



CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION

CONSIDERATION REPORT NO. 262

**APPLICATION FOR AN ACCELERATED REVIEW
OF A DUMPING DUTY NOTICE APPLYING TO**

**PREPARED OR PRESERVED TOMATOES
EXPORTED FROM ITALY
BY
PMC SRL**

August 2014

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1 Summary and recommendations

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application by PMC SRL for an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy.

1.1 Recommendations

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application.

1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901*¹ (the Act) sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the accelerated review of a dumping duty notice by certain exporters of goods covered by the notice.

The section empowers the Commissioner to reject or not reject the application for an accelerated review of anti-dumping measures.

1.3 Findings and conclusions

PMS SRL's application for an accelerated review of anti-dumping measures applying to prepared or preserved tomatoes exported to Australia from Italy has been examined.

The Commission finds:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under subsection 269ZE(2) were not met; and
- the circumstances in which an accelerated review can be sought have been satisfied.

The Commission concludes that the applicant is eligible to apply for an accelerated review, and recommends that the Commissioner not reject the application and the accelerated review continue.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

2 Background

2.1 Goods under review

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are:

Tomatoes, whether peeled or unpeeled, prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.

The goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

2.2 Tariff classification

The goods are classified under tariff subheading 2002.10.00, statistical code 60 in Schedule 3 to the *Customs Tariff Act 1995*.

2.3 Existing measures

On 17 June 2013, an application was lodged by SPCA requesting that the then Minister responsible for anti-dumping publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy. The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application. Public notification of initiation of the investigation was made on 10 July 2013 in The Australian newspaper and ADN No. 2013/59.

The investigation period was set as 1 July 2012 to 30 June 2013 and a Statement of Essential Facts (SEF) was placed on the public record on 4 February 2014.

On 16 April 2014, the Parliamentary Secretary to the Minister of Industry (Parliamentary Secretary) signed a dumping duty notice that imposed dumping duties on the goods under review.

The current anti-dumping measures on imports from Italy expire 15 April 2019.

2.4 The current review application

Name	PMC SRL
Role	Exporter
Address	C/o – Mr John Bracic Director J. Bracic & Associates PO Box 3026 Manuka, ACT 2603

3 Background to the application for an accelerated review

On 25 July 2014, PMC SRL lodged an application for an accelerated review of anti-dumping measures applying to exports of prepared or preserved tomatoes from Italy to Australia in so far as it affects PMC SRL.

PMC SRL's application detailed the circumstances regarding its export of prepared or preserved tomatoes to Australia. Aspects of the application are assessed in section 5.

3.1 Review Process

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary a report recommending:

- a) that the dumping duty notice the subject of the application remain unaltered; or
 - b) that the dumping duty notice the subject of the application be altered:
 - i. so as not to apply to the applicant; or
 - ii. so as to apply to the applicant as if different variable factors had been fixed;
- and set out the Commissioner's reasons for so recommending.

There is no legislative requirement for the Commission to maintain a public file for this accelerated review. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be created.

This Consideration Report along with a non-confidential version of the application and response to the exporter questionnaire will be published on the Electronic Public Record, available at <http://www.adcommission.gov.au/cases/default.asp>.

Given the expedited nature of accelerated reviews and the shortened timeframe for the Commission to produce a final report, any submissions by interested parties should be lodged before day 60 of the review – 23 September 2014.

The Commissioner may not have regard to submissions received after this date if to do so would, in the Commissioner's opinion, delay the timely preparation of the final report to the Parliamentary Secretary.

3.2 Key dates

25 July 2014	Application lodged
22 September 2014	Response to exporter questionnaire due
23 September 2014	Submissions by interested parties due
03 November 2014	Final report to Parliamentary Secretary due

4 Application for an Accelerated Review

4.1 Legislative Background

Section 269ZF requires that an application for accelerated review must:

- be in writing (subsection 269ZF(1));
- be lodged with the Commissioner in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice relates; and
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned.

4.2 Application

On 25 July 2014, the email including an accelerated review application was first received by the Commission. A copy of their application is at **Confidential Attachment 1**.

On receipt of the application, the date on which the application was received was recorded as 25 July 2014 in accordance with subsection 269ZF(3). This date is the date of lodgement and if the Commissioner does not reject the application it is the date in which the 100 day review timeframe commences.

4.2.1 Assessment of the application

The application received from PMC SRL, was in writing, lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty notice relates. While submission by email is not explicitly provided for in the Act, applications lodged by email are acceptable. This reflects the intention of federal electronic transactions / transmissions legislation.

PMC SRL's grounds for lodging an application are that it had not exported prepared or preserved tomatoes to Australia during the period in which a new exporter is defined in section 269T of the Act.

4.3 Finding under section 269ZF

The Commission is satisfied that the application complies with subsections 269ZF(1) and 269ZF(2) of the Act.

5 Circumstances in which an accelerated review may be sought

5.1 Status as a New Exporter

5.1.1 Background

Subsection 269ZE(1) sets out that only a new exporter may apply for an accelerated review. A new exporter is defined by section 269T as an exporter who did not export such goods to Australia at any time during the period:

- (a) starting at the start of the investigation period in relation to the application; and
- (b) ending immediately before the day the Commissioner places on the public record the statement of essential facts (SEF) in relation to the investigation of the application.

Section 269T also defines “application” in relation to a dumping duty notice, as meaning an application for the publication of such a notice.

5.1.2 Application

The Commission considers that, due to the definitions in section 269T, the period within which a new exporter cannot have exported prepared or preserved tomatoes to Australia relates to the period commencing the day the investigation period commenced and ceases the day before the Statement of Essential Facts was published.

Therefore, the Commission considers the period for which PMC SRL must not have exported to Australia (new exporter period) is from 1 July 2012, the start of the investigation period, to 3 February 2014, the day before the SEF for Investigation 217 was placed on the public record.

5.1.3 Exports during the New Exporter Period

A search of the Australian Customs and Border Protection Service (ACBPS) import database has revealed no goods within the applicable Tariff Classification and statistical code have been exported to Australia by PMC SRL during the period 1 July 2012 to 3 February 2014.

5.2 Cooperation in regards to the application for a dumping duty notice

Paragraph 269ZE(2)(a) provides that, if the Commissioner is satisfied that because the exporter refused to cooperate in relation to the application for a dumping duty notice, the Commissioner may reject the application.

To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(a), files from the original investigation (REP 217) were examined for any correspondence between the Commission and PMC SRL.

No reference to PMC SRL was found in the previous investigation. The Commission could not identify PMC SRL as an exporter for the original investigation.

5.3 Relationships with selected exporters

Paragraph 269ZE(2)(b) provides that, if the Commissioner is satisfied that because the exporter is related to an exporter who was a selected exporter in relation to the application for a notice, the Commissioner may reject the application.

To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(b), the exporter questionnaire responses and/or visit reports produced during the investigation for selected exporters were reviewed for company information and shareholding arrangements. The ACBPS database was also examined for any company information.

No reference to PMC SRL was found. The Commission did not identify PMC SRL as a related party to any of the selected exporters considered in the original investigation.

5.4 Finding under Section 269ZE

In accordance with section 269ZE, on review of the application, the following findings have been made about whether the circumstances exist in which an accelerated review may be sought:

- the applicant does not appear to have exported prepared or preserved tomatoes during the period for which new exporters cannot have exported. Therefore, the applicant appears to meet the definition of a new exporter and appears to satisfy the requirements for requesting an accelerated review as stated at subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for a dumping duty notice, and the application should not be rejected under paragraph 269ZE(2)(a); and
- the applicant does not appear to be related to any selected exporters in the original investigation, and the application should not be rejected under paragraph 269ZE(2)(b).

6 Consideration Findings

The Commission considered the application made by PMC SRL to determine if it was valid as required by sections 269ZE, 269ZF, and the definitions provided in section 269T of the Act.

The Commission concludes that:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under section 269ZE were not met; and
- the circumstances in which an accelerated review can be sought have been satisfied.

The Commission concludes that PMC SRL, who the Commission considers to be a new exporter, is eligible to apply for an accelerated review, and it recommends that the Commissioner not reject the application and the accelerated review continue.

Should the Commissioner decide to not reject this application and the accelerated review continues, it is recommended that the review period be 1 July 2013 to 30 June 2014.

7 Securities and Interim Dumping Duties (IDD)

When an application for an accelerated review of a dumping duty notice is lodged, section 269ZH states that no interim duty can be collected in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review. ACBPS may, however, require and take securities under section 42 in respect of IDD that may be payable.

Should the Commissioner not reject the application, and continue an accelerated review, ACBPS will require and take securities during the course of the accelerated review. A table outlining the variable factors relevant to calculating the amount of securities is provided as table 1 to the section 269ZH(b) notice.

8 Recommendation

To give effect to the recommendations of this report, the Commissioner must approve and sign the following attachments:

- Consideration instrument under s269ZF (**Attachment 1**),
- Imposition of securities instrument under s269ZH(b) (**Attachment 2**),
- Anti-Dumping Notice 2014/74 (**Attachment 3**),

9 Attachments

Confidential Attachment 1	Application
Confidential Attachment 2	Table outlining variable factors for calculation of securities