

No. 14/03/2005 DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
(DEPARTMENT OF COMMERCE)  
DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES  
UDYOG BHAVAN, NEW DELHI

Final Finding  
(Review)

Dated the 20th August, 2010

**Subject:** Review regarding the anti- dumping duties imposed on imports of All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn originating in or exported from Indonesia, Korea RP, Malaysia and Chinese Taipei.

**Background**

**1. The procedure described below has been followed with regard to this investigation:-**

- i. Based on a petition earlier filed on behalf of domestic industry, the Designated Authority had earlier conducted anti dumping investigations vide notice of initiation dated 27th June 2005. After elaborate investigations, the final findings were issued vide Notification Number 14/03/2005-DGAD dated 26.12.2006. The definitive anti dumping duty on the subject goods was imposed vide Customs Notification No.15/2007-Customs dated 20th February, 2007.
- ii. The Customs Tariff (Amendment) Act 1995 and the Anti Dumping Rules made there under require the Authority to review from time to time the need for continuation of anti dumping duty. Under these rules, two requests for name change were received. M/s Recron (Malaysia) Sdn Bhd requested for change of name from M/s Hualon Corp (M)) Sdn Bhd to Recron Malaysia Sdn Bhd in the aforesaid investigation as the ownership and all businesses of M/s Hualon have been transferred to M/s Recron Malaysia. In the aforesaid investigation, M/s Hualon, Malaysia was subjected to the anti dumping duties. It was informed by M/s Hualon that with this transfer, the full ownership of the business including the management systems etc. are transferred to M/s Recron and M/s Hualon has ceased all its manufacturing as well as business operations (including exports) in Malaysia.

- iii. Another request was received from M/s Woongjin Chemicals Co Ltd, Korea RP, to replace their name in place of Saehan Industry, Korea RP as under a share transfer agreement dated 07.12.2007, the company namely Saehan Industry, Korea RP has been taken over by Woongjin Chemicals Co Ltd. In the aforesaid investigation, M/s Saehan Industry was not subjected to the anti dumping duties in case of exports made by them. However, they were subjected to anti dumping duty in case of exports made through any other exporter.
- iv. The Authority, on the basis of evidence submitted by the applicants and after considering these requests, initiated a limited review, in accordance with the Rule 6(1) of the AD Rules, by issuing a public notice dated 23<sup>rd</sup> November 2009 published in the Gazette of India, Extraordinary concerning imports of the aforesaid product.
- v. The Authority sent copies of initiation notification dated 23<sup>rd</sup> November, 2009 to the Embassies of the subject countries in India, known exporters from the subject countries, importers and the domestic industry as per the addresses available, and requested them to make their views known in writing within 40 days of the initiation notification.
- vi. The Authority provided copies of the non-confidential version of the application to the known exporters and to the Embassies of subject countries in accordance with Rule 6(3) supra.
- vii. The Authority sent questionnaires, to elicit relevant information to the known exporters in subject countries in accordance with Rule 6(4).
- viii. In response to the above notification, none of the importers has responded to the questionnaire.
- ix. The period of investigation (POI) for the purpose of present investigation is January to October, 2009 (10 months).
- x. The Authority held a public hearing on 1<sup>st</sup> Feb 2010 to hear the interested parties orally. The parties attending the public hearing were requested to file written submissions of views expressed orally. The submissions, so made, have been taken into account in the Disclosure statement.
- xi. The Authority made available the public file as per Rule 6(7) of the Rules containing non- confidential version of the information/ submissions made by various interested parties.

- xii. \*\*\* in this finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- xiii. In accordance with Rule 16 of the Rules supra, the authority disclosed essential facts/basis to known interested parties and comments received thereon have been considered appropriately in these findings.

**2. Submissions made by Recron, Malaysia** – Following submissions have been made by Recron, Malaysia

- i. The Authority has considered review of final findings in respect of South Korea and Malaysia. The Authority is required to determine dumping margin in the present case. None of the interested parties made any submission opposing the present review. In fact, the Counsel of the domestic industry stated that they have no objection in change of name to the present company.
- ii. Referring to the another notification issued under similar circumstances on 30<sup>th</sup> Nov., 2009, the applicant has argued that the authority considered it appropriate to determine individual dumping margin in that case as well. The grounds being similar in the two reviews, the Authority should consider determine the dumping margin in the present case as well.
- iii. Considering the quantity and quality of evidence as contained in the various mid term review applications and in that background, it would be seen that the Authority has considered that all that is required at the stage of initiation is “*positive evidence*” substantiating the need for review. The Authority need not be satisfied at the stage of initiation whether or not there is sufficient evidence justifying the need for continuation or withdrawal of anti dumping duties.
- iv. The fact of changed ownership has been acknowledged as changed circumstances “necessitating review of the measure in force”. The notification clearly stated that the review of final finding and ant-dumping duty imposed is appropriate. Also it’s the Authority who has fixed the period of investigation for the purpose of present review.
- v. The Authority has sought information from exporters in subject countries, their Governments, importers and users in India to provide relevant information in the form and manner prescribed. If the scope of the present review was to be restricted to mere change of name, there was no necessity of writing to these parties.
- vi. The applicant submits that the domestic industry has read the present review as partial/restricted review without any legal and factual basis. While the Authority has taken a consistent position that no partial/restricted review is

- permissible under Rule 23, on facts, the Designated Authority has indeed initiated a full mid-term review.
- vii. It is denied by the applicant that it has for the first time disclosed at the time of oral hearing that it requested re-determination of dumping margin. Indeed, such disclosure was made earlier in the letter dated 22<sup>nd</sup> January 2010 and the exporters questionnaire response filed by the applicant.
  - viii. If ASFI has tried to read the notification inappropriately, it cannot blame either the Authority or the applicant.
  - ix. As regards providing a copy of the questionnaire response to the domestic industry, their request is beyond the law. Rule 6 provides for “making available” a copy of the application to the interested parties, which cannot be read as same as “providing” a copy.
  - x. As regards existence of the previous company as a legal entity, the applicant considers that the same is irrelevant for the present purpose. The facts that Hualon has ceased of its manufacturing and business operations in Malaysia alone is relevant and have also been acknowledged by Designated Authority in its notice of initiation.
  - xi. It is for the domestic industry to provide relevant information relating to non-injurious price and injury to the domestic industry in case they feel that the duty lower than dumping margin would be sufficient to address injury to the domestic industry. Since the domestic industry has not provided relevant information, the Designated Authority can proceed on the basis of best available information.
  - xii. Domestic Industry has asked the Authority to consider some settled jurisprudence without providing either a copy or reference to the same. The only known jurisprudence known to the applicant in this regard is that the Authority has conducted only full mid-term reviews and has consistently denied partial/limited reviews.
  - xiii. Looking to the prescribed format for mid-term review as is available on the website of DGAD, it would be seen that change in the legal status of the domestic producer or exporter is one of the factors that has been considered as a sufficient factor of changed circumstances. In the instant case, this is indeed the situation. Hence the question of providing other information at this stage does not arise.
  - xiv. Applicant has not received any deficiencies from the Authority. In case the Authority has found any deficiencies in the questionnaire response filed, the applicant may be informed.

- xv. As regards insufficiency of non-confidential version, the applicant has claimed such information confidential as is considered necessary and justified. The Authority may kindly review and accept the same considering the practice being followed by the Authority in this regard.
- xvi. As regards the request for clarifications/information/documents, the applicant submits that the domestic industry is trying to step into the shoes of the Authority and ignores its own obligation and position.
- xvii. Consequent upon the sale of the plant, Hualon does not own assets/ production facilities to produce the product under consideration.
- xviii. Hualon neither produces the product, nor sells the same either in the domestic market or in the export market.
- xix. Hualon does not have any related entity in Malaysia who is producing and selling the product under consideration.
- xx. As far as liquidation of the company is cornered, Hualon Corporation has sold its entire business and assets in Malaysia to Recron. It has subsidiaries in Vietnam and China which are not in the business of manufacturing or selling of product under consideration. Thus, Hualon is not liquidated. However, anti-dumping investigations are being product specific and only operations relating to product under consideration are relevant to the Authority. Since the company is no longer producing and selling the product under consideration, it should be construed, for the purpose of the present product and investigations, that Hualon Corporation ceases to be engaged in production and sale of the product under consideration and has liquidated its assets for the product under consideration.

3. Views of domestic industry – Domestic industry made its submissions through its association, Association of Synthetic Fibre Industry (ASFI). The domestic industry submitted as follows

- a. It has no objection, if the Authority is considering only change in the name of the companies concerned. However, the domestic industry objects to extension of the present investigations to determination of dumping margin of the applicant exporters.
- b. the applicant for the first time disclosed at the time of oral hearing that it requested re-determination of dumping margin
- c. Neither the applicants nor the Authority has put ASFI to notice that the present review can extend to determination of dumping margin. At this belated stage, the scope of review should not be extended to determination of dumping margin.
- d. The Authority has not provided a copy of the questionnaire response to the domestic industry. The copy of rejoinder submissions filed for and on behalf of the exporters may also be provided.
- e. The previous companies continue to exist and therefore there is no merit in considering these companies as new entities.

- f. The examination of issues relating to dumping margin or its determination thereof would be without jurisdiction as this case was never initiated based on a request for re determination of the dumping margin.
  - g. The domestic industry also refers to settled jurisprudence, which provides for only change in name and not for re-determination of dumping margin.
  - h. The questionnaire response filed by the applicant Recron is grossly deficient.
4. Submissions made by Woongjin Chemicals Co. Ltd., from Korea- Woongjin Chemicals Co. Ltd., from Korea made the following submissions
- (i) Saehan Industries Inc. merged with Woongjin Chemical Co. Ltd., since 21-03-2008 and M/s Woongjin Chemical Co. Ltd., has acquired all the assets, liabilities facilities and factories of the former.
  - (ii) The Registration Certificate issued by Gumi Tax Office in the name of Saehan Industries Inc. has also been transferred in the name of M/s Woongjin Industries Inc. with the same Registration No. 174811-0000151 earlier issued to Saehan Industries Inc.
  - (iii) The Businessman Registration Certificate (Corporate) was issued to M/s Saehan Industries Inc with Registration Number: 515-81-00097 by the Director of Gumi Tax Office which has also been transferred in the name of M/S Woongjin Chemical Co. Ltd. with the same Registration Number since its merger.
  - (iv) The said M/s Saehan Industries Inc. after its merger with M/s Woongjin Chemical Co. Ltd. filed a name change report with the Tax Office to replace its Company name from M/s Saehan Industries Inc. to M/s Woongjin Chemical Co. Ltd. on April, 2008 and since then the said M/s Saehan Industries Inc. operates under the corporate name Woongjin Chemical Co. Ltd. and it no longer uses the name M/s Saehan Industries Inc.
  - (v) Woongjin Chemical Co. Ltd. has not exported any consignment into India either before or after taking over of M/s Saehan Industries Inc.
  - (vi) Woongjin Chemicals Co. Ltd. after taking over of M/s Saehan Industries is continuing with the manufacturing of the PUC at the same factory following the same manufacturing process and adopting the same accounting practices.
  - (vii) Korea Chemical Fibers Association have also issued a Notarized Confirmation Certificate dated 05-02-2010. confirming that M/s Saehan Industries has been taken over and merged with Woongjin Chemical Co. Ltd. with effect from 21<sup>st</sup> March, 2008.

#### **EXAMINATION BY THE AUTHORITY**

5. The Authority has carefully considered submissions made by various interested parties considering the legal and factual position.

6. The product under consideration involved in the original investigation and also in the present review application imports of All Fully Drawn or Fully Oriented Yarn/ Spin Draw Yarn/ Flat Yarn originating in or exported from Indonesia, Korea RP, Malaysia and Chinese Taipei. The product under consideration involved in the original investigation and also in the present review application is " All Fully Drawn or Fully Oriented Yarn / Spin Draw Yarn / Flat Yarn of Polyester (non-textured and non-POY) and other yarns conforming to the tariff description of customs heading 5402.43 (hereinafter also referred to as subject goods). The above-mentioned product in commercial market parlance is generally known as 'Fully Drawn Yarn'. The subject goods are used for manufacture of apparel / household textiles, and other industrial textiles. Technical specifications of the subject goods are defined in terms of their deniers, tenacities, lustres, colours (like semi dull, bright, super bright, full dull, Dope dyed), cross section and shrinkage. During the course of the original investigation it has been noticed that significant quantity of the subject goods have also been imported under customs heading 5402.42. Therefore, for the purpose of this review the goods imported under customs heading 5402.43 and 5402.42 have been considered. However, these classifications are indicative only and are no way binding on the scope of this investigation. The authority notes that none of the interested parties has raised any argument on the issue of product under consideration. The Authority, therefore, has considered the same scope of the product under consideration as was considered in the final findings earlier notified. Further, the Authority proposes to hold that the goods produced by the domestic industry are like articles of the subject goods imported from the subject countries.
7. The Authority examined the various applicable statutory provisions in the light of the arguments raised by the interested parties. The Authority observes as follows with regard to various legal provisions.
- (a) The present investigations are being conducted under Section 9A(5) and Rule 23, which provides as follows

**23. Review.** - (1) *The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.*

(2) *Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.*

*(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.*

(b) Having regard to various legal provisions, the Authority notes as follows with regard to M/s Recron (Malaysia) Sdn Bhd:

- i) It is the consistent practice of the Authority that mid term review is initiated on the basis of changed circumstances established by an interested party requesting a review of anti-dumping duties earlier imposed.
- ii) M/s Hualon Corporation has sold its entire businesses and assets In Malaysia to Recron. It has subsidiaries in Vietnam and China which are not in the business of manufacturing or selling the product under consideration. Thus, M/s Hualon is not liquidated. However/s Hualon have transferred its business to M/s Recron Malaysia. With this transfer, full ownership of the business including the management systems are transferred to M/s Recron and M/s Hualon has ceased all its manufacturing as well as business operations (including exports) in Malaysia.
- iii) The Authority also notes that anti dumping investigations are being product specific and operations relating to the product under consideration are relevant. As per the information provided, M/s Hualon ceases to be engaged in production and sale of the product under consideration and has liquidated/ transferred its assets for the product under consideration in Malaysia.
- iv) Change in ownership will amount to “changed circumstances” for the purpose of mid-term review. In the instant case, ownership and all businesses of M/s Hualon have been transferred to M/s Recron Malaysia. Therefore it amounts to change in circumstances.
- v) The domestic industry agrees with the substitution of M/s. Hualon’s name with M/s. Recron. Further, even though the applicant originally argued for determination of dumping margin, it has subsequently withdrawn its request for determination of dumping margin vide letter dated 17<sup>th</sup> June, 2010 and reiterated again vide letter dated 24<sup>th</sup> June, 2010.

In the light of the foregoing, the Authority holds that the present review is for the change in name of the applicant company and hence the name should be

changed from M/s Hualon Corp( M)) Sdn Bhd to Recron Malaysia Sdn Bhd in the duty table.

8. Woongjin Chemicals Co. Ltd., from Korea: In respect of Woongjin Chemicals, the Authority notes that Saehan Industries Inc. merged with Woongjin Chemical Co. Ltd., since 21-03-2008 and Woongjin Chemical Co. Ltd., has acquired all the assets, liabilities facilities and factories of the former. The Registration Certificate issued in the name of Saehan Industries Inc. has also been transferred in the name of M/s Woongjin Industries Inc. with the same Registration No. 174811-0000151 earlier issued to Saehan Industries Inc.
- a) Woongjin Chemicals Co. Ltd. after taking over of M/s Saehan Industries is continuing with the manufacturing of the PUC at the same factory following the same manufacturing process and adopting the same accounting practices.
  - b) Saehan Industries Inc. operates under the corporate name Woongjin Chemical Co. Ltd. and it no longer uses the name M/s Saehan Industries Inc.

In the light of the foregoing, the Authority holds that the name of Saehan Industry, Korea RP be replaced by Woongjin Chemicals Co Ltd.

#### **9. Comments to the disclosure statement**

**a) Submissions made by Recron, Malaysia**

There are sufficient justifications to change the name of company and grant the same level of duties to the applicant as were granted to the its previous management. It is requested that the change in name may be specified with retrospective effect. They have also submitted a notification issued by the European commission, wherein the EC has accepted the name change on same grounds.

- b)** No other interested party has made any submissions to the disclosure statement.

#### **10. Examination by the Authority**

The Authority notes that there are no comments from any of the interested party except M/s Recron Malaysia. The Authority notes that the final recommendations are given after detailed investigation over a period of time;

and retrospective recommendations except that of duty are not contemplated in the rules. The Authority notes the change in name of M/s Recron by EC authorities.

## **11. Conclusion and Recommendations**

Having considered all the aspects of the case, including submissions made by the petitioners to the Disclosure Statement, the Authority concludes that the investigation has established that it is not a case where new production facilities have come in operation in Malaysia and Korea RP. The companies which had exported the product under consideration to India during the original investigations period had completely transferred its assets and liabilities to the new management and the new management is now undertaking the very same old business. In view of the above, the Authority holds that the individual dumping margin in respect of exports made by the applicants is not required to be determined. Instead, the applicant is required to be given the same level of dumping margin and consequently the benchmark for payment of anti dumping duties as was given to the earlier exporters.

12. Accordingly, the authority recommends following amendments in the Duty table given at Para 146 in the amendment to the Final Findings No. 14/3/2005-DGAD dated 24<sup>th</sup> January 2007:

- i) Against serial no. 15, in col. 7 and Col. 8, the name of the Producer and Exporter may be amended to read as M/s Recron (Malaysia) Sdn Bhd.
- ii) Against serial no.16, in col. No.7, the name of the Producer may be amended to read as M/s Recron (Malaysia) Sdn Bhd.
- iii) Against serial no. 9, in col. 7 and Col. 8 , the name of the Producer and Exporter may be amended to read as M/s Woongjin Chemicals Co Ltd.
- iv) Against serial no.10, in col. No.7, the name of the Producer may be amended to read as M/s Woongjin Chemicals Co Ltd.

13. An appeal against the orders of the Central Government arising out of this order shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Act.

P.K.Chaudhery  
The Designated Authority