



# @azmilaw Newsletter

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## GREETINGS FROM AZMI & ASSOCIATES



Raja Ahmad Mohzanuddin  
Shah Raja Mohzan

Dear valued clients, business associates and friends,

Welcome once again to the @azmilaw Newsletter! We are pleased to present the 36th issue of this quarterly newsletter. The Firm is honoured to welcome two associates and four new trainee solicitors into our fold. We trust that they will be a useful addition to the Firm as it continues to expand its strength and earnestly welcome them on board.

This edition of our newsletter brings to readers articles on selected local and international corporate law issues, in addition to up-to-date news on the developments in the legal field. We continue to provide a range of legal topics and current affairs news in this issue of @azmilaw Newsletter.

In line with our mission to provide our readers with notable news and the latest updates in the legal world, we feature in this issue an overview of the newly enacted **Medical Devices Act 2012** and **New Investment Guidelines by Indonesia**; which we trust will bring an added dimension to the development of law in Malaysia. In addition to that, we also discuss cross border lending transactions and trademark issues in Malaysia.

Include in this issue an array of articles concerning the Companies Act, including the proposed Companies Bill Policy Statement and Contracts Bill (Rights of Third Parties). Further to that, we also highlighted the Anti-Dumping Petition against Dumped Tinplates.

It is our greatest pleasure to deliver a wide range of legal services regionally and globally to assist our clients in conducting business successfully worldwide; we hope that you will enjoy reading the materials we have provided in this issue and we look forward to delivering more interesting findings in our next issue.

We welcome any feedback that you may have regarding this issue. Should you require some focus on any specific areas or if you wish to make a contribution to the next issue, do let us know via [azmi@azmilaw.com](mailto:azmi@azmilaw.com).

Finally, from everyone at Azmi & Associates, we wish you Eid Mubarak. For our local readers, 'Selamat Hari Merdeka' and 'Selamat Hari Malaysia'.

Raja Ahmad Mohzanuddin Shah Raja Mohzan  
Co-Deputy Managing Partner  
Azmi & Associates  
6 August 2013

**AZMI & ASSOCIATES**  
Aristokratik, Profesional, Berkeadilan & Berkeadilan

阿兹米律师事务所

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Cont



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## THE ANTI-DUMPING PETITION AGAINST DUMPED TINPLATES: IS IT TIME TO CONSIDER THE NATION'S WELFARE?

The filing of anti-dumping petition against imported tinplates from China and South Korea which was reported by this newspaper on 12 June 2013 has alerted many of those who have been observing the developments in domestic and international trade policy and law for many years.

Anti-dumping is not about dumping of toxic wastes. It is not such wastes which are being dumped and the dumping is subject to legal action. It is the so called cheap products exported from an exporting country to importing country which allegedly cause material injury to the domestic producers in the latter country.

Then why is there a need for counteracting dumping when cheap imports will be good for consumers and industrial users?

Dumping happens when an exporting producer charges its goods in the export market below the normal value. Below normal value is understood as either pricing goods in the exporting market lower than in the home market of the dumping producer or pricing them below costs.

Going back to the claim by consumers and industrial users that anti-dumping law will make the relevant goods more expensive, one must understand that the law targets the unfair trade practice of dumping. The law will say that it does not envy the consumers who always want the best price for them. But the law needs to protect domestic producers against the so called predatory behaviour of dumpers under-pricing their goods in the market of the importing country (i.e. Malaysia) with the aim of killing the domestic producers here.

The tricky part of the discussion is that the legal provisions of the Countervailing and Anti-Duties Act 1993 that address this problem do not give proportionate consideration to interests other than the domestic producers. The provisions of the 1993 Act require the articulation of the relevant factors indicating the existence of dumping, injury and causal link but the end of the whole exercise will be correcting

the deleterious impact of the under-priced dumped imports on the "health" of the domestic producers, not on the state of competition in the market. In a way this will trump other considerations including the need of consumers and industrial users to have a good (if not the best) price, choice, and security of supply.

To be fair to the law enforcers, such imbalance does not exist in Malaysia alone. All countries with anti-dumping law in place accord greater weight to protection of domestic producers when deciding whether to impose anti-dumping duties. If we compare the number of anti-dumping cases that have been initiated by Malaysia to that by developed (including the United States and European Union) and other developing countries, the number that our country has is just miniscule. One must also consider the rising number of anti-dumping cases initiated by China and India.

Further, the Malaysian anti-dumping legislation (the 1993 Act) has a concept not found in the legislation of some of the most developed jurisdictions, including the US and Australia – the public interest clause. The public interest clause should allow broader interests (including consumers and industrial users) to be considered by the law enforcers. The WTO Anti-Dumping Agreement does not make positive public interest determination a condition to imposition of duties nor does it provide clear guidelines on how the determination is carried out. Consequently the impact of applying the public interest clause has been limited. Nonetheless, the invocation of the clause can still indirectly influence the law enforcers to make more informed decisions.

The law enforcers will face a dilemma in the event that other neighbouring countries have taken action against the same goods. The anti-dumping case against dumped hot-rolled coil steel imports is a good example of the "domino effect" stemming from one country acting against low priced imports and the others followed suit.

Where a call is made to reconsider the action, those wanting a strategic response by the Malaysian government would argue that the "disuse" of anti-

dumping law will be a move in the wrong direction. And they will always put up a strong case for maintaining status quo with regards to the implementation and enforcement of anti-dumping law as the law remains intact in most of free trade agreements (FTAs) that most countries including the US, Australia etc have concluded. A safe prediction can be made that even if more intense integration is undertaken in ASEAN via the ASEAN Economic Community (AEC), Member States will still be able to use anti-dumping actions against one another as much as before. The same may said of the controversial Trans-Pacific Partnership (TPP). One may safely predict that anti-dumping law will remain within the sovereignty of each States.

However, proponents of anti-dumping duties should consider the fact that invariably it is not the foreign exporters who pay for the duties. Unless the Malaysian importers (the purchasers of the dumped imports) contracted with the foreign exporters on delivery duty paid terms, the obligation to pay the duties falls on the buyer (the Malaysian purchasers).

The anti-dumping also has more indirect effects on Malaysian companies. This is known as the "cascading effects of trade protection" should duties be imposed on the goods concerned. The additional costs from the duties borne by the buyer of the goods may be passed downstream until they reach the end users. However the costs will not be internalized by those in the downstream in all cases. In some cases, the level competition in the downstream market is extremely stiff with a great of competitors both local and abroad. Such high level of competition will prevent the costs from being passed downstream reducing their margin. They may have to consider asking for protection (which include anti-dumping measures) or leaving the market altogether.

All these will pose challenges to the law enforcers who will again have to make difficult decisions. The current legal framework does not accommodate cost-benefit analysis. As said, even if such analysis is incorporated, other countries may not do the same.

### AZMI & ASSOCIATES WON

#### THE EMPLOYER OF CHOICE AWARD FOR MALAYSIA LEGAL MARKET

Asian Legal Business ("ALB") in its June 2013 issue publishes the full results of Employer of Choice 2013. The ALB Employer of Choice rankings were compiled taking into account responses from thousands of law firm employees, ranging from Managing Partners to support staff, as well as our own market knowledge. The survey was open in the month of May and June and law firms have been ranked on the basis of job satisfaction, remuneration, work life balance, career prospects, mentorship, job security and other aspects. Respondents being asked to submit their views anonymously to help maintain fairness and objectivity.

With honour, Azmi & Associates debuts within the top 5 in the survey result having a wave of positive feedback on all aspects surveyed. Other winners of the award are Skrine, Tay & Partners and Zul Rafique & Partners. Established in the year 2000, Azmi & Associates is determined to strive towards becoming an outstanding employer in the legal industry and this recognition proves that the Firm is on its way to greater heights.

The Firm strongly believes that constant development is crucial in providing constant training to the lawyers

and other support executives through professional development and quality management programmes with the aim of producing lawyers of global standards. This is in line with the firm's commitment to become a world-class corporate commercial law firm, providing integrated, innovative and comprehensive solutions by synergizing human capital, technology and best practices.

The achievement acts as a stepping stone for the Firm to provide a comprehensive working arena for the Firm to its employees while ensuring that they meet the client's expectations. It is hoped that the Firm will continue to provide an environment suitable for achieving excellence in the future.

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