



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

**FINAL REPORT**

**REPORT NO. 262**

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

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

**PMC SRL**

**OCTOBER 2014**

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<b>ABBREVIATIONS</b>
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<b>Abbreviation</b>	<b>Full title</b>
ADN	Anti-Dumping Notice
CON 262	Consideration Report No. 262
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
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	Preserved or prepared tomatoes 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. 262* is in response to an application<sup>1</sup> from PMC SRL 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 PMC SRL.

## 1.1 Recommendation

The Commissioner of the Anti-Dumping Commission (the Commissioner) recommends that in accordance with subsection 269ZG(1)(a) of the *Customs Act 1901* (the Act), the original dumping duty notice the subject of the application remain unaltered so far as it affects PMC SRL.

If the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare<sup>2</sup> (by signing the notice at **Attachment 1**) that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the original dumping duty notice is to remain unaltered, and such notice must be published in the *Gazette*.

## 1.2 Application of law to facts

Division 6 of Part XVB of the Act enables new exporters to apply for an accelerated review of anti-dumping measures. 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.

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.

In December 2013, the Minister for Industry (the Minister) delegated responsibility for decision making on operational matters under Parts XVB

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

<sup>2</sup> Subsection 269ZG(3)(a) of the Act.

and XVC of the Act and other anti-dumping legislation to the Parliamentary Secretary.

### **1.3 Findings and conclusions**

Based on all relevant and available information the Anti-Dumping Commission (the Commission) has found that PMC SRL is not a manufacturer or producer of prepared or preserved tomatoes, and accordingly it does not have the status of an exporter. As such, PMC SRL cannot be considered a new exporter for the purposes of an accelerated review and therefore is not eligible for an accelerated review. Accordingly, the Commissioner recommends that the original dumping duty notice remain unaltered.

## 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 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.

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.

Following the Parliamentary Secretary's decision, a notice is published advising interested parties of the decision.

### 2.2 Existing measures

On 16 April 2014 the Parliamentary Secretary signed a dumping duty notice that imposed dumping duties on certain prepared or preserved tomatoes exported to Australia from Italy except for the goods exported by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A.

The current anti-dumping measures on imports of the goods 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 below.

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 PMC SRL 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 25 July 2014, PMC SRL lodged an application for an accelerated review.

The Commission examined the application and considered at that time:

- PMC SRL was a new exporter;<sup>3</sup>
- there were no grounds to reject the application;<sup>4</sup> and
- the requirements of an application for accelerated review were satisfied.<sup>5</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. 262 (CON 262) provides further

<sup>3</sup> As defined by section 269T of the Act

<sup>4</sup> In terms of subsection 269ZE(2) of the Act

<sup>5</sup> In terms of section 269ZF of the Act

details in relation to the Commission's consideration of the application and the decision of the Commissioner. The report 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. 2014/74, which was published on 2 September 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 3 November 2014. The ADN is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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](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 (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.*<sup>6</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 to subheading 2002.10.00 (statistical code 60) in Schedule 3 of the *Customs Tariff Act 1995*.

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<sup>6</sup> Anti-Dumping Commission Report No. 217



### **3 ASSESSMENT OF THE APPLICATION**

The application submitted by PMC SRL on 25 July 2014 indicated that the applicant was a manufacturer of prepared and preserved tomatoes and it contained information that appeared to be relevant for assessing variable factors. It referred to PMC SRL as being a manufacturer and an exporter and made references to certain sales data and arrangements with respect to exports of the goods to Australia.

On 19 September 2014, the Commission received from PMC SRL a complete response to the exporter questionnaire. The non-confidential version of this response was placed on the public record. Based on the information provided, it became apparent that PMC SRL had not, at that point in time manufactured the goods.

The information provided by PMC SRL in its exporter questionnaire response indicates that it had not:

- manufactured the goods under consideration;
- sold any of the goods under consideration to Australia;
- sold any of the goods under consideration on the domestic market, nor;
- sold any of the goods under consideration to any other third country.

On 14 October 2014, PMC SRL made a submission stating that PMC SRL had not:

- manufactured or sold any of the goods under consideration to Australia;
- sold any like goods on the domestic market;
- however it outlined a preferred methodology for determining the relevant variable factors. This submission is available on the Public Record.

Notwithstanding the submission, the Commission considers it is critical for a new exporter to have at least manufactured or sold the goods in order to determine any variable factors relevant to it.

The Commission concludes that PMC SRL, based on all available information including the exporter questionnaire response and submissions made to the review, is not a manufacturer or producer of prepared or preserved tomatoes and accordingly it does not currently have the status of an exporter. As such, PMC SRL cannot be considered a new exporter for the purposes of an accelerated review and therefore is not eligible for an accelerated review. The Commission recommends that the original dumping duty notice remain unaltered.

Accordingly, the Commission has not determined the variable factors (export price, normal value and non-injurious price) in this report.

## **4 EFFECT OF THE REVIEW**

If the Parliamentary Secretary agrees, PMC SRL will remain subject to the anti-dumping measures that were imposed in relation to uncooperative / all other exporters in the original dumping duty notice.

**5 ATTACHMENTS**

**Attachments**

Attachment 1

Section 269ZG(3) public notice