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Your ref:

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

Date: 4<sup>th</sup> January 2021

**ANTI-DUMPING COMMISSION  
GPO BOX 2013  
CANBERRA ACT 2601  
AUSTRALIA**

X

**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 NO. 540 FOR MILL FINISHED ALUMINIUM EXTRUSIONS  
EXPORTED TO AUSTRALIA FROM MALAYSIA  
AFFECTED EXPORTER : KAMCO ALUMINIUM SDN. BHD.  
WRITTEN SUBMISSIONS TO APPEAL AND REVIEW AGAINST COMMISSIONER'S DECISION  
TO CATEGORIZE EXPORTER AS "UNCOOPERATIVE EXPORTER" & ITS INTERIM  
RECOMMENDATIONS**

We refer to the matter above wherein we act on behalf of Kamco Aluminium Sdn. Bhd. (hereinafter referred to as "**our Client**").

2. For your kind information, our Client has instructed us to make this appeal to the Commissioner against its decisions and interim recommendations to impose interim dumping duties or excise tax for:-
  - 2.1 mill finished aluminium extrusions goods which are imported from our Client and entering into Australia commencing from 10 December 2020 at the rate of 13.2%; and
  - 2.2 surface finished aluminium extrusions goods which are imported from our Client and entering into Australia commencing from 10 December 2020 at the rate of 18.5%.
3. Our Client also notes and acknowledges that these proposed securities, excise duties or dumping duties are interim recommendations by the Commissioner and is recommended to be imposed on those like goods imported from our Client in Malaysia and entering Australia purely for home consumption on or after 10 December 2020.
  - **Reference to sub-paragraph 2.5 of the Statement of Essential Facts No. 540 at page 15**
4. In having instructing us to proceed with the relevant responses herein, our Client and us have considered and taken into considerations the essential and salient contents contained in the following documentations reflective of the interim recommendations reached by the Commissioner and these documents are as follows:-

- 4.1 the Commissioner's Statement of Essential Facts No. 540 (hereinafter referred to as the "**SEF No. 540**");
- 4.2 the Commissioner's Preliminary Affirmative Determination No. 540 (hereinafter referred to as "**PAD No. 540**");
5. Our Client's written responses and submissions to the Commissioner's SEF No. 540 shall be addressed herein categorically under the appropriate sub-headings for ease of the Commissioner's references and conveniences.
- 6. RESPONSES TO COMMISSIONER'S SEF No. 540**
- 6.1 With due respect to the Commissioner, our Client and us do note the essential disclaimer under sub-heading 2.6 of the SEF No. 540 that the Commissioner's recommendations under the SEF No. 540 nonetheless MAY NOT represent the final views of the Commissioner and is subject to change or review by the Commissioner.
- **Reference to sub-paragraph 2.6 of the SEF No. 540 at page 16**
- 6.2 Our Client notes under sub-paragraph 6.4 of the SEF No. 540 at page 33 that it has continued to be classified or deemed as an "*uncooperative exporter*". On this findings and with due respect to the Commissioner, our Clients respectfully disagrees with the Commissioner's findings on this.
- 6.3 We are made to understand that as required under S. 269T (1) of the Customs Act 1901, an "*uncooperative exporter*" applies to an exporter whom **(1) the Commissioner is satisfied DID NOT give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable** or **(2) where the Commissioner is satisfied that an exporter SIGNIFICANTLY IMPEDED the investigation.**
- **Reference to sub-paragraph 6.4 of the SEF No. 540 at page 33**
- 6.4 We note that the above are an 'either or' requirement thus are to be read disjunctively as opposed to reading it conjunctively.
- 6.5 Kamco's Responses to Commissioner's Findings pursuant to S. 269T(1)**
- 6.5.1 We have been advised by our Client that throughout the entire period of the investigations carried out by the Commissioner, our Client had indeed made all reasonable attempts to provide and furnish to the Commission all relevant information and documents at the behest of the Commission and had provided assistances where necessary. Our Client has not nor has any intention of withholding any information or documents requested by the Commission during the investigation period save and except for the requests for several extensions which the Commission had obliged and which our Client is grateful for and appreciates the exercise of discretion by the Commission.
- 6.5.2 We have also been advised by our Client to state that it trusts that the Commission in exercising its discretion to grant the extension of time to necessitate our Client to provide the relevant information and documentations, would have considered all possible avenues and had there been any suspicion by the Commission of our Client's intention to merely delay and impede investigations, if any which is denied herein, then the Commission would not have afforded such indulgence at all to our Client.
- 6.5.3 We also wish to state here that we have provided a recent written response to the Commission through our letter dated 3 December 2020 and our Client had agreed to make such letter a public record. Our letter dated 3 December 2020 provides in chronological order our Client's attempts at



rendering its assistance to the Commission during the investigation period and its reasons for disagreeing with the Commission's finding of our Client as an "uncooperative exporter".

We hereby attached our previous written responses dated 3 December 2020 addressed to the Commissioner and marked as **Enclosure "A"** for the Commissioner's kind reconsideration which we trust has been made a public record for all intent and purpose.

- 6.5.4 Our Client advises us to stress that at no material time did our Client intend to intentionally delay the provision of information and documentations or to impede the Commission's investigations but instead was and is more than willing to render its assistances to the Commission in its investigations in reaching at a just and fair decision, findings and recommendations.
- 6.5.5 This is clear from the findings of the Commissioner under the SEF No. 540 where whilst the Commissioner admits having received the relevant information or REQ from our Client, nonetheless the Commissioner had qualified that it was unable to verify our Client's REQ due to systemic issues and that due to these systemic issues, the verification process thereafter ceased or halted midway.
- **Reference to sub-paragraph 6.4 of the SEF No. 540 at page 33**
- 6.5.6 The conclusion arrived at by the Commissioner that there were certain *deficiencies* as a result of these *systemic issues* hence resulting in the Commissioner thereafter making the findings that our Client is an "uncooperative exporter" is therefore, in all fairness, unfair and unjust to our Client. These systemic issues are by no means reflective of our Client's true intent and conduct throughout the entire investigation period.
- 6.5.7 Our Client respectfully reiterates that it has in fact provided all information and documentations relevant to the investigations as requested by the Commissioner and had, to the best of its endeavaours, rendered all reasonable assistance to the Commission and our Client is still willing and ready to provide further assistances and to continue cooperating with the Commission to achieve the desired findings and recommendations. At the risk of repetition, our Client states there has not been any attempts by our Client in any way whatsoever to impede the investigations conducted by the Commission, not even remotely.
- 6.5.8 Our Client herein respectfully appeals to the Commissioner to take into consideration its own findings under the SEF No. 540 that the inability to verify the information and documentations provided were due to *systemic issues* and not one which were as a result of our Client being uncooperative.

**7. KAMCO'S TOTAL VOLUME OF EXPORT IS NEGLIGIBLE**

- 7.1 Additionally, our Client is not considered to be a main exporter or player in the industry with its total export of aluminium extrusions, both mill finished and surface finished, to Australia in the year 2019 was highly negligible when considering the total extrusion market in Australia being 190,000 tonnes for that year.
- 7.2 To substantiate this and for the benefit and information of the Commission, our Client's total export of aluminium extrusions into Australia for the year 2019, both mill finished and surface finished are as follows:-

No.	Types or Particulars of Aluminium Extrusions	Tonnage
7.2.1	Mill Finished Aluminium Extrusions	
7.2.2	Surface Finished Aluminium Extrusions	

<b>TOTAL :</b>	
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- 7.3 In view of this, we believe that judging at the total tonnage exported by our Client into Australia, the Commission will appreciate that whether viewed in isolation or collectively, the tonnage for such exports into Australia's market during the year 2019 is negligible when considering the total volume of extrusion market being 190,000 tonnes. In this sense, our Client's total export of aluminium extrusions in in terms of percentage represents a mere █% which is extremely low and represents less than █% of total Australian market for the like goods.
- 7.4 Our Client had previously provided these information to the Commission during the investigation period and hence we humbly and respectfully urge that the Commission review the information and documentations previously provided by our Client. If need be, our Client is ready and willing to re-submit these documents and information again to the Commission for it to undertake a review of its findings and recommendations.
- 7.5 We trusts that had the Commission considered the information provided above, the Commission may have in all likelihood terminated its investigations against our Client pursuant to subsection 269TDA(1)(b)(ii) of the Customs Act 1901.

**8. CONCLUSION**

- 8.1 In view of the above and with due respect to the Commission, we have been advised by our Client that based on the above responses, our Client hereby appeals to and seek the Commissioner's cooperation and kind assistance to exercise its powers and discretion to:-
- 8.1.1 review its findings and recommendations and to discharge or declassify or remove our Client as an "*uncooperative exporter*" and to classify and categorise our Client as a "cooperative exporter" instead; and
- 8.1.2 to terminate the investigations against our Client pursuant to S. 269TDA(1)(b)(ii) of the Customs Act 1901 as our Client's total export volume falls well below 2% of the total Australian market for the like goods; and/or
- 8.1.3 grant an exemption or alternatively and at the very least to revise its recommendation on imposing securities at a far reduced rate than the one currently recommended by the Commission which is 13.2% on the imports of mill finished alluminium extrusions into Australia emanating from our Client.
9. Our Client and us hereby express our appreciation and gratitude to the Commission for taking the time to consider our written submissions herein and we look forward to hearing a favourable response from the Commission soonest.
10. Should the Commission have any queries or require further clarifications, we will be glad to respond to those queries and provide responses to any clarification sought by the Commission for and on behalf of our Client.

Yours faithfully,

**VIKNESH & YAP**



C.C.

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**ENCLOSURE**

**“A”**

# VIKNESH & YAP

advocates + solicitors

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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  
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AUSTRALIA**

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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.

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