VAN BAEL & BELLIS

OPEN FOR INSPECTION
Le Specialità Italiane

Anti-Dumping Review Panel

Prepared or Preserved Tomatoes Exported from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli, La Doria and AR Industrie Alimentari and Prepared or Preserved Tomatoes Exported from the Republic of Italy by AR Industrie Alimentari

Submission by Le Specialità Italiane Srl

[redacted]

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INTRODUCTION

On 26 April 2016, the Anti-Dumping Commission (the "***ADC***") initiated the accelerated review No. 351 ("***Review 351***") upon 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 Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A.

On 1 June 2016, the ADC informed LSI that *"any dumping duty rate established for LSI as a result of* [Review 351] *will be superseded by the outcome of Review 354"*. The ADC further informed LSI that *"as the questionnaires for Review 354 are identical to the one completed for the accelerated review"*, LSI's questionnaire reply could be accepted *"as a submission for both the accelerated Review 351 and Review 354 should LSI wish to participate in both"*.

On 3 June 2016, LSI replied to the ADC, requesting to be excluded from the scope of Review 354. In this respect, LSI noted that AR Industrie Alimentari S.p.A. ("***ARIA***") was excluded 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. Therefore, LSI claimed that its inclusion in the scope of Review 354 was against the principle of non-discrimination, given that LSI was already subject to a review at the time when Review 354 was initiated.

On 7 June 2016, the ADC rejected LSI's request to be excluded from the scope of Review 354 explaining, in substance, that while Review 349 and Review 354 are interim reviews conducted under the same legislative provisions, Review 351 is an accelerated review governed by different provisions of the Customs Act 1901.

On 8 June 2016, LSI expressed its disagreement with the ADC's position but nevertheless requested the ADC (i) to accept LSI's questionnaire reply for both Review 351 and Review 354; (ii) to continue the accelerated Review 351, and (iii) to calculate an individual dumping margin for LSI in the framework of Review 354.

On 14 July 2016, the ADC concluded Review 351. As LSI never exported PPTs to Australia, the ADC recommended to set the fixed component of LSI's interim dumping duty at zero, and to set the ascertained export price ("***AEP***") at the same level of LSI's weighted average normal value. On 10 August 2016, the Parliamentary Secretary confirmed the ADC's recommendations by adopting the ADN 2016/68.

On 5 April 2017, the ADC concluded Review 354 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 published the ADNs No. 2017/46 and No. 2017/47 amending the antidumping 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.

On 4 June 2017, LSI lodged an application with the Anti-Dumping Review Panel ("***ADRP***"), claiming that (i) the reviewable decision should not have amended LSI's variable factors (i.e. LSI should have been excluded from the scope of Review 354); (ii) the methodology followed to ascertain LSI's variable factors in the framework of Review 354 is ill-founded and should be revised; and (iii) the variable factors ascertained in Review 354 result in the collection of antidumping duties in excess of LSI's dumping margin.

On 11 July 2017, the ADRP informed that the first and third grounds of review contained in LSI's application were rejected and only the second ground of review was considered reasonable for the reviewable decision not being the correct or preferable decision.

In accordance with its rights as an interested party under section 269ZZJ of the Customs Act 1901, LSI wishes to supplement its application for review by way of the additional comments contained in the present submission.

Moreover, LSI respectfully reiterates its request for a review of the reviewable decision also on the basis of the first and third ground of review contained in LSI's application, which in LSI's view have been misinterpreted by the ADRP and therefore incorrectly rejected.

1. FIRST GROUND: THE MINISTER SHOULD NOT HAVE AMENDED LSI'S VARIABLE FACTORS IN THE FRAMEWORK OF REVIEW 354

LSI respectfully submits that the ADRP misinterpreted LSI's first ground of review and consequently rejected it by stating that the ADRP was not in a position to review the decision insofar as it relates to the decision of the ADC to initiate an investigation or review concerning the imports of PPTs from LSI.

In this respect, it should be noted that in its application for review LSI did not challenge the decision of the ADC to **initiate a review vis-à-vis LSI** but, rather, the decision of the Minister to confirm the inclusion of LSI within the framework of Review 354 and, therefore, to **amend LSI's variable factors** pursuant to Section 269ZDB(1)(iii) of the Customs Act 1901.

LSI considers that the decision of the Minister to amend LSI's variable factors as a result of Review 354 violates the fundamental principle of equal treatment. As enshrined in the WTO Anti-Dumping Agreement and repeatedly confirmed by the WTO case law, the investigating authorities must exercise their discretion so as to lead to a result that is unbiased, even-handed and fair.

Nevertheless, the outcome of the discretion used by the ADC in the present case, i.e. the reviewable decision, is not considered an even-handed decision since it confirmed the inclusion of LSI in Review 354 whereas ARIA was excluded from the scope of Review 354 on the ground that Review 349 had already been initiated.

In this respect, it should be noted that Review 349 concerned the same review period and the same product as Review 351 and Review 354. Yet, the ADC conducted Review 349 separately for ARIA whereas LSI, which was subject to Review 351, was included in the scope of Review 354. The ADC, by using its discretion, should have treated ARIA and LSI in an even-handed manner and excluded LSI from the scope of Review 354 as it had done for ARIA.

In light of the foregoing, LSI respectfully requests the ADRP to reconsider its position on LSI's first ground of review and to conclude that the reviewable decision is not the correct decision since it amended LSI's variable factors in violation of the principle of equal treatment.

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

LSI respectfully submits that the methodology followed by the ADC to ascertain LSI's variable factors in Review 354 – and the resulting antidumping measures - is ill-founded and that the correct methodology should have been the one used in the framework of Review 351.

2.1 The ADC erred in concluding that LSI's domestic sales were not suitable for the normal value calculation

In Review 351, the ADC determined LSI's normal value on the basis of the actual domestic sales of unlabelled (bright) PPT cans made by LSI in the investigation period, duly adjusted in order to reflect the labelling and packaging costs.

Nevertheless, the ADC decided not to follow this methodology in the framework of Review 354 and considered that LSI's domestic sales were not suitable for calculating LSI's normal value under subsection 269TAC(1). This conclusion was reached based on the assumption that *"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".*[1]

As a result, the ADC 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)."*[2]

LSI firmly believes that the methodology adopted by the ADC in Review 354 violates the WTO Anti-Dumping Agreement. In fact, the relevant criterion to decide whether or not a sales transaction to an unrelated customer established in the exporting country should be considered *"for home consumption"* is not the actual final destination of the goods, but rather the producer's awareness as to whether the goods will be exported.

The Panel in *EC — Salmon (Norway)* confirmed that the key element for determining whether the domestic transactions are suitable for the calculation of the normal value is the awareness of the producer as to whether the goods will be exported:

> *"[…] Article 2.1 makes clear that it is only sales that are "destined for consumption in the exporting country" that may qualify as domestic sales. Thus, **where a producer sells** to an unrelated exporter (or a trader) **knowing that the product will be exported**, that sale cannot, in our view, qualify as a sale intended for domestic consumption."*[3]

The above is further confirmed in the practice of other major users of WTO's trade defence instruments such as the United States[4] and the European Union.[5]

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1 Final Report No. 349 and 354, p. 29.

2 Final Report No. 349 and 354, p. 29.

3 Panel Report, EC — Salmon (Norway), footnote 339, emphasis added.

4 Notice of Final Determination of Sales at Less Than Fair Value, International Trade Administration [A-580-831] 64 FR 30598, March 31, 1999. Within the framework of the anti-dumping investigation conducted by the United States concerning the imports of stainless steel sheet and strip in coils from Taiwan, the investigating authority noted that the *"sales may be excluded from the home market database only if a respondent knew or had reason to know that merchandise was not sold for home consumption."*

5 Council Regulation (EC) No 1676/2001 of 13 August 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate film originating in India and the Republic of Korea, recital 28, where the European Commission examined the "structure" of domestic sales in order to determine whether such goods were destined for domestic consumption. As a result, the European Commission excluded such sales since it was evident from the way that such sales are structured in Korea

It is therefore clear that the approach followed by the ADC is at odds with the legal standard established under WTO law: while the ADC considers that a mere uncertainty concerning the actual final destination of the goods is sufficient to exclude these goods from the normal value calculation, the WTO case law considers that a domestic sale transaction can be excluded from the normal value calculation only when it is certain that the exporting producer is aware that the goods are not destined for consumption in the exporting country.

The above is also confirmed by common sense: a producer is not supposed to know and cannot be required to know the actual final destination of the goods it sells. Therefore, unless the producer under discussion is aware – for a particular reason (such as contractual arrangements, etc.) – of the final destination of the goods, any sales transaction to an unrelated customer established in the exporting country should be considered "for home consumption".

Bearing the above in mind, it should be noted that LSI did not know nor had a reason to know whether or not the bright cans sold on the domestic market would be finally exported to a third country. This was confirmed by the Final Report, which confirms that LSI *"does not have control over (or potentially awareness of) the end destination for the goods."*[6]

Therefore, 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.

In order to further confirm that the ADC's approach was ill-founded, LSI has managed to collect a piece of evidence which confirm that the bright cans that LSI sold to its client **[Confidential – Name of the Client]** during the investigation period were further re-sold in the Italian market. In particular, the ADRP's attention is drawn to the sales invoice No. **[Confidential – Individual Sales Transaction]** exceptionally obtained from **[Confidential – Name of the Client]** showing that certain PPTs produced by LSI (distinguished by the use of LSI's unique producer lot number starting with SI[7]) were further sold in Italy by **[Confidential – Name of the Client]** to its own domestic customer **[Confidential – Name of the Client]**.

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that they were made for export, i.e. Korean authorities permitted such sales to be made without the addition of any local sales tax (VAT); the vendor was also able to transfer to the purchaser the right to claim duty drawback and the sales were usually made in a foreign currency.

6 Final Report No. 349 and 354, p. 29.

7 The correspondence between LSI and the Italian Ministry for Economic Development (attached under **Annex II [Confidential – Administrative Correspondence]**) demonstrates that LSI is officially authorised to use the unique acronym "SI" in order to identify the products produced by LSI pursuant to Italian norms.

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As a result, it should be concluded that the ADC's assumption that LSI's sales of bright cans should not be considered "for home consumption" is ill-founded and contrary to WTO's established jurisprudence. Accepting the ADC's would have much wider implications than the case at hand, setting a precedent for the future exporters who may seek to exclude certain portion of their domestic sales by claiming that they are not certain whether the goods would be sold for consumption in the home market.

2.2 The ADC wrongly used the weighted average normal value of the other verified exporters in order to calculate LSI's normal value

Having declared unsuitable the domestic sales of bright cans for calculating LSI's normal value, the ADC determined the ascertained normal value for LSI *"under subsection 269TAC(1) with reference to the price paid or payable for like goods in the ordinary cost of trade for home consumption in Italy in sales that are arm's length transactions by other sellers of like goods"*. As explained by the ADC, this means that LSI's normal value was determined as the *"weighted average of the ascertained normal value for the five verified exporters of the goods whose normal values where determined under subsection 269TAC(1)"*.[8]

However, LSI is of the view that the methodology followed by the ADC is at odds with the provisions of subsection 269TAC(1) and moreover lacks any other legal basis under the Customs Act 1901, for the reasons illustrated below.

2.2.1 The methodology followed by the ADC is at odds with subsection 269TAC(1) of the Customs Act 1901

The Final Report explains that LSI's normal value was determined *"under subsection 269TAC(1) with reference to the price paid or payable for like goods in the ordinary cost of trade for home consumption in Italy in sales that are arm's length transactions by other sellers of like goods"*. However, it is respectfully submitted that the ADC violated the provisions of subsection 269TAC(1) in several respects.

(A) The ADC was not entitled to determine LSI's normal value on the basis of other sellers' information under subsection 269TAC(1)

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 the case at hand, having verified that LSI has made domestic sales – even though the ADC was uncertain whether the bright cans sold by LSI in Italy would be entered into home consumption- **the ADC could not use other seller's information in order to establish the normal value of the products sold by LSI**.

[8] Final Report No. 349 and 354, p. 29.

The above conclusion is confirmed by the ADC's practice. For example, in the framework of the review of antidumping measures applicable to certain pineapples exported from Thailand, domestic sales made by the exporting producer Natural Fruit were not considered to be true domestic sales as the like goods were sold to domestic trading companies who in turn exported the goods. As a result, the ADC determined a constructed normal value for Natural Fruit and did not resort to the sales of other sellers.[9] The Final Report does not provide any explanation as to why the ADC has departed from its established practice.

(B) Subsection 269TAC(1) enables the ADC to use sales by other exporters but not the normal value of other exporters

Even assuming that the ADC correctly relied on other seller's sales information under subsection 269TAC(1) having disregarded the clear wording of Dumping and Subsidy Manual, it was not allowed to use the normal values of other exporters for LSI.

In fact, subsection 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 **domestic sales** by other exporters in order to establish LSI's normal value - meaning that 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.

Section 8.3 of the Dumping and Subsidy Manual confirms the above reading of subsection 269TAC(1) as it expressly provides that *"in considering whether other seller's sales are suitable, the Commission will **compare the other seller's prices to the CTMS of the exporter in question**. The purpose is to ensure that the other seller's domestic sales prices, which are being considered for normal value purposes for the exporter in question, are not unprofitable and unrecoverable **given the cost structure of the exporter in question**. The other seller's prices should not be less than the CTMS of the exporter"* (emphasis added).

Also the established practice of ADRP, whereby the ADRP considers that the ADC should have recourse to the verified information of the exporters whenever possible, would preclude the ADC from disregarding the LSI's cost to make and sell. For example, in the framework of the review of antidumping measures applicable to imports of pineapple juice concentrate and pineapple fruit exported from Thailand,

[9] Statement of Essential Facts No. 196, p. 18-19.

the ADRP did not affirm Customs' decision to use another seller's SG&A since Customs' Officers were able to establish the SG&A of the exporting producer using verified data in the normal value visit report.[10]

As a result, LSI respectfully submit that subsection 269TAC(1) would have required the ADC to use the CTMS of LSI in order to determine the normal value on the basis of sales made by other sellers in Italy.

(C) The ADC violated LSI's right of defence

Moreover, the use of other seller's information in order to establish LSI's normal value in the Final Report is also affected by a serious procedural deficiency, in so far as 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 meaningful information relating to other seller's sales on the basis of which LSI's normal value was established is a 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.

2.2.2 The methodology followed by the ADC in order to determine LSI's normal value does not have a legal basis under the Customs Act 1901

In addition to the above it should be further noted that none of the alternative methodologies described in the Dumping and Subsidy Manual envisage the possibility to determine the normal value on the basis of the weighted average of the ascertained normal values established for the other verified exporters.

Such a methodology could only be justified under subsection 269TAC(6) of the Customs Act 1901 (normal value based on all relevant information). Nevertheless, Section 13 of the Dumping and Subsidy Manual clearly explains that the provision under discussion can be applied only if the relevant exporter (i) refused access to necessary information; (ii) failed to provide necessary information within a reasonable period; or (iii) significantly impeded an investigation. In other words, subsection

10 Review Of A Ministerial Decision To Publish Dumping Duty Notices Under Subsections 269tg(1) And 269tg(2) Of The Customs Act 1901 In Relation To Imports Of Pineapple Juice Concentrate And Pineapple Fruit From Thailand, recitals 50-55.

269TAC(6) of the Customs Act 1901 is **only applicable in case of non-cooperation**, and therefore cannot be relied upon in the case at hand.

2.3 Conclusion on the second ground for review

In light of the above, it is submitted that the reviewable decision is not the correct decision since the methodology used to determine the normal value is in clear violation of subsection 269TAC(1) and it does not have any legal basis under Customs Act 1901.

The ADC should have calculated LSI's normal value on the basis of the LSI's domestic sales verified by the ADC in the framework of Review 351. This would have resulted in the same normal value ascertained in the framework of Review 351.

3. THIRD GROUND: WTO LAW PROHIBITS THE COLLECTION OF DUTIES IN EXCESS OF THE DUMPING MARGIN

With the third ground of review LSI submitted that - even assuming that LSI's variable factors ascertained in Review 354 are correct, *quod non* - the reviewable decision is not correct since it results in collection of duties in excess of the dumping margin.

The ADRP rejected this ground of review as it considered that this ground was aimed at challenging the form of the duty established under the Dumping Duty Act (which the ADRP does not have the power to review) rather than the decision of the Assistant Minister made under subsection 269ZDB(1) of the Customs Act 1901.

However, LSI respectfully submits that the ADRP misinterpreted and therefore incorrectly dismissed this ground of review. Indeed, **LSI does not challenge the form of the duty but, rather, the ADC's determination of LSI's variable factors, and in particular the determination of LSI's AEP, i.e. the variable component of the duty** (the fixed component of the duty being set at zero). In this regard, the following should be noted.

3.1 The variable component of the anti-dumping duty targeting LSI should have been set at zero

According to Article VI.2 of the GATT, anti-dumping 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, anti-dumping 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 anti-dumping duty targeting that exporter should be immediately terminated, irrespective of the form of the duty.

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

It follows that the reviewable decision is not the correct decision since it should have (set to zero) not only the fixed component of the duty, but also the variable component of the duty targeting LSI's exports.

3.2 The AEP of LSI should be amended as to avoid the collection of anti-dumping duties in excess of the dumping margin

According to the WTO case law *"nothing in the AD Agreement explicitly identifies the form that anti-dumping duties must take. In particular, nothing in the AD Agreement explicitly prohibits the use of variable anti-dumping duties"*.[11] It follows that the Australian authorities have a wide margin of discretion as regards the form of the anti-dumping duty.

However, it is respectfully submitted that that the variable component of the anti-dumping duty targeting LSI - as determined in the Final Report - results in the collection of duties in excess of LSI's dumping margin, in clear violation of Article 9.2 of the WTO Anti-Dumping Agreement, which states that *"[w]hen an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts"* and Article 9.3 of the WTO Anti-Dumping Agreement, which states that *"the amount of the anti-dumping duty shall not exceed the margin of dumping."*

In this regard, it must be noted that LSI's dumping margin was calculated as being negative in Review 354, which means that the ascertained export price was found to be higher than the ascertained normal value. Therefore, even assuming that the measures are to be kept in relation to LSI, *quod non*, LSI's AEP (the variable component) should be fixed at the level not exceeding the ascertained normal value (rather than at the higher level corresponding to the weighted average of the export prices of other cooperating exporters) in order to comply with the requirement of Article 9.3 of the WTO Anti-Dumping Agreement.

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11 Panel Report, Argentina — Poultry Anti-Dumping Duties, para. 7.355.

This approach finds ground in *EC — Salmon (Norway),* where the Panel concluded that in order to comply with the requirement of Article 9.2 that anti-dumping duties must be collected in the appropriate amounts, *"[m]embers imposing minimum import prices (MIPs)*[12] *on investigated parties must ensure that they do not exceed their respective normal values."*[13] The Panel further emphasised its views as follows:

> *"[T]he last sentence of Article 9.4 explicitly recognizes that the benchmark for a MIP applied to any individual exporter or producer that has provided information of the kind that could result in the calculation of an individual margin of dumping in accordance with Article 6.10.2, may be equivalent to its 'individual … normal values'."*[14]

The setting of the AEP (which acts as a floor price) at the level of the ascertained normal value is actually a common practice of the ADC. For example, **in Review 351 the ADC concluded that LSI's AEP was equal to the ascertained normal value as LSI did not export to Australia**.[15] Similarly, in the framework of the accelerated review of measures applicable to imports of PPTs from Calispa, the ADC set the AEP at the same level of the ascertained normal value as Calispa had not exported the product concerned to Australia.[16]

In light of the above, LSI respectfully request the ADRP to reconsider its position on the above-mentioned ground for review and to accept it as a reasonable ground for the reviewable decision not being the correct or preferable decision insofar as the amount of duty set therein results in the collection of duties in excess of the dumping margin.

4. CONCLUSION

In light of the foregoing, LSI respectfully requests the ADRP to (i) reconsider its position concerning the admission of first and third grounds of review, (ii) accept them as reasonable grounds for the reviewable decision not being the correct or preferable decision on the basis of the explanations provided above, and (iii) 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)

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12 The case law on the minimum import price is considered to be of particular relevance to the case at hand since the Commissioner stated on page 35 of the Final Report 349 and 354 that *"for exporters found to have a negative margin, the fixed component of dumping duty will be zero. As such, the measures will act like a floor price set at the ascertained export price."*

13 Panel Report, EC — Salmon (Norway), para. 7.709.

14 Panel Report, EC — Salmon (Norway), para. 7.707.

15 Final Report No. 351, p. 11.

16 Final Report No. 250, p. 16.

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 set at the level of LSI's normal value (as determined in ADN 2016/68).