

Anti-Dumping Review Panel

**Prepared or Preserved Tomatoes Exported from
the Republic of Italy by all exporters except
Feger di Gerardo Ferraioli, La Doria and AR
Industrie Alimentari and Prepared or Preserved
Tomatoes Exported from the Republic of Italy by
AR Industrie Alimentari**

Submission by Anicav

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INTRODUCTION

On 25 May 2016, the Anti-Dumping Commission (the '**ADC**') initiated an interim review ('**Review 354**') of the anti-dumping measures applicable to certain prepared or preserved tomatoes ('**PPTs**') exported to Australia from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A.

On 5 April 2017, the ADC concluded the investigation by adopting the Final Report No. 349 and 354 (the '**REP 349/354**'). On 4 May 2017, on the basis of the recommendations contained in the REP 349/354, the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science published the Anti-Dumping Notices No. 2017/46 and No. 2017/47 amending the anti-dumping measures in relation to imports of PPTs exported from Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A. (the '**reviewable decision**').

On 11 July 2017, the Anti-Dumping Review Panel ('**ADRP**') published a notice under section 269ZZI of the Act, indicating its intention to conduct a review following an application filed by, *inter alia*, SPC Ardmona ('**SPCA**').

In accordance with its rights as an interested party within the meaning of Section 269ZZJ of the Act, the association of Italian PPTs producers ('**Anicav**') would like to submit comments on each of the six grounds of review contained in SPCA's application for review.

1. FIRST GROUND: THE ADC INAPPROPRIATELY RELIED ON DATA TO THE EXCLUSION OF OTHER DATA IN CONCLUDING THAT THE EVIDENCE SUPPLIED BY FEGER AND LA DORIA IN REP 360 WAS RELIABLE IN ASSESSING THE IMPACT OF HISTORICAL TOMATO CAP PAYMENTS AND NEW PAYMENTS RECEIVED BY TOMATO GROWERS SUPPLYING OTHER EXPORTERS IN REP 349/354.

The first ground of review contained in SPCA's application is composed of three different limbs, which will be analysed, in turn, in the following sections.

1.1 The ADC did not consider that 2014 became the base year for the new Basic Payment Scheme (BPS) introduced in January 2015

With the first limb of the first ground of review, SPCA claims, in substance, that the ADC failed to take into account that the legislation concerning the direct payments granted to farmers under the Common Agricultural Policy ('**CAP**') changed between the investigation period of REP 276 (calendar year 2014) and the investigation period of REP 354 (1 April 2015 – 30 March 2016). According to SPCA, in light of the new

legislative framework, the Italian tomato growers received a subsidy of 2,540 €/ha in 2015. In this respect, the following should be noted.

As SPCA noted, as from the year 2015, the direct payments granted to farmers under the CAP have been modified as follows:

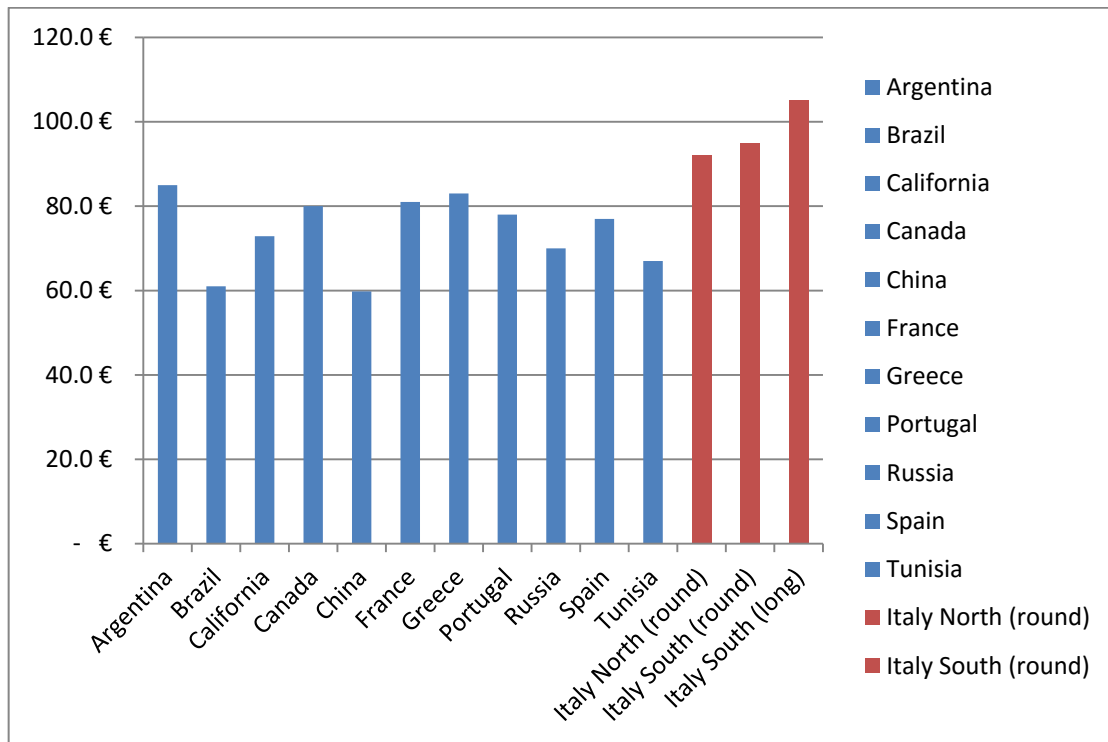
- the Single Payment Scheme ('**SPS**') has been replaced by the Basic Payment Scheme ('**BPS**'), in combination with the Greening Payment Scheme ('**GPS**') and the Young Farmer Payment ('**YFP**'). All these schemes have the same basic characteristics of the SPS, i.e. they are non-specific and fully decoupled from production. This means that all the eligible farmers – whether or not tomato growers – are granted a payment, irrespective of what they produce, and the volume of their production. The amount of the payment depends on the number and value of the entitlements held by each particular farmer;
- in addition, the Italian Government has introduced a coupled support scheme for a limited number of agricultural products, including tomatoes for processing. The coupled support for tomatoes amounts to 160 €/ton.

That said, it should be noted that the 're-modulation' of the direct payments granted to farmers (including tomato growers) described above, has not changed the substance of the income support schemes provided for by the CAP. In fact:

- despite the reform of the CAP, the total budget allotted to direct payments to farmers has not increased (on the contrary, the national ceiling has slightly decreased between 2014 and 2015).¹ In fact, the new schemes introduced in 2015 are financed with the same resources previously used to finance the SPS (the BPS accounts for 58% of the national ceiling, the GPS accounts for 30%, the YFP accounts for 1% and the coupled support accounts for 11%);
- like the SPS, the BPS, GPS and YFP - which account for the largest part of the national ceiling (89%) - are **non-specific** and **fully decoupled** income support schemes. As such, they cannot produce trade-distorting effects and must be considered 'green-box' measures fully compliant with the requirements of the WTO Agreement on Agriculture. In fact, since all farmers receive the payments irrespective of whether, what and how much they produce, the decision to grow any crop (including tomatoes) is a purely profit-driven decision;
- the coupled payment granted to Italian tomato growers is clearly **negligible** as it amounts to 160 €/ha only, i.e. about 0.0022 €/kg (the production yield being 73,000 kg/ha). Moreover, the available evidence demonstrates that the newly introduced coupled payment has not produced distortive effects. In this

¹ The national ceiling amounted to 3.953.394 000/€ in 2014 (see Regulation (EU) No 1310/2013, Annex II) and 3.902.039 000/€ in 2015 (see Regulation (UE) No 1307/2013, Annex III).

regard suffice it to note that in 2015 the market price of raw tomatoes in Italy (92 €/ton for round tomatoes in Northern Italy; 95 €/ton for round tomatoes in Southern Italy; 105 €/ton for long tomatoes in Southern Italy) was amongst the highest in the world (see chart below).



*Source: Anicav (Italy) and WTPC (rest of the world)

Therefore it must be concluded that - although the legislative framework was slightly amended between 2014 and 2015 - the substance of the direct payments granted to farmers under the CAP, as well as the impact of these payments, has not changed (see also section 1.2 below).

Finally, with regard to the calculation contained in Table 1 of SPCA's application for review - which aims at demonstrating that *'the historical sector specific amount allocated to tomatoes in 2014 has continued under a new delivery system in 2015'* - it should be recalled that, as repeatedly explained during the investigation No. 276, starting from the year 2003, the *'ad hoc'* national funds dedicated to each agricultural product were progressively transferred and merged into a single national fund aimed at financing the payments granted under the SPS (now BPS). In particular, the *'ad hoc'* national ceiling for tomatoes (allegedly amounting to € 183,970,000 plus a 3% increase as from 2015, giving a total of € 187,476,301) ceased to exist at the end of 2010, when the SPS was fully implemented also with regard to tomatoes. Therefore, the *'ad hoc'* national ceiling for tomatoes no longer exists. It follows that the

calculations made in Table 1 of SPCA's application for review are not of any use in determining an *'updated hectare amount'* of the alleged subsidy, as they are based on out of date and/ or wrong information.

1.2 The ADC failed to examine the Regulations which show that the value of individual historical entitlements is recorded at the time a farmer applies for the total subsidy

With the second limb of the first ground of review, SPCA claims that the conclusions contained in REP 349/354 were based on *'selected information'* provided by Feger and La Doria in REP 360, which was *'not specific to tomatoes'*.

This argument appears to be based on the assumption that the value of the SPS (now BPS) entitlements would vary depending on the particular crop produced. In other words, SPCA insists that it is possible to calculate the value of the entitlements relating to tomatoes as distinct from other crops.

However, it has been repeatedly explained by the relevant exporting producers, the European Commission and the Government of Italy, that SPCA is wrong. The payment attached to each SPS/BPS entitlement is not linked to a particular crop. All farmers receive a payment based on the hectares of land they own and the entitlements they hold, irrespective of the crop(s) produced, and the volume of production. Therefore, contrary to what SPCA suggests, **entitlements relating to tomatoes do not exist** under the current legislative framework.

In this respect it is worth recalling that, as already explained, as from the year 2003 the *'ad hoc'* national funds dedicated to each agricultural product (i.e. tomatoes, olives, wheat, etc.) were progressively transferred and merged into a single national fund aimed at financing the payments granted under the SPS/BPS. At the same time, the entitlements relating to each single agricultural product have been replaced by the general entitlements which confer the right to receive the direct payments provided for by the SPS/BPS. Therefore, SPCA's allegation that Italian farmers would hold different entitlements for different crops has no legal or factual basis.

That said, it is worth providing additional clarifications regarding SPCA's allegation that REP 349/354 would have *'failed to examine the Regulations which show that the value of individual historical entitlements is recorded at the time a farmer applies for the total subsidy'*.

As is well known, the value of the entitlements is not fixed but varies considerably (each entitlement having a different value and covering a different number of eligible hectares). Hence, the weighted average payment per hectare received by each single grower is different, as it depends on the value of the entitlements held by that particular grower. This was true under the SPS (as noted in REP 360) and is also true under the BPS, although the value of the entitlements has been partially re-

calculated in 2015 in order to reduce the differences in value among the different entitlements.

The information concerning the value of each entitlement owned by each grower is recorded in an online database administered by the Italian Agency for Agricultural Payments ('**AGEA**').² Therefore, contrary to what SPCA argues, the information on the value of all the entitlements owned by all Italian tomato farmers is recorded and is available to the ADC.

This clarified, it must be noted that the number of tomato growers in Italy is in the thousands, and each grower may hold dozens, or even hundreds of entitlements. Examining all the entitlements one-by-one would be extremely burdensome, and of little use. In fact, the only conclusion that could be reached by examining all the entitlements under discussion is the same as was reached in REP 360, i.e. that the weighted average payment per hectare received by each single grower is different, as it depends on the value of the entitlements held by that particular grower.

Nevertheless, it must be pointed out that REP 360 also concluded that the payment received by each particular grower (irrespective of the value of each entitlement) did not have any impact on the market price for raw tomatoes. In other words, in REP 360 it was found that the alleged subsidy received by tomato growers (irrespective of the amount of that subsidy) was not transferred downstream (i.e. there was **no pass-through**). This conclusion is equally applicable to REP 349/354, for the following reasons:

- first of all, it should be noted that the ADC's analysis in REP 360 was based on a representative sample of farmers - growing, *inter alia*, fresh tomatoes³ - holding entitlements covering a surface of more than 30,000 eligible hectares (i.e. about ½ of the hectares used to grow tomatoes in 2014). Considering that tomato growers normally supply different processors (as was confirmed in REP 360) the sample identified in REP 360 can also be relied upon in the context of REP 349/354;
- as submitted by SPCA itself, the actual purchase price paid to Italian raw tomato growers is agreed on the basis of the framework contracts (one for Northern Italy, one for Southern Italy) concluded every year between the relevant market organisations of growers and processors. Such framework contracts fix a reference price for tomatoes and identify the parameters (brix, supply, good or bad growing conditions) to be used in order to adjust that reference price, as to obtain the actual (final) price paid to growers. It follows that the actual price paid to tomato growers cannot be influenced by the value of the entitlements held by each single grower. This was confirmed in REP

² See www.agea.gov.it/portal/page/portal/AGEAPageGroup/HomeAGEA/AreaCons/Registrotitoli
³ As noted in REP 360, tomato growers normally do not only grow tomatoes, but also other crops.

360, where the ADC found that the vast majority of sales of tomatoes to both Feger and La Doria were within a small price bandwidth, despite the different value of the entitlements held by each single grower. As is correctly noted in REP 349/354, *'given the prices are fixed for all growers, with only variations for quality or type (e.g. round, long etc.), and that these are industry-wide, it follows that any distortions will equally affect all growers and purchasers. [...] In REP 360 it was established that there is no distortionary effect of the SPS for growers that sold to Feger and La Doria. SPCA has provided information which confirms that prices are set at a level which cannot be influenced by individual growers or canners. The Commission is of the view that this means there is no distortion for participants in the market, and that the findings of REP 360 should be applied to all exporters'*.

In light of the foregoing, SPCA's argument that the conclusions contained in REP 349/354 were based on *'selected information'* provided by Feger and La Doria in REP 360 which was *'not specific to tomatoes'* should be dismissed.

1.3 The ADC ignored evidence which showed an amount for tomatoes which was similar to the per hectare amount of the subsidy under the BPS

With the third limb of the first ground of review, SPCA submits, in substance, that the ADC ignored a piece of evidence *'found in an application for assistance under the young farmer provisions'* which would demonstrate that the value of the entitlements varies depending on each particular crop, and that the value of the entitlements for tomatoes would amount to 2,970.87 €/ha.

However, the alleged evidence submitted by SPCA has no relationship whatsoever with the young farmer provisions or with the CAP in general. In this respect, the following should be noted.

The document mentioned in SPCA's application for review⁴ is an application form that can be used in order to request financial assistance under a regional scheme adopted by the Italian region Emilia Romagna with the Regional Resolution No. 1113 of 3 August 2015 (**Annex 1**)⁵.

The regional scheme under discussion is aimed at supporting undertakings operating in the agricultural sector in getting better access to credit, through a contribution to the interests paid by such undertakings on loans obtained from local credit institutions which are part of the programme. The scheme is financed with a modest budget (€ 1,500,000 in total) and it is only addressed to undertakings established in

⁴ EPR 354, doc. 064b.

⁵ See <http://agricoltura.regione.emilia-romagna.it/aiuti-agevolazioni/doc/normativa/procedimenti-per-i-quali-sono-aperti-i-termini-per-la-presentazione-della-domanda/deliberazione-di-giunta-regionale-n-1113-del-3-agosto-2015/view>

Emilia Romagna. The contribution can only be granted in order to cover the interests arising from short-term loans (12 months maximum) not exceeding € 150,000 and meeting the requirements laid down in the Regional Regulation No. 1113 of 3 August 2015. The maximum amount of the eligible loans is determined on the basis of fixed parameters including, *inter alia*, the surface of land owned by each undertaking and the crop(s) produced on that land.

Therefore, in light of the purpose and scope of the scheme under discussion, it is clear that the amount of € 2,970.87 which is mentioned in the application for assistance quoted by SPCA has no link whatsoever with the direct payments granted to tomato farmers under the CAP. In fact, the values reported in the application form annexed to the Regional Resolution No. 1113 of 3 August 2015 – under the heading ‘unitary value parameter/ annum (in Euro)’ – are nothing more than the parameters that should be used to determine the maximum amount of the loans which are eligible for the contribution. This means, for instance, that any loan eligible for a contribution under the above-described regional scheme cannot exceed € 2,970.87 per hectare of land used to grow tomatoes, € 726.46 per hectare of land used to grow wheat, etc.

It follows that SPCA manifestly misinterpreted the document under discussion. Once again, it must be reiterated that the CAP entitlements do not relate to any particular crop; therefore the entitlements specifically relating to tomatoes do not exist. This also affects the arguments developed at paragraphs 1.38-1.41 of SPCA’s application for review (including the calculations contained in Table 2) which are based on incorrect assumptions.

Finally, SPCA’s claim that the alleged subsidy granted to tomatoes farmers should be doubled as tomatoes cannot be grown on the same land in successive years is also ill-founded. In this respect, Anicav wonders whether SPCA has ever considered that different crops may be grown on the same piece of land. For instance, a piece of land grown with tomatoes may be used to grow wheat the following year. Therefore, this argument is also manifestly unsubstantiated and should be rejected.

1.4 Conclusions regarding SPCA’s first ground of review

Based on the aforementioned arguments, SPCA’s first ground of review concludes that *‘the review had accepted the data that showed the estimated subsidy was €0.0142 per kg which was 15.4% of the negotiated price. (€0.0142/€0.092) But using information that related solely to tomatoes the estimated subsidy as a proportion of the negotiated price between the growers of tomatoes and tomato processors is 88.0% (€0.081/€0.092). This means that if the tomato subsidy was not paid then the income of tomato farmers would reduce. Tomato processors would be unable to increase the prices paid for tomatoes to the extent of the subsidy. The tomato price at €0.092/kg is not a competitive price. Therefore the tomato price of €0.092/kg*

should be uplifted by €0.081/kg when applying the ordinary course of trade test (OCOT)'.

However, this conclusion is ill-founded. In fact:

- first, it has been demonstrated that the calculation of the estimated subsidy carried out by SPCA is flawed as it is based on out of date and/or wrong information and, in any case, on an incorrect understanding of the CAP;
- second, the allegation that *'the tomato price at €0.092/kg is not a competitive price'* is clearly contradicted by publicly available information showing that the price for raw tomatoes in Italy is amongst the highest in the world. In particular, in the year 2015, the price for raw tomatoes in Italy ranged between 92 €/kg (round tomatoes in Northern Italy) and 105 €/kg (long tomatoes in Southern Italy), i.e. a price significantly higher than the price paid by SPCA to Australian tomato farmers in the same period;
- third, the course of action suggested by SPCA, i.e. uplifting the cost of production by the full amount of the subsidy for the purpose of carrying out the OCOT test (without any pass-through analysis) is clearly unlawful, as it runs against the legal requirement set out in the Dumping and Subsidy Manual according to which *'it cannot be assumed that the whole of the benefit of the subsidy received by the input supplier always equates with the benefit that is received by the purchaser, being the producer of the final goods'* that are the subject of the investigation (see also section 2 below).

In light of the foregoing, it must be concluded that SPCA's first ground of appeal is ill-founded and should be rejected.

2. SECOND GROUND: THE DATA SUPPLIED BY FEGER AND LA DORIA IN REP 360 AND APPLIED IN REP 349/354 WAS NOT PROPERLY ANALYSED IN REP 349/354 AND LED TO THE INCORRECT CONCLUSION WHICH WAS APPLIED TO THE OTHER EXPORTERS

With the second ground of review, SPCA claims, in substance, that in order to determine the magnitude of the alleged subsidy, the ADC relied on the value of the entitlements relating *'not only to tomatoes but products other than tomatoes'*, thus underestimating the amount of the subsidy per kg of raw tomatoes. Moreover, SPCA seems to argue that the ADC shouldn't have carried out a flow-on analysis in order to determine whether or not the alleged subsidy granted to growers was transferred to PPTs producers.

As regards the first argument put forward by SPCA, it must be recalled once again that *'the subsidy in the form of SPS payments [...] revealed to the ADC related to not*

only tomatoes but products other than tomatoes' simply because this is the way the CAP is shaped. Apparently, SPCA does not want to understand that the SPS entitlements are not linked to a particular crop. Therefore calculating the amount of the direct SPS payments specifically relating to tomatoes is just not possible.

Moreover, the argument that the ADC *'failed to take into account that the subsidy per hectare is still paid for a tomato plot that is at rest'* is also pointless. In fact, when a piece of land cannot be used to grow tomatoes, other crops (typically, wheat) are produced on that land. Since the SPS/BPS payments are not linked to a particular crop, it is clear that there is no reason whatsoever to double the alleged amount of the subsidy relating to tomatoes. In fact, when tomatoes are not grown, the direct BPS/SPS payments will benefit another crop (e.g. wheat).

Finally, Anicav wonder how SPCA can argue that the *'the tomato price of € 0.092 kg is not a competitive price'* when that price is amongst the higher prices in the world, and it is also significantly higher than the price SPCA pays to Australian tomato farmers for the supply of raw tomatoes. This simple fact suggests that SPCA's claims are ill-founded.

As regards the second argument that SPCA seems to advance, suffice it to note that Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement prevent any investigating authority from assuming that a subsidy granted to producers of an upstream input automatically benefits unrelated producers of the downstream product, especially if there is evidence on the record of arm's-length transactions between the two. In this respect, the case law has clarified that a pass-through analysis is required.⁶

This is confirmed by the Anti-Dumping and Subsidy Manual which clearly states that *'it cannot be assumed that the whole of the benefit of the subsidy received by the input supplier always equates with the benefit that is received by the purchaser, being the producer of the final goods that are the subject of the countervailing application'*.⁷

Although the above principles concern the interpretation of the SCM Agreement and not the AD Agreement, they are fully applicable in the present case, which indeed involves the assessment of the impact of an alleged subsidy (even though in the framework of an antidumping investigation).

Moreover, it should be noted that the absence of any pass-through of the alleged subsidy is acknowledged by SPCA itself, which has submitted that the market price for raw tomatoes is negotiated between the relevant producer organisations and *'reflects supply, growing conditions and quality/brix levels in the relevant tomato crop'*,

⁶ Appellate Body Report, *US — Softwood Lumber IV*, paras. 156–157.

⁷ AD/AS Manual, footnote 19.

thus recognising that the direct payments granted to tomato farmers have no impact on actual prices.

It follows that in REP 360 the ADC correctly carried a pass-through analysis in order to analyse what share of the direct payments received by growers under the CAP was reflected in the price for raw tomatoes paid by Feger and La Doria, concluding that there was no flow-on of the alleged subsidy. Such conclusion is equally applicable to REP 349/354.

3. THIRD GROUND: WHEN COMPARED WITH OTHER DATA, THE FEGER AND LA DORIA ANALYSIS APPLIED TO REP 349/354 IS INCONSISTENT WITH OTHER INFORMATION AND SHOULD NOT HAVE BEEN USED IN THE REVIEWABLE DECISION

SPCA's third ground of review concerns the fact that the ADC's analysis in REP 360, which was also applied to REP 349/354, would be inconsistent with other information provided by SPCA.

However, this ground of review is ill-founded insofar it has been demonstrated that the information relied upon by SPCA is out of date and/or incorrect. In particular it should be noted that:

- the 'ad hoc' national fund dedicated to tomatoes (allegedly amounting to € 183,970,000 plus a 3% increase as from 2015, giving a total of € 187,476,301) **no longer exists**, as it has been integrated into a single national fund aimed at financing the payments granted under the SPS (now BPS);
- the SPS/BPS entitlements give farmers the right to receive a direct payment, irrespective of the crop(s) produced, and the volume of production. Therefore, entitlements relating to tomatoes **do not exist** under the current legislative framework;
- it is not true that the land used to grow tomatoes in a given year must necessarily rest the following year, as it can be used to grow other crops such as wheat, and vice-versa.

It follows that the calculations contained in Table 3 of SPCA's application for review are meaningless, and should be disregarded. This applies, in particular, to the third column of Table 3 ('SPC 349/354') which is based on incorrect information, as demonstrated in section 1.3 of the present submission.

4. THE ADC DID NOT TAKE INTO ACCOUNT SPC'S ARGUMENTS ON THE DATA AND ANALYSIS USED IN REP 349/354 WHICH ORIGINATED IN REP 360

With the fourth ground of review, SPCA argues in substance that (i) new information not considered in REP 360 was provided to the ADC and was unlawfully ignored (ii) the period of investigation was different and there was a new subsidy scheme in that period.

In this respect, it must first be noted that the ADC did not ignore the new evidence submitted in the framework of review 354 (as alleged by SPCA), but analysed that evidence and decided to disregard it. This was correct, since the evidence provided by SPCA was pointless or even misleading, as demonstrated in the previous sections of this submission. In fact, it is clear that SPCA does not have (*rectius*, does not want to have) a correct understanding of the CAP and of the way in which the direct payments to farmers are administered.

Regarding the fact that the periods of investigation of REP 360 and REP 349/354 were different, the following should be noted:

- despite the legislative changes which occurred between 2014 and 2015, the basic characteristics of the CAP have remained the same. In particular, the total budget allotted to direct payments to farmers has not changed between 2014 and 2015, as the new schemes introduced in 2015 were financed with the same resources previously used to finance the SPS (the BPS accounts for 58% of the national ceiling, the GPS accounts for 30%, the YFP accounts for 1% and the coupled support accounts for 11%);
- the BPS, GPS and YFP (which account for the largest part of the national ceiling, i.e. 89%) are non-specific and fully decoupled income support schemes like the SPS. As such, they cannot produce trade distorting effects and must be considered 'green-box' measures fully compliant with the requirements of the WTO Agreement on Agriculture.
- the coupled payment granted to Italian tomato growers, although it did not exist in 2014, is negligible as it amounts to just 160 €/ha, i.e. 0.0022 €/kg. Moreover, the available evidence demonstrates that the new coupled payment has not produced distortive effects as in 2015 the market price of raw tomatoes in Italy remained amongst the highest in the world.

That said, it must be stressed once again that the limited changes to the legislative framework between 2014 and 2015 cannot affect the validity of the conclusions reached by the ADC in REP 360, which were based, in substance, on the finding that there was no pass-through of the alleged subsidy from tomato growers to PPTs processors. This conclusion is equally applicable to REP 349/354, irrespective of the

amount of subsidy received by each single tomato grower, for the reasons illustrated in section 1.2 above. Therefore, the ADC was right in considering that the conclusions reached in REP 360 could also be applied to REP 349/354.

5. FIFTH GROUND: THE ADC'S CONCLUSION THAT AN EXPORTER WAS SELLING AT ARM'S LENGTH WAS NOT BASED ON AN EXAMINATION OF THE EXPORTER'S ACCOUNTS AND THEREFORE THE ADC COULD NOT INVESTIGATE THE CLAIMS MADE IN THE CONFIDENTIAL APPLICATION FOR REVIEW. THE EXPORTER WAS NOT A SELECTED EXPORTER AND NOT A RESIDUAL EXPORTER

SPCA argues that the ADC failed to properly examine the relevant financial data of an exporter in order to investigate SPCA's claim that the exporter in question was reimbursing dumping duties.

Once again, the fact that the ADC did not agree with SPCA does not mean that the argument raised by SPCA was ignored. To the best of Anicav's knowledge, the ADC was in possession of the information necessary to examine SPCA's claim, it analysed that claim and correctly concluded that it was unsupported. It follows that SPCA's fifth ground of review should be rejected.

6. SIXTH GROUND: BECAUSE OF THE ERRORS IN THE ADC'S UNDERSTANDING OF THE SPS IN 2014 AND THE NEW BPS IN 2015, THE ASSESSMENT THAT THERE WAS NO MARKET SITUATION WAS NOT SOUND

With the sixth ground of review, SPCA argues that the ADC wrongly concluded that in 2015 there was no *'particular market situation'* in the Italian market for PPTs. In this respect, the ADC claims that - compared to the year 2014 - the influence of the Government of Italy increased significantly in 2015 *'with the introduction of a payment to the tomato farmer coupled to raw tomato production and a contract with a processor'*. According to SPCA, *'a tomato farm cannot be economic without the subsidy. The farmer cannot offset the subsidy with a higher price from the processors. Therefore, the raw tomato price paid by the processors is a distorted price directly linked to a government mandate. The market for processed tomato should be considered to be a market situation'*.

These allegations are ill-founded and should be rejected for the following reasons.

First of all, it has been demonstrated that all the analysis carried out by SPCA (and summarised in Table 6 of SPCA's application for review) is flawed as it is based on out of date and/or incorrect information and, in any case, on a wrong understanding of the CAP.

Second, although the legislative framework changed slightly from 2014 to 2015, it must be stressed once again that the coupled support to tomato farming introduced in 2015 is negligible (i.e. 0.0022 €/kg) and the available evidence demonstrates that the new coupled payment has not produced distortive effects as in 2015 the market price of raw tomatoes in Italy remained amongst the highest in the world.

Third, SPCA's claim that a 'market situation' would exist in the Italian market for PPTs is based on the assumption that *'a tomato farm cannot be economic without the subsidy. The farmer cannot offset the subsidy with a higher price from the processors'*. However, it is important to note that a tomato farm 'as such' does not exist. All tomato farmers also grow other crops. This is quite obvious and should be well known to SPCA. No farmer would only grow one crop, as this would represent a high risk for the farmer in case of harvest loss (due to weather conditions, etc.). Moreover, as SPCA itself claims, a piece of land cannot grow tomatoes for two consecutive years. This means that tomato farmers must always use part of their land to grow crops other than tomatoes. Therefore, SPCA's claim that *'a historical tomato payment was still paid on fallow land [which] means that the subsidy [...] was understated at €0.0142/kg. It should be €0.0284/kg'* is ill-founded and should be rejected.

Fourth, it is worth noting that a comprehensive assessment was made in the framework of investigation No. 276 in order to establish whether a 'market situation' exists in the Italian market for PPTs, and the conclusion was negative. In particular, the absence of a 'market situation' was confirmed by an independent expert appointed by the ADC. The conclusions reached by the expert and confirmed by the ADC in REP 276 cannot be questioned on the basis of the unsubstantiated allegations made by SPCA in its application for review.

Therefore, Anicav respectfully submits that SPCA's sixth ground of review is also ill-founded and should be rejected.

CONCLUSION

In light of the foregoing, Anicav respectfully requests the ADRP to dismiss all of the six grounds of review put forward by SPCA and confirm the conclusions reached in REP 349/354 that *'the cost of raw tomatoes should not be uplifted'*.⁸

⁸ REP 349/354, section 3.2.4.