



CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 278

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

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

DAVIA S.P.A.

March 2015

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ABBREVIATIONS

Abbreviation	Full title
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Davia	Davia S.p.A.
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	free-on-board
the goods	the goods to which the anti-dumping measures apply
NIP	Non-Injurious Price
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
REP 217	Final Report No. 217
review period	1 October 2013 to 30 September 2014
SEF	Statement of Essential Facts
SPCA	SPC Ardmona Operations Limited

1 SUMMARY AND RECOMMENDATION

This *Accelerated Review No. 278* is in response to an application¹ from Davia S.p.A. (Davia) seeking an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy in so far as the notice affects Davia.

1.1 Recommendation

The Commissioner of the Anti-Dumping Commission (the Commissioner) recommends that the dumping duty notice, the subject of the application, be altered so as to apply to the applicant as if different variable factors had been fixed.²

If the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary)³ accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare by signing the notice at **Attachment 1** that, for the purposes of the *Customs Act 1901* (the Act)⁴ and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the original dumping duty notice had applied to the applicant but the Parliamentary Secretary had specified different variable factors relevant to the determination of duty payable.⁵ This notice must be published in the *Commonwealth Gazette*.

In terms of the method for working out interim dumping duty payable in relation to any exports of prepared or preserved tomatoes by Davia, the interim dumping duty amount will be worked out in accordance with the combination of fixed and variable duty method pursuant to subregulation 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. This is consistent with the method used in the original dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy.

1.2 Legislative background

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of a dumping and/or countervailing duty notice. This 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 Parliamentary Secretary; and

¹ This application was lodged in accordance with section 269ZF.

² Subsection 269ZG(1)(b)(ii).

³ The Minister for Industry and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision-maker for this accelerated review.

⁴ 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.

⁵ Subsection 269ZG(3)(b)(ii).

- empowers the Parliamentary Secretary, after consideration of such reports, to leave the dumping and/or countervailing duty notice unaltered or to modify them as provided for in the legislation.

1.3 Findings and conclusions

Based on all relevant and available information, the Anti-Dumping Commission (the Commission) has, in relation to the variable factors for Davia's exports of prepared or preserved tomatoes to Australia, found that:

- the export price should be determined using the price paid or payable by the importer less post-exportation charges⁶ (refer to Section 3 of this report);
- the normal value should be established using the price paid or payable for like goods sold by Davia in the ordinary course of trade for home consumption in Italy in sales that are arms length transactions⁷ (refer to Section 4 of this report); and
- the non-injurious price⁸ (NIP) should be based on an unsuppressed selling price that is the full cost to make and sell (CTMS) of the Australian manufacturer, SPC Ardmona Operations Limited (SPCA), adjusted to reflect export price at free-on-board (FOB) (refer to section 5 of this report).

Based on these findings and conclusions, the Commissioner recommends that the Parliamentary Secretary declare that the original dumping duty notice had applied to the applicant but the Parliamentary Secretary had fixed specified different variable factors relevant to the determination of duty payable by the applicant.⁹

The effect is that prepared or preserved tomatoes exported to Australia from Italy by Davia will be subject to interim dumping duty. The dumping duty payable comprises a fixed component that is zero, and a variable component that will be payable if the actual export price of Davia is below a specified (confidential) amount per kilogram.

⁶ Subsection 269TAB(1)(a).

⁷ Subsection 269TAC(1).

⁸ Section 269TACA.

⁹ Subsection 269ZG(3)(b)(ii).

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.

These goods do not include pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

The goods are currently classified to tariff subheading 2002.10.00 (statistical code 60) of Schedule 3 to the *Customs Tariff Act 1995*.

2.2 Existing measures

On 17 June 2013, an application was lodged by SPCA requesting that the then Minister responsible for anti-dumping matters publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

Public notification of initiation of the investigation was made on 10 July 2013 in *The Australian* newspaper and in Anti-Dumping Notice (ADN) No. 2013/59.

The investigation period was 1 July 2012 to 30 June 2013. A Statement of Essential Facts (SEF) was placed on the public record on 4 February 2014.

On 16 April 2014, following consideration of Final Report No. 217 (REP 217), the then Parliamentary Secretary to the Minister for Industry published a dumping duty notice in respect of the goods. Dumping duties were imposed on all exporters from Italy, except 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.

PUBLIC RECORD

Exporter / Italy	Dumping Margin	Effective rate of 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%	

Pending the outcome of this accelerated review, if Davia 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 actual export price of the goods per unit is below the (confidential) ascertained export price per unit.

2.3 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.¹⁰

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

¹⁰ Subsection 269ZE(1).

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. 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.¹¹

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

2.4 The current review

On 2 December 2014, Davia lodged an application for an accelerated review of the dumping duty notice in so far as the notice affects Davia.

The Commissioner considered the application made by Davia to determine if it was valid, as required by sections 269ZE and 269ZF of the Act.

The Commissioner concluded that:

- the application satisfied the requirements of subsection 269ZF(1);
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) were satisfied; and
- there was no reason to reject the application under subsection 269ZE(2) of the Act.

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. 278 provides further 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.

The commencement of the accelerated review was publicly notified in ADN No. 2014/140, which was published on 19 December 2014.

This ADN advised that interested parties had until 31 January 2015 to lodge submissions in relation to the accelerated review. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 12 March 2015. The ADN is available on the Commission's website at www.adcommission.gov.au.

¹¹ Subsection 269ZG(1).

For the purposes of the accelerated review, the period examined is from 1 October 2013 to 30 September 2014 (referred to as the review period).

2.4.1 Davia's exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Davia to complete.

On 16 January 2015, the Commission received a completed response to the exporter questionnaire. The non-confidential version of this response was placed on the public record.

This response contained information and data in relation to:

- company structure and organisation;
- turnover and financial statements;
- domestic sales with supporting documentation for two sales;
- export sales to Australia with supporting documentation for two sales;
- purchase of raw materials including details of suppliers;
- production costs and selling, general and administrative expenses; and
- production process and production volumes.

The Commission reviewed the response to the exporter questionnaire and considered that it was complete and relevant for the purpose of this accelerated review.

2.5 Matters excluded from the accelerated review

The Commission considers that this accelerated review is not the relevant mechanism to reassess certain aspects of the anti-dumping measures applying to prepared or preserved tomatoes. As such, this accelerated review did not reassess the finding made in REP 217 that a market situation does not exist in Italy in relation to prepared or preserved tomatoes.

2.6 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.

3 EXPORT PRICE

3.1 Findings

The Commission considers that the information provided by Davia in its response to the exporter questionnaire is suitable for determining the export price.

The Commission considers that the export price for prepared or preserved tomatoes exported by Davia from Italy should be determined under subsection 269TAB(1)(a) of the Act using the price paid or payable by the importer, less post-exportation expenses.

3.2 Determination of export price

Based on the information available, the Commission is satisfied that, for the goods exported by Davia from Italy to Australia:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arms length transactions.

The Commission considers that sufficient information is available to determine the export price, for the purposes of this accelerated review, under subsection 269TAB(1)(a) of the Act. Specifically, the Commission has used Davia's invoiced price, other than any part of that price that represents a charge in respect of transport or any other matter arising after exportation.

Export price calculations are at **Confidential Attachment 1**.

4 NORMAL VALUE AND DUMPING MARGIN

4.1 Findings

The Commission considers that the information provided by Davia in its response to the exporter questionnaire is suitable for normal value purposes.

The Commission considers that normal value should be established under subsection 269TAC(1) using the price paid or payable for all sales of like goods sold by Davia in the ordinary course of trade for home consumption in Italy in sales that are arms length transactions.

The Commission has found the dumping margin in respect of prepared or preserved tomatoes exported from Italy by Davia is -0.56 per cent and therefore considers that Davia was not dumping during the review period.

4.2 The Commission's assessment of normal value

Sufficient information is available to enable the normal value of preserved or prepared tomatoes exported to Australia from Italy by Davia to be determined under subsection 269TAC(1).

The normal value was determined using domestic sales of prepared or preserved tomatoes made by Davia in Italy that were made in the ordinary course of trade, in arms length transactions and in sufficient volumes.

The following adjustments were made to the normal value under subsection 269TAC(8) to ensure fair comparison with the export price at FOB delivery terms:

- inland freight – a downward adjustment was made to reflect domestic inland freight (where applicable) and an upwards adjustment was made to reflect export inland freight to the port;
- commissions – a downward adjustment was made to reflect commissions paid to an agent that facilitated some domestic sales transactions; and
- physical differences – a downward adjustment was made to reflect the difference in the cost to make for exported products and the cost to make for products sold domestically.

Further, the Commission excluded certain products from the assessment of normal value where it considered these products were not (for confidential reasons) likely to be relevant domestic sales for the purposes of establishing normal value.

The normal value is expressed as a weighted average per kilogram based on comparable models sold by Davia in the review period that were sold in the ordinary course of trade and in arms length transactions, as adjusted to ensure fair comparison.

Normal value calculations are at **Confidential Attachment 2**.

4.3 Dumping margin

As Davia exported prepared or preserved tomatoes during the review period, the Commission calculated a dumping margin for prepared or preserved tomatoes exported to Australia from Italy by Davia.

The dumping margin has been assessed in accordance with subsection 269TACB(2)(a) by comparing the weighted average of export prices to the corresponding weighted average of normal values for a comparable model over the review period.

The dumping margin in respect of prepared or preserved tomatoes exported from Italy by Davia is -0.56 per cent.

The dumping margin calculations are at **Confidential Attachment 3**.

5 NON-INJURIOUS PRICE

The calculation of the NIP provides the mechanism whereby the lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping.¹²

In REP 217, the Commission based its calculation of NIP on SPCA's CTMS, and it stated:

*"...the minimum NIP exceeded established normal values. Accordingly, the Commission intends recommending that the full margins of dumping be the basis for imposing interim dumping duties."*¹³

The Commission considers it is appropriate to maintain the same approach to calculating NIP for the purposes of the accelerated review. The Commission used SPCA's CTMS data for the six months to June 2014 (which covers SPCA's production period and is within the review period) for the purposes of this accelerated review. Using the CTMS data as an unsuppressed selling price, the Commission then deducted from this unsuppressed selling price post-exportation costs including overseas freight, insurance, landing and clearing charges and importer SG&A and profit. These estimates were derived from data verified previously for the purposes of REP 217. These deductions provided a NIP at FOB delivery terms.

As was the case in the original investigation, the Commission noted that the NIP for the accelerated review exceeded the normal value calculated for Davia for the review period.

NIP calculations are at **Confidential Attachment 4**.

¹² Section 269TACA.

¹³ REP 217, p. 71.

6 EFFECT OF THE REVIEW

The existing dumping duties take the form of a fixed amount of duty per kilogram (calculated as a percentage of the export price, or the ascertained export price, whichever is higher), plus a variable amount of duty if the actual export price is below the ascertained export price.

The method of calculating duty payable in relation to Davia's exports of prepared or preserved tomatoes will not vary as a result of this accelerated review. However, the fixed component of dumping duty applying to the goods exported by Davia will be zero. This is because the ascertained export price is set at the same level of the weighted average normal value for Davia.

Dumping duty will only be incurred in relation to Davia's exports of prepared or preserved tomatoes where the actual export price is below the ascertained export price.

7 RECOMMENDATION

The Commissioner recommends that the dumping duty notice, the subject of the application, be altered so as to apply to the applicant (Davia) as if different variable factors had been fixed.

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Attachment 1**) to declare, under subsection 269ZG(3)(b)(ii) of the Act, that the Act and the Dumping Duty Act have effect as if the original dumping duty notice had applied to Davia but the Parliamentary Secretary had fixed specified different variable factors relevant to the determination of duty payable.

8 ATTACHMENTS

Attachments	
Attachment 1	Public notice under subsection 269ZG(3)(b)(ii)
Confidential Attachments	
Confidential Attachment 1	Export price calculations
Confidential Attachment 2	Normal value calculations
Confidential Attachment 3	Dumping margin calculations
Confidential Attachment 4	NIP calculations