

# MINISTRY OF COMMERCE

## NOTIFICATION

New Delhi, the 14th May, 1999

## FINAL FINDINGS

**Subject:** Anti Dumping Investigation concerning imports of EPDM from Japan- Final findings.

**No. 16/1/98-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995- thereof;

## A. PROCEDURE

The procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide notification dt. 24.12.98 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
- iii. The Authority also forwarded a copy of the preliminary findings to the embassy of Japan in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- iv. the Authority provided an opportunity to all interested parties to present their views orally on 4.3.99. All parties presenting views orally were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- v. The Authority made available the file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request;
- vi. Argument raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by

the interested parties have been appropriately dealt in the preliminary findings and/or these findings.

- vii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 15.4.99 and comments received on the same have also been duly considered in these findings.

## **B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY**

2. The views expressed by various interested parties have been discussed in the relevant paras herein below. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

## **C. PRODUCT UNDER CONSIDERATION**

3. Product under consideration in the present investigation is Ethylene Propylene Diene Rubber (hereinafter also referred to as EPDM) used in number of rubber based applications as also illustrated in para C(4) of preliminary findings dt. 24.12.98. EPDM is classified under sub-heading 4002.70.09 of the tariff items head 4002.70 and is different from Polybutadiene rubber classified under ITC sub-heading No. 4002.70.01

Following rubber (PBR) should be excluded from the levy of anti-dumping duty.

### **(a) Argument raised**

Polybutadiene rubber (PBR) should be excluded from the levy of anti-dumping duty.

### Examination by Authority

Authority notes that in para C(3) of the preliminary findings dt. 24.12.98, authority has clearly mentioned that the product under consideration is EPDM as classified under 4002.70.09 and is different from PBR classified under 4002.90.01, which is excluded from the scope of levy of anti-dumping. The Authority confirms exclusion of Poly Butadiene Rubber (PBR) from the scope of anti-dumping duty.

### **(b) Argument raised**

DCPD and ENB grades used by the tyre industry should be excluded from the scope of anti-dumping duty. Auto component industry needs to import world class quality EPDM rubber.

#### Examination by Authority

The authority notes that in para C(3) of the preliminary findings dt. 24.12.98, all forms/grades/parties of EPDM rubber classified under sub-heading 4002.70.09 of the Customs Tariff Act, 1975 have been considered as product under consideration. No specific arguments on exclusion of DCPD and ENB grades have been provided. The fact that the qualities may be different does not imply that the imported product and the domestic are not like articles. The Authority confirms the findings regarding product under consideration as mentioned in para C(3) of the preliminary findings dt. 24.12.98.

### **D. STANDING OF THE PETITIONER AND DOMESTIC INDUSTRY**

4. The petitioner accounts for a major proportion of the total domestic production. The petitioner, therefore, satisfies the standing to file the present petition and constitutes domestic industry within the meaning of the Rules. There is also no contention by any interested parties on this account.

### **E. LIKE ARTICLE**

#### **a) Argument Raised**

EPDM should also be included along with the EPDM under the purview of the present investigation.

#### Examination by Authority

Authority notes that the product under consideration in the present investigation is EPDM as classified under sub-heading, 4002.70.09. Phenomena of circumvention of clearance of product covered under one head through a different head cannot be addressed within the scope of product under consideration as the scope of the investigation is limited to the product Ethylene Propylene Diene Rubber (EPDM) in the present investigation. The Authority, therefore, confirms the views as indicated in para 1.4 of the disclosure statement dt. 15.4.99 and para c(3) of the Preliminary findings dated 24.12.98.

## **F. DUMPING**

### **(a) Argument raised**

The domestic Selling price of DSM should be taken from the secondary sources and not equivalent to the domestic selling price of JSR and that the difference of export price of DSM and JSR should be added to the domestic selling price M/s JSR to arrive at domestic selling price of DSM

#### Examination by Authority

It has been consistent practice of the Authority to go by the best available information with regard to any of the specific parameters. In this case, the Authority on the basis of the actual verification carried out by the investigating team after noticing that the sales of the DSM were below the cost of production has referenced the domestic selling price of other Japanese producer viz. M/s JSR as the most appropriate basis for the domestic selling price for M/s DSM. The adjustments on the domestic selling price with respect of handling charges and inland freight for M/s. DSM have been on the basis of the actual verification conducted by the visiting team. The Authority, therefore, confirms the methodology followed for working out Normal value for DSM as also indicated in para 2.2 of the disclosure dt. 15.4.99.

### **(b) Argument raised**

The Authority's findings with respect to Normal value are disputed since the firm viz. M/s. DSM has at no time sold its products below the cost of production and that losses were due to very high cost of operating in Japan in respect to marketing, selling and technical support provided to customers. The selling prices has been lower because of recession and over-capacity in the EPDM industry in Japan.

#### Examination by Authority

The Authority notes that during the visit of the investigation team to the premises of M/s. DSM, the firm did not provide details on the cost of production. The Company had actually incurred losses in 1996 and first half of 1997 has also been confirmed by the firm. The firm has further indicated that the operating profit has actually accrued in fiscal year 1998. The Authority on the basis of the best available information, therefore, considers it appropriate to reference domestic selling price of M/s. JSR as the domestic selling price for M/s. DSM with appropriate actual adjustments in respect of handling and inland freight to arrive at the normal value for M/s. DSM. The Authority has disallowed the adjustments to storage expenses as only adjustments upto ex-factory level have been considered as per usual practice.

**c) NORMAL VALUE AND EXPORT PRICE FOR M/s. JSR**

The Company has considered Normal Value for M/s. JSR on the basis of the weighted average sales price during the POI as verified on the premises of the exporter and has allowed adjustments on inland freight, insurance and interest on credit sales. The Authority has disallowed the adjustments to storage expenses as only adjustments upto ex-factory level have been considered as per usual practice. The adjustment in respect of level of trade in the domestic market equivalent to the commission payable in respect of export to India has been disallowed as it is only a national adjustment and not based on actual, Regarding export price of M/s. JSR Authority has considered CIF prices on the basis of the actual invoices raised during the POI and as verified by the investigating team. Appropriate adjustments on account of inland freight, ocean freight, commission, interest and exchange rate have been allowed.

**(d) NORMAL VALUE AND EXPORT PRICE FOR M/s. DSM**

The Authority on the basis of the available information considers it appropriate to reference domestic selling of JSR as the domestic selling price for M/s. DSM with appropriate adjustments for handling and inland freight to arrive on the Normal Value for M/s DSM. The adjustments on accounts of storage are not considered an adjustments as only upto ex-factory level have been taken into account as per the consistent practice of the Authority.

As regards, export price the authority has considered CIF export price on the basis of actual invoice for the sales during the POI. The Authority has considered adjustments on export sales with regard to inland freight, handling overseas freight, overseas insurance and commission paid to the Singapore Office of M/s. DSM. Adjustment on account of storage costs have not been considered as the authority has considered adjustments upto ex-factory level as per the consistent practice of the Authority.

e) The Dumping, margin comes, as under :-

Exporter	Normal Value	Export Price	Dumping Margin
JSR Corpn.	****	****	27.48%
DSM	****	****	25.5%

**G) INJURY, CAUSAL LINK AND DETERMINATION OF DUTY**

**a) Argument raised**

The petitioners suffer input shortages and have limited storage facilities.

### Examination by Authority

The Authority notes that these issues are normal business eventualities which any organization can face. The authority is considering redressal of injury due to dumping and effects of any additional costs incurred on account of abnormal and unrelated factors have been duly considered while arriving at reasonable selling price of the domestic industry.

#### **b) Argument Raised**

Injury on the industry has been un account of customs duty, faulty demand projections and high interest costs.

### Examination by Authority

It has been the consistent practice of the Authority to determine injury to the domestic industry with respect to landed value of dumped imports. The injury is examined with reference to the period of investigation and weighted average customs duty for this period is considered. The cost elements which are not related to the product under consideration are duly taken care of while arriving a at reasonable selling price for the domestic industry. The Authority, therefore confirm the findings in the para 24 or the preliminary findings dt. 24.12.98.

#### **c) Argument raised**

Reference Price should be fixed at the CIF level and should not take into account the customs duty which is a variable parameter.

### Examination by Authority

The Authority considers it appropriate to continue the practice of having the reference level inclusive of custom duty i.e. the landed value. Any change in any of the parameters such as normal value, dumping margin, customs duty. exchange duty fluctuation etc. would lead to changed circumstances meriting a review of the findings in any case.

#### **d) Argument raised**

M/s JSR an exporter from Japan has argued that they export EPDM to India not directly but through various trading house viz. JTC, Nichigo Shoji Co. Ltd., and Mitsui & Co. The Authority should indicate the reference price for the combination of

JSR-Mitsui, JSR-JTC and JSR-Nichigo Shoji Co. Ltd. The system of indicating combination rate for the producer-exporter is prevalent in USA.

#### Examination by Authority

It has been the consistent practice of the Authority to assess producers only and to recommend duty accordingly. So long as the importer is able to satisfy the custom Authority that the goods are produced by specific producer whose name is indicated while indicating the amount of duties in this notification, the Custom Authority would impose anti-dumping duty accordingly. Also, it is not feasible to determine normal value of a trader, who can export goods of any producer. Therefore, it is not feasible to levy and monitor anti-dumping duties on traders. The Authority, therefore does not consider it appropriate to indicate reference price for the combination of the producer and trader.

#### e) **Argument raised**

Minimum floor price and variable duty in dollar terms be fixed.

#### Examination by Authority

The Authority considers it appropriate to fix the variable duty in Rupee terms in conformity with the currency of the fair selling price.

#### f) **Argument raised**

Reference price indicated for JSR in para J-32 of the preliminary Findings is not correct.

#### Examination by Authority

The Authority has appropriately considered this argument and has taken note of the same while working out the reference price in the present final findings.

g) **Landed value:** The landed value has been determined on the basis of weighted average export price of EPDM rubber from Japan, determined separately for the two exporters viz. M/s. JSR and M/s. DSM, after adding the weighted customs duties during the period of investigation. 1% towards landing charges and 2% handling charges.

## **H. FINAL FINDINGS**

The Authority, after considering the foregoing, concludes that:

- a. EPDM originating in or exported from Japan has been exported to India below its normal value.
- b. The domestic industry has suffered material injury;
- c. The injury has been caused to the domestic industry by dumping, of the subject goods originating in or exported from Japan.
- d. The Authority confirms the preliminary findings dt. 24.12.98 with regard to imposition of anti-dumping duty and recommends imposition of definitive anti-dumping duty on all imports of EPDM (as per details brought in the para relating to product under consideration in these findings as also in the preliminary findings) falling under chapter 40 originating in or exported from Japan, excluding Poly Butadiene Rubber (PBR) falling under sub-heading 4002.70.01.
- e. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A as the case may be of the Customs Tariff Act, 1975.
- f. It was also considered whether a duty lower than the dumping margin would be sufficient to remove the injury. Landed price of the imports for individual exporters, for the purpose, was compared with the fair selling price of the domestic industry, determined for the period of investigation. However, Authority found dumping margin to be lower than the injury margin.

Accordingly, it is proposed that anti-dumping duties be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of EPDM Rubber originating in or exported from Japan falling under Chapter 40 of the Customs Tariff excluding Poly Butadiene Rubber (PBR) falling under sub-heading 4002.70.01. The anti-dumping duty shall be the difference between the amounts mentioned in column 3 below and the landed value of imports per MT.

S.No.	Name of Company	Amount (Rs./Pmt)
1.	M/s. JSR	100644
2.	M/s. DSM	104725
3.	Any other Exporter	104725

Subject to above, the Authority confirms the preliminary findings dt. 24.12.98.

An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act Supra.

**RATHI VINAY JH A...**  
Designated Authority & Additional Secretary