

Director Operations 1



Anti-Dumping Commission

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Non-Confidential

Dear Sir/Madam

On Wednesday 28 October SPC met with the Commission to discuss the extension to the investigation and matters covered in SPC's recent submissions. Further to the discussion at that meeting SPC provides the following comments.

The national ceiling corresponding to tomatoes transferred to the SPS during the transition period in 2008-2010 is still available through the activated entitlements based on historical allocations from the national ceiling corresponding to tomatoes.

1. As shown in the agiregioni and Translateagri attachments to SPC's 24 August submission:

As from January 2011 will be paid on 100 % of the amount accrued up to a maximum of 183,967,000 euro. From 2011 on they will be awarded 100 % of national ceiling in the form of entitlements (sic)¹

2. The Italian Minister of Agriculture Food and Forestry Decree of 17 October 2013 (attached) provides further evidence that the full value of the national ceiling corresponding to tomatoes as shown in Annex X of EC Regulation 73/2009 continues to be available in 2014 to those farmers with historical entitlements.²

3. The continuation of the tomato amount was mentioned in SPC's submission of 24 August 2015 (footnote 3 and 4). EC Regulation 1120/2009 also confirmed this in Article 30:

As the case may be, Article 40 of Regulation (EC) No 73/2009 shall apply to the value of all the payment entitlements existing before the integration of fruit and vegetable support and to the reference amounts calculated for fruit and vegetables support

¹ This evidence was not enough to alter the ADC's assessment in the SEF (published 4 September 2015)

² While this translation may be difficult to follow the Decree is consistent with the principle that a recipient of aid would not receive a lesser amount with the introduction of the SPS. .See footnotes 3 and 4 of SPC's submission of 24 August 2015

4. Whilst access to the information on the AGEA website is extremely difficult, SPC has come across the Single Payment Scheme Procedural Manual for the 2014 campaign³ issued by ARPEA (an agency authorised by AGEA). This document demonstrates there is a continuing link to the national ceiling corresponding to tomatoes now (then) transferred to the SPS and also suggests that growers still require evidence of contracts for processed tomatoes to activate the historical entitlements.⁴ The same SPS Procedural Manual also refers to EU Regulation 1308/2013. In this Regulation is a provision for “Contract systems” which is found in Article 168. There is mention of an exemption from such contracts for cooperatives (Article 168(5)) such as those mentioned in the LECA report (3rd paragraph page 12). This exemption is of interest as it reflects the comments made by SPC about the difficulty of conducting a pass through analysis in vertically integrated producers.⁵
5. The SPS Procedural manual also appears to provide for the following tracking system as explained in the explanatory paragraphs of EC Regulation 1122/2009:

In order to ensure a proper implementation of the single payment scheme as provided for in Title III of Regulation (EC) No 73/2009, the Member States should establish an identification and registration system according to which the payment entitlements have to be traceable and which allows, inter alia, to cross-check areas declared for the purposes of the single payment scheme with the payment entitlements available to each farmer and between the different payment entitlements as such.(paragraph 8)

The above extract supports the observation that a farmer will have different payment entitlements for different crops. The evidence provided by the exporters that some tomato farmers received much less than €2801/ha could be because these farmers did not have historical entitlements or that it may have been an average across the farm’s growing area of all entitlements. However, SPC reiterates that the relevant information for the investigation is the subsidy paid per hectare for tomatoes alone (Euro 2801 per ha) and not the average subsidy received by the farmer across all crop types.

6. It should be pointed out that the evidence suggests there is a prevalence of large farms in Northern and Southern Italy where the tomato subsidy is effectively “locked in” because of historical entitlements. This points towards the scheme’s influence on supply and pricing for raw tomatoes.

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<https://translate.google.co.nz/translate?hl=en&sl=it&u=http://www.arpea.piemonte.it/site/normativa/category/277-determinazioni-anno-2014%3Fdownload%3D1612:determinazione-n-54-2014-del-18-03-2014&prev=search>

⁴ The definitions for “first processor” and “delivery” are relevant. **delivery** "means any operation involving the supply of tomatoes, pears, peaches and prunes d'Ente to a first processor pursuant to a contract or a commitment to supply

⁵ SPC’s submission 24 July 2014.

7. The exporters' suggestion that a tomato farmer will still receive the historical entitlement even if tomatoes are not grown is not consistent with SPC's interpretation. EC Regulation 73/2009⁶ shows that payment entitlements must be activated or else they would be allocated to the national reserve. For holders of historical tomato entitlements the economic hurdle to switch to other crops is high given the €2801/ha subsidy and the €6716/ha price received from the processors.

The proposition that the SPS cannot be examined in a trade remedy investigation because of a misguided notion that it is WTO compatible has no basis.

8. SPC refers the ADC to its submissions which addressed this matter: 23 March 2015, 29 June 2015 and 13 July 2015. That latter submission of 13 July pointed the ADC to a publication by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) which had noted the continued distorting effects of the SPS.

9. SPC notes that the SEF concluded:

The Commission is of the view that whether the CAP payments are explicitly coupled to production is not of critical importance for its assessment of whether there is a market situation such that renders the sale of prepared or preserved tomatoes unsuitable for use as normal value. (Page 59)

SPC agrees with the above observation. If the ADC has new information that changes this assessment in the SEF then when such information is on the EPR a response will be made.

The reintroduction of coupled support is another significant indicator of a market situation

10. The exporters' submissions contest that as the re-introduction of coupled support is outside of the dumping investigation period it should not be considered in the market situation analysis.
11. However, the provisions to allow coupled support were in place for some time⁷. The LECA report referred to Regulation (EC) 73/2009 extending the ability to retain coupled payments and noted the coupled support for processed tomatoes.⁸
12. EU Regulation 1307/2013 (20 December 2013) in Title IV (at Article 52) laid out the grounds for Member States to introduce coupled support. The fact that the provision was enacted in 2013 does not exclude it from being considered in the market situation analysis.
13. In any event there is an argument to suggest that in practical terms a market situation analysis is not limited to a 12 month period. To remove any doubt about the inclusion of the coupled

⁶ Articles 19,34 and 42

⁷ SPC's market situation document noted that the 2013 reform allocated a further €11.2 million to processed tomatoes., paragraph 29(d)

⁸ Page 18 ,3rd paragraph

payment in the market situation analysis it is noted that the Italian government implemented the provisions of EU Regulation 1307/2013 by a decree dated 18 November 2014.⁹

The assessment of price distortion in SPC's submission of 24 September 2015 supports a finding of market situation.

14. SPC has informed the ADC of the shortcomings in the LECA subsidy assessment. The LECA study did not even assess the national ceiling corresponding to tomatoes and hence inappropriately relied on data from the Solazzo paper. LECA's use of the Solazzo data suggests that the national ceiling corresponding to tomatoes was €51 million and not €184 million.¹⁰ This illogical result was caused by the omission of the national ceiling corresponding to tomatoes from the LECA report as provided in Annex X of Regulation 73/2009.

15. The validity of dated elasticities in the LECA analysis needs to be considered. The supply elasticity was obtained from California data in 1967-1975 and the demand elasticity was obtained from similarly dated material and applied to the EU and not specifically Italy.

16. As such, SPC reiterates that the flow-on impacts are difficult to quantify using the adopted elasticities because of the prevalence of cooperatives. As mentioned in the LECA report, page 12,3rd paragraph :

The northern area is characterized by the presence of large self-processing cooperatives or grower controlled producer organisations which in turn own processing facilities.

The ADC will recall that the data used in LECA from the Solazzo paper was from farms in the northern Emilio-Romagna region.¹¹

17. The tables in SPC's submission of 24 September demonstrate that if the correct level of subsidy is used then a consistent result is obtained. The LECA analysis started with an incorrect subsidy amount and yet it is still given credence in the SEF by including the result of the subsidy in the SEF's range of flow-on impacts. This incorrect subsidy level has, it appears, been an influence on the ADC's assessment of market situation.

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https://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.co.nz&sl=it&u=https://www.politicheagricole.it/flex/cm/pages/ServeAttachment.php/L/IT/D/e%25252F3%25252Fa%25252FD.56cad94b3e23511a4973/P/BLOB%253AID%253D8154/E/pdf&usg=ALkJrhbbB17j1DrlGsj-yKzTsqprwE6udg

¹⁰ See SPC's submissions of 13 and 24 August, prior to the SEF, and fn 13 of 24 September 2015

¹¹ The issue of a pass through test was noted in SPC's submission of 13 August 2015 and evidence was presented of a major integrated tomato company in Emilio-Romagna.

18. If the right level of subsidy is considered in the LECA Tables (12 and 13)¹², the results would be consistent with SPC's observation regarding the level of the impact on PPT. This fundamental error of the data used in the LECA tables needs to be addressed as it influences the SEF's conclusion on market situation. SPC's submission of 24th September shows the range with and without flow on effect. Using ADC's approach with the Rickard model, the higher end impact would have been 17.7 percent (24.4 percent without flow on) instead of 8.9 percent. Even if 8.9 percent was correct, SPC is surprised that ADC does not recognise it as a significant impact on normal values for the purposes of determining whether market situation exists.

The interpretation of Regulation 43¹³ has been clearly outlined in the Dalian Federal court judgement

19. The issues raised by the exporters around the interpretation of Regulation 43 appear to have been answered in the analysis in Dalian¹⁴. Both Dalian and Pan Asia¹⁵ also confirmed the use of "competitive market costs".

20. In the assessment of market situation in China, it has been ADC's practice to establish evidence pointing to distortions in the costs of the inputs and the possible impact on the price of like goods in absence of these distortions. There is no identifiable reason to deviate from this practice by introducing a speculative flow on impact assessment.

21. It is noted that the identifiers of a market situation are present and that the absence of detailed and specific information from other parties should not influence the ADC's market situation assessment. The reservation of the European Commission and exporters in providing full answers to the ADC's information requests have been similar to the measured responses by the Government of China in recent market situation inquiries. SPC has provided to the ADC relevant, official and expert analysis on the level of subsidies and its impact in influencing the price and supply of raw tomatoes to the processing industry which is also influenced by the planning role delegated to Producer Organisations. The ADC must rely on validated information for its assessment of market situation rather than unsupported generalisations

22. All evidence points to prevalence of distortions in the market for like goods in Italy. The range of the price effects mentioned in the SEF needs to be recalculated by ADC. SPC reminds ADC that the publically documented comments by La Doria validate the role of the subsidy in impacting PPT and in influencing supply of raw tomatoes to the industry.

¹² SPC's submission of 24 September 2015

¹³ Customs(International Obligations) Regulations 2015

¹⁴ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885

¹⁵ Panasia Aluminium (China) Ltd v Attorney-General of the Commonwealth (2013) 217 FCR 64



*Il Ministro delle politiche agricole
alimentari e forestali*

Decreto n. 12706 del 17/10/2013

Modifiche al decreto 24 marzo 2005, concernente la gestione della riserva nazionale del regime di pagamento unico della PAC.

Visto il regolamento (CE) n. 73/2009 del Consiglio, del 19 gennaio 2009, che stabilisce norme comuni relative ai regimi di sostegno diretto nell'ambito della politica agricola comune e istituisce taluni regimi di sostegno a favore degli agricoltori, che modifica i regolamenti (CE) n. 1290/2005, (CE) n. 247/2006, (CE) n. 378/2007 e abroga il regolamento (CE) n. 1782/2003;

Visto il regolamento (CE) n. 1120/2009 della Commissione, del 29 ottobre 2009, recante modalità di applicazione del regime di pagamento unico di cui al titolo III del citato regolamento (CE) n. 73/2009 del Consiglio;

Visto il regolamento di Esecuzione (UE) n. 287/2013 della Commissione, del 22 marzo 2013, recante modifica degli allegati IV e VIII del regolamento (CE) n. 73/2009;

Visto il decreto del Ministro delle politiche agricole alimentari e forestali 5 agosto 2004, pubblicato nella Gazzetta Ufficiale della Repubblica italiana n. 191 del 16 agosto 2004, recante disposizioni per l'attuazione della riforma della politica agricola comune, e successive modifiche e integrazioni;

Visto il decreto del Ministro delle politiche agricole alimentari e forestali 24 marzo 2005, pubblicato nella Gazzetta Ufficiale della Repubblica italiana n. 98 del 29 aprile 2005, concernente la gestione della riserva nazionale, e successive modifiche e integrazioni;

Visto l'articolo 4, comma 3, della legge 29 dicembre 1990, n. 428, concernente disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee, così come modificato dall'articolo 2, comma 1, del decreto legge 24 giugno 2004, n. 157, convertito con modificazioni nella legge 3 agosto 2004 n. 204, con il quale si dispone che il Ministro delle politiche agricole, d'intesa con la Conferenza permanente per i rapporti tra lo Stato, le Regioni e le Province autonome di Trento e Bolzano, nell'ambito di propria competenza, provvede con decreto all'applicazione nel territorio nazionale dei regolamenti emanati dalla Comunità europea;

Considerato che l'articolo 41 del regolamento (CE) n. 73/2009 stabilisce che gli Stati membri possono utilizzare la riserva nazionale per assegnare diritti all'aiuto in base a criteri oggettivi e in modo da assicurare parità di trattamento tra gli agricoltori ed evitare distorsioni del mercato e della concorrenza;

Considerato che, a seguito dell'integrazione nel regime di pagamento unico della restante parte del sostegno accoppiato alle prugne d'Ente destinate alla trasformazione, come stabilito nell'articolo



*Il Ministro delle politiche agricole
alimentari e forestali*

54 paragrafo 2 e nell'allegato XI del regolamento (CE) n. 73/2009 e dell'entrata in vigore del regolamento di Esecuzione (UE) n. 247/2013, che ha modificato gli importi dei massimali fissati dallo stesso regolamento (CE) n. 73/2009, è necessario aggiornare gli importi da utilizzare per il calcolo delle medie regionali;

Acquisita l'intesa della Conferenza permanente tra lo Stato, le Regioni e le Province autonome di Trento e Bolzano nella seduta del 26 settembre 2013;

DECRETA

Art. 1

1. L'allegato B del decreto ministeriale 24 marzo 2005 è sostituito dal seguente:

“ALLEGATO B

1. Ai fini della definizione delle medie regionali di cui all'articolo 2 del presente decreto si utilizza la componente di plafond nazionale, prevista all'allegato VIII del regolamento (CE) n. 73/2009, immediatamente associabile all'utilizzo delle superfici nel periodo di riferimento, come riportato nella tabella seguente:



*Il Ministro delle politiche agricole
alimentari e forestali*

Tabella 1: plafond nazionale per il calcolo delle medie regionali

Componenti del plafond nazionale di cui all'allegato VIII del regolamento (CE) n. 73/2009	Importi [milioni EURO]
Pagamenti per cereali, oleaginose e proteiche	1.317,25
Aiuto supplementare grano duro	454,15
Leguminose da granella	7,24
Premio vacca nutrice	89,52
Premio addizionale vacca nutrice	6,34
Premio speciale bovini maschi	80,80
Premio per l'estensivizzazione dei bovini	13,13
Premio per il riso	234,73
Foraggi essiccati	42,20
Sementi certificate	13,32
Colture proteiche	5,01
Olio d'oliva	683,41
Tabacco	167,35
Zucchero	135,99
Agrumi	122,00
Pomodori	183,97
Grano duro	42,46
Estirpazione vigneti	10,34
Pere destinate alla trasformazione	7,57
Pesche destinate alla trasformazione	1,00
Prugne destinate alla trasformazione	1,13
Frutta a guscio	15,71



*Il Ministro delle politiche agricole
alimentari e forestali*

Plafond nazionale ai fini del calcolo delle medie regionali	3.634,62
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2. Il plafond nazionale disponibile, ricavato come al punto 1 e decurtato delle percentuali di riduzione previste ai sensi dell'articolo 2 del decreto del Ministro delle politiche agricole alimentari e forestali 29 luglio 2009, viene suddiviso tra le diverse zone elencate nell'allegato A, in proporzione alla percentuale di generazione degli importi di riferimento (per stesse componenti di plafond) dei titoli storici nella stessa zona.
3. Ai fini della determinazione delle medie regionali si utilizza il totale delle superfici eleggibili dichiarate nel periodo di riferimento nelle diverse zone.
4. Per ciascuna particella dichiarata nel periodo di riferimento varrà il valore più recente seguendo l'ordine di recupero dell'informazione.
5. Il valore medio regionale è individuato dal rapporto tra importo di riferimento disponibile per la regione di cui al punto 2 e superficie eleggibile regionale di cui al punto 3.”

Il presente decreto è trasmesso alla Corte dei conti per la registrazione ed è pubblicato nella *Gazzetta Ufficiale* della Repubblica italiana.

Roma, 17/10/2013

IL MINISTRO
Nunzia De Girolamo

The Minister of Agriculture
Food and Forestry

[Translated using Google]

Decree No. 12706 of 17/10/2013

Amendments to the Decree of 24 March 2005 concerning the management of the national reserve of single payment scheme of the CAP

Having regard to Regulation (EC) No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003;

Having regard to Regulation (EC) No. 1120/2009 of the Commission of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme under Title III of the Regulation (EC) No. 73/2009;

Having regard to Regulation of Execution (EU). 287/2013 of the Commission of 22 March 2013 amending Annexes IV and VIII of Regulation (EC) No. 73/2009;

The Order of the Minister of Agriculture and Forestry on Aug. 5, 2004, published in the Official Gazette of the Italian Republic n. 191 of 16 August 2004, laying down rules for the implementation of the reform of the common agricultural policy, and subsequent amendments and additions;

The Order of the Minister of Agriculture, Food and Forestry March 24, 2005, published in the Official Gazette of the Italian Republic n. 98 of 29 April 2005 on the management of the national reserve, and subsequent amendments and additions;

Having regard to Article 4, paragraph 3, of the Law of 29 December 1990, n. 428, concerning provisions for the fulfillment of obligations deriving from Italy to the European Communities, as amended by Article 2, paragraph 1 of the Decree Law 24 June 2004, n. 157, converted with amendments into law 3 August 2004 n. 204, with which it provides that the Minister of Agriculture, in cooperation with the Permanent Conference for relations between the State, the regions and the autonomous provinces of Trento and Bolzano, within its competence, by Decree to 'application in the national territory of the regulations issued by the European Community;

As Article 41 of Regulation (EC) No. 73/2009 states that Member States may use the national reserve to allocate payment entitlements in accordance with objective criteria and in order to ensure equal treatment between farmers and to avoid market and competition;

Considering that, following the integration in the single payment scheme of the rest of the support coupled with prunes d'Ente intended for processing, as stipulated in Article 54 paragraph 2 and Annex XI of Regulation (EC) No. 73/2009 and the entry into force of the Regulation of Execution (EU). 247/2013, which amended the amounts of the ceilings fixed in that Regulation (EC) No. 73/2009, it is necessary to update the amounts to be used for the calculation of the regional averages;

Acquired the agreement of the Standing Conference of the State, the regions and the autonomous provinces of Trento and Bolzano in the meeting of September 26, 2013

DECREES

Art. 1

Annex B of the ministerial decree 24 March 2005 is replaced by the following

ANNEX B

1. For the development of the regional average referred to in Article 2 of this decree using the component of the national ceiling provided for in Annex VIII of Regulation (EC) No. 73/2009, immediately associated with the use of land in the reference period, as shown in the following table

Table 1: national ceiling for the calculation of the regional averages

Components of the national ceiling set out in Annex VIII of Regulation (EC) No. 73/2009

Componenti del plafond nazionale di cui all'allegato VIII del regolamento (CE) n. 73/2009	Importi [milioni EURO]
Pagamenti per cereali, oleaginose e proteiche	1.317,25
Aiuto supplementare grano duro	454,15
Leguminose da granella	7,24
Premio vacca nutrice	89,52
Premio addizionale vacca nutrice	6,34
Premio speciale bovini maschi	80,80
Premio per l'estensivizzazione dei bovini	13,13
Premio per il riso	234,73
Foraggi essiccati	42,20
Sementi certificate	13,32

Colture proteiche	5,01
Olio d'oliva	683,41
Tabacco	167,35
Zucchero	135,99
Agrumi	122,00
Pomodori	183,97
Grano duro	42,46
Estirpazione vigneti	10,34
Pere destinate alla trasformazione	7,57
Pesche destinate alla trasformazione	1,00
Prugne destinate alla trasformazione	1,13
Frutta a guscio	15,71

[Note tomato (Pomodori) component of the overall national ceiling €183,97]

National ceiling for the calculation of the regional averages **3.634,62**

2. The national ceiling available, obtained as in step 1 and reduced the percentages provided for under Article 2 of the decree of the Minister of Agriculture, Food and Forestry July 29, 2009, is divided among the different areas listed in Annex A , in proportion to the generation of the reference amounts (for the same components of the ceiling) of historical titles in the same area.

3. For the purposes of determining the regional averages using the total of the areas declared eligible in the reference period in the different areas.

4. For each parcel declared during the reference period will be worth the most recent value in the order of retrieval.

5. The regional average is identified as the ratio between the reference amount available for the region referred to in paragraph 2 and eligible regional area referred to in paragraph 3. "

This decree shall be sent to the Court of Auditors for registration and published in the Official Gazette of the Italian Republic
Rome, 17/10/2013

THE MINISTER
Nunzia De Girolamo

Obtained from on 6 November 2015

<https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/6829>