

NON -CONFIDENTIAL VERSION
ADN No 2019/125



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a Ministerial decision.

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

Time

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

Conferences

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

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

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

² As defined in section 269ZX *Customs Act 1901*.

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

Contact

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

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Siam Yamato Steel Co. Ltd.(SYS)
Address: 1 Siam Cement Road, Bangsue Bangkok, 10800, Thailand.
Type of entity (trade union, corporation, government etc.): CORPORATION

2. Contact person for applicant

Full name:
Position: Authorised representative
Email address
Telephone number:

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

<p>Siam Yamato Steel Co.Ltd is the Producer and Exporter to Australia of the Goods subject to the Ministers decision published on the 11th November 2019 in relation to recommendations to the Minister by the Anti-Dumping Commission final report on Case No 499 (Review of Measures).</p>

4. Is the applicant represented?

Yes No

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If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

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PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

The Goods are: Hot Rolled Structural Steel Sections in the following shapes and sizes, whether or not containing alloys:

- **Universal beams (I sections), of a height greater than 130mm and less than 650mm;**
- **Universal columns and universal bearing piles(H Sections) , of a height greater than 130mm and less than 650mm**
- **Channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and**
- **Equal and Unequal Angles (L sections) with a combined leg length of greater than 200mm.**

Sections and/or shapes in the dimensions described above, that have minimal processing , such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.

Excluded Goods:

The measures do not apply to the following goods:

- **Hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections , such as rounds, squares, flats, hexagons, sleepers and rails; and**
- **Sections manufactured from welded plate(e.g. welded beams and welded columns)**

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

Goods identified as hot rolled non-alloy steel sections, as per the shapes and sizes described above (6) , are classified to the following tariff subheadings in schedule 3 to the Customs Tariff Act 1995:

- **7216.31.00 statistical code 30 (channels-U and C sections);**
- **7216.32.00 statistical code 31 (universal beams-I sections)**
- **7216.33.00 statistical code 32 (universal column and universal bearing piles-H sections) and;**
- **7216.40.00 statistical code 33 (equal and unequal angles-L sections)**

Goods identified as hot rolled alloy steel sections, as per the shapes and sizes described above, are classified to tariff subheading 7228.70.00(statistical codes 11 and 12) in schedule 3 of the Customs Tariff Act 1995.

The commission has also introduced a Model Control Code (MCC)structure for identifying identical and like goods sold on the domestic market with those exported to Australia.

The MCC Structure for this investigation was published as Appendix 1 to ANTI-DUMPING NOTICE No 2019/02.

-Confidential Attachment 'A' provides an extract of that Notice as it relates to SYS.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:
For the Review of Measures on these goods, the Anti-Dumping Notice number is No 2019/125 ;

Date ADN was published:
ADN number, 2019/125 was published on the 11th November 2019 and copy is attached.

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

PART C: GROUNDS FOR THE APPLICATION

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If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

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

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

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

GROUND No 1:

Siam Yamato Steel Co.Ltd.,(SYS) contends that the Reviewable Decision published on ADN No 2019/125 was not the correct or preferable decision and should be revoked because the Commissioner 's determination of normal value for the verified exporter SYS failed to properly base it on relevant quarterly domestic sales of identical goods exported to Australia in accordance with s 269T.

s269T of the 'ACT' defines 'like goods' –

' like goods, in relation to goods under consideration , means goods that are identical in all respects to the goods under consideration or, although not alike in all respects to the goods under consideration have characteristics closely resembling those goods under consideration'.

In the Commission's 'Manual' , Section 2 on Like Goods, the clear inference is that if the goods are found to be identical , it is not necessary to to further consider other factors in determining the question of like goods.

SYS contends that where there are relevant domestic sales of identical goods then the normal value needs to be determined on those identical goods provided they satisfy the sufficiency and OCOT tests.

Absent those sales, then the Commission needs to determine normal value on the relevant domestic sales of the most directly comparable goods to the exported goods.

Normal Value methodology:

The Commission determined the normal value for SYS in accordance with s269TAC (1) of the ACT.

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The normal policy and practice is for the Commission to calculate the the total normal value for the investigation period by using the quarterly weighted average unit normal value multiplied by the corresponding quarterly export volumes, and ;

For the Commission to compare the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of the investigation period in accordance with s269TACB (2) (a) of the 'ACT'

The Commission's Manual at section 7.3, PRACTICE re the MCC structure states 'inter alia' –

'Model matching criteria will be followed in order to identify identical goods sold on the exporter's domestic market , or absent identical goods which goods most closely resemble the goods under consideration.

Confidential Attachment 'B' details that SYS had sufficient domestic sales of identical goods in the OCOT in the first two quarters of the whole of the investigation period, namely quarters ending March and June of year 2018.

Those identical goods sales should have been used to determine the normal value for the first two quarters and SYS rejects the Commission's stance that the identical sales needed to be acceptable sales for every quarter of the investigation period.

GROUND No 2:

Adjustments for Domestic Credit:

The Commission determined normal values for SYS in accordance with s269TAC(1).

s269TAC(1) requires that normal value is the price paid or payable in arms length domestic sales transactions.

To ensure a fair comparison of normal values with export prices the Commission correctly accepted the need to adjust normal value to reflect domestic credit costs in accordance with s269TAC (8).

The Commission however has applied a figure of ■ % {RATE} on the basis that it is considered to be more appropriate than than the actual effective ■ % {RATE} per annum credit charge since it is closer to independent interest rates on bank loans etc.

Also, SYS strongly disputes the Commission's comment in the final report that ' the Commission did not find that the actual credit costs as claimed by SYS were incurred'.

Given this comment by the Commission was only conveyed at the time of the Minister's decision being published, SYS has had no opportunity to respond to what is considered an incorrect 'finding'.

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On the basis that the █%(RATE) can be further verified ,SYS contends that there is no legal basis to ignore the true, factual domestic price mechanism and instead impose some hypothetical pricing that adversely affects the normal value calculation and thus the determined dumping margin.

Ground No 3:

Export Credit charges:

Firstly, SYS acknowledges that this ground does not materially impact on the current dumping duty margin but it is included for seeking clarification in the event there is a duty assessment application lodged or when a further review of measures occurs

{Outline of the circumstances provided-considered to be commercially sensitive information}.

Ground No 4:

Ordinary course of trade:

This relates to the domestic sales of certain like goods-not being identical goods- and identified as being MCC █ (█) {GRADE-SHAPE-YIELD STRENGTH} that were obviously sold at a nett loss and as such were not considered by the Commission in the determination of normal value in accordance with subsections 269TAAD(1)(a), (b), (2) and (3) .

As indicated, the like goods in question are small sized" █" {SHAPE}produced to specification █ {GRADE} and only comprising one size, namely █ mm [SIZE] and which on the basis of the Commission's MCC structure of Appendix 1 to ADN No 2019- 02 are identified as being █ [MCC].in terms of Items 1, 2, 3 for mandatory sales data.

-Confidential Attachment 'A' provides a relevant extract of the MCC structure of ADN No 2019-02

SYS contends however that whilst the Commision has treated those sales strictly in accordance with the legislation, it would have been open to the Commision to give more consideration as to whether those sales could have been recoverable in a reasonable period of time and thus could have been included in the determination of normal value for those most comparable like goods in the █ {NUMBER} quarters ended █ █ {PERIOD OF I.P.}

Whilst acknowledging the Commission has applied the relevant legislation on a WAV 'model' only basis, given the remaining domestic sales identified as MCC -█. were , contrary to the █ mm size{SIZE}, very profitable and when both the profitable and non-profitable sales are treated as 'one' , the result is for the █ {NUMBER} quarters in question, the sales were profitable.

It can be demonstrated that all of the domestic sales identified as being █ {MCC}, when treated as a 'whole' returned calculated nett profits of █ % {RATE}and █ % {RATE} for the █ {PERIOD}quarters respectively.

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This suggests that if the WAV domestic selling price of the goods comprising that 'model' was compared to the WAV cost to make and sell of the goods over the period, the excluded sales at a loss could have been considered recoverable within a reasonable period of time given that the sales in question are all of the same grade and shape, although the excluded sales have a [REDACTED] {DEGREE} than the included sales. s269TAAD (3) is considered to be relevant.

The Commission did find that in regard to all of SYS relevant domestic sales, [REDACTED] % {RATE} were profitable, the exception being those excluded sales as described above and SYS is contending that s269TAAD (3) is relevant.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct or preferable decision ought to be:

- **The Minister revoke the decision BASED on Report No 499 in relation to SYS that pursuant to subsection 8(5) of the Dumping Duty Act that:**

The interim dumping duty payable in respect of the goods exported to Australia by SYS is an amount which will be worked out in accordance with the combination fixed and variable duty method pursuant to subsections 5 (2) and 5 (3) (a) of the Dumping Duty Regulations with the 5% fixed ad-valorem rate to be adjusted downwards from the 11th November 2019;

Alternatively , the Minister revoke the decision BASED on Report No 499 in relation to SYS that pursuant to subsection 8 (5) of the Dumping Duty Act, that the interim dumping duty payable on the goods exported to Australia by SYS from Thailand be an amount worked out in accordance with the floor price method pursuant to subsections 5 (4) and 5 (5) of the Customs Tariff (Anti-Dumping) Regulation 2013 (the Dumping Duty Regulation) with effect from the 11th November 2019.

SYS has calculated that in terms of Grounds 1, 2, and 3, the correct or preferable decision would reduce the 5% interim dumping duty to 3.6% which is considered to be a material difference.

In terms of Ground 4 also being accepted , the 5% interim dumping duty is calculated to be reduced to 1.1%.

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

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Re Ground No 1;

- s269T of the ACT and the Commission's Manual on Policy and Practice support the claim that when there are identical domestic sales of the goods exported, there is no need to conflate those with other comparable domestic sales

Re Ground No 2:

- s269TAC(1) of the ACT defines normal value as being the price paid or payable .

Re Ground No 3:

- As explained this [REDACTED] {MATERIAL IMPACT}.

Re Ground No 4:

- SYS understands that whilst the Australian legislation - [s269TAAD(1) (b)and (3)]- only involves the 20 per cent test and not any comparison of the WAV sales price of say '[REDACTED]', [REDACTED] {MCC} with the WAV cost to make and sell for that 'model' over the relevant periods, the legislation is understood to include the consideration of cost recovery within a reasonable time.

The fact that [REDACTED] % {RATE} of all relevant domestic sales were profitable suggests that SYS is clearly concerned with sales being profitable.

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

As outlined in Section 10 , the proposed decision is materially different in terms of the amount of interim dumping duty announced by the Minister and the amount that SYS has calculated on the basis of the stated grounds of appeal.

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

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

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- **Anti-Dumping Notice No 2019/125**-The Reviewable decision.
- **Anti-Dumping Notice No 2019/02**-Details the MCC structure for ADN No 2019/125.
- **Confidential Attachment 'A:-'**- Re MCC structure of ADN No 2019/02 (attached)-re Ground No 4.
- **Non-confidential Version of Attachment 'A'**.
- **Confidential Attachment 'B':-** Re 'identical goods' sold domestically re Ground No 1.
- **Non-confidential Version of Attachment 'B'**.
- **Confidential Separate authority to represent**

Signed copy attached

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: ATTACHED

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Name:

Position:

Organisation:

Date: / /

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PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative
Organisation
Address:
Email:
Telephone number:

Representative's authority to act

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

Letter of Authority being provided.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position: Marketing Division Manager

Organisation: Siam Yamato Steel Company Limited.

Date: 3/12 /2019.



ANTI-DUMPING NOTICE No. 2019/125

Customs Act 1901 – Part XVB

Hot rolled structural steel sections

**Exported to Australia from Japan, the Republic of Korea,
Taiwan (except by Feng Hsin Steel Co Ltd) and the
Kingdom of Thailand**

Findings in relation to a review of Anti-Dumping Measures (Review 499)

***Notice under subsection 269ZDB(1) of the Customs Act 1901 and
subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975***

The Commissioner of the Anti-Dumping Commission has completed a review, which commenced on 3 January 2019, of the anti-dumping measures in the form of a dumping duty notice applying to certain hot rolled structural steel sections (HRS or 'the goods') exported to Australia from Japan, the Republic of Korea (Korea), Taiwan (except for exports by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand (Thailand).

Recommendations resulting from the review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 499* (REP 499).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology have considered REP 499 and have decided to accept the recommendations and reasons for the recommendations including all the material findings of facts or law set out in REP 499.

Under subsection 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), with effect from the date of publication of this notice, the dumping duty notice currently applying to the goods exported to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin Steel Co Ltd) and Thailand is to be taken to have effect as if different variable factors relevant to the determination of duty had been fixed in respect of exporters generally.

I determine, pursuant to subsection 8(5) of the Dumping Duty Act, that:

- the interim dumping duty payable on the goods exported to Australia by TS Steel Co. Ltd from Taiwan be an amount worked out in accordance with the floor price duty method pursuant to subsections 5(4) and 5(5) of the *Customs*

Tariff (Anti-Dumping) Regulation 2013 (the Dumping Duty Regulation) with effect from the date of publication of this notice; and

- the interim dumping duty payable in respect of the goods exported to Australia by:
 - all exporters from Japan;
 - all exporters from Korea, except for Hyundai;
 - Dragon Steel Corporation from Taiwan;
 - uncooperative and all other exporters from Taiwan; and
 - all exporters from Thailand

is an amount which will be worked out in accordance with the combination fixed and variable duty method pursuant to subsections 5(2) and 5(3)(a) of the Dumping Duty Regulation with effect from the date of the publication of this notice.

Particulars of the dumping margins established for each of the exporters and the fixed rates of duty are set out in the following table.

Country	Manufacturer/ exporter	Dumping margin	Effective fixed rate of interim dumping duty	Duty Method
Japan	All Exporters	12.2%	12.2%	Combination
Korea	Hyundai Steel Company	4.7%	4.7%	Combination
	Uncooperative Exporters	7.9%	7.9%	Combination
Taiwan	Dragon Steel Corporation	9.0%	9.0%	Combination
	TS Steel Co Ltd	-1.6%	0%	Floor price
	Tung Ho Steel Enterprise Corporation	-1.6%	0%	Floor price
	Uncooperative Exporters	12.3%	12.3%	Combination
Thailand	Siam Yamato Steel Co Ltd	5.0%	5.0%	Combination
	Uncooperative Exporters	7.7%	7.7%	Combination

Affected parties should contact the Anti-Dumping Commission (the Commission) on 132846 or +61 2 6213 6000 or clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

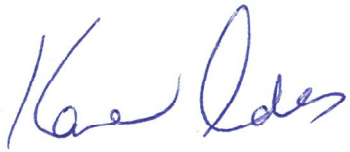
To preserve confidentiality, details of the revised variable factors being the Ascertained Export Price, Ascertained Normal Value and non-injurious price will not be published.

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

REP 499 has been placed on the Commission's public record. The public record may be examined at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission's office during business hours by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2428 or by email to investigations2@adcommission.gov.au.

Dated this 5 day of November 2019

A handwritten signature in blue ink, appearing to read 'Karen Andrews', written in a cursive style.

KAREN ANDREWS
Minister for Industry, Science and Technology

NON-CONFIDENTIAL ATTACHMENT 'A' ADRP APPEAL ADN No 2019/125

EXTRACTs from APPENDIX -1, ANTI-DUMPING NOTICE No 2019-02

Proposed Model Control Code Structure.

ITEM	Category	Sub-Category	Identifier	Sales Data	Cost Data	Key Category
1	PRIME	PRIME	P	Mandatory	N/A	YES
		NON-PRIME	N			
2	SHAPE	Universal beams (I sections)	I	Mandatory	Mandatory	YES
		Universal columns & Universal Bearing Piles ('H' sections)	H			
		Channels ('U' or 'C' sections)	C			
		Angles (Equal and Unequal Angle sections)	A			
3	Minium Yield Strength	Less than 265MPa	A	Mandatory	Mandatory	YES
		Greater than or equal to 265MPa	B			

Note:

1. SYS exported identical goods identified as P-H-B and P-C-B [REDACTED] (PERIOD)of the I.P.
2. SYS exported most directly comparable goods identified as P-H-A, and P-C-A in [REDACTED] (PERIOD)of the I.P.
3. P-H-A and P-C-A identified as having a minimum MPa of less than 265MPa based on the Thai Standard specification.
4. Re the P-C-A 'model' , SYS originally proposed that the MPa should be determined on the actual MPa as evidenced on Mill Test Certificates that accompany every transaction.
5. Ground No 4 relates to the P-C-A model exported during the [REDACTED] (PERIOD) of the I.P..

NON- CONFIDENTIAL Attachment 'B'- Siam Yamato Steel Co. Ltd. -ADRP application

ADC Case Nos 499 on Hot Rolled Structural Steel Sections ex Thailand

Anti-Dumping Notices No 2019/125 of 11th November 2019 refer.

Line #	Relevant Sales Exports Or Domestic	Goods Shape Type Sub Category Item 2 MCC Structure	ADC 's MCC – Mandatory 'model Identifier' Structure Appendix 1 ADN No 2019/02	Specification And Grade Grade 300	Tonnes March Qtr	Tonnes June Qtr	Tonnes Sept Qtr	Tonnes Dec Qtr	Total Tonnes I.P.	Notes
1	Exports	Beams	P-H- B.	AS /NZS 3679-1-300						
2	Domestic	Beams	P-H-B	AS/NZS 3679-1-300						
3	Domestic	Beams	P-H-B	AS/NZS 3679-1-300 SO						
4	Total	Beams	P-H-B	Identical Domestic						
5	Exports	Channels	P-C-B	AS/NZS 3679 -1-300						
6	Domestic	Channels	P-C-B	AS/NZS 3679-1-300						
7				Sufficiency for NV						
8				OCOT for NV						

CLAIMS:

1. For the March and June quarters of the Investigation Period (I.P) Siam Yamato Steel had sufficient domestic sales of Identical goods exported to Australia in terms of the Commission's MCC structure and in regards to both 'Shape' and Steel Specification /Grade.
2. The Australian market 'specifiers' and 'users' demand the GUC to be compliant with the AS/NZS 3679-1-300 specification and Grade 300 MPa.
3. For Normal Value purposes ,the Commission only needed to base Quarterly Costs and sales data for the [REDACTED] (PERIOD of I.P) on what were essentially identical domestic sales to that exported and which exceeded the 5% sufficiency test and which were determined to be profitable (OCOT) sales. For the [REDACTED],(PERIOD of I.P.) the Commission needed to determine quarterly NV's on the most directly comparable domestic sales which are detailed on Confidential Attachment 'A'.