

PUBLIC RECORD VERSION

The Director, Investigations 1,
 Anti-Dumping Commission,
 GPO Box 2013,
 CANBERRA ACT 2601,
 AUSTRALIA.

By Email: investigations1@adcommission.gov.au
 11th September 2020.

REP 499 & REP 505
 Preliminary Re-Investigation Report-

Dear Director,

This submission is on behalf of the exporter Siam Yamato Steel Co.Ltd.(Siam) and is in response to the Commission’s preliminary re-investigation report on Hot Rolled Structural steel sections imported from Thailand.

Siam welcomes the Commission’s consideration in relation to the respective credit cost adjustments on the comparable domestic and export sales of identical goods but as* previously advised to the Commission, Siam totally rejects the Normal Value calculations resulting in the preliminary dumping margin of 8.3 per cent.

Whilst the Commission has correctly included the identical goods in the Normal Value calculation, the methodology employed adopted a quarter x quarter approach which demonstrably skews the comparative sales analysis significantly, simply because in two of the four quarters there were such low volume unrepresentative domestic sales that dumping amounts are highly inflated.-Refer Tables No 1.& 2

Siam contends that based on a truly proper and fair comparison of domestic and export sales, namely that the calculation should be conducted on the entire basis of the review period under investigation, the resultant dumping margin is **██████ per cent** as demonstrated in Table No 3 below.

Based on the relevant domestic sales volumes of only identical goods it is respectfully submitted that the Commission’s quarter x quarter approach which it employed in REP 499 is not only considered to be unreasonable and inappropriate but bordering on being protectionist and the Commission is seriously requested to determine the Normal Value over the whole of the investigation period.

The following Tables based on agreed sales data are provided for purposes of demonstrating how the Commission’s quarter x quarter approach totally skews the analysis that results in a dumping duty margin of 8.3 per cent.

TABLE No 1:- **██████ MCC) Sales comparison ‘██████ + ‘██████**

Line	Identifier	Q1	Q2	Q3	Q4	I.P.
1	Domestic sales tonnes -OCOT					
2	Export sales tonnes					
3	% Domestic sales / export sales					
4	Ascertained Export price/tonne					
5	ADC’s calculated Normal Value/t					
6	Unit /tonne Dumping amounts					
7	Extended Dumping # 2 x # 6					

- Notes : 1. Source ADC’s App No 4 supplied **██████** - actual totals may vary due to ‘rounding’ # 4.5.6.7.
 2. Line Nos 4, 5, 6, 7 are ‘rounded-Line No 6 has negative dumping I.P. amount of **██████**/t = **██████**
 3. * Initial response sent as confidential memo on **██████**

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TABLE No 1-CONCLUSIONS:

1. Q 3 & Q 4 Domestic sales tonnes comprised [REDACTED] tonnes compared to export tonnes of [REDACTED]
2. That means the domestic sales were [REDACTED] % of the export sales volume for the two respective quarters.
3. The quarter x quarter approach means [REDACTED] % of domestic sales contributed [REDACTED] dumping amount.
4. Those Q 3 & Q 4 domestic sales tonnes are not considered to be sufficient to be properly representative.

TABLE No 2 [REDACTED] (MCC) Sales comparison ‘ [REDACTED] + ‘ [REDACTED]

Line	Identifier	Q1	Q2	Q3	Q4	I.P.
1	Domestic sales tonnes -OCOT					
2	Export sales tonnes					
3	% Domestic sales/ export sales					
4	Ascertained Export price /tonne					
5	ADC’s calculated Normal Value/t					
6	Unit/tonne Dumping amount					
7	Extended dumping amounts # 2 x #6					

- Notes: 1. Source-ADC’s App No 4 supplied [REDACTED]. Actual totals may vary due to rounding # 4, 5, 6, 7
 2.Line # 4, 5, 6, 7 are ‘rounded’. Line No 6 has dumping amount of [REDACTED]
 3.Initial response sent as confidential memo on [REDACTED]

TABLE No 2 -CONCLUSIONS:

1. Q 3 & Q 4 Domestic sales volumes comprised [REDACTED] tonnes compared to export tonnes of [REDACTED]
- 2.That means the domestic sales were [REDACTED] % of the export sales volume for the two respective quarters.
- 3.The quarter x quarter approach mean [REDACTED] % of domestic sales contributed [REDACTED] dumping amount.
4. Those Q 3 & Q 4 domestic sales tonnes are not considered to be sufficient to be properly representative.

DETERMINATION of DUMPING METHODOD:

As to whether the calculation should be the quarter x quarter methodology or conducted over the whole of the investigation period ,neither the Australian legislation nor the WTO Anti -Dumping Agreement (ADA) specify what particular circumstances mandate which particular method is preferred .

Para 2.1. 6 of the Commission’s preliminary reinvestigation report states that for Siam the dumping margin

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 ‘was assessed by comparing quarterly weighted average export prices to the corresponding quarterly weighted average normal value for the purposes of this reinvestigation during the review period under section 269TACB (2(a)).’

TACB (2) (a) states the Minister may, subject to subsection 3:

‘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’

-TACB (2) (a) is consistent with Article 2.4.2 of the ADA which states:-

‘Subject to the provisions governing fair comparison in paragraph 4 , the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with the weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction -to transaction basis’

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The ADA provision goes on to also allow for weighted averages for entire periods to be compared to individual transactions in limited circumstances. Thus the WTO Agreement sets up only two options, an analysis over the entire period or a transaction -by -transaction analysis in the bulk of circumstances.

Furthermore, the provision states that it is subject to the provisions governing fair comparison in paragraph 4 . That is paragraph 2.4 requiring a fair comparison making due allowances for differences , inter alia, as to quantity.

Based on TABLES No 1 & 2, there are obviously vast differences in the two quarters 3 & 4 between the domestic sales volumes and the export sales volumes to Australia. Those differences are highlighted in the respective Tables.

Siam's contention therefore is that the Commission should either start with the primary method in the ADA or if selecting any other method , make appropriate allowance for this to take account of the obvious mismatch in two quarters.

Siam also contends that this approach is supported by an analysis of the Australian legislation.

While section 269TACB does provide for a third option, being consideration of parts of an investigation -or review- period, it is important to observe that the first mentioned option in section 269TACB (2) (a) is for a whole of period wide analysis , equating to the ADA. Either it establishes a hierarchy , in which case that provision should be utilised, or there should be a good reason for choosing an alternative approach.

Whilst recognising the **Commission's practice** is to typically use the quarter x quarter approach ,and which was used in the original report 499, we again contend that for the above reasons, it would be knowingly protectionist to do a quarterly analysis that clearly skews the calculation for a commercial quantity of exports , based on unduly high prices of an obviously small, unrepresentative, volume of corresponding domestic sales.

It needs to be stated that the basis for this reinvestigation is very different to that of the original review, in that this reinvestigation is only dealing with identical goods and not all like goods.

For example any reasonable person would understand that in, say Q 3, a combined ■ tonnes of domestic sales compared to export sales of ■ tonnes are hardly likely to represent a fair comparison for establishing a benchmark normal value calculation or a fair discrimination analysis. The same applies to Q 4, where a combined ■ tonnes of domestic sales is compared to export sales of ■ tonnes.

Siam also contends that it is important to observe that the ratio between domestic and exports in the last two quarters , if it applied throughout the review period, then an identical goods analysis would not be permissible. It is only permissible by considering the entirety of the review period.

The normal value calculation should therefore be for the entirety of the review period and further support for this view can be obtained from section 269 TACB (10) which stipulates that any comparison must be worked out in respect of similar units of goods whether determined by weight , volume or otherwise.

Given the obvious disparity in volumes in the last two quarters of the review period as detailed in Tables No 1 & 2, the above mentioned provision is considered to give further support for a preference for the first-mentioned section 269TACB (2) (a) method-namely a whole of period approach.

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WTO Appellate Body:

Whilst dealing with different facts, Siam considers that the logic of the WTO Appellate Body in the *EC - TUBE and Pipe Fittings case* is supportive. The Appellate Body considered that:-

‘Permitting such discretionary selection of data from a period of time within the POI would defeat the objectives underlying investigating authorities relying on a POI for the purposes of a dumping determination.’

The Appellate Body observed that a POI period ‘ *can allow the investigating authority to make a dumping determination that is less likely to be subject to market fluctuations or other vagaries that may distort a proper evaluation.*’

Clearly relying upon an insignificant amount of domestic sales to colour the the comparison with export sales is considered to be the very kind of distortion that the Appellate Body was concerned about.

Also in *US-Hot -Rolled-Steel*, the Appellate Body opined that ‘ *discretion must be exercised in an even-handed way that is fair to all parties affected by an anti-dumping investigation.*’

For all of the foregoing reasons the calculation of normal value and the determination of a dumping amount should be undertaken over the entire period which on our calculations based on the Commission’s relevant sales price data results in no dumping duty being justified.

TABLE No 3 – Normal Values over the entire review period:

MCC -SHAPE	N V Extended Value	N V Unit /tonne	FOB Total value	FOB Unit value/tonne	Dumping Amount
██████████					
██████████					
██████████					
██████████					
TOTALS					

- Note: 1. TABLES No 1 & 2 REFER
 2. Any variances due to ‘rounding’ of values
 3. Values are Thai Baht

CONCLUSION:

Based on TABLE No 3, the amount of aggregate dumping is ██████████ which is ██████%

TABLE No 4:

PUBLIC RECORD VERSION**SUMMARY DOMESTIC & EXPORT SALES TONNES:**

MCC-	DOMESTIC SALES TONNES	EXPORT SALES TONNES	SUFFICIENCY TEST > 5%
TOTAL			

FINAL CONCLUSION :

Siam contends it reasonable to claim that retention of the preliminary dumping duty calculation based on solely the quarter x quarter approach would be perverse and protectionist when considered in light of an injury analysis.

If ,as demonstrated in Table No 3, there has been a de-minimis dumping margin over the entire period there can be no injury caused by any Siam dumping to the sole local producer. The only injury causation can be as a result of the Commission's approach to determine normal values on a quarter x quarter basis.

The fair and proper analysis requested by Siam results in no entitlement to dumping duty and this factor must also have relevance to the Commission's intention to recommend a continuation of measures on Siam's future exports which need to compete in the single Australian market with Korean, Taiwan, China and other 'non-dumped' exports.

Please contact the writer for any clarification on the values and content included in this response.

Regards

M J Howard