

NEWSLETTER

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NAVIGATING INDONESIA'S INTERNATIONAL TRADE OBLIGATIONS: TERMINATION OF SAFEGUARD INVESTIGATION

Lawyers from Yang & Co recently represented foreign clients under investigation by the Indonesian Safeguard Committee of Ministry of Trade accused of unfair international trade practices. They successfully ended the investigation protecting their clients from penalties under Safeguard provisions arising from Indonesia's trade obligations. If the investigation had found that our clients, who represented Chinese manufacturers, had acted in an unfair manner millions of dollars would have been payable in penalties to the Indonesian government.

Summary

In mid-June this year after a year of legal proceedings, Yang & Co assisted clients in bringing a successful end to an investigation into breaches of Safeguard measures. The aim of Safeguarding measures is to avoid unfair international trade activities that can unreasonably damage domestic industries.

Safeguarding provisions have been incorporated into Indonesian domestic law in order to comply with World Trade Organization ("WTO") agreements. In this instance, the Indonesian Safeguard Committee ("Komite Pengamanan Perdagangan Indonesia" or "KPPI") was investigating whether foreign imports were unfairly damaging the domestic producers of food sweetener, certain Doxtrose Monohydrate ("DMH").

Yang & Co represented the Chinese Chamber of Foodstuffs and Native Produce ("CFNA") before KPPI and successfully argued that our clients had not contravened these Safeguard measures. Our representations required a nuanced explanation of the domestic and international market for this food sweetener arguing that the evidence did not reflect any injury suffered where domestic producers were likely to be decimated by the new foreign competition. We argued to KPPI that no surge of imports and the local industry remained healthy – with an over 80% market share. These representations to the committee led the investigation, mandated under WTO rules, to be terminated after a formal hearing.

The Investigation

The proceedings were complex both from an evidential and substantive legal perspective. It would, therefore, be useful to go through the details of this matter chronologically. The investigation commenced on 14 July 2015 after PT Sorini Agro Asia Corporindo Tbk. ("Sorini") applied to KPPI requesting it conduct an investigation into the importation of DMH. They argued that this foreign product was causing serious injury to the domestic manufacturers.

As the key local producer with 82% of the market share in Indonesia, Sorini lodged a formal claim under Chapter I Article 1 paragraph 18 of the Government Regulation Number 34 of 2011

regarding Anti Dumping, Countervailing Duties and Safeguard. The KPPI began an investigation into these allegations of unfair trade practices looking specifically at the period 2012 to 2014.

Sorini claimed that as the domestic producer they had suffered serious injury due to the foreign imports. They argued that this was identified through a decline of production targets, domestic sales decreases, declining profits, stagnant employee numbers and reduction in their market share. These consequences it was alleged arose out of the recent surge of imported DMH from China, France and other countries.

In response to Sorini's petition, the KPPI convened a first hearing to consider this alleged breach of Safeguard provisions on 31 August 2015. It was attended by representatives of KPPI, Sorini, CFNA, PT IMCD Indonesia (as the Indonesian importer), the Indonesian National Importers Association (*Gabungan Importir Nasional Seluruh Indonesia* or GINSI), representatives of the European Union, Brunei Darussalam and ASEAN, as well as staff from the Directorate-General of Custom and Excise (*Direktorat Jenderal Bea dan Cukai*) and the Indonesian Bureau of Statistics (*Badan Pusat Statistik Indonesia* or BPS).

As the investigation proceeded, we successfully argued that Sorini could not prove serious injury effecting the domestic industry was caused by foreign imports. Our arguments were that foreign producers were simply involved in a competitive market and trade environment for DMH. This argument convinced the KPPI to terminate the investigation process. The importance of this announcement was highlighted by the coverage it received from the local Indonesian media, *Business Indonesia* on 13 June 2016.

Lessons Learnt

This Safeguard Investigation was an important opportunity to test Indonesia's ability to implement its international trade obligations. We were satisfied that the Indonesian Ministry of Trade processes allowed for the thorough investigation and determination of this matter.

During this investigation we were able to offer our clients advice and legal services that ensured the successful conclusion of the matter.

For further information on this investigation or about the legal services available from Yang & Co in relation to International Trade and Investment matters please contact:

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