Australian Government

Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name : Le Specialità Italiane Srl

Address : Via Ligea 92
Salerno (SA) 84121
Italy

Type of entity (trade union, corporation, government etc.) : Corporation

2. Contact person for applicant

Full name : Stefano Perfetto

Position : Management Controller

Email address : c.gestione@lespecialitaitaliane.it

Telephone number : +39-081 8893205

3. Set out the basis on which the applicant considers it is an interested party

Le Specialità Italiane Srl ("***LSI***") is one of the nineteen Italian exporters of prepared or preserved tomatoes targeted by investigation No. 354, upon which the Assistant Minister for Industry, Innovation and Science has imposed anti-dumping measures by virtue of Anti-Dumping Notice No. 2017/47 published under Sections 269ZDB(1) and (2) of the Customs Act 1901 (the "***Act***").

Considering that LSI is directly concerned with the importation of the goods subject to the reviewable decision, it is considered as an "interested party" pursuant to Section 269ZX of the Act.

4. Is the applicant represented?

Yes ☑ **No**

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. **Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

☐ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☒ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. **Provide a full description of the goods which were the subject of the reviewable decision**

The goods which were the subject of the reviewable decision were defined in section 2.3 of the Final Report as follows:

> *"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."*

Furthermore, pastes, purees, sauces, pasta sauces, juices and sundried tomatoes were excluded from the definition above.

7. **Provide the tariff classifications/statistical codes of the imported goods**

The goods which were subject of the reviewable decision are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the Customs Tariff Act 1995.

8. **Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**
   If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

The reviewable decision was notified by Anti-Dumping Notice No. 2017/47.

9. **Provide the date the notice of the reviewable decision was published**

The reviewable decision was published on 4 May 2017.

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application*

A copy of the Anti-Dumping Notice published in accordance with Sections 269ZDB(1) of the Act is provided in **Attachment A**.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

10. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

Please see **Attachment B** (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

11. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

Please see **Attachment B** (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

Please see **Attachment B** (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

PART D: DECLARATION

~~The applicant~~/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:..

Name : Gabriele Coppo
Position : Associate
Organisation : Van Bael & Bellis
Date : 02/06/2017

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representatives	:	Fabrizio Di Gianni Gabriele Coppo
Organisation	:	Van Bael & Bellis
Address	:	Glaverbel Building Chaussée de La Hulpe 166 1170 Brussels Belgium
Email address	:	fdigianni@vbb.com gcoppo@vbb.com
Telephone number	:	+ 32(0)2.647.73.50

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

Please refer to **Attachment C**.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:...

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

Anti-Dumping Review Panel

Application for a Review - ADC 354 - Prepared or preserved tomatoes exported from Italy by AR Industrie Alimentari S.p.A. and by all exporters other than by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A.

Le Specialità Italiane Srl

Table of Contents

INTRODUCTION 4

1. FIRST GROUND: LSI SHOULD HAVE BEEN EXCLUDED FROM THE SCOPE OF REVIEW 354 4

1.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10] 5

1.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11] 5

1.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12] 6

2. SECOND GROUND: THE METHODOLOGY FOLLOWED TO ASCERTAIN LSI'S VARIABLE FACTORS IN THE FRAMEWORK OF REVIEW 354 IS ILL-FOUNDED 6

2.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10] 6

2.1.1 Methodology used to calculate LSI's normal value is unfounded 6

2.1.2 Methodology used to calculate LSI's export price is unwarranted 8

2.1.3 Conclusion on the methodology used to ascertain LSI's variable factors 9

2.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11] 9

2.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12] 9

3. THIRD GROUND: THE ANTIDUMPING MEASURES SHOULD BE TERMINATED OR MODIFIED *VIS-À-VIS* LSI 10

3.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10] 10

3.1.1 The measures should be terminated *vis-à-vis* LSI 10

3.1.2 The measures should be modified *vis-à-vis* LSI 10

3.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11] 11

3.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12] 11

CONCLUSION 12

INTRODUCTION

On 26 April 2016, the Anti-Dumping Commission (the "***ADC***") initiated the accelerated review No. 351 ("***Review 351***") upon the request of Le Specialità Italiane Srl ("***LSI***") concerning the anti-dumping measures applicable to certain prepared or preserved tomatoes ("***PPTs***") exported to Australia from the Republic of Italy ("***Italy***").

On 25 May 2016, when Review 351 was still on-going, the ADC initiated the interim review No. 354 ("***Review 354***") concerning the anti-dumping measures applicable to certain PPTs exported to Australia from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A. Review 354 was subsequently extended to exports of PPTs from LSI.

On 5 April 2017, the ADC concluded the investigation by adopting the Final Report Nos. 349 and 354 (the "***Final Report***"), in which the ADC concluded that the normal value, export price and the non-injurious price leading to the imposition of original measures have changed, and consequently recommended the Parliamentary Secretary to modify the ascertained variable factors in relation to all exporters, including LSI.

On 4 May 2017, on the basis of the recommendations contained in the Final Report, the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the "***Minister***") published the Anti-Dumping Notice No. 2017/47 amending the anti-dumping measures in relation to imports of PPTs exported from Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A. (the "***reviewable decision***"), including the PPTs produced by LSI.

The present submission sets out the reasons why, in LSI's view, the reviewable decision is not the correct or preferable decision within the meaning of Section 269ZDB of the Customs Act 1901 (the "***Act***").

1. FIRST GROUND: LSI SHOULD HAVE BEEN EXCLUDED FROM THE SCOPE OF REVIEW 354

LSI submits that the ADC wrongly disregarded the outcome of Review 351 and extended Review 354 to exports of PPTs to Australia by LSI. The Minister, in turn, accepted the ADC's recommendations drawn up on the basis of such inaccurate extension, thereby creating an unfair result for LSI.

1.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]

LSI believes that the reviewable decision is not the correct decision since the extension of Review 354 to imports from LSI is in violation of fundamental principles laid down in the Act and in WTO jurisprudence. In fact:

(i) the ADC excluded the producer AR Industrie Alimentari S.p.A. from the scope of Review 354 on the ground that a review of measures in relation to its exports ("***Review 349***") had already been initiated. However, at the time when Review 354 was initiated, LSI was also subject to a review (Review 351), which was still ongoing. It follows that the inclusion of LSI in the scope of Review 354 is against the principle of non-discrimination;

(ii) Section 269ZA(2) of the Act prohibits the initiation of a review for a 12-month period following the conclusion of a previous review. Considering that Review 351 was concluded on 10 August 2016, the inclusion of LSI in the scope of Review 354 is contrary to the provisions of the Act;

(iii) as made clear by the WTO Appellate Body in *Mexico - Anti-Dumping Measures on Rice*, when an investigation determines that there is no dumping (or a *de minimis* dumping margin) for an exporter, that exporter should be excluded from the scope of the measures. As a result, it should also be excluded from the scope of any subsequent review. It follows that, by including LSI in the scope of Review 354, the ADC has unlawfully re-assessed LSI's dumping margin found to be zero in Review 351.

In light of the foregoing, it is respectfully submitted that LSI should be excluded from the scope of Review 354. As a consequence, the variable factors applicable to LSI's imports should continue to be those assessed in Review 351.

1.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11]

Based on the arguments illustrated under section 1.1 above, it is submitted that had the ADC correctly excluded LSI from the scope of Review 354, this would have resulted in the application of the variable component determined within the framework of Review 351, which would have led to a reduced rate of duty.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted with a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties imposed by Anti-Dumping Notice No. 2017/47 in relation to PPTs exported from Italy by LSI.

1.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by LSI subject to the payment of an antidumping duty, the variable component of which is determined on the basis of the weighted average of the ascertained export price from the five sampled exporting producers. The proposed decision is materially different from the reviewable decision since it entails the revocation in accordance with subparagraph 269ZDB(1)(ii) of the antidumping measures which were imposed by Anti-Dumping Notice No. 2017/47 in relation to the PPTs manufactured by LSI.

2. SECOND GROUND: THE METHODOLOGY FOLLOWED TO ASCERTAIN LSI'S VARIABLE FACTORS IN THE FRAMEWORK OF REVIEW 354 IS ILL-FOUNDED

As a subordinate ground, should the Review Panel refuse LSI's claim that it should have been excluded from the scope of Review 354, it is submitted that the methodology followed by the ADC to ascertain LSI's variable factors in Review 354 is flawed. The correct methodology was that the one used in the framework of Review 351.

2.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]

LSI submits that the reviewable decision is not correct since it disregards the information collected and verified in the framework of Review 351.

2.1.1 Methodology used to calculate LSI's normal value is unfounded

Considering that LSI's weighted average normal value had been already ascertained in the framework of Review 351 (which concerned the same investigation period of Review 354) it is clear that, as a matter of fact, the ADC should have simply applied the conclusions already reached in Review 351.

However, the ADC refused to do so, on the ground that LSI only sold bright cans in Italy during the investigation period, and *"LSI's domestic sales of bright cans are not suitable for use in calculating a domestic sale price as it is uncertain whether these will be entered into home consumption. This is because the unlabelled goods can be either exported or sold domestically, and the manufacturer does not have control over (or potentially awareness of) the end destination for the goods"*.

In light of the above, the ADC has determined the ascertained normal value for LSI by *"using the weighted average of the ascertained normal value from the five verified exporters of the goods whose normal value was determined under subsection 269TAC(1)."*

LSI respectfully submits that the above-described methodology is flawed and not compliant with the Anti-Dumping Agreement (the "***ADA***").

At the outset, it should be noted that the ADC never raised a similar ground, i.e. that the "*domestic sales of bright cans are not suitable for use in calculating a domestic sale price as it is uncertain whether these will be entered into home consumption"* neither in Review 351 nor in the original investigation (Investigation 217). Therefore, the reason underlying the change in the ADC's approach in this respect remains unclear. Moreover, the idea that labelled cans are necessarily entered into home consumption, while unlabelled goods may be either sold domestically or exported is ill-founded. The fact that the cans are labelled does not provide conclusive evidence that they will be entered for home consumption. Suffices it to note that:

- labels are often standardised, i.e. **[Confidential – Business Information]**;
- labels may be easily removed and replaced by other labels, if necessary.

In light of the above, the relevant criterion to decide whether or not a sales transaction should be considered "for home consumption" is the producer's awareness when fixing the price. In LSI's perspective, the bright cans sold to domestic customers are destined to domestic consumption. It follows that LSI's normal value should have been calculated on the basis of LSI's sales in the ordinary course of trade, i.e. should correspond to the normal value calculated in the framework of Review 351.

Nevertheless, even assuming that the ADC's conclusion concerning the suitability of domestic sales of bright cans for use in calculating a domestic sale price is correct, *quod non*, the following should be noted:

(1) Section 269TAC(1), on the basis of which the ADC established LSI's normal value, provides that "*the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods."*

    This provision enables the ADC to use **sales** by other exporters in order to establish LSI's normal value (meaning that, e.g., the relevant other exporters' sales should undergo an OCOT test carried out on the basis of LSI's cost to make and sell), but not to use directly the **normal value** determined for other exporters.

(2) Furthermore, section 8.2 of the Dumping and Subsidy Manual states that *"if it is not known whether the exporter has made any domestic sales, other seller's information is not applicable for the purposes of s. 269TAC(1)."* in our

case, having concluded that it was uncertain (i.e. not known) whether the bright cans sold by LSI in Italy would be entered into home consumption, the ADC cannot use other seller's information (nor the weighted average normal value of other exporters) in order to establish the normal value of the products sold by LSI.

(3) In addition, the ADC did not provide LSI with any information relating to other seller's sales and consequently prevented LSI from defending its interests as prescribed by section 8.2 of the Dumping and Subsidy Manual, which states that *"[w]here an other seller's prices are being considered for normal values, the Commission will, subject to confidentiality, seek to provide the exporter with information about the other seller's sales so that the exporter in question might defend its interests. Generally, this will involve identifying that other seller, providing information on the type of products being sold on the domestic market, and the other seller's domestic distribution methods for level of trade comparisons."*

The ADC's failure to provide LSI with information relating to other seller's sales, on the basis of which LSI's normal value was established, is in clear violation of LSI's rights of defence. Such failure means, for instance, that LSI's normal value may have been established on the basis of a product mix that is different from the product mix sold by LSI with no possibility of objection on the part of LSI.

In conclusion, it is respectfully submitted that the ADC's normal value determinations are flawed both from a substantial and procedural viewpoint. In fact, the ADC is not allowed to rely upon the normal value calculated for other exporters as explained under point (1). Moreover, as a result of its own conclusions concerning the suitability of domestic sales of bright cans, the ADC cannot establish LSI's normal value on the basis of the sales by other exporters as explained under point (2).

In light of the foregoing, it is submitted that the ADC should have calculated LSI's normal value on the basis of the data provided by LSI and previously verified by the ADC. This would result in the same normal value ascertained in the framework of Review 351.

2.1.2 Methodology used to calculate LSI's export price is unwarranted

According to the ADC's consolidated practice, when there are no export sales from a particular exporter during the investigation period, the ascertained export price is set at the same level of the weighted average normal value for that exporter (see, *ex multis,* Final Report 351 and Final Report 250).

However, in the case under discussion, the ADC calculated LSI's ascertained export price on the basis of the export prices of other exporters. It is respectfully submitted

that this approach is unwarranted and that there is no reason for the ADC to deviate from its consolidated practice.

In light of the above, LSI submits that the ADC should establish LSI's export price at the same level of LSI's weighted average normal value in line with its well-established practice.

2.1.3 Conclusion on the methodology used to ascertain LSI's variable factors

It submitted that the methodology followed by the ADC to ascertain LSI's variable factors in Review 354 is flawed. The correct methodology was the one used in Review 351. As a consequence, the ADC should have continued to apply the antidumping measures in the form established in Review 351, i.e. (i) a fixed duty of 0%, and (ii) a variable duty based on a floor price (AEP) set at the same level of the LSI's normal value (ascertained on the basis of LSI's own data).

2.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11]

Based on the arguments illustrated under Section 2.1 above, it is submitted that had the ADC correctly used the normal value determined in Review 351, this would have resulted in a reduced rate of duty.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted with a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii) imposing a reduced duty rate in relation to PPTs exported from Italy by LSI on the basis of the variable factors established in Review 351.

2.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by LSI subject to the payment of an anti-dumping duty, the variable component of which is determined on the basis of the weighted average of the ascertained export price from the five sampled exporting producers. The proposed decision is materially different from the reviewable decision since it entails imposition of antidumping duties in accordance with subparagraph 269ZDB(1)(a)(iii) in relation to the PPTs manufactured by LSI, but on the basis of the variable factors established in Review 351.

3. THIRD GROUND: THE ANTIDUMPING MEASURES SHOULD BE TERMINATED OR MODIFIED *VIS-À-VIS* LSI

As a further subordinate ground, should the ADRP (i) confirm the inclusion of LSI in Review 354, (ii) confirm the correctness of the methodology followed by the ADC to determine LSI's variable factors, it is submitted that the antidumping measures targeting LSI should be either terminated or modified.

3.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]

Assuming that LSI's export price and normal value ascertained in Review 354 are correct, *quod non*, it should be concluded that the reviewable decision is not correct since it results in collection of duties in excess of the dumping margin. In this respect, the following should be noted.

3.1.1 The measures should be terminated *vis-à-vis* LSI

According to Article VI.2 of the GATT, antidumping duties can be imposed only on *"dumped products"*.

Moreover, Article 2.1 of the ADA sets forth that *"a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."*

Therefore, antidumping duties cannot be imposed on goods whose export price is higher than their normal value. It follows that if, as a result of an interim review, an investigation authority determines that the dumping margin of a particular exporter is negative, the antidumping duty targeting that exporter should be immediately terminated, irrespective of the form it may take (i.e. *ad valorem* duty, floor price or combination of the two measures).

In the case at hand, in light of the fact that LSI's dumping margin is established as negative in the Final Report, no antidumping measure (including the floor price applicable to LSI's imports pursuant to the so-called "combination method") should be imposed *vis-à-vis* LSI. The imposition of a floor price *vis-à-vis* exports by LSI would be at odds with the relevant rules set forth under the GATT and the ADA.

3.1.2 The measures should be modified *vis-à-vis* LSI

Article 9.3 of the ADA states that *"[t]he amount of the antidumping duty shall not exceed the margin of dumping as established under Article 2"*.

It must be recalled that in the framework of Review 354, the ADC established a negative dumping margin for LSI, meaning that LSI's ascertained export price was found to be higher than LSI's ascertained normal value.

It follows that any "floor price" applicable to LSI's imports should be set at the level of the ascertained normal value and not at the level of the ascertained export price (or, in the alternative, LSI's ascertained export price should be set at the same level of the ascertained normal value).

In fact, pursuant to the reviewable decision, if LSI exports PPTs to Australia at a selling price (DXP) lower than the ascertained export price but higher than the ascertained normal value, the goods under discussion would be subject to anti-dumping duties (calculated as the difference between the AEP and the DXP) even though such exports are not dumped, i.e. they are sold at a price higher than the normal value.

In light of the above, it is submitted that any floor price to be applied *vis-à-vis* LSI's exports to Australia should be set at a level that cannot exceed LSI's normal value ascertained during the investigation.

3.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11]

Based on the arguments illustrated under Section 3.1 above, it is submitted that had the ADC correctly set the floor price at a level that did not exceed LSI's normal value, this would have resulted in a lesser amount of anti-dumping duties to be collected on the imports from LSI.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted (as the case may be):

(i) with a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties imposed by Anti-Dumping Notice No. 2017/47 in relation to PPTs exported from Italy by LSI; or

(ii) with a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii) setting a different variable factor in relation to PPTs exported from Italy by LSI.

3.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by LSI subject to the payment of an anti-dumping duty, the variable component of which is determined on the basis of the weighted average of the ascertained export price from the five sampled exporting producers. The proposed decision is materially different from the

reviewable decision since it entails imposition of antidumping duties in accordance with subparagraph 269ZDB(1)(a)(iii) in relation to the PPTs manufactured by LSI, but at a reduced amount.

CONCLUSION

In light of the foregoing, LSI respectfully requests the Anti-Dumping Review Panel to make a recommendation under paragraph 269ZZK(1)(b):

(i) recommending the Minister to revoke the reviewable decision and substitute it with a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties imposed by Anti-Dumping Notice No. 2017/47 in relation to PPTs exported from Italy by LSI; or

(ii) as a subordinate ground, recommending the Minister to revoke the reviewable decision and substitute it with a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii), imposing antidumping duties in relation to PPTs exported from Italy by LSI, but with a reduced variable component amount.