



CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT

NO. 268

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

**PREPARED OR PRESERVED TOMATOES
EXPORTED FROM ITALY
BY
CONSORZIO CASALASCO DEL POMODORO S.A.C.**

OCTOBER 2014

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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
CON 268	Consideration Report No. 268
CCDP	Consorzio Casalasco Del Pomodoro S.A.C.
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.268* is in response to an application by Consorzio Casalasco Del Pomodoro S.A.C. (CCDP) seeking 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 CCDP.¹

1.1 Recommendation

The Anti-Dumping Commission (the Commission) recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) be satisfied that CCDP 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* (the Act), the Commissioner terminate the accelerated review.²

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 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 unchanged 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

CCDP was sent an exporter questionnaire in relation to the accelerated review. The exporter questionnaire requests the provision of essential information that is relevant to the accelerated review applied for by CCDP. As only a partial response was received by the due date, the Commission wrote to CCDP advising that the information was incomplete with a list of the key

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 terms of subsection 269ZE(3)

deficiencies (**Confidential Attachment 1**). CCDP then wrote to the Commission and advised that it wished to withdraw its application for the accelerated review.

The failure to provide a complete response to the exporter questionnaire, by CCDP advising that it wished to withdraw its application for the accelerated review, 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.⁶

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.⁷

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.

⁶ In terms of Subsection 269ZG(1).

⁷ 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%	
Unco-operative exporters (All other)	26.35%	26.35%	

If CCDP 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 26 August 2014, CCDP 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 CCDP.⁸

⁸ In terms of section 269ZF

The Commission examined the application and considered at the time:

- CCDP was a new exporter⁹;
- there were no grounds to reject the application¹⁰; 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. 268 (CON 268) provides further details in relation to the Commission's consideration of the application and the decision of the Commissioner. CON 268 should be read in conjunction with this report and is available on the Commission's website at www.adcommission.gov.au.

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2014/95, which was published on 25 September 2014. ADNs are available on the Commission's website at www.adcommission.gov.au. Interested parties were invited in ADN 2014/95 to lodge submissions in relation to the accelerated review by 27 October 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 4 December 2014.

For the purposes of the accelerated review, the period examined is 1 July 2013 to 30 June 2014 (referred to as 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.

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 terms of subsection 269ZE(2)

¹¹ In terms of section 269ZF

¹² Anti-Dumping Commission Report No. 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

CCDP was sent an exporter questionnaire on 29 August 2014, with a due date of 6 October 2014 to submit its response to the Commission.

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

- if CCDP did not provide all of the information sought in the questionnaire, the Commissioner may deem that CCDP 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.

On 6 October 2014, CCDP provided a response to the exporter questionnaire. The Commission found the response to be incomplete for the purposes of the Commission's requirements to undertake the accelerated review under the Act.

On 15 October 2014, the Commission wrote to CCDP advising that only a partial response to the questionnaire was received. In addition, the Commission alerted CCDP that the failure to provide a substantially compliant response to the questionnaire may be considered as a refusal to co-operate with an aspect of the accelerated review. CCDP was advised that as a result, the Commissioner may decide to terminate the accelerated review (**Confidential Attachment 1**).

CCDP then wrote to the Commission on 15 October 2014, advising that it wishes to withdraw its application for the accelerated review (**Non-Confidential Attachment 2**).

The Commission considers that the failure to provide a complete response to the questionnaire, by CCDP advising that it wished to withdraw its application for the accelerated review, 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, CCDP'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.

Securities were imposed by the Commissioner on 26 August 2014 on exports by CCDP while the accelerated review proceeded.

In accordance with section 269ZH of the Act, if CCDP has exports of prepared or preserved tomatoes that were subject to securities (i.e. prepared or preserved tomatoes exported by CCDP that were imported and entered for home consumption in Australia between 26 August 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 CCDP will also be subject to this level of duty.

This termination does not affect CCDP's right to apply for another accelerated review in accordance with sections 269ZE and 269ZF of the Act, should CCDP be in a position to be able to provide a substantially compliant response to the exporter questionnaire.

5 Attachments

Confidential Attachment 1	Letter from the Commission to CCDP
Non-confidential Attachment 1	Letter from CCDP to the Commission