

**TO BE PUBLISHED IN PART 1 SECTION-1 OF THE GAZATTE OF INDIA
EXTRAORDINARY
F. No. 6/12/2017- DGAD (Pt.1)
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: 7.01. 2019

Amendment Notification

Subject: Anti-Dumping investigation concerning imports of ‘High Tenacity Polyester Yarn’ from China PR – Amendment to the final finding notification no. 6/12/2017-DGAD dated 24/05/2018.

1. No. 6/12/2017- DGAD (Pt.): - 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

2. The Directorate General of Trade Remedies ("Authority") had conducted an anti-dumping investigation concerning imports of High Tenacity Polyester Yarns ("subject goods" or "HTPY") originating in or exported from China PR ("subject country") and recommended imposition of definitive anti-dumping duties vide the final finding Notification No. 6/12/2017-DGAD dated 24th May 2018 ("Final Findings"). The recommendations were accepted by the Ministry of Finance and definitive duties were imposed vide Customs Notification No. 35/2018 – Customs (ADD) dated 9th July 2018 ("Customs Notification").

B. PROCEDURE

3. A written request was received from M/s Hyosung Corporation, Korea RP and M/s Hyosung Advanced Materials Corporation (“HAMC”) (the 1st Applicants) in accordance with the Trade Notice No. 12/2018 dated 17.9.2018 requesting for change of name of the exporter in the duty table notified as above.

4. A second written request was received from M/s Zhejiang Guxiandao Industrial Fibre Co., Ltd. ("Guxiandao IF") and M/s Zhejiang Guxiandao Polyester Dope Dyed Yarn Co., Ltd. "Guxiandao PDD" (the 2nd applicants) in accordance with the Trade Notice No. 12/2018 dated 17.9.2018 requesting for change of name of the exporter in the duty table notified as above.
5. The Authority examined the request and noting the nature of the request decided to seek views from the interested parties, who could be directly affected by the outcome, so that the request could be considered appropriately and need of undertaking a MTR could be evaluated. The Authority held the hearing on 17th December 2018 and subsequently directed the participants namely, applicant exporters and the domestic industry, of the original investigation, to file written submissions. The submissions were filed by all the participants and submissions made therein have been considered by the Authority.

C. SUBMISSIONS

Views of the 1st Applicants – Hyosung Group

6. Hyosung Chemical Fiber (Jiaxing) Co. Ltd. ("**HCF**"), China PR is a producer of the subject goods which were exported to India through Hyosung Corporation, Korea RP during the period of investigation (April 2016 – March 2017). As per the duty table in the Final Findings, exports by the supply chain consisting of HCF, China as the producer and Hyosung Corporation as the exporter were assigned an individual anti-dumping duty rate of 'NIL'.
7. The applicant has stated that with effect from 1st June 2018, Hysoung has undergone a change in its corporate structure. The management of Hyosung took a decision to spin-off some of its business groups and in-corporate them into new entity named as "Hyosung Advance Materials Corporation (HAMC)". Like the earlier named exporter Hyosung Corp., HAMC is also based in Korea RP and it was intended that the export of the subject goods produced by HCF China would henceforth be undertaken by HAMC. With this restructuring, the HAMC will succeed Hyosung in its operations of exporting HTPY to India. There is no change in the corporate structure or name of the producer HCF China. Application for name change only concerns trader exporter Hyosung Corp.
8. The present application is being made pursuant to the provisions of Trade Notice No. 12/2018 ("Trade Notice"). Paragraph 3 of this Trade Notice expressly recognizes that requests for name change may be made on account of various reasons such as merger/demerger, acquisition etc., and not just simple change in name.

9. The Authority has clearly recorded in the Final Findings dated 24th May 2018 that Hyosung is only a trader. HAMC is now assuming this role of a trader from Hyosung. Similar to Hyosung, it will only be involved in trading HTPY produced by HCF in so far as HTPY originating in China PR is concerned. Apart from a change in the name of the exporting entity specified in the sales chain, all other aspects pertaining to sale of subject goods will continue to remain the same. The importer base in India and the price at which the subject goods will be exported by HAMC to India will be similar to the goods exported by Hyosung to India. The management of HAMC also remains the same in-principle.
10. The Applicant requests the Authority to accept the Application and introduce change in name in the Duty Table of the Final Findings or alternatively delete the "Exporters Column" from the Duty Table in the Final Findings.

Views of the 2nd Applicants – Guxiandao Group

11. Zhejiang Guxiandao Industrial Fibre Co., Ltd. (**Guxiandao IF**) and Zhejiang Guxiandao Polyester Dope Dyed Yarn Co., Ltd. (**Guxiandao PDD**) had participated in the above investigation and received an individual anti-dumping duty rate. The Authority vide its final findings had recommended an individual duty rate for the supply chain consisting of Guxiandao IF & Guxiandao PDD as the producers and Guxiandao IF as the exporter.
12. It has been stated that there is internal reorganisation in the company. Earlier the production plants of Guxiandao IF and Guxiandao PDD were situated in the same premises doing the same work and with a view to avoid unnecessary duplication of resources, it was decided by the shareholders of Guxiandao in June 2017, that all assets and liabilities of polyester industrial filament and polyester chip business are transferred to Guxiandao PDD. As a result of internal reorganisation, Guxiandao IF is no longer involved in the production of the subject goods and remains as an investment company only. Change in name will require that Guxiandao PDD, who was earlier a producer only be named as exporter also in the duty notification to be able to enjoy the benefit of individual rate of duty.
13. The Applicants filed an application on 2nd November 2018 requesting replacement of Guxiandao IF instead of Guxiandao PDD as the exporter in serial number 2 of the duty table of the final finding dated 24 May, 2018. The present application has been made pursuant to the provisions of Trade Notice No. 12/2018 ("Trade Notice"). Paragraph 3 of this Trade Notice expressly recognizes that requests for name change may be made on account of various reasons such as merger/ demerger, acquisition etc., and not just simple change in name.
14. The Applicants have further submitted that during the review investigation and the verification visit, the Authority focused on information relating to POI. The

reorganisation took place in June 2017 which is a post POI event, thus, the matter was not discussed. However, on 5th July 2018, Guxiandao PDD had filed a letter requesting the Authority to issue a corrigendum for rectification of the Final Findings dated 24th May 2018 for the name of the exporter at S. No. 2, column 7 of the Duty Table after realising that the matter related to reorganisation was not covered in the findings and therefore there is no suppression of facts relating to reorganization during the original investigation.

15. Both Guxiandao PDD and Guxiandao IF had participated in the original investigation and physical verification for both the companies was done during the course of investigation and accordingly export price was appropriately determined. There is mere transfer of assets and liabilities of polyester industrial filament and polyester chip business of Guxiandao IF to Guxiandao PDD after reorganisation. Since, Guxiandao PDD is a closely related company of Guxiandao IF, decision regarding pricing is taken by the group and these decisions do not change when the function of marketing/export activity is assigned to a different entity. As a result, there is no change of cost structure, normal value and export price due to reorganization.
16. In the anti-dumping investigation, China PR was treated as a non-market economy and normal value was constructed based on parameters related to domestic Industry in India. Also, in this case, whether there is change in producer or not, the constructed normal value will remain same and thus, there cannot be any change in dumping margin as claimed by the domestic industry.

Views of the Domestic Industry

17. The Domestic Industry (M/s SRF Limited and M/s Reliance Industries) stated that the replacement of exporter's name from Zhejiang Guxiandao Industrial Fibre Co. Ltd. (Zhejiang IF) to Zhejiang Guxiandao Polyester Dope Dyed Yarn Co. Ltd (Zhejiang PDD), rests on the reason that all assets and liabilities of polyester industrial filament and polyester chip business of Guxiandao IF have been transferred to Guxiandao PDD w.e.f. 1st July 2017 that means the transfer had taken place soon after the initiation of investigation on 15th June, 2017. This major change in structuring of organization should have been brought before the authority at the very stage of filing a response to the exporters' questionnaire. Clearly the present request is mala fide, and should be outrightly rejected. In fact, the individual duty granted to the combination needs to be withdrawn and the applicants need to be put to 'residual duty' for the fact now admitted on records.
18. Further, for the claim regarding Hyosung, domestic industry stated that it has undergone equity spin off with effect from 1st June 2018 and has become holding company of newly incorporated subsidiary, HAMC. By mere simple understanding

of the same there is an equity change in the ownership and requires full investigation and not summary acceptance of the claims on face value. Also, this change in the company structure imply change of “marketing company”. A new company will be “introduced” in the Indian market. Such facts require detailed investigations.

19. Domestic Industry submitted that there is a need to differentiate between “change of name” and “change of company” and Applicants cannot use this interchangeably. The “change of name” as envisaged by the trade notice should be understood in the context of change of name of the same company and can be considered in situations where the change happens due to very technical error/reason and not necessitated by the business reasons. In this case request is for “change of company” by substitution of a different legal entity. And this change of legal entity warrants a complete mid-term review and not just a summary proceeding.
20. The exporters in question had approached the authority for the change in name after the issue of final finding and before the issuance of the customs notification. However, even at that stage, when the findings were only recommendatory in nature, the Designated Authority did not entertain the requests. If the request were not maintainable even before the implementation of final finding by way of customs notification; they are certainly not maintainable now that the findings have attained finality. Trade notice issued by the Designated Authority did not intend to grant any benefits which was not available to foreign producers/ exporters before issuance of trade notice.
21. DI has stated that it is important to understand the difference between the ‘producer specific duty’ and ‘producer-exporter specific duty’. In producer specific duty system only producer name is sufficient while exporting goods, where as in a producer-exporter specific duty, only when the combination is same as producer and exporter mentioned in the duty table, the specific duty is given to producer–exporter combination. As the two systems are different, the appropriateness or otherwise of the two systems is not the subject matter of present demand proceeding. If the applicant producer –exporter considered that the combination awarded by the designated authority was inappropriate, the recourse to them was appeal before CESTAT and not the present demand proceeding.
22. Designated Authority should not entertain such correction or modification to the duty table because of administrative/ business decisions of the interested parties at their will. If the DA entertains such changes, it shall imply very frequent request regarding change in the name in duty table.
23. Due to reorganization, there are changes in cost structure, normal value, export price and also change of Legal entity and these changes warrant detailed Mid-term review.

D. Examination by the Authority

24. The issues and submissions made by the applicants, domestic industry and available facts, as recorded in the final finding, have been examined and following observation have been made.
25. In the case of 1st applicant namely **Hysoung Group**, the need for change in name of the exporter has emerged from creating an entity namely M/s Hysoung Advanced Materials Corporation (HAMC) in the organisation. The examination of the final finding indicates that this applicant was granted a market economy status on the grounds that the producer in China operates under the complete control of Hyosung - Korea, which is based in Korea RP and is the ultimate shareholder of M/s Hyosung Chemical Fiber (Jiaxing) Co. Ltd, the producer of the goods. There is no change in the status of the producer, thus normal value remains unchanged. Further it is noted that both dumping margin and injury margin were negative during the investigation. Therefore, there is no need to reassess the dumping parameter.
26. In the case of 2nd applicant namely **Guxiandao Group**, the need for change in name of the exporter has emerged from internal reorganisation. The producer is the same and he wants to be the exporter also. The questionnaire responses were complete when filed at the time of investigation. There is no attempt to hide the facts as alleged by the DI and the exporter has brought the facts to the notice of the Authority in reasonable time. The examination of the final finding indicates that this applicant was not given market economy status and normal value was constructed on the basis of best available information. The export price was determined as per the standard adjustments. Further, it is noted that AD duty was imposed on injury margin on the basis of LDR. Therefore, there is no need to reassess the dumping parameters.
27. The examination further revealed that the two requests fall in the category of name change only and there is no change in shareholding pattern of ownership which do not alter the basic nature of the business. The requests are covered in the scope of the trade notice. The submissions by the DI to undertake a detailed midterm review is without any merits and will only lead to waste of time for all concerned.
28. Having considered all aspects, the Authority recommends following change in the duty table in para no 128 of the final finding 6/12/2017-DGAD dated 24thMay, 2018:
- (a) At Sr. No. 1 in column 7, the name of the exporter viz. "Hyosung Corporation, Korea RP (Hyosung)" be amended to "Hyosung Advance Materials Corporation (HAMC) Korea".

- (b) At Serial No. 2 in column 7, the name of the exporter viz. “Zhejiang Guxiandao Industrial Fibre Co., Ltd. (Guxiandao IF) and be amended to ‘Zhejiang Guxiandao Polyester Dope Dyed Yarn Co. Ltd (Guxiandao PDD)”.
29. Accordingly, the Authority recommends the change in the Custom Notification No. 35/2018- Customs (ADD) dated 9th July, 2018.
30. 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
Additional Secretary & Director General