

Trade & Customs e-Alert

9 AUGUST 2019

Recent Anti-Dumping Duty Investigation

In late March 2019, the Malaysian government initiated an anti-dumping investigation into the importation of cold-rolled coils of iron or non-alloy steel (of width exceeding 1,300 mm with HS Codes 7209.15.00.00, 7209.16.90.00, 7209.17.90.00, 7209.18.99.00 and 7225.50.90.00).

The ongoing investigation is in respect of cold-rolled coils originating or exported from China, Japan, South Korea and Vietnam. The notice for the initiation of this investigation is accessible [here](#).

The petition leading to this investigation was filed by tax lawyers from our firm's Tax, SST & Customs practice.

The Petition

Section 2 of the Countervailing and Anti-Dumping Duties Act 1993 (**the Act**) states that dumping occurs when the importation of merchandise into Malaysia is at less than its normal value as sold in the domestic market of the exporting country. Normal value is further defined under Section 16 of the Act as "the comparable price actually paid or payable in the ordinary course of trade for the like product sold for consumption in the domestic market of the exporting country".

The investigation under Section 28(1)(a) of the Act resulted from a petition filed by Mycron Steel CRC Sdn Bhd on behalf of the domestic industry. The petitioner submitted that the cold-rolled coils imported from China, Japan, South Korea and Vietnam are being dumped in Malaysia at a price lower than the domestic price in the respective countries. This has directly resulted in injury suffered by the domestic industry.

The Ministry of International Trade and Industry (**MITI**) found that the petitioner has provided sufficient evidence to demonstrate that there has been dumping from these four countries, and that the dumping has caused injury to the local steel industry, thereby warranting an investigation. The dumping margin is not *de minimis*, nor the volume of imports and extent of the injury so

Contact persons:



Datuk D. P. Naban
Senior Partner
Tax, SST & Customs Practice
T: +603 6208 5858
E: dpn@lh-ag.com



S. Saravana Kumar
Partner
Tax, SST & Customs Practice
T: +603 6208 5813
E: 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.

negligible that MITI should have immediately rejected the petition pursuant to Section 20(5)(a) of the Act.

The Investigation

At the initial stage of the investigation, MITI will first carry out a preliminary determination on whether the manufacturers from these four countries have indeed been exporting cold-rolled coils to Malaysia at a price lower than the price at which these goods are sold in their domestic market, i.e. the normal price.

Section 18(1) of the Act requires a fair comparison to be made between the export price and the normal value. Differences in the circumstances of export and domestic sales which affect price comparability, such as the conditions and term of sales, taxation, quantities and physical characteristics would be considered. In accordance with Section 18(3), MITI will take these differences into account and make adjustments to ensure that there is a basis for fair comparison of the normal value and the export price. As nearly as possible, the comparison between normal value and the export price will be made in respect of sales done at the same time.

There will also be a preliminary determination on the injury sustained by the steel industry. Under Section 22A of the Act, the word *injury* is not only limited to material injury but is extended to cover the threat of material injury to the domestic industry and material retardation of the establishment of such an industry. Nevertheless, a determination of a threat of material injury will be based on facts and not merely on allegation, conjecture or remote possibility.

In accordance with Regulation 22(2) of the Countervailing and Anti-Dumping Duties Regulations 1994, when determining the threat of material injury, the government will consider, among other factors:

- contracts for future shipment of the subject merchandise to Malaysia.
- capacity utilisation in the foreign country under investigation.
- price undercutting by the subject merchandise.

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)

SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitfiltering

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

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

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

Trade & Customs e-Alert

- recent import trends of the subject merchandise.
- the existence of significant inventories in the country under investigation.

In determining whether any injury sustained by the domestic industry has been caused by the importation of steel by these four countries, MITI will consider, among other factors, whether:

- there has been a significant increase in subsidised or dumped imports, in absolute or relative terms.
- there has been significant price undercutting by subsidised or dumped imports.
- there has been significant price suppression or depression by subsidised or dumped imports.

In order to obtain information necessary for the investigation, questionnaires were distributed to Malaysian steel producers, the steel producers or exporters of the respective countries and their governments. All interested parties were given 30 days from the date of publication of the notice in the government *Gazette* to present their views in writing and submit their responses to the questionnaires.

A preliminary determination will be made with a notice published within 120 days from the initiation of the investigation. If the preliminary determination is in the affirmative, the government will impose provisional measures. Under Section 24 of the Act, such measures will take the form of provisional anti-dumping duties guaranteed by a security equal to the amount of the estimated dumping margin.

Before a final determination is made to impose definitive measures, MITI will inform all interested parties of the essential facts that form the basis of its decision to apply definitive measures. Interested parties will then have the opportunity to defend their 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)

SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitfiltering

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

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

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

Trade & Customs e-Alert

A notice of final determination will consequently be made (within 120 days from the date of publication of the notice of the preliminary determination). The notice of final determination will include all relevant information (both fact and law) and reasons that have led to the determination, with due regard being given to the requirement for the protection of confidential information.

Where there is a determination of threat of injury or material retardation, but no injury has occurred, Section 25 of the Act provides that a definitive anti-dumping duty may be imposed only from the date of the determination of the existence of a threat of injury or material retardation, and any security submitted during the period of the application of provisional measures shall be released immediately.

Conclusion

Other industries should be open to the possibility of filing a petition to MITI for the imposition of anti-dumping duties if there is suspicion that there has been dumping from other foreign states and the dumping has caused them injury. If the petition is successful, the anti-dumping duty imposed under the Act will remain in force for as long as it is necessary to counteract the dumping. It will also apply on a non-discriminatory basis against all imports of the merchandise in question. For some industries, this can be a lifeline and effective mode to fight the importation of goods into Malaysia.

For queries on 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

**Published by the Tax, SST & 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)

SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitfiltering

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

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

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

