

**MINISTRY OF COMMERCE**  
**(Directorate General of Anti Dumping & Allied Duties)**

**NOTIFICATION**

New Delhi, the 24th December, 1998

**Subject:** Anti-dumping investigation concerning imports of EPDM Rubber- Preliminary Findings.

**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 on Dumped Articles and for determination of Injury) Rules, 1995, thereof :

**A. PROCEDURE**

The procedure described below has been followed with regard to the investigations:

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules received written application from M/a Hardillia Unimers Ltd., on behalf of the domestic industry, alleging dumping of EPDM Rubber, originating in or exported from Japan;
- ii. The Authority on the basis of sufficient evidence submitted by the petitioner, decided to initiate dumping investigations against imports of EPDM Rubber from Japan. The Authority notified the Embassy of Japan about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 20th May, 1998 published in the Gazette of India Extraordinary, initiating anti-dumping investigations concerning imports of EPDM Rubber, classified under custom sub-headings 4002.70 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from Japan;
- iv. The Authority forwarded a copy of the public notice to the known exporters from Japan (whose details were made available by the petitioner) and industry associations in India and gave them an opportunity to make their views known in writing in accordance with the rule 8(2);
- v. The Authority forwarded a copy of the public notice to the known importers of EPDM Rubber in India and advised them to make their views known in writing within forty days from the date of the latter;
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of EPDM Rubber for the past three years, including

- the period of investigations. No information was however, received from CBEC;
- vii. The Authority provided a copy of the petition to the known exporters, from Japan and the Embassy of Japan in accordance with rules 6(3) supra;
  - viii. The Authority sent questionnaire, to elicit relevant information, to the following exporters from of the subject goods, in accordance with the rules 6(4);
    - a. Japan Synthetic Rubber Co Japan, now known 83 JSR Corpn. and hereinafter referred to as JSR also;
    - b. DSM Idemitsu Co Ltd., Japan (hereinafter referred to as DSM also)
  - ix. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed lime. A copy of the latter, petition and questionnaire sent to the exporter was also sent to the Embassy. Along with a list of known exporter(s) /producer (s);
  - x. A questionnaire was sent to a number of known Importers of EPDM Rubber in India calling for necessary information in accordance with rule 6(4):
  - xi. Additional information regarding injury was sought from the petitioner, which was also received;
  - xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties:
  - xiii. Cost investigations ware also conducted lo work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner so as -to ascertain if anti- dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry;
  - xiv. Investigations was carried out for the period from starting 1st April 1996 to 30th Sept., 1997 (18 months).

## **B. VIEWS EXPRESESSED BY PETITIONER, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY**

2. The submissions made by the petitioner, exporters, Importers, and other Interested parties have been brought out. examined, considered and have bean dealt at appropriate places in this notification.

## **C PRODUCT UNDER CONSIDERATION**

3. The product under consideration in the present investigations is 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 classified under sub-heading no. 4002.7009 under the Harmonised International Trade Classification system and is different from polybutadiene classified under ITC sub heading no. 4002.70 01

4. EPDM is a synthetic polymer of ethylene propylene and diene. EPDM is produced by solution polymerization. EPDM provides better ozone and thermal resistance and is mainly used in automotive applications such as profiles, radiators, hoses and seals; in building and construction as profiles, roofing foils and seals; in cable and wire as cable insulation and jacketing and in applications as a wide variety of mostly in moulded articles.

5. The manufacturing process, functions & uses and custom classification indicated above are, however, indicative only and are in no way binding on the scope of the present investigations.

## **D. LIKE ARTICLES**

6. In order to examine whether the EPDM Rubber produced by the domestic industry is a like article to the EPDM Rubber exported from Japan, 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.

7. It has been argued by DSM that there is a variety of different technologies to produce EPDM, which result in a variation to a certain degree in the EPDM produced. One of the differences that arises is the quality of the goods produced. Further, it has been argued by the exporter that EPDM is not comparable to NBR as the manufacturing process of NBR is less complex than EPDM. Change in EPDM of different producers requires changes in the recipe, following which the finished product will show different physical properties.

8. The Authority notes that the only difference pointed out by the exporter is with regard to the technology to produce EPDM by different producers. The Authority notes that there is implied acceptance by the exporter that the goods imported from the subject country can be substituted with the goods produced by the domestic industry.

Even if the argument of the exporter is accepted that there may be some difference in quality (though the argument is unsubstantiated and deserves to be ignored on this ground along), difference in quality does not imply that the two goods are not interchangeable. Mere difference in quality calls for adjustments for the purpose of fair comparison. No price adjustment is, however, feasible under the present circumstances in view of unqualified claim. The Authority therefore, holds that the goods exported from Japan and goods produced by the petitioner have characteristics closely resembling each other and the two are technically and commercially substitutable. The goods produced by the domestic industry are a like article to the goods exported from Japan within the meaning of the Rule 2(d).

## **E. DOMESTIC INDUSTRY**

9. The petition has been filed by M/S. Herdillia Unimers Ltd. There is no dispute that 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.

## **F. DUMPING**

### **NORMAL VALUE:**

10. Under Section 9A(1)(c), normal value in relation to an article means:

- i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6) or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-
  - a. comparable represent a live price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
  - b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of Import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

11. The Authority provided opportunity to the known exporters from Japan to furnish information relevant to the investigations and offer comments, if any in accordance with the Section cited above. The following exporters responded;

- a. JSR Corpn., Japan;
- b. DSM Idemitsu.

12. Since the subject goods are produced only by JSR Corpn. and DSM, separate dumping margins in respect of these exporters have been determined on the basis of the information furnished by the exporters and the same is discussed herein below. Separate dumping margin in respect of other exporters who have furnished information but who do not produce EPDM are not been assessed separately.

### **JSR CORPN., JAPAN**

13. **Normal Value:** The exporter has derived the Bailing price by adding the deductions to the ex-factory price. The Authority notes that the exporter was required to furnish the details of the price at which goods have been sold in the home market. The selling price should have been determined on the basis of the price arrived from the sales made in the home market. The Authority has, however, accepted the claim made by the exporter for the purpose of preliminary determination, pending further investigations. The normal value comes to US \$ \*\*\*\* pmt.

14. **Export Price:** The export price has been claimed on *the* basis of average CIF export price of the subject goods to India. The exporter has claimed adjutants on account of ocean freight, insurance, interest on payment, commission to the Japanese Trading house and Indian trading house. Some of these expenses are not incurred by the exporters and are borne by the trading companies. However, since these trading companies have also furnished necessary Information, the Authority considers it appropriate to allow these adjustments for the purpose of preliminary determination, pending further investigations. The export price comes to US \$ \*\*\* pmt

### **DSM IDEMITSU**

15. **Normal Value:** The exporter has claimed Normal value on the basis of an average of selling price to customers in domestic market. The exporter has claimed

adjustments on account of inland freight, storage and handling charges, No explanation has been provided by the company with regard to the nature of expenses involved in account of storage. The Authority, therefore, considers it appropriate to disallow the claim on account of storage for the purpose of preliminary determination, pending further investigations. The average normal value comes to US \$ \*\*\*\*.

16. **Export Price.** The exporter has claimed export price on the basis of an average of selling price to customers in India. The exporter has claimed adjustments on account of inland freight, storage, handling, overseas freight and insurance charges. No explanation has been provided by the company with regard to the nature of expenses involved in account of storage. The Authority, therefore, considers it appropriate to disallow the claim on account of storage for the purpose of preliminary determination, pending further investigations..

17. The Authority notes that though the exporter has accepted the claim of the petitioner that there is extra packing involved in case of exports to India, yet no information with regard to the price adjustment has been furnished by the company.

18. The exporter has not claimed any adjustment on account of commission. No evidence has been furnished by the exporter that the goods have been sold by the exporter directly to the customers in India and sales did not involve any payment of commission, even though the petitioner has alleged that sales are made through traders. The Authority, therefore, considers it appropriate to provide for commissions to the traders at the same rate as has been disclosed by JSR Corpn. Further, the exporter has claimed ocean freight incurred by the company on this account. Comparison of ocean freight incurred by JSR with the expenditure incurred by the company reveals that the ocean freight claimed by the company is significantly lower than the ocean freight claimed by JSR. In view of the fact that ocean freight for the same product and same country is not expected to be significantly different from company to company and in view of the fact that no evidence furnished by the exporter with regard to the adjustment claimed by it, the Authority considers it appropriate to provide for adjustment on this account on the basis of claims made by JSR. The average export price thus comes to US\$ \*\*\*\* pmt.

### **Comparison of normal value and export price:**

19. The rules relating to comparison provides as follows:

"While arriving at a margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case,

on its merits, for differences which affect price comparability, including differences in conditions and terms of sale taxation, levels Of trade, quantities. physical characteristics, and any other differences which are demonstrated to affect price comparability "

20. 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 published information available with the Authority. The normal value and export price determined, as detailed above, are at ex-works level and therefore, the comparison of normal value with weighted average export price has been considered.

21. The dumping margin comes as under:

Exporter	Normal Value	Export Price	Dumping Margin
JSR Corpn.	****	****	33.76%
DSM	****	****	8.66%

## G. INJURY AND CAUSAL LINK

22. 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.

23. 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, a took, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

24. The Authority observes that:

- a. **Volume and Market share of Dumped imports:** Imports of EPDM Rubber from Japan increased in absolute terms and relative to total imports in India as also consumption of EPDM in India. The petitioner started commercial

production from 1.4.1993 and there was no other producer before that, in spite of which the imports from Japan have increased in absolute terms, relative to total imports in India as also relative to consumption in India.

- b. **Production Sales and Capacity Utilisation:** The petitioner started commercial production of the subject goods from 1.4.1993. The production of the petitioner increased from 2194 MT in 1994-95 to 3625 MT in 1996-97 and was 4573 MT in the period of investigation, increase in production resulted in increase in the capacity utilisation also. Sales in absolute volumes also increased from 2305 MT in 1994-95 to 3062 MT in 1996-97 and were 4711 MT in the period of investigation. However, increase in production, sales and capacity utilisation have to be viewed in the light of the fact that the petitioner started commercial production only from 1.4.1993.
- c. **Average Sales Realisation:** Average net unit sales realisation of the domestic industry increased from Re 84.1 per kg. (1994-95) to Rs. 88.65 in the period of investigation. Though the unit sales realisation of the domestic industry increased over the period, yet the same was significantly below the cost of production, resulting in financial losses to the domestic industry.
- d. **Stocks:** Stock of EPDM Rubber with the domestic industry increased from 216 MT (1994-95) to 441 MT (1995-96) Though the same declined to 367 MT in 1996-97, yet the same was higher than the stocks at the end of 1994-95.
- e. **Price suppression/depression:** The imports were depressing the prices of EPDM Rubber in India to a significant degree and forced the domestic industry to sell the Rubber at prices significantly below its cost of production.
- f. **Profit/Loss:** The domestic industry was selling EPDM Rubber significantly below its cost of production, resulting in losses. Though the cost of production of the domestic industry declined and selling prices increased over the period resulting in decline in the losses per unit of production, yet the domestic industry was suffering severe financial losses from sales of EPDM Rubber.
- g. **Conclusion on injury:** The imports of EPDM Rubber from Japan increased in absolute terms.

- The share of the subject country in the total demand in the country increased significantly.
- Exports of EPDM Rubber from the subject country prevented the domestic industry from recovering its cost of production and earning a fair return on its investment resulting in financial losses to the domestic industry.
- Various economic indicators relating to domestic industry such as production, capacity utilisation, sales quantities, average sales realisation, stock, losses collectively and cumulatively establish that the domestic industry has suffered material injury.

25. It is seen 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 countries, the Authority holds (that increase in market share of Japan and exports from Japan significantly below the cost of production forced to the domestic industry to sell at unremunerative prices, resulting in financial losses to the domestic industry.

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

26. 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.

27. 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 on 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 Rubber. 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.

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

## **I. LANDED VALUE:**

29. 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 as described in the para relating to dumping, after adding the prevailing level of customs duties and one percent towards landing charges.

## **J. CONCLUSIONS:**

30. It is seen. after considering the foregoing, that:

- a. EPDM Rubber originating in or exported from Japan has been exported to India below normal value, resulting in dumping;
- b. The Indian industry has suffered material Injury;
- c. The injury has been caused by the Imports from the subject country.

31. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of EPDM Rubber originating in or exported from the subject country, pending investigations.

32. It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury. Landed prices 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 investigations. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended.

Accordingly, it is proposed that provisional 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. pending final determination. The anti-dumping duty shall be the difference between the amounts mentioned in column 3 be law and the landed price or imports per kg.

S.No.	Name of Company	Amount (Rs. pmt)
1.	JSR Corpn.	114446
2.	DSM Idemitsu Co. Ltd.	101716
3.	Any other exporter	114446

33. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act. 1982 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975

## **K. FURTHER PROCEDURE**

34. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority Invites comments on these findings from all interested parties and the same would be considered In the final findings;
- b. Exporters, importers, petitioner and other Interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the despatch of the letter.

Any other interested party may also make known its views within forty days from the date of publication of these findings;

- c. The Authority would conduct verifications to the extent deemed necessary. No fresh evidence will be accepted at this stage;
- d. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- e. The Authority would disclose essential facts before announcing final findings.

**RATHI VINAY JHA...**

Designated Authority & Addl. Secy.