

Trade & Customs e-Alert

12 SEPTEMBER 2019

Anti-Circumvention Investigation On Malaysian Manufacturers

On 12.8.2019, the United States Department of Commerce launched an anti-circumvention investigation into the anti-dumping and countervailing duties imposed on the corrosion-resistant steel products (**CORE Products**) exported to the country from China. The investigation covers CORE Products that were exported from Malaysia to the US to ensure that the CORE Products from China are not re-routed into the US through Malaysia.

Background

In recent months, the US has imposed significant duties on certain goods including steel products exported from China to the US. These duties are believed to have spurred trade diversion of dutiable Chinese goods by re-routing them through other countries in Southeast Asia, including Malaysia, into the US. As the exporter of the dutiable Chinese goods located in jurisdictions where the US does not impose the high duties, the Chinese manufacturers would be able to circumvent the high duties had the goods been exported directly from China. Hence, the US has launched a multiple anti-circumvention investigation in order to combat the purported circumvention of duties.

The investigation aims to determine whether the CORE Products made with base material, among others, from China, are being finished and shipped from countries like Costa Rica, Guatemala, Malaysia, South Africa and the United Arab Emirates to avoid high duties. According to the United States Department of Commerce, the shipments of CORE Products from those five countries have grown exponentially since the imposition of high duties.¹

¹ "Corrosion-Resistant Steel Products From the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders" <<https://www.federalregister.gov/documents/2019/08/21/2019-18012/corrosion-resistant-steel-products-from-the-peoples-republic-of-china-initiation-of>>

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Investigations Into Malaysian Manufacturers

In the present anti-circumvention investigation of Malaysian manufacturers, the US alleges these companies may have used CORE Products manufactured in China to circumvent the existing anti-dumping and countervailing duties. As part of the investigation, Malaysian manufacturers are required to file a response to the US investigations within the prescribed timelines.

Anti-Circumvention Law

Unlike Malaysia, the US has anti-circumvention law, whereby under Section 781 of its Tariffs Act 1930, it may impose duties on goods which circumvent existing duties or tariffs. In the present investigation in relation to CORE Products, Malaysian manufacturers are required to establish that there is no occurrence of circumvention. They must ensure that:

- Before importation into the US, the goods are completed or assembled in Malaysia.
- The process of assembly in Malaysia is not minor or insignificant.
- The value of goods produced in China does not form a significant portion of the total value of the goods eventually exported to the US.

In determining whether a process is minor or insignificant, the US will take the following into account:

- The level of investment in Malaysia for production of the goods;
- The level of research and development;
- The nature of production process;
- The extent of production facilities.

In essence, a Malaysian manufacturer must prove that the value-add of the CORE Products is significant and not a sham to circumvent the existing duties imposed by the US.

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Our Observation

All genuine steel manufacturers that are subject to this investigation should come clean and declare that they are not using Malaysia as a jurisdiction to circumvent the existing duties on the Chinese CORE products. In other words, the manufacturers must establish that Malaysia is not used to bypass the existing high duties imposed by the US. Further, they are required under the law to show that the manufacturing activities conducted in Malaysia are thorough and sufficient. This can be achieved through the tabling of evidence that a significant amount of investments was being funded to start the manufacturing plant in Malaysia. Expenditure towards research and development of the product manufactured is also additional grounds to show that their manufacturing plant here was set up as a genuine plant to manufacture such steel products.

It would also be apt to demonstrate that the Malaysian manufacturers do not solely source for the raw materials from China. One must also show that one does not have any shareholding relationship with the manufacturers of raw materials from China, and that the relationship is purely professional. In the event a Malaysian manufacturer of the CORE Products fails to respond to the anti-circumvention inquiry, he will be subject to the same anti-dumping and countervailing duties that are imposed on China from the date of initiation of the investigations, i.e. 12.8.2019.

Our Tax, SST & Customs Practice is representing one of the Malaysian manufacturers currently under investigation by the United States Department of Commerce.

For indirect tax issues including anti-dumping and safeguard duties, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

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