



# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (Review Panel) on or after 20 October 2025 for a review of a reviewable decision of the Minister.

Any interested party<sup>2</sup> may lodge an application to the Review Panel for review of a Ministerial decision.

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

The Review Panel maintains a public record for reviews of decisions of the Minister. If a review is initiated, a copy of the application will be placed on the Review Panel's website.

Please note that the existence of applications will be disclosed on the Review Panel's 'Pending Applications and Duty Assessments' webpage prior to initiation, including the following information:

- Relevant reviewable decision
- Country and goods to which the application relates
- Number of applications
- Status (e.g. application/s under consideration)

### **Time**

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

### **Conferences**

The Review Panel may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application. The conference may be requested any time after the Review Panel receives the application for review and before beginning to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the Review Panel website for more information.

### **Further application information**

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the Review Panel website for more information.

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<sup>1</sup> By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

**Withdrawal**

You may withdraw your application at any time, by completing the withdrawal form on the Review Panel website.

**International Trade Remedies Advisory (ITRA) Service**

Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service.

For more information on the ITRA Service, visit [www.business.gov.au](http://www.business.gov.au) or telephone the ITRA Service Hotline on +61 2 6213 7267

**Contact**

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

**PART A: APPLICANT INFORMATION**

**1. Applicant’s details**

Applicant’s name: <b>VAS Group Nghi Son Joint Stock Company (“VAS”)</b>
Address: <b>Nghi Son Iron and Steel Complex, Nghi Son Economic Zone, Hai Thuong Ward, Thanh Hoa Province, Vietnam</b>
Type of entity (trade union, corporation, government etc.): <b>Corporation</b>

**2. Contact person for applicant**

Full name: <b>Nguyen Bao Khanh</b>
Position: <b>Deputy General Director</b>
Email address: <b>khanhnb@vasgroup.vn</b>
Telephone number: <b>+84 28 3820 6206</b>

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

<b>VAS is a producer and exporter of the subject goods, and was considered a residual exporter during the course of the investigation.</b>
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**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 Review Panel 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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

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

**Hot-rolled deformed steel reinforcing bar, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.**

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

**The goods are generally classified according to the following tariff subheadings in Schedule 3 to the Customs Tariff Act 1995:**

Tariff Classification	Statistical code
7214.20.00	47
7228.30.10	70
7228.30.90	40
7228.60.10	72

**8. Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number: **ADN 2025/124**

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Date ADN was published: **22 December 2025. Refer to Attachment A.**

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

**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 application 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 **highlighted in yellow**, and the document 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.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

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:

**Please note:** Failure to adequately and accurately respond to questions 9 – 12 below may result in the application or ground/s being rejected pursuant to s 269ZZG(2) or s 269ZZG(5) of the *Customs Act 1901*. Where there are multiple grounds of review, it is important to address each of the questions below for each ground.

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

**Please refer at Attachment B.**

10. **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 9:**

**Please refer at Attachment B.**

11. **Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

**Please refer at Attachment B.**

12. **Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

**Please refer at Attachment B.**

13. **Please list all attachments provided in support of this application:**

**Attachment A: ADN 2025/096**  
**Confidential Attachment B: Grounds of review**  
**Confidential Attachment C: Estimated dumping margin**

**PART D: DECLARATION**

The applicant's authorised representative declares that:

- The applicant understands that the Review Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Review 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; and
- 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 Review Panel is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: **JOHN BRACIC**

Position: **DIRECTOR**

Organisation: **J.BRACIC & ASSOCIATES PTY LTD**

Date: **15 / 01 / 2026**

**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 representative: <b>JOHN BRACIC</b>
Organisation: <b>J.BRACIC &amp; ASSOCIATES PTY LTD</b>
Address: <b>PO BOX 3026, MANUKA, ACT 2603</b>
Email address: <b>john@jbracic.com.au</b>
Telephone number: <b>+61 (0)499 056 729</b>

**Representative's authority to act**

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

**NON-CONFIDENTIAL**

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.

Yours sincerely,



*[Handwritten signature]*

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NGUYEN BAO KHANH  
DEPUTY GENERAL DIRECTOR

Organisation: **VAS Group Nghi Son Joint Stock Company**

Date: **12 / 01 / 2026**



**J.BRACIC & ASSOCIATES**  
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18 November 2025

Anti-Dumping Review Panel  
c/o Legal, Audit and Assurance Branch  
Department of Industry, Science and Resources  
GPO Box 2013  
Canberra ACT 2601

## INTRODUCTION

On 22 December 2025, the Anti-Dumping Commission (“Commission”) published its final report (“Report 655”) into its dumping investigation into hot rolled deformed steel reinforcing bar in lengths (“rebar”) from Indonesia, Malaysia, Thailand, Türkiye, Vietnam.

VAS Group Nghi Son Joint Stock Company (“VAS”) is a Vietnamese producer and exporter of rebar to Australia, and fully cooperated with the Commission’s investigation.

The Minister for Industry and Science (The Minister) accepted the recommendations contained in Report 655, and impose a 9.6% interim dumping duty on VAS’ exports.

VAS’ application for review of the Minister’s decision sets out grounds on which it considers that the Minister’s decision to determine a dumping margin of 9.6%, is not correct or preferable.

## SUMMARY OF RELEVANT FINDINGS

VAS is identified as an exporter of rebar from Vietnam. It is classified as a "residual exporter" under the investigation, meaning it was not selected for individual examination in the sample of cooperating exporters, which included Hoa Phat and Vina Kyoei. VAS submitted requests to alter the sampling outcome to receive an individual dumping margin, but these were not granted.

The Commission determined a dumping margin of 9.6% for VAS, consistent with the residual exporter margin for Vietnam. This margin was calculated under subsection 269TACAB(2) of the *Customs Act 1901* (the Act), using the weighted average export price and normal value from the sole remaining sampled exporter with a positive margin above 2% (Vina Kyoei), after excluding Hoa Phat due to its negligible margin.

## QUESTION 9: SET OUT THE GROUNDS ON WHICH THE APPLICANT BELIEVES THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION:

1. The Minister erred in calculating a residual exporter dumping margin for VAS.

VAS contends that the Commission's reliance on a single sampled exporter's (Vina Kyoei Steel Vina Kyoei Steel Company Ltd ("Vina Kyoei")) data to determine the residual dumping margin contravenes subsection 269TACAB(2) of the the Act, and supported by WTO interpretations relating to an investigating authority's obligations under Article 9.4 of the WTO Anti-Dumping Agreement ("ADA"). The Commission's reasoning in section 6.4.1 of the final report fails to adequately address these deficiencies, misinterprets the statutory requirements, and disregards binding WTO jurisprudence. This error undermines the legality of the final determination and the imposition of measures on residual exporters such as VAS.

**a) Flawed calculation of residual export price and normal value**

Subsection 269TACAB(2) the Act prescribes mandatory requirements for determining the export price and normal value for residual exporters in dumping investigations, reviews, or inquiries. Paragraph (2)(c) mandates that the export price for a residual exporter must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export. Paragraph (2)(d) requires that the normal value must not exceed the weighted average of normal values for like goods of those cooperative exporters.

These requirements are qualified by subsection 269TACAB(3), which excludes from the weighted average calculations any export price or normal value where the Minister, under section 269TACB, determines: (a) no dumping exists; or (b) the dumping margin is less than 2% of the relevant export price or weighted average of export prices. The inclusion of "must not include" in subsection 269TACAB(3) of the Act, reflects the intent to ensure weighted averages are derived solely from exporters engaged in dumping above the de minimis threshold.

However, with two sampled cooperating exporters, if one has a dumping margin below 2%, as was the case for Hoa Phat Hai Duong Steel Joint Stock Company ("Hoa Phat"), its data is excluded, leaving only the remaining exporter's (Vina Kyoei) export price and normal value for the weighted average calculations required by subsection 269TACAB(2). In this scenario, compliance with subsection 269TACAB(2) is not possible. The exclusion of one exporter under subsection (3) leaves a single cooperating exporter, rendering the weighted average calculation under subsection 269T(5A) of the Act infeasible.

Subsection 269T(5A) of the Act defines the weighted average calculation and provides a formula for calculating a weighted average under Part XVB:

$$\frac{P_1 Q_1 + P_2 Q_2 + \dots + P_n Q_n}{Q_1 + Q_2 + \dots + Q_n}$$

Where:

- (P<sub>1</sub>, P<sub>2</sub>, P<sub>n</sub>) are the per-unit price, value, cost, or amount in each transaction, and
- (Q<sub>1</sub>, Q<sub>2</sub>, Q<sub>n</sub>) are the number of units in each respective transaction.

The formula's use of multiple subscripts and the term "transactions" in the plural indicates a requirement for multiple data points. With only one exporter's data remaining after the exclusion under subsection (3), the formula reduces to a single term, which is not a weighted average but merely the individual value. This fails to meet the statutory definition, as a

weighted average inherently requires aggregation across multiple transactions. The plural reference to "cooperative exporters" in subsection 269TACAB(2) and the structure of subsection 269T(5A) demonstrate a legislative intent that weighted averages involve multiple contributors, to ensure compliance with the corresponding obligations of Article 9.4 of the ADA.

In section 6.4.1 of REP 655, the Commission acknowledges VAS' arguments but dismisses them, asserting that the use of data from the sole remaining sampled exporter constitutes a valid "weighted average" under subsection 269TACAB(2) after excluding Hoa Phat due to its negative dumping margin. The Commission justifies this by emphasising the practical need to proceed with the investigation and by interpreting the statutory language as permitting a single-exporter proxy where multiple data points are unavailable post-exclusion. It further contends that this approach aligns with the anti-dumping framework's objectives and does not prejudice residual exporters, while citing the Commission's Manual as supportive of flexibility in such scenarios.

Australian jurisprudence supports a strict interpretation of statutory definitions in anti-dumping contexts. The Federal Court has emphasised that anti-dumping provisions must be construed according to their ordinary meaning and purpose, without expanding authority beyond explicit terms. The Commission's approach impermissibly broadens subsection 269TACAB(2) to include a non-average as an "average," contrary to this principle. In our view, statutory formulas must be applied as written, without substitution where gaps in data are evident. The Commission's proxy method amounts to such an unauthorised substitution.

There are notable parallels between the Commission's refusal in this rebar case involving VAS, and Federal Court's recent findings in *Press Metal Aluminium (Australia) Pty Ltd v Minister for Industry and Science [2024] FCA (NSD67/2024)*. In the Press Metal case, the Commission knew of an evidentiary gap (deficient trade level evidence) but did not act to fill it by asking obvious questions. In VAS' case, the Commission knew of a methodological gap (insufficient data for weighted average after exclusion) but refused to fill it with available means (VAS' submitted data or sample expansion). Both cases involve not using obtainable or available information to ensure accuracy and fairness in dumping margin calculations.

There have also been a number of WTO Panel and Appellate Body findings that also confirm and support our interpretation of the requirements for establishing the residual exporter dumping margins, and reject the position held by the Commission.

Article 9.4 of the ADA governs the imposition of antidumping duties on exporters or foreign producers not individually examined during an investigation. It stipulates that such duties shall not exceed the weighted average dumping margin established for those exporters or producers examined individually, provided that the authorities shall disregard margins that are zero or de minimis in this calculation. Article 9.4 of the ADA reflects the rules captured in section 269TACAB of the Act.

- i) DS539: US – Anti-Dumping and Countervailing Duties (Korea)

In *US – Anti-Dumping and Countervailing Duties (Korea)*, the Panel considered that subparagraph (i) of Article 9.4 constrains the discretion of investigating authorities by imposing a ceiling that the "all others" rate "shall not exceed" and by requiring investigating authorities to disregard, for the purposes of paragraph 4, any zero, de minimis, and "facts

available" margins. The Panel also considered that, by requiring investigating authorities to disregard "facts available" margins, Article 9.4 seeks to prevent exporters who were not asked to cooperate in the investigation from being prejudiced by gaps or shortcomings in the information supplied by the investigated exporters<sup>3</sup>:

*Subparagraph (i) of Article 9.4 sets out the general rule that the relevant ceiling is to be established by calculating a 'weighted average margin of dumping established' with respect to those exporters or producers who were 'selected' or investigated. However, this general rule is qualified by the proviso that, 'for the purpose of this paragraph', investigating authorities 'shall disregard', first, zero and de minimis margins and, second, 'margins established under the circumstances referred to in paragraph 8 of Article 6'. Thus, the provision constrains the discretion of investigating authorities in two ways: first, by imposing a ceiling that the 'all others' rate 'shall not exceed'; and, second, by requiring investigating authorities to disregard, for the purposes of that paragraph, any zero, de minimis, and 'facts available' margins. By requiring investigating authorities to disregard 'facts available' margins, Article 9.4 'seeks to prevent the exporters, who were not asked to cooperate in the investigation, from being prejudiced by gaps or shortcomings in the information supplied by the investigated exporters'.*

The Panel then turned to an argument by the United States that Article 9.4 would not apply, given that all dumping margins were based on facts available, that these margins would be disregarded under Article 9.4, and thus the provision would become "inoperative". The Panel noted that nothing in the text of Article 9.4 indicates that that provision would cease to be applicable in a situation where all rates established by the investigating authority are zero, de minimis, or based on facts available. Thus, the Panel disagreed with the United States that Article 9.4 would be "inoperative" in the light of the facts and circumstances of the dispute<sup>4</sup>:

*We note that although Article 9.4 prohibits the use of certain margins in the calculation of the ceiling for the 'all others' rate, 'it does not expressly address the issue of how that ceiling should be calculated in the event that all margins are to be excluded from the calculation, under the prohibitions'. However, nothing in the text of Article 9.4 indicates that the provision ceases to be applicable in a situation where all rates established by the investigating authority are either zero, de minimis, or based on facts available. In the absence of such a limitation in the text of Article 9.4, Article 3.2 of the DSU prevents us from 'add[ing] to or diminish[ing] the rights and obligations provided in the covered agreements'. We therefore disagree with the United States that Article 9.4 of the AntiDumping Agreement is 'inoperative' in light of the facts and circumstances of the present case.*

It is important to note that the Commission's position in the final report, that extending the sample to include additional exporters would be "unreasonable and impracticable," thereby justifying the use of a single sampled exporter's data as a proxy for the "weighted average" under subsection 269TACAB(2) of the Act, is analogous to the United States' position rejected by the WTO Panel in *US – Anti-Dumping and Countervailing Duties (Korea)*.

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<sup>3</sup> WT/DS539/R, para 5.578, page 175

<sup>4</sup> Ibid., para 5.578, page 175

In that case, the US argued that Article 9.4 of the ADA becomes "inoperative" when all individually examined margins are zero, de minimis, or based on facts available, as no qualifying margins remain for calculating the weighted average ceiling for the "all others" rate. This effectively allowed the US to disregard the provision's cap and impose facts-available margins on non-investigated exporters, citing the impracticality of applying the rule in such circumstances.

Similarly, the Commission acknowledges that exclusions due to Hoa Phat's negligible margin, leaves only one qualifying sampled exporter (Vina Kyoei), making a true weighted average infeasible under the weighted formula in subsection 269T(5A). However, rather than treating this as a "lacuna" (gap) that bounds their discretion, the Commission interprets the provision flexibly to permit using the single exporter's data as the "weighted average." The Commission justifies not expanding the sample by claiming it would be "unreasonable and impracticable," as it contradicts the efficiency purpose of sampling. This mirrors the US' practicality-based deviation, filling the gap with an alternative approach not explicitly authorised by the text.

The US contended that the provision ceases to be applicable when no margins qualify, implying no obligation to adhere to the cap and allowing punitive measures for non-investigated parties. The Commission does not explicitly call subsection 269TACAB(2) "inoperative" but achieves a similar outcome by redefining "weighted average" to encompass a single data point and rejecting expansion due to impracticability. This effectively bypasses the statutory requirement for multiplicity (evidenced by plural terms like "exporters" and "transactions"), imposing a margin unreflective of a representative average. The Commission's position introduces implicit limitations such as practicality constraints, not present in the text of the Act or the ADA, which the Panel explicitly prohibited.

The Panel emphasised that Article 9.4 protects non-investigated (residual) exporters from being prejudiced by shortcomings in investigated data. The Commission's refusal to extend the sample or calculate a dumping margin utilizing VAS' submitted data (despite VAS's low-volume exports enabling timely examination), assigns an inflated margin based on one exporter, ignoring VAS's submitted evidence of a negative margin (-0.9%).

ii) DS184: US – Hot-Rolled Steel

In *US – Hot-Rolled Steel*, the Appellate Body<sup>5</sup> explained that Article 9.4 provides for a "ceiling" for a dumping margin established for exporters that are not investigated due to the sampling of exporters. It establishes two "prohibitions" on the use of certain margins in the calculation of the "all others" rate, i.e. not to use (i) zero or de minimis margins and (ii) margins established on the basis of best facts available:

*Article 9.4 simply identifies a maximum limit, or ceiling, which investigating authorities 'shall not exceed' in establishing an 'all others' rate. Subparagraph (i) of Article 9.4 states the general rule that the relevant ceiling is to be established by calculating a 'weighted average margin of dumping established' with respect to those exporters or producers who were investigated. However, the clause beginning with 'provided that', which follows this sub-paragraph, qualifies this general rule. This qualifying language mandates that, 'for the purpose of this*

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<sup>5</sup> WT/DS184/AB/R, para 116, page 43.

*paragraph', investigating authorities 'shall disregard ', first, zero and de minimis margins and, second, 'margins established under the circumstances referred to in paragraph 8 of Article 6'.*

In response to the US objection that this interpretation of Article 9.4 would make it impossible to calculate an "all others" rate in any investigation where all of the individual margins have been calculated using some element of facts available, the Appellate Body noted that there could be investigations where all of the margins are entirely based on facts available. It characterised this situation as "a lacuna in Article 9.4", because Article 9.4 does not address how the ceiling for the "all others" rate should be calculated if all margins of investigated respondents must be excluded from the calculation.

Again, the Commission's position in REP 655 (as outlined in section 6.4.1) mirrors that of the United States' position rejected by the Appellate Body, particularly in how both invoke practical difficulties or "impossibility" to justify deviating from the strict requirements of the Act and the ADA when calculating the residual exporter rate.

iii) DS294: US – Zeroing (Article 21.5 – EC)

The Appellate Body in *US – Zeroing (Article 21.5 – EC)*<sup>6</sup> commented on the disciplines that apply in such a lacuna situation, although it made no findings concerning the EC claim under Article 9.4:

*[T]he fact that all margins of dumping for the investigated exporters fall within one of the categories that Article 9.4 directs investigating authorities to disregard, for purposes of that paragraph, does not imply that the investigating authorities' discretion to apply duties on non-investigated exporters is unbounded. The lacuna that the Appellate Body recognized to exist in Article 9.4 is one of a specific method. Thus, the absence of guidance in Article 9.4 on what particular methodology to follow does not imply an absence of any obligation with respect to the 'all others' rate applicable to non-investigated exporters where all margins of dumping for the investigated exporters are either zero, de minimis, or based on facts available.*

iv) DS141: EC – Bed Linen

The plural reference to "cooperative exporters" in subsection 269TACAB(2) and the structure of subsection 269T(5A) demonstrate a legislative intent that weighted averages involve multiple contributors. This view is supported by the WTO Appellate Body interpretation of Article 2.2.2(ii) of the ADA in *EC – Bed Linen*<sup>7</sup>:

*In our view, the phrase 'weighted average' in Article 2.2.2(ii) precludes, in this particular provision, understanding the phrase 'other exporters or producers' in the plural as including the singular case. To us, the use of the phrase 'weighted average' in Article 2.2.2(ii) makes it impossible to read 'other exporters or producers' as 'one exporter or producer'. First of all, and obviously, an 'average' of amounts for SG&A and profits cannot be calculated on the basis of data on SG&A and profits relating to only one exporter or producer. Moreover, the*

<sup>6</sup> WT/DS294/AB/RW, para 453, page 173

<sup>7</sup> WT/DS141/AB/R, para 74. Page 23

*textual directive to 'weight' the average further supports this view because the 'average' which results from combining the data from different exporters or producers must reflect the relative importance of these different exporters or producers in the overall mean. In short, it is simply not possible to calculate the 'weighted average' relating to only one exporter or producer. Indeed, we note that, at the oral hearing in this appeal, the European Communities conceded that the phrase 'weighted average' envisages a situation where there is more than one exporter or producer.*

...

*In our view, then, the use of the phrase 'weighted average', combined with the use of the words 'amounts' and 'exporters or producers' in the plural in the text of Article 2.2.2(ii), clearly anticipates the use of data from more than one exporter or producer. We conclude that the method for calculating amounts for SG&A and profits set out in this provision can only be used if data relating to more than one other exporter or producer is available.*

Whilst the Appellate Body was addressing weighted average in the context of a different article of the ADA, the need to calculate a "weighted average" in Article 2.2.2(ii) and subsection 269TACAB(2) of the Act (or equivalent Article 9.4 of the ADA) is central to understanding and complying with the rule. It's a critical part of the calculation method outlined in the provision, which focuses entirely on how that calculation works.

Drawing from prior jurisprudence (e.g., *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*), the Appellate Body clarified that the lacuna must be addressed through harmonious interpretation with other provisions, such as Article 9.3 (which limits duties to the actual margin of dumping). Therefore, the Commission is required to impose a rate not exceeding the calculated weighted average.

It is worth noting that the Commission's own policy and practice reinforces the view that a weighted average calculation consistent with subsection 269T(5A), cannot be achieved with a single exporter. The Commission's own Manual<sup>8</sup> confirms that:

*Weighted average: The Commission will apply this provision in Regulation 45(3)(b) only where there are two or more other exporters providing data in relation to domestic sales of the like goods.*

It is clear then that subsection 269TACAB(2) requires the residual exporter's export price and normal value to be benchmarked against the weighted averages of cooperative exporters' data. However, with the exclusion of Hoa Phat due to its negative dumping margin, only Vina Kyoie's data remains. As per subsection 269T(5A), a weighted average cannot be calculated from a single price-quantity pair, as the formula requires multiple transactions. Consequently, the Minister was unable to satisfy the mandatory conditions of subsection (2)(c) and (2)(d).

Relying solely on Vina Kyoie's export price and normal value as a proxy for a weighted average contravenes the anti-dumping framework and the definition outlined in subsection 269T(5A) of the Act, constituting an error of law. The inability to calculate a weighted

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<sup>8</sup> ADC Manual – December 2021, section 9.3, page 39.

average prevents the Minister from lawfully determining VAS' export price or normal value under subsection 269TACAB(2) of the Act.

This Commission's response in Report 655 is neither correct nor preferable, as it contravenes the plain meaning of the Act, ignores the legislative intent behind the weighted average requirement, and conflicts with established WTO jurisprudence. Moreover, it fails to engage meaningfully with the "lacuna" identified in WTO rulings, opting instead for an impermissible deviation that imposes a punitive margin on non-investigated exporters.

The commission also considers '... it would be unreasonable and impracticable for it to be required to extend the sample and examine the information of the non-selected participating exporters where the sample of exporters selected pursuant section 269TACAA resulted in only one cooperative exporter with a margin above 2%. To accept that the Act would necessitate a different approach is contrary to the reasons for invoking the sampling provisions in the first instance.' This justification is flawed and unsustainable.

The Commission's reliance on "unreasonable and impracticable" burdens to justify not extending the sample ignores that the predicament stemmed from its own discretionary choice under subsection 269TACAA(1) to select only two Vietnamese exporters (Hoa Phat and Vina Kyoei) for examination. This minimal sample size, unprecedented in the Commission's practice, heightened the risk of the lacuna materialising, as the exclusion of even one exporter under subsection 269TACAB(3) would render a weighted average infeasible.

The "practicalities" the Commission cites as rendering sample extension or reliance on VAS data unreasonable were self-inflicted, arising directly from its decision to limit the Vietnamese sample to only two exporters at the outset. This choice amplified the likelihood of the statutory lacuna under subsection 269TACAB(3), where exclusions for de minimis or negative margins could leave insufficient data for a true weighted average under subsection 269T(5A).

Upon review of the Commission's archived and current cases from 2012 onwards displayed in the table below, it is evident that in every other investigation where sampling was invoked due to a large number of exporters, the Commission selected a minimum of three exporters per country, with an average of four across all such cases.

Case Number	Product	Country	Number of Sampled Exporters
217	Tomatoes, prepared or preserved	Italy	7
238	Deep drawn stainless steel sinks	China	3
248	Aluminium extrusions	China	5
263	Aluminium road wheels	China	5
354	Tomatoes, prepared or preserved	Italy	5
378	Aluminium road wheels	China	3
441	Steel pallet racking	China	4
609	Aluminium extrusions	China	4
646	Deep drawn stainless steel sinks	China	3
652	Deep drawn stainless steel sinks	China	3
654	Tomatoes, prepared or preserved	Italy	4
656	Clear laminate glass	China	4
657	Aluminium extrusions	China	3
691	Aluminium windows & doors	China	6
<b>Average sampled exporters</b>			<b>4</b>

This consistent practice demonstrates that larger samples are standard to fulfill the Act's objectives of representative and accurate margin calculations. In contrast, limiting Vietnam to two exporters in Case 655 deviated from this norm without explanation, making the post-exclusion gap foreseeable and avoidable. The Commission's statement overlooks that the "reasons for invoking the sampling provisions" (efficiency amid numerous exporters) do not justify undersampling to the point of statutory non-compliance. Subsection 269TACAA(1) empowers selection of a reasonable number of exporters, implying sufficiency for the process's integrity, not minimalism that risks failure.

By choosing only two, the Commission amplified the lacuna's probability, with a 50% chance of exclusion per exporter, the odds of insufficient data were exponentially higher than in typical cases with three or more. This self-created impracticality cannot excuse non-compliance with subsection 269TACAB(2), which mandates a weighted average requiring multiple contributors (as per subsection 269T(5A)'s plural formula).

The Commission's approach contravenes the Act's purpose of fair, evidence-based remedies against injurious dumping, not punitive measures from methodological shortcuts. Subsection 269TACAA(2) explicitly allows extension to non-selected exporters if it "would not prevent the timely completion of the investigation," underscoring flexibility to address gaps without derailing efficiency. VAS' single export transaction would have enabled swift examination, as evidenced by our prompt data submissions showing a -0.9% margin. Refusing this perpetuates prejudice, assigning VAS a 9.6% margin unreflective of reality.

**QUESTION 10: 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 9.**

In VAS' opinion, the correct or preferable decision involved determining an individual margin of dumping for VAS based on its own submitted data. Subsection 269TACAA(2) of the Act provides that information submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, must extend to that exporter unless to so extend it would prevent its timely completion.

VAS' export sales involved one single export transaction over the whole of the investigation period, and so calculation of the dumping margin could have been completed promptly, so as to not impede the timely completion of the investigation. To assist the Commission, VAS engaged the services of J.Bracic & Associates Pty Ltd, to calculate its margin of dumping over the investigation period, and these calculations were provided to the Commission for its review. The Commission was advised that the calculations revealed that the weighted average export price was 0.9% higher than the corresponding weighted average normal value, confirming that the single export transaction was not dumped.

The information submitted by VAS need not have been verified in order to be accepted by the Commission, given that they did not undertake any such verification of the information submitted by the sampled exporter, Hoa Phat. Given that VAS exports involved one single export transaction during the whole of the investigation period, and that information was able to be verified against Australian Border Force import data, it is not appropriate for the Commission to suggest that calculation of VAS' dumping margin would have impeded and delayed the investigation.

The dumping margin calculations provided to the Commission are contained within **Confidential Attachment C**.

**QUESTION 11: SET OUT HOW THE GROUNDS RAISED IN QUESTION 9 SUPPORT THE MAKING OF THE PROPOSED CORRECT OR PREFERABLE DECISION.**

Support for the proposed decision stems from the statutory formula in the domestic legislation, relevant WTO jurisprudence, and the Commission's interpretation of weighted averages in the Dumping Manual.

**QUESTION 12: SET OUT THE REASONS WHY THE PROPOSED DECISION PROVIDED IN RESPONSE TO QUESTION 10 IS MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION.**

Had the Commission adopted the correct and preferable decision of calculating VAS' dumping margin on the basis of its own information that was available to the Commission, it would have determined that the dumping margin was below 2% and negligible.

Contrasted to the challenged decision, this would have resulted in the investigation being terminated insofar as it relates to VAS, resulting in no interim dumping duties being imposed on its future exports.



*Customs Act 1901 – Part XVB*

**Hot rolled deformed steel reinforcing bar in lengths  
Exported from Malaysia, the Kingdom of Thailand, the Republic  
of Türkiye and the Socialist Republic of Vietnam**

**Findings in Relation to a Dumping Investigation**

***Public notice under sections 269TG (1) and (2) of the Customs Act 1901***

***Anti-Dumping Notice (ADN) 2025/124***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of hot rolled deformed steel reinforcing bar in lengths (rebar, or the goods), exported to Australia from the Republic of Indonesia by Pt Ispat Panca Putera and Pt Putra Baja Deli, Malaysia, the Kingdom of Thailand (Thailand), the Republic of Türkiye (Türkiye) and The Socialist Republic of Vietnam (Vietnam) (the subject countries).

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

*Hot-rolled deformed steel reinforcing bar, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.*

Further information on the goods:

*The goods include all steel reinforcing bar meeting the above description regardless of the particular grade, alloy content, coating or length.*

**Exclusions:**

*Goods excluded from the measures are hot-rolled deformed reinforcing steel in coil form, plain round bar, stainless steel and reinforcing mesh.*

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

Tariff classification				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
7214			<b>Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling.</b>	

Tariff classification				
Tariff code	Statistical code	Unit	Description	Duty rate
7214.20.00	47	T	Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling.	5% DCS:Free <sup>1</sup>
<b>7228</b>	<b>Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods of alloy or non-alloy steel.</b>			
7228.30.10	70	T	Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded: Goods as follows: a. of high alloy steel; b. “flattened circles” and “modified rectangles”.	5% DCS:4% DCT:5% <sup>2</sup>
7228.30.90	40	T	Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded: Containing indentations, ribs, grooves or other deformations produced during the rolling process.	5% DCS:Free
7228.60.10	72	T	Other bars and rods: Goods as follows: a. Of high alloy steel; b. “flattened circles” and “modified rectangles”. <sup>3</sup>	5% DCS:4% DCT:5%

**Table 1 Tariff classifications**

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description.

On 18 December 2025, the Commissioner terminated the dumping investigation into the goods in respect of the following exporters from Indonesia, Malaysia and Vietnam:

- Pt Ispat Panca Putera and Baja Deli from Indonesia
- Southern Steel Berhad from Malaysia
- Hoa Phat Hai Duong Steel Joint Stock Company (Hoa Phat) from Vietnam

*Termination Report No. 655* and ADN 2025/124 sets out the reasons for the terminations. This report is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

In respect of all other exporters, the Commissioner reported their findings and recommendations to me in *Anti-Dumping Commission Report No. 655* (REP 655). In REP 655, the Commissioner outlines the investigations carried out and recommends the publication of a dumping duty notice in respect of the goods exported from Malaysia,

<sup>1</sup> DCS denoted Developing Countries and Places listed in Part 4 of Schedule 1 to the *Customs Tariff Regulations 2004*.

<sup>2</sup> DCT denoted Countries and Places listed in Part 5 of Schedule 1 to the *Customs Tariff Regulations 2004*.

<sup>3</sup> Note: 1(m) to Chapter 72 of the Current tariff classification defines “flattened circles” and “modified rectangles” as convex polygons of which two opposite sides are convex arcs, the other two being straight, of equal length and parallel. These products may have indentations, ribs, grooves or other deformation produced during the rolling process and/or be twisted after rolling

Thailand, Türkiye and Vietnam, except by Southern Steel Berhad from Malaysia and by Hoa Phat from Vietnam. I have considered REP 655 and accepted the Commissioner's recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the findings. The report is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Exporter	Dumping Margin	Method to establish dumping margin
Malaysia	Ann Joo Steel Berhad	9.2%	<i>Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss.269TACB(2)(a) of the Customs Act 1901.</i>
	Alliance Steel (M) Sdn Bhd	9.2%	
	Amsteel Mills Sdn Bhd	9.2%	
	Malaysia Steel Works (KL) Bhd	9.2%	
	Uncooperative exporters	26.2%	
Thailand	Tata Steel Manufacturing (Thailand) Public Company Limited	2.1%	
	Uncooperative exporters	6.7%	
Türkiye	Çolakoğlu Metalurji A.S.	7.1%	
	Kaptan Demir Celik Endustrisi ve Ticaret A.S.	9.1%	
	Kroman Celik Sanayii A.Ş	8.5%	
	Uncooperative exporters	36.4%	
Vietnam	Vina Kyoee Steel Company Ltd	9.6%	
	Tung Ho Steel Vietnam Corporation Limited	9.6%	
	VAS Group Nghi Son Joint Stock Company	9.6%	
	Uncooperative exporters	17.3%	

**Table 2 Dumping margins**

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science (the Minister), have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 655.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods would or might have been caused if the security had not been taken. Therefore under section 269TG(1) and section 45 of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and
- (ii) subject to section 45 and section 269TN(2) of the Act, like goods that were exported to Australia, and entered for home consumption on or after 22 October 2025 but before the publication of this notice.<sup>4</sup>

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused or is being caused. Therefore under section 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

These declarations apply in relation to all exporters of the goods and like goods from Malaysia, Thailand, Türkiye and Vietnam excluding those exported by Southern Steel Berhad from Malaysia and Hoa Phat from Vietnam.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the economic condition of the Australian industry, the size of dumping margins, the prices of exports from the subject countries, the importance of price in the market, evidence of import prices impacting pricing negotiations in the market and changes in the volume and market share of imports and of the Australian industry.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures and securities are applied to 'goods on the water' is available in ACDN 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

REP 655 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2418 or email [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au)

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<sup>4</sup> This is the date when the Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 22 October 2025. Section 45 and section 269TN(2) of the Act enable the publication of a retrospective notice under section 269TG(1) in respect of goods entered for home consumption in relation to which security has been taken under section 42.

Dated this 20 day of December 2025

A handwritten signature in blue ink, appearing to be 'T Ayres', with a long horizontal flourish extending to the right.

TIM AYRES  
Minister for Industry and Innovation and Minister for Science