



CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT

REPORT NO. 278

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

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

DAVIA S.P.A.

December 2014

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Abbreviations

Abbreviation	Full title
ACBPS	Australian Customs and Border Protection Service
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
Davia	Davia S.p.A.
the goods	the goods to which the anti-dumping measures apply
IDD	Interim Dumping Duty
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
REP 217	Final Report No. 217
Review period	1 October 2013 to 30 September 2014
SEF	Statement of Essential Facts

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1 Summary and recommendations

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application by Davia S.p.A. (Davia) for an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes¹ exported to Australia from Italy in so far as the notice affects Davia.

1.1 Recommendations

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject Davia's application for an accelerated review of the dumping duty notice.

1.2 Legislative background

Division 6 of Part XVB of the *Customs Act 1901* (the Act)² 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 and/or countervailing duty notice by certain exporters of goods covered by the notice.

The Division provides that the Commissioner can reject or not reject an application for an accelerated review of anti-dumping measures.

1.3 Findings and conclusions

Davia's application for an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy has been examined and the Commission finds that:

- the application satisfies the requirements of section 269ZF;
- the circumstances in which an accelerated review may be sought under subsection 269ZE(1) have been satisfied; and
- the circumstances in which an application can be rejected under subsection 269ZE(2) have not been met.

Accordingly, the Commission concludes that the applicant is eligible to apply for and had lodged a valid application for an accelerated review under the Act, and recommends that the Commissioner not reject the application.

¹ Refer to the full description of the goods in Section 2.1 of this report.

² 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:

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 SPC Ardmona Operations Limited requesting that the then Minister responsible for anti-dumping 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) (SEF 217) was placed on the public record on 4 February 2014.

On 16 April 2014, following consideration of Final Report No. 217 (REP 217), the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)³ published a dumping duty notice that imposed dumping duties on the goods. These dumping duties were applicable to 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.

³ Responsibility for anti-dumping matters was transferred to the Minister for Industry on 25 September 2013. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry.

2.3 The current review application

Name	Davia S.p.A.
Role	Exporter
Address	Via Motta Casa dei Miri,5 80054 Gragnano (NA) Italia P.IVA 06547571213

2.3.1 Background to the application for an accelerated review

On 17 April 2014, Davia lodged its first application for an accelerated review of the dumping duty notice applying to exports of prepared or preserved tomatoes from Italy to Australia in so far as the notice affects Davia.

Following consideration of this application, the Commissioner decided not to reject the application and public notification of the review was made on 13 May 2014 in ADN No. 2014/39.

On 24 July 2014, the Parliamentary Secretary declared that the original dumping duty notice was to remain unchanged (ADN No. 2014/63 refers). Notice of the Parliamentary Secretary's decision was published in the *Commonwealth of Australia Gazette* on 31 July 2014.

At that time, the Commission concluded that Davia was not a manufacturer or producer of prepared or preserved tomatoes, and therefore not an exporter of the goods. As such, Davia could not be considered a new exporter for the purposes of an accelerated review and therefore was not eligible for an accelerated review (Final Report No. 246 refers).

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

Aspects of this second application are assessed in Section 4 of this report.

2.3.2 Review process

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

- a) *that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or*
- b) *that the dumping duty notice or countervailing 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;*

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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 maintained.

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 at <http://www.adcommission.gov.au/cases/default.asp>.

Interested parties can make submissions to the Commission in relation to this accelerated review application. However, 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 by 31 January 2015.

The Commissioner may not 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 Parliamentary Secretary.

2.3.3 Matters excluded from the accelerated review

The Commission considers that an 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 will not reassess the finding made in REP 217 that a market situation does not exist in Italy in relation to prepared or preserved tomatoes.

2.3.4 Key dates

2 December 2014	Application lodged
10 January 2015	Response to exporter questionnaire due
31 January 2015	Submissions by interested parties due
12 March 2015	Final report to Parliamentary Secretary 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 (subsection 269ZF(1)(a)); 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 (subsection 269ZF(1)(b)).

3.2 Assessment of the application

On 2 December 2014, Davia lodged its accelerated review application. A copy of this application is at **Non-Confidential Attachment 1**.

This date is the date of lodgement and, if the Commissioner does not reject the application, it is the date on which the 100 day review timeframe commences.

The application received from Davia was in writing, lodged in accordance with subsection 269ZF(2) and contained a description of the goods to which the dumping duty notice relates (subsection 269ZF(1)(a)).

In accordance with the requirements of subsection 269ZF(1)(b), Davia's grounds for lodging an application are that it did not export prepared or preserved tomatoes to Australia during the relevant period set out in the definition of a 'new exporter' in subsection 269T(1). Further, Davia stated that it had only become a producer/manufacturer of prepared and preserved tomatoes in July 2014.

3.3 Finding under section 269ZF

The Commission is satisfied that the application complies with subsections 269ZF(1) and (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) provides that only a new exporter may apply for an accelerated review.

Subsection 269T(1) defines a “new exporter”, in relation to goods the subject of an application for a dumping duty notice or like goods, 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 SEF in relation to the investigation of the application.

Subsection 269T(1) also defines “application” in relation to a dumping duty notice, as meaning an application for the publication of such a notice and “dumping duty notice” as the notice published under subsection 269TG(1) or (2), that is, the notice published in relation to the original dumping investigation.

4.1.2 New exporter

To meet the definition of a “new exporter”, the period during which Davia must not have exported prepared or preserved tomatoes to Australia (the new exporter period) is from 1 July 2012, the start of the original investigation period, to 3 February 2014, the day before SEF 217 was placed on the public record.

A search of the Australian Customs and Border Protection Service (ACBPS) import database has revealed that no prepared or preserved tomatoes (classified to tariff subheading 2002.10.00 (statistical code 60) of Schedule 3 to the *Customs Tariff Act 1995*) have been exported to Australia by Davia during the period 1 July 2012 to 3 February 2014.

4.1.3 Declaration under subsection 269ZG(3)(b)(ii)

A new exporter cannot apply for an accelerated review if they had previously applied for an accelerated review and a declaration had been made in respect of that exporter under subsection 269ZG(3)(b)(ii).

In relation to Davia’s first application for an accelerated review, the Parliamentary Secretary did not make a declaration under subsection 269ZG(3)(b)(ii).

4.2 Circumstances in which an application may be rejected – subsection 269ZE(2)

The Commissioner can reject an application for an accelerated review in certain circumstances. In particular, subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that because the exporter refused to co-operate in relation to the application for a dumping duty notice, and the exportations of that exporter were not investigated, then the Commissioner may reject the application.

Subsection 269ZE(2)(b) further provides that the Commissioner may reject the application if the Commissioner is satisfied that the exporter is related to an exporter whose exports were examined in relation to the application for the publication of the dumping duty notice.

4.2.1 Refusal to co-operate

To determine whether subsection 269ZE(2)(a) applies to Davia, the Commission examined files from the original investigation (REP 217) for correspondence between the Commission and Davia.

The Commission found no correspondence between the Commission and Davia in relation to the original investigation, and, as discussed in Section 4.1.2 of this report, the Commission found that Davia made no exportations of the goods during the original investigation. Accordingly, subsection 269ZE(2)(a) does not apply to Davia.

4.2.2 Relationships with selected exporters

To determine if Davia is related to an exporter whose exports were examined in relation to the original investigation in accordance with subsection 269ZE(2)(a), the Commission reviewed the exporter questionnaire responses and visit reports of selected exporters for company information and shareholding arrangements. The ACBPS import database was also examined for any relevant company information.

The Commission did not find any information to indicate that Davia is related to any of the selected exporters considered in the original investigation.

4.3 Findings under section 269ZE

Given the above, the Commission makes the following findings regarding the circumstances in which Davia is seeking an accelerated review under section 269ZE:

- Davia did not export prepared or preserved tomatoes during the new exporter period and a declaration under subsection 269ZG(3)(b)(ii) was not made in respect of Davia's first accelerated review application. Therefore, Davia meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- Davia did not refuse to cooperate in relation to the application for a dumping duty notice, and therefore the application should not be rejected under subsection 269ZE(2)(a); and

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- Davia does not appear to be related to any selected exporters in the original investigation, and therefore the application should not be rejected under subsection 269ZE(2)(b).

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5 Conclusion and recommendations

The Commission has considered the application made by Davia to determine if it was valid, as required by sections 269ZE and 269ZF, and the definitions in subsection 269T(1) of the Act.

The Commission concludes that:

- the application satisfies the requirements of section 269ZF;
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) are satisfied; and
- the circumstances to reject an application under subsection 269ZE(2) do not exist.

Accordingly, the Commission recommends that the Commissioner not reject Davia's application for an accelerated review of the dumping duty notice.

Should the Commissioner decide not to reject this application for an accelerated review, the Commission recommends that the review period be from 1 October 2013 to 30 September 2014.

6 Securities and interim dumping duties

When an application for an accelerated review of a dumping duty notice is lodged, section 269ZH provides that no interim dumping duty (IDD) can be collected from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review.

However, the ACBPS may, on the importation of goods to which the application relates, require and take securities under section 42 of the Act in respect of IDD that may be payable.

Should the Commissioner not reject the application, and an accelerated review is conducted, the ACBPS may require and take securities under section 42 in respect of IDD that may be payable.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 2**.

7 Attachments

Non-Confidential Attachment 1	Application
Confidential Attachment 2	Table outlining variable factors for calculation of securities