



CONSIDERATION REPORT

**APPLICATION FOR AN ACCELERATED REVIEW
OF A DUMPING DUTY NOTICE APPLYING TO**

**SODIUM BICARBONATE
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA
BY**

VANDERARK INTERNATIONAL LIMITED

REPORT NO. 235

17 December 2013

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1 Summary and recommendations

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application by VanderArk International Limited (VDA) for an accelerated review of the dumping duty notice applying to sodium bicarbonate exported to Australia from the People's Republic of China (China).

1.1 Recommendations

The Commission recommends that the Anti-Dumping Commissioner (the Commissioner) decide not to reject the application.

1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901*¹ (the Act) sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the accelerated review of a dumping duty notice by certain exporters of goods covered by the notice.

The Division empowers the Commissioner to reject or not reject the application for an accelerated review of anti-dumping measures.

1.3 Findings and conclusions

VDA's application for accelerated review of anti-dumping measures applying to sodium bicarbonate exported to Australia from China has been examined.

The Commission finds:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under subsection 269ZE(2) were not met; and
- the circumstances in which an accelerated review can be sought have been satisfied.

Accordingly the Commission concludes that the applicant is eligible to apply for an accelerated review, and recommends that the Commissioner not reject the application and the accelerated review continue.

¹ 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.

2 Background

2.1 Goods under review

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are sodium hydrogen carbonate, also referred to as sodium bicarbonate or baking soda, which can be manufactured via the natural alkali method or the Solvay method. For the natural alkali method, alkali is mined, purified, filtered, carbonised and dried before packing. The Solvay method is a synthetic process that includes crude bicarbonate formation, filtration, light ash finishing and refining.

Tariff classification

The goods are classified under tariff subheading 2836.30.00, statistical code 27 in Schedule 3 to the Customs Tariff Act 1995.

2.2 Existing measures

Measures were imposed on imports of sodium bicarbonate from China on 3 November 2005.

On 8 November 2010 the then Minister signed a notice regarding the review of anti-dumping measures applying to sodium bicarbonate. As a result of this review anti-dumping measures applying to this product were revised.

In reviewing the anti-dumping measures, Customs and Border Protection identified that there were 'regular' pack exports and 'specialty' pack exports. Regular pack exports were bulk shipments that competed with the Australian industry. Specialty packs were sodium bicarbonate packaged in smaller packs with high quality packaging, often with features such as tamper evident caps and zip locks, which the Australian industry was unable to supply.

During the review Customs and Border Protection recommended, and the Minister accepted that separate anti-dumping measures should be set for one specific exporter, Inner Mongolia Ihjuchem Industrial Co., Ltd (Ihjuchem), other regular pack exporters and specialty pack exporters.

As imports of specialty packs were found not to be injurious to the Australian industry, industry agreed that the non-injurious price be the export price during the review period. As a result, the measures on specialty pack exporters were a floor price, i.e., importers only need to pay duty if the price of these imports drops below a certain level. The measures on sodium bicarbonate for the other two categories required the importer to pay interim dumping duty regardless of import price.

In order to ascertain revised variable factors and new anti-dumping measures, Customs and Border Protection identified known exporters of specialty pack sodium

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bicarbonate and set individual rates for these companies based on their export price during the review period.

The current anti-dumping measures on imports from China expire on 3 November 2015.

2.3 The current review application

Name	VanderArk International Limited
Role	Exporter
Address	Suite 4-502, Building 3, Fang Qing Yuan, Bao Sheng Li, Qing He, Hai Dian Dist., Beijing, 100192, China

2.3.1 Background to the application for an accelerated review

On 21 November 2013 VDA lodged an application for an accelerated review of anti-dumping measures applying to exports of sodium bicarbonate from China to Australia in so far as it affects VDA.

VDA's application detailed the circumstances regarding its export of sodium bicarbonate to Australia. Aspects of the application are assessed in section 4.

2.3.2 Review Process

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Minister a report recommending:

- a) *that the dumping duty notice the subject of the application remain unaltered;*
or
 - b) *that the dumping duty notice the subject of the application be altered:*
 - i. so as not to apply to the applicant; or*
 - ii. so as to apply to the applicant as if different variable factors had been fixed;*
- and set out the Commissioner's reasons for so recommending.*

There is no legislative requirement for the Commission to maintain a public file for this accelerated review. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be opened.

This Consideration Report along with a non-confidential version of the application and response to the exporter questionnaire will be published on the Electronic Public Record, available at <http://www.adcommission.gov.au/cases/default.asp>.

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Given the expedited nature of accelerated reviews and the shortened timeframe for the Commission to produce a final report, any submissions by interested parties should be lodged before day 60 of the review – 20 January 2014.

The Commissioner may not be able to have regard to submissions received after this date if to do so would, in the Commissioner's opinion, delay the timely preparation of the final report to the Minister.

2.3.3 Key dates

21 November 2013	Application lodged
20 January 2014	Submissions by interested parties due
27 January 2014	Response to exporter questionnaire due
3 March 2014	Final report to Minister due

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3 Application for an Accelerated Review

3.1 Legislative Background

Section 269ZF requires that an application for accelerated review must:

- be in writing (subsection 269ZF(1));
- be lodged in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice relates; and
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned.

3.2 Application

On 21 November 2013, VDA lodged an application for an accelerated review. A copy of their application is at **Confidential Attachment 1**.

On receipt of the application, the Director of Quality Assurance and Operational Support recorded the date on which the application was received as 21 November 2013 in accordance with subsection 269ZF(3). This date, if the Commissioner does not reject the application, the initiation date is said to be the date of lodgement of the application.

3.2.1 Assessment of the application

The application received from VDA, was in writing, lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty notice relates.

VDA's grounds for lodging an application are that it had not exported sodium bicarbonate to Australia during the period in which a new exporter is defined in s.269T.

3.3 Finding under section 269ZF

The Commission is satisfied that the application complies with subsections 269ZF(1) and 269ZF(2) of the Act.

4 Circumstances in which an accelerated review may be sought**4.1 Status as a New Exporter****4.1.1 Background**

Subsection 269ZE(1) sets out that only a new exporter may apply for an accelerated review. A new exporter is defined (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.

Section 269T also defines “application” in relation to a dumping duty notice, as meaning an application for the publication of such a notice.

4.1.2 Application

The Commission considers that, due to the definitions in section 269T, the period within which a new exporter cannot have exported to Australia relates to the application for a dumping duty notice, which in this case relates to the 2005 application by Penrice Soda Products Pty Ltd.

Thus, the Commission considers the period for which VDA must not have exported to Australia (new exporter period) is from 1 January 2004, the start of the investigation period, to 18 August 2005, the day before the SEF for Investigation 148 was placed on the public record.

4.1.3 Exports during the New Exporter Period

A search of Customs and Border Protection’s import database for any exports by VDA did not reveal any exports from VDA during the period 1 January 2004 to 18 August 2005.

4.2 Cooperation in regards to the application for a dumping duty notice

Paragraph 269ZE(2)(a) provides that, if the Commissioner is satisfied that because the exporter refused to cooperate in relation to the application for a dumping duty notice, the Commissioner may reject the application.

To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(a), the exporter files for the original investigation (REP 98) were examined for any correspondence between Customs and Border Protection and VDA.

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The exporter files were examined with no reference to VDA found. The Commission could not identify VDA as an exporter for the original investigation or identify any exporter related to VDA who was involved in the original investigation. This is consistent with the finding that VDA did not export the goods to Australia during the investigation period for REP 98.

There are no grounds for rejection in terms of paragraph 269ZE(2)(a).

4.3 Relationships with selected exporters

Paragraph 269ZE(2)(b) provides that, if the Commissioner is satisfied that because the exporter is related to an exporter who was a selected exporter in relation to the application for a notice, the Commissioner may reject the application.

To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(b), the exporter questionnaire responses and/or visit reports for the REP 98 selected exporters were reviewed for company information and shareholding arrangements. There is no evidence to suggest that VDA is related to a selected exporter.

Given the information available there are no grounds for rejection in terms of paragraph 269ZE(2)(b).

4.4 Circumstances in which accelerated review may be sought

In accordance with section 269ZE, on review of the application, the following findings have been made about whether the circumstances exist in which an accelerated review may be sought:

- the applicant did not export sodium bicarbonate during the period for which new exporters cannot have exported. Thus the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review as stated at subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for a dumping duty notice, and the application should not be rejected under paragraph 269ZE(2)(a); and
- the applicant does not appear to be related to any selected exporters in the original investigation and the application should not be rejected under paragraph 269ZE(2)(b).

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5 Conclusion

The Commission considered the application made by VDA to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act.

The Commission conclude that:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under section 269ZE were not met; and
- the circumstances in which an accelerated review can be sought have been satisfied.

Accordingly, the Commission conclude that VDA, who the Commission considers to be a new exporter, is eligible to apply for an accelerated review, and it recommends that the Commissioner not reject the application and the accelerated review continue.

Should the Commissioner decide to not reject this application and the accelerated review continue, it is recommended that the review period be 1 October 2012 to 30 September 2013.

6 Securities and Interim Dumping Duties (IDD)

When an application for an accelerated review of a dumping duty notice is lodged, section 269ZH states that no interim duty can be collected in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review. The Commissioner may, however, require and take securities under section 42 in respect of IDD that may be payable.

Should the delegate not reject the application, and continue an accelerated review, a declaration under paragraph 269ZH(b) will need to be made to ensure securities are collected for the period of the review. These documents have been prepared and attached at **Confidential Attachment 2**.



CONSIDERATION OF AN APPLICATION UNDER SECTION 269ZF OF THE *CUSTOMS ACT 1901*

I, Dale Seymour, have considered, in terms of section 269ZF of the *Customs Act 1901* (the Act), an application by VanderArk International Limited, a new exporter, for an accelerated review of the dumping duty notice in respect of sodium bicarbonate exported to Australia from the People's Republic of China.

Having regard to the matters contained in the application and to other information considered relevant, I am satisfied that:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under section 269ZE(2) are not satisfied; and
- the circumstances in which an accelerated review can be sought have been satisfied.

In view of the above, I have decided that the application should not be rejected.

The attached assessment details the consideration of the application and other relevant information, and provides the reasons relied on in making my decision in relation to the application.

Dale Seymour
Commissioner Anti-Dumping Commission
Position Number

December 2013
