



Brussels, 31 October 2024

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

**Submission by the European Commission following the
second consultations held on 31 October 2024**

1. INTRODUCTION

The European Commission thanks the Australian Anti-Dumping Commission for the opportunity of holding these second consultations pursuant to Article 13 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) on 31 October 2024.

Further to the elements we already raised during the pre-initiation consultations, the European Commission would like to raise some more general issues and also specific points relating to the investigation and in particular to the questionnaires.

2. GENERAL CONCERNS

As mentioned in the pre-initiation consultations on 17 September, the European Commission is very concerned about this investigation for the following substantive reasons:

1. the insufficiency of the evidence at initiation, e.g.
 - subsidy information from 10 years ago,
 - lack of a proper pass-through analysis,
 - referring to the US countervailing measures applied to pasta from Italy,
2. the non-countervailable nature of the CAP's (non-specific) direct payments to tomato growers, following extensive reforms;
3. the lack of a causal link between any alleged injury and Italian imports.

This investigation is very badly perceived by the EU agricultural constituency, especially given the current context of retaliatory cases from China (which Australia has also experienced on wine).

This investigation will be subject to close political scrutiny from the EU.

3. SPECIFIC CONCERNS REGARDING THE QUESTIONNAIRE

The questionnaire includes very extensive questions regarding subsidy programs, often requesting very detailed information going back decades that in no way seems necessary or that could reasonably be made available.

Specifically, the questionnaire targets 84 programs and 99 companies.

However, according to Article 11.2 of the WTO ASCM, in order for an investigation to be initiated, the application shall include **sufficient evidence of the existence of a subsidy**, injury and a causal link.

Nevertheless, the complaint simply lists programs almost randomly, without any evidence that these programs still exist or are in any way relevant to the product concerned.

Thus, the Commission respectfully requests to limit the investigation to those programs where there is indeed **sufficient evidence of their existence, that they are relevant to the product concerned and cause injury**.

Furthermore, it appears that 99 companies are supposed to reply to the full questionnaire, which seems not feasible and unreasonable. Therefore, sampling as provided for in Section 269TACAA of the Customs Act 1901 should be applied.

As Australia clarified during the consultations, it appears that sampling is indeed being applied. However, in particular the questionnaire for Italy e.g. in question C3.6, requests information for programs dating back to the sixties and eighties and which should be provided for 99 companies. Therefore, as explained above, we would like to request that Australia limits the investigation to those programs where there is indeed **sufficient evidence of their existence, that they are relevant to the product concerned and cause injury**, and reduces the information requested to a reasonable amount and a reasonable number of companies.

4. CAP PAYMENTS

Regarding payments made under the CAP, reference is made to the arguments submitted in the context of the pre-consultations.

In particular, due to their general availability to all agricultural producers, decoupled payments under the BPS and BISS schemes are not specific to tomato production or any other sector in the EU, and hence not actionable or countervailable. This was acknowledged by the Canadian authorities in the context of the review of Anti-Dumping and Countervailing duties on refined sugar by Canada. 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.

Coupled support is subject to various important conditions and strict limits to mitigate the risk of market distortion; it is not expected to increase the production.

Moreover, as regards the necessity to establish a causal link between imports from Italy and injury suffered by the complainant, it is inconceivable to assume such a link, having regard to the increase - in line with increasing input costs (essentially raw tomatoes) - of the unit value of exports of the products concerned from Italy to Australia in the period April 2021 to March 2024.

5. CONCLUSION

The European Commission reiterates its position that the evidentiary basis of this investigation is insufficient and that it should not have been initiated.

The European Commission therefore calls on the Australian authorities to terminate the investigation without further delay.

In the meanwhile, and notwithstanding our strong concerns about the merits of the investigation, we would like to underline that the EU and the Italian authorities will fully cooperate in the investigation.

However, some of the information requested is manifestly excessive and not necessary for determining any potential impact on Australian producers of allegedly subsidised imports of Italian preserved tomatoes in the investigation period.

As regards the subsidy schemes, we would like to signal that the EU and Italian authorities will only be providing information on support schemes which is reasonably available to us and can be considered to still have an effect during the investigation period.

We trust that the investigating authority will address these important systemic and practical issues so that the investigation can proceed in an objective and reasonable manner.