



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 425**

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

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

LA VERA NAPOLI SOC. COOP. AGR.

JULY 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
the applicant, La Vera	La Vera Napoli Soc. Coop. Agr.
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application
Parliamentary Secretary	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
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's) consideration of an application made by La Vera Napoli Soc. Coop. Agr. (La Vera) (the applicant) for an accelerated review of the dumping duty notice in respect of certain prepared or preserved tomatoes¹ 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 by La Vera.

1.2 Application of law to facts

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 applications for accelerated reviews 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) are 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.

¹ Refer to the full description of the goods in Section 2.2 of this report.

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

2 BACKGROUND

2.1 Existing measures

Since 2013, the Commission has conducted numerous investigations, reviews and inquiries relating to prepared or preserved tomatoes exported from Italy. Full details can be found on the Commission’s electronic public record at www.adcommission.gov.au. The matters relevant to the current applications are summarised below.

10 July 2013	The Commissioner initiated an investigation into the alleged dumping of prepared or preserved tomatoes exported to Australia from Italy following an application by SPC Ardmona Operations Ltd (SPCA).
16 April 2014	The then Parliamentary Secretary to the Minister for Industry imposed anti-dumping measures, in the form of a dumping duty notice, on tomatoes exported to Australia from Italy except by Feger di Gerardo Ferraioli S.p.A. (Feger) and La Doria S.p.A. (LA Doria) – <i>Anti-Dumping Commission Report No. 217</i> refers.
25 May 2016	The Commissioner initiated a review of the anti-dumping measures on tomatoes exported from Italy following an application by SPCA.
5 May 2017	The Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) ³ revised the anti-dumping measures applying to tomatoes exported from Italy except by Feger, La Doria and AR Industrie Alimentari S.p.A. – <i>Anti-Dumping Commission Report Nos. 349 and 354</i> refers.

The current anti-dumping measures applying to the applicant are in the form of combination duties, with the fixed component of duty at the rate of 118 per cent, being the ‘all other exporters’ rate of duty.

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.

³ 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.

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 19 June 2017 La Vera made 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 each application is lodged, provide the Parliamentary Secretary with 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 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 the application, this report must be made no later than **27 September 2017**.⁴

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 record for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public record will be maintained.

This Consideration Report, along with a non-confidential version of the applications and responses to the exporter questionnaire, will be published on the electronic public record, available at www.adcommission.gov.au.

⁴ 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 is in writing, was 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 the applicant that outlined the reasons why it believes the current dumping duty notice is inappropriate in so far as the notice affects it. Specifically, the applicant 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 19 June 2017, La Vera lodged an application for an accelerated review. A copy of its application is at **Attachment 2**. A non-confidential version of the application will be available on the public record. On receipt of the application, the Commission recorded the date on which the application was received as 19 June 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 conclusion in this section is 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 La Vera during the new exporter period 1 July 2012 to 30 June 2013.

Therefore, the Commission considers that La Vera should be considered a new exporter for the purpose 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).

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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 La Vera during the investigation period for the original investigation, La Vera'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.

To enable the Commission to assess whether the applicants are related to an exporter examined during the original investigation, on 19 June 2017 the Commission requested the applicant complete Section A of the exporter questionnaire, which includes information on company background and ownership, by 27 June 2017.

La Vera responded to Section A of the questionnaire and the Commission and found no evidence that La Vera is related to an exporter that had its exports examined during the original investigation.

4.5 Summary of findings

In accordance with section 269ZE, on review of the applications 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 and is not an exporter in respect of whom declarations have been made under subsection 269ZG(3)(b). Consequently, the applicant satisfies 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
- La Vera does not appear to be related to any exporter that had its exports examined in the original investigation and therefore its application should not be rejected under subsection 269ZE(2)(b).

5 CONCLUSION

The Commission has considered the application made by La Vera to determine if they 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 by La Vera 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 April 2016 to 31 March 2017.

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.

The Commission recommends that the Commissioner take securities in respect of exports of the goods by La Vera until the completion of this accelerated review.

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

7 APPENDICES AND ATTACHMENTS

Attachment 1	La Vera's Application
Attachment 2 (Confidential)	Securities Instrument