



A-580-890

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June 25, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
Administrative Review of the Antidumping Duty Order: Emulsion  
Styrene-Butadiene from the Republic of Korea; 2018-2019

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on emulsion styrene-butadiene rubber (ESB rubber) from the Republic of Korea (Korea) for the period of review (POR) September 1, 2018 through August 31, 2019. Commerce selected one respondent for individual examination, LG Chem, Ltd. (LG Chem). Because LG Chem did not respond to Commerce's questionnaire, we preliminarily find that LG Chem failed to provide necessary information within the established deadlines, thereby significantly impeding this administrative review. Accordingly, we recommend preliminarily assigning a margin of 44.30 percent to LG Chem based on adverse facts available (AFA). We also recommend preliminarily assigning the same dumping margin to the six companies not selected for individual examination.

## II. BACKGROUND

On September 12, 2017, Commerce published in the *Federal Register* the AD order on ESB rubber from Korea.<sup>1</sup> On September 3, 2019, Commerce published a notice of opportunity to request an administrative review of the AD order on ESB rubber from Korea for the POR.<sup>2</sup> Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), Commerce received timely requests to conduct an administrative review of the AD order on ESB rubber from Korea from Lion Elastomers, LLC (the petitioner) for Daewoo International Corporation (Daewoo), Hyundai Glovis Co., Kukje Trading Corp., Kumho

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<sup>1</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders*, 82 FR 42790 (September 12, 2017) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 45949 (September 3, 2019).



Petrochemical Co. Ltd. (Kumho), LG Chem, Sungsan International Co., Ltd., and WE International Co., Ltd.<sup>3</sup> LG Chem self-requested an administrative review.<sup>4</sup> On November 12, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review with respect to seven companies.<sup>5</sup>

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of ESB rubber from Korea during the POR.<sup>6</sup> On December 13, 2019, relying on CBP data, Commerce selected LG Chem as the sole mandatory respondent for this review.<sup>7</sup> We issued the AD questionnaire to LG Chem the same day.<sup>8</sup> On January 13, 2020, LG Chem notified Commerce that it would not be participating in this administrative review.<sup>9</sup>

We received comments for these preliminary results from the petitioner, which we have considered.<sup>10</sup>

On April 24, 2020, Commerce uniformly tolled deadlines for all AD and countervailing duty administrative reviews by 50 days, postponing these preliminary results to July 21, 2020.<sup>11</sup> For a description of the events that occurred subsequent to issuance of the AD questionnaire, *see* the “Use of Facts Available” section, below.

### **III. SCOPE OF THE ORDER**

The merchandise subject to this order is cold-polymerized emulsion styrene-butadiene rubber. Subject merchandise includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the review covers grades of ESB rubber included in the IISRP 1500 and 1700 series of

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<sup>3</sup> See Petitioner’s Letter, “Antidumping Review of Emulsion Styrene-Butadiene Rubber (E-SBR) from South Korea: Request for Second Administrative Review,” dated September 30, 2019.

<sup>4</sup> See LG Chem’s Letter, “Emulsion Styrene-Butadiene Rubber (ESBR) from Korea; LG Chem’s Request for AD Administrative Review (POR 2),” dated September 30, 2019 (LG Chem Request for Review).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2019) (*Initiation Notice*).

<sup>6</sup> *Id.*, 84 FR at 61018.

<sup>7</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order of Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Respondent Selection,” dated December 13, 2019.

<sup>8</sup> See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order of Emulsion Styrene-Butadiene Rubber from Republic of Korea: Initial Questionnaire,” dated December 13, 2019 (AD questionnaire).

<sup>9</sup> See LG Chem’s Letter, “Emulsion Styrene-Butadiene Rubber (ESBR) from m Korea: LG Chem’s Decision to Stop Participating in AD Review,” January 13, 2020.

<sup>10</sup> See Petitioner’s Letter, “Antidumping Review of Emulsion Styrene-Butadiene (ESBR) from South Korea (A-580-890): Pre-Preliminary Determination Comments,” dated April 3, 2020.

<sup>11</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments due to COVID-19,” dated April 24, 2020.

synthetic rubbers. The 1500 grades are light in color and are often described as “Clear” or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

Specifically excluded from the scope of this order are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The subject merchandise is classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber.

Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### **IV. APPLICATION OF FACTS AVAILABLE AND ADVERSE INFERENCES**

In accordance with sections 776(a) and (b) of the Act, we determine the use of AFA is appropriate for these preliminary results. Therefore, for the reasons discussed below, we are preliminarily assigning LG Chem a dumping margin of 44.30 percent.

##### **A. Use of Facts Available**

Section 776(a)(1) and (2) of the Act provide that if necessary information is not available on the record or an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that if an interested party, “promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner,” then Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On December 13, 2019, we issued the AD questionnaire to LG Chem.<sup>12</sup> In the questionnaire, we established due dates of January 3, 2020, and January 20, 2020, for LG Chem’s responses to section A, and sections B through D of the AD questionnaire, respectively. On December 20,

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<sup>12</sup> See AD questionnaire.

2019, Commerce granted a partial extension to LG Chem, allowing LG Chem to submit its section A response by January 10, 2020.<sup>13</sup> However, LG Chem failed to respond to section A of the questionnaire by the newly-established deadline. Further, on January 13, 2020, LG Chem informed Commerce it would no longer continue participating in this review.<sup>14</sup>

As noted above, LG Chem failed to respond to Commerce's AD questionnaire in this administrative review, and it stated its intention that it would no longer participate in this review. As a consequence, we preliminarily find that the necessary information is not available on the record and that LG Chem withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding.<sup>15</sup> Moreover, because LG Chem failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the preliminary dumping margin for LG Chem.

#### B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In applying adverse inferences, Commerce is not required to determine, or to make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>16</sup> Furthermore, Commerce does not require affirmative evidence of bad faith on the part of a respondent before Commerce may make an adverse inference in selecting from the facts available.<sup>17</sup> It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>18</sup>

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<sup>13</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order of Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Extension Request for Section A Questionnaire Response," dated December 20, 2019.

<sup>14</sup> See LG Chem's Letter, "Emulsion Styrene-Butadiene Rubber (ESBR) from Korea; LG Chem's Decision to Stop Participating in AD Review," dated January 13, 2020.

<sup>15</sup> See sections 776(a)(2)(A), (B), and (C) of the Act.

<sup>16</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>17</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27340 (May 19, 1997).

<sup>18</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

We preliminarily find that LG Chem did not act to the best of its ability to comply with Commerce's request for information. LG Chem requested this administrative review,<sup>19</sup> and as a full participant in the underlying AD investigation,<sup>20</sup> and first administrative review,<sup>21</sup> LG Chem was aware of the consequences of its failure to respond within the established deadline.<sup>22</sup> Nonetheless, LG Chem failed to respond to Commerce's AD questionnaire, and indeed affirmatively stated that it would no longer participate in this administrative review. Therefore, we preliminarily determine that LG Chem failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct this administrative review.<sup>23</sup> Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.<sup>24</sup>

### C. Selection and Corroboration of Adverse Facts Available

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.<sup>25</sup> In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>26</sup>

As AFA, we are preliminarily assigning to LG Chem a dumping margin of 44.30 percent, which is the highest rate that we previously assigned to respondents in a prior segment of this proceeding. Specifically, Commerce assigned to Daewoo and Kumho, uncooperative mandatory respondents, a dumping margin of 44.30 percent in the LTFV investigation in this proceeding.<sup>27</sup>

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<sup>19</sup> See LG Chem Request for Review.

<sup>20</sup> See, e.g., *Order*; and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 33045 (July 19, 2017).

<sup>21</sup> See *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Results of Antidumping Administrative Review; 2017-2018*, 84 FR 65114 (November 26, 2019), and accompanying PDM.

<sup>22</sup> See AD questionnaire cover letter at 3 ("If Commerce does not receive either the requested information or a written extension request before 5:00 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding . . . {which} may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.").

<sup>23</sup> See *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum at 5-6 (applying AFA to the China-wide entity because several respondents that were a part of the China-wide entity did not respond to Commerce's quantity and value questionnaire).

<sup>24</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where Commerce applied total AFA because the respondent failed to respond to the questionnaire); see also *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>25</sup> See also 19 CFR 351.308(c).

<sup>26</sup> See SAA at 870.

<sup>27</sup> See *Order*, 82 FR at 42791.

Section 776(c) of the Act provides that, where Commerce relies on secondary information rather than on information obtained during the course of a review, it must corroborate that information using independent sources that are reasonably at its disposal. However, section 776(c) also states that Commerce shall not be required to corroborate any dumping margin applied in a separate segment of the same proceeding. Because we are applying as the AFA rate a dumping margin applied in a prior segment of this proceeding, we are not required to corroborate this margin pursuant to section 776(c)(2) of the Act.

Accordingly, we are preliminary assigning LG Chem an AFA dumping margin of 44.30 percent.

#### D. Rate for Non-Selected Companies

The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all others rate in an administrative review.<sup>28</sup> Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle*,<sup>29</sup> in this review, we preliminarily determine that a reasonable method for determining the rate for the non-selected companies is to use the dumping margin applied to the sole mandatory respondent (LG Chem) in this administrative review.<sup>30</sup> This is the only dumping margin determined in this review for an individual respondent, and thus, it is appropriate to apply this dumping margin to the six non-selected companies under section 735(c)(5)(B) of the Act. Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 44.30 percent.

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<sup>28</sup> See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).

<sup>29</sup> See *Albemarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. 2016) (*Albemarle*).

<sup>30</sup> See, e.g., *Certain Hot-Rolled Steel Flat Products from Brazil: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 48592 (September 26, 2018).

## V. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margins in the *Federal Register*.



\_\_\_\_\_  
Agree



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Disagree

6/25/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance