



CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 246

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

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

DAVIA S.P.A.

JULY 2014



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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
CON 246	Consideration Report No. 246
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Review period	1 April 2013 to 31 March 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 kind of 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. 246* 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 it 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 remain unaltered so far as it affects Davia.²

If the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare³ (by signing the notice at **Attachment 1**) that, for the purposes of the *Customs Act 1901* (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 eligible parties 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.

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.

1.3 Findings and conclusions

Based on all relevant and available information the Anti-Dumping Commission (the Commission) has found that Davia is not a manufacturer or producer of prepared or preserved tomatoes, and it does not have the status of an exporter. As such, Davia cannot be considered a new exporter for the purposes of an accelerated review and therefore is not eligible for an

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

² Subsection 269ZG(1)(a) of the Act.

³ Subsection 269ZG(3)(a) of the Act.

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 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 Davia exports prepared or preserved tomatoes to Australia, the imported goods will be subject to the “*All other*” rate of 26.35%, 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 17 April 2014, Davia lodged an application for an accelerated review.

The Commission examined the application and considered at that time:

- Davia was a new exporter;⁴
- there were no grounds to reject the application;⁵ and
- the requirements of an application for accelerated review were satisfied.⁶

⁴ As defined by section 269T of the Act

⁵ In terms of subsection 269ZE(2) of the Act

⁶ In terms of section 269ZF 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. 246 (CON 246) 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. 2014/39, which was published on 13 May 2014. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 26 July 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 April 2013 to 31 March 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.⁷

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*.

⁷ Anti-Dumping Commission Report No. 217

3 CONSIDERATION OF THE APPLICATION

The application submitted by Davia on 17 April 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 Davia as being a manufacturer and an exporter and made references to certain sales data and arrangements with respect to Australia.

On 6 June 2014, the Commission received from Davia 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 Davia has not manufactured the goods.

The information provided by Davia in its exporter questionnaire response indicates that its domestic and export sales data relate to goods produced by entities other than Davia, and that Davia's role in those transactions was that of an intermediary.

The Commission's Dumping and Subsidy manual states:

Typically the manufacturer, as a principal, and who knowingly sent the goods for export to any destination, will be the exporter. The export price will be the price received by that producer/exporter i.e. the manufacturer, and where an intermediary is involved the export price will be the price received by that exporter when selling to the intermediary. In working out the dumping margin the export price received by the exporter for the goods will typically be the free on board price but an export price at another point may have to be used depending on the circumstances, for example a free alongside price, or an export price expressed in some other terms.

Depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trader and because it is acting more like a distributor intermediary may usually have its own inventory for all export sales.⁸

In this case, Davia has not manufactured the goods and it has not explained, in relation to its role as an intermediary, any circumstances that indicate it can be regarded as an exporter.

The Commission concludes that Davia is not a manufacturer or producer of prepared or preserved tomatoes and it does not have the status of an exporter. As such, Davia cannot be considered a new exporter for the purposes of an accelerated review and therefore is not eligible for an

⁸ Anti-Dumping Commission Dumping and Subsidy manual, p. 27

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, Davia will remain subject to the anti-dumping measures that were imposed in the original dumping duty notice.

5 ATTACHMENTS

Attachments	
Attachment 1	Section 269ZG(3) public notice



Customs Act 1901 – Part XVB

**Prepared or Preserved Tomatoes
Exported from Italy**

**Findings in relation to an Accelerated Review
of Anti-Dumping Measures**

Public Notice under subsection 269ZG(3) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission has completed the accelerated review, which commenced on 17 April 2014, of the anti-dumping measures applying to prepared or preserved tomatoes exported to Australia from Italy, in so far as they affect Davia S.p.A.

Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Anti-Dumping Commission Report No. 246 (REP 246).

I, ROBERT CHARLES BALDWIN, the Parliamentary Secretary to the Minister for Industry, have considered REP 246 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 246.

Under subsection 269ZG(3)(a) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the original dumping duty notice is to remain unchanged.

REP 246 has been placed on the public record, which may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries concerning this notice may be directed to the case management team by email to operations1@adcommission.gov.au, by telephone on (03) 9244 8259 or by fax on 1300 882 506 or +61 2 6275 6888 (outside Australia).

Dated this 24th day of July 2014

ROBERT CHARLES BALDWIN

Parliamentary Secretary to the Minister for Industry