

**MINISTRY OF COMMERCE AND INDUSTRY**  
**(Department of Commerce)**  
**DIRECTORATE GENERAL OF ANTI-DUMPING AND**  
**ALLIED DUTIES**

**NOTIFICATION**

New Delhi, the 21st August, 2000

**FINAL FINDINGS**

**Subject:** Anti-dumping investigation concerning imports of Ethylene Propylene Rubber (EPM) and Ethylene Propylene Diene Rubber (EPDM) from Korea RP

**No. 28/1/99-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 dated 23.3.2000 on anti-dumping investigation concerning imports of Ethylene Propylene Rubber (EPM) and Ethylene Propylene Diene Rubber (EPDM) (hereinafter also referred to as subject goods) from Korea RP (herein after referred to as subject country) 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 Korea in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in ( i ) and ( ii ) above.
- iv. The Authority provided an opportunity to all interested parties to present their views orally on 16.5.2000. All parties presenting views were requested to file written submissions of the views expressed. 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 public 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 subsequent to the preliminary findings and disclosure have been appropriately dealt with in these findings.
  - vii. Verification of exporters' data was carried out by the Authority to the extent it was feasible. A team of officers carried out verification of the data at the exporters' premises viz. M/s kumho Polychem Co. Ltd. (KPC), Korea RP.
  - viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 18.7.2000 and comments received on the same have also been duly considered in these findings.
  - ix. The period of investigation (POI) considered is 1.4.98 to 30.6.99.

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

The views expressed by various interested parties have been discussed in the disclosure statement. The views which have not been discussed earlier in the disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. 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**

It has been argued that the product under consideration has not been identified under the Rules governing these investigations.

It has also been argued that the petitioner has filed complaint only in the bale form while M/s KPC produced EPDM/EPM of all forms.

The Authority recalls the findings made in the Preliminary Findings under Para C(1) and notes that in the initiation notification dated 27.8.99 initiated investigations for EPDM and EPM classified under Custom Head 4002.70 and 4002.99 respectively covering III forms under these Heads. The authority reiterates that the investigation covers all forms of EPDM/EPM classified under the heads 4002.70 and 4002.99.

The Authority holds that the product under consideration in the present investigations is EPM and EPDM rubber of all forms/grades/purities. EPDM rubber is classified under custom sub-heading 4002.70 of Schedule 1 of the Customs Tariff Act, 1975. EPDM is further classified under subheading no. 4002.70.09 under the Harmonized International Trade classification system and is different from polybutadiene classified under ITC sub-heading no. 4002.70.01. EPM is classified under 4002.99.

The Authority reiterates the detailed description for the product under consideration given in Preliminary Findings in para C(1).

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

The petition has been filed by M/s Herdillia Unimers Ltd. (HUL) on behalf of domestic industry. There is no dispute on standing as there is no other producer of EPDM rubber in India. The petitioner, therefore, satisfies the standing to file the present petition and constitutes domestic industry in accordance with Rule 2(b) supra.

## **E. LIKE ARTICLE**

In order to examine whether EPDM rubber produced by the domestic industry is a Like Article to the EPDM exported from Korea RP characteristics such as physical characteristics (size, chemical composition; raw material) manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods have been considered.

It has been argued by other interested parties that EPM and EPDM grades are neither Like Articles, nor interchangeable nor substitutable. Also that physical forms of the grades are different and distinct. The authority further notes that the difference in grades and their forms of EPDM has been pointed with respect to technology and end use. It has been argued that out of the four grades exported by M/s ECIS only two grades viz. Vistalon 2504 and 5730 are similar to the M/s HUL's ENS based grades. Further the process design of exporter's and petitioner's grades vary and also the prices of EPM/EPDM grades vary depending on the diene and terpolymer content. The Authority has considered these attributes while examining the issue of Like

Article with reference to various grades of EPDM produced by the petitioner and those imported from the subject country. The authority holds that the EPDM from Korea RP and goods produced the petitioner have characteristics closely resembling each other and are technically and commercially substitutable. The Authority reiterates its findings of the Preliminary Findings that the EPDM produced by the domestic industry are a like article to EPDM exported from Korea RP within the meaning of the Rule 2(d).

As regards, EPM, the Authority notes that these are different class of polymers and are not- interchangeable with EPDM. The two are also classified under different custom head. The Authority holds that EPM and EPDM are distinct class of polymers. Since no exports of EPM are evidenced either on the basis of response of exporters, importer's and information furnished by the petitioners, the issue of like article of EPM exported from the subject country and that produced by the domestic industry cannot be examined since the petitioner also has not been able to substantiate any imports of EPM in the POI, the authority holds the imports as de minimus.

It has also been argued that EPDM and butyl rubber are interchangeable and that 10% to 15% of EPDM can be used for the manufactured of butyl rubber based tubes for tyres.

The authority has considered the above argument and holds that both butyl rubber and EPDM are classified under different custom heads and have usage of complementing type and not of substituting or interchangeable nature. The Authority, therefore, considers EPDM exported by Korea RP and as classified under custom head 4002.70.09 and EPDM produced by domestic industry as Like Article within the meaning of the Rule 2(d).

## **F. NORMAL VALUE AND EXPORT PRICE**

It has been argued that the normal value and export price may be determined separately for M/s ECIS, the exporter for some of the grades of EPDM manufactured by M/s KPC. It has also been argued that the normal value and export price for the purposes of calculation of dumping may be considered grade-wise.

The Authority notes that the cost of production and the selling price of various grades fall within a narrow band and the weighted average comparison of various grades is realistic and appropriate. Further the domestic industry is capable of producing all grades of EPDM with minimal changes in the chemical composition and manufacturing process. As regards, assessment of M/s ECIS separately is concerned, the authority for the purposes of separate determination of the normal value, export

price and dumping for M/s ECIS has referenced the grades manufactured by M/s KPC and exported exclusively through M/s ECIS for purposes of determining normal value, export price and dumping. The exporter-wise normal value and export price determined is illustrated below:-

### **M/s Kumho Polychern Co. Ltd. (KPQ Korea RP**

#### Normal value

The Authority notes that M/s KPC, the manufacturer and exporter has claimed Normal value separately for different grades of product under consideration exported by them. The exporter has claimed grade-wise adjustments on account of discounts, packing, inland freight, travel, advertising, entertainment, sample, donation, vehicle maintenance and interest. A team of officers from the anti-dumping Directorate verified the claims on normal value and adjustments claimed by the M/s KPC. The exporter could not substantiate the adjustments on travel, advertising, entertainment, sample, donation, vehicle maintenance, interest and discounts and the same are, therefore, disallowed. Further the adjustment as travel, advertising, entertainment, sample donation, vehicle maintenance claimed for domestic sales which are not exclusively incidental to domestic sales but would have equivalent for export sales. The authority, therefore, allows adjustments on account of packing, inland freight only which have been substantiated by the export and verified by the investigating team. The Authority has calculated the weighted average, normal value for the grades exported directly or through M/s ECIS by the producer/exporter.

It has been argued by the exporter that for the various adjustments which have not been allowed for the purpose of normal value may be considered. The authority holds that subsequent to the verification carried out by the investigating team in January, 2000, there is no material to substantiate any of the adjustments which have been disallowed. Further since verification was carried out at the premises of the producer and the records actually made available by the producer exporter were referenced, the Authority confirms the methodology and the normal value as calculated in the Preliminary Findings. The weighted average normal value for these grades comes to \*\*\*\$/MT.

#### Export Price

The exporter has claimed export price on the basis of average selling price to customers in India for the grades directly exported by them. The exporter has also indicated the export price for the grades exported through M/s ECIS. The exporter has claimed grade-wise adjustments on account of discounts, packing, inland freight, ocean freight, ocean insurance, interest, duties refund and Exchange Rate gains. The

Authority has allowed all adjustments except Exchange Rate gains which is a non-cost adjustment and is not known at the time of sale and duty refund which were not substantiated with evidence during the visit of the verification team in January, 2000. The authority has referenced the export selling price as furnished by M/s EGTS for the grades exported through them as co-related with the response given by various importers for these grades. The weighted average export price for all the grades exported directly or through M/s ECIS by the producer/exporter comes to \*\*\*\$/MT.

### **M/s Exxon Chemical International Services Ltd. (ECIS)**

#### Normal value

The authority notes that M/s ECIS has exported certain grades manufactured by M/s KPC to India. M/s ECIS has claimed normal value on the basis of the export price of these grades to countries other than India. The authority notes that the grades exported by M/s ECIS have actually been manufactured by M/s KPC and have been exported through M/s ECIS. The authority has, therefore, referenced the domestic selling prices in Korea RP for these grades for determination of the normal value. The Authority notes that one of the grades viz. vistalon 2200 has weighted average selling price lower than the weighted average cost of production during the period of investigation. The Authority has referenced the domestic weighted average selling price of vistalon 2200K as the domestic selling price of vistalon 2200 in the ordinary course of trade. The adjustments claimed by M/s KPC on account of discounts, packing, inland freight, travel, advertisement, entertainment, sample, donation, vehicle maintenance and interest were verified by the team of officers during their verification visit in January, 2000. The exporter could not substantiate the adjustments of travel, advertising, entertainment, sample, donation, vehicle maintenance, interest and discounts and the same are therefore, disallowed. The adjustments on travel, advertising, entertainment, sample, donation, vehicle maintenance claimed for domestic sales are not exclusively incidental to domestic sales but would have equivalents for export sales also. The authority allowed adjustments on account of packing, and inland freight only which have been substantiated by the exporter and verified by the investigation team. The authority has calculated the weighted average normal value for the grades exported through M/s ECIS as \*\*\*\$/MT.

#### Export price

The authority has referenced the export selling price as furnished by M/s ECIS for the grades exported through them as also co-related with the response given by various importers for these grades. The verification team in January, 2000 had verified the various adjustments on the export price during their visit to Korea RP and have allowed all adjustment claimed by M/s KPC viz. discounts, packing, inland freight,

ocean freight, ocean insurance and interest. The exchange rate gains adjustments which is a non-cost adjustment and is not known at the time of sale and duties refund adjustment which were not substituted with evidence during the visit of the verification team in January, 2000 have been disallowed. The weighted average export price for the grades, exported by M/s ECIS comes to \*\*\*\$/MT.

## **G. Evaluation of non-cooperating exporters**

For the non-cooperating exporters, the Normal Value, the export price and the landed value have been referenced on the basis of one of the grades exported by the cooperating exporters, evidencing highest margin of dumping. No adjustments on normal value as claimed by the cooperating exporter for this grade have been allowed to the non-cooperating exporters.

It has been argued by the domestic industry that the adjustments on normal value and export price as provided by them may be referenced for the non-cooperating exporters. The authority considers it appropriate to reference the best available information and methodology as illustrated above for determining the normal value and export price for such noncooperating exporters.

## **H. DUMPING-Comparison of normal value and export price**

### **M/s KPC**

For the purpose of fair comparison between the normal value and the export price, the Authority has considered taking into account the information furnished by the exporters, and other information available with the Authority.

The Authority has carried out transaction to transaction analysis for the grades exported directly by the exporter, for the purpose of determination of dumping.

### **M/s ECIS**

It has been argued that the dumping margin may be assessed separately for M/s ECIS, the exporter for certain grades manufactured by M/s KPC. It has been argued that for determining the normal value and export price to the third countries may be considered. The authority notices that the grades exported by M/s ECIS have actually originated in Korea RP and that they have only been exported to India through M/s ECIS. The authority has, therefore, referenced the domestic selling price of these grades by M/s KPC in Korea RP for the purposes of Normal value.

For the grades exported through M/s ECIS, the Authority notes that one of the grades viz. vistalon 2200 has weighted average selling price lower than the weighted average cost of production during the period of investigation. The Authority has referenced the domestic weighted average selling price of vistalon 2200K as the domestic selling price of vistalon 2200 in the ordinary course of trade. The Authority has thereafter carried out weighted average normal value comparison with export prices on a transaction to transaction basis for the goods exported through M/s ECIS.

### **Calculation for EPM**

The Authority notices that the separate details on imports of EPM are not available from DGCI&S. Also the petitioners have indicated that they have not observed any details pertaining to EPM imports under Custom Head 4002.99 during the POI. Further the Authority notices that it is the apprehension of the petitioners that EPDM is being imported as EPM to avail lower custom duty under chapter 39. The Authority also notices from the response of M/s KPC, Korea RP that no exports of EPM have been made during the POI. No exports of EPM are also made by M/s ECIS, Hong Kong during the POI. The data has further been co-related with the response received from various importers. The Authority has already indicated in the foregoing para 2 that the end-uses for EPM and EPDM are different and the two products are different class of polymers classified under different custom heads. In view of no imports evidenced from response of exporters, importers and information furnished by the petitioner, the Authority holds the imports of EPM from Korea RP as de minimis.

Based on the above methodology, the dumping margins for EPDM are indicated below: -

### **Exporter Normal Value Export price Dumping margin(%)**

M/s Kumho

Polychem Co. Ltd. \*\*\*\*\* 9.54

(KPC), Korea RP

Any other exporter \*\*\*\*\* 18.35

M/s Exxon Chemical

International \*\*\*\*\* 9.1

Services Ltd.

(ECIS), Hong Kong

## **I. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

It has been argued by many interested parties that interests of the consumers of EPDM also needs to be watched as it affects the price competitiveness of exporters and that the anti-dumping duties cannot be used as protection but only to remove injury.

The Authority holds that the purpose of anti dumping duties, in general, is to eliminate dumping, which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

It is recognized that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence or relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures, particularly if the levy of the anti dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of EPDM. Imposition of anti dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers.

To ascertain the extent of Anti-dumping duty necessary to remove the injury to the domestic industry, the Authority has relied upon a non injurious selling price of EPDM in India for the domestic industry, by considering the optimum cost of production for the domestic industry.

## **J. INJURY AND CAUSAL LINK**

Under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, " taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles ....". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of-such imports is otherwise to

depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

For the examination of the impact of the imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

The authority has also examined factors other than dumped imports viz. demand contraction, recession, un-economical plant size, high and inefficient consumption norms of raw materials and utilities, high interest burden, distress exports etc. as cited which might be injuring the domestic industry at the same time. It has been argued that the injury has been do account of demand changes because of substitutability of butyl rubber with EPDM. As also indicated by the authority under para of Like Article, the authority holds that the butyl rubber and EPDM are complementing in nature and that the demand of EPDM has been constructed on the basis of the total production and the imports of EPDM in 'the country. which are under a dedicated custom head.

The non-injurious price (NIP) for the domestic industry has been determined by making appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption, captive generation of utilities etc. and the actual expenses during the period of investigations including the investments and capacity utilisation. The non-injurious price of domestic industry has been determined by considering the optimum cost of production and considering the reasonable return on the capital employed by the domestic industry. While determining NIP, the authority has taken into account the best consumption norms of raw materials and utilities and has, thereby addressed any inefficiencies which might lead to financial injury the industry on account of the inefficiencies.

- a. Imports of EPDM rubber have increased in absolute terms and relative to total imports from 110 MT in 96-97 to 204.9 MT in 98-99 and to 287 MT dumping POI.
- b. Market share of Korea RP in total imports increased from 4.5% in 96-97 to 12.5% in POI.
- c. The stocks of EPDM with the petitioner increased from Rs. 548.30 lakhs on 31.3.98 to Rs. 741.09 lakhs on 30.6.99.
- d. The imports from Korea RP have forced the domestic industry to sell at price which led to sales realisation below the non-injurious selling price, thus resulting in financial losses.

It is, therefore, seen that the domestic industry has suffered material injury from dumped imports. In establishing that the material injury to the domestic industry has been caused by the imports from the subject country, the Authority holds that dumped exports from Korea RP have depressed the prices of subject goods in the domestic market and forced the domestic industry to sell at un-remunerative prices, resulting in decline in net sales realization, financial losses to the domestic industry.

## **K. FINAL FINDINGS**

The Authority, after considering the foregoing, concludes that

- a. EPDM originating in or exported from the subject country 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 Korea RP.
- d. The Authority recommends imposition of definitive anti-dumping duty on all imports of EPDM falling under Chapter 40 (Custom head 4002.70.09) originating in or exported from Korea RP.
- e. The 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 of the Customs Tariff Act, 1975.
- f. It was considered to recommend the amount of anti-dumping duty equal to the margin of dumping or less which if levied would remove the injury to domestic industry. Landed value of the imports for individual exporters, for the purposes, were compared with the non injurious selling price of the domestic industry, determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended.
- g. Accordingly, it is proposed that definitive anti-dumping duties be imposed on all imports of EPDM originating in or exported from the subject country i.e. Korea RP falling under chapter 40 (Custom head 4002.70.09) of the Customs Tariff The anti-dumping duty shall be the difference between the amounts mentioned in column 3 below and the landed value of imports in \$/MT.

### **S1. No. Name of the exporter / producer Amount of duty (US\$/MT)**

1. M/s Kumho Polychem Co. Ltd. 2445

(KPC), Korea RP

2. An other exporter of Korea RP 2461

3. M/s Exxon Chemical International

Services Ltd. (ECIS), Hong Kong 2433

h. Subject to the above, the authority confirms the Preliminary Findings dated 23.3.2000.

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

**RATHI VINAY JHA...**  
Designated Authority and Addl. Secy.