



# **CONSIDERATION REPORT**

**REPORT NO. 246**

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

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

**DAVIA S.P.A.**

**28 April 2014**

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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 DAVIA S.p.A. (DAVIA) for an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes exported to Australia from Italy.

### 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*<sup>1</sup> (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

DAVIA's application for an accelerated review of anti-dumping measures applying to prepared or preserved tomatoes exported to Australia from Italy 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.

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<sup>1</sup> 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.

The goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

#### Tariff classification

The goods are classified under tariff subheading 2002.10.00, statistical code 60 in Schedule 3 to the *Customs Tariff Act 1995*.

### 2.2 Existing measures

On 16 April 2014 the Parliamentary Secretary for the Minister of Industry (Parliamentary Secretary) signed a dumping duty notice that imposed dumping duties on the goods under review.

The current anti-dumping measures on imports from Italy expire 15 April 2019.

### 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 an application for an accelerated review of anti-dumping measures applying to exports of prepared or preserved tomatoes from Italy to Australia in so far as it affects DAVIA.

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DAVIA's application detailed the circumstances regarding its export of prepared or preserved tomatoes 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>.

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 – 16 June 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

17 April 2014	Application lodged
11 June 2014	Response to exporter questionnaire due
16 June 2014	Submissions by interested parties due
26 July 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 17 April 2014, DAVIA 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 Client Support recorded the date on which the application was received as 17 April 2014 in accordance with subsection 269ZF(3). This date is the date of lodgement and if the Commissioner does not reject the application it is the date in which the 100 day review timeframe commences.

##### 3.2.1 Assessment of the application

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

DAVIA's grounds for lodging an application are that it had not exported prepared or preserved tomatoes to Australia during the period in which a new exporter is defined in s.269T of the Act.

#### 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 prepared or preserved tomatoes to Australia relates to the period commencing the day the investigation period commenced and ceases the day before the Statement of Essential Facts was published.

Therefore, the Commission considers the period for which DAVIA must not have exported to Australia (new exporter period) is from 1 July 2012, the start of the investigation period, to 3 February 2014, the day before the SEF for Investigation 217 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 DAVIA did not reveal any exports from DAVIA during the period 1 July 2012 to 3 February 2014.

### **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 217) were examined for any correspondence between the Commission and DAVIA.

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The exporter files were examined with no reference to DAVIA found. The Commission could not identify DAVIA as an exporter for the original investigation or identify any exporter related to DAVIA who was involved in the original investigation. This is consistent with the finding that DAVIA did not export the goods to Australia during the investigation period for REP 217.

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 217 for selected exporters were reviewed for company information and shareholding arrangements. There is no evidence to suggest that DAVIA 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 prepared or preserved tomatoes during the period for which new exporters cannot have exported. Therefore, 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 DAVIA to determine if it was valid as required by sections 269ZE, 269ZF, and the definitions provided in section 269T of the Act.

The Commission concludes 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 concludes that DAVIA, 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 continues, it is recommended that the review period be 1 April 2013 to 31 March 2014.

**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**.

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**7 Attachments**

Confidential Attachment 1	Application
Confidential Attachment 2	Section 269ZH(b) imposing securities and relevant s.269ZH(b) table

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