



CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT

NO. 260

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

**PREPARED OR PRESERVED TOMATOES
EXPORTED FROM ITALY
BY
COPPOLA FOODS LTD**

OCTOBER 2014

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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
CON 260	Consideration Report No. 260
Coppola Foods	Coppola Foods Ltd
REP 217	Anti-Dumping Commission Report No. 217
Review period	1 July 2013 to 30 June 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.260* has been conducted following an application by Coppola Foods Ltd (Coppola Foods) for 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 Coppola Foods.¹

1.1 Recommendation

The Anti-Dumping Commission (the Commission) recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) be satisfied that Coppola Foods is refusing to co-operate with an aspect of the accelerated review. Accordingly, the Commission recommends that, in accordance with subsection 269ZE(3)(a) of the *Customs Act 1901*² (the Act), the Commissioner terminate the accelerated review.

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.³ The Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews in respect of the exporter and the goods covered by the application for the purpose of making a report to the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.⁴

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.⁵

1.3 Findings and conclusions

Coppola Foods has advised the Commission that it will not be able to provide information pertinent to its application for an accelerated review and has requested that the Commission terminate its application.

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

² 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.

³ 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.

⁴ 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).

⁵ In accordance with subsection 269ZE(3).

The inability to provide information that the Commission considers relevant 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 subsection 269T(1) of the Act may request an accelerated review of those measures as they affect that particular exporter.

If an application for an accelerated review of anti-dumping measures is 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
 - so as to apply to the particular exporter as if different variable factors had been fixed.⁶

In making recommendations in his 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.⁷

2.2 Existing measures

On 16 April 2014, the Parliamentary Secretary signed a dumping duty notice imposing 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 anti-dumping measures on prepared or preserved tomatoes 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.

⁶ Subsection 269ZG(1).

⁷ In accordance with 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%	
Uncooperative exporters (All other)	26.35%	26.35%	

If Coppola Foods exports prepared or preserved tomatoes to Australia, the imported goods are 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 28 July 2014, Coppola Foods lodged an application for 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 Coppola Foods.⁸

⁸ In accordance with section 269ZF

The Commission examined the application and considered that there was sufficient information that:

- Coppola Foods was a new exporter;⁹
- there were no grounds to reject the application;¹⁰ and
- the requirements of an application for an accelerated review were satisfied.¹¹

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. 260 (CON 260), available on the Commission's website at www.adcommission.gov.au, provides further details and should be read in conjunction with this report.

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2014/79, which was published on 1 September 2014. ADNs are available on the Commission's website at www.adcommission.gov.au.

Interested parties were invited in ADN 2014/79 to lodge submissions in relation to the accelerated review by 26 September 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 5 November 2014.

For the purposes of the accelerated review, the period examined is 1 July 2013 to 30 June 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 was maintained on the Commission's website at 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 (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.*¹²

⁹ As defined by section 269T

¹⁰ In accordance with subsection 269ZE(2)

¹¹ In accordance with section 269ZF

¹² REP 217

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*.

3 Termination Grounds

3.1 Findings

Coppola Foods was sent exporter questionnaires on 8 August 2014, with a due date of 14 September 2014 to submit its response to the Commission.

The Commission advised Coppola Foods at the time it forwarded the exporter questionnaires that:

- if Coppola Foods did not complete the exporter questionnaires the Commissioner may deem that Coppola Foods did not co-operate 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.

Coppola Foods wrote to the Commission on 15 September 2014 seeking an extension of time to complete the exporter questionnaires. The Commission considered this request and granted an extension up to 18 September 2014.

Given the expedited nature of accelerated reviews and the shortened timeframe for the Commission to produce a final report, the Commission advised Coppola Foods that there is no provision in the legislation to extend the accelerated review timeline. Coppola Foods was also advised that if it is not able to submit the exporter questionnaires by 18 September 2014, then the Commission will proceed to terminate its application for an accelerated review.

Coppola Foods wrote to the Commission on 19 September 2014 advising that it was not able to submit the exporter questionnaires and requested that the Commission terminate its application for an accelerated review. Coppola Foods indicated that it will resubmit an application for an accelerated review once it has completed the exporter questionnaires (**Non-Confidential Attachment 1**).

The Commission considers that the failure to provide a response to the exporter questionnaires amounts to a refusal to co-operate with an aspect of the accelerated review and requires termination of the accelerated review in accordance with subsection 269ZE(3)(a).

4 Effect of the Termination

Coppola Foods exports of prepared or preserved tomatoes remain subject to the 'all other exporters' dumping duty rates for Italy in accordance with the dumping duty notice signed by the Parliamentary Secretary on 16 April 2014.

In accordance with section 269ZH of the Act securities were imposed by the Commissioner on 28 July 2014 on exports by Coppola Foods (the date the accelerated review commenced).

Any securities taken on the subject goods exported by Coppola Foods that had been imported and entered for home consumption in Australia between 28 July 2014 and the date that the review was terminated will be converted to interim dumping duty at the rate applicable to 'all other exporters' from Italy. Any future exports of prepared or preserved tomatoes by Coppola Foods will also be subject to 'all other exporters' level of duty.

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

5 Attachments

Non-confidential Attachment 1	Letter from Coppola Foods to the Commission
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