

VIKNESH & YAP

advocates + solicitors

*Partners:***VIKNESH SELVANATHAN**
LLB (Hons) (London) , CLP (Malaya)**BRENT YAP HON YEAN**
B. Juris (Malaya) , CLP (Malaya)**SHALLINI SUBRAMANIAM**
LLB (Hons)(London) , CLP (Malaya)*Senior Associates:***MARIANNE SONIA PAUL**
LLB (Hons)(London), CLP (Malaya)**MOHD NOR HAFIDZUDDIN BIN YUSOFF**
LLB (Hons) UiTM*Associates:***ELFIRA ROSELLINI**
LLB (Hons) UiTM**BRENDA TAN KAI YING**
LLB (Hons)(London) ; CLP (Malaya)

Your ref:

Our ref.: VY/Lit/636.20.adc(KASB)(v)
(Please quote our reference number when replying)

Date: 3rd December 2020

**ANTI-DUMPING COMMISSION
GPO BOX 2013
CANBERRA ACT 2601
AUSTRALIA****By A.R. Registered Post
By E-mail
(gavin.crooks@adcommission.gov.au /
investigations3@adcommission.gov.au)
By Fax :
By Courier****For the kind attention of Mr. Dale Seymour / Mr.
Gavin Crooks**

Dear Sirs/Madam,

**RE: ANTI DUMPING INVESTIGATIONS NOs. 540 AND 541
EXPORTER : KAMCO ALUMINIUM SDN. BHD.
APPEAL AGAINST COMMISSIONER'S DECISION TO CATEGORIZE EXPORTER AS
"UNCOOPERATIVE EXPORTER"**

We refer to the matter above wherein we act on behalf of Kamco Aluminium Sdn. Bhd. (hereinafter referred to as "**our Client**"). Reference is also made to your letter dated 14.10.2020 and our Client's letter dated 05.11.2020.

2. First and foremost, our Client advises us to express their utter disappointment and state they are appalled at the manner in which the Anti Dumping Investigations (hereinafter referred to as the "Investigations") have been conducted by the Commission against our Client which have led to the Commissioner's decision to categorise and/or classify our Client as an "uncooperative exporter" pursuant to S.269T(1) of the Customs Act, 1901.
3. We have also been advised by our Client to express their dissent to the Commissioner's decision aforesaid and firmly believe that the Investigations conducted leading to such a decision is, with due respect to the Commission, gravely misguided and misconceived and hence had led to an unfair decision altogether.
4. Kindly take note that our Client's rationale and reasonings for the aforesaid are based on the factual matrix of the investigations which are set forth herein below chronologically:-
 - 4.1. On 25 February 2020, our Client received the notification of the Commission's Investigation and the Exporter Questionnaire wherein the deadline to respond to the Exporter Questionnaire was on or before 01 April 2020;
 - 4.2. On 16 March 2020, due to the enforcement of Movement Control Order (hereinafter referred to as "**MCO**") in Malaysia which was to be enforced beginning 18 March 2020 onwards as a

result of the Covid-19 pandemic, our Client requested for an extension of time to submit the Exporter Questionnaire on or before 15 April 2020;

- 4.3. On 20 March 2020, our Client received a reply from the Commission granting the extension of time to respond to the Exporter Questionnaire on or before 15 April 2020;
- 4.4. On 25 March 2020, due to the extension of the MCO period in Malaysia, our Client once again requested for an extension of time to respond to the Exporter Questionnaire on or before 29 April 2020;
- 4.5. On 09 April 2020, our Client received a reply from the Commission granting the extension of time to respond to the Exporter Questionnaire on or before 29 April 2020;
- 4.6. On 10 April 2020, due to a further extension of the MCO period in Malaysia, our Client requested for an extension of time to respond to the Exporter Questionnaire;
- 4.7. On 27 April 2020, our Client received a reply from the Commission granting a further extension of time to respond to the Exporter Questionnaire on or before 06 May 2020;
- 4.8. On 06 May 2020, our Client was able to finally respond to the Exporter Questionnaire as by that time, the Government of Malaysia had laxed the MCO enforcement for certain industries which encompassed the industry which our Client is involved and allowed these limited industries to operate with conditions;
- 4.9. On 15 May 2020, our Client received a letter from the Commission advising our Client that the responses sent by our Client were somewhat, in the Commission's view, having "deficiencies" and could be resolved by "further responses" and requested our Client to provide responses to these alleged "deficiencies" by 22 May 2020;
- 4.10. At all times, the nature and particulars of these alleged "deficiencies" were not specified and were mere generic statements and vague in nature but due to the urgency of the matter, our Client then made all reasonable attempts to provide so far as practicable the responses to fulfil what the Commission deemed to be "deficiencies" and provided the same on 22 May 2020;
- 4.11. On 27 May 2020, our Client received another letter from the Commission notifying our Client that our Client's responses on 22 May 2020 were again, in the Commission's view, laden with alleged "deficiencies" and required further responses and requested our Client to respond to these alleged "deficiencies" by 03 June 2020;
- 4.12. On 03 June 2020, our Client again made reasonable attempts to provide responses to fulfil these alleged "deficiencies" despite the Commission having failed to address specifically what these alleged "deficiencies" were;
- 4.13. On 22 June 2020, our Client received an email from the Commission's representative, Ms. Ana-Michelle Floros informing that Corey Hawke, Trent Macri and herself would be involved in the Investigations and would be analysing the data provided to the Commission and

sending specific queries and requesting further information (where required) in relation to our Client's sales and costs information. For such purposes, our Client was requested to upload all the documents and information requested into SIGBOX. In the same email, Ms. Ana-Michelle Floros requested for the first request for additional information to be uploaded into the SIGBOX folder by 29 June 2020;

- 4.14. On 26 June 2020, our Client complied with their request and uploaded all the documents requested into SIGBOX;
- 4.15. On 29 June 2020, our Client received an email from Ms. Ana-Michelle Floros acknowledging receipt of the documents uploaded into the SIGBOX and stated that she would advise our Client if further information is required once she has done a thorough assessment of the documents furnished;
- 4.16. On 14 October 2020, our Client received a letter from the Commission dated the same date informing our Client that the Commission has decided to categorize and/or classify our Client as an "*uncooperative exporter*" as our Client purportedly did not provide all information to the Commission as requested; and
- 4.17. On 05 November 2020, our Client responded to the Commission's letter dated 14 October 2020 and provided further documents and information to address the deficiency as listed in your letter dated 14 October 2020;
- 4.18. Thereafter, nothing else were forthcoming from the Commission and our Client has not received any response from the Commission since pertaining to the Commission's decision to categorise or classify our Client as an "*uncooperative exporter*".

(i) **The Concerns or Issues**

- 5. We hereby write for and on behalf of our Client to express our Client's grave concerns as to the manner in which the Commission has conducted the investigations which are as follows:-
 - 5.1. despite being extremely cooperative in assisting the Commission in its Investigations against our Client and having submitted all documentations requested by the Commission for the purposes of the Investigations, nonetheless, the Commission has somewhat deemed it fit to categorise and/or classify our Client as being an "*uncooperative exporter*" pursuant to S. 269T of the Customs Act, 1901;
 - 5.2. the notices of investigation itself have never stipulated, highlighted or made mention of any specific offence(s) or breach(es) or violation(s) that our Client is accused of having allegedly committed warranting the Investigations;
 - 5.3. the Investigations itself, judging by the notices and conduct adopted by the Commission in its entirety, appears to be merely casting a wide net, so to speak, in hope of finding some breach(es) or offence(s) or violation(s) against our Client and our Client is instead placed with the burden of proving its innocence first rather than disproving the specific charge(s) or

accusation(s) meted out or finding(s) reached by the Commission and we believe similarly to the laws of Malaysia and other Commonwealth countries alike, cannot be the case; and

- 5.4. the letters dated 15 May 2020 and 27 May 2020 respectively from the Commission itself and both having signed by the General Manager of Investigations, Mr. Paul Sexton, are mere 'word-for-word' regurgitations of the provision under the Customs (Extensions of Time and Non-Cooperation) Direction 2015 (hereinafter referred to as the "**2015 Direction**") without delving into specifics as to what these so-called "*deficiencies*" actually are contrary to Directive or Paragraph 6 of the 2015 Direction. We trust that this is in line with the *rules of natural justice* to which our Client should be accorded as well and thus notification of an offence or breach or wrongdoing or violation cannot be ambiguous or vague in nature so as to leave an aggrieved or affected party to 'grope in the dark' aimlessly.
6. Kindly take note further that we trust and believe that the Investigations being carried out by the Commission against our Client and our Client's other Malaysian counterparts are done in a transparent and open manner and in good faith in the spirit of maintaining good business and trade relationship and ties between the two nations pursuant to the several agreements executed between Malaysia and Australia and in particular the Malaysia-Australia Free Trade Agreement, the World Trade Organization and the ASEAN-Australia-New Zealand Free Trade Area Agreement.
7. In view of the above and with due respect to the Commission, we have been advised by our Client to hereby write this letter as an appeal and to seek the Commission's kind consideration to review its decision of having categorised or classified our Client as an "*uncooperative exporter*" in light of the entire circumstances stated above and given that our Client has in fact given its cooperation with the Commission's request throughout the entire period of the Investigations.
8. Our Client also advises us to highlight that despite the Movement Control Order being enforced in Malaysia from 18.03.2020 until 12.05.2020 which thereafter followed by the Conditional Movement Control Order which continues to be in force to date due to the Covid-19 pandemic, which restricted our Client's personnel movements and working hours, our Client has nonetheless painstakingly assisted, provided and furnished all information and documents requested by the Commission within the time period stipulated by the Commission.
9. We are advised by our Client to express their hopes that the Commission will take into consideration these matters seriously since our Client has to date issued a couple of appeal letters but to no avail and without a single response from the Commission.
10. We thank you for your time in considering our Client's appeal herein and look forward to an amicable resolution to this matter soonest.

Thank you.

Yours faithfully,


VIKNESH & YAP

C.C.

1. **YB MINISTER OF MINISTRY OF INTERNATIONAL TRADE
AND INDUSTRY**
Menara MITI,
No. 7, Jalan Sultan Haji Ahmad Shah,
50480 Kuala Lumpur, Malaysia

2. **SECRETARY GENERAL OF MINISTRY OF INTERNATIONAL TRADE
AND INDUSTRY**
Menara MITI,
No. 7, Jalan Sultan Haji Ahmad Shah,
50480 Kuala Lumpur, Malaysia