



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 261

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

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

LE SPECIALITA ITALIANE S.R.L

OCTOBER 2014

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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
CON 261	Consideration Report No. 261
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. 261* is in response to an application¹ from Le Specialita' Italiane S.R.L (Le Specialita) 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 Le Specialita.

1.1 Recommendation

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

If the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare² (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 unchanged, 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

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

² 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 Le Specialita is not a manufacturer or producer of prepared or preserved tomatoes, and accordingly it does not have the status of an exporter. As such, Le Specialita 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%	
Uncooperative exporters (All other)	26.35%	26.35%	

If Le Specialita 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 22 July 2014, Le Specialita lodged an application for an accelerated review.

The Commission examined the application and considered at that time:

- Le Specialita was a new exporter;³
- there were no grounds to reject the application;⁴ and
- the requirements of an application for accelerated review were satisfied.⁵

As the circumstances in which an accelerated review can be sought were satisfied, the Commissioner did not reject the application and commenced the

³ As defined by section 269T of the Act

⁴ In terms of subsection 269ZE(2) of the Act

⁵ In terms of section 269ZF of the Act

accelerated review. Consideration Report No. 261 (CON 261) 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 Anti-Dumping Notice (ADN) No. 2014/73, which was published on 29 August 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 30 October 2014. The ADN is available on the Commission's website at 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.

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.*⁶

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*.

⁶ Anti-Dumping Commission Report No. 217

3 ASSESSMENT OF THE APPLICATION

The application submitted by Le Specialita on 22 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 Le Specialita 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 Le Specialita a response to the exporter questionnaire. The non-confidential version of this response was placed on the public record. In its exporter questionnaire response, Le Specialita did not provide any data in relation to the cost of production of the goods or like goods.

The information provided by Le Specialita 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; or
- sold any of the goods under consideration to any other third country.

The Commission concludes that Le Specialita, based on all available information including the exporter questionnaire response, is not a manufacturer or producer of prepared or preserved tomatoes and accordingly it does not have the status of an exporter. As such, Le Specialita 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 unchanged.

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, Le Specialita 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