



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

---

*CUSTOMS ACT 1901 - PART XVB*

**CONSIDERATION REPORT  
NO. 398**

**APPLICATION FOR AN ACCELERATED REVIEW OF A  
DUMPING DUTY NOTICE APPLYING TO  
CERTAIN PREPARED OR PRESERVED TOMATOES  
EXPORTED FROM ITALY  
BY BRUNELLA FOOD INDUSTRY S.R.L**

**March 2017**

**CONTENTS**

**CONTENTS..... 2**

**ABBREVIATIONS..... 3**

**1 SUMMARY AND RECOMMENDATION ..... 4**

1.1 RECOMMENDATION ..... 4

1.2 APPLICATION OF LAW TO FACTS ..... 4

1.3 FINDINGS AND CONCLUSIONS ..... 4

**2 BACKGROUND..... 5**

2.1 EXISTING MEASURES ..... 5

2.2 THE GOODS THE SUBJECT OF THE APPLICATION ..... 6

2.3 CONSIDERATION OF THE APPLICATION FOR ACCELERATED REVIEW ..... 6

2.4 PUBLIC RECORD ..... 7

**3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF..... 8**

3.1 LEGISLATIVE BACKGROUND ..... 8

3.2 ASSESSMENT OF THE APPLICATION – COMPLIANCE WITH SECTION 269ZF ..... 8

3.3 LODGEMENT DATE ..... 8

**4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE ..... 9**

4.1 BACKGROUND..... 9

4.2 STATUS AS A NEW EXPORTER..... 9

4.3 COOPERATION IN REGARDS TO THE APPLICATION FOR A DUMPING DUTY NOTICE ..... 10

4.4 RELATIONSHIPS WITH SELECTED EXPORTERS ..... 10

4.5 SUMMARY OF FINDINGS ..... 11

**5 CONCLUSION..... 12**

**6 SECURITIES..... 13**

**7 APPENDICES AND ATTACHMENTS..... 14**

## PUBLIC RECORD

### ABBREVIATIONS

\$	Australian dollars
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ARIA	AR Industrie Alimentari S.p.A
Brunella	Brunella Food Industry S.r.l, the applicant
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Feger	Feger di Gerardo Ferraioli S.p.A.
the goods	the goods the subject of the application (also referred to as the goods under consideration)
La Doria	La Doria S.p.A.
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 217	<i>Anti-Dumping Commission Report No. 217</i>
SEF	Statement of Essential Facts
SPCA	SPC Ardmona Operations Ltd

## 1 SUMMARY AND RECOMMENDATION

This report provides the results of the Commissioner of the Anti-Dumping Commission's (the Commissioner) consideration of an application by Brunella Food Industry S.r.l (Brunella, the applicant) for an accelerated review of the dumping duty notice in respect of certain prepared or preserved tomatoes<sup>1</sup> exported to Australia from Italy in so far as the notice affects the applicant.

### 1.1 Recommendation

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

### 1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for an accelerated review of a dumping duty notice by certain exporters of goods covered by the notice.

### 1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

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

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

---

<sup>1</sup> Refer to the full description of the goods in Section 2.2 of this report.

<sup>2</sup> Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

## 2 BACKGROUND

### 2.1 Existing measures

#### 2.1.1 The original investigation (Investigation No. 217)

On 10 July 2013, an investigation (Investigation 217) into the alleged dumping of certain prepared or preserved tomatoes exported to Australia from Italy was initiated following an application lodged by SPC Ardmona Operations Ltd (SPCA). In that investigation, as outlined in *Anti-Dumping Commission Report No. 217 (REP 217)*, it was found that:

- in the case of two exporters, Feger di Gerardo Ferraioli S.p.A. (Feger) and La Doria S.p.A. (La Doria), the goods were exported to Australia from Italy at dumped prices, but the dumping margins were negligible (less than 2 per cent);
- for all other exporters, the goods were exported to Australia from Italy at dumped prices, with dumping margins ranging from 3.25 to 26.35 per cent;
- the dumped goods caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Accordingly, the Commissioner recommended that the then Parliamentary Secretary to the Minister for Industry impose anti-dumping measures on the goods exported from Italy, with the exception of two exporters, Feger and La Doria, against whom the investigation was terminated. The then Parliamentary Secretary accepted that recommendation and, on 16 April 2014, public notice of his decision was published in the *Commonwealth Gazette*<sup>3</sup> and *The Australian* newspaper (Anti-Dumping Notice (ADN) No. 2014/32 refers). This is the dumping duty notice for which Brunella seeks an accelerated review.

#### 2.1.2 Review of Measures

On 1 April 2016, AR Industrie Alimentari S.p.A (ARIA) lodged an application requesting a review of the anti-dumping measures as they apply to its exports of the goods to Australia from Italy. ARIA claims that certain variable factors relevant to the taking of the anti-dumping measures have changed. The application relates to the measures imposed following the investigation set out in REP 217. The Commissioner initiated the review of measures regarding the goods exported by ARIA on 21 April 2016 (ADN No. 2016/41 refers).

On 5 May 2016, SPC Ardmona Operations Ltd lodged an application requesting a review of the anti-dumping measures as they apply to all exports of prepared or preserved tomatoes to Australia from Italy except by Feger and La Doria. SPCA claims that certain variable factors established in REP 217 have changed and should be reviewed. The Commissioner initiated the review of measures regarding the goods exported by all exporters other than Feger, La Doria and ARIA on 25 May 2016 (ADN No. 2016/55 refers).

---

<sup>3</sup> Available on the legislation.gov.au website at <https://www.legislation.gov.au/Details/C2014G00626>

## PUBLIC RECORD

For both reviews, the *Statement of Essential Facts 349 and 354* was published on 20 February 2017. A recommendation to the Parliamentary Secretary will be made in a report by 5 April 2017.

### 2.1.3 The current accelerated review

Name	Brunella Food Industry S.r.l
Role	Exporter/Manufacturer
Address	Via Termine Bianco 42 San Marzano sul Sarno, Salerno Italy

## 2.2 The goods the subject of the application

### 2.2.1 Description

The goods the subject of the application (the goods) are:

*Tomatoes (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.

### 2.2.2 Tariff classification

The goods are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the *Customs Tariff Act 1995*. The general rate of Customs duty is currently 5 per cent for the goods imported from Italy.

## 2.3 Consideration of the application for accelerated review

On 24 February 2017, Brunella Food Industry S.r.l lodged an application for an accelerated review of the dumping duty notice applying to certain prepared or preserved tomatoes exported to Australia from Italy in so far as the notice affects the applicant.

If the Commissioner does not reject the application or terminate the accelerated review, pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science (Parliamentary Secretary)<sup>4</sup> with a report recommending:

---

<sup>4</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this review the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

## **PUBLIC RECORD**

- 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 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.

In relation to this application, this report must be made no later than **5 June 2017**.<sup>5</sup>

The assessment of the application is discussed in sections 3 and 4 of this report.

### **2.4 Public record**

There is no legislative requirement for the Commissioner to maintain a public file for accelerated reviews. 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, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

---

<sup>5</sup> If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day.

### 3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

#### 3.1 Legislative Background

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

- be in writing and be lodged in a manner approved under section 269SMS (subsection 269ZF(1));
- 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 – compliance with section 269ZF

The application was in writing, lodged in a manner approved under subsection 269SMS (subsection 269ZF(1)), which was via email to the Commission's nominated email address, and contains 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), the application also contains a statement from Brunella that outlines the reasons why the company believes the current dumping duty notice is inappropriate in so far as the notice affects it. Specifically, Brunella claimed to have not exported the goods to Australia previously.

The Commission is satisfied that the application complies with subsection 269ZF(1).

#### 3.3 Lodgement date

Subsection 269ZF(2) states that an application for accelerated review is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated reviews.

On 24 February 2017, Brunella lodged an application for an accelerated review. A copy of its application is at **Attachment 1**. A non-confidential version of the application is available on the public record. On receipt of the application, the Commission recorded the date on which the application was received as 24 February 2017 in accordance with subsection 269ZF(3).



## **4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE**

### **4.1 Background**

Section 269ZE sets out the circumstances in which an accelerated review may be sought.

The conclusions in this section are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) are met, the Commissioner may terminate the application for an accelerated review.

### **4.2 Status as a new exporter**

#### **4.2.1 Background**

Subsection 269ZE(1) sets out that only a “new exporter” may apply for an accelerated review. A new exporter is defined in subsection 269T(1) as, in relation to goods the subject of the application for a dumping duty notice or countervailing duty notice or like goods, an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269ZE(1) provides that a new exporter can apply for an accelerated review if a dumping duty or countervailing duty notice has been published in respect of goods exported from a particular country of export or in respect of goods exported by new exporters from a particular country of export, provided a declaration has not already been made in respect of that exporter under subsection 269ZG(3)(b).

Subsection 269T(1) also defines “application” in relation to a dumping duty notice or a countervailing duty notice as meaning an application for the publication of such a notice.

#### **4.2.2 New exporter period**

To fall within the definition of a new exporter in subsection 269T(1), the period within which the applicant must not have exported to Australia (the new exporter period) is from 1 July 2012 to 30 June 2013 (the investigation period for the original investigation in relation to the application for publication of the dumping duty notice in respect of the goods).

#### **4.2.3 Evidence of exports during the new exporter period**

A search of the Australian Border Force’s import database did not reveal any exports of the goods by Brunella during the new exporter period 1 July 2012 to 30 June 2013.

Therefore, the Commission considers that Brunella should be considered as a new exporter for the purposes of the accelerated review.

#### **4.2.4 Declaration under subsection 269ZG(3)(b)**

Pursuant to subsection 269ZE(1)(b), a new exporter cannot apply for an accelerated review if they had previously applied for an accelerated review that resulted in a declaration being made in respect of that exporter under subsection 269ZG(3)(b).

A declaration under subsection 269ZG(3)(b) has not been made in respect of the applicant.

#### **4.3 Cooperation in regards to the application for a dumping duty notice**

Subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because the exporter refused to cooperate in relation to the application for publication of a dumping duty notice or a countervailing duty notice, the exportations from that exporter were not investigated (in the original investigation), the Commissioner may reject the application.

Noting the above finding that there is no evidence of exports of the goods by Brunella during the investigation period for the original investigation, Brunella's cooperation would not have been sought during the original investigation.

The Commission considers that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

#### **4.4 Relationships with selected exporters**

Subsection 269ZE(2)(b) provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter that had its exports examined in relation to the application for the publication of a dumping duty notice or countervailing duty notice, the Commissioner may reject the application.

An exporter is deemed to be related to another exporter if the exporters are associates of one another under subsection 269TAA(4).<sup>6</sup> The Commission has found that Brunella is related to another exporter that had exported the goods to Australia during the original investigation period.

In the original investigation, the related company was classified as a residual exporter by the Commission. Subsection 269T(1) defines residual exporter to mean, in relation to an investigation, an exporter of goods that are the subject of the investigation where the exporter's exports were not examined as part of the investigation and the exporter was not an uncooperative exporter in relation to the investigation.

Accordingly, as Brunella is not related to an exporter whose exports were examined in the original investigation, but only related to a residual exporter, the Commission considers there are no grounds for rejection in terms of subsection 269ZE(2)(b).

---

<sup>6</sup> Subsection 269ZE(4).

## **4.5 Summary of findings**

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

- the applicant did not export the goods during the new exporter period is not an exporter in respect of whom a declaration has been made under subsection 269ZG(3)(b). Consequently, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- as the applicant did not refuse to cooperate in relation to the application for the publication of a dumping duty notice in relation to the goods, the application should not be rejected under subsection 269ZE(2)(a); and
- the applicant does not appear to be related to any exporter that had its exports examined in the original investigation and therefore the application should not be rejected under subsection 269ZE(2)(b).

## **5 CONCLUSION**

The Commission has considered the application made by Brunella to determine if it satisfied the requirements of sections 269ZE and 269ZF.

The Commission concludes, on the basis of currently available information, that:

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

The Commission recommends that the Commissioner:

- not reject the application for an accelerated review of the dumping duty notice applying to the goods exported to Australia from Italy in so far as the notice affects the applicant and continue with the accelerated review; and
- set the review period as 1 January 2016 to 31 December 2016.

## 6 SECURITIES

When an application for an accelerated review of a dumping duty and / or countervailing duty notice is lodged, subsection 269ZH(a) provides that no interim duty can be collected in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the accelerated review.

However, pursuant to subsection 269ZH(b), the Commonwealth may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim dumping duty and interim countervailing duty that may be payable.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 1**.

**7 APPENDICES AND ATTACHMENTS**

<b>Confidential Attachment 1</b>	Securities Instrument
<b>Attachment 1</b>	Application