



CONSIDERATION REPORT

REPORT NO. 260

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

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

COPPOLA FOODS LTD

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 Coppola Foods Ltd (Coppola) 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 Division empowers the Commissioner to reject or not reject the application for an accelerated review of anti-dumping measures.

1.3 Findings and conclusions

Coppola'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.

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

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.

Tariff classification

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

2.2 Existing measures

On 16 April 2014 the Parliamentary Secretary for 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.

2.3 The current review application

Name	Coppola Foods Ltd
Role	Exporter
Address	61 Cholmlely Gardens London NW6 1AJ United Kingdom

2.3.1 Background to the application for an accelerated review

On 18 June 2014 Coppola 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 Coppola.

Coppola's application detailed the circumstances regarding its application including identifying Coppola as a United Kingdom entity, that it is primarily a trading company and that it has never manufactured the goods nor exported prepared or preserved tomatoes to Australia in its capacity as a trader.

The Commission preliminarily determined that Coppola's application for an accelerated review was not a valid application. This is because the Commission considered that Coppola is a trader of prepared or preserved tomatoes and not an exporter, and is not likely to be an exporter, of such goods to Australia.

The Commission's Dumping and Subsidy manual states:

Typically the manufacturer, as a principal, and who knowingly sent the goods for export to any destination, will be the exporter. The export price will be the price received by that producer/exporter i.e. the manufacturer, and where an intermediary is involved the export price will be the price received by that exporter when selling to the intermediary. In working out the dumping margin the export price received by the exporter for the goods will typically be the free on board price but an export price at another point may have to be used depending on the circumstances, for example a free alongside price, or an export price expressed in some other terms.

Depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trader and because it is acting more like a distributor intermediary may usually have its own inventory for all export sales.²

The application from Coppola did not adequately explain, in relation to its role as an intermediary, any circumstances that indicate it can be regarded as an exporter.

In response to the Commission's preliminary assessment, Coppola described its role as an intermediary in terms of its products, relationships with customers, supply chain and its role and functions in relation to ordering, warehousing, shipping and sales. The information provided sufficiently addressed the concerns identified in the initial application and supported Coppola's claim that it can be regarded as an exporter of prepared or preserved tomatoes for the purposes of the accelerated review.

² Anti-Dumping Commission Dumping and Subsidy manual, p. 27

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The applicant submitted a new application on 28 July 2014. Coppola's application detailed the circumstances regarding its export of prepared or preserved tomatoes to Australia and addressed the deficiencies identified in the preliminary assessment. Aspects of the application are assessed in section 4.

2.3.2 Review Process

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Minister³ 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 opened.

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 – 26 September 2014.

The Commissioner may not be able to 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 Minister.

2.3.3 Key dates

28 July 2014	Application lodged
14 September 2014	Response to exporter questionnaire due
26 September 2014	Submissions by interested parties due
5 November 2014	Final report to Minister due

³ On 25 September 2013, responsibility for anti-dumping matters was transferred to the Minister for Industry. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry.

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3 Application for an Accelerated Review

3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged 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.

3.2 Application

On 28 July 2014, Coppola lodged an application for an accelerated review. A copy of their application is at **Non Confidential Attachment 1**.

On receipt of the application, the Commission recorded the date on which the application was received as 28 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.

3.2.1 Assessment of the application

The application received from Coppola, was in writing, lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty notice relates.

Coppola'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.

3.3 Finding under section 269ZF

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

4 Circumstances in which an accelerated review may be sought

4.1 Status as a New Exporter

4.1.1 Background

Subsection 269ZE(1) sets out that only a new exporter may apply for an accelerated review. A new exporter is defined (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.

4.1.2 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 Coppola 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.

4.1.3 Exports during the New Exporter Period

A search of the Australian Customs and Border Protection Service (ACBPS) import database for any exports by Coppola did not reveal any exports from Coppola during the period 1 July 2012 to 3 February 2014.

4.2 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), the exporter files for the original investigation (REP 217) were examined for any correspondence between the Commission and Coppola.

The exporter files were examined with no reference to Coppola found. The Commission could not identify Coppola as an exporter for the original investigation.

4.3 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 for the REP 217 for selected exporters were reviewed for company information and shareholding arrangements. The ACBPS database was also examined.

During the examination of the import database, the Commission identified an exporter of prepared or preserved tomatoes during the period 1 July 2012 to 3 February 2014 that has some aspects of its company identification that are similar to the applicant. The Commission has already made some inquiries of the applicant about the nature of the relationship, if any, between these parties. At this stage, the evidence does not provide grounds for rejection in terms of paragraph 269ZE(2)(b). The Commission will, as part of the accelerated review, investigate the nature of any relationships that may be relevant in terms of that legislative provision.

4.4 Circumstances in which accelerated review may be sought

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 did not export prepared or preserved tomatoes during the period for which new exporters cannot have exported. Therefore, the applicant meets the definition of a new exporter and satisfies 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).

5 Conclusion

The Commission considered the application made by Coppola 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.

Accordingly, the Commission considers Coppola to be a new exporter that 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.

6 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. Customs and Border Protection 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, Customs and Border Protection 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 at Confidential Attachment 2.

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7 Attachments

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

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