



***CUSTOMS ACT 1901 - PART XVB***

**TERMINATION REPORT**

**NO. 251**

**ACCELERATED REVIEW  
OF A DUMPING DUTY NOTICE APPLYING TO**

**PREPARED OR PRESERVED TOMATOES  
EXPORTED FROM ITALY  
BY  
F.P.D. SRL INDUSTRIA CONSERVE ALIMENTARI**

**AUGUST 2014**

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## ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
CON 251	Consideration Report No. 251
FPD	F.P.D. SRL Industria Conserve Alimentari
REP 217	Anti-Dumping Commission Report No. 217
Review period	1 April 2013 to 31 March 2014
the Act	<i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods to which the anti-dumping measures apply
the Minister	the Minister for Industry
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry

# 1 Summary and Recommendations

This *Accelerated Review No.251* is in response to an application to the Anti-Dumping Commission (the Commission) by F.P.D. SRL Industria Conserve Alimentari (FPD) requesting an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy, in so far as it affects FPD.<sup>1</sup>

## 1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) be satisfied that FPD has refused to co-operate with an aspect of the accelerated review.

Accordingly, the Commission recommends that the Commissioner terminate the accelerated review in accordance with subsection 269ZE(3)(a) of the *Customs Act 1901* (the Act).<sup>2</sup>

## 1.2 Application of law to facts

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures.<sup>3</sup> The Division, among other matters:

- sets out the procedures to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Parliamentary Secretary; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.<sup>4</sup>

The Commissioner may terminate an accelerated review if satisfied that:

- the exporter is refusing to co-operate with any aspect of the review; or
- the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice.<sup>5</sup>

## 1.3 Findings and conclusions

FPD has not provided a complete and adequate response to the exporter questionnaire. The exporter questionnaire requests the provision of essential information that is relevant to the accelerated review applied for by FPD. The

<sup>1</sup> This application was lodged in accordance with section 269ZF of the *Customs Act 1901*.

<sup>2</sup> 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.

<sup>3</sup> Section 269T provides that 'anti-dumping measures' means the publication of a dumping duty notice or a countervailing duty notice or both; or the acceptance of an undertaking. In the case of prepared or preserved tomatoes from Italy, the only form of anti-dumping measures in place is a dumping duty notice.

<sup>4</sup> In December 2013, the Minister for Industry (the Minister) delegated responsibility for decision making on operational matters under Parts XVB and XVC of the Act and other anti-dumping legislation to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary).

<sup>5</sup> In terms of subsection 269ZE(3)

refusal to furnish a substantially compliant response to the exporter questionnaire amounts to a refusal to co-operate with an aspect of the accelerated review and it is recommended that the Commissioner terminate the accelerated review in accordance with subsection 269ZE(3)(a).

## 2 Background

### 2.1 Accelerated review process

If anti-dumping measures have been taken in respect of certain goods, a new exporter as defined in section 269T of the Act may request an accelerated review of those measures as they affect that particular exporter, if they consider the measures are not appropriate to that exporter.

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commission has up to 100 days to conduct its review and report to the Parliamentary Secretary.

In respect of a dumping duty notice, the Commissioner must recommend to the Parliamentary Secretary that the dumping duty notice:

- remain unaltered; or
- be altered:
  - so as not to apply to the particular exporter; or
  - to have effect in relation to the particular exporter as if different variable factors had been fixed.

In making recommendations in its final report to the Parliamentary Secretary, the Commissioner must consider the application for an accelerated review and make such inquiries as considered appropriate.

The Commissioner may terminate a review if satisfied that the exporter is refusing to co-operate with any aspect of the review or the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice.<sup>6</sup>

### 2.2 Existing measures

On 16 April 2014, the Parliamentary Secretary signed a dumping duty notice to impose dumping duties on prepared or preserved tomatoes exported from Italy (except by La Doria S.p.A and Feger di Gerardo Ferraioli S.p.A).

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

The dumping duty imposed in relation to prepared or preserved tomatoes from Italy is an amount worked out in accordance with the combination of fixed and variable duty method, as detailed in the table on the following page.

<sup>6</sup> In terms of subsection 269ZE(3)

Exporter / Italy	Dumping Margin	Effective rate interim dumping duty	Duty Method
De Clemente Conserve S.p.A.	3.25%	3.25%	<i>Combination of fixed and variable duty method</i>
Attianese S.p.A.	4.24%	4.24%	
Fiamma Vesuviana Srl	4.24%	4.24%	
Greci Industria Alimentare S.p.A.	4.24%	4.24%	
Menu Srl	4.24%	4.24%	
Mutti S.p.A.	4.24%	4.24%	
Nolana Conserve Srl	4.24%	4.24%	
Princes Industrie Alimentari SRL	4.24%	4.24%	
Rispoli Luigi & C (S.R.L.)	4.24%	4.24%	
Steriltom Srl	4.24%	4.24%	
Conserve Italia Soc. Coop Agr	4.54%	4.54%	
I.M.C.A. S.p.A.	26.35%	26.35%	
Lodato Gennaro & C. S.p.A.	26.35%	26.35%	
<b>Uncooperative exporters (All other)</b>	26.35%	26.35%	

If FPD exports prepared or preserved tomatoes to Australia, the imported goods will be subject to the “*All other*” rate of 26.35 per cent, which is the fixed component of duty. An additional amount of variable duty may be incurred if the export price per unit is below the (confidential) ascertained export price per unit.

### 2.3 The current review

On 23 May 2014, FPD lodged an application for an accelerated review of the anti-dumping measures applying to prepared or preserved tomatoes exported to Australia from Italy, in so far as it affects FPD.<sup>7</sup>

<sup>7</sup> In terms of section 269ZF



The Commission examined the application and considered at the time:

- FPD was a new exporter;<sup>8</sup>
- there were no grounds to reject the application;<sup>9</sup> and
- therefore, the requirements of an application for an accelerated review were satisfied.<sup>10</sup>

As the circumstances in which an accelerated review can be sought were satisfied, the Commissioner did not reject the application and commenced the accelerated review. Consideration Report No. 251 (CON 251) provides further details in relation to the Commission's consideration of the application and the decision of the Commissioner. CON 251 should be read in conjunction with this report and is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2014/47, which was published on 11 June 2014. ADNs are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Interested parties were invited in ADN 2014/47 to lodge submissions in relation to the accelerated review by 22 July 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 1 September 2014.

For the purposes of the accelerated review, the period examined is 1 April 2013 to 31 March 2014 (the review period).

## 2.4 Public record

There is no legislative requirement for the Commission to maintain a public file for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public file for this accelerated review has been maintained and is accessible on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 2.5 The goods

### 2.5.1 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*

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<sup>8</sup> As defined by section 269T

<sup>9</sup> In terms of subsection 269ZE(2)

<sup>10</sup> In terms of section 269ZF



*(including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.<sup>11</sup>*

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

### **2.5.2 Tariff classification**

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

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<sup>11</sup> REP 217

### 3 Termination Grounds

#### 3.1 Findings

FPD was sent an exporter questionnaire on 29 May 2014 with a due date of 7 July 2014 to submit its response to the Commission.

The Commission advised FPD at the time it forwarded the questionnaire that:

- if FPD did not complete the questionnaire, the Commissioner may deem that FPD did not cooperate with the review and the Commissioner would likely terminate the review under subsection 269ZE(3); and
- the Australian Customs and Border Protection Service will collect securities in respect of interim dumping duty that may be payable in respect of consignments of goods intended for home consumption after the application was lodged and until the completion of the review.

On 7 July 2014, FPD provided a response to the exporter questionnaire. However, the Commission found the response to be incomplete and did not satisfy the Commission's requirements to undertake the accelerated review.

On 8 July 2014, the Commission wrote to FPD and granted an extended due date of 11 July 2014 to submit a complete exporter questionnaire response. In addition, the Commission alerted FPD that should this response fail to be complete and accurate, that the Case Director is likely to recommend to the Commissioner that the accelerated review be terminated.

On 10 July 2014, FPD provided to the Commission a revised response to the exporter questionnaire. The Commission has assessed FPD's response and found that it did not provide all of the information sought (**Confidential Attachment 1**). In particular:

- numerous questions and sections of the exporter questionnaire were not completed; and
- numerous appendices that required financial data were not completed.

Given the scale of the deficiencies it was not considered feasible for FPD to remedy the deficiencies with sufficient time to allow the accelerated review to be completed within the legislative timeframe.

The Commission considers that the failure to provide a response to the questionnaire amounts to a refusal to co-operate with an aspect of the accelerated review and therefore provides grounds to terminate the accelerated review in accordance with subsection 269ZE(3)(a).

#### **4 Effect of the Termination**

As a result of this termination, FPD's exports of prepared or preserved tomatoes will remain subject to the 'all other exporters' dumping duty rates for Italy in accordance with the dumping duty notice published on 16 April 2014.

On 23 May 2014, the Commissioner imposed Securities on exports by FPD while the accelerated review proceeded.

In accordance with section 269ZH of the Act, if FPD has exports of prepared or preserved tomatoes that were subject to securities (i.e. prepared or preserved tomatoes exported by FPD that were imported and entered for home consumption in Australia between 23 May 2014 and the date that the review is terminated) these securities will now be converted to interim dumping duty at the rate applicable to 'all other exporters' from Italy. Future exports of prepared or preserved tomatoes by FPD will also be subject to this level of duty.

This termination does not affect FPD's right to apply for another accelerated review in accordance with section 269ZF of the Act.

5 Attachments	
Confidential Attachment 1	List of deficiencies identified in FPD's response to the exporter questionnaire