

**F. No. 7/22/2020-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi -110001**

Dated: 29th October 2020

(FINAL FINDINGS)

Case No.AD-MTR 08/2020

Subject: Mid-Term Review limited to change of name of producer/exporter from Korea RP regarding anti-dumping duty imposed on imports of "Toluene Di- Isocyanate (TDI)" originating in or exported from China PR, Japan and Korea RP-Amendment to the final finding notification no.14/36/2016-DGAD dated 13th December, 2017.

A. Background of the case

1. 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 Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the "Rules") thereof;
2. Whereas having regard to the Act and Rules supra, the Designated Authority, (hereinafter referred to as "the Authority") had issued its final finding vide Notification No.14/36/2016-DGAD dated 13th December 2017 recommending continued imposition of definitive anti-dumping duty on imports of anti-dumping duty imposed on imports of "Toluene Di- Isocyanate (TDI)" originating in or exported from Korea RP, China PR and Japan (hereinafter referred to as the subject countries).
3. And whereas the Central Government, vide Customs Notification No. 3/2018-Customs (ADD) dated 23 January 2018, had imposed definitive anti-dumping duty on the subject goods originating in or exported from the subject countries.
4. And whereas the Customs Tariff Act and the Anti-dumping Rules require the Authority to review from time to time the need for the continuance of anti-dumping duties. Hanwha Solutions Corporation has filed a Mid-Term Review application stating that a merger of Hanwha Chemical Corporation with its wholly owned subsidiary Hanwha Q Cells and Advanced Materials Corporation has resulted in a name change only, and there has been no change in the shareholding structure of the applicant. It has been claimed that the original company name has changed on 6th January, 2020 following merger of Hanwha Q Cells and Advanced Materials Corporation with Hanwha Chemical Corporation. They have further claimed that in view of the same, all their exports will be in the name of Hanwha Solutions Corporation, and accordingly, the duty applicable on Hanwha Chemical Corporation must be made applicable to Hanwha Solutions Corporation as the entity is the same.

5. And, whereupon in accordance with Section 9A (5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority issued a public notice dated 3rd August 2020, published in the Gazette of India, Extraordinary Part I Section I, initiating the Mid-Term Review limited to change of name of producer/exporter from Korea RP regarding anti-dumping duty imposed on imports of "Toluene Di- Isocyanate (TDI)" originating in or exported from China PR, Japan and Korea RP. The review is only limited to the aspect of the name change as claimed by M/s Hanwha Solutions Corporation, Korea RP (hereinafter referred to as "Applicant") with regard to the Final Findings of No. No.14/36/2016-DGAD dated 13th December 2017 and the definitive anti-dumping duty imposed vide Customs Notification No. 3/2018-Customs (ADD) dated 23 January 2018.

B. PROCEDURE

6. The procedure described below has been followed with regards to the investigation:
 - i. The Authority, issued a public notice dated 5th August 2020 published in the Gazette of India Extraordinary, initiating midterm review limited to change of name of producer/exporter from Korea RP, investigation concerning imports of the subject goods from subject countries.
 - ii. The Authority forwarded a copy of initiation notification dated 3rd August 2020 to the embassy of the Subject Countries and known domestic producers of subject goods in India (whose details were made available by the Applicant) and gave them opportunity to make their views known in writing within thirty days from the date of receipt of the notice as per Rule 6(4) of the Anti-Dumping Rules.
 - iii. There was no period of investigation set for the purpose of the present investigation as the scope of the investigation was restricted to change of name of the applicant only.
 - iv. The Authority provided a copy of the non-confidential version of application to the known exporters and the Embassy of subject countries in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.
 - v. The Authority has examined the information furnished by the exporter with regard to the changed circumstance for accuracy and adequacy of the information so provided.
 - vi. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to all interested parties to present their views orally in the public hearing held on 20th October 2020. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally followed by rejoinders. The arguments made in the written submissions and rejoinders thereon received from the interested parties to the extent considered relevant for the present investigation have been addressed by the Authority in this final finding.
 - vii. Information provided by interested parties on 'confidential basis' was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- viii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has examined the issue on the basis of the 'facts available'.
- ix. The Authority issued a disclosure statement under Rule 16 on 26th October, 2020. No comments other than the Applicant producer/exporter have been filed by interested parties pursuant to the disclosure statement. The Applicant producer/exporter has requested to confirm the disclosure statement.

C. SUBMISSIONS MADE BY APPLICANT PRODUCER AND EXPORTER

7. The following submissions have been made by M/s Hanwha Solutions Corporation, the applicant producer-cum-exporter from Korea RP:
 - a. It has been submitted by the Applicant that following the imposition of duty and with effect from January 6, 2020, Hanwha Q Cells and Advanced Materials Corporation, a wholly owned company of the Applicant (hereinafter also referred to as "HQAMC") merged into the Applicant for business efficacy. Both the Applicant and HQAMC are part of the Hanwha Group. Subsequent to the merger, HQAMC has ceased to exist as a separate entity and in the board of directors' meeting dated January 2, 2020, the name of the Applicant has been changed to Hanwha Solutions Corporation.
 - b. It has also been submitted that consequent to the merger there has only been a change of name of the Applicant with no change in its shareholding structure. The Applicant held 100% of the shares in the erstwhile HQAMC and consequent to this merger, HQAMC has ceased to exist as an entity. There has not been any change in the share capital of the Applicant Company since there was no need for the Applicant to allot any shares to itself in exchange for its shareholding in HQAMC, being the merged entity.
 - c. There are only two shareholders of the Applicant that hold more than 5% shareholding in the Applicant, namely Hanwha Corporation (36.88%) and the National Pension Service (10%) and they continue to remain so. The remaining shareholding is held by the general public.
 - d. It has also been submitted that the merger has not resulted in any direct advantage to the Applicant. It is also not expected to have any future gains. HQAMC primarily focused on the energy sector and was not involved in any business activity concerning the product under consideration. Accordingly, this merger will not have any impact on the export of the product under consideration to India.
 - e. The sole purpose of the merger was to enhance management efficiency and strengthen business competitiveness. Post-merger, there has been a limited change in the management structure of the Applicant to the extent of the addition of two additional CEOs in the Applicant, beside the existing CEO, Mr. Koo Yung Lee. The two additional CEOs have been appointed to manage two separate business divisions that came into existence after merging HQAMC with the Applicant and were part of the management of the erstwhile company as well. Consequent to the merger, certain financial adjustments have also been made in the accounts of the Applicant to reflect the intercompany transactions between the Applicant and HQAMC, the balance of inventories, cost of sales and affiliated investment stocks of HQAMC.

D. SUBMISSIONS MADE BY DOMESTIC INDUSTRY

- a. The Domestic Industry has contended that this is not mere change of name of company but merger of three separate entities of Hanwha Group. Also, as per the attached merger documents accessed from Hanwha Group website, this corporate action also involved spin-off of company named Hanwha Global Asset. As this is merger and not mere name of change, the domestic industry apprehended that the interested party can represent change of entity as change of name only to avail benefit of lower duty (difference of 50% in the present case).
- b. No other interested party has made any submission.

E. RESPONSE OF APPLICANT PRODUCER AND EXPORTER ON SUBMISSIONS OF DOMESTIC INDUSTRY

- a. In response, the Applicant has stated that HQAMC spun off its domestic business, which continued to be called HQAMC. The remaining business continued as Hanwha Global Asset. The spin-off occurred in HQAMC and did not concern the Applicant Company.
- b. Pursuant to the spin off, HQAMC has merged into the Applicant resulting in the change of name. Being a case of a wholly owned subsidiary merging into its holding company for business efficacy. Subsequent to the merger, HQAMC has ceased to exist and name of the Applicant has been changed to Hanwha Solutions Corporation.

F. EXAMINATION BY THE AUTHORITY

8. The submissions made by the interested parties are addressed herein below:

- i. The Authority notes the change of name of the Applicant from Hanwha Chemical Corporation to Hanwha Solutions Corporation was done as a result of a merger with Hanwha Q Cells and Advanced Materials Corporation, a wholly owned company of the Applicant in the ratio 1:0, with effect from 6 January 2020. Subsequent to the merger of HQAMC with the Applicant, the name of the Applicant has been changed to Hanwha Solutions Corporation. This has been reflected in the Certificate of Facts issued by the District Tax Office of Korea, for the office at Seoul, Korea and Manufacturing Unit at Yeosu/ Ulsan, Korea, whereby the request by Hanwha Solutions was examined and the name of the business was changed from Hanwha Chemical Corporation to Hanwha Solutions Corporation. The Business Certificates for the office at Seoul, Korea and for the manufacturing unit at Yeosu/ Ulsan, Korea also reflect the above change.
- ii. It is evident from the Public Announcement filed by the Applicant with Financial Supervisory Service, Korea's integrated financial regulator, that there has only been a change of name of the Applicant with no change in the shareholding structure. The Applicant held 100% of the shares in the erstwhile HQAMC. As the companies made the resolution to keep the merging ratio of 1:0, there was no capital increase and no new share has been issued by the Applicant and HQAMC discontinued as an entity after the merger.
- iii. It is also evident that all changes are limited to addition of 2 new CEOs to the management structure of the application and alteration in the financials of the Applicant to reflect this

merger. The sole purpose of the merger was clearly to enhance management efficiency and strengthen business competitiveness. The merger has also not resulted in any direct advantage to the Applicant, as is evident from the business segments, volume of production, sales, total exports and product wise export to India for the last three years for the merged companies submitted by the Applicant. The Authority therefore holds that the request is of name change only and that there is no change in shareholding pattern of ownership which continues to exist and operate as before.

- iv. It is further evident that HQAMC spun off its domestic business, which continued to be called HQAMC the remaining business continued as Hanwha Global Asset and since this spin-off occurred in HQAMC it does not concern the Applicant.
- v. Pursuant to the spin off, HQAMC has merged into the Applicant resulting in the change of name. Being a case of a wholly owned subsidiary merging into its holding company for business efficacy. Subsequent to the merger, HQAMC has ceased to exist and name of the Applicant has been changed to Hanwha Solutions Corporation.

G. CONCLUSIONS & RECOMMENDATIONS

9. Having considered all aspects of the case, including submissions made by M/s Hanwha Solutions Corporation, the applicant producer/exporter from Korea RP, and other interested parties, the Authority holds that the name of the producer/ exporter i.e. M/s Hanwha Chemical Corporation has been changed to M/s Hanwha Solutions Corporation. W.e.f. 6th January 2020. Accordingly, the Authority makes the following change in para 139 of the Final Findings No. 14/36/2016-DGAD dated 13 December 2017:
 - a. Against Serial No. 7, in Col. 6, the name of the Producer 'Hanwha Chemical Corporation' is amended to read as 'Hanwha Solutions Corporation'.
10. Accordingly, the Customs Notification No. 3/2018-Customs (ADD) dated 23rd January 2018 may also be amended by the Ministry of Finance.
11. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.



(B.B. Swain)

Special Secretary & Designated Authority

