Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 176

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

May 2026

https://www.adreviewpanel.gov.au

Contents

Abbreviations

Term	Meaning
Act	*Customs Act 1901*
ABF	Australian Border Force
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADC	Anti-Dumping Commission
AND	Anti-Dumping Notice
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organisation
Applicants	Alliance Steel (M) Sdn Bhd Malaysia Steel Works (KL) Bhd VAS Group Nghi Son Joint Stock Company
CIO Regulation	*Customs (International Obligations) Regulation 2015*
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	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 ('rebar') Further information: 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.
IDD	Interim dumping duty
Indonesia	Republic of Indonesia
Original Investigation period	1 July 2023 to 30 June 2024
Manual	Dumping and Subsidy Manual December 2021
Minister	Minister for Industry and Innovation and Minister for Science
NIP	Non-injurious price
RIQ	Response to Importer Questionnaire
REQ	Response to Exporter Questionnaire
REP 655	The report published by the ADC in relation to rebar from Indonesia by Pt Ispat Panca Putera and Pt Putra Baja Deli, Thailand, Türkiye and Vietnam and dated 16 December 2025
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister made on 20 December 2025 to impose anti-dumping measures pursuant to s 269TG(1) and (2) of the Act
SCM	Agreement on Subsidies and Countervailing Measures
SEF 655	Statement of Essential Facts 655
SG&A	Selling, general and administration expenses
Thailand	Kingdom of Thailand
Türkiye	Republic of Türkiye
USP	Unsuppressed selling price
Vietnam	Socialist Republic of Vietnam
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry and Innovation and Minister for Science ('the Minister') to publish a dumping duty notice pursuant to s 269TG(1) and (2) of the *Customs Act 1901*[1] ('the Act') in respect of hot rolled deformed steel reinforcing bar in lengths ('rebar') exported from Malaysia, the Kingdom of Thailand ('Thailand'), the Republic of Türkiye ('Türkiye') and the Socialist Republic of Vietnam ('Vietnam') ('Reviewable Decision'). The Applicants for this review are:

    a) Alliance Steel (M) Sdn Bhd ('Alliance'),

    b) Malaysia Steel Works (KL) Bhd ('Masteel'), and

    c) VAS Group Nghi Son Joint Stock Company ('VAS').

2. For the reasons set out in this report, I recommend that the Reviewable Decision be affirmed.

Introduction

3. Alliance, Masteel and VAS applied under s 269ZZC of the Act for a review of the Reviewable Decision.

4. The Senior Member of the Anti-Dumping Review Panel ('Review Panel') directed in writing that the Review Panel be constituted by me in accordance with s 269ZYA of the Act.

5. The applications were accepted and notice of the proposed review, as required by s 269ZZI, was published on 31 March 2026.

Background

6. On 24 September 2024, the Commissioner of the Anti-Dumping Commission ('ADC') initiated an investigation into the alleged dumping of the goods exported from Malaysia, Thailand, Türkiye and Vietnam, following an application by

[1] *Customs Act 1901* (Cth).

Infrabuild NSW Pty Limited ('Infrabuild'). Infrabuild is an Australian manufacturer of rebar and represents the Australian industry for the goods.

7. The Commissioner established an investigation period of 1 July 2023 to 30 June 2024 ('inquiry period'). For the purposes of assessing the economic condition of the Australia industry and potential injury factors, the Commissioner also set an injury period from 1 July 2020 ('injury period').

8. In conducting the investigation, the Commissioner used the sampling method prescribed under the Act rather than examine the exports of all exporters from each of the countries the subject of the investigation. The decision was made by the Commissioner (ADN No 2025/014) and published on 11 March 2025 ('the sampling decision').[2]

9. The Commissioner published a Statement of Essential Facts ('SEF 655') on 22 October 2025.

10. On 16 December 2025, the Commissioner terminated part of the investigation in relation to certain exporters from Indonesia, Malaysia and Vietnam.[3]

11. On 16 December 2025, the Commissioner made a report to the Minister ('REP 655'). REP 655 recommended that the Minister impose a dumping duty notice in respect of the goods.

12. In summary, the Commissioner was satisfied that:

    a) The goods the subject of the investigation exported to Australia from Malaysia, Thailand, Türkiye and Vietnam were dumped at margins that were not negligible and that the volume of dumped goods imported from each of the countries was not negligible.[4]

    b) The dumping margins, expressed as a percentage of the export price, were assessed in the range of 2.1% (for one exporter from Thailand) and 36.4% (for uncooperative exporters from Türkiye).[5] Relevantly, dumping margins for

[2] ADN No 2025/014, EPR 34.
[3] ADN 2025/125.
[4] REP 655 Section 1.6.4.
[5] REP 655 Chapter 6.

residual exporters from Malaysia were assessed as 9.2% and as 9.6% from Vietnam.[6]

c) The Australian industry, as a preliminary finding, had experienced injury in the investigation period in the form of loss of sales volume, lost market share, price depression, price suppression, loss of profits, reduce profitability reduced revenue, reduce return on investment, reduced capacity utilisation, Increased stock holding and reduced inventory turnover.[7]

d) The dumped exports of the goods from Thailand, Türkiye and from Malaysia (with the exception of one exporter) and Vietnam (also with the exception of one exporter) caused material injury to the Australia industry with respect to factors concerning price and volume.[8]

e) Exports of the goods may continue in the future at dumped prices by all exporters from Thailand, Türkiye and from Malaysia and Vietnam (except for those two exporters from each country found not to have exported goods at dumped prices).[9]

13. The Commissioner recommended that the measures be imposed in relation to rebar exported to Australia from the subject countries at the full dumping margin but declined to recommend retrospective notices.[10]

14. On 20 December 2025, the Minister accepted the Commissioner's recommendations in REP 655 and made a decision to impose dumping duty on exports from Malaysia, Thailand, Türkiye and Vietnam. The notice of the decision was published on 22 December 2025.[11]

15. Alliance, Masteel and VAS have sought review of the decision and, in so doing, raise questions about whether the dumping margin for residual exporters can be calculated by reference to the variable factors for one exporter from each country.

[6] REP 655 Section 1.6.4, Table 3 and Section 6.4.1.
[7] REP 655 Section 1.6.6 and Chapter 7.
[8] REP 655 Chapter 8.
[9] REP 655 Chapter 9.
[10] REP 655 Sections 10.1 and 12.2.
[11] ADN 2025/124.

Conduct of the Review

16. Pursuant to s 269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a reinvestigation is required under s 269ZZL(1) of the Act.[12]

17. In accordance with s 269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, or revoke it and substitute a new specified decision. Section 269ZZK(1A) of the Act requires that the Review Panel may only make a recommendation to revoke and substitute a new specified decision if the new decision is materially different from the reviewable decision.

18. In undertaking the review s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

19. Subject to certain exceptions,[13] the Review Panel is not to have regard to any information other than relevant information pursuant to s 269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.

20. If a conference is held under s 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A conference was held with the ADC on 29 April 2026 pursuant to s 269ZZHA of the Act for the purpose of obtaining further information in relation to this review. A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act. A list of the conferences held during the course of this review is available at Appendix A

21. In conducting this review, I have had regard to the application and supporting documents, as well as submissions received pursuant to s 269ZZJ of the Act insofar as they contained conclusions based on relevant information. I have also

[12] Pursuant to s 269ZZK(3) of the Act.
[13] See s 269ZZK(4).

had regard to REP 655 and SEF 655, and to the confidential and public documents and information relevant to the review which were referenced in those reports. Further, I have had regard to the relevant information obtained at the conference held on 29 April 2026.

22. Australia's anti-dumping and countervailing system implements the following WTO agreements to which Australia is a party:

    a) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994[14] ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and

    b) Agreement on Subsidies and Countervailing Measures[15] ('SCM Agreement') – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.

23. The Act and the *Customs Tariff (Anti-Dumping) Act 1975 (*Cth*)* (Anti-Dumping Act) are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means where the legislation is ambiguous the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement and the SCM Agreement and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27]).

24. Subsection 269ZZG(5) of the Act deals with what must occur if the Review Panel does not reject an application and is satisfied that one or more grounds contained in

[14] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') ('Anti-Dumping Agreement').

[15] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) ('*Agreement on Subsidies and Countervailing Measures*') ('SCM Agreement').

the application under s 269ZZE(2)(b) of the Act are reasonable grounds for the reviewable decision not being the correct or preferable decision. In that context, s 269ZZG(5)(c) of the Act provides that the Review Panel " *must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds".* In *Yara AB v Minister for Industry, Science and Technology*,[16] the Federal Court considered the operation of s 269ZZG(5)(c) of the Act. In the course of resolving Ground 5 of Yara AB's application, Wigney J observed that it was "*clear*", having regard to s 269ZZG(5)(a)-(c), that "*the review is not a de novo review or a merits review which is entirely at large*" and that "[*t]he 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*".[17]

25. His Honour observed at [182] to [185]:

> *…the Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.*
>
> *The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a "reviewable ground" is whether it is a "reasonable ground for the reviewable decision not being the correct or preferable decision". What that must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on*

[16] [2022] FCA 847.
[17] Ibid at [172].

those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.

If, on the one hand, the Review Panel, having conducted the review, is not satisfied that the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds, the Review Panel would be entitled to find that the reviewable decision was the correct or preferable decision, and therefore entitled to recommend that the Minister affirm the reviewable decision. The Review Panel is not required – indeed, it is not permitted – to look beyond the reviewable grounds in order to satisfy itself that there is no other reason for finding that the Minister's decision was not the correct or preferable decision. If, on the other hand, the Review Panel is satisfied that the reviewable decision is not the correct or preferable decision for one or more of the reasons articulated in the reviewable grounds, it would be entitled to recommend that the Minister revoke the reviewable decision and substitute a new decision.

What that means, as a practical matter, is that it might reasonably be expected that the Review Panel's report, and the reasoning contained therein, will largely focus on the merits or otherwise of the reviewable grounds and the submissions advanced in support of those grounds…

26. In conducting this review, I have confined my consideration to the grounds of review accepted as reviewable as outlined below.

Grounds of Review

27. Each of the Applicants rely on identical grounds of review. The grounds of review relied on, which the Review Panel accepted as reviewable, are as follows:

Alliance

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.

Masteel

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.

VAS

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.

28. These grounds are explained by the Applicants in Attachment B to the application, being a letter from the Applicants lawyers, J Bracic & Associates, dated 18 November 2025. Attachment B is identical for the applications for Alliance and Masteel (although there are differences to take into account the particular data relating to each). Attachment B is in similar terms for VAS but also differs to take into account the particular circumstances of VAS.

29. Attachment B particularises the grounds of review (Question 9); identifies what the Applicants say is the correct or preferable decision resulting from the grounds (Question 10); sets out how the grounds raised in Question 9 support the making of the proposed correct or preferable decision (Question11) and sets out the reasons why the proposed decision provided in Question 10 is materially different from the reviewable decision (Question 12).

30. In response to Question 9 about why each of the Applicants believe the reviewable decision is not the correct or preferable decision, the Applicants each contend that the Minister “erred in calculating a residual exporter dumping margin” because:

> *The Commission's reliance on a single sampled exporter's [name of remaining selected exporter] data to determine the residual dumping margin contravenes subsection 269TACAB(2) of 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 [name of the Applicant].

[The above extract has been amended to omit and therefore generalise the references that are particular to each Applicant]

31. The Applicants further contend that the Minister used a "flawed calculation of residual export price and normal value" because:

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 [excluded selected exporter], its data is excluded, leaving only the remaining exporter's [name of remaining selected exporter] 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.

[The above extract has been amended to omit and therefore generalise the reference the selected exporter insofar as it relates to each Applicant]

32. Each of the Applicants make submissions about subsection 269T(5A) of the Act noting that the subsection defines the “weighted average” calculation and provides a formula for calculating a weighted average under Part XVB. The provision is extracted and the Applicants set out why it is contended that the formula must involve multiple data points as follows:

> *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.*

33. The Applicants rely on WTO and Appellate Body decisions, the ADC’s Dumping and Subsidy Manual and other ADC decisions to support their contentions about the interpretation of subsections 269TACAB and 269T(5A); why the dumping notice decision was flawed and how this should be rectified.

34. The essence of the argument is set out in Attachment B (in response to Question 9) as follows:

> *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 [named Applicant], 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 [name of Applicant]'s case, the Commission knew of a methodological gap (insufficient data for weighted average after exclusion) but refused to fill it with available means ([named Applicant's] submitted data or sample expansion). Both cases involve not using obtainable or available information to ensure accuracy and fairness in dumping margin calculations.*
>
> [The above extract has been amended to omit the reference to each named Applicant]

35. The Applicants refer to the sampling procedures undertaken by the ADC in selecting only two exporters, noting that on review of the ADC's archive and current cases from 2012 (14 cases are cited) it is evident that in every other investigation where sampling was invoked due to a large number of exporters, the ADC selected a minimum of three exporters per country with an average of four across all such cases.[18] The Applicants further contend that the ADC response in REP 655 to the submissions raised about the contravention of subsection 269TACAB(2):

> *….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.*

36. The Applicants argue that the contention of the ADC in REP 655 that it would be "*unreasonable and impracticable"* for it to be required to extend the sample where the sampling process resulted in only one cooperative exporter with a margin above 2% was a "*flawed and unsustainable"* justification.

[18] Alliance non-confidential application for review, p 16: Attachment B – cases 217, 238, 248, 263, 354, 378, 441, 609, 646, 652, 654, 656, 657, 691.

37. It is in this context that the Applicants contend that the approach adopted by the Commissioner, and accepted by the Minister, is neither correct nor preferable, submitting that:

> *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).*

38. In response to Question 10, the Applicants contend that this “lacuna” can be remedied on review and the correct or preferable decision is to recalculate the Applicants’ respective dumping margins on the basis of the information provided by each of them, which was available to the ADC during its investigation.

39. In the case of Masteel and Alliance, it is contended that this information did not need to be verified or could easily have been verified against Australian Border Force import data and would have determined that the dumping margin was below 2% and therefore negligible. In the case of VAS, it is contended that its 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. It is further contended that this would result in the investigation being terminated insofar as it relates to each of the Applicants, resulting in no interim dumping duties being imposed on their future exports.

40. To the extent the grounds and submissions raise issues about the sampling procedure undertaken by the ADC, they are expressed to be confined to, first, the Applicants’ contention that their interpretation of subsections 269TACAB(2) and 269T(5A) is correct such that there has been error in the dumping duty calculation

and, secondly, if there is error, the only lawful course to resolve what the Applicants' contend is a "lacuna" to now extend the sample under subsection 269TACAA(2) and recalculate an individual margin for each of the Applicants on their own data. The applications do not challenge the sampling decision or procedure other than in this context. It is argued that because there is an evidentiary gap that arises given the proper construction of subsections 269TACAB(2) and 269T(5A), the ADC (and thereby the Minister) should fill the gap with available information to ensure accuracy and fairness in dumping margin calculations.[19] It is further contended that this would be in line with the recent findings made by the Federal Court in *Press Metal Aluminium (Australia) Pty Ltd v Minister for Industry and Science (Press Metal Aluminium)*.[20]

41. The notice of the proposed review published on 31 March 2026 reflects the grounds of review particularised in response to Question 9.

42. To the extent there is any ambiguity about the grounds of review and what is sought, this is made clear in the written submissions provided in support of the applications for review as follows:

> Alliance
>
> *Conclusion and support for the proposed correct or preferable decision*
>
> *The grounds in Alliance's application, reinforced by the above authorities, established that the Minister's decision is not the correct or preferable decision. The only lawful cause was to either:*
>
> *(i) extend the sample to Alliance under s 269TACAA(2) (feasible given its single transaction) and calculate an individual margin on Alliance's own data (which showed a negative margin of -0.4%); or*
>
> *(ii) recognise the statutory lacuna and terminate the investigation in respect of Alliance (as occurred for other exporters with negligible margins).*

[19] Applications for review, Attachment B, p 10.
[20] Orders made 25 November 2025, Younan J, [2024] FCA (NSD67/2024).

Either outcome would have resulted in no dumping duty notice applying to Alliance, materially different from the 9.2% margin imposed.[21]

Masteel

Conclusion and support for the proposed correct or preferable decision

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

(i) extend the sample to Masteel under s 269TACAA(2) (feasible given its single transaction) and calculate an individual margin on Masteel's own data (which showed a negative margin of -2.6%); or

(ii) recognise the statutory lacuna and terminate the investigation in respect of Alliance (as occurred for other exporters with negligible margins).

Either outcome would have resulted in no dumping duty notice applying to Masteel, materially different from the 9.2% margin imposed.[22]

VAS

Conclusion and support for the proposed correct or preferable decision

The grounds in VAS's application, reinforced by the above authorities, established that the Minister's decision is not the correct or preferable decision. The only lawful cause 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

[21] Alliance's s 269ZZJ submission, p 5.
[22] Masteel's s 269ZZJ submission, p 5-6.

(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 9.2% margin imposed.[23]

43. Thus, in conducting this review, I have confined the review to the legal issues raised in the applications for review and address the contentions about the sampling process in this context.

Statutory Framework

44. To understand the grounds of review and the submissions of the Applicants, interested parties and the ADC, it is convenient to first set out the relevant legislation.

45. Section 8 of the Custom Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) provides for the imposition of dumping duties. Subsection (2) provides:

> *(2) There is imposed, and there must be collected and paid, on goods:*
>
> *(a) to which this section applies by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act; and*
>
> *(b) in relation to which the amount of the export price is less than the amount of the normal value;*
>
> *a special duty of Customs, to be known as dumping duty, calculated in accordance with subsection (6).*

46. Subsection 8(6) of the Dumping Act provides for the calculation of the dumping duty in states as follows:

> ***Calculation of final dumping duty***

[23] VAS's s 269ZZJ submission, p 6.

(6) The dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to:

(a) unless paragraph (b) applies--the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

(b) if the interim dumping duty payable on those particular goods is ascertained by reference to the non - injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice--the difference between:

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

(ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non - injurious price.

47. Section 269TACB of the Act contains the provisions dealing with assessing whether dumping has occurred and the levels of dumping where an application is made for a dumping duty notice. Section 269TACB states:

Working out whether dumping has occurred and levels of dumping

(1) If:

(a) application is made for a dumping duty notice; and

(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and

(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;

the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):

(a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or

(aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or

(b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or

(c) use:

(i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and

(ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.

48. Relevantly, subsections 269TACB(4) and (5) provide:

(4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:

(a) the goods exported to Australia during that period are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.

(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

(a) the goods exported to Australia in that transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.

49. Section 269T(1) of the Act sets out the definition for "residual exporter" to mean an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where the exporter's exports are not examined as part of that investigation, review or inquiry and the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

50. Section 269T(5A) sets out the formula for the "weighted average" as follows:

(*5A) 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.*

51. Sections 269TAB and 269TAC of the Act contain provisions in relation to the "export price" and "normal value" of goods exported to Australia and, relevantly provide, in subsection 269TAB(3) for the export price and subsection 269TAB(6) for the normal values, that where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the export price or normal value of goods to be ascertained, the Minister may determine the export price or normal value (as the case may be) "having regard to all relevant information*".*

52. Section 269TACAB of the Act sets out how the dumping notice is to be calculated for "uncooperative exporters" and "residual exporters" and provides, in respect of residual exporters, as follows:

> ***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%.

53. In determining the dumping margin and the normal values in the investigation period, s 269TACAA of the Act provides for a sampling method that may be used as follows:

Sampling

(1) If:

(a) one of the following applies:

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

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

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

> *(b) the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters;*
>
> *then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:*
>
> *(c) who constitute a statistically valid sample of those exporters; or*
>
> *(d) who are responsible for the largest volume of exports to Australia that can reasonably be examined.*
>
> *(2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.*

54. Section 269TDA provides that if an application has been made for a dumping duty notice and the Commissioner is satisfied that there has been no dumping by the exporter of the goods or there has been dumping by the exporter of some or all of those goods, but 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%, the Commissioner *must* terminate the investigation so far as it relates to the exporter.

55. Section 269TEA sets out the statutory timeframe for investigations, being 155 days to complete the relevant investigation the subject at the review and to provide a report to the Minister, unless a longer time is allowed by the Minister.

Sampling decision and investigation

56. As noted, the Applicants primary contentions are that the Commissioner, and thereby the Minister in accepting the recommendation, 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.

57. The grounds and supporting arguments raise questions about the use of the sampling methodology allowed under section 269TACAA of the Act to support the contention that the calculation was in error and, given this error, to support the contention that the ADC should have identified the methodological gap and used the data of the Applicants, which was available to the Commissioner before REP 655 was finalised. The Applicants do not contend that the ADC did not properly follow the sampling procedure or that there was procedural unfairness in the approach taken but rather that, in the events that happened, the ADC wrongly calculated a dumping margin for residual exporters using the variable factors for one exporter.

58. It is therefore apt to briefly summarise the reasons for the sampling decision and subsequent events leading to the publication of REP 655 as this background, which is not in itself contentious, provides useful context to explain the parties' contentions.

59. In the reasons for the sampling decision, the Commissioner noted that, in response to an invitation to exporters of the goods to Australia to participate in the investigation by completing an exporter questionnaire, the ADC had received completed responses from 15 exporters – relevantly, five from Malaysia and four from Vietnam.

60. In assessing whether it was practicable to examine the exports of all the exporters from each of the subject countries, the Commissioner considered, for each subject country, the following:

    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)

    c) the resources available and the timeframe for the timely completion of the investigation

61. Having regard to these matters, the Commissioner decided that the number of exporters from Malaysia, Türkiye and Vietnam was so large that it was not practicable to examine the exports of all the exporters from those countries. The

investigation was limited to the examination of exports of the goods of two exporters each from Türkiye, Malaysia and Vietnam. As there was only one participating exporter from Indonesia and two from Thailand, the Commissioner decided to examine the exports of all participating exporters from these countries.

62. According to the sampling decision, the ADC examined the total volume of the goods exported from Malaysia and found that Ann Joo Bhd (Ann Joo) and Southern Steel Bhd (Southern Steel) represented 76% of exports from Malaysia and 85% of exports from Malaysia from participating exporters. They were responsible for the largest volume of goods exported into Australia from Malaysia. The ADC also examined the total volume of exports the goods exported from Vietnam and found that Hoa Phat Hai Duong Steel Joint Stock Co (Hoa Phat) and Vina Kyoei Steel (VK Steel) represented 87% of exports from Vietnam and 88% of exports from Vietnam from participating exporters. These exporters were responsible for the largest volume of goods exported into Australia from Vietnam.

63. As such, two exporters from Malaysia, Ann Joo and Southern Steel, and two exporters from Vietnam, Hoa Phat and VK Steel were selected for the sampling under section 269TACAA of the Act.

64. It should be noted that a similar approach was taken in relation to exporters from Türkiye, the detail of which is not included in this report as those residual exporters have not sought review of the dumping duty notice.

65. While not referred to in REP 655 but nonetheless relevant for context, following the sampling decision, VAS and Masteel made requests to the Commissioner dated 2 and 10 April 2025 respectively, about the information to be used in the dumping calculations. These requests were included in the ADC documents filed with the Review Panel. Both requested that the ADC make an individual determination of dumping on the basis of their own export and domestic sales information and that they be excluded from the sampling and, thus, not be characterised as residual exporters.[24] The request made by VAS was expressed to have been made pursuant to subsection 269TAC(6) of the Act. There was no such request made by Alliance at this time.

[24] EPR 655 document # 36 and 37.

66. The ADC did not make an individual determination for VAS or Masteel and proceeded with the investigation, calculating dumping margins in respect of the goods exported to Australia from Malaysia and Vietnam using the selected sampled exporters. However, following investigation, the ADC found that the dumping margin for Southern Steel was negative -0.1% and the dumping margin for Hoa Phat was 0.5%. This was the result of verification processes and is referred to in SEF 655.[25] These exporter verification reports were published on 29 September 2025 for Hoa Phat and 20 October 2025 for Southern Steel.

67. Given the margins for Southern Steel and Hoa Phat were "negligible" for the purposes of calculating dumping margins for residual exporters under the Act, the ADC excluded these exporters in calculating the dumping margin for residual exporters and only relied on the data of Ann Joo for Malaysia and VK Steel for Vietnam. The dumping margin for Ann Joo was calculated as 9.2% and was calculated as 9.6% for VK Steel. The ADC therefore calculated the dumping margin for residual exporters for Malaysia and Vietnam as 9.2% and 9.6% respectively. [26]

68. There were three residual exporters for Malaysia, namely Masteel, Alliance and Amsteel Mills Sdn Bhd (Amsteel), and two for Vietnam, namely Tung Ho Steel Vietnam Corporation Ltd (Tung Ho) and VAS.

69. The Commissioner published SEF 655 on 22 October 2025 and outlined the preliminary conclusion that dumping from the subject countries, except Indonesia, had caused material damage to the Australian industry producing like goods. It was noted that, consistent with these preliminary findings and subject to submissions received in response to SEF 655, the Commissioner proposed to recommend that the Minister impose a dumping duty notice on the subject countries, except for those exporters the subject of the Commissioner's termination decision. These dumping margins were outlined in SEF 655 and exporters were invited to provide any submissions within 20 days after the publication of the report.

70. The Applicants each provided submissions to the effect that the calculation of the residual exporter calculations in SEF 655 were incorrect because, relevantly, the weighted average export price and normal value determined for residual exporters

[25] SEF 655, pages 7, 60-63, 69-70.
[26] REP 655 Section 6.1, Table 13.

from Malaysia and Vietnam incorrectly relied on the variable factors of one exporter from each country.[27] These submissions were rejected.

71. By notice (ADN 2025/125) published on 16 December 2025, the Commissioner terminated part of the investigation pursuant to subsections 269TDA(1)(i) and (ii) of the Act in relation to the exporters from Indonesia as he was satisfied there was no dumping in respect of one of the exporters and a negligible dumping margin in respect of the other. The investigation into Southern Steel and Hoa Phat was also terminated because the Commissioner was satisfied that there had been no dumping by Southern Steel and the dumping margin calculated for Hoa Phat was negligible. The investigation into the alleged dumping of the goods from the other subject countries otherwise continued.

72. The Applicants were all assessed as “residual exporters” for the purposes of the dumping duty calculation. They now seek review of the Minister’s decision and request that any dumping margins be calculated by using their own information because the ADC incorrectly relied on the variable factors of one exporter from each country. No other residual exporters have made an application for review, although Amsteel made submissions as an interested party pursuant to section 269ZZJ of the Act.

Submissions

Alliance grounds and supporting arguments

73. Alliance provided comprehensive contentions at the time it lodged its application for review (referred to above) which were supplemented by written submissions lodged on 28 April 2026.

74. The submission, which is consistent with the contentions in Alliance’s application for review, sets out the essence of the argument as follows:

[27] Submissions Alliance dated 11 November 2025 EPR 74; Submissions Masteel dated 11 November 2025 EPR 73; 11 November 2025 EPR 72; and summarised in REP 655 Section 6.4.1.

This submission is made by Alliance Steel (M) Sdn Bhd ("Alliance") in support of its application for review, concerning the Minister's decision to publish a dumping duty notice imposing a 9.2% interim dumping duty on Alliance's exports of the subject goods.

The submission focuses on the core legal error identified in Alliance's application, and 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 Alliance. Specifically, after excluding Southern Steel Berhad's ("Southern Steel") data under subsection 269TACAB(3), only a single sampled cooperative exporter, Ann Joo Steel Berhad ("Ann Joo") remained. The Commission treated Ann Joo'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.

75. Alliance contends that the calculation is flawed because subsection 269TACAB(2) mandates a weighted average of export prices/normal values from cooperative exporters, which is in the plural. These requirements are qualified by subsection 269TACAB(3), which excludes from the weighted average calculations de minimis or negative margins. 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. The ADC's "single exporter proxy approach" is an impermissible substitution not authorised by the Act, Art 9.4 of the ADA or the ADC's policy.

76. Subsection 269T(5A) defines the weighted average calculation using a formula and of the language of the formula makes it clear that aggregation across multiple data points is required. A single exporter's data collapses to a simple value, not an average, which mirrors the legislative intent to produce a representative benchmark, contended to be consistent with Art 9.4 of the ADA.

77. As already noted, the Applicants rely on the decision of *Press Metal Aluminium* and submit that the ADC knew of an evidentiary gap, based on a methodological gap in the application of subsection 269TACAB(2)(c) and (d) using a single data point, but did not act to fill the gap by asking obvious questions. Alliance submits that there are parallels with *Press Metal Aluminium* because the ADC knew the exclusion of Southern Steel left only one exporter, rendering the true weighted average impossible under subsection 269T(5A), yet the ADC refused to expand the sample or use Alliance's own "verified" data, despite subsection 269TACAA(2) permitting extension where timely completion is not prejudiced. Given Alliance's single transaction, export data could have been examined promptly. Alliance contends that despite the ADC's early awareness, it made no attempt to remedy or correct the issue by extending the sample to Alliance under subsection 269TACAA(2) after the sampling decision, or by otherwise utilising the readily available and "easily verifiable data" submitted by Alliance. It is submitted that the failure to address a known methodological gap is precisely the type of failure that the Federal Court in *Press Metal Aluminium* held to be erroneous. Alliance further submits that the ADC did not undertake any onsite or virtual verification of Ann Joo's significant volume of data and given Alliance's limited data, it was open to the ADC to calculate an individual dumping margin for Alliance without undertaking verification once it became aware of the potential evidential gap. Alliance also relies on a number of WTO Panel and Appellate body findings in relation to Article 9.4 which reflects the rules captured in section 269TACAB of the Act.[28]

78. In its written submissions lodged in the review dated 28 April 2026, Alliance relies on:

    a) EC – Bed Linen where 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*";

    b) The ADC's own Manual[29] which it is submitted expressly adopts this interpretation by stating that it will apply the provision dealing with weighted

[28] DS539: US – Anti-Dumping and Countervailing Duties (Korea): DS184: US – Hot-Rolled Steel, WT/DS184/AB/R; DS294: US – Zeroing (Article 21.5 – EC), WT/DS294/AB/RW; DS141: EC – Bed Linen, WT/DS141/AB/R.
[29] December 2021, p39.

average in r 45(3)(b) of the Customs (International Obligations) Regulation 2015 only where there are two or more other exporters providing data.

c) US – Hot-Rolled Steel (DS184) and US – Zeroing (Article 21.5 – EC) (DS294) which confirm that Article 9.4 creates a ceiling and prohibits unbounded discretion where a "lacuna" arises after exclusions. In other words, practical difficulties do not authorise redefining weighted average to include a single data point.

d) US – Anti-Dumping and Countervailing Duties (Korea) (DS539) where the panel rejected arguments that Article 9.4 becomes inoperative when exclusions leave insufficient data and the authorities cannot fill gaps with unauthorised proxies.

79. Alliance submits that the ADC's justification of impracticability in REP 655 mirrors the US positions that were rejected in the above disputes.

80. In its written submissions, Alliance refers to the 12 sampled investigations in its application and relies on other ADC precedents in REP 285A – Hollow structural sections from China (Dalian Steelforce review) and REP 295: FSI pineapple from Thailand (Prime Products Co Pty Ltd) to support its contention that in other cases, the ADC selected a minimum of three exporters per country (average of four) and the current approach is an unexplained departure that foreseeably created the lacuna now currently before the Review Panel.

81. Alliance submits that these ADC precedents demonstrate that the current position adopted in REP 655 is not only legally flawed but is a departure from the ADC's practice.

82. As outlined above in respect of the grounds of review, Alliance submits that the Minister's decision was not the correct or preferable decision, and the only lawful course is to extend the sample to Masteel under subsection 269TACAA(2) and calculate an individual margin on Masteel's data or recognise the statutory lacuna and terminate the investigation in respect of Alliance as occurred for other exporters with negligible margins. It is submitted that Alliance's data showed a negative dumping margin of -2.6%. Either outcome would result in no dumping duty

notice applying to Masteel which would be materially different from the 9.2% residual exporter dumping margin imposed.

Masteel grounds and supporting arguments

83. As noted, Masteel's grounds of review in its application and written submissions are in similar if not identical terms as the contentions submitted by Alliance, save for the contention that the ADC should have corrected the issue of only having one exporter's data by extending the calculation to Masteel under subsection 269TACAA(2) or otherwise using readily verifiable data by Masteel.

84. Masteel submits that it had made a detailed and proactive request for individual examination on 10 April 2025,[30] almost seven months before the publication of the SEF and almost nine months prior to the final report being due to the Minister. Masteel contends that it offered to participate in onsite or remote verification processes and explicitly drew the ADC's attention to its low export volume. It is submitted that, given the simplicity of its data, verification could be completed quickly and would not have impeded the timely publication of SEF 655 or the overall investigations.

85. Masteel submits that the Minister's decision was not the correct or preferable decision, and the only lawful course now is to extend the sample to Masteel under subsection 269TACAA(2) and calculate an individual margin on Masteel's data or recognise the statutory lacuna and terminate the investigation in respect of Masteel as occurred for other exporters with negligible margins. It is submitted that Masteel's data showed a negative dumping margin of -2.6%. Either outcome would result in no dumping duty notice on future exports applying to Masteel which would be materially different from the 9.2% residual exporter dumping margin imposed.

VAS grounds and supporting arguments

86. VAS's grounds for the application and written submissions are also in similar terms as the contentions submitted by Alliance. It is further submitted that in VAS's case, its export sales involved one single export transaction over the whole of the

[30] EPR 655, record no. 34, Masteel submission.

investigation period and to calculate the dumping margin would have been completed so as not to impede the timely completion of the investigation. VAS further contends that to assist the ADC, it engaged the services of its lawyer to calculate its margin of dumping over the investigation. These calculations were provided to the ADC for its review. These calculations reveal that the weighted average export price for VAS was 0.9% higher than the corresponding weighted average normal value, confirming that the single export transaction was not dumped.

87. VAS submits that the Minister's decision was not the correct or preferable decision, and the only lawful course is to extend the sample to VAS under subsection 269TACAA(2) to calculate an individual margin on VAS's data or recognise the statutory lacuna and terminate the investigation in respect of VAS as occurred for other exporters with negligible margins. It is submitted that VAS's data showed a negative margin of -0.9%. Either outcome would result in no dumping duty notice applying to VAS on future exports and this would be a materially different outcome from the 9.2% margin imposed.

Submissions from Amsteel Mills Sdn Bhd (Amsteel)

88. Amsteel is a residual exporter from Malaysia and is subject to a dumping duty notice by reason of the decision of the Minister, as with other residual exporters, of 9.2%. Amsteel did not make an application for review of the decision but made submissions to the Review Panel on 22 April 2026, in similar terms to the submissions made by Alliance and Masteel. It is nonetheless an interested party for the purposes of sections 269T and 269ZZJ(a) of the Act.

89. Amsteel submits that the correct or preferable decision is for the Minister to determine an individual dumping margin for Amsteel based on its own submitted data pursuant to subsection 269TACAA(2) of the Act. It is submitted that the residual exporter methodology applied in REP 655 is not the correct or preferable decision because it contravenes the plain wording of the Act, it conflicts with binding WTO jurisprudence, it departs from the ADC's own established practice and unfairly penalised a fully cooperative exporter with a demonstrably negative dumping margin. It is further submitted that in the information provided to the ADC dated 19 November 2025 and in the confidential attachment demonstrated that

Amsteel's weighted average export price was higher than the corresponding weighted average normal value, demonstrating a negative dumping margin. It is submitted that the Review Panel should set aside the decision insofar as it applies to Amsteel and substitute a new decision requiring the determination of an individual Dumping margin based on Amsteel's own information.

Submissions from Infrabuild (Australian Industry)

90. Infrabuild submits that as a matter of statutory interpretation under section 23(b) of the *Acts Interpretation Act 1901* (Cth) (Interpretation Act), "*words in the singular number include the plural and words in the plural number include the singular*". This rule applies unless a contrary intention appears in the legislation. It is noted that the residual exporters point to the equation appearing in the section 269T definitional provision under subsection (5A) and to the multiple inputs in both numerator and denominator. Infrabuild submits that the direction to exclude certain inputs under subsection 269TACAB(3) from the equation in subsection 269T means that the latter is subject to the substantive provisions of Part XVB of the Act, to which it applies. To conclude otherwise would render the operation of subsection 269TACAB(3) "inutile". Infrabuild relies on the High Court decision in *Project Blue Sky Inc v Australian Broadcasting Authority* [1998][31], noting that it was observed by the Review Panel in REP 84 that:

> *The 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 and discern the intention of the legislature.*[32]

91. As such, Infrabuild contends that the operation of subsection 269TACAB(3) cannot be overlooked. The provision explicitly directs that the weighted average of variable factors of 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. Having made its assessment under subsection

[31] [1998] HCA 28.
[32] ADRP REP 84, Reinforcing bar exported from the People's Republic of China (6 August 2018), P6 at [23], Member O'Connor.

269TACAA(1) that the number of exporters from a particular country of export in relation to an investigation was so large it was not practicable to examine the exports of all of those exporters, the Commissioner then properly gave notice of his intention that the investigation would be carried out and findings made on the basis of information obtained from an examination of the number of exporters.

92. The cooperative exporters selected from Malaysia were Southern Steel and Ann Joo and in Hao Phat and VK Steel were selected for Vietnam. Notice of this was given in the sampling decision notice.[33]

93. The dumping margins determined for Southern Steel and Hao Phat were respectively no dumping or de minimis. Therefore, pursuant to subsection 269TACAB(3), the variable factors applicable to Southern Steel from Malaysia and Hao Phat from Vietnam must be excluded from the determination of any average weight variable factors for Alliance, Masteel and VAS from their respective sources. The weighted average calculation of the variable factors for these residual exporters was from a population of a single source. Infrabuild contends that a difficulty with the contentions of the residual exporters is that having been determined under subsection 269TACAA(1) to be residual exporters, there is no known alternative mechanism to determine their variable factors. The process followed by the ADC was permitted by the legislation. It is submitted that the residual exporters do not contest their designation as residual exporters in the grounds of review and this status must be accepted as uncontested and not a matter for the current review.

94. Infrabuild rejects the contention that is necessary to consider extrinsic material in the interpretation of section 269TACAB because the meaning of the section is clear, unambiguous and on its face reasonable having regard to its context in the object and purpose of the legislation. As such, the use of extrinsic material in the forms of the WTO Agreement and, by extension Dispute Settlement Panel and Appellate Body decisions, cannot be referenced to introduce another meaning to the relevant sections and subsections. There is no absurdity or ambiguity in the construction of relevant subsections afforded by the reviewable decision and, as such, it is contended that the residual exporters claimed inconsistencies between the domestic law and the instinct extrinsic materials must be rejected. In support of

[33] ADN 2025/104.

this argument, Infrabuild further relies on the decision of Member O'Connor in Review Panel Report No. 84, which notes that recourse to extrinsic material as authorised by section 15AB of the Interpretation Act is limited in its scope.

95. In summary, Infrabuild contends that in 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 he was constrained by subsection (3). The reference to language of plurality and the equation in subsection 269T(5A) cannot override the explicit language under subsection (3). The determination of the Applicants for review as "residual exporters" is not contested and did not form their grounds of review. Therefore, the residual exporters are confined to those methodologies open to the Minister under the Act and to accept the residual exporters' arguments would render it impossible to determine variable factors lawfully available to the Minister.

Submissions from the ADC

96. The ADC submits that the Review Panel's task is primarily centred on the interpretation of subsection 269TACAB(2) and (3) of the Act, which contain the provisions on how export prices and normal values must be calculated for residual exporters, being those exporters who are not individually examined because the investigation or review relied on a sample of relevant exporters. It is submitted that this section must be read in the context of the sampling provisions in section 269TACAA of the Act, which permits the Commissioner to use sampling in an investigation where a number of exporters from a particular country is so large that it is not practicable to examine them all.

97. In those circumstances, the investigation or review may be conducted and findings made on the basis of the information from a selected number of exporters because they constitute a statistically valid sample or are responsible for the largest volume of exports to Australia that can reasonably be examined. Subsection 269TACAA(2) addresses the issue where exporters not initially selected may seek to have their information included in the sample. This subsection provides that the investigation or review must extend to that exporter unless doing so would prevent timely completion of the investigation or review. The ADC contends that in this case,

extending the sample would have prevented the timely completion of the investigation.

98. The ADC contends that the then Acting Commissioner initiated the investigation which forms the subject of this review on 24 September 2024. The initiating notice ADN 2024/070 invited exporters of the goods to Australia to participate in the investigation by completing an exporter questionnaire. The notice further stated that the ADC may consider, pursuant to section 269TACAA, whether sampling is required for particular countries due to the number of exporters of the goods.

99. The Acting Commissioner considered various factors, being those matters set out in [60] above and made the decision set out in ADN 2025/014. This decision was published on 11 March 2025.

100. It is submitted that this approach is consistent with the ADC's practice of selecting a sample based on the largest volume of exports to Australia and is consistent with the criterion in subsection 269TACAA(1)(d) that the sample should be “the largest volume of exports that can be reasonably examined”. The section does not require that all cooperating exporters be examined, nor does it prescribe a minimum number of exporters to be selected.

101. It is further submitted that consistent with this framework, the ADC has in the past selected a number of exporters sufficient to capture a substantial proportion of exports, with the precise level of export coverage area according to the circumstances of each case.[34]

102. The ADC contends that those cases illustrate that exporter coverage has ranged from approximately 60% to well over 90% and that the focus has consistently been on whether the selected exporters together account for the largest volume of

[34] Submission at ft 15:
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

exports that could reasonably be examined, rather than on exporter numbers as an end to themselves.

103. The ADC further contends that 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, Türkiye and Vietnam was not practical given the requirement to deliver the report to the Minister in a timely manner. The approach adopted was therefore broadly consistent with prior ADC practice and reflected rationale and reasonable application of the "largest volume of exporters" criterion in subsection 269TACAA(1) in the circumstances.

104. Once the Acting Commissioner lawfully adopted sampling under subsection 269TACAA(1), the investigation proceeded on the basis that not all cooperative exporters would be individually examined, and the Applicants were residual exporters for the purpose of the investigation.

105. When the ADC subsequently determined that the dumping margins for Southern Steel from Malaysia and Hoa Phat from Vietnam were either negative or negligible, the use of export prices and normal values of those exporters was not permitted in the calculations performed under subsection 269TACAB(2). This was by virtue of the exclusion in subsection 269TACAB(3) of the Act.

106. The principal contention of the ADC in relation to the review is that the applications for review essentially raise a legal question, although it is contingent on the specific facts and circumstances for the case.

107. It is further submitted that the ADC's interpretation of subsections 269TACAB(2) and (3) is the correct, or alternatively, the preferable construction. The ADC therefore submits that the Review Panel should affirm the ADC's approach and recommend that the Minister affirm the reviewable decision.

108. The ADC submits that neither sections 269TACAB and 269T(5A), nor any other provision in the Act, expressly address the question of whether the export price or normal value of goods of residual exporters can be calculated on the basis of values provided by a single exporter. However, as a matter of statutory interpretation, the starting point is, pursuant to section 23(b) of the Interpretation

Act, that "*words in the singular number include the pruning words in the plural number include the singular*". This submission is in line with the submission made by Infrabuild.

109. The ADC submits that the effect of section 23(b) of the Interpretation Act is that section 269TACAB, and the definition of "weighted average" in subsection 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 section 269TACAA of the Act. Section 2 of the Interpretation Act provides that the Act applies to all Acts subject to a contrary intention. There is no contrary intention because:

    a) The mathematical concept of "weighted average" does not strictly preclude single imports and neither the language of subsection 269TACAB(2) nor the formula in subsection 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 when 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 269TACAB(2)(c) and (d) may be calculated using a single data point, including the mandatory exclusions in subsection 269TACAB(3), the statutory timeframes governing investigations and the absence of any mechanism require investigations to be suspended were only one eligible exporter remains.

110. The ADC rejects the Applicants' contentions in relation to the Dumping and Subsidy Manual because, firstly, the cited guidance is not addressing "weighted average" export prices or normal values and, secondly, the Manual does not constitute extrinsic material for statutory interpretation. Properly understood, it is submitted that the Manual confirms the ADC's approach and its treatment of non-sampled exporters, subject to time and resource constraints.

111. It is further submitted that 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 ADC contends that the statutory context including investigation timeframes, the conditional nature of extending examination to some additional exporters, the purpose of sampling and the availability of post-measure review mechanisms, supports a construction under which subsection 269TACAB(2) continues to operate on the remaining dataset.

112. Finally, the ADC submits that the Applicants' reliance on *Press Metal Aluminium* is misplaced because there was no denial of procedural fairness in the case, nor is there an obligation on the ADC 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.

113. The ADC expands on these submissions in its written submissions provided to the Panel dated 30 April 2026. These detailed contentions are referred to later in my analysis.

Consideration of Grounds

Scope of the Review and issues for determination

114. As noted, this review is not a *de novo* review at large and is confined to those grounds raised by the Applicants in their applications, as further explained in written submissions provided to the Review Panel in accordance with the timetable.

115. The Applicants contend that the Minister erred in calculating a residual exporter dumping margin for each of them based on 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. They further contend that to correct this error, the Review Panel should revoke the dumping duty notice, insofar as it relates to them, and substitute a new decision, said to be the correct or preferable decision, by calculating the Applicants' respective dumping margins on the basis of the information provided by each of them. This information was available to the ADC during its investigation.

116. While the Applicants contend that the sampling process resulted in a flawed calculation for residual exporters because the calculation under subsection 269TACAB(2) used the data for a single exporter, they do not challenge the sampling decision itself. Nor do they allege any procedural unfairness in this regard. The Applicants, and indeed all participating exporters, were made aware of the sampling decision in the notice and reasons for decision which were published by the Commissioner on 11 March 2025. Subsection 269TACAA(2) allows for the sample to be extended where information is submitted by an exporter not initially selected unless to do so extend would prevent the timely completion of the investigation. Submissions were made by Masteel and VAS after the sampling decision was made for the sample to be extended to include their data. Both sought individual determinations. There is no dispute that the Commissioner did not extend the sample and did not take into account any further information under subsection 269TAC(6), as also submitted by VAS at this time.

117. Following these submissions after the sampling decision and, in the events that happened by reason of the mandatory exclusion under subsection 269TACAB(3), the residual exported calculation used by the ADC was based on the variable factors of a single exporter. Again, this is not in dispute. At the time of the sampling decision, the fact that one of the exporters selected for the sample would be excluded for both Malaysia and Vietnam was not known by the ADC – the investigation in relation to these issues had not been finalised. This was not known by the ADC until at least 29 September 2025 for Hoa Phat and 20 October 2025 for Southern Steel after the verification process for these exporters was completed (refer [66] above).

118. As observed by Infrabuild in its submissions dated 30 April 2026, the Applicants do not contest their designation as residual exporters in their grounds of review and, as such, their status must be accepted as uncontested and not a matter for the current review.

119. I accept this submission.

120. Once the sampling decision was made by the Commissioner under subsection 269TACAA(1) of the Act, the Applicants were designated as “residual exporters” for the purposes of subsection 269TACAB(2)(b) of the Act, in accordance with the definitional provisions of s 269T of the Act. The investigation proceeded on the

basis of the selected exporters and the ADC calculated the dumping margin for residual exporters in the manner set out in REP 655.

121. Given the grounds raised in the applications for review, the questions that arise for determination on this review are: first, whether the calculation of the residual export price and normal value by relying on a single sampled exporters data to determine the residual dumping margin was in contravention of subsection 269TACAB(2) of the Act and, secondly, if so, how should this be remedied. The Applicants contend that this "lacuna" or gap should be resolved by their individual data now being considered under subsection 269TACAA(2) or by the investigation being terminated.

122. The first question raises the correct construction of subsection 269TACAB(2) of the Act rather than the correct or preferable construction, as contended by the ADC. The calculation for the purposes of subsection 269TACAB(2) either permits the use of a single exporters data or it does not, in which case the calculation would be in error.

123. The second question raises the issue about whether, in the absence a valid determination of the relevant residual exporter dumping margin, the Review Panel should itself make recommendations on the recalculation based on the material provided by the Applicants after the sampling decision but before REP 655 was published or whether the calculations should be referred back to the ADC for reinvestigation. If I accept that the calculation was not in contravention of subsection 269TACAB(2) of the Act, it will be unnecessary to consider how the contravention should be remedied and what recommendations should be made.

Analysis of grounds

Overview

124. The principal issue for determination is the construction of subsection 269TACAB(2) of the Act in the context of the definition for "weighted average" set out in subsection 269T(5A) of the Act.

125. The process for construing legislation should begin with the statutory text, which must be considered in its context.[35] Objective discernment of the context may be made through extrinsic material, the legislative history and the purpose and policy of the legislation.[36] However extrinsic material cannot be relied on to displace the clear meaning of the text.[37]

126. The recent decision of the Full Federal Court in *Commissioner of Taxation v Toowoomba Regional Council* (*Toowoomba Regional Council*) provides a useful summary of the principles of statutory construction, which are "settled and well understood".[38]

127. In summary at [23] – [26] McElwaine and Wheatley JJ observe:

> *…The starting point for construing a statutory provision is the text of the statute understood in context, whilst regard is had at the same time, to its statutory purpose. In this sense, context is an inquiry made at this first stage and in its widest sense.*
>
> *It is necessary to construe the provision in light of the relevant extrinsic materials and legislative history, that being the statutory purpose which the provision is designed to actually achieve. Extrinsic material may assist in understanding the context and in fixing the meaning of the statutory text. Such materials will illuminate the mischief which the statute is intended to remedy. However, considerations drawn from the extrinsic materials cannot be relied on to displace the clear meaning of the text of the relevant provision: Furthermore, such extrinsic materials cannot be substituted for the text of the statute: The construction which best achieves the purpose or object of the legislation is to be preferred: s 15AA of the* Acts Interpretation Act 1901 (Cth)
>
> *As the issue involves a defined term it is well to observe that ordinarily statutory definitions are construed according to their ordinary meaning, read in context. Limitations and qualifications are not to be read into a statutory definition unless clearly required by its terms or its context. There is no rule*

[35] *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [2009] HCA 41; (239) CLR 27 and *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28.
[36] *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384.
[37] *Alcan* at [47].
[38] [2026] FCAFC 5, McElwaine, Feutrill and Wheatley JJ.

against construing the words of a definition by reference to the terms that those words define, it forms part of the context within which the definition must be construed. The interpretative principle is more nuanced and is not an inflexible rule of statutory construction. The proper course is to read the words of the definition into the substantive enactment and construe the definition in the context of the substantive provision.

Finally, dictionaries can be useful, but appropriate caution needs to be observed in their use due to the obvious limitations…

[citations omitted]

128. This review involves consideration of a number of provisions of the Act which are interrelated. These provisions are set out above. However, given the importance of the statutory context when construing legislative provisions, it is convenient to outline the operation of the various provisions as part of the statutory scheme, including their history and purpose, as this is ultimately relevant to the construction of subsections 269TACAB(2) and 269T(5A) of the Act.

129. Section 269TACB sets out how the Minister is to work out whether dumping has occurred and, if so, the levels of dumping. Under subsection (1), the Minister must determine whether dumping has occurred by comparing the export prices in respect of the goods that are subject to the application and corresponding normal values in respect of like goods. The export prices must be established in accordance with section 269TAB, and the normal value must be established in accordance with section 269TAC. The applications do not raise any dispute about the calculation of export prices and normal value in accordance with those relevant sections.

130. Subsection 269TACB(2) sets out how the Minister must compare the export prices and normal values of the goods and provides the Minister with four alternatives for calculating whether dumping has occurred, one of which is to compare the weighted average of export prices of the goods over the whole of the investigation with the weighted average of corresponding normal values of the goods over the period.[39]

[39] Subsection 269TACB(2)(a).

131. This was the method chosen in this investigation.

132. Whatever method chosen by the Minister is subject to subsection 269TACB(3), which provides that, if the Minister is satisfied that export prices differ significantly among different purchases, regions or periods, and those differences make any of the methods set out in some subsection (2) inappropriate, the Minister may compare the respective export prices determined in relation to individual transactions during the period with the weighted average of corresponding normal values over that period.

133. Subsection 269TACB(4) provides that in the comparison under subsection (2), if the Minister is satisfied that the weighted average of export prices over the period is less than the weighted average of corresponding normal values over the period, the goods exported to Australia during that period are taken to be dumped. The dumping margin for the exporters concerned in respect of those goods is the difference between those weighted averages.

134. While section 269TACB contemplates a comparison with individual exporters, following the introduction of the sampling provisions, which were introduced in their current form in section 269TACAA in 2012, the Minister may instead determine whether dumping has occurred and the dumping margin by using the sampling method to make the determination under section 269TACB.

135. The Explanatory Memorandum for the *Customs Amendment (Anti-Dumping Improvements) Bill* (No 3) 2012 (*Anti-Dumping Improvement Bill*) explains the amendments to the Act to insert new sampling provisions (section 269TACAA) and new consequential provisions about dumping duty notices for uncooperative and residual exporters (section 269TACAB).[40]

136. Given these provisions are central to the current review, the relevant paragraphs of the Explanatory Memorandum are extracted as follows.

> *17. Currently, the Customs Act, in section 269T, categorised an exporter of goods to Australia as a 'selected exporter', 'residual exporter' or 'new*

[40] *Explanatory Memorandum, Customs Amendment (Anti-Dumping Improvements) Bill (No 3) 2012 (Cth*) [108]–[117].

exporter'. A new exporter was only relevant for the purposes of an accelerated review under Division 6. Therefore a current exporter of goods the subject of an anti-dumping investigation must have been either a selected exporter or a residual exporter.

18. Customs and Border Protection considers that residual exporters should only exist in cases where the Minister has applied subsection 269TACB(8), known as the sampling provision. This provision reflects Article 6.10 of the WTO Anti-Dumping Agreement (ADA), as stated in the Explanatory Memorandum for the 1994 amendments. This Article describes a process where, if the number of exporters from a particular country is too large for an investigating authority to examine each exporter individually, the investigating authority may choose, or 'select', which exporters to examine as part of the investigation. Article 9.4 of the ADA outlines the method for calculating the dumping margin for residual exporters. This Article is reflected in subsections 269TG(3B) and (3C).

19. In a recent review, an alternative interpretation has arisen which would mean that non-cooperating exporters are provided with the weighted average dumping margin of fully cooperative exporters and therefore avoid the application of subsections 269TAB(3) and 269TAC(6), which are the provisions intended to deal with non-cooperation in accordance with Article 6.8 of the ADA.

20. The amendments in this Bill will prevent the possible manipulation of the level of cooperation (which can occur when only the two rates are implemented) by introducing three categories of exporters: cooperative, residual and uncooperative.

137. Paragraph 108 of the Explanatory Memorandum notes that the new sampling provision was inserted to replace the old sampling provisions relating to dumping in subsections 269TACB(7) to (9). Paragraph 110 notes:

This sampling provision also reflects Article 6.10 such that the findings of the relevant investigations, review under Division 5 or continuation inquiry can be made based on the information obtained from an examination of a select number of exporters where the number of exporters who provide information

to the relevant process is so large as to make a determination for each individual exporter impracticable.

138. The Explanatory Memorandum also refers to the insertion of the new subsection 269TACAB(2), the construction of which is currently at the centre of dispute in the review, as follows:

115. The new subsection 269TACAB(2) reflecting Article 9.4 of the ADA by requiring that, in ascertaining a normal value and export price for goods of a residual exporter in an investigation, review under Division 5 or continuation inquiry that:

1. the 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

2. the normal value must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.

139. The qualifications referred to in (1) and (2) are reproduced in subsections 269TACAB(2)(c) and (d). These mandatory requirements provide that where an investigation, review or inquiry is carried out on the basis of information obtained for a selected number of exporters under subsection 269TACAA(1), export prices for the goods of a residual exporters must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export and normal values of goods for residual exporters and must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.

140. Even though the Explanatory Memorandum notes that subsection 269TACAB(2) reflects Art 9.4 of the ADA, the threshold provisions under subsections 269TACAB(2)(c) and (d) are differently expressed.

141. Article 6.10 of the ADA provides for a sampling methodology to determine whether dumping has occurred and the levels of dumping as an alternative to determining individual dumping margins "*for each known exporter or producer concerned of the product under investigation… where the number of exporters, producers, importers or types of products involved is so large as to make such a termination*

impracticable". Article 9.4 applies where the sampling methodology has been used under Art 6.10 and provides a "ceiling" where, firstly, any dumping duty applied to exporters not included in the sample examined must not exceed the weighted average margin of dumping established with respect to the selected exporters or producers or, secondly, where liability for anti-dumping duties is calculated on the basis of prospective normal value, the difference between the weighted average of normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined must not be exceeded. The first requirement in Art 9.4 is given effect in the mandatory requirement in subsection 299TACAB(2)(c) and the second in subsection (2)(d). Article 9.4 also excludes from the calculation any exporters where there is no dumping or the dumping margin is de minimis, in similar terms as subsection 269TACAB(3) of the Act.

142. The Explanatory Memorandum does not otherwise deal with or explain how the dumping calculation works and how it would be calculated in circumstances where there may only be data from a single sampled exporter available as a result of the sampling process.

143. Broadly speaking, subsections 269TACAB(2)(c) and (d) have the combined effect of excluding from the calculation for residual exporters export prices and normal values of those exporters who are outliers in the pool of cooperative exporters from the same country of export who export like goods and seem designed to ensure, as much as possible, that where the sampling method is applied the selected sampled exporters are representative of residual exporters. Subsection 269TACAB(3) excludes the data of exporters who have been found not to have dumped or where their dumping is de minimis. This exclusion seems designed to ensure that the dumping calculation is not unduly impacted by exports that do not involve dumping.

144. Accordingly, if there is an investigation in relation to whether a dumping duty notice should be published and the investigation is carried out on the basis of information obtained from the examination of a selected number of exporters under subsection 269TACAA(1), then the dumping calculation is to be worked out by reference to the mandated weighted average thresholds for export prices and normal values (in subsections (c) and (d)), excluding the data of exporters who have not dumped or were the dumping is negligible. The sampling methodology does not yield an exact calculation for dumping in respect of individual exporters, and therefore is not

perfect, but allows dumping calculations to be assessed by reference to representative samples of exporters.

145. Given the legislative provisions set out above, it is important to examine the interpretation of “weighted average” in determining dumping and any dumping margin because this concept is incorporated into both subsections 269TACAB(2) and (3).

146. The Applicants each contend that subsection 269TACAB(2) must be construed to mean that the “weighted average” formula cannot be calculated by relying on the data of a single exporter.

147. However, neither subsection 269TACAB(2) nor 269T(5A) make such an express qualification and it is not clear from the submissions what words, if any, need to be imported into either of these the subsections to give effect to the construction contended by the Applicants – the Applicants simply submit that the formula, and therefore the definition, connotes multiple data inputs as does subsection 269TACAB(2).

148. The Applicants rely on the wording used in each of the sections. It is contended that subsection 269TACAB(2) mandates a weighted average of export prices and normal values from cooperative exporters, in the plural, and the formula in subsection 269T(5A) refers to “transactions”, multiple subscripts and “cooperative exporters”, all in the plural. It is submitted that this language makes it plain that aggregation across multiple data points is required. A single exporter’s data collapses to a single value, not an average. Using the data of one exporter as a representative sample is an impermissible proxy for the purposes of the formula in calculating weighted average.

149. The Applicants also rely on WTO and Appellate Body authority in relation to the application of Article 9.4. It is contended that the impracticability of determining the export price and normal value for multiple exporters does not justify a calculation or construction that does not represent a proper “weighted average”. It is submitted that this is the intent of the sampling and residual exporter provisions and is consistent with WTO and Appellate Body authority.

150. In contrast, the ADC and Infrabuild contend that section 23 of the Interpretation Act applies and the plural in the formula for weighted average (and the references in subsection 269TACAB(2)) should be read as singular, unless there is a contrary intention. The ADC submits there is no such contrary intention, either expressly or implicitly in the Act. The ADC submits that there are several contextual factors under the statutory regime which support using a single data point where the mandatory exclusion under subsection 269TACAB(3) leaves only one cooperative exporter. The ADC further contends that, while decisions of the WTO and the WTO Appellate Body may be relevant when construing provisions of Part XVB of the Act where those provisions are ambiguous, the authorities referred to were made in the context of Art 2.2.2(ii) of the ADA, rather than based on Art 9.4, which is drafted in materially different terms.

How should weighted average be construed?

151. Subsection 269T(5A) sets out how the weighted average of prices, values, costs or amounts in relation to goods are to be worked out by reference to a formula. The formula is set out in full above but in essence, and expressing the formula in words as it applies to subsection 269TACAB(2), the formula provides that the weighted average for the export price or normal value of goods must be worked out by using the export price or normal value of a cooperative exposure, multiplying this price or value by the number of items exported to Australia during the period, adding the ascertained exported price or value for additional exporters and multiplying this by the number of items exported to Australia during the period. These inputs are then divided by the total number of items from all of the cooperative exporters. This formula is unremarkable in the sense that this is generally how an average would be calculated. However, and this is the thrust of the argument from the Applicants, the question is whether a weighted average can be calculated using the data of only one exporter.

152. An “average” is an arithmetic calculation being the sum of all values divided by the number of values. It is an arithmetic mean.[41] A “weighted” average simply connotes that some values may be assigned varying degrees of importance in the formula. As observed in *Toowoomba Regional Council* dictionary definitions can be useful

[41] Macquarie Dictionary, online.

but, in this case, the plain words or ordinary meaning of “weighted average” is informed by the formula set out in subsection 269T(5A). The formula provides for multiple scrips, but the provision does not require multiple data points to be used or provide any commentary or guidance withing the subsection.

153. There is no judicial authority on this issue to provide guidance. There have been two reviews before the Review Panel where this issue was discussed. However, neither provide an authoritative of ruling on the issue because each review turned on the particular circumstances in the case and the critical issues that required determination.

154. In ADRP Report No 119 Power Transformers from the Republic of Indonesia and Taiwan (*Power Transformers*),[42] the Panel was considering section 269TAAD, which was dealing with the cost of goods in the ordinary course of trade. In that review, a submission had been made that the ADC was correct when it stated in REP 504 that “*the definition of weighted average in s.269T(5A) does not preclude the possibility that n can equal 1”*. The Panel opined that the submissions regarding subsection 269T(5A) missed the point but observed:

> *The formula for determining the weighted average of prices, values, costs or amounts in s.269T(5A) is not limited to s.269TAAD. It applies whenever in Part XVB the weighted average of prices, values, costs or amounts have to be calculated. It is difficult to envisage a situation when it would be appropriate to apply the formula in s.269T(5A) with n equalling 1. However, it is not necessary for me to decide this in the abstract.*[43]

155. These observations in *Power Transformers* do not assist as the Panel did not outline the reasons for this view.

156. In ADRP Report No 100: Wind Towers Exported from the People's Republic of China (*Wind Towers*),[44] the Panel was considering the provisions relating to the “ordinary course of trade” under s 269TAAD and, in particular, subsection (3) which provides that the cost of goods are taken to be recoverable where the selling price is above the weighted average cost of such goods over the investigation period. In

[42] Dated August 2020.
[43] At [40].
[44] Review Panel Report 100, p 14-26.

its Preliminary Report to the ADRP in relation to the Reinvestigation of Certain Findings in Report No 487, the ADC had stated the definition in subsection 269T(5A) "does not preclude the possibility that *n* can equal 1".[45] The Panel criticised this approach, stating:

> *Not only did the approach of the ADC not apply the formula in s.269T(5A) but by using the unit cost of the sales instead of the weighted average cost it effectively did not allow for any recovery of costs in unprofitable projects over the inquiry period.*[46]

157. In making these findings, the Panel focussed on the wording and structure of section 269TAAD, which emphasised the distinction between the costs of the goods at their time of sale and the weighted average cost of those goods over the investigation period. The Panel's principal difficulty with the approach was that the ADC did not properly assess the recoverability of unprofitable sales, which was a mandatory requirement, by using data based on projects.

158. The observations of the Panel in this review cannot be applied more broadly to the definition of weighted average as they were based on consideration of the evidence and particular statutory provision the subject of review. As such, the observations of the Panel in *Wind Towers* also do not assist in the interpretation and, more relevantly, the application of the formula in subsection 269T(5A) to the residual exporter dumping calculations set out in subsection 269TACAB(2).

159. In the absence of judicial authority and relevant Panel guidance, I have closely examined the submissions of the parties to identify the key contentions raised about the statutory interpretation of the disputed provisions.

160. The submissions of the Applicants about the application of the weighted average formula have superficial appeal in that, on the face of it, if the reference to a weighted average and the provisions of the formula are given their ordinary meaning, it would follow that the data for the purposes of calculating weighted average under subsection 269TACAB(2), and indeed other operative provisions under Part XVB, would require multiple inputs. The Applicants contend that the requirement in subsections 269TACAB(2)(c) and (d) to use a weighted average

[45] Preliminary Report 487, p 18.
[46] REP 100 at [78].

necessarily implies the use of multiple exporters' data and that reliance on a single export as data is inconsistent with the statutory purpose of the provision. The Applicants further submit that the ADC's approach undermines the rationale for the weighted average methodology and results in an outcome that is unrepresentative and unfair to residual exporters. In contrast, Infrabuild and the ADC contend that the formula does not require multiple data points and using the data of a single exporter does not compromise the formula or the operation of subsection 269TACAB(2) of the Act.

161. Accordingly, the interpretation of "weighted average" is at the heart of this Review. The interpretation of subsection 269T(5A) and how it operates must be considered applying the well-established principles of statutory construction summarised earlier.

162. The starting point is the statutory text, understood in context and given the statutory purpose and, if necessary, extrinsic materials, including the legislative history and statutory purpose that the provision was designed to achieve.

163. Section 269T(5A) provides a formula for the calculation of "weighted average" for several provisions, not just subsection 269TACAB(2). In the context of subsection 269TACAB(2), the concept of weighted average is used to calculate dumping for residual exporters where the sampling method has been used. The sampling method is intended to facilitate a timely dumping determination where there are a large number of cooperative exporters. There is nothing in the sampling provisions that require a specified number of exporters to be selected. It is sufficient that the exporters chosen constitute a statistically valid sample and are responsible for the largest volume of exports to Australia that can reasonably be examined. Once the sampling process has been finalised, the ADC can proceed to determine whether dumping has occurred and, if so at what levels. Subsection 269TACAB(2) was inserted to facilitate the new sampling methodology and was inserted in the Act at the same time.

164. The ADC contends that the formula in subsection 269T(5A) does not preclude single inputs. While it is accepted that the concept of a weighted average is ordinarily based on two or more values, there is no inherent mathematical reason why the formula cannot be based on a single value. In other words, the weighted average simply reflects the single value, weighted against itself. This may result in

a less nuanced approximation, but it is not mathematically impossible and nothing in the text of subsection 269TACAB(2) suggests that the calculation becomes inoperative because the data set is reduced to one cooperative exporter. This is confirmed by the formula which does not prescribe a minimum value for n and does not condition the calculation on the presence of multiple exporters or transactions. It is therefore submitted that where $n = 1$, the formula remains mathematically coherent and, relevantly, the product of P_1 and Q_1, divided by Q_1, necessarily reduces to P_1. This may be less nuanced than a weighted average derived from multiple inputs but is still a valid result.

165. It is further contended that, even if the formula as it applies to subsection 269TACAB(2) appears to contemplate multiple inputs, in most cases the weighted average will be based on multiple transactions. It does not follow that the formula becomes unusable, or as the Applicants contend, infeasible, were only one value remains. The formula therefore allows for calculation of a weighted average based on a single unit and also allows for irrelevant inputs to be omitted from the calculation. The ADC submits that this construction is consistent with how mathematical formulae ordinarily operate and ensures that subsection 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 data set is limited to a single cooperative exporter.

166. I accept the submission of the ADC that the formula in subsection 269T(5A) remains mathematically coherent and is capable of producing a valid result. However, I also accept the submission that the result may be less nuanced and thereby, potentially less representative of cooperative exporters. This does not of itself compel the conclusion that the formula is not capable of performance where the data set is limited to a single cooperative exporter.

167. The ADC notes that the purpose of the references to weighted average in subsections 269TACAB(2)(c) and (d) (and the equivalent references in Art 9.4) is not explained in extrinsic materials and, in the absence of such materials, it is reasonable to infer that one purpose is to eliminate the possibility of a result-oriented bias 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 ADC's discretion and guards against cherry

picking to arrive at a certain outcome. It is submitted that this inferred purpose is not undermined where, following the mandatory exclusions, only one eligible exporter's data remains. This is because there is no scope for selective or discriminatory choice between competing data sources. It is thereby submitted that the use of a single data source is not incompatible with this underlying purpose for the weighted average requirement.

168. I accept the ADC submission that there is limited guidance in extrinsic materials about the purpose of the references to "weighted average" in subsections 269TACAB(2)(c) and (d). However, I am not persuaded that this particular purpose can be inferred or that this advances the ADC's contentions. In my view, the weighted average reference in subsections (c) and (d) is simply intended to provide a consistent representative approach to calculating export prices and normal values in respect of cooperative exporters, which generally involves more than one cooperative exporter.

169. The more relevant question is whether the fact that the input to the formula is confined to one cooperative exporter compromises the formula, such that the underlying purpose of the mandatory requirements in 269TACAB(2)(c) and (d) is undermined.

170. Once the data for Southern Steel and Hoa Phat was excluded, which the ADC was obliged to do under subsection 269TACAB(3), there was only one cooperative exporter from which to make the dumping assessment for the purposes of subsections 269TACAB(2)(c) and (d). There is no dispute that the assessment for residual exporters for Malaysia and Vietnam was only based on a single dataset, namely Ann Joo and VK Steel. If there is only one cooperative exporter remaining in the sample, the dumping calculation for that exporter necessarily will become the dumping margin for all residual exporters who have not been selected in the sample. In this circumstance, subsections 269TACAB(2)(c) and (d) have no work to do. Amsteel contends compliance with 269TACAB(2) therefore became "legally impossible" and the Applicants contend compliance became "infeasible".

171. I reject these contentions and do not accept that where the dumping calculation for residual exporters is based on the data of one of the selected cooperative exporters, there has been non-compliance with, or a contravention of, subsections 269TACAB(2)(c) and (d). While these subsections contemplate that the relevant

threshold for the mandatory requirements to be calculated by reference to a weighted average that would usually, but not invariably, involve multiple inputs, this is not required. Relevantly, subsection 269TACAB(2) does not express this to be a condition, there is no express requirement for multiple inputs to be used in either subsections 269TACAB(2) or 269T(5A) and this issue was not referred to in the Explanatory Memorandum to the *Anti-Dumping Improvements Bill* when sections 269TACAA and 269TACAB were inserted.

172. Given the current sampling and the residual exporter dumping provisions were inserted into the Act at the same time to facilitate the dumping calculation, it is relevant to construe subsections 269TACAB(2) and 269T(5A) in their statutory context, having regard to the operation of the sampling provisions under section 269TACAA of the Act.

Weighted average calculation and the sampling methodology

173. The sampling provisions allow the ADC to select a sample of cooperative exporters where their number is “so large as to make a determination for each individual exporter impracticable”.

174. There is no dispute that in this investigation, which involved five countries and responses from 15 exporters, including nine from Malaysia and Vietnam combined, the Commissioner decided to avail himself of the sampling procedures under section 269TACAA. The Commissioner selected two cooperative exporters from each of Malaysia, Vietnam and Türkiye.

175. The exporters selected for Malaysia and Vietnam represented a significant majority of the volume of exporters. This is not in dispute. Nor is there challenge in this review that the sample chosen was “statistically valid”. Despite this, one of the arguments raised by the Applicants is that, given the importance of the weighted average to the mandated requirements in subsections 269TACAB(2)(c) and (d), the Commissioner should have chosen a greater number of exporters. By choosing only two, the prospect of the sample selected being reduced to one exporter was 50%. It is unclear how this would be so given the exclusion is not based on an arithmetic probability calculation but rather on whether the selected exporter has been engaged in dumping. While I accept that the more exporter selected to sample, the more representative the sample may be, however all that is required

under subsection 296TACAA(1) is that the sample of exporters selected must be statistically valid and represent the largest volume of exporters who can be examined. The question of what will be "the largest volume of exporters who can be examined" will properly be informed by practicalities and resources involved in examining a large number of exporters – this is why the sampling provisions were introduced.

176. Once an exporter is selected and the dumping calculation is made by reference to the selected exporters sampled, the ADC can proceed with its investigation, which is time limited although subject to possible extension. The ADC does not know at this stage of the investigation that one of the selected exporters may be excluded under subsection 269TACAB(3).

177. The ADC submits that where dumping is assessed by using the sampling method, the construction contended by the Applicants necessarily implies that the residual exporting methodology becomes inoperative unless additional exporters are assessed or sampling is expanded. It is submitted that this would leave the ADC with no workable method to calculate residual exporter dumping margins other than to calculate export price and normal value by reference to exporters whose dumping margins are less than 2%, which is expressly prohibited by subsection 269TACAB(3), or to continue examining exporters until a further cooperative exporter with a dumping margin exceeding 2% is identified. The ADC further contends that Parliament would not have intended for such an outcome where the data of only one selected cooperative exporter remains after the exclusion in subsection 269TACAB(3) is applied.

178. The difficulties that may arise with the construction contended by the Applicants is illustrated by the contentions made by each that if their data had been examined, they would have been excluded and the investigation terminated, as was the case for Southern Steel and Hoa Phat.

179. For instance, if three exporters had been selected for Malaysia and one of those exporters was Alliance, which had a significant volume of exports, it is Alliance's contention that its data would have been excluded for the purposes of the calculation under subsection 269TACAB(3). As such, the other residual exporters would still be left with a dumping margin calculated by reference to one exporter, namely, Ann Joo. Under the Applicants' construction, the ADC would be required to

undertake further investigations to determine dumping from the other residual exporters, in this case Masteel and then Amsteel, both of which contend they would have been excluded under subsection 269TACAB(3).

180. In my view, the purpose and efficacy of the sampling provisions would be compromised if the ADC was required to anticipate such an event or to retrospectively extend the sample or undertake individual determinations for other residual exporters, particularly with the benefit of hindsight.

181. It therefore follows that I accept the contentions of the ADC that this would not have been intended by Parliament when it amended the Act in 2012. Such a construction could have the impact of prolonging investigations or requiring that investigations be reopened or expanded beyond the sampling framework. While the sampling procedures may lead to a reduced number of datasets being considered where selected cooperative exporters are excluded under subsection 269TACAB(3), the Applicants' proposed construction of subsections 269TACAB(2) and 269T(5A) may impede the ADC in calculating export prices or normal values for residual exporters within the relevant statutory timeframes. This would be inconsistent with the timeframes prescribed under section 269TEA and the express caveat in subsection 269TACAA(2), which permits an investigation to be extended to additional exporters where to do so would not prevent its timely completion.

182. As provided in section 15AA of the Interpretation Act,

> *In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.*

183. The sampling procedures were inserted into the Act in 2012 to facilitate the timely determination of whether dumping had occurred and, if so, what levels of dumping were established. This is relevant when construing subsection 269TACAB(2) and the application of the weighted average formula in subsection 269T(5A).

184. The importance of this is also illustrated by the difficulties that arose in this investigation, as recorded in REP 655. In response to the submissions made by the Applicants in response to SEF 655, the Commissioner noted in REP 655 that limited extensions of statutory deadlines were granted during the course of the

invitation reflecting the scale and complexity of the matter and the need to accommodate procedural steps required by Part XVB of the Act. Relevantly, it is noted that the date for publication SEF was extended from 13 January 2025 to 22 October 2025 and the deadline for providing the report to the Minister was extended to 18 December 2025.[47]

185. The Applicants point to WTO and Appellate Body authority to support their contentions; however, I accept the submissions of the ADC that these decisions arise in a different statutory context. The provisions and issues considered in those cases were materially different to the present dispute and, as such, these decisions are not authoritative.

186. The WTO Appellate Body decision in *EC – Bed Linen* opined about the meaning of "weighted average' in Art 2.2.2(ii) for the purposes of calculating administrative, selling and general costs and for profits based on actual data pertaining to production and sales in the ordinary course of trade. Article 2 .2 deals with the situation where there are no sales of the like product to the ordinary course of trade in the domestic market of the exporting country such that sales do not permit a proper comparison for the purposes of calculating the margin of dumping. The ADC contends that Art 2.2.2 provides for three different methods for determining the relevant amounts, including use of a "weighted average" for determining "any other reasonable method" where the specific methods cannot be applied, whereas Art 9.4 (and by analogy subsection 269TACAB(2)) requires a weighted average to be used as the weighted average is the only available statutory mechanism. As such, the observations made in *EC – Bed Linen* do not provide authority to support the Applicants' contentions. It is further submitted that the original Panel opined that Art 9.4 does not become "inoperative" if there is only one single exporter or producer and this finding was not disturbed by the Appellate Body when it reversed the Panel's interpretation of Art 2.2.2.[48] Having reviewed the decisions in *EC – Bed Linen,* I accept these submissions.

187. In *US – Anti-Dumping and Countervailing Duties (Korea)* (DS539)[49] the Panel, in considering a dispute between Korea and the US, observed that:

[47] REP 655, page 15.
[48] EC – Bed Linen WT/DS141/R at [6.72].
[49] WT/DS539/R at [7.578], p 175.

> *….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 Anti-Dumping Agreement is "inoperative" in light of the facts and circumstances of the present case.*

188. However, these observations were made in the context of the particular dispute between Korea and the US about whether certain facts available should be disregarded for the purposes of calculating the “ceiling” for the purposes of Art 9.4 and are not directly applicable to the disputed statutory interpretation in this review. The decisions of the WTO Appellate Body in US – Hot-Rolled Steel (DS184) and US – Zeroing (Article 21.5 – EC) (DS294)[50] are raised in a similar context. Given the differences in Art 9.4 and the mandatory requirements in subsections 269TACAB(2)(c) and (d) and the matters being considered in those cases, I do not find these decisions to be of assistance.

189. Nor is the guidance provided by the ADC in its Dumping and Subsidy Manual in relation to r 45(3) of the Customs (International Obligations) Regulation 2015 authoritative in relation to the interpretation of subsection 269T(5A). In this regard, I accept the ADC’s submissions that the guidance relates to a different provision and is, in any event, not extrinsic material. The concept of “weighted average” is used in the Act in several different contexts and in my view its interpretation and application should be construed in the specific context in which it is used. Relevantly, the ADC cases of FSI pineapple from Thailand (Report 295) and Hollow structural sections from China (Report 295A) both relate to the application of r 43 and, in my view, the approach taken by the ADC in those cases can be distinguished for the circumstances and issues raised in this Review.

190. The ADC submits that the Applicants’ reliance on *Press Metal Aluminium* is misplaced. The contention that, once it became apparent once sampled exporter would be excluded under subsection 269TACAB(3), the ADC was required to take affirmative steps to avoid the resulting lacuna is not supported by the findings of

[50] WT/DS184/AB/R and WT/DS294/AB/RW.

the Federal Court. It is contended that *Press Metal Aluminium* concerned a materially different question, namely whether the ADC denied procedural fairness by determining the normal value without first obtaining information from *Press Metal Aluminium* on a level of trade adjustment. The proceedings were resolved by consent without the Court delivering reasons articulating the principles of general application capable of guiding the operation of the Act in other cases. It is submitted that there are no comparable factual circumstances that arise in the present investigation and there is no obligation on the ADC to reopen or extend sampling to undertake exporter specific examinations in order to avoid "the ordinary consequences of the Act's residual exported provisions".

191. I accept this submission. The Federal Court orders do not provide authoritative precedent for the proposition that such an obligation exists in circumstances such as this. I accept that there are circumstances where the ADC should take steps to fill an evidentiary gap, but this is because there would be no information on which the relevant decision could be made. For the reasons outlined above, I am not satisfied that this is the case in relation to the decision under review. While it may be contended by the Applicants that there is further available information that would make the decision fairer for them as residual exporters, this is not the test provided under the Act. Once the ADC used the sampling methodology, which it was entitled to do and properly applied subsections 269TACAB(2)(c) and (d), which I am satisfied it did, there is no obvious evidentiary gap.

192. Finally, the ADC contends that subsection 269TACAB(2) and subsection 269T(5A) should be construed taking into account the statutory scheme which provides an alternative avenue for residual exporters who are dissatisfied with the dumping margin determined under section 269TACAB. An affected party may request a review of anti-dumping measures once the requisite period has elapsed under Div 5 and the review mechanism allows export-specific cooperative residual or uncooperative exporter rates to be reviewed. Relevantly, the Act does not confer an entitlement to review or for individual examination once sampling has concluded, which is said to support the contention that Parliament did not intend subsection 269TACAB(2) to become inoperative whenever one eligible exporter remains. There is force in this submission.

Conclusion

193. Having carefully considered the competing contentions of the parties, I am persuaded by the contentions of the ADC that the use of the data of a single exporter for the purposes of determining and calculating dumping of residual exporters under subsection 269TACAB(2), is not in contravention of the Act. Accordingly, I am not satisfied that the Minister has erred in relying on the data of Ann Joo and VK Steel alone to calculate the dumping margin for residual exporters under 269TACAB(2). Accordingly, it is unnecessary to consider the second question raised by the Applicants, namely, how the error should be remedied.

194. In summary, I find:

a) Subsection 269T(5A), as it is used in subsection 269TACAB(2)(c) and (d), does not require multiple inputs – the formula remains mathematically coherent and is capable of producing a valid result.

b) There is no contrary intention expressed in the Act and the statutory context supports the construction that Parliament must have intended the sampling and the residual exporter provisions to have effect and to work together despite the potential impact of the subsection 269TACAB(3) exclusion.

c) The construction contended for by the Applicants does not provide a mechanism to resolve the issue under the existing statutory framework. The mechanisms proposed involve a post-facto revisiting of the investigation outcomes after the sampling process has been undertaken. Despite contentions that there was no dumping and the Applicants data is “verified” or “easily verifiable”, the data of the Applicants would nonetheless need to be verified under a proper process. An exporter should not be able to raise this after the investigation has been completed using the sampling process has been applied. I accept that the construction contended by the Applicants not only has the potential to prolong the investigation but may require the ADC to keep expanding the sample, after the investigation, until it is able to use the data of multiple exporters.

d) *Press Metal Aluminium* does not apply as there is no obvious evidentiary gap. Nor do the applications raise procedural issues. After applying the sampling

procedures and properly applying the exclusion under subsection 269TACAB(3), one sampled export remained for Malaysia and Vietnam. This necessarily resulted in the variable factors for residual exporters being determined by the data of a single exporter. If this is permitted under subsection 269TACAB(2), there is no methodological or evidentiary gap. Further, there is no judicial or ADRP authority on this issue and WTO and AB decisions are not directly relevant.

e) The statutory scheme supports the ADC contention and gives effect to the 2012 amendments and timeliness timeframes. While the Applicants contend that it would be fairer to them if the dumping calculation was made by reference to individual determinations, this is not the test, and any unfairness can be address by exporters later seeking a review of the measures under Division 5 of the Act.

195. Accordingly, I reject the Applicants' grounds of review.

Recommendation

196. Pursuant to s 269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was the correct or preferable decision.

197. For the reasons set out in this report, I recommend that the Minister pursuant to s 269ZZM(1)(a) of the Act affirm the Reviewable Decision.

Jan Redfern PSM
Panel Member
Anti-Dumping Review Panel
29 May 2026

Appendix A

Conference

Date of conference	Participants	Purpose of conference
29 April 2026	Anti-Dumping Commission	The Review Panel sought further information in relation to the sampling report (ADN 2025/014) and the dumping margin calculations for certain exporters and the residual exporters