Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Attn: Jan Redfern
Panel Member
c/o- ADRP Secretariat

By email: ADRP@industry.gov.au

Dear Member Redfern

ADRP Review No. 176: Hot rolled deformed steel reinforcing bar in lengths exported from Indonesia, Malaysia, Thailand, Türkiye and Vietnam

I write regarding the notice under section 269ZZI of the Customs Act 1901 (Cth) (the **Act**) published by the Anti-Dumping Review Panel (**ADRP** or **Review Panel**) on 22 December 2025.

The notice advised of your intention to review the decision of the Minister for Industry and Science, under section 269TG(1) and 269TG(2) of the Act to publish a dumping duty notice applying to hot rolled deformed steel reinforcing bar in lengths exported from Malaysia, the Kingdom of Thailand (Thailand), the Republic of Türkiye (Türkiye) and The Socialist Republic of Vietnam (Vietnam).

I have considered the application for review submitted by Alliance Steel (M) Sdn Bhd, Malaysia Steel Works (KL) Bhd and VAS Group Nghi Son Joint Stock Company and make the submissions, under section 269ZZJ(aa) of the Act, at **Attachment A** for your consideration.

Please let us know if we can assist you further in this matter.

Yours sincerely

David Latina
Commissioner
Anti-Dumping Commission

30 April 2026

Attachment A

COMMISSIONER, ANTI-DUMPING COMMISSION SUBMISSION

ADRP Review 2026/176

1. The Commissioner[1] of the Anti-Dumping Commission (the **Commissioner**), with the assistance of officers of the Anti-Dumping Commission (the **commission**), makes this submission under section 269ZZJ(aa) of the *Customs Act 1901* (Cth) (the **Act**).[2]

2. The submission is made in response to an application for review to the Anti-Dumping Review Panel (the **ADRP** or **Review Panel**) from Alliance Steel (M) Sdn Bhd (**Alliance**), Malaysia Steel Works (KL) Bhd (**Masteel**) and VAS Group Nghi Son Joint Stock Company (**VAS**) (the **Applicants**) (**Applications for review**).

3. The applications for review seek review of the decision by the Minister for Industry and Innovation (the **Minister**) on 20 December 2025 to publish a dumping duty notice under ss 269TG(1) and (2) of the Act in respect of certain hot rolled deformed steel reinforcing bar in lengths (**rebar,** or **the goods**) exported to Australia from Malaysia, Thailand, Türkiye and Vietnam (the **Reviewable Decision**).

4. The Reviewable Decision is a reviewable decision for the purposes of s 269ZZA(1)(a) of the Act.

5. The submission includes two parts: **Part A** and **Part B**.

6. **Part A** clarifies that this submission has been informed by the scope of the review as articulated in the Application for Review and set out in the Review Panel's notice under section 269ZZI (**section 269ZZI notice**).

7. **Part B** sets out the following:
   - Section 1 sets out a concise legislative overview relevant to this review,
   - Section 2 concerns the decision to apply the sampling provisions pursuant to section 269TACAA of the Act, and
   - Section 3 sets out the Commissioner's submissions in respect of the sole **ground** articulated in each of the Applications for review.

8. Although three separate applications have been filed by Alliance Steel, Masteel and VAS, their grounds of review concerning the calculation of residual exporter dumping margins are, in substance, the same. Because of this, the Commissioner has considered and addressed these grounds together in these submissions.

Part A: The scope of the review

9. The section 269ZZI notice sets the parameters of the review. As required by section 269ZZI(2)(b), the notice identified that the Review Panel 'is satisfied that the

[1] References in this document to individuals holding the position of Commissioner are references to whoever occupies the position at the time. This includes when the position is held in an acting capacity.
[2] All legislative references in this submission are to the *Customs Act 1901 (Cth)*, unless otherwise specified.

following ground(s) are reasonable grounds for the Reviewable Decision not being the correct or preferable decision':

a. Ground 1 – Alliance

i. The Minister erred in calculating a residual exporter dumping margin for Alliance in that the Minister used a flawed calculation of residual export price and normal value by relying on a single sampled exporter's data to determine the residual dumping margin in contravention of subsection 269TACAB(2) of the Act.

b. Ground 1 – Masteel

i. The Minister erred in calculating a residual exporter dumping margin for Masteel in that the Minister used a flawed calculation of residual export price and normal value by relying on a single sampled exporter's data to determine the residual dumping margin in contravention of subsection 269TACAB(2) of the Act.

c. Ground 1 – VAS

i. The Minister erred in calculating a residual exporter dumping margin for VAS in that the Minister used a flawed calculation of residual export price and normal value by relying on a single sampled exporter's data to determine the residual dumping margin in contravention of subsection 269TACAB(2) of the Act.

10. The referenced single sample exporter's data for VAS was Vina Kyoei and for Alliance and Masteel was Ann Joo Steel Berhad (**Ann Joo**).

11. In summary, each contends that the Minister erred by determining a residual dumping margin for that Applicant, rather than an individual dumping margin based on the Applicant's own submitted information. The Applicants contend that, had individual margins been determined, those margins would have been below the de minimis threshold, with the consequence that the investigation would have been terminated insofar as it relates to the Applicants, and the dumping duty notice published under ss 269TG(1) and (2) of the Act would not apply to rebar exported to Australia by the Applicants.[3]

Scope of review

12. This submission is informed by consideration of the remarks of Wigney J in the Federal Court judgment of *Yara AB v Minister for Industry, Science and Technology* (**Yara**).[4] In Yara, Wigney J affirmed that an ADRP review is:

> *"confined and constrained in certain respects" because "the review is not a de novo review or a merits review which is entirely at large. The [Review Panel] must restrict itself to a consideration of the grounds that it accepted were reasonable grounds for the reviewable decision not being the correct or preferable decision".*[5]

[3] Alliance's Application for review: Attachment B, pp 16–17; Masteel's Application for review: Attachment B, pp 16–17; VAS' Application for review: Attachment B, pp 16–17.
[4] [2022] FCA 847.
[5] Ibid [172]-[182]; see also the Act ss 269ZZG(5)(a)–(c).

13. The scope of review is therefore confined to these grounds of review and the Applicants' contentions which underpin those grounds.

14. The Applicants seek review of the Minister's decision only insofar as it relates to goods exported to Australia from Malaysia and Vietnam by the Applicants.

15. The Commissioner notes that the Applicants contend that the alleged error in the Reviewable Decision 'undermines the legality of the final determination and the imposition of measures on residual exporters such as [the Applicants]'.[6] That contention cannot expand the scope of the review. The review is confined to the dumping margins determined in respect of the Applicants themselves, and it is only those margins that are properly the subject of the Review Panel's consideration.

Submission by an interested party - Amsteel

16. Amsteel Mills Sdn Bhd (Amsteel) has made a submission to the Review Panel as an interested party, dated 22 April 2026 and published on 28 April 2026.[7] Amsteel has not, however, made an application for review under Division 9 of Part XV B of the *Customs Act 1901* (Cth) seeking review of the Reviewable Decision.

17. In its submission, Amsteel advances arguments concerning the calculation of residual exporter dumping margins and contends that its own information would support a negative or de minimis dumping margin. Those matters do not arise for determination in this review. The Review Panel's jurisdiction is confined to determining whether the Reviewable Decision is the correct or preferable decision only in respect of the applications for review properly before it, and does not extend to setting aside the Reviewable Decision insofar as it applies to Amsteel, nor to substituting a decision requiring the determination of an individual dumping margin based on Amsteel's own information.

18. Amsteel's submission may only be considered to the extent that it bears upon, or overlaps with, the grounds of review squarely raised by the Applicants and within the Panel's statutory remit.

Part B: The Commissioner's submissions

Section 1: Legislative overview

19. The Review Panel's task is primarily centred on the interpretation of ss 269TACAB(2) and (3) of the Act. These sections set out how export prices and normal values must be calculated for residual exporters, that is, exporters who were not individually examined because the investigation or review relied on a sample of relevant exporters.

20. This section is to be read in the context of the sampling provisions in s 269TACAA of the Act. Section 269TACAA permits the Commissioner to use sampling in an investigation, where the number of exporters from a particular country is so large that it is not practicable to examine them all. In those circumstances, the investigation or review may

[6] Alliance's Application for review: Attachment B, p 9; Masteel's Application for review: Attachment B, p 9; VAS' Application for review: Attachment B, p 9.
[7] https://www.industry.gov.au/sites/default/files/adrp/2026-04/amsteel-submission-combined.pdf

be conducted, and findings made, on the basis of information from a selected number of exporters, chosen either because they:

a. constitute a statistically valid sample, or

b. are responsible for the largest volume of exports to Australia that can reasonably be examined.

21. The provision also addresses exporters not initially selected. If such an exporter later submits information, the investigation or review must extend to that exporter, unless doing so would prevent timely completion of the investigation or review.

22. Sections 269TACAB(2) and (3) are then set out below (subsection (1) is not relevant and deals with 'uncooperative exporters').

269TACAB Dumping duty notice—export prices and normal values for different categories of exporters

...

Residual exporters

(2) If:

(a) one of the following applies:

(i) there is an investigation under this Part in relation to whether a dumping duty notice should be published;

(ii) there is a review under Division 5 in relation to the publication of a dumping duty notice;

(iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice; and

(b) the investigation, review or inquiry is carried out on the basis of information obtained from an examination of a selected number of exporters as mentioned in subsection 269TACAA(1);

then:

(c) if the export price of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that export price must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export; and

(d) if the normal value of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that normal value must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.

(3) To the extent that subsection (2) applies in relation to an investigation, the weighted average of export prices, and the weighted average of normal values, of the cooperative

exporters must not include any export price or normal value if, in a comparison under section 269TACB involving that export price or normal value, the Minister has determined:

(a) that there is no dumping; or

(b) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

23. Section 269TEA provides the statutory timeframe (155 days) for completing the relevant investigation the subject of this review and provide a report to the Minister, unless a longer period is allowed by the Minister.

24. Relevant also is section 269T(5A) which provides the definition / formula for "weighted average", which is as follows:

For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

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

where:

P_1, P_2 ... P_n *means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.*

Q_1, Q_2 ... Q_n *means the number of units of the goods involved in each of the respective transactions.*

25. In plain English, this provision says that the weighted average is worked out by taking each transaction price (or value, cost or amount), multiplying it by the quantity sold in that transaction, adding those results together, and then dividing by the total quantity sold over the period.

Section 2: Decision to apply sampling provisions

26. On 24 September 2024, the then Acting Commissioner of the Anti-Dumping Commission, initiated the relevant investigation which forms the subject of this review (INV 655).[8] The initiating notice (ADN No. 2024/070) invited exporters of the goods to Australia to participate in Investigation (**INV**) 655 by completing an exporter questionnaire. ADN 2024/070 further stated that the commission may consider, pursuant to section 269TACAA, whether sampling is required for particular countries due to the large number of exporters of the goods.

[8] See Anti-dumping Notice (**ADN**) No. 2024/070.

27. The commission received completed questionnaire responses from the 15 exporters listed in Table 1 below:[9]

Table 1: List of exporters who provided a response to the exporter questionnaire

Name	Country
Pt Putra Baja Deli (PBD)	Indonesia
Southern Steel Berhad (Southern Steel)	Malaysia
Ann Joo	Malaysia
Malaysia Steel Works (KL) Bhd (Masteel)	Malaysia
Amsteel Mills Sdn Bhd (Amsteel Mills)	Malaysia
Alliance Steel (M) Sdn Bhd (Alliance Steel)	Malaysia
Tata Steel (Thailand) Public Company Limited (Tata Steel Thailand)	Thailand
BPV-Systems Co.,Ltd (BPV Systems)	Thailand
Kaptan Demir Celik Endustrisi ve Ticaret A. Ş. (Kaptan Demir)	Turkiye
Çolakoğlu Metalurji A.Ş. (Çolakoğlu)	Turkiye
Kroman Celik Sanayii A.Ş. (Kroman)	Turkiye
Vina Kyoei Steel Co.,Ltd. (VK Steel)	Vietnam
Hoa Phat Hai Duong Steel Joint Stock Company (HPHD)	Vietnam
Tung Ho Steel Vietnam Corporation Ltd (Tung Ho Steel Vietnam)	Vietnam
VAS Group Nghi Son Joint Stock Company (VAS Group)	Vietnam

28. In their decision dated 11 March 2025 (the **sampling report**), in assessing whether it was practicable to examine the exports of all the exporters from each of the subject countries, including Malaysia and Vietnam, the Commissioner considered:

    a. the number of exporters from that country, including the volume of exports by those exporters;

    b. the number of exporters from that country who provided a response to the exporter questionnaire (participating exporters); and

[9] The commission granted certain exporters an extension of time to provide a response to the exporter questionnaire. Further information regarding the extensions granted are included in the file note published on the EPR on 18 November 2024 (EPR Document Number 9).

c. the resources available and the timeframe for the timely completion of the investigation.[10]

29. After considering these factors, the Commissioner assessed 'that the number of exporters from each of Malaysia, Türkiye and Vietnam are so large that it is not practicable to examine the exports of all the exporters from Malaysia, Türkiye and Vietnam'.[11]

30. Relevantly, in relation to exports from Malaysia and Vietnam, and applying section 269 TACAA, the Commissioner limited the examination of exports of the goods to the exporters who were 'responsible for the largest volume of goods exported into Australia' from both countries that could reasonable be examined.[12]

a. For Malaysia this was Ann Joo and Southern Steel, which together, of the participating exporters, represented 76% of exports from Malaysia, and 85% of exports from Malaysia from participating exporters.[13]

b. For Vietnam this was HPHD and VK Steel, which together, of the participating exporters, represented 87% of exports from Vietnam and 88% of exports from Vietnam by participating exporters.[14]

31. On the basis of the volume of exports, Ann Joo, Southern Steel, HPHD and VK Steel were selected as the exporters for the purpose of sampling. This approach was consistent with the Commission's practice of selecting a sample based upon the largest volume of exports to Australia, consistent with the "largest volume of exports that can reasonably be examined" criterion in s 269TACAA(1)(d). Section 269TACAA(1)(d) does not require that all cooperating exporters be examined, nor does it prescribe a minimum number of exporters to be selected.

32. Consistent with that framework, the Commission has, in past matters, selected a limited number of exporters sufficient to capture a substantial proportion of exports, with the precise level of export coverage varying according to the circumstances of each case.[15] Those matters illustrate that export coverage has ranged from approximately 60 per cent to well over 90 per cent, and that the focus has consistently been on whether the selected exporters together account for the largest volume of exports that could reasonably be examined, rather than on exporter numbers as an end in themselves.

33. In the present investigation, the number of exporters and the constraints imposed by the statutory timeframe meant that examining more than two exporters from each of Malaysia, Thailand, Turkiye and Vietnam was not practicable given that the requirement

---

[10] ADN 2025/014, 'Application of sampling provisions for Investigation No. 655', Page 3
[11] Ibid, page 3.
[12] Ibid.
[13] Ibid, page 3 and footnote 5.
[14] Ibid, page 4 and footnote 7.
[15] See for example:
- Inv 654 Tomatoes - 6 exporters, 70% of exports: ADN 2024/089 November 2024;
- Con Inquiry 657 (Extrusions China) - 4 exporters (China), 68% of exports: ADN 2025/006 Jan 2025;
- Inv 656 (Glass China/Thailand) - 4 exporters (China) 94% of exports: ADN 2024/106 Dec 2024;
- Review 646 Sinks China - 3 exporters more than 60% of exports: ADN 2024/048 Aug 2024;
- Inv 550 Steel tube Vietnam - 2 exporters 70%; see ch 6.6.3 SEF 550 fn 83;
- Inv 557 copper tube (China/Korea) 3 exporters China 89%, 2 exporters Korea 99% of exports, all exporters from China negative DM, no +2% margin available for selection re 4 residual exporters: ch 2.3.1, 2.3.2, SEF 557 and 7 Sept 2020 File Note, p.3.

is to deliver the Report to the Minister in a timely way. The sampling approach adopted was therefore broadly consistent with prior Commission practice and reflected a rational and reasonable application of the “largest volume of exports” criterion in s 269TACAA(1) in the circumstances.

34. The Commissioner, at this time (11 March 2025), considered that it was not ‘practicable to examine the exports of the other exporters who submitted questionnaire responses within the required timeframe’ and that ‘examining the exports of these exporters would prevent the timely completion of the investigation’.[16] As a result, the Applicants were, for the purposes of INV 655, residual exporters.[17]

35. The commission subsequently determined that Southern Steel from Malaysia and Hoa Phat from Vietnam, had dumping margins that were either negative or negligible.[18] The use of the export prices and normal values of those exporters was therefore not permitted in the calculations performed under s 269TACAB(2), by virtue of the exclusion in s 269TACAB(3) of the Act.

36. Having regard to the purpose of the sampling provisions, the commission considered ‘it would be unreasonable and impracticable for the commission 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’.[19]

37. Once the Commissioner lawfully adopted sampling under s 269TACAA(1) on 11 March 2025, the investigation proceeded on the basis that not all cooperative exporters would be individually examined.

38. The Commissioner otherwise relies on Report No 655 dated 16 December 2025, including with respect to background, the legislative framework, findings and assessment, and does not reproduce those matters here. However, the Commissioner can provide further submissions on matters or provide further information if it would be of assistance to the Review Panel.

39. Further, the Commissioner notes that limited extensions of statutory deadlines were granted during the course of the investigation, reflecting the scale and complexity of the matter and the need to accommodate procedural steps required by Part XVB. In particular, the due date for publication of the Statement of Essential Facts was extended from 13 January 2025 to 22 October 2025,[20] and the deadline for providing the report to the Minister was extended to 18 December 2025,[21] with the report in fact provided on 16 December 2025.[22]

[16] ADN 2025/014, ‘Application of sampling provisions for Investigation No. 655’, page 4.
[17] Ibid.
[18] See chapter 6.9 and 6.13 to Report No 655 and Confidential Attachments 16 to 19 and 32 to 35.
[19] ADN 2025/014, ‘Application of sampling provisions for Investigation No. 655’, page 4.
[20] Report No 655, page 15.
[21] Report No 655, page 16.
[22] Ibid.

40. Those extensions were granted for the purpose of completing the investigation in accordance with its adopted methodology, including finalising sampled exporter examinations, and addressing a large volume of submissions.

41.

Section 3: Commissioner's submissions in respect of Grounds 1

Introduction

Question for the Review Panel and Commissioner's submission

42. The question for the Review Panel is whether the Minister erred in calculating a residual exporter dumping margin for each Applicant on the basis that the Minister calculated the residual export price and normal value by relying on a single sampled exporter's data to determine the residual dumping margin when applying subsection 269TACAB(2) of the Act.

43. This is a legal question; however, it is contingent on the specific facts and circumstances of this case.

44. For the following reasons, the Commission submits that its interpretation of ss 269TACAB(2) and (3) is the correct or, alternatively, the preferable construction.

45. The Commission therefore submits that the Panel should affirm the Commission's approach and recommend that the Minister affirm the reviewable decision.

Singular includes plural and plural includes singular

46. The Commission submits that neither ss 269TACAB and 269T(5A), nor any other provision in the Act, expressly addresses the question of whether the export price or normal value of goods of residual exporters can be calculated under s 269TACAB(2) on the basis of values provided by a single exporter.

47. As a matter of statutory interpretation, the commission submits that the starting point, is s 23(b) of the *Acts Interpretation Act 1901* (Cth) (**AIA**) which relevantly provides:

    In any Act:

    …

    (b) words in the singular number include the plural and words in the plural number include the singular.

48. The effect of s 23(b) is that s 269TACAB(2) (and the definition of 'weighted average' in s 269T(5A)) must be read as permitting calculations of the residual exporter export price and normal value to be based on the weighted average export price or normal value of a single cooperative exporter sampled under s 269TACAA.

49. Section 2 of the AIA provides that (1) the Act applies to all Acts… (2) However, the application of the AIA or a provision of the AIA to an Act or a provision of an Act is subject to a contrary intention. Therefore, the application of s 23(b) is subject to contrary intention, which the Commissioner submits is not present here for the following reasons:

a. The mathematical concept of 'weighted average' does not strictly preclude single inputs and neither the language of s 269TACAB(2), nor the formula in s 269T(5A) indicates that the calculation becomes unusable merely because only one value remains;

b. International observations on Art 9.4 indicate the continued operability of a weighted average where only one exporter remains;

c. It can reasonably be argued that use of a single data source would not undermine the purpose of requiring a weighted average; and

d. There are other contextual factors which support the view that a weighted average in s 269TACAB(2)(c) and (d) may be calculated using a single data point, including:

   i. the mandatory exclusions in s 269TACAB(3),

   ii. the statutory timeframes governing investigations, and

   iii. the absence of any mechanism requiring investigations to be suspended or expanded where only one eligible exporter remains.

50. Further, the Applicants' contentions relating to the Dumping and Subsidy Manual is misplaced because the cited guidance relates to a different regulatory context and does not address the calculation of weighted-average export prices or normal values for residual exporters under s 269TACAB(2). Nor does the Manual constitute extrinsic material for statutory interpretation. Properly understood, the Manual confirms that the Commission's sampling approach, and its treatment of non-sampled exporters seeking individual examination, subject to time and resource constraints was consistent with the Commission's established administrative practice in this investigation.

51. Further, the Applicants' construction would lead to unworkable and unintended outcomes, by rendering the residual exporter methodology inoperative whenever mandatory exclusions leave only one eligible exporter. The statutory context, including investigation timeframes, the conditional nature of extending examination to additional exporters, the purpose of sampling, and the availability of post-measure review mechanisms, supports a construction under which s 269TACAB(2) continues to operate on the remaining dataset.

52. Lastly, the Applicant's reliance on *Press Metal Aluminium (Australia) Pty Ltd v Minister for Industry and Science* [2024] FCA (NSD67/2024)[23] (Press Metal) is misplaced. Unlike in Press Metal, there was no denial of procedural fairness and no obligation on the Commission to reopen or extend sampling or to undertake exporter-specific examinations in order to avoid the ordinary consequences of the Act's residual exporter provisions.

53. These reasons are discussed further below.

[23] Orders made on 20 November 2025 by Younan J can be found at: https://www.comcourts.gov.au/file/Federal/P/NSD67/2024/3973015/event/32600092/document/2644180.

A weighted average does not preclude single inputs

54. The Applicants contend that once subsection 269TACAB(3) excludes one sampled exporter, "compliance with subsection 269TACAB(2) is not possible" because "the exclusion […] leaves a single cooperating exporter, rendering the weighted average calculation under subsection 269T(5A) of the Act infeasible".[24] They argue that the formula in s 269T(5A), by using plural terminology and multiple subscripts, "requires multiple data points", and that with only one exporter's data remaining, the result "is not a weighted average but merely the individual value".[25]

55. That contention should be rejected. While the concept of a 'weighted average' is ordinarily based on two or more values, there is no inherent mathematical reason why it cannot be based on a single value. In such a case, the weighted average would simply reflect that single value, weighted against itself. Although this may result in a figure that provides a less nuanced approximation, it is not mathematically impossible to calculate a weighted average of one value. Nothing in the text of s 269TACAB(2) suggests that the calculation becomes inoperative merely because the dataset is reduced to one cooperative exporter.

56. That conclusion is confirmed by the statutory definition of "weighted average" in s 269T(5A), which defines a weighted average by reference to a variables-based formula capable of operating for any number of transactions, denoted by *n*. The provision does not prescribe a minimum value for *n*, nor does it condition the calculation on the presence of multiple exporters or transactions. Where $n = 1$, the formula remains mathematically coherent: the product of P_1 and Q_1, divided by Q_1, necessarily resolves to P_1. The outcome may be less nuanced than a weighted average derived from multiple data points, but it is nonetheless a valid result of the prescribed calculation.

57. Similarly, even if the formula in s 269T(5A) is applicable to the expression "weighted average" in s 269TACAB(2), the fact that it appears to contemplate multiple inputs reflects the reality that, in most cases, a weighted average will be based on multiple transactions. It does not follow that the formula becomes unusable where only one value remains. The Commission submits that the formula in s 269T(5A) allows for the calculation of a weighted average based on a single unit, with any irrelevant inputs (for example, P_2, Q_2 and so on) simply omitted from the calculation.

58. That construction is consistent with how mathematical formulae ordinarily operate and ensures that s 269TACAB(2) continues to operate according to its terms in circumstances expressly contemplated by the Act. The statutory task is therefore capable of performance even where the dataset is limited to a single cooperative exporter; any perceived limitations relate to the representativeness of the result, not to the operability of the formula or the availability of the concept of a weighted average under the Act.

---

[24] Alliance's Application for review, Attachment B, p 9; Masteel's Application for review, Attachment B, p 9; VAS' Application for review, Attachment B, p 9.
[25] Alliance's Application for review, Attachment B, p 10; Masteel's Application for review, Attachment B, p 10; VAS' Application for review, Attachment B, p 10.

59. **International observations on Art 9.4 indicate the continued operability of a weighted average where only one exporter remains**

60. The Applicants rely heavily on international decisions concerning Art 2.2.2(ii) of the Anti-Dumping Agreement,[26] and in particular the WTO Appellate Body's reasoning in *EC – Bed Linen*,[27] to contend that a "weighted average" necessarily requires more than one exporter and that reliance on a single exporter's data is impermissible.[28] Each Applicant submits that these decisions demonstrate a binding or decisive interpretation that should be applied to s 269TACAB(2) of the Act.

61. The Commission acknowledges that decisions of international bodies, such as WTO Panels or the WTO Appellate Body, may be relevant when construing provisions in Pt XVB of the Act, at least where those provisions are ambiguous.[29] Nonetheless, the Commission submits that the WTO Appellate Body's comments in *Bed Linen* were made in the context of Art 2.2.2(ii) of the Anti-Dumping Agreement, whereas s 269TACAB is based on Art 9.4 of that instrument.[30] The subject matter of Art 2.2.2(ii), namely the calculation of amounts for administrative, selling and general costs and profits is materially different from that of Art 9.4 and s 269TACAB(2), which are concerned with determining dumping duty for exporters who are not individually examined.

62. Further, Art 2.2.2 is structured differently from Art 9.4 and s 269TACAB(2). Art 2.2.2 sets out three alternative methods for determining the relevant amounts, including use of a weighted average, but also expressly permits "any other reasonable method" where the specified methods cannot be applied.[31] By contrast, Art 9.4 and s 269TACAB(2) are framed in terms that effectively require a weighted-average calculation to be used. The Commission's view is that the WTO Appellate Body was therefore not considering a situation where, as here, the weighted-average method is the only available statutory mechanism.

63. In any event, the Appellate Body's comments relied upon by the Applicants sit uneasily with other international observations concerning Art 9.4. The original Panel in *EC – Bed Linen* (WT/DS141/R) noted at [6.72] (page 24) that Art 9.4 "does not become inoperative if there is only one selected exporter or producer, rather, the dumping margin for that exporter or producer may be applied".[32] Although the Appellate Body later reversed the Panel's interpretation of Art 2.2.2(ii), it did not disturb or address the Panel's observations on Art 9.4. Those observations support the view that Art 9.4, and by extension s 269TACAB(2) is capable of operating even where there is only one exporter whose data remains available for the weighted-average calculation, and they undermine the Applicants' contention that the provision necessarily becomes inoperative in such circumstances.

---

[26] https://www.wto.org/english/docs_e/legal_e/adp_e.htm#art2.
[27] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds141_e.htm.
[28] Alliance's v, Attachment B, pp 10–14; Masteel's Application for review, Attachment B, pp 10–14; VAS' Application for review, Attachment B, pp 10–14.
[29] See *Siam Polyethylene Co Ltd v Minister for Home Affairs* [2009] FCA 837 at [7].
[30] see Explanatory Memorandum, *Customs Amendment (Anti-Dumping Improvements) Bill (No 3) 2012* at [115].
[31] Art 2.2.2(iii) of the Anti-Dumping Agreement.
[32] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/141R-00.pdf&Open=True.

Use of a single data source would not undermine the purpose of requiring a weighted average

64. The Applicants contend that the requirement in s 269TACAB(2)(c) and (d) to use a "weighted average" necessarily implies the use of multiple exporters' data, and that reliance on a single exporter's data is inconsistent with the statutory purpose of the provision.[33] They submit that the Commission's approach undermines the rationale for a weighted-average methodology and results in an outcome that is unrepresentative and unfair to residual exporters.

65. The Commissioner notes that there are no extrinsic materials which identify with precision the purpose of the references to "weighted average" in s 269TACAB(2)(c) and (d), or to the equivalent references in Art 9.4 of the Anti-Dumping Agreement. In the absence of such materials, it is reasonable to infer that one purpose of requiring a weighted average of the information of other producers or exporters is to eliminate the possibility of a result-oriented, biased or discriminatory selection among multiple available data sources. Where more than one exporter's data is available, the obligation to calculate a weighted average constrains the Commission's discretion and guards against cherry-picking inputs to arrive at a certain outcome.

66. That purpose is not undermined where, following the mandatory exclusions required by s 269TACAB(3), only a single eligible exporter's data remained. In those circumstances, there is no scope for selective or discriminatory choice between competing data sources, because no such choice existed. The use of a single data source is therefore not incompatible with the underlying purpose of the weighted-average requirement, and its application in that context does not defeat or distort the statutory objective the provision can reasonably be understood to serve.

The relevance of the Commission's Dumping and Subsidy Manual

67. The Applicants place reliance on the Commission's Dumping and Subsidy Manual to support their contention that a weighted-average calculation cannot lawfully be carried out using a single exporter's data.[34] Reference is made to a passage in section 9.3 on page 39 citing the Manual's statement that: *"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*".[35]

68. That reliance is misplaced. The relevant part of the Manual is concerned with regulation 45(3)(b) of the *Customs (International Obligations) Regulation 2015*, which prescribes the manner in which the Minister must work out an amount to be the profit on the sale of goods for the purposes of s 269TAC(2)(c)(ii) or s 269TAC(4)(e)(ii) of the Act. It is not concerned with the calculation of weighted-average export prices or normal values for residual exporters under s 269TACAB(2), nor does it purport to address the operation of that provision.

---

[33] Alliance's Application for review, Attachment B, pp 10–11; Masteel's Application for review, Attachment B, pp 10–11; VAS' Application for review, Attachment B, pp 10–11.
[34] VAS' Application for review, Attachment B, p 14; Alliance, Application for review, Attachment B, p 14; Masteel's Application for review, Attachment B, pp 14.
[35] ADC Manual – December 2021 ([), section 9.3, page 39.

69. The Commission's Manual provides general guidance as to administrative practice and is important for that reason, but the Commission accepts that it is not extrinsic materials for the purposes of statutory interpretation.

70. The Commission does not suggest that the Manual is unimportant. To the contrary, the Manual is a central statement of the Commission's published administrative practice and a useful guide to how the Commission typically approaches sampling and the treatment of sampled and residual exporters. In that sense, although it cannot alter the meaning of Pt XVB of the Act, the Manual is relevant background and confirms that the approach adopted in this investigation accords with the Commission's ordinary methodology.

71. In particular, the Manual explains that where the number of exporters is large, the Commission may use sampling to confine the case to a manageable number of exporters, including by issuing a preliminary information request (PIR) to all known suppliers to assess whether sampling is required and to assist in selecting the sample.[36] The Manual further states that the Commission will generally select the sample by reference to export volumes (typically the largest-volume exporters), and that '[u]sually it will be the largest volume exporters included in the sample to make the case manageable'.[37]

72. Consistently with the approach taken here, the Manual specifically addresses 'requests for individual treatment' by exporters who are not sampled. It states that where a non-sampled exporter seeks its own individual treatment and completes the exporter questionnaire, the Commission will examine that information only if there is time available and having regard to resource constraints; and that, where appropriate, the Commission can make determinations without an on-site verification visit, including by satisfying itself as to accuracy through other means such as benchmarking.[38]

73. In short, the approach taken in this investigation in relation to sampling and the availability of individual treatment for non-sampled exporters was consistent with the Commission's published guidance in the Manual.

Other contextual factors which support using a single data point

74. The Applicants contend that, where mandatory exclusions under s 269TACAB(3) leave only one cooperative exporter, s 269TACAB(2) cannot lawfully operate and the investigation must either be extended for alternative avenues to be taken, or the remaining exporter's data treated as unusable.[39] On that footing, the Applicants' construction necessarily implies that the residual exporter methodology becomes inoperative unless additional exporters are assessed or sampling is expanded.

75. The Applicants' construction of s 269TACAB(2) would, in circumstances such as the present, leave the Commission with no workable method to calculate residual exporter dumping margins. Where mandatory exclusions under s 269TACAB(3) leave only a single eligible exporter, the Applicants' approach would appear to present the Commission with two possible courses. The first would be to calculate export price and normal value by reference to exporters whose dumping margins are less than 2 per cent,

---

[36] Manual, p 97.
[37] Ibid.
[38] Manual, p 98.
[39] Alliance's Application for review, Attachment B, p 9; Masteel's Application for review, Attachment B, p 9; VAS' Application for review, Attachment B, p 9.

despite the express prohibition in s 269TACAB(3). The second would be to continue examining exporters until a further cooperative exporter with a dumping margin exceeding 2 per cent is identified.

76. It is unlikely that Parliament intended either outcome. The first is plainly inconsistent with the mandatory terms of s 0269TACAB(3), which require the exclusion of exporters with zero or negligible margins from the weighted-average calculation. The Applicants themselves do not suggest that this option is legally open.[40] The second would require investigations to be prolonged, reopened or expanded beyond the sampling framework. That is so despite the absence of any mechanism in the Act requiring that course to be taken once the investigation has progressed to the stage of determining export prices, normal values and dumping margins, and notwithstanding the statutory constraints imposed by the investigation timeframes.

77. There may be cases where, regardless of the effort expended by the Commission working within the time available, it is not possible for the Commission to identify any further cooperative exporters with dumping margins above 2 per cent. On the Applicants' approach, which would result in an inability to calculate export prices or normal values for residual exporters within the relevant statutory timeframes. Such an outcome would not be consistent with the evident purpose of s 269TACAB, which is to provide a workable method for determining residual exporter margins within a defined investigation period.

78. The statutory context reinforces this conclusion. Under s 269TEA, the Commissioner must complete an investigation and prepare a report for the Minister within a prescribed timeframe, unless an extension is granted. Similarly, s 269TACAA(2) permits an investigation to be extended to additional exporters only where doing so would not prevent its timely completion. These provisions reflect a legislative concern that investigations be conducted efficiently and concluded within strict time limits, having regard to the potentially harmful effects of dumping if left unaddressed and market uncertainty where an investigation is prolonged.

79. It is also relevant that the sampling regime in s 269TACAA is intended to avoid the need for the Commission to seek information from, and individually examine, a large number of exporters. Sampling decisions are necessarily made at the outset of an investigation, before it is known what dumping margins will ultimately be determined. To require the Commission to reopen or extend sampling late in the investigative process, simply because mandatory exclusions leave only one eligible exporter, would undermine the very purpose of the sampling provisions and impose a substantial administrative burden not contemplated by the Act.

80. Nor does the Act provide any express mechanism requiring investigations to be suspended, restarted or indefinitely expanded in such circumstances. The absence of any such mechanism strongly suggests that Parliament intended s 269TACAB(2) to operate on the dataset that remains after the mandatory exclusions in s 269TACAB(3) have been applied, even where that dataset consists of a single exporter.

81. Finally, the statutory scheme provides an alternative avenue for residual exporters who are dissatisfied with the dumping margin determined under s 269TACAB. Under Div 5 of Pt XVB of the Act, an affected party may request a review of anti-dumping measures once the requisite period has elapsed. That review mechanism allows exporter-specific

issues to be addressed without distorting the investigative process or rendering the residual exporter methodology unworkable.

82. Taken together, these contextual factors support the conclusion that Parliament did not intend s 269TACAB(2) to become inoperative whenever only one eligible exporter remains. Rather, they indicate that the provision is designed to operate sequentially and pragmatically, including in circumstances where the weighted-average calculation is necessarily based on a single data point.

The Applicants under sampling contention misconceives the sampling provisions

83. The Applicants contend that the Commission's selection of only two exporters in Malaysia and Vietnam departed from "consistent practice", rendered the later exclusion of one exporter under s 269TACAB(3) "foreseeable and avoidable", and amounted to under sampling inconsistent with the requirements of s 269TACAA(1).[40] They submit that s 269TACAA(1) requires a sample of sufficient size to ensure representativeness and accuracy, and that selecting only two exporters risks statutory non-compliance where one exporter is later excluded.

84. That contention is misplaced. In this investigation, the two exporters selected from Malaysia and Vietnam were the two cooperative exporters responsible for the largest volume of total exports to Australia from each respective country (76% for Malaysia and 87% for Vietnam in the circumstances).[41] The selection was therefore made squarely by reference to the criteria in s 269TACAA(1), including the volume of exports that could reasonably be examined within the statutory timeframes.

85. Section 269TACAA(1)(b) does not prescribe a minimum numerical sample size, nor does it require the Commission to select a sample that guarantees multiple exporters will remain available after the mandatory exclusions in s 269TACAB(3) are applied. Rather, it permits findings to be made on the basis of information obtained from an examination of a selected number of exporters, where the number of exporters is so large that it is not practicable to examine them all. In that context, a sample of two exporters may be entirely reasonable and representative, particularly where export volumes are concentrated among a small number of cooperative exporters.

86. The Applicants' argument impermissibly applies hindsight to the sampling decision. The fact that one sampled exporter was later excluded under s 269TACAB(3) does not retrospectively invalidate a sampling exercise that was lawful, representative and consistent with s 269TACAA(1) at the time it was undertaken. Mandatory exclusions under s 269TACAB(3) are a feature of the statutory scheme, not a defect in sampling design, and the Act does not require the Commission to inflate sample sizes in anticipation of every possible downstream exclusion outcome.

Applicant-specific claims of low export volume and negative margins do not displace the statutory scheme

87. While Alliance, Masteel and VAS each emphasise that they were cooperative exporters, cooperation with an investigation determines whether an exporter is subject to

[40] Alliance's Application for review, Attachment B, pp 15–16; Masteel's Application for review, Attachment B, pp 15–16; VAS' Application for review, Attachment B, pp 15–16.
[41] See cell reference F32 and F55 on worksheet '*Sample Selection*' in '655 Exporter Register', Item 24 of the Documents provided by the Commission on 14 April 2026.

cooperative residual or uncooperative rates; it does not confer an entitlement to individual examination once sampling has concluded.

88. Alliance, Masteel and VAS each contend that, because of the limited scale of their exports, the Commission could have extended the investigation under s 269TACAA(2) to calculate their exporter-specific dumping margins without preventing timely completion of the investigation.[42] Alliance relies on its “low volume export transactions” and self-calculated dumping margins. Each submits that application of the residual exporter margin resulted in an outcome that was “unreflective of reality”.[43]

89. These submissions rest on a misapprehension of the operation of s 269TACAA within the statutory sampling framework. Once the Commissioner determined under s 269TACAA(1) that the number of exporters was so large that it was not practicable to examine them all, the investigation proceeded on the basis of a selected number of exporters, with all other cooperative exporters treated as residual exporters by design.

90. Section 269TACAA(2) does not confer a right to an individual dumping margin, nor does it require exporter-specific examination once sampling has been adopted. Rather, it provides a limited and conditional mechanism by which an exporter not initially selected may be individually examined only if doing so would not prevent the timely completion of the investigation. Where, as here, the investigation progressed to the application of the mandatory exclusions in s 269TACAB(3) and the determination of residual exporter margins, the sampling exercise authorised by s 269TACAA(1) had served its statutory function. At that stage, cooperative exporters who were not selected for examination were properly treated as residual exporters, with their dumping margins required to be determined in accordance with ss 269TACAB(2) - (3).

91. That conclusion is not altered by the Applicants’ assertions that exporter-specific assessment could have been undertaken quickly or would have produced de minimis margins, as those matters do not displace the statutory operation of the sampling and residual exporter provisions once engaged. In those circumstances, the Commissioner acted lawfully and exercised their discretion reasonably to not seek additional extensions as would have been required.

92. The Minister, it is therefore submitted lawfully accepted the Commissioner’s findings, and none of the Applicant-specific assertions warrants a different conclusion.

Applicant’s Reliance on Press Metal is misplaced

93. The Applicants place reliance on Press Metal to contend that once it became apparent that one sampled exporter would be excluded under s 269TACAB(3), the Commission was required to take affirmative steps to avoid what they characterise as a resulting “lacuna”, including by expanding the sample or undertaking additional exporter-specific examinations. That reliance is misplaced.

94. The commission submits that Press Metal concerned a materially different question, namely whether the Commission denied procedural fairness by determining the normal

[42] Alliance’s Application for review, Attachment B, pp 16–17; Masteel’s Application for review, Attachment B, pp 16–17; VAS’ Application for review, Attachment B, pp 16–17.
[43] Alliance’s Application for review, Attachment B, p 16; Masteel’s Application for review, Attachment B, p 16; VAS’ Application for review, Attachment B, p 16.

value for PMBA without obtaining information from PMBA on a level of trade adjustment, in circumstances which differ to those that pertain to this matter.

95. The proceeding was resolved by consent on that basis, with orders setting aside the decision and remitting the matter for reconsideration, and without the Court delivering reasons articulating principles of general application capable of guiding the operation of the Act in other cases.

96. By contrast, no comparable factual circumstances arise in the present investigation.

97. In this matter, there is no obligation on the Commission to reopen or extend sampling or to undertake exporter‑specific examinations in order to avoid the ordinary consequences of the Act's residual exporter provisions.

98. **Conclusion**

99. The Applicants' submissions ultimately proceed on the premise that it would be correct or preferable to displace the sampling methodology adopted in this investigation and to substitute exporter-specific assessments in respect of the Applicants. The Commissioner does not accept that premise.

100. The sampling approach adopted in this investigation was expressly permitted by the Act and lawfully applied. The Reviewable Decision was made on that basis. No findings were made in respect of the Applicants' individual export prices, normal values or dumping margins, nor was the Commissioner required to make such findings under the statutory scheme in the circumstances of this investigation. Exporter-specific assessments therefore did not form part of the factual or legal foundation of the Reviewable Decision.

101. It follows that the Applicants' applications do not identify any finding capable of being reconsidered or revisited. Rather, it seeks to substitute an alternative investigative approach, namely, individual exporter examination for the sampling methodology lawfully adopted. In the Commissioner's submission, it cannot be correct or preferable to displace a legitimate sampling decision permitted by the Act and replace it with exporter-specific findings where no such findings were made, and where the Commissioner made no assessment based on the Applicants' individual exports or exporter-specific circumstances.