

30 April 2026

Jan Redfern PSM  
Panel Member  
Anti-Dumping Review Panel  
10 Binara Street  
Canberra City ACT 2601

**BY EMAIL:**  
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Dear Member,

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

**AUSTRALIAN INDUSTRY SUBMISSION**

InfraBuild NSW Pty Ltd (**InfraBuild**), the Australian industry applicant for publication of a dumping duty notice in respect of the goods from the sources the subject of this application for review, makes this submission in response to the applications for review of the reviewable decision made by:

- Alliance Steel (M) Sdn Bhd (**Alliance**);
- Malaysia Steel Works (KL) Bhd (**Masteel**); and
- VAS Group Nghi Son Joint Stock Company (**VAS**),

collectively the “*residual exporters*” as defined under subsection 269TACAB(2).<sup>1</sup>

Due to the common authorship of the three applications, and the duplication in grounds and arguments, InfraBuild responds substantively to the application of Alliance, although InfraBuild’s observations and contentions may be applied equally to all the applications.

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<sup>1</sup> Statutory references are to the *Customs Act 1901*, unless expressed otherwise.

### Summary of residual exporters' arguments

The residual exporters contest the Commission's reliance on a single sampled exporter's data to determine each residual exporter's export price and normal value under subsection 269TACAB(2) on the basis that the provision refers to the respective variable factor in terms *'not be[ing] less than the weighted average of the... [variable factor] for like goods of cooperative exporters from the same country of export'*.<sup>2</sup>

The residual exporters argue that notwithstanding that subsection (3) directs that where,

in relation to an investigation, the weighted average of [the variable factors], 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 [is de minimis],

that the Commission remains unable to rely on a single sample exporter's data because of the definition of "weighted average" under subsection 269T(5A), specifically that its language and expression requires a plurality of values:

For the purposes of this Part [XVB], 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:

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

where:

**P<sub>1</sub>, P<sub>2</sub> ... P<sub>n</sub>** means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

**Q<sub>1</sub>, Q<sub>2</sub> ... Q<sub>n</sub>** means the number of units of the goods involved in each of the respective transactions.

In further support of its argument that a "weighted average" of the respective variable factor requires a plurality of values, the residual exporters point to the WTO Agreement and a number of Dispute Settlement (DS) Panel and Appellate Body (AB) decisions.

### Section 23, Acts Interpretation Act 1901

At the outset, as a matter of statutory interpretation, paragraph (b) provides in relevant part:

words in the singular number include the plural and words in the plural number include the singular.

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<sup>2</sup> Paragraph (a) relates to the determination of the export price and paragraph (b) relates to the determination of the normal value.

This rule applies unless a contrary intention appears in the legislation. The residual exporters point to the ‘equation’ appearing in the section 269T definitional provision under subsection (5A) and refer to the multiple inputs in both the numerator and denominator. However, InfraBuild submits that the direction to exclude certain inputs under subsection 269TACAB(3) from the ‘equation’ in subsection 269T(5A) means that the latter is subject to the substantive provisions of the Part [XVB] to which it applies. To conclude otherwise would render the operation of subsection 269TACAB(3) inutile. Citing the High Court of Australia in *Project Blue Sky Inc v Australian Broadcasting Authority [1998]*<sup>3</sup>, ADRP Panel Member O’Connor observed:

The modern approach to statutory interpretation is that an Act of Parliament is to be read as a whole. The object of statutory construction is to construe the meaning of words used in a section, in the context of the language and the legislation as a whole, to try to discern the intention of the legislature.<sup>4</sup>

Applied here, the operation of subsection (3) cannot be overlooked.

### ***Subsection 269TACAB(3)***

Subsection 269TACAB(3) specifically relates to investigations, as distinct from reviews and inquiries. Applied here, the reviewable decision related to an investigation initiated by the Commissioner on 24 September 2024.<sup>5</sup>

The provision explicitly directs that *‘the weighted average of [the variable factors], 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’* either that there is no dumping or that de minimis margins of dumping apply.

Applied here, the three sources of cooperative exporters relevant to the residual exporters were:

- With respect to Alliance and Masteel, the cooperative exporters from Malaysia were:
  - Ann Joo; and
  - Southern Steel,
- With respect to VAS, the cooperative exporters from Viet Nam were:
  - Hoa Phat; and
  - Vina Kyoiei.

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<sup>3</sup> [1998] HCA 28

<sup>4</sup> ADRP Report No. 84, *Steel Reinforcing Bar exported from the People’s Republic of China* (6 August 2018), p. 6 at [23].

<sup>5</sup> ADN 2024/070 refers.

Having made its assessment under subsection 269TACAA(1) that the number of exporters from a particular country of export in relation to an investigation, is so large that it is not practicable to examine the exports of all of those exporters, the Commissioner then properly gave notice of his intention that the investigation will be carried out, and findings made, on the basis of information obtained from an examination of a selected number of those exporters.<sup>6</sup>

In the case of both Malaysia and Viet Nam, two cooperative exporters were selected.

With respect to Malaysia, the dumping margins determined for the selected exporters were:

- Ann Joo, 9.2%
- Southern Steel, no dumping.

With respect to Viet Nam, the dumping margins determined for the selected exporters were:

- Hoa Phat, de minimus (0.5%)
- Vina Kyoei, 9.6%.

Therefore, pursuant to subsection 269TACAB(3), the variable factors applicable to Southern Steel from Malaysia, and Hoa Phat from Viet Nam, must be excluded from the determination of any “weighted average” variable factors for Alliance, Masteel and VAS from their respective sources. As such, the “weighted average” calculation of the variable factors for these residual exporters are from a population of a single source.

A further difficulty that faces the residual exporters’ argument is having been determined under subsection 269TACAA(1) to be residual exporters, there is no known alternative mechanism to determine their variable factors. We observe that the residual exporters do not contest as grounds for review their designation as residual exporters. As such, that status must be accepted as uncontested and not a matter for the current review.

#### ***Use of extrinsic material in the interpretation of section 269TACAB***

The residual exporters contend that the Commission acted contrary to the WTO Agreement and DS Panel and AB decisions.

Member O’Connor observed in ADRP Report No. 84, that:

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<sup>6</sup> ADN 2025/014 refers.

Section 15AB of the Acts Interpretation Act 1901 (Interpretation Act), does authorise, in two limited circumstances, recourse, to any material not forming part of an Act, if it is capable of assisting in the ascertainment of the meaning of the provision. The first circumstance is that such material may be used to confirm the meaning conveyed by the text, taking account of its context in the Act, and the purpose and object of the Act. The second, is that extrinsic material may be considered when the ordinary meaning conveyed by the text of the provision, taking into account its context in the Act and the purpose of all object of the underlying Act, leads to a result that is manifestly absurd or unreasonable.

Paragraph (d) of subsection (2) prescribes that *'any treaty or other international agreement that is referred to in the Act'* are documents of a kind, which are extrinsic and not forming part of an Act, but which may be referred to confirm the ordinary meaning of the text or to resolve ambiguity or avoid an unreasonable interpretation.

Applied here, if the language used in the contested construction of subsection 269TACAB is clear, unambiguous and on its face reasonable, having regard to its context and the object and purpose of the legislation, then extrinsic material in the forms of the WTO Agreement, and by extension DS Panel and AB decisions cannot be referenced to introduce another meaning.

Applied here, there is no absurdity or ambiguity in the construction of subsection 269TACAB afforded to it by the reviewable decision, and as such the residual exporters' claimed inconsistencies between the domestic law and the extrinsic materials must be rejected.

### **Conclusion**

By making a determination under subsection 269TACAA and treating the applicants for review as residual exporters, the Minister was bound to determine their variable factors under the methodologies available to him under subsection 269TACAB(2) and constrained by subsection (3).

Reference to language of plurality and the 'equation' in subsection 269T(5A) cannot override the explicit language under subsection 269TACAB(3).

The determination of the applicants for review as 'residual exporters' is not contested in this review and did not form their grounds for review.

Therefore, the residual exporters are confined to those methodologies open to the Minister under the Act. To accept the residual exporters' arguments would render it impossible to determine variable factors lawfully available to the Minister.

Please do not hesitate to contact your InfraBuild representative on record with any questions.



FOR AND ON BEHALF OF THE

**AUSTRALIAN INDUSTRY MEMBER**

*InfraBuild NSW Pty Ltd*