

# Trade & Customs e-Alert

7 MARCH 2018

## Anti-Dumping Measures And Imposition Of Tariffs

Over the years, the United States (US) has imposed various anti-dumping measures on steel imports from all over the world.

More recently, the US Commerce Department has recommended tariff impositions of at least 53% on all steel imports from 12 countries — namely, Brazil, China, Costa Rica, Egypt, India, **Malaysia**, Russia, South Korea, South Africa, Thailand, Turkey and Vietnam. The recommendation was made based on Section 232 of the US Trade Expansion Act 1962, which provides that the US can conduct investigations into the effects of imports on grounds of national security and impose tariffs on such imports.

On 1.3.2018, the US President announced that he would be instituting tariffs of 25% and 10% respectively on all steel and aluminium imports this week. The Malaysian steel and aluminium industry was taken aback by this sudden announcement.

### Why anti-dumping and tariff measures?

Anti-dumping laws provide local businesses with a mechanism to obtain relief from the harmful effects of dumping unfairly priced products into their country. Countries can initiate anti-dumping probes to determine if their domestic industry has been hurt by a surge in below-cost imports. As a countermeasure, they impose duties under the multilateral World Trade Organization (WTO) regime, which has been incorporated into domestic law.

However, the imposition of anti-dumping duties can be challenged too. For instance, the US imposition of tariffs on steel and aluminium on national security grounds can be challenged as it potentially violates the spirit of the General Agreement on Tariffs and Trade.

#### Contact persons:

**Datuk D. P. Naban**  
Senior Partner,  
Tax, GST & Customs Practice  
+603-6208 5858  
dpn@lh-ag.com

**S. Saravana Kumar**  
Partner,  
Tax, GST & Customs Practice  
+603-6208 5813  
sks@lh-ag.com

**CHAMPIONING  
TAXPAYERS**

We represent taxpayers. Be it tax litigation, advisory or structuring,  
we focus on clarity, certainty and solutions.  
Make us your confidante today.

## Challenge against tariff measures — South Korean case study

All countries subjected to tariff measures can challenge these barriers through the WTO appeal procedure. Recently, on 14.2.2018, the government of the Republic of Korea (South Korea) filed a request for consultation against the anti-dumping duty imposed by the US on corrosion-resistant steel, cold-rolled steel flat products and hot-rolled steel flat products imported from South Korea.

The South Koreans claimed that the anti-dumping duty was wrongly imposed and not based on actual information. Apparently, the US did not rely on raw data relating to the normal value of products sold by the domestic manufacturers in South Korea. Instead, the US applied Article 6.8 of the WTO Anti-Dumping Agreement, in which it is stated that where any interested party refuses access to or does not provide necessary information, preliminary and final determinations may be made on the basis of the facts available.

The US alleged that the South Korean manufacturers had failed to provide the necessary information relating to the materials supplied by their subsidiaries, loans obtained, the location of subsidiaries and programme use. The US also alleged that the manufacturers failed to disclose their location in a Foreign Economic Zone, which benefited them in terms of exemption and reduction of lease fees. Consequently, the US applied the adverse facts available by using the highest possible calculated rate for all identical information concerning programme use.

In its request for consultation, South Korea strongly opposed the use of adverse facts and assumptions by the US, instead of seeking to substitute the missing information with the best information available. The US had also disregarded the information submitted by the South Korean manufacturers to the best of their ability.

Additionally, the Americans' reliance on the adverse facts was inconsistent with Articles 6.1 and 6.2 of the WTO Anti-Dumping Agreement, given that interested parties such as the South Korean manufacturers had not been given full opportunity to defend their respective interests.

### Our sub-specialisation includes:

#### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

#### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

#### GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitshifting

#### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

#### TRADE FACILITATION & INCENTIVES

#### REAL PROPERTY GAINS TAX

#### PETROLEUM INCOME TAX

#### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas

Solaris Dutamas

No. 1, Jalan Dutamas 1

50480 Kuala Lumpur

Malaysia

Tel: +603 6208 5888

Fax: +603 6201 0122

Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

## Procedure on consultation and further appeals under WTO law

Pursuant to Article 4(3) of Annex 2 of the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (Rules of Disputes), South Korea and the US will now enter into formal consultations in respect of the issues raised. The consultations between both jurisdictions are ongoing and kept confidential pursuant to Article 4(6).

However, if the dispute still cannot be settled within 60 days, then South Korea can request the establishment of a WTO panel, which will then hear the dispute and make the necessary ruling. The ruling, in the form of a panel report, can be adopted by the WTO's Dispute Settlement Body, provided that no appeal has been lodged.

The findings of the panel report are binding on all parties. If there is an appeal, the findings by the appellate body will be binding.

## Remedy to Malaysian exporters

On the Malaysian front, manufacturers of steel and aluminium products have voiced their concerns over the unfairness and harshness of the proposed tariffs by the US. Steel and aluminium exporters who are affected may lobby the Ministry of International Trade and Industry to lodge a request for consultation under the Rules of Disputes to challenge the validity of the tariff imposition.

Similarly, Malaysian exporters in the photovoltaic and solar glass industries who have been constantly subjected to safeguard and anti-dumping measures by various jurisdictions may also consider challenging any arbitrary decisions imposed against them. This is especially so given that the US is taking a tougher stance on trade imports.

The US Secretary of Commerce was quoted as saying that *“with an 81% increase in trade cases initiated since President Trump took office, this administration has made it clear that we will vigorously administer anti-dumping and countervailing duty*

### Our sub-specialisation includes:

#### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

#### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

#### GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitshifting

#### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

#### TRADE FACILITATION & INCENTIVES

#### REAL PROPERTY GAINS TAX

#### PETROLEUM INCOME TAX

#### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122  
Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

## Trade & Customs e-Alert

*laws*" (See: <http://www.cbc.ca/news/business/united-states-canada-welded-pipe-duties-1.4532995>).

Please contact us at [tax@lh-ag.com](mailto:tax@lh-ag.com) if you have queries on any Customs matter, including anti-dumping and other Customs-related concerns.

### Contact persons:

#### Datuk D. P. Naban

Senior Partner,  
Tax, GST & Customs Practice  
+603-6208 5858  
[dpn@lh-ag.com](mailto:dpn@lh-ag.com)

#### S. Saravana Kumar

Partner,  
Tax, GST & Customs Practice  
+603-6208 5813  
[sks@lh-ag.com](mailto:sks@lh-ag.com)

**Published by the Tax, GST & Customs Practice,  
Lee Hishammuddin Allen & Gledhill**

### Our sub-specialisation includes:

#### INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

#### INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

#### GOODS & SERVICES TAX

- GST Litigation
- GST Legal Advisory
- GST Audit & Investigation
- Anti-Profitshifting

#### CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

#### TRADE FACILITATION & INCENTIVES

#### REAL PROPERTY GAINS TAX

#### PETROLEUM INCOME TAX

#### STAMP DUTY

[www.lh-ag.com](http://www.lh-ag.com)

## Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122  
Email: [tax@lh-ag.com](mailto:tax@lh-ag.com)

