

**APPLICATION FOR REVIEW OF  
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY  
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish :  a dumping duty notice(s), and/or  
 a countervailing duty notice(s)

OR

not to publish :  a dumping duty notice(s), and/or  
 a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

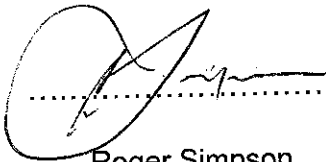
I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

[If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:  .....

Name: .....Roger Simpson.....

Position: .....Consultant.....

Applicant Company/Entity:

....Siam Yamoto Steel Co. Ltd.....

Date: 15 / 12 / 14

**Applicant**

Siam Yamato Steel Co. Ltd.  
1 Siam Cement Road  
Bangsue  
Bangkok 10800  
Thailand

Form of business: Company

**Contact details**

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Export Sales Department Manager  
Tel: +66 2 5862371  
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Email: [charlerta@syssteel.com](mailto:charlerta@syssteel.com)

**Consultant**

Mr Roger Simpson  
Roger D Simpson & Associates Pty Ltd  
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Port Adelaide SA 5015  
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Copy of authorisation at attachment 1.

**Goods to which the application relates.**

The goods subject of the application 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.

## NON-CONFIDENTIAL

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 application.

Goods excluded from this application are:

- 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 (eg. welded beams and welded columns).

### **Tariff classification of the goods to which the application relates.**

- 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).

### **Reviewable decision.**

A copy of the reviewable decision is at attachment 2.

### **Notification of the reviewable decision.**

Anti-Dumping Notice No. 2014/127 of 20 November 2014.

### **Reasons for believing that the reviewable decision is not the correct or preferable decision.**

Please refer to attachment 3.

### **Non-confidential version**

A non-confidential version of the reasons for believing that the reviewable decision is not the correct or preferable decision is at attachment 4.



Siam Yamato Steel Co.,Ltd  
1 Siam Cement Road, Bangsue  
Bangkok, Thailand 10800

December 3, 2014

To: The Anti-Dumping Review Panel  
c/- Legal Services Branch  
Australian Customs and Border Service  
Customs House  
Canberra ACT 2601  
Australia

Dear Sir/Madam,

**Application for Review of the Minister's Decision to Publish a Dumping Duty Notice in  
Relation to our Exports of Hot Rolled Structural Steel Sections.**

This letter is to provide authorization of consultant Mr Roger Simpson of Roger D Simpson & Associates Pty Ltd to represent our company in seeking a review of the Minister's decision to publish a dumping notice in relation to our exports of hot rolled structural steel sections to Australia.

Yours faithfully,

Mr. Pongsak Haelom  
Marketing Division Manager  
December 3, 2014



**Australian Government**  
**Anti-Dumping Commission**

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*Customs Act 1901 – Part XVB*

**Hot Rolled Structural Steel Sections**

**Exported from Japan, the Republic of Korea, Taiwan and the**

**Kingdom of Thailand**

**Findings in Relation to a Dumping Investigation**

***Public notice under subsections 269TG (1) and (2) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of hot rolled structural steel sections (“the goods” or “HRS”), exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and the Kingdom of Thailand (Thailand).

The goods are classified to following tariff subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7216.31.00 statistical code 30;
- 7216.32.00 statistical code 31;
- 7216.33.00 statistical code 32; and
- 7216.40.00 statistical code 33.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/75, which is available on the internet at [www.adcommission.gov.au](http://www.adcommission.gov.au)

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 223* (REP 223). REP 223 outlines how the Anti-Dumping Commission (the Commission) carried out the investigation and recommends the publication of a dumping duty notice in respect of the goods.

Notice of my decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 20 November 2014.

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish the dumping margins are also set out in the table below.

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901 (the Act)</i> .
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.28%	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

*NB: Pursuant to s. 12 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken.*

*The above table lists the effective rate of duty which in this case are equal to the dumping margins found, as the lesser duty rule pursuant to s. 8(5B) of the Dumping Duty Act in this case does not come into effect.*

*The effective rate of duty has been calculated in accordance with the ad valorem duty method.*

*The investigation as it relates to Feng Hsin Iron and Steel Co Ltd has been terminated, and imports to Australia manufactured by Feng Hsin Iron and Steel Co Ltd are free of dumping duty.*

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 223.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s. 269TG(1) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to:

- (i) the goods; and
- (ii) like goods that were exported to Australia after 14 March 2014 (when the Commissioner made a preliminary affirmative determination under s. 269TD of the

Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before the publication of this notice.<sup>1</sup>

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused or is being caused. Therefore under s. 269TG(2) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Japan, Korea, Taiwan (except for exports by Feng Hsin Iron and Steel Co Ltd) and Thailand.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on Australian industry prices and the consequent impact on the Australian industry including reduced revenues, price depression, price suppression, reduced profits and reduced profitability.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

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

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

REP 223 and other documents included in the public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8270, fax number +61 3 9244 8902 or email at [operations3@adcommission.gov.au](mailto:operations3@adcommission.gov.au).

Dated this 7<sup>th</sup> day of November 2014

ROBERT CHARLES BALDWIN  
Parliamentary Secretary to the Minister for Industry

<sup>1</sup> Within the time limitations of section 45 of the Act.



**REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.**

The Parliamentary Secretary to the Minister for Industry's ("Parliamentary Secretary") decision to publish a dumping duty notice in relation to Siam Yamoto Steel's ("SYS") exports of hot rolled structural steel sections ("HRS") is based on the Anti-Dumping Commission's ("the Commission") determination of a non-negligible margin of dumping in respect of these exports. We believe that the Anti-Dumping Commission's dumping margin determination is incorrect and therefore the Parliamentary Secretary's decision to publish the said dumping duty notice is not the correct or preferable decision. Our reasons for the belief that the Commission's dumping margin determination is incorrect follow.

**Steel grade selection**

For the purpose of calculation of normal values for use in the determination of dumping margins for all investigated exporters other than SYS, ie JFE Bars and Shapes Corporation (Japan), Hyundai Steel Company (Korea), TS Steel Co Ltd (Taiwan) and Tung Ho Steel Enterprise Corporation (Taiwan), the Commission considered that grade SS400 was the most comparable grade of like goods to the grade 300 HRS exported to Australia sold by the said investigated exporters in their respective domestic markets.<sup>1</sup>

The Commission's stated approach to selection of HRS grades for normal value assessments was to at first identify domestic sales of like goods and to then select from those like goods the "closest comparator" or "closest comparative" grade to the grade 300 exported to Australia.<sup>2</sup> It followed this approach in the case of all investigated exporters, other than SYS, who had more than one grade of domestic sales which met the like goods definition. That is, where an exporter (other than SYS) had more than one grade of domestic sales of like goods to the grade 300 exported to Australia, the Commission selected the single grade of those like goods which most closely matched grade 300, ie was the "closest comparator" or "closest comparative goods". An example of this is Hyundai Steel which sold grades SS400 and SM490A in the domestic market, both considered like goods to grade 300 exported to Australia, and the Commission based its normal value calculations for Hyundai Steel on only grade SS400 domestic sales, as it considered SS400 to be the "closest subset of like goods".<sup>3</sup>

In the case of SYS, the Commission did not follow this approach in respect of its exports of grade 300 channels. SYS had domestic sales of two grades of like goods to the channels exported to Australia, one being SS400, the most comparable grade to grade 300, and the other superior dual grade SS/SM400 – a similar situation to that cited above for Hyundai Steel. Despite SS400 being

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<sup>1</sup> Final Report No. 223, sections 7.4, 7.5 and 7.6.

<sup>2</sup> SEF No. 223, section 6.3.1.3.

<sup>3</sup> Ibid, section 6.3.1.8; Final Report No. 223, section 7.5.1.

the closest comparative grade of like goods and being in sufficient sales volume for normal value, contrary to its approach in respect of other exporters, the Commission included the superior dual grade SS/SM400 with grade SS400 in its normal value calculation of SYS' grade 300 channel exports. Because SYS' domestic selling prices of superior grade SS/SM400 channels were higher than those of grade SS400 channels, this inconsistent approach by the Commission resulted in a substantially higher normal value for channels and overall dumping margin. It also contributed to SYS' dumping margin being substantially higher than that of other investigated exporters.

Under Thai International Standards ("TIS") and Australian Standards ("AS"), grades SS400 and AS300 are the lowest grades of mild steel respectively. TIS' dual grade SS/SM400 is a superior grade to SS400 (and AS300) as it includes grade SM400, a superior TIS grade of mild steel which is comparable with AS superior grade 300LO and requires impact testing, as does AS300LO (not AS300). The purpose of SM400 is welding whereas AS300 and SS400 are suited for bolt and nut installation. Because of its weldability, SM400 requires more controlled chemical composition so as not to exceed certain levels for carbon, silicon, manganese, phosphorous and sulphur. The inclusion of the higher quality and impact tested SM400 in dual grade SS/SM400 makes this grade superior to SS400 (and AS300) and causes it to be of higher cost and higher priced than SS400 (and AS300).

The Commission's inclusion of superior SS/SM400 dual grade channel domestic sales in the normal value calculation for SYS' grade 300 export channels appears to have been influenced by the fact that this grade constituted the major volume of domestic sales of HRS during the investigation period. This fact has no relevance as, even though grade SS400 did constitute a minor volume of SYS' domestic sales of channels during the investigation period, its sales volume was sufficient for determination of normal value, ie more than 5%

In summary, as was the case with all other investigated exporters, grade SS400 is the closest comparable grade of like goods sold in SYS' domestic market to its exports of grade 300 channels to Australia and, contrary to its methodology in respect of other investigated exporters, the Commission did not base its normal value calculation for SYS' exports of grade 300 channels on these domestic sales of grade SS400 channels alone. In its calculation of SYS' normal value of its grade 300 channel exports, the Commission did not just use domestic sales of the most comparable grade of like goods as it did with all other investigated exporters with more than one grade of like goods sold in the domestic market, but included a higher priced superior grade of like goods, resulting in a higher normal value for channel exports and a higher overall dumping margin.

#### **Date of sale**

Contrary to the Commission's final report findings<sup>4</sup>, SYS did provide evidence to the Commission that the material terms of its export sales to Australia are established by final order confirmation. The sets of documents in relation to

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<sup>4</sup> Final Report No. 223, section 7.7.2 (2d)

export shipments selected for verification by the Commission included order confirmations and invoices for these shipments, and these documents proved that the verified invoiced prices and quantities were established by final order confirmations.

As explained to the Commission and demonstrated by the verified export documents provided to them, initial order confirmations may be renegotiated, but final order confirmations form the final contract between buyer and seller in relation to price, quantity and other material terms of sale. It is the terms of this contract upon which the buyer's letters of credit are established and invoices are based.

It is of note that the verification team in the previous investigation concerning SYS' HRS exports found that *"the date of order confirmation by SYS is the date of sale"*.<sup>5</sup>

In summary, the Commission's said final findings that SYS did not provide evidence that the material terms of export sales were established by order confirmation is untrue. Verified documents provided in relation to selected export shipments included order confirmations, letters of credit and invoices which proved that the material terms of SYS' export sales to Australia were established by the final order confirmation and therefore it is the date of this final order confirmation which is the date of sale.<sup>6</sup>

#### **Conversion of export prices from Australian dollar (AUD) to Thai baht (THB).**

Subsection 269TAF(2) of the Customs Act provides that –

*If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.*

The "rollover gain" reported in SYS' Australian sales spreadsheet at attachment B-4 to its exporter questionnaire response is not a due allowance claim as interpreted by the ADC, but is a bank adjustment to the forward exchange rate contracted between the bank and SYS. It forms part of the conversion of SYS' AUD export prices to THB export prices in accordance with ss269TAF(2) of the Act.

That this exchange rollover adjustment is an adjustment to particular forward exchange rates contracted by SYS was explained and evidenced to the Commission at the verification meeting, following which the Commission expressed its acceptance of it.

To not make this bank adjustment to the forward rate of exchange contracted between the bank and SYS into account in the conversion of AUD export prices to THB export prices is inconsistent with ss269TAF(2) of the Act.

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<sup>5</sup> Exporter Visit Report, SYS, September 2002, section 4.1.

<sup>6</sup> Footnote 8 to Article 2.4.1 of the AD Agreement; Dumping and Subsidy Manual, page 60.

### Cutting cost normal value adjustment

Subsection 269TAC(8) provides that –

*Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

- a) relate to sales occurring at different times; or*
- b) are not in respect of identical goods; or*
- c) are modified in different ways by taxes or the terms of circumstances of the sales to which they relate;*

*that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.*

The circumstance of sales of the goods under consideration (“GUC”) in lengths less than 12 metres is different for export and domestic sales, modifies prices in these sales in different ways and affects comparison of the prices in these sales. Consequently, in normal value calculations the domestic price of sales of the GUC in lengths less than 12 metres must be adjusted vide ss269TAC(8) to remove the effect of this price modification on its comparison with export price.

The Commission verified the fact that a charge of THB [REDACTED]/mt was made by SYS for domestic purchases of the GUC in lengths less than 12 metres and no such charge was made to its Australian customer’s purchases of the GUC in lengths less than 12 metres.

It was explained to the Commission on several occasions and appeared to be accepted by them that this THB [REDACTED]/mt charge was made by SYS to cover the additional cost incurred by it in cutting 12 metre lengths to shorter lengths required by domestic customers at its Sriracha domestic distribution centre. It was explained to the Commission that no such cost was incurred in export sales of lengths less than 12 metres as the GUC were produced at SYS’ mill to the lengths required by export customers. That is –

- export sales of the GUC were produced to the lengths required by its export customers at SYS’ mill and there was no additional cutting cost; whereas
- domestic sales were all produced in 12 and 18 metre lengths at SYS’ mill, transferred in these lengths to its Sriracha domestic distribution centre where an additional cutting cost was incurred for domestic sales of less than 12 metres and domestic customers charged THB [REDACTED]/mt for such additional cutting cost.

The Commission certainly verified that there was an additional charge of THB [REDACTED]/mt for domestic sales of the GUC in lengths less than 12 metres and no such charge for export sales of lengths less than 12 metres and appeared to accept the above explanation for this additional charge.

To not make an adjustment to domestic selling prices of the GUC in lengths less than 12 metres for this additional THB [REDACTED]/metre charge for cutting cost,

which affects their comparison with export prices for the GUC in lengths less than 12 metres, is inconsistent with ss269TAC(8) of the Act.

**Level of trade adjustment**

In addition to section 269TAC(8) of the Act cited above, Article 2.4 of the WTO Anti-Dumping Agreement provides that –

*A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, **levels of trade**, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.* (emphasis added).

It is clear from the above provisions that the Commission is obliged to make an adjustment (due allowance) for differences in levels of trade which affect a fair comparison between export price and normal value.

In this case, fair comparison between normal value and export price to Australia is significantly affected by, among other things, the level of trade of SYS' domestic customers, viz distributors and end-users, and the level of trade of its sole Australian customer ThyssenKrupp Mannex ("TKM"), a trader who on-sells to distributors and end-users.

That the level of trade difference between SYS' domestic customers and its sole Australian customer, TKM, affects fair comparison of domestic prices and export prices to Australia is clear from the fact that SYS' sales prices to TKM are

[redacted] [pricing policy]

Obviously, if SYS were to sell to Australian customers at the same level of trade as its domestic customers, ie to TKM's customers, it would achieve a price higher than that in its sales to trader TKM

[redacted] [pricing policy]

It is of important note that it is TKM's prices in on-sales to its distributor and end-user customers that are competitive with the Australian industry's prices, not SYS' prices to TKM.

The fundamental ground for the Commission's decision to not make due allowance for the difference in levels of trade of SYS' domestic customers and its Australian customer is its finding that there is no evidence to prove that a domestic customer at the same level of trade as SYS' Australian customer, ie

trader, would achieve a lower price than that paid by existing domestic customers.<sup>7</sup>

This finding does not take into account the requirement of ss269TAC(8) of the Act and Article 2.4 of the AD Agreement that an adjustment is to be made when it is demonstrated that level of trade differences of domestic and export customers **affect domestic and export price comparability**.

It has been demonstrated to the Commission that TKM's level of trade (trader selling to distributors and end-users) affects fair price comparability between SYS' export price to it and domestic prices in SYS' sales to domestic customers at the same level as TKM's customers (distributors and end-users). It is clear from evidence provided to the Commission at its verification visit to TKM that if SYS exports were to the same level of customer as its domestic customers (distributors and end-users), the price of those exports would be higher than its export price to TKM in the amount of [REDACTED].

[REDACTED]. That is, a [REDACTED] upward adjustment is necessary to SYS' export price to trader TKM to make it fairly comparable with SYS' normal value based on domestic prices to distributors and end-users.

To not make this level of trade adjustment is inconsistent with Customs Act ss269TAC(8) and WTO AD Agreement Article 2.4 which require adjustments to be made to enable a fair comparison between export prices and domestic prices to customers at different levels of trade, as they are in this case.

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<sup>7</sup> Final Report No. 223, section 7.7.2(5)