policy (CAP) – notably SPS payments at that time and support granted to fruit and vegetables producer organisations through their operational programmes - formed the main component of this assessment in both past investigations.

¹ Customs International Obligations Regulation 2015 – Subsection 43 (2)

² https://www.tomatonews.com/en/the-2024-season-processing-tomato-prices-down-11_2_2348.html

The EU would like to recall that the CAP underwent major reforms in 2003 (introduction of the Single Payment Scheme -SPS) and 2013 (introduction of the Basic Payment scheme - BPS). Compatibility with WTO rules was among the key objectives of these reforms. Farmers' payments were decoupled from the agricultural commodity produced and the volume of production to make farmers more market-oriented, reduce distortions in agricultural production and trade, and at the same time guarantee income stability by using "green box" instruments.

The BPS was complemented by a series of other decoupled support schemes targeting specific objectives, among which the 'green' direct payment for agricultural practices beneficial for the climate and the environment ("the Greening Program"). A farmer entitled to BPS payments was automatically eligible under the Greening Program if he/she applied "green" agricultural practices (regardless of whether or not the permanent crop is harvested).

Moreover, Member States could introduce, irrespective of eligibility for the BPS, coupled support payment in certain sectors, which was however marginal for the product concerned.

The current **CAP (2023-2027)** came into force in January 2023 and covers farmers' applications introduced as of 2023. Under the new policy, each EU Member State designed a national CAP Strategic Plan, combining funding for income support, rural development, and sectoral interventions.

The new **Basic Income Support for Sustainability (BISS)** is an annual decoupled payment per hectare, granted with no requirement to produce, with no link to any type or volume of production, and not related to price support. Member States can implement it as a uniform amount per hectare (currently 18 Member States do so) or based on payment entitlements established previously under the decoupled direct payments scheme. Eligibility for the BISS is a precondition for the complementary income support payments under the decoupled income scheme: Complementary redistributive income support for sustainability and Complementary income support for young farmers. Payments under the BISS and the top-ups comply with paragraph 1 of Annex 2 to the Agreement on Agriculture ("Green Box") as well as with the relevant criteria of paragraph 5 or 6 depending on whether implementation is based on payment entitlements (par. 6) or not (par. 5). Hence, they cannot be trade distorting.

Member States set up **eco-schemes** in their CAP Strategic Plans. These are voluntary for farmers. They can take form of a payment granted either for, and remunerating, the provision of public goods by agricultural practices beneficial to the environment and climate (additional to the BISS payment), or as compensation for carrying out those practices. Payments under the schemes for the climate, the environment and animal welfare are not related to price support and are granted with **no requirement to produce and with no link to any type or volume of production**. If they are additional payments to the BISS, the eco-schemes are likewise Green-Box compatible, and hence not trade distortive, for the reasons explained in the BISS section.

Article 10 of Regulation (EU) 2021/2115 explicitly stipulates that the BISS and the top-up payments as well as the eco-schemes shall qualify under specific criteria of the Green Box as indicated in Annex II to this Regulation for those interventions. This makes their non trade-distortive design obvious.

Moreover, under the terms of the WTO ASCM, a subsidy would need to be *specific* to be actionable. The application has failed to address this point in a convincing way, which constitutes a serious shortcoming on one of the key requirements of the WTO rules for such investigations.

Decoupled payments under the BPS and BISS schemes **are available to all EU farmers**, irrespective of whether they produce or not, and regardless of type and volume of agriculture production. Moreover, in accordance with Article 2.1 (b) of the ASCM, Regulation (EU) No 1307/2013 and Regulation (EU) No 2021/2115 establish **objective criteria governing the eligibility for, and the amount of**, direct payments under BPS and BISS. Those conditions and criteria have been strictly adhered to by the granting authority. The **eligibility has been automatic** since every EU farmer who complies with the criteria is entitled to receive payments under the BPS and the BISS schemes. **For this reason, these payments are not specific to tomato production or any other sector in the EU.**

The EU would like to recall that in the context of the review of **Anti-Dumping and Countervailing duties on refined sugar by Canada**, the Canadian authorities acknowledged that, due to the general availability of decoupled payments to all agricultural producers, decoupled support to farmers under the CAP is not specific (to sugar or any other sector) and is not actionable and therefore no countervailing duties can be applied on this basis.

Similarly, the WTO Panel report in the case DS 577 on **olives from Spain** found that the US had erroneously concluded that the EU BPS subsidies were specific and targeted to olives producers.

As regards **Voluntary Coupled Support (VCS)**, a limited budget may, when duly justified and under certain conditions, be provided as coupled support to specific agricultural sectors. VCS, a production-limiting scheme, could be granted under the 2014-2022 CAP to specific types of farming or specific agricultural sectors that were particularly important for economic, social or environmental reasons, when undergoing difficulties. Coupled income support (CIS) under the CAP 2023-2027 may be similarly provided to address the difficulties encountered by certain agricultural sectors or specific types of farming, thereby improving competitiveness, sustainability or quality, where the supported sectors are important for socio-economic or environmental reasons. The support is subject to various important conditions and strict limits to mitigate the risk of market distortion. Tomato production for processing in Italy has a lower profitability than other sectors, and the support is not expected to increase the production.

As regards **sectoral interventions** in the fruit and vegetables sector regulated under Regulation (EU) 2021/2115, they meet the criteria laid out in paragraphs 1 and 2 of Annex 2 to the WTO Agreement on Agriculture (Green Box) as specified in Article 10 and in Annex II of that Regulation. Additionally, payments cover only costs incurred/income forgone under the relevant paragraph 12 of WTO Annex 2.

On **pass-through**, the Commission would like to recall that, if a benefit is granted to a recipient other than the producer of the product concerned, such as the supplier of an upstream input product, the investigating authority must undertake a pass-through analysis. The requirement for a pass-through analysis flows from GATT Article VI:3 and Articles 10 and 32.1 of the ASCM and requires to demonstrate that any benefit was passed down to the producer of the product concerned. As already mentioned, the

Commission considers that the elements contained in the application in this respect satisfy the standard set by the GATT and the ASCM.

In this context, the EU would like to recall that in the US/ripe olives WTO dispute, the Panel concluded that the US failed to demonstrate that EU CAP subsidies were ‘passed through’ to processors.

4. INJURY AND CAUSAL LINK

While the European Commission understands that the main purpose of the consultations under Article 13 of the WTO ASCM is to provide information on the subsidy schemes challenged, we nevertheless wish to make some additional comments.

On the basis of the complaint, the European Commission has difficulties in identifying the existence of a **causal link between imports from Italy and injury suffered by the complainant**.

Imports from Italy decreased in line with depressed demand in Australia since 2022. SPC claims that it has lost market share, but their sales remained stable, or even increased at some point during the investigation period, while demand declined. **SPC sales only decreased sharply in the last year of the investigation period**, but this is caused by other factors and not by imports from Italy.

Moreover, based on EU export statistics, **the unit value of exports from Italy to Australia increased and also to the rest of the world**, in line with increasing input costs (essentially raw tomatoes). Prices of SPC have also increased but at a lower rate than prices of Italian origin exported to Australia (19.88% vs. 45% in the period April 2021 to March 2024).

Similarly, the applicant claims that the negative impact on profitability is directly attributable to imports from Italy. **In fact, SPC was already operating at a loss in 2021 and Italian imports decreased by 22%** between 2021 and 2024, while losses increased (index of profitability from -100 to -29.922 over the same period).

This clearly shows that any difficulties the domestic industry is experiencing is due to **other factors**, in particular:

- The **Australian market of processed tomatoes has decreased around 23%** in the investigation period (2021-2024). Consequently, both SPC and Italian sales volumes declined.
- It appears that in October 2023, according to SPC **“Goulburn Valley was hit with bad flooding days before our harvest. Unfortunately, this led to a significant loss of tomatoes”**. This appears to be the likely reason why SPC’s sales decreased sharply in 2024, while sales slightly increase between 2021 and 2023.

In this regard, injury caused by other factors may not be attributed to imports.

Based on the above, the European Commission considers that the claim of material injury as a result of imports is unfounded.

5. CONCLUSION

For the reasons stated above, the application **does not contain sufficient evidence according to Article 11.2 of the WTO ASCM** to justify the initiation of an anti-subsidy investigation in respect of prepared or preserved tomato products from Italy, exported to Australia. The arguments presented are flawed and do not support the request presented in the application.

We would also like to highlight that a number of European agricultural products, namely brandy, pork and dairy products are currently subject to highly dubious investigations by China. These investigations are clearly retaliatory in nature, aiming to blackmail the EU to not impose duties on our electric vehicles case. Such abusive, retaliatory use of trade defence by China is not unknown to Australia. These investigations are creating significant political tension in several EU Member States, and the initiation of further investigations targeting EU agricultural products, especially on the basis of questionable evidence, would be very badly perceived.

The European Commission therefore urges Australia not to accept this application.