



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 351**

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

CERTAIN PREPARED OR PRESERVED TOMATOES

EXPORTED FROM ITALY

BY

LE SPECIALITÀ ITALIANE S.R.L.

April 2016

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ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Le Specialità Italiane S.r.l. (also referred to in this report as Le Specialità)
the Commission	the 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 or GUC)
La Doria	La Doria S.p.A.
the notice	the dumping duty notice applying to certain prepared or preserved tomatoes exported from Italy
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	The then Parliamentary Secretary to the Minister for Industry
REP 217	<i>Anti-Dumping Commission Report No. 217</i>
REP 261	<i>Anti-Dumping Commission Report No. 261</i>
REP 276	<i>Anti-Dumping Commission Report No. 276</i>
SPCA	SPC Ardmona Operations Ltd

1 SUMMARY AND RECOMMENDATION

This report provides the results of the consideration by the Anti-Dumping Commission (the Commission) of an application by Le Specialità Italiane S.r.l. (the applicant or Le Specialità) for an accelerated review of the dumping duty notice (the notice) applying to certain prepared or preserved tomatoes¹ exported to Australia from Italy in so far as the notice affects the applicant.

The application is based on the applicant being a new exporter of certain prepared or preserved tomatoes to Australia.

1.1 Recommendation

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

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 duty notice by certain exporters of goods covered by the notice.

Subsection 269ZE(2) provides that the Commissioner may reject the application for an accelerated review of a dumping duty notice if satisfied that the conditions set out in this subsection have been met.

1.3 Findings and conclusions

Le Specialità's application for an accelerated review of the dumping duty notice applying to certain 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 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 under the Act, and recommends that the Commissioner not reject the application and the accelerated review continue.

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*. Following recent reforms to the anti-dumping legislation, several provisions of the Act have recently been revised in relation to accelerated reviews.

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%);
- 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%;
- 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 (the then Parliamentary Secretary) 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, notice of his decision was published in the Commonwealth *Gazette*³ and *The Australian* newspaper.

Anti-Dumping Notice No. 2014/32 (ADN 2014/32) refers. This is the dumping duty notice for which Le Specialità seeks an accelerated review.

2.1.2 Accelerated Review No. 261

On 4 September 2014, an accelerated review (Accelerated Review 261) of the dumping duty notice applying to certain prepared or preserved tomatoes exported to Australia from Italy was initiated following an application lodged by Le Specialità. In *Anti-Dumping Commission Report No. 261* (REP 261) it was found that, based on all relevant and available information, Le Specialità:

- was not a manufacturer or producer of preserved tomatoes;
- did not have the status of an exporter;
- could not be considered a new exporter for the purposes of an accelerated review; and
- therefore was not eligible to apply for an accelerated review.⁴

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

⁴ Subsection 269ZE(1) of the Act.

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Accordingly, the Commissioner recommended that the then Parliamentary Secretary declare that the original anti-dumping measures outlined in ADN 2014/32 remain unchanged. The then Parliamentary Secretary accepted that recommendation and, on 28 November 2014, notice of his decision was published in the Commonwealth *Gazette*.⁵

2.1.3 Investigation 276

On 19 January 2015, the Commissioner initiated an investigation into the alleged dumping of certain prepared or preserved tomatoes exported to Australia from Italy by Feger and La Doria following an application by SPCA. In that investigation, and as outlined in Report No. 276 (REP 276), it was found that:

- the goods were exported from Italy by Feger and La Doria at dumped prices (8.4% and 4.5%, respectively);
- 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 Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)⁶ impose anti-dumping measures on the goods exported from Italy by Feger and La Doria. The Parliamentary Secretary accepted that recommendation and, on 10 February 2016, public notice of the Parliamentary Secretary's decision was given in Anti-Dumping Notice No. 2016/13 (ADN 2016/13).

2.2 The current review application

Name	Le Specialità Italiane S.r.l.
Role	Exporter
Address	via Ligea 92 84121 Salerno Italy

⁵ Available on the legislation.gov.au website at <https://www.legislation.gov.au/Details/C2014G01953>.

⁶ On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science. The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker.

2.3 The goods

2.3.1 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.

2.3.2 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% for the goods imported from Italy.

2.4 Consideration of the application for an accelerated review

On 5 April 2016, Le Specialità 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 (refer **Attachment 1**).

If the Commissioner does not reject the application, the date of lodgement (5 April 2016) is the date on which the 100 day accelerated review timeframe commences.⁷

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

2.4.1 Review process

If the Commissioner does not reject the application or terminate the review, 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 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 current application, this report must be provided to the Parliamentary Secretary no later than 14 July 2016.

⁷ Subsection 269ZG(2).

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2.4.2 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 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>.

2.4.3 Key dates

Application lodged	5 April 2016
Response to exporter questionnaire due	19 May 2016
Final report to Parliamentary Secretary due	14 July 2016

2.5 Relevance of other investigations

The findings of other investigations including REP 261 and REP 276 and any other investigations, reports or reviews the Commissioner deems relevant may be considered during this accelerated review.

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 269SMS⁸;
- contain a description of the goods to which the dumping duty notice or countervailing duty notice relates⁹; 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 concerned¹⁰.

3.2 Assessment of the application – compliance with section 269ZF

The application received from the applicant was in writing and was lodged in a manner approved in the Commissioner's instrument under section 269SMS, being by email to the Commission's nominated email address as provided in the instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).

The Application contains a description of the goods to which the dumping duty relates. The application also contains a statement from the applicant that outlines the reasons why the company considers the current dumping duty notice is inappropriate in so far as the notice affects the applicant. This was because the applicant did not export certain prepared or preserved tomatoes to Australia during the relevant period set out in the definition of a 'new exporter' in subsection 269T(1) (further discussed in section 4.2.1 of this report).

The Commission therefore recommends that the Commissioner be satisfied that the application complies with subsection 269ZF(1) and was taken to have been lodged on 5 April 2016 in accordance with subsection 269ZF(2).

⁸ Subsection 269ZF(1).

⁹ Subsection 269ZF(1)(a).

¹⁰ Subsection 269ZF(1)(b).

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 chapter are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that either or both of the matters outlined in subsection 269ZE(3) are met, the Commissioner may terminate the accelerated review.

4.2 Status as a new exporter

4.2.1 Background

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

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 the goods to Australia (the new exporter period) is from 1 July 2012 to 30 June 2013, being the investigation period for REP 217.

4.2.3 Evidence of exports during the new exporter period

A search of the Department of Immigration and Border Protection import database by the Commission did not reveal any exports of the goods by Le Specialità during the period 1 July 2012 to 30 June 2013.

Based on the available information, the Commission considers that Le Specialità should be considered a new exporter for the purposes of this accelerated review.

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

Pursuant to subsection 269ZE(1), 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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Notwithstanding that Le Specialità lodged a previous application, the Parliamentary Secretary has not previously made a declaration under subsection 269ZG(3)(b) 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 a dumping duty notice, and the exportations from that exporter were not investigated (in the original investigation), the Commissioner may reject the application.

As there was no evidence of exports by Le Specialità during the investigation period for the original investigation, the Commission notes that Le Specialità's cooperation was not sought during the original investigation. A review of the information from the original investigation reveals that Le Specialità was not identified as an exporter.

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

4.4 Relationships with exporters whose exports were examined

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 the application for the publication of a dumping duty notice, the Commissioner may reject the application.

To determine whether subsection 269ZE(2)(b) applies, the exporter questionnaire responses and visit reports for exporters whose exports were examined in the original investigation were reviewed for company information and shareholding arrangements. There is no evidence to suggest that Le Specialità is related to an exporter whose exports were examined in the original investigation.

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

4.5 Findings under section 269ZE

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 an accelerated review may be sought:

- the applicant did not export certain prepared or preserved tomatoes to Australia during the new exporter period and has not previously received a determination 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);
- the applicant did not refuse to cooperate in relation to the application for the dumping duty notice, and the application should not be rejected under subsection 269ZE(2)(a); and

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- 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 AND RECOMMENDATIONS

The Commission has considered Le Specialità's application to determine if it satisfied the requirements of sections 269ZE, 269ZF and the definition of a new exporter provided in subsection 269T(1).

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

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

Accordingly, the Commission recommends that the Commissioner not reject the 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.

Should the Commissioner decide not to reject this application for an accelerated review, the Commission recommends that the review period for the accelerated review be from 1 April 2015 to 31 March 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.

Should the Commissioner not reject the application, and an accelerated review is conducted, the Commonwealth may require and take securities under section 42 in respect of interim dumping 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

Non-Confidential Attachment 1	Application by Le Specialità
Confidential Attachment 1	Table outlining variable factors for the calculation of securities