

**TO BE PUBLISHED IN PART 1 SECTION-1 OF THE GAZATTE OF
INDIA- EXTRAORDINARY**

F. No. 14/10/2015-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 5, Parliament Street, New Delhi - 110001

Dated: 8/11/2019

Amendment Notification

Subject: Anti-Dumping investigation concerning imports of Styrene Butadiene Rubber of 1500 series and 1700 series originating, in or exported from European Union, Korea RP or Thailand dated 12/7/2017 Amendment thereof.

No. 14/10/2015- DGAD - Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter referred to as “the Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter referred to as “the Rules”) thereof:

A. BACKGROUND

1. No. 14/10/2015 -DGAD - Whereas having regard to the Act and Rules supra, the Designated Authority, in the Ministry of Commerce and Industry, Department of Commerce, Govt. of India, appointed under the Rules supra, (hereinafter referred to as “the Authority”) notified its Final Findings dated 12th July 2017 recommends definitive anti-dumping duty on imports of Styrene Butadiene Rubber of 1500 series and 1700 series hereinafter referred as subject goods originating, in or exported from European Union, Korea RP or Thailand (hereinafter referred as subject countries, which was notified by Department of Revenue, through Custom Notification No. 43/2017-Customs (ADD) dated 30th August 2017.
2. And whereas definitive anti-dumping duty was imposed on the subject goods vide Customs Notification No. 43/2017-Customs (ADD) dated 30.08.2017.
3. And whereas now M/s POSCO INTERNATIONAL Corporation requested for change of name of the exporter from M/s Daewoo International Corporation to M/s POSCO INTERNATIONAL Corporation in regard to the above Relevant Notification, in accordance with the Trade notice No. 12/2018 dated 17.09.2018.

B. PROCEDURE

4. On 20.05.2019, M/s POSCO International Corporation (formerly known as “POSCO

Daewoo Corporation” and before that as “Daewoo International Corporation”) filed a duly substantiated application requesting for change of name of the exporter from M/s Daewoo International Corporation to M/s POSCO International Corporation in regard to the above investigation, in accordance with the Trade notice No. 12/2018 dated 17.09.2018.

5. Considering the nature of the request and in terms of Trade notice No. 12/2018 dated 17.09.2018, the Authority circulated the non-confidential version of the application to the interested parties and sought views on the same from interested parties, so that the request could be considered appropriately and need of undertaking a Mid Term Review (“MTR”) could be evaluated. Submissions made by interested parties have been considered by the Authority.
6. An oral hearing was conducted on 02.07.2019, wherein all the interested parties were given an opportunity to make their submissions. The interested parties were also required to file their written submissions and rejoinder submissions within the specified date. The submissions filed by the interested parties are summarized below:

C. SUBMISSIONS MADE BY INTERESTED PARTIES

7. Written submissions by M/s POSCO International Corporation (Applicant/exporter)

- (i) POSCO INTERNATIONAL Corporation (formerly known as POSCO DAEWOO Corporation and before that as Daewoo International Corporation) (the “Applicant”) is an exporter of “Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series”. Vide Notification No. 43 / 2017-Customs (ADD) dated August 30, 2017, the Ministry of Finance, Department of Revenue”) imposed anti-dumping duty on the Applicant’s exports.
- (ii) However, prior to the date of issuance of the Relevant Notification, Daewoo International Corporation’s name had changed to POSCO DAEWOO Corporation. This name change has been recognized by the Designated Authority, the Directorate General of Trade Remedies (“Designated Authority”), in Notification F. No. 14/1/2014-DGAD dated December 31, 2018 which was issued with respect to an anti-circumvention investigation concerning imports of Cold-Rolled Flat Products of Stainless Steel originating in or exported from China PR, Korea RP, South Africa, Taiwan, Thailand and the U.S.A.
- (iii) Thereafter, on March 18, 2019, at the General Shareholders Meeting of POSCO DAEWOO Corporation, its name was changed to POSCO INTERNATIONAL Corporation.
- (iv) The Applicant herein filed an application dated May 20, 2019 (the “present Application”) before the Designated Authority, requesting for a change of name to POSCO INTERNATIONAL Corporation with retrospective effect. The present Application was submitted in accordance with Trade Notice No. 12 / 2018 issued by the Directorate General of Trade Remedies. In its application, the Applicant has provided all relevant documents evidencing the change of name.
- (v) The Applicant is a company registered under the laws of Korea having its registered

office at 165, Convensia-daero, Yeonsu-gu, Incheon, 21998, Korea.

- (vi) The Applicant was registered as Daewoo International Corporation on November 16, 2000 with Resident (Corporation) Registration Number 110111-2137358. Daewoo International Corporation became a part of the Posco Group of Companies on November 1, 2010.
- (vii) Thereafter, with a view to integrate Daewoo International Corporation's name with the Posco Group, at Daewoo International Corporation's (as the Applicant was then known) General Shareholders' Meeting dated March 14, 2016, a resolution was passed to change the name to POSCO DAEWOO Corporation. This change in name came in effect on this date itself.
- (viii) A further need was felt to enhance the Applicant's homogenization with the Posco Group and at a General Shareholders Meeting of POSCO DAEWOO Corporation (as the Applicant was then known) held on March 18, 2019, a resolution was passed to change the name of the Applicant to its present name, i.e. POSCO INTERNATIONAL Corporation.
- (ix) On both the above occasions, the change of name was made since a need was felt to homogenize the Applicant's name with the Posco Group and it was felt that a closer association of the Applicant with the group name was required. The Applicant hereby states and confirms that the change of name on both occasions was a standalone corporate action and was not accompanied by any concomitant change in corporate, shareholding, or ownership structure.
- (x) The Applicant submits that the present Application requesting for change of name in the Relevant Notification may be allowed since these changes were simply made to homogenize the Applicant's name with the Posco Group.
- (xi) Furthermore, upon the change of names of the Applicant, there was no concomitant change in the corporate, shareholding, or ownership structure of the Applicant.
- (xii) The Applicant also submits that:
 - a. The Resident (Corporation) Registration Number of the Applicant is the same as that of Daewoo International Corporation and POSCO DAEWOO Corporation i.e., 110111-2137358.
 - b. As stated above, the Designated Authority has previously already recognized the change of name of the Applicant from Daewoo International Corporation to POSCO DAEWOO Corporation by its Notification F. No. 14/1/2014-DGAD which was issued pursuant to the Designated Authority's finding on December 31, 2018. In this Notification, the Designated Authority also observed that Daewoo International Corporation and POSCO DAEWOO Corporation is the same company.

8. Written submissions by Domestic Industry.

- (i) Change of name is change of ownership: The exporter is coming before the Authority for the second time for name change. In the first instance, the company's name changed from Daewoo International Corporation to POSCO Daewoo. This was not a case of mere name change but involved change in legal structure and status. The exporter has not placed any documents on record to show that it was a case of mere name change and there was no change in legal structure and status of

the company. Since the first name change has not been adequately established, and since second change is a subsequent event consequent upon first change, the present request should not be accepted without applicants providing all relevant information; domestic industry getting opportunity to comment on such information and authority satisfying on accuracy and adequacy of such information.

- (ii) Daewoo International Corporation and POSCO Daewoo Corporation existed before the alleged name change: there is enough reason to suspect that the two entities who have claimed mere change of name existed before alleged change of name. There is no document to show that these entities did not exist before. Both Daewoo International Corporation and POSCO Daewoo existed in the year of 2000 and 2015. It is hard to believe that the company merely changed the name in 2016. The exporter has the onus to prove that there was no change of ownership and but was only name change.
- (iii) Contradictory claims have been made in three different applications: Referring to claims made by the applicant in three different applications (two present applications and the previous application), it is seen that there is no consistency in the claims made with regard to the reasons for the alleged change. This clearly establishes that the applicants are trying to create confusion in order to seek change of name in a situation where there is indeed a change in ownership.

9. Rejoinder submissions by the M/s POSCO INTERNATIONAL Corporation (Applicant/exporter) [Response dated 11.10.2019 on behalf of POSCO INTERNATIONAL Corporation to DGTR's letter of 20.08.2019]

- (i) The merger of POSCO P&S with the company was a merger concerning the steel segment of the company and not SBR in respect of which the company has filed the present application for change of name in the Relevant Notification and moreover, it was a small-scale merger under Korean laws. The effect of this merger was: a) minor change in the shareholding of the company; b) no change in the company's identity pursuant to the merger; and c) in any case, without prejudice, *ex facie*, the merger could not said to have any effect on the company's trade in relation to the SBR which forms a part of its petrochemical business whereas the steel business of POSCO P&S was merged with the company and on the face of it this could not have had any impact on the company's SBR business.
- (ii) In any case, the earlier change in name of the company from Daewoo International Corporation to Posco Daewoo Corporation was verified by the DGTR who arrived at a categorical finding vide its Amendment Notification dated 31.12.2018 that upon verification of the records of the exporter, the Domestic Industry's submissions regarding amalgamation and merger are found to be without any merit and therefore, *"the request is of name change only and that there is no change in shareholding pattern of ownership which therefore do not alter the basic nature of*

business operations of the exporter”.

- (iii) The above said findings of the Authority in the Amendment Notification dated 31.12.2018 have not been challenged by the Domestic Industry though it was open for them to file an appeal against the same. Therefore, the said findings have been accepted by the Domestic Industry and have attained finality *inter se* the parties. Therefore, the Domestic Industry is estopped from raising this issue.
- (iv) M/s POSCO INTERNATIONAL Corporation submits that there is no inconsistency as to the reasons for change of name. The company has changed its name in view of seeking uniform branding of the company and in view of goodwill of the name associated with POSCO.

10. Rejoinder submissions filed by the domestic industry

- (i) The exporter has suppressed vital fact with regard to POSCO Daewoo’s merger with one of its subsidiary POSCO Processing and Service with effect from 1st March 2017. The merger is done with an aim to simplify the steel distribution channels in South Korea as well as in the global market by directly engaging in steel trading, processing and scrapping. Post name change in 2016, POSCO Daewoo merged with POSCO P&S in March 2017. After merger the company became a completely new identity with the change in shareholding pattern, paid-up capital, etc. The exporter has not only changed its name but has also changed the entire shareholding composition. The said merger was not brought on record, which amounts to suppression of facts.
- (ii) Certificate of Business issued by the tax authority and board of resolution is insufficient proof of change of name. There is no documentary evidence to demonstrate that there is no change in ownership and legal status.
- (iii) There is no legal basis given by the company why this change of name should be applied on retrospective basis.

11. [Response dated 23.10.2019 on behalf of POSCO INTERNATIONAL Corporation to DGTR’s letter of 17.10.2019]

In response to the Authority’s letter dated 17.10.2019 seeking explanation / clarifications on the issue of merger of POSCO AST and POSCO P&S into POSCO DAEWOO Corporation and impact of these mergers on the business profile of the company and its ownership structure, the following submissions were made:

- (i) It was reiterated that the merger of POSCO P&S w.e.f. 01.03.2017 being a merger with respect to the steel segment of the company would have no effect on the anti-dumping duty imposed by the Relevant Notification since the name change application was made in respect of the company’s SBR business.

- (ii) In any case POSCO AST merged into POSCO P&S in 2016, and not into the company as a result of which POSCO AST ceased to be a separate entity.
- (iii) The name change of the company occurred, first on 14.03.2016 when the name was changed from Daewoo International Corporation to POSCO DAEWOO Corporation and then on 18.03.2019 from POSCO DAEWOO Corporation to POSCO INTERNATIONAL Corporation. Moreover, the authority in respect of the case of Cold Rolled Stainless Steel (“CRSS”) had already allowed the change of name from Daewoo International Corporation to POSCO DAEWOO Corporation vide Amendment Notification dated 31.12.2018.
- (iv) It was also submitted that the company continued to remain an exporter of CRSS post the above-mentioned mergers.
- (v) The company is engaged in the SBR business as an exporter and not a producer.
- (vi) Upon the merger of POSCO P&S into the company, the shareholding of the majority shareholder increased from 60.31% to 62.9%. However, since 2017, the company’s majority shareholding has not changed and neither has its structure. Reliance was placed on the company’s financial statements of 2017, 2018 and the quarterly report of the first quarter of 2019.
- (vii) It was also submitted that pursuant to the above-mentioned mergers, there had neither been any impact on the company’s business profile nor on the ownership structure.
- (viii) Without prejudice, it was also submitted that the present Application related to change of name of the company with respect to its SBR business which would in any case not be impacted by mergers, if any, in relation to the company’s steel business.

12. No other interested party has made any submission.

D. Examination by the Authority

13. The Authority has examined the documents and submissions on record as under:

14. M/s POSCO INTERNATIONAL Corporation has filed the present application as a result of change of name from Daewoo International Corporation to POSCO Daewoo Corporation and then to POSCO INTERNATIONAL Corporation. In support of the request, the applicant has made available the following documents, which have been examined by the Authority to the extent necessary:

- a. Certificate of Business Registration issued on 21.08.2018 issued by Namincheon District Tax Office;

- b. Certificate of Business Registration issued on 22.03.2019 issued by Namincheon District Tax Office;
 - c. Minutes of the General Meeting of the Shareholders held on 14.03.2016;
 - d. Minutes of the General Meeting of the Shareholders held on 18.03.2019 passed by the company in respect of change of name to POSCO INTERNATIONAL Corporation;
 - e. Financial Statements of POSCO INTERNATIONAL Corporation for the years ended December 31, 2016 and December 31, 2017 along with independent auditor's report; and
 - f. Financial Statements of POSCO INTERNATIONAL Corporation for the year ended 31.12.2018 along with independent auditor's report.
15. Prior to the present application, the name of the applicant was changed from Daewoo International Corporation to POSCO Daewoo Corporation. The applicant made an application dated 12.11.2018 to DGTR to modify its name from Daewoo International Corporation to POSCO Daewoo Corporation specifically in respect of the following two notifications: i) Custom Notification No. 61/2015-Cstoms (ADD) dated 11.12.2015; and ii) Custom Notification No. 52/2017-Customs (ADD) dated 24.12.2017. The Authority considered the said request and issued an amendment notification dated 31.12.2018, wherein DGTR accepted the request for change of name to 'POSCO Daewoo Corporation'
16. In accepting the request for change of name, the Authority concluded as under in its amendment notification dated 31.12.2018:

10. The Authority notes that Domestic Industry's submissions that it is a case of amalgamation/merger has been verified as per the records of the Company Register and Certificate of Registration submitted by the applicant exporter. The Certificate referred to by the Domestic industry pertains to the branch office establishment of the erstwhile Daewoo International Corporation as has been correlated from the certificate of business registration dated 20.01.2015 also issued to M/s Daewoo International Corporation mentioning the same details of the branch office. The Authority therefore holds that the request is of name change only and that there is no change in shareholding pattern of ownership which therefore do not alter the basic nature of business operations of the exporter.

11. Having considered all aspects, the Authority holds that the name of the exporter i.e. M/s Daewoo International Corporation has been changed to POSCO Daewoo Corporation with effect from 14.3.2016. Thus, Daewoo International Corporation and POSCO Daewoo Corporation are the same companies.

17. The Authority notes that in the present case as well, POSCO International Corporation and POSCO Daewoo Corporation share the same Resident (Corporation) registration number and the change in name is reflected in the Certificate of Business registration issued by the concerned Tax Authority.
18. The Authority has examined the company's shareholding for the past 3 years, including for the period post change of name claimed by the applicant. Based on the published annual reports for the year 2017 and 2018 as well as quarterly report for the first quarter ending on

31.03.2019, the Authority notes that the shareholding of the company has not undergone any major change in structure, prior to name change as well as post name change.

19. The Authority has also taken note of the submissions made by the Domestic Industry regarding the two entities – Daewoo International Corporation and POSCO Daewoo Corporation suspected to be existing in 2000 and 2015 i.e. before the change of name. The Authority notes that during the previous proceedings in relation to the earlier name change of the entity from Daewoo International Corporation to POSCO Daewoo Corporation, issues were considered and change has been notified already.

E. Conclusion and Recommendations

20 Having considered all aspects, the Authority holds that the name of the exporter i.e. M/s Daewoo INTERNATIONAL Corporation changed to M/s POSCO Daewoo Corporation with effect from 14.3.2016 which has further has been changed to POSCO INTERNATIONAL Corporation with effect from 18.03.2019. Thus, M/s Daewoo INTERNATIONAL Corporation, POSCO Daewoo Corporation and POSCO INTERNATIONAL Corporation are the same companies.

21 In view of the above, the Authority recommends amendment in the notification no 43/2017 Customs ADD dated 30th November 2017.

a. In duty table under Para 97 of Final Finding No. 14/10/2015-DGAD dated 12.7.2017 substitute the words “**POSCO INTERNATIONAL Corporation**” to “Daewoo International Corporation” in S.No 7 column no 7 item no (i).

b. Substitute the words “**POSCO INTERNATIONAL Corporation**” in place of “Daewoo International Corporation” in customs notification 43/2017-Customs (ADD) dated 30.08.2017 in Duty table in S.No 7 Column No.7 item no (i).

22. 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.

Sunil Kumar
Special Secretary & Designated Authority