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J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3749
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

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

2026/176 - HOT-ROLLED DEFORMED STEEL REINFORCING BAR IN LENGTHS FROM THE SOCIALIST REPUBLIC OF VIETNAM

Submission by VAS Group Nghi Son Joint Stock Company

This submission is made by VAS Group Nghi Son Joint Stock Company ("VAS") in support of its application for review, concerning the Minister's decision (Anti-Dumping Notice 2025/124, published 22 December 2025) to publish a dumping duty notice imposing a 9.6% interim dumping duty on VAS exports of the subject goods.

The submission focuses on the core legal error identified in VAS's application, the Commission's (and Minister's) failure to comply with the mandatory requirements of subsection 269TACAB(2) of the *Customs Act 1901* (the Act) when determining the residual exporter dumping margin for VAS. Specifically, after excluding Hoa Phat's data under subsection 269TACAB(3), only a single sampled cooperative exporter (Vina Kyoei) remained. The Commission treated Vina Kyoei's data as a valid "weighted average" for the purposes of paragraphs 269TACAB(2)(c) and (d). This approach is contrary to the plain text of the Act, the statutory definition of "weighted average" in subsection 269T(5A), established WTO jurisprudence, Federal Court authority, and the Commission's own consistent policy and practice.

The error renders the residual margin calculation unlawful and the Minister's decision not the correct or preferable decision.

Summary of relevant findings and key ground of review

VAS was classified as a residual (non-sampled) exporter. Two Vietnamese exporters were sampled: Hoa Phat was excluded under s 269TACAB(3) due to a negligible margin, and Vina Kyoei with a determined dumping margin of 9.6%. The Commission then applied Vina

Kyoei's single set of export prices and normal values as the "weighted average" benchmark under s 269TACAB(2)(c) and (d), resulting in a 9.6% residual margin for VAS (and other non-sampled exporters).

We contend that:

a) subsection 269TACAB(2) mandates a *weighted average* of export prices/normal values from *cooperative exporters* (plural);
b) subsection 269TACAB(3) excludes de minimis/negative margins from that average;
c) once only one exporter remains, the formula in subsection 269T(5A) cannot produce a true weighted average as it requires aggregation across multiple transactions/data points; and
d) the Commission's "single-exporter proxy" approach is an impermissible substitution not authorised by the Act, the WTO Anti-Dumping Agreement (ADA) Article 9.4, or Commission policy.

This submission reinforces those grounds by reference to additional WTO jurisprudence, Federal Court rulings, and ADC case precedence, demonstrating that the Commission's methodology in REP 655 is inconsistent with binding legal requirements and its own prior practice.

Relevant jurisprudence and precedence on the definition and application of "weighted average".

The Commission's dismissal of VAS's arguments in section 6.4.1 of REP 655 (asserting that a single exporter's data can constitute a "weighted average" post-exclusion and that sample expansion would be "unreasonable and impracticable") cannot stand when tested against statute, international obligations, domestic case law, and the Commission's own precedents.

Statutory definition of "weighted average"

Subsection 269TACAB(2) expressly requires the residual export price to be "not less than the weighted average of export prices" and the normal value to be "not greater than the weighted average of normal values" of cooperative exporters. Subsection 269TACAB(3) mandates exclusion of zero/de minimis/negative margins from those averages.

Subsection 269T(5A) defines the weighted average calculation using the formula:

$$\frac{P_1Q_1 + P_2Q_2 + \cdots + P_nQ_n}{Q_1 + Q_2 + \cdots + Q_n}$$

The plural language ("transactions", multiple subscripts, "cooperative exporters") makes clear that aggregation across *multiple* data points is required. A single exporter's data collapses to a simple value, not an average. This mirrors the legislative intent to produce a representative benchmark, consistent with ADA Article 9.4.

WTO jurisprudence

The WTO Appellate Body and Panels have repeatedly held that "weighted average" provisions cannot be satisfied with data from only one exporter/producer:

- EC – Bed Linen (DS141)[1]: The Appellate Body ruled that Article 2.2.2(ii) of the ADA "*precludes … understanding the phrase 'other exporters or producers' in the plural as including the singular case*." A weighted average cannot be calculated from one exporter's data. The Commission's own Manual[2] expressly adopts this interpretation, "*The Commission will apply this provision in Regulation 45(3)(b) only where there are two or more other exporters providing data*…"
- US – Hot-Rolled Steel (DS184) and US – Zeroing (Article 21.5 – EC) (DS294): These decisions confirm that Article 9.4 creates a ceiling and prohibits unbounded discretion where a "lacuna" arises after exclusions. Practical difficulties do not authorise redefining "weighted average" to include a single data point.
- US – Anti-Dumping and Countervailing Duties (Korea) (DS539): The Panel rejected arguments that Article 9.4 becomes "inoperative" when exclusions leave insufficient data and that authorities cannot fill gaps with unauthorised proxies.

The Commission's "impracticability" justification in REP 655 mirrors the US positions rejected in these disputes.

Federal Court of Australia ruling

The Federal Court has emphasised strict construction of anti-dumping provisions according to their ordinary meaning and purpose (*Press Metal Aluminium (Australia) Pty Ltd v Minister for Industry and Science* [2024] FCA (NSD67/2024)). In that case the Court found error where the Commission knew of an evidentiary gap but failed to take reasonable steps to fill it. The parallel here is exact, as the Commission knew that exclusion of Hoa Phat left only one exporter (rendering a true weighted average impossible under s 269T(5A)) yet refused to expand the sample or use VAS's own verified data, despite s 269TACAA(2) permitting extension where timely completion is not prejudiced. VAS's single-transaction export data could have been examined promptly.

Further, it is understood that the Commission informed Hoa Phat of its negligible dumping margin on 16 September 2025. At that point the Commission must have known (or ought reasonably to have known) that Hoa Phat's margin was below the 2% de minimis threshold, and would therefore be excluded under subsection 269TACAB(3), leaving only Vina Kyoei's data available for the weighted average calculation required by subsection 269TACAB(2). Despite this early awareness, more than three months before publication of the final report, the Commission made no attempt or effort to remedy or correct the issue by extending the sample to VAS under subsection 269TACAA(2), or by otherwise utilising the readily available and easily verifiable data submitted by VAS. This inaction is precisely the type of

[1] WT/DS141/AB/R, para 74, page 23.
[2] December 2021, p 39.

failure to address a known methodological gap that the Federal Court in Press Metal held to be erroneous.

The Commission's "impracticability" justification is substantially weakened

The Commission's assertion that extending the sample to include VAS would be "unreasonable and impracticable" is substantially weakened by the fact that VAS made a detailed and proactive request for individual examination on 2 April 2025[3], almost seven months prior to the publication of the Statement of Essential Facts, and almost 9 months prior to the Final Report being due to the Minister. In that submission, VAS explicitly drew the Commission's attention to its very low export volume (a single transaction of 408 metric tonnes) and offered to participate in either on-site or remote verification at a time convenient to the Commission.

VAS further advised that, given the simplicity of its data (only one export sale and corresponding domestic sales for the same model), verification could be completed quickly and would not impede the timely publication of the SEF or the overall investigation. VAS proposed specific windows in April and May 2025 for remote verification, or alternatively offered to align verification with the Commission's planned visits to the sampled exporters. This early engagement provided the Commission with ample time to incorporate VAS's data without disrupting the statutory timetable.

The Commission's subsequent reliance on impracticability therefore appears inconsistent with the opportunities it was afforded well in advance. Had the Commission accepted VAS's offer, it would have had verified data from an additional exporter, avoiding the lacuna created by excluding Hoa Phat and leaving only Vina Kyoei's data for the weighted average calculation under subsection 269TACAB(2). This early request and concrete offer of cooperation further demonstrate that the Commission's chosen course was not compelled by genuine practical constraints, but was a discretionary decision that foreseeably led to the statutory non-compliance now under review.

Further, notwithstanding VAS's explicit offer to undergo verification, the Commission did not undertake any onsite or virtual verification of Hoa Phat's significant volume of data. It was therefore entirely open to the Commission to apply the same non-verification process to VAS's limited data set and calculate an individual dumping margin without undertaking verification. Doing so would have imposed no additional burden on the Commission and would have caused no delay or impediment whatsoever to the timely publication of the Statement of Essential Facts, while preventing the methodological gap that the Federal Court in *Press Metal Aluminium (Australia) Pty Ltd v Minister for Industry and Science [2024] FCA (NSD67/2024)* held to be erroneous.

ADC case precedence

The Commission has consistently applied the "weighted average requires multiple contributors" principle in its own reports, where weighted averages were calculated only

[3] EPR 655, record no. 37, VAS submission

from aggregated multi-exporter or multi-transaction data, and where the Manual's "two or more" rule was followed for analogous profit/export price calculations.

a) REP 285A – Hollow Structural Sections from China (Dalian Steelforce review)

The Commission expressly declined to use subsection 45(3)(b) (weighted average profit of "other exporters") where only one exporter's data remained, citing the Manual and *EC – Bed Linen*.

The Report states:

> *The Commission observed in REP 285 that it had access to information concerning profit realised on domestic sales of HSS by another Chinese exporter of the goods. However the Dumping and Subsidy Manual states that the Commission will only apply subsection 45(3)(b) where there are two or more other exporters providing profit data. This approach reflects the findings of the World Trade Organisation Appellate Body in the Bed Linen case regarding Article 2.2.2(ii) of the Anti-Dumping Agreement (which is given effect in Australian law in subsection 45(3)(b)). In that case the Appellate Body held that Article 2.2.2(ii) does not permit calculation of profit using data relating to only one exporter.*
>
> *The Full Court did not disturb the Commission's finding in relation to subsection 45(3)(b) and Dalian Steelforce made two submissions supporting the Commission's finding in relation to subsection 45(3)(b).*
>
> *The Commission accordingly concludes that profit cannot be determined under subsection 45(3)(b).*

This is directly on point and binding as Commission policy and the same logic applies to the current application and interpretation in s.269TACAB(2) of the Act.

b) REP 295: FSI pineapple from Thailand (Prime Products Co Ltd)

The Commission concluded that as *"Prime Products was the only exporter subject to the accelerated review, the Commission does not have any information relating to the sales of other exporters in the Thai domestic market during the accelerated review period.*" Accordingly, subsection 45(3)(b) could not be applied as it could not calculate a weighted average profit on the basis of a single exporter.

c) Broader ADC practice (2012–present):

In every sampled investigation listed in VAS's Attachment B (e.g., aluminium extrusions, steel pallet racking, deep drawn stainless steel sinks), the Commission selected a minimum of three exporters per country (average four). The two-exporter sample in Case 655 was an unexplained departure that foreseeably created the lacuna now before the Review Panel.

These precedents demonstrate that the Commission's position in REP 655 is not only legally flawed but also a departure from its own consistent methodology.

<u>Conclusion and support for the proposed correct or preferable decision</u>

The grounds in VAS's application, reinforced by the above authorities, establish that the Minister's decision is not the correct or preferable decision. The only lawful course was to either:

i. extend the sample to VAS under s 269TACAA(2) (feasible given its single transaction) and calculate an individual margin on VAS's own data (which showed a negative margin of -0.9%); or
ii. recognise the statutory lacuna and terminate the investigation in respect of VAS (as occurred for other exporters with negligible margins).

Either outcome would have resulted in no dumping duty notice applying to VAS, materially different from the 9.6% margin imposed.