

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

NOTIFICATION

New Delhi, the 23rd March, 2000

PRELIMINARY 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

1. The procedure described below has been followed with regard to the investigation:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received a written application from the Petitioner, M/s Herdillia Unimers Limited (HUL), having registered office at 2/2, TTC Industrial Area, D Block, MIDC, Thane- Belapur Road, Turbhe, Novi Mumbai on behalf of domestic industry, alleging dumping of Ethylene Propylene Rubber (EPM) and Ethylene Propylene Diene Rubber (EPDM) (hereinafter also referred to as subject goods) originating in or exported from Korea RP (hereinafter referred to as subject country).
- ii. Preliminary scrutiny of the application filed by petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
- iii. The Authority, on the basis of sufficient evidence submitted by the petitioner decided to initiate the investigation against imports of subject goods from Korea RP. The authority notified the Embassy of Korea RP in New Delhi about the receipt of dumping allegation before proceeding to initiate. the investigation in accordance with sub-Rule 5(5) of the Rule.
- iv. The Authority issued a public notice dated 27.8.99 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of the subject goods classified under custom Code 4002.70 and 4002.99 of

Schedule I of the Customs Tariff Act, 1975 originating in or exported from Korea RP.

- v. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with the Rule 6(2).
- vi. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter.
- vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- viii. The Authority provided a copy of the petition to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested.
- ix. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
 - 1. M/s Kumho Polychem Co. Limited, Korea RP
 - 2. M/s Kumho Petrochemicals Company Ltd., Korea RP
 - 3. M/s Hyundai Petrochemicals Co., Korea RP
 - 4. M/s Korea Kumho Petrochemical Co. Ltd., Korea RP
 - 5. M/s Exxon Chemical International Ltd., Hong Kong

A number of parties requested for extension of time for filing information, which was allowed on due cause shown by the Authority upto 20.10.99.

- x. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation 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 time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to the Embassy of the subject country alongwith a list of known exporters/producers.
- xi. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
 - 1. M/s Rishiroop Holding Private Ltd., Mumbai
 - 2. M/s Anand Nishikawa Co. Ltd. Noida (UP)
 - 3. M/s ASP Sealing Products Ltd., New Delhi
 - 4. M/s BTR Wadco Automotive Ltd., Ghaziabad
 - 5. M/s Gold Seal Engg. Products, Ltd., Mumbai

6. M/s Birla Tyres, Calcutta
7. M/s National Engg. Inds. Ltd., Calcutta
8. M/s All India Rubber Industrial Association (AIRIA)
9. Automotive Component Manufacturers Association of India (ACMA)
10. Automotive Tyre Manufacturers Association (ATMA)

A number of parties requested for extension of time for filing information, which was allowed on due cause shown by the Authority upto 20.10.99.

Response to the questionnaire/notification was filed by the following exporters/producers:

1. M/s Kumho Polychem Co. Ltd. (KPC)
2. M/s Exxon Chemical International Services Ltd., Hongkong (ECIS), through Associated Law Advisors

Response to the questionnaire/notification was filed by the following Importers/user Associations:

1. M/s J. K. Industries Ltd.
 2. M/s Automotive Tyre Manufacturers Association (ATMA)
 3. M/s Vikrant Tyres Ltd.
 4. M/s Ceat Ltd.
 5. M/s MRF Ltd.
 6. M/s ASP Sealing Private Ltd.
 7. All India Rubber Industries Association
 8. M/s Rishiroop Holding Private Ltd., Mumbai
- xii. Additional information regarding injury and product under consideration was sought from the petitioner, which was also furnished. The information on injury and cost of production was provided by the petitioner.
- xiii. The Authority conducted on the spot investigation at the premises of the petitioner to the extent considered necessary.
- xiv. The Authority kept .available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties.
- xv. Cost investigation was also conducted to 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.
- xvi. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

- xvii. A team of officers from the Anti-dumping Directorate visited the premises of M/s KPC in January, 2000 and verified the claims on normal value and export price and adjustments claimed thereof.
- xviii. Investigation was carried out for the period starting from 1.4.98 to 30.6.99 i.e. the period of investigation (POI).

B. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

1. PETITIONER'S VIEWS

a) PRODUCT UNDER CONSIDERATION

- i. EPM/EPDM synthetic rubber can be produced in many grades/ types/ forms. EPDM is usually produced in bale form containing 20-25 kg per bale. The technical specifications of EPM/EPDM are broadly governed by Ethylene, Propylene, Diene content and Mooney viscosity whose variation can produce different grades.
- ii. Although EPM/EPDM manufacturing require special technology, monomer (raw material), technical skills, the manufacturing process/ method for producing different grades broadly remains the same and no special equipments are required for different grades. The marketing and distribution of production also remains the same for various grades.
- iii. EPM/EPDM produced by different suppliers are interchangeable in use.
- iv. There is no substitute available for EPM/EPDM.
- v. There is no significant difference in product produced by domestic industry and EPM/EPDM exported from Korea RP.
- vi. EPM/EPDM is produced by using solution polymerisation technology. There is no significant difference in production process employed by various producers world over, although other manufacturers fine-tunes their production processes according to available facilities and necessities.
- vii. Exporters from Korea RP are resorting to large scale dumping of EPM/EPDM in the market.

b) ON DUMPING

- i. Reliable figures of prevailing prices of EPM/EPDM in Korea RP could not be obtained and hence constructed cost of production based on the standard consumption norms for the major raw material, packing material and utilities for determining the normal value in Korea RP has been considered.

- ii. The information on prices at which subject goods have been exported from and imported into the Korean market have also been considered because the Price at which goods have been imported into Korea is the price at which goods must be sold by the producers in Korean market and would relate to import prices of such goods.
- iii. EPM/EPDM is classified under dedicated custom subheading. DGCIS data can therefore be considered as reflecting true picture of the import volume and value of EPM/EPDM. As DGCIS has not released statistics for 98-99, export price, has been claimed in the current year on the basis of a secondary source viz. (PPR's) published data.

c) ON INJURY

- i. Imports from Korea RP have increased in absolute terms. The market share of imports in total demand from the subject country which was only 4.5% in 1997 rose to 9.81% in 98-99.
- ii. There has been significant decline in production and capacity utilisation. Domestic industry has not been able to utilise the full capacity in view of dumping of goods initially by Japanese now by Korean manufacturers.
- iii. Sales of domestic industry which was 3074 MT in 96-97 has remained more or less stagnant in 97-98 and 98-99 due to dumping by Japanese and Koreans.
- iv. Inventory of the petitioner has increased from 134 MT as on 1.4.98 to 206MT as on 31.12.98.
- v. The petitioners have lost sales of the major customers like M/s Vikrant Tyres, M/s Mysore Polymers and M/s Felcon Tyres.
- vi. Though there is no significant change in employment level of the petitioner's company as they have the policy to retain people, appointment of fresh persons is almost banned in all the areas.
- vii. The petitioners have not been able to achieve optimum sales volumes nor achieve fair sales realisation on account of tremendous pressure from the dumped imports.

d) ON CAUSAL LINK

- i. Exporters from the other countries are exporting EPM/EPDM in the Indian market at fair price and, therefore, not causing injury to the domestic industry.
- ii. There has, not been. much change in demand of EPM/EPDM in India and, therefore, these have not contributed to any injury to the domestic industry.
- iii. The domestic industry has been compelled to sell at prices significantly below its cost of production to match the landed value of imports and has been suffering heavy financial losses.

2. EXPORTER'S VIEWS

a) PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

1. M/s KPC has made the following submissions

- i. All grades of EPM/EPDM are not substitutable and any one cannot be used in any applications.
- ii. M/s KPC have a lot of types of EPM/EPDM such as bale, friable, crumbs and pallet and the special equipments might be required for different grade/types.
- iii. M/s KPC is manufacturer, shipper and -exporter for KEP brand EPM/EPDM. M/s Rishiroop is the representative agent for KEP brand for the Indian market.
- iv. M/s ECIS is the seller for vistalon brand EPM/EPDM.

2. M/s ECIS has made the following submissions

- i. M/s ECIS does not manufacture in Korea RP or sell products in Korea RP and thus we have no knowledge of or base for Korean domestic prices.
- ii. Constructed normal value based on the third countries to which M/s ECIS sells in the Asia Pacific region shows that M/s ECIS's Indian customers generally pay no less than its other Asian Pacific customers.
- iii. There is no dumping during the period under investigation, because generally M/s ECIS's products are not like articles to those which are produced by the petitioner.
- iv. M/s HUL's EPM/EPDM is generally not a like article to that sold by M/s ECIS and that as a consequence most of the EPM/EPDM sold by M/s ECIS should fall outside the scope of this investigation.
- v. M/s HUL produces both DCPD and ENB based EPDM whereas all the EPM/EPDM products sold in India by M/s ECIS and other Asian Pacific countries are ENB based EPDM.
- vi. DCPD based EPDM and ENB based EPDM are distinctly different in performance.
- vii. M/s ECIS sold four grades of EPM/EPDM during the period of investigation i.e. 2200 K, 2200, 2504 and 5730 vistalon range. Only vistalon 2504 and vistalon 5730 have some similarities to M/s HUL's ENB based grades. However, M/s ECIS's vistalon 2200K and 2200 grades are different to M/s HUL's products.
- viii. Although manufacturing process of M/s HUL and M/s KPC are solution based, differences in the detailed process design can significantly impact on product capabilities and cost efficiency of plant operation.
- ix. The prices of EPM/EPDM differ significantly depending upon the type and the amount of the diene content in the EPDM terpolymer.

- x. Regardless of the diene used ROM rubber is all classified under ITC of 4002.70 and EPM under 4002.99.
- xi. Vistalon 2000 and vistalon 2200 K are essentially the same only difference being that there is a separate production line for 2200K.

b) ON DUMPING

M/s ECIS does not manufacture either EPDM or EPM in Korea RP and neither does it sell products in Korea RP. Therefore, it will not be possible for the Designated Authority to establish normal value based on actual sales on the Korean domestic market. It is impossible to establish constructed normal value in accordance with section 9A(1)(c)(i)(b) of Indian customs~tariff act since ECIS does not manufacture in Korea RP. Prices at which M/s KPC sells to M/s ECIS is market driven. EPM/EPDM produced in India and sold to Indian customers should significantly be cheaper than imported product because of existing duties.

c) ON INJURY

M/s ECIS has made the following submissions:

- i) Petitioner is not suffering any injury which can be shown to have been caused by us. Rather its economic difficulties appear to be due to performance limitations of its different products and lack of sufficient economies of scale.

d) OTHER ARGUMENTS

M/s KPC has made the following submissions:-

- i. We have no idea whether or not vistalon export sales have been imported to India nor do we know on any export details such as selling price, user names, destinations etc.
- ii. We are producing and shipping vistalon upon M/s ECIS'S, request while M/s ECIS is performing all the activities for export of vistalon to overseas market including India.

3. IMPORTER'S VIEWS

a) ON PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- i. M/s KPC produces several types of EPM/EPDM grades under their brand name KEP and exports to India through their exclusive agents.

- ii. Article for investigation has not been identified. EPM/EPDM are broad and distinct generic terms representing two separate sets of classes of products or articles. EPM and type of synthetic rubber is produced by the polymerisation process of ethylene and propylene and is classified under custom subhead 4002.70 while EPDM is produced by polymerisation of 3 monomers and classified under 4002.99.
- iii. The investigation is bad in law since two separate classes of polymers falling under two separate headings have been clubbed in one investigation.
- iv. EPM grades and EPDM grades are neither like articles nor interchangeable.
- v. The petitioner has not brought forward any evidence to demonstrate that either all types of co-polymers of Ethylene and Propylene are interchangeable and their end-use amongst themselves nor that they are interchangeable with any or all types of co-polymers of Ethylene and Propylene and ENB products by M/s KPC.
- vi. The past wrongful interpretation in a similar investigation of anti-dumping proceedings against Japan should not be taken as the basis for this investigation,
- vii. The petitioner has filed a complaint only against the import of EPM/EPDM grades/types imported in bale forms. On the other hand, M/s KPC produces EPM/EPDM in various physical forms such as friable, pallets, crumbs and bale type and all such materials are separate and distinctly classified. In certain applications an enduser may like to import pallet form and cannot use any other type such as bale form. The Authority has erred in not appreciating the technical difficulties of various types/grades of EPM/EPDM and incorrectly initiated these investigations for all physical forms of these products.
- viii. No technical evidence has been furnished by the petitioner such as test results to demonstrate to the Authority that all of their products are equal with any or all of the products made by HUL.
- ix. In certain applications, EPDM has been substituted by butyl rubber when the prices of butyl rubber dropped significantly. The authority will, therefore, have to recognise that demand of EPDM is dynamic and that other polymers compete with EPM/EPDM for their use in the end applications and all such polymers are substitutable with EPM/EPDM.
- x. It is requested that separate findings be made for M/s KEP and M/s Vistalon grades by the Authority.

b) ON DUMPING

- i. The petitioner has not furnished any evidence of the normal value for the sale of product in Korea.

- ii. The option of constructed Normal value or recourse to alternative data for exports to 3rd countries is to be resorted in those proceedings for non-organised markets and for countries which are not party to WTO.
- iii. There is no evidence of price suppression or depression during the POI by M/s KPC.

c) ON INJURY

- i. The market share of M/s KPC was negligible from 1996-97 to 98- 99 and below the de minimus level.
- ii. The market share of petitioners increased from 55.75% from 96- 97 to 67.86% in 98-99 even though the market contracted during the POI.
- iii. The increase in inventory level from 134MT to 206MT is not alarming and high. This would translate only to 17.6 days inventory level. Further it is not possible to say whether the actual inventory is of good material or of old material and off specifications. It is requested an ageing analysis of the inventory of M/s HUL be done to find out the dead stock of the inventory level.
- iv. The petitioners have reduced their losses during the POI as compared to previous period and that the small imports of M/s KEP grades from M/s KPC did not and could not have caused any injury to them. The reasons of incurring losses are such as low demand, low utilisation of production capacity, export of their products at below cost price, poor raw materials and utility consumption norms.
- v. The petitioners are a BIFR Company. The entire net worth of the company is negative and all financial problems that beset the petitioner have taken place prior to the POI and no cause can be attributed to the meagre imports of KEP grades of EPDM for injury during POI.
- vi. The petitioners are faced with very high quantum of payment for interests in the POI due to the financial problems faced by them in the past period.

d) ON CAUSAL LINK

- i. There was a demand contraction for EPM/EPDM in India progressively from 96-97 onwards due to severe recession in the automobile industry. Overall the market shrank from 5514 MT in 96-97 to 4824.8 MT in 98-99 indicating a contraction in demand of about 12.5% from 96-97.
- ii. No causal link can be established to the injury caused to M/s HUL with the imports from M/s KPC or Korea: There are several other factors which are causing injury to the petitioner and as per annexure-II of the anti-dumping rules, it is mandatory for Authority to examine the unknown factors other than alleging dumping import which at the same time are injuring domestic industry.

- iii. The production of 10,000/- tonnes EPM/EPDM is not a viable production capacity for this type of synthetic rubber. As a result of this their product cost is high and they are suffering injury. There is no demand growth in India during the last three years and rather the demand has contracted due to depression in the automotive sector, lack of development of high technology, application which have caused injury to the petitioner.

e) OTHER ARGUMENTS

- i. M/s KPC is neither aware of the final sales quantum nor of the-final selling price of Vistalon brand sold by them to M/s ECIS, Hong Kong to the Indian market. Vistalon grades of EPM/EPDM should not be considered as the export quantum from Korea and that this quantum be considered as the export quantum either from USA or Hong Kong as deemed fit, since Vistalon is not the product of M/s KPC.
- ii. The Authority is requested to publish a white paper and to discuss the general principles adopted by it in arriving at the fair selling price in this investigation.
- iii. No exports have been made by Korean Kumho Petrochemicals Co. Ltd. and M/s Kumho & Co. KPC has always directly exported its product to India and to its customers. Further no material has been sold either to M/s Vikrant Tyres or to M/s Mysore Polymers as alleged by petitioners.
- iv. M/s KPC has only sold their KEP grades during the POI to two customers in India against DEEC licences.
- v. There has been no decrease of export price to India during the POI. The material was exported at a CIF price of US\$ 1667/MT during the POI .. This - price is higher than the price at which exports were made to India during the previous period. The data supplied by the petitioner shows that there was no decline in the import price of EPM/EPDM from Korea during the last three years and there is no evidence of price depression or under-cutting from Korea.
- vi. M/s Ceat, M/s MRF, M/s Vikrant Tyres Ltd. and M/s J K Industries have provided information on imports and purchase from the domestic industry during the POI.

C. EXAMINATION BY AUTHORITY

The foregoing submissions made by the exporters, the importers, the petitioner and other interested parties, to the extent these are relevant as per Rules and to extent these have a bearing upon the case, have been examined and considered and have been dealt with at appropriate places in these findings.

PRODUCT UNDER CONSIDERATION

The product under consideration in the present investigations is EPM and EPDM rubber of all forms/grades/purl ties. EPDM rubber is classified under custom sub-heading 4002.70 of Schedule 1 of the Customs Tariff Act, 1975. EPDM is further classified under sub-heading 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.

It has 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 in the initiation notification dated 27.8.99 has initiated investigations for EPDM and EPM classified under Custom Head 4002.70 and 4002.99 respectively covering all forms under these Heads.

EPM is a co-polymer of ethylene and propylene monomers and is produced by solution polymerization.

EPDM is also synthetic ter-polymer of ethylene, propylene and diene is produced by solution polymerization technique. 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 article.

EPM and EPDM have different uses being different class of polymers and are not interchangeable and therefore for the purposes of present investigation, authority considers the product under consideration as EPDM classified under ITC head 4002.70.09 and EPM classified under head 4002.99.

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

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 ENB 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 by the petitioner have characteristics closely resembling each other and are technically and commercially substitutable. EPDM produced by the domestic industry are 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 for the purpose of preliminary determination 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, importers 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 for the purpose of preliminary determination.

3. 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.

4. NORMAL VALUE & EXPORT PRICE

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 representative 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 transhipped 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.

The exporter-wise normal value and export price determination is illustrated below.

M/s Kumho Polychem Co. Ltd. (KPC), 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. 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 ECIS 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.

5. DUMPING-Comparison of Normal Value & Export Price

The rules relating to comparison provides as follows:

"While arriving at 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."

Calculation for EPDM

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 Authority has carried out transaction to transaction analysis for the grades exported directly by the exporter, for the purpose of determination of dumping. 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 transaction to transaction basis for the goods exported through M/s ECIS, for the purpose of preliminary findings.

The dumping margin for exporters comes as under:

Exporter	Normal Value	Export price	Dumping
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margin(%)

M/s Kumho ***** 9.54

Polychem Co. Ltd. (KPC),

Korea RP

Any other exporter ***** 18.35

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; or 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 EPII from Korea RP as de minimus for the purpose of the preliminary determination.

6. 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 dumped 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 observes that

- 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.

CONCLUSION ON INJURY:

The Authority concludes that

- a. The imports of EPDM rubber from Korea RP increased in absolute terms.
- b. The market share of the subject country in total imports increased in POI to 12.5% as compared to 4.5% in 96-97 and 4% in 97-98.
- c. The exports from subject country have prevented domestic industry from realising non-injurious price thus resulting in financial losses.
- d. These economic indicators collectively and cumulatively establish that domestic industry has suffered material injury.

7. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

It has been argued by interested parties that community interest be kept in view.

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 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. 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.

8. LANDED VALUE

The landed value has been determined for the cooperating exporter on the basis of the weighted average export price of the product under consideration from Korea RP and through M/s ECIS from Hong Kong for the various grades of EPDM after adding the weighted average level of applicable custom duties, i.e. 1% towards landing charges and 2% handling charges for the purpose of preliminary determination pending final investigation.

ASSESSMENT OF NON-COOPERATING EXPORTERS

The Authority has referenced the information as provided by the exporter for the various grades of EPDM exported by them directly and also through M/s ECIS to India for the purpose of preliminary determination. 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.

D. CONCLUSIONS:

It is seen, after considering the foregoing, that:

- a. EPDM originating in or exported from Korea RP 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.

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

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 purpose, 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. Accordingly, it is proposed that provisional anti dumping duties as set out below be imposed, from the date of notification to be issued in this regard by the Central Government, on all imports of EPDM originating in or exported from Korea RP falling under Chapter 40, Customs sub-heading 4002.70.09 of the Customs Tariff, pending final determination. EPDM in all physical forms excluding EPM if imported under any other custom head viz. 4002.99, 39.01 and 39.02, would also be subjected to the anti dumping duties as set out below. Exports by M/s ECIS, Hong Kong, of EPDM manufactured by M/s KPC, Korea RP is-also subjected to the anti-dumping duty as set out below.

(1) (2) (3)

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

1. M/s Kumho Polychem Co. Ltd. (KPC), Korea RP 124.00
2. Any other exporter 124.00

E. FURTHER PROCEDURE

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.