Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of emulsion styrene-butadiene from Brazil, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit equal to the estimated amount by which the normal value exceeds the export price as shown below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Petroflex Industria e Comercio S.A.	71.08
All Others	43.85

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporter/manufacturer listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration

[FR Doc. 99–7525 Filed 3–26–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–833]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, AD/CVD Enforcement Group II, Office V, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–0783, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to 19 CFR Part 351 (April 1, 1998).

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from the Republic of Korea is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice, below.

Case History

Since the preliminary determination in this investigation on October 28, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 63 FR 59514 (November 4, 1998) (*Preliminary Notice*)), the following events have occurred:

In November 1998, we received a supplemental response to Section D of the Department's antidumping questionnaire from Korea Kumho Petrochemical Co. Ltd. (KKPC).

In January 1999, we verified the questionnaire responses of KKPC. In February 1999, we issued our verification reports for KKPC. Also in February 1999, KKPC submitted a revised sales database, reflecting verification revisions, at the Department's request.

On February 16, 1999, the petitioners (*i.e.,* Ameripol Synpol Corporation and DSM Copolymer), and KKPC submitted case briefs. On February 22, 1999, the petitioners and KKPC submitted rebuttal briefs. The Department held a public hearing on February 25, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of 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.'' ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR 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) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Facts Available

The petition in this investigation named both KKPC and Hyundai Petrochemical Co., Ltd. (Hyundai) as producers/exporters of ESBR from Korea to the United States. On May 8, 1998, Hyundai requested that it be excluded from participation as a mandatory respondent. On May 12, 1998, the petitioners submitted a letter to the Department opposing Hyundai's exclusion from this proceeding. On May 13, 1998, the Department notified Hyundai that it was selected as a mandatory respondent. On May 21, 1998, the Department issued the antidumping duty questionnaire to both companies. Hyundai did not submit a response to the questionnaire. Consequently, for purposes of the preliminary determination, the Department based the antidumping margin for Hyundai on facts otherwise available and assigned it a margin of 118.88 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent. *See Preliminary Notice.* Hyundai did not submit comments on the Department's preliminary determination and, thus, has continued not to participate in this investigation. Accordingly, for the final determination, the Department has continued to base the antidumping margin for this company on facts otherwise available and assigned it a margin of 118.88 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of ESBR from Korea to the United States were made at less than fair value, we compared the export price (EP) to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted below under the ''Export Price'' and ''Normal Value'' sections of the notice.

Level of Trade

For purposes of the preliminary determination, we conducted a level of trade analysis for KKPC, and determined that the level of trade for all EP sales is the same as that of the home market sales. *See Preliminary Notice.* Based on our findings at verification, we find no indication that the level of trade for EP sales is different from that of the home market sales. Furthermore, neither the petitioners nor KKPC commented on the Department's level of trade determination. Therefore, for purposes of the final determination, we have continued to hold that a level of trade adjustment is not warranted for KKPC.

Export Price

In accordance with section 772(a) and (c) of the Act, we used EP methodology for KKPC because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions: (1) we recalculated U.S. credit expenses using the average short-term lending rates calculated by the Federal Reserve (*see Calculation Memorandum for the Final Determination for Korea Kumho Petrochemical Co., Ltd.* dated March 19, 1999 (*Final Calculation Memorandum*)); and (2) we adjusted the reported amounts for U.S. bank charges and packing expenses based on corrections presented at the start of verification.

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions: (1) we used the February 12, 1999, home market sales listing reflecting verification revisions, submitted at the Department's request; (2) we adjusted the reported amounts for home market inland freight charges and packing expenses based on corrections presented at the start of verification; and (3) we recalculated home market credit expenses denominated in U.S. dollars using the average short-term lending rates calculated by the Federal Reserve (*see Final Calculation Memorandum*). We continued to make no adjustment for imputed credit expenses related to the payment of value-added taxes (VAT), in accordance with our long-standing practice (*see* Comment 2 below). In those instances where KKPC did not report payment dates, we recalculated reported credit expenses using the date of the last day of the sales verification as the payment date.

Cost of Production

We calculated the cost of production (COP) based on the sum of KKPC's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs, except for the following specific instances where we modified the margin calculation program to correct for certain adjustments and updated cost data based on verification findings (*see Final Calculation Memorandum*): (1) based on information obtained at verification, we adjusted KKPC's reported cost of manufacturing (COM) to reflect the POI costs (*see* Comment 5 below); (2) we recalculated KKPC's financial expense ratio used in the calculation of COP and CV on a consolidated basis (*see* Comment 6 below), and additionally, in accordance with Department practice to exclude exchange gains and losses from accounts receivable (*see* Comment 7 below, and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40416 (July 29, 1998)); and (3) based on our analysis of KKPC's supplemental response to Section D of the Department's antidumping questionnaire, we determined that an adjustment to the direct labor costs reported in KKPC's COP and CV databases was unwarranted (see Comment 8 below).

We also conducted our sales below cost test in the same manner as that described in our preliminary determination. As with the preliminary determination, we found that, for certain grades of ESBR, more than 20 percent of KKPC's home market sales were at prices less than the COP within an extended period of time. *See* Section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of KKPC's cost of materials, fabrication, SG&A expenses, profit, and

U.S. packing costs. We relied on the submitted CVs, except in the specific instance noted in the ''Cost of Production'' section above.

Currency Conversion

As noted in the *Preliminary Notice,* our preliminary analysis of Federal Reserve dollar-won exchange rate data showed that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. We continue to determine that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.,* as having experienced only a momentary drop in value. Therefore, for purposes of the final determination, the Department continued to use daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an ''up-to-date'' (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. For sales occurring after March 1, the standard model and standard (rolling, 40-day) benchmark rate were used (*see* Comment 1 below).

Critical Circumstances

On September 24, 1998, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of ESBR from Korea. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

For purposes of the preliminary determination, we found that no critical circumstances existed because there was no history of dumping, and the preliminary margins were insufficiently high to impute knowledge of dumping to exporters, producers, or importers of the subject merchandise. Because the margin remains insufficiently high to impute such knowledge, our final determination of critical circumstances remains negative (*see* Comment 4 below).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by KKPC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by KKPC.

Interested Party Comments

General Issues

Comment 1: Exchange Rate Methodology

The petitioners argue that the Department did not fully analyze its methodology for currency conversion used in the preliminary determination in which it modified the exchange rate database by using the actual daily exchange rates during the period of devaluation, November 1, 1997–December 31, 1997, to convert prices denominated in Korean won into U.S. dollars. The petitioners contend that the Department neither explained how it identified the devaluation of the Korean won as too precipitous and large to represent a fluctuation, nor did it cite any support for its decision to use a modified benchmark for sales after January 1, 1998, which provided no clear notice to interested parties as to what the official exchange rate would be on a particular date of sale. The petitioners argue that the Department's methodology used for the preliminary determination, in addition to being unnecessarily complex and unpredictable, is inconsistent with Congressional intent that the currency conversion process not distort dumping margins, and should, therefore, not be used for purposes of the final determination.

The petitioners contend that the Department should, instead, use its standard exchange rate model, which would treat the won as a fluctuating currency. As an alternative, the petitioners suggest that the Department apply its existing ''sustained movement'' analysis (used for situations in which a foreign currency appreciates against the U.S. dollar) to the period of devaluation in Korea. The petitioners claim that using this approach would deny an exporter the benefit of lower dumping margins when it is selling products in the United States at less than fair value, and would also provide a consistent treatment of both increases and decreases in the value of the foreign currency. Finally, the petitioners suggest that, as a third option, the Department limit the POI to the seven months preceding the devaluation of the won.

KKPC argues that the depreciation in the Korean won cannot be considered a ''fluctuation'' because its value at the end of March 1998, three months after the period of devaluation, was still 50 percent less than what it had been in October 1997, which is contrary to the definition of a fluctuation. Further, KKPC asserts that the Department's ''sustained movement'' analysis is designed to prevent artificial dumping margins created by appreciations in the foreign currency in situations in which there would ordinarily be no margins. KKPC contends that if the Department were to implement a ''sustained movement'' policy to devaluating currency situations, it would apply an exchange rate reflective of the pre-devaluation period to prices reflective of the won's devaluation, and would, thus, penalize exporters that immediately adjust their prices when the foreign currency depreciates in value instead of waiting to adjust prices until after the won rebounds in value. KKPC cites to recent cases involving currency depreciations in which the Department chose not to follow this approach (*e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 72268, 72269 (December 31, 1998)). Moreover, KKPC argues that the Department should not alter the POI because the Department's regulations require that the Department investigate sales during the four fiscal quarters prior to the filing of the petition. KKPC asserts that the petitioners had knowledge of the currency devaluation in Korea before filing the antidumping petition, and could have avoided a POI including the devaluation of the won by filing their petition at an earlier date.

DOC Position

We have continued to use the currency conversion methodology used for purposes of the preliminary determination, for the reasons explained in the *Preliminary Notice.* Although neither party requested that we use separate averaging periods, the petitioners did request that we consider using a truncated POI. Under section 777A(d)(1)(A) of the Act, the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 CFR 351.414(d)(3), the Department may use averaging periods shorter than the POI where NV, EP, or constructed export price varies significantly over the POI. In the instant case, NV (in dollars) in the last five months of the POI differs significantly from NV earlier in the POI due primarily to a significant change in the underlying dollar value of the won. In this case, the change is evidenced by the precipitous drop in the won's value that occurred in November and December 1997, without a quick, significant rebound. The won's value decreased by more than 40 percent in relation to the dollar in the span of these two months and remained substantially at this new lower value for the remainder of the POI. While we do not believe that it is appropriate in this case to ignore sales that occurred in the latter five months of the POI, and, thus, truncate the POI as the petitioners have proposed, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Therefore, we have used two averaging periods for purposes of the final determination: April through October 1997, and November 1997 through March 1998.

We disagree with the petitioners' claim that we should not have modified the currency conversion model, as was done for purposes of the preliminary determination. As the petitioners themselves have acknowledged, ''whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline.'' *Exchange Rate Methodology,* Policy Bulletin, March 4, 1996. The petitioners dispute our interpretation of the movement in the dollar-won exchange rate during November and December of 1997 as so precipitous and large as to reasonably preclude the possibility that it was only fluctuating. However, as KKPC points out in its case brief, within an approximately two-month period, the won's value fell from 920 per U.S. dollar to 1700 per U.S. dollar. In addition, while the won recovered slightly after the rapid two-month decline, it did not regain its value of the period prior to the rapid devaluation. A devaluation of almost 50 percent over a period of two or three months cannot reasonably be seen as a mere fluctuation. Accordingly, the Department continued to apply the currency conversion methodology outlined above in the ''Currency Conversion'' section, and divided the POI into two separate averaging periods for purposes of the final determination.

Sales Issues

Comment 2: Calculation of Home Market Credit Expenses

According to KKPC, the Department erred in its decision to not include home market VAT in the price used as the basis for the calculation of home market credit expenses. KKPC explains that the purpose of calculating credit expenses is to determine the economic cost to the seller when it decides to allow the customer to delay its payment. KKPC asserts that the Department should calculate credit expenses based on the total price actually paid by the customer, because the cost to KKPC of the delayed payment must be measured by the total amount on which payment was delayed, which includes the tax-exclusive price, plus VAT. KKPC argues that calculating credit expenses on a tax-exclusive basis understates the economic effect of its decision to extend credit.

Furthermore, KKPC states that calculating credit expenses net of only VAT, without also deducting other costs borne by the seller, is incongruent with the Department's stated methodology in *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom,* 58 FR 3253 (January 8, 1993)(*Sulphur Vat Dyes*). KKPC argues that the treatment of VAT should not differ from the treatment of other costs that the seller pays from the proceeds of the sale (*e.g.,* commissions), and asserts the Department has never calculated credit expenses net of such other costs.

KKPC cited cases in which the Department calculated credit expenses based on prices that include taxes (*e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico,* 57 FR 42953 (September 17, 1992); *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil,* 56 FR 26977 (June 12, 1991); and *Notice of Final Results of Administrative Review of Antidumping Duty Order: Color Television Receivers from Korea,* 49 FR 50420 (December 28, 1984). KKPC contends that the Department's past practice on calculating credit expenses has been inconsistent, and that there is no rationale for excluding VAT from the total price paid by the customer.

The petitioners state that such a circumstance-of-sale adjustment for credit expenses relating to VAT is not warranted by the Department's regulations, and refer to the stated methodology concerning credit expense calculations in *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921 (December 28, 1994), in which the Department explained that the regulations contain no indication that an adjustment should be granted for a government imposed tax such as VAT, or for any type of so-called ''opportunity cost.'' The petitioners assert that KKPC did not support its argument with any statutory or regulatory basis. In addition, the petitioners argue that KKPC supports its argument with cases that are outdated, and that the Department has since then reflected on the treatment of VAT for credit expense calculations and concluded that it should not make a circumstance-of-sale adjustment for imputed interest expenses related to the payment of VAT. Finally, the petitioners assert that the Department should continue to calculate credit expenses net of VAT, because these expenses do not bear a ''direct relationship'' to the sales in question, as defined by the Department's regulations.

DOC Position

We agree with the petitioners. As the petitioners noted, we have evaluated this issue in past cases, and have come to the conclusion that our regulations do not imply that we should treat the payment of VAT as an opportunity cost to the seller on behalf of the buyer (*See Sulfur Vat Dyes*). Furthermore, no statute or regulation requires us to include VAT in the home market credit expense calculation (*see Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33050 (June 17, 1998)). As the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) (SAA) states at page 827, ''[t]he deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping

margins will be tax-neutral.'' Thus, Congress specifically intended for normal value to be tax-neutral. Accordingly, computing imputed credit expenses on a price that specifically includes an indirect tax such as the VAT, as KKPC insists that we do, would be clearly inconsistent with Congressional intent on this subject. For the final determination, we are following our established practice of excluding VAT from home market credit expense calculations for purposes of the final determination (*see Frozen Concentrated Orange Juice From Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 64 FR 5767, 5769 (February 5, 1999)).

Comment 3: Home Market Date of Sale

The petitioners argue that the Department should not use KKPC's invoice date as the date of sale for its larger home market customers, because the terms of sale are established at an earlier date (*i.e.,* the order date). The petitioners cite past cases in which the Department used a date other than the invoice date for the respondent's date of sale, and assert that the Department can appropriately use KKPC's order date as the date of sale. The petitioners state that at a minimum, because KKPC's order dates are not on the record, the Department should use KKPC's date of shipment as the date of sale, since this information is on the record of this proceeding. The petitioners explain that because of the currency crisis in Korea, the order date during this time period may precede the invoice date by more than a month, which can have a significant effect on the calculation of dumping margins.

KKPC asserts that it properly reported the invoice date as the date of sale for all sales to its larger home market customers, because in the normal course of business, such customers place orders and receive shipments throughout the month. KKPC maintains that it recognizes home market sales, and records them as sales in its accounting records, when it issues the invoice to the customer. In addition, KKPC states that reporting the shipment date for these sales based on the month-end invoice date understates the number of days between shipment and payment, reduces the amount of credit expense relating to the sale, and overstates the resulting dumping margin calculated for KKPC, since the average shipment date would be at the middle of the month. KKPC argues that the petitioners' allegation is untimely, because they had not contended its use of the invoice date as the date of sale until their case brief. Further, KKPC contends that using the invoice date is consistent with the Department's regulations, and that the petitioners did not provide a sufficient basis to use a different date. Finally, KKPC contests that, although the sales quantity can be tied to its transaction statements that are prepared for each shipment prior to invoicing, the invoice itself is the first document generated in its sales process which provides written evidence of the sales price charged to the customer. KKPC explains that the transaction statement and invoice relating to a specific shipment are always generated in the same month that the shipment is made, and, therefore, all of its relevant sales were included in the sales listing reported to the Department.

DOC Position

We agree with KKPC. The Department's current practice is to use invoice date as the date of sale, unless record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date. *See* 19 CFR 351.401(i). The Department explained in the preamble to its regulations at 62 FR 27348 (May 19, 1997):

> * * * as a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced.

As noted in its responses to Sections A, B, and C of our questionnaire, KKPC explained its above-stated invoicing methodology for its home market customers. Furthermore, we noted ''* * * no inconsistencies between the information concerning the date of sale methodology in the company responses and the information gathered at verification.'' *See Sales Verification Report,* dated February 15, 1999, at page 9. During the course of this investigation, we found no indication that a different date is more suitable as a date of sale. We find that KKPC accurately reported the invoice date as the appropriate date of sale because the invoice date best reflected the date on which the essential terms of the sale were established.

Comment 4: Critical Circumstances

The petitioners request the Department reconsider their critical circumstances allegation, should it calculate a final dumping margin greater than 25 percent.

KKPC argues that even if the final calculated dumping margin, if any, exceeds 25 percent, there is no way that an importer knew or should have known that the subject merchandise was being sold at less than fair value. KKPC asserts that it is unfair for the Department to penalize importers with a retroactive assessment of duties when it changes its methodologies from the preliminary determination, which might cause the margin to exceed 25 percent, because an importer has limited information.

DOC Position

As stated above in the ''Critical Circumstances'' section of this notice, KKPC's margin does not exceed 25 percent for EP sales, and there are no CEP sales in this investigation. Therefore, we find both the petitioners' and KKPC's arguments to be moot in this case.

Cost Issues

Comment 5: Use of Fiscal Year Costs Versus POI Costs

According to KKPC, it correctly reported its costs based on the fiscal year (*i.e.,* January 1 through December 31, 1997) and not based on the POI, because, although KKPC calculates monthly ESBR manufacturing costs on a product-specific basis, the costs for certain expenses, such as severance and depreciation costs, are based on estimates. In addition, KKPC explains that its monthly ESBR manufacturing costs for materials and inventories are valued using a monthly moving average method, while the annual cost calculations use an annual average method. As a result, the summation of KKPC's monthly costs do not reconcile directly to the annual costs because the differences between the monthly costs through November and the annual costs are recorded as year-end adjustments to the December costs, which can lead to aberrant December costs.

Moreover, KKPC argues that the Department has allowed respondents to report fiscal year costs when the POI and fiscal year do not differ by more than a few months, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725, 12734 (March 16, 1998), in which the Department granted the respondent's request to base its reported costs on its fiscal period rather than the period of review. KKPC asserts that it indicated its use of fiscal year data in its September 18, 1998, response to the Section D questionnaire, and that, although the petitioners asked the

Department to require KKPC to report POI costs, the Department did not request POI costs until verification. According to KKPC, it would be inappropriate for the Department to use the monthly POI costs now on the record, because the fiscal year 1997 covers nine months of the POI, and the monthly costs cannot be tied directly to its annual costs or to KKPC's financial statements.

The petitioners argue that, although KKPC has maintained that only its annual costs could be reconciled to its audited financial statements, information gathered at verification proves that the monthly cost statements could be reconciled to its financial statements. In support of its argument, the petitioners refer to the following items noted in the Department's *Cost Verification Report,* dated February 7, 1999: (1) KKPC's cost accounting system is integrated with its financial accounting system; (2) KKPC produces monthly trial balances, income statements, and COM statements; and (3) the unit costs calculated in the monthly COM statements match the unit costs as calculated in KKPC's reconciliation of reported costs to its annual COM statement. The petitioners assert that the monthly cost information reported to the Department at verification could have been provided at an earlier date, and that the Department should, therefore, consider the information to be submitted in an untimely fashion. In addition, the petitioners argue that in light of the increase in the COM during the first quarter of 1998, as noted in the *Cost Verification Report,* KKPC's decision to report fiscal year costs and not POI costs was intended to minimize its costs of production. The petitioners suggest that, consequently, the reported COMs should be rejected, and the Department should apply adverse facts available, using the rate of 118.88 percent for KKPC's sales of subject merchandise, as was applied to Hyundai.

The petitioners argue that if the Department decides not to reject KKPC's reported COMs, it should, at a minimum, adjust KKPC's reported COPs to reflect the differences in COM between the fiscal year 1997 and the POI. However, the petitioners state that an upward adjustment based on the percentage difference should not be used because of the devaluation of the Korean won at the end of the POI, which would benefit KKPC rather than penalize it. As an alternative, the petitioners suggest that, as adverse facts available, the Department should either: (1) limit the POI to the seven months prior to the devaluation of the won (*see* Comment 1 above); or (2) convert HM prices denominated in U.S. dollars to won both for purposes of the cost test, as well as for calculating NV. The petitioners explain that although KKPC has HM sales denominated in U.S. dollars, these US dollar prices reflect won-based prices that were converted to U.S. dollars for the convenience of KKPC's customers. The petitioners state that converting all HM prices into won would, therefore, be consistent with KKPC's pricing practice.

DOC Position

We disagree with the petitioners that we should reject KKPC's response in toto and apply total facts available for purposes of the final determination. We note that although the Department, in its May 21, 1998, Section D questionnaire at D–3, instructed KKPC to report its costs based on the costs incurred during the POI, KKPC reported its costs to the Department based on its fiscal year 1997. In its September 18, 1998, Section D response, KKPC stated that the company's cost accounting system calculates costs on an annual basis at the end of each fiscal year and these annual figures are the only calculations that reconcile to KKPC's audited financial statements (*See* pages 24 and 25 at footnote 9). KKPC further stated that while the company also calculates monthly product costs for management purposes, using the same methodologies used in the company's normal cost accounting system, these monthly management cost calculations are not used in KKPC's accounting systems and do not reconcile directly to the company's audited financial statements. Based on such claims, the Department did not require KKPC to report POI cost data subsequent to its September 18, 1998, submission. We note that the Department does allow a respondent to report fiscal year costs where there is only a few months difference between the POI and the company's fiscal year. In such instances, the Department will test the impact of the shift in the cost reporting period to ensure that the use of fiscal year costs is not distortive for purposes of our COP and CV analysis.

At the start of verification, contrary to its statements in its questionnaire responses, KKPC disclosed to Department officials that KKPC does, in fact, record monthly cost data in its accounting system. Consequently, we requested and reviewed KKPC's monthly cost data, noting that the monthly costs do reconcile to the company's audited financial statements, after accounting for year-end adjustments for certain expenses. During verification, we tested and compared the POI costs based on the monthly cost data to the reported fiscal year costs and noted that the per-unit COMs for each grade of ESBR for the POI were higher than the per-unit COMs for the fiscal year (*see Cost Verification Report* at pages 7 and 8 for a detailed discussion). Thus, in this instance, because the Department originally requested POI cost data, and our verification findings indicate that the use of the reported fiscal year cost data is distortive, we have used the verified POI cost data for purposes of the final determination, as facts available, in accordance with section 776(a) of the Act (*see Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Memorandum,* dated March 19, 1999). *See e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29568 (June 5, 1995) (where the Department disagreed with the respondent's reporting period for cost data, and used the costs obtained during the verification for purposes of the final determination).

Comment 6: Allocation of Financial Expenses to Investment Activities

KKPC argues that the Department erred in its calculation of financial expenses for purposes of the preliminary determination. KKPC calculated its financial expenses reported in the COP and CV data by allocating its total financial expenses between its investment activities and its manufacturing and sales activities, based on the ratio of the income generated by each of these lines of business. For purposes of the preliminary determination, the Department rejected KKPC's methodology and recalculated KKPC's financial expenses by allocating the company's total financial expenses over its cost of goods sold (*see Preliminary Notice* at 59517). KKPC, citing *Final Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Korea,* 55 FR 32659, 326678 (August 10, 1990) (*Sweaters from Korea*) and *Porcelain-on-Steel Cooking Ware from Mexico: Final Results of Antidumping Duty Administrative Review,* 58 FR 32095 (June 8, 1993), argues that the methodology adopted by the Department for its preliminary determination is not consistent with established Department practice. KKPC contends that, as the Department recognized in *Sweaters from Korea,* financial expenses incurred by a company relate both to the company's investment activities and to its

manufacturing and sales activities. Thus, KKPC asserts that an allocation that assigns all of the financial expenses to the company's manufacturing and sales activities is incorrect and urges the Department to revise its calculation of financial expenses for the final determination.

The petitioners argue that KKPC offers no compelling reason for the Department to deviate from its long-standing practice of allocating a company's total financial expenses over its cost of goods sold, and, therefore, urge the Department to deny KKPC's request for reallocation of its financial expenses to the company's investment activities.

DOC Position

We disagree with KKPC that we erred in rejecting its method of allocating interest expenses. As the Department has repeatedly stated, and the Court of International Trade has upheld, we

> recognize the fungible nature of a corporation's invested capital resources, including debt and equity, and we do not allocate corporate financing expenses to individual divisions of a corporation on the basis of sales per division. Instead, we allocate the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation. More importantly, our established practice of requiring the use of consolidated financial statements recognizes: (1) the fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies; and (2) that the controlling entity within a consolidated group has the power to determine the capital structure of each member company within its group (*see, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review,* 62 FR 38058 (July 16, 1997)).

E.I. Du Pont de Nemours & Co. v. *U.S.,* SLIP OP. 98–7 (CIT 1998).

In this instance, KKPC is asking that the Department deviate from its established practice of allocating financial expenses to the merchandise under investigation using consolidated results of operations (due to the proprietary nature of this issue, for a full explanation, please *see Memorandum to Louis Apple, Office Director, from Team,* dated March 19, 1999). Accordingly, for purposes of the final determination, we continued to rely on the interest expense calculation methodology used for purposes of the preliminary determination.

Comment 7: Treatment of Exchange Gains and Losses on Sales

KKPC argues that foreign exchange gains and losses arising from sales transactions should be included in the calculation of COP and CV. KKPC asserts that foreign exchange gains and losses on sales transactions relate to a company's general operations and, as such, should be included as part of the financial expense of the company. Furthermore, KKPC maintains that the treatment of exchange gains and losses on sales transactions as a cost of financing sales is inconsistent with the fundamental principle that money is fungible. Accordingly, KKPC argues that the Department's financial expense calculation should include all exchange gains and losses, including gains and losses that arise from sales transactions.

The petitioners maintain that KKPC presents no compelling justification for the Department to deviate from its long-standing policy of excluding exchange gains and losses on sales transactions from the calculation of COP and CV.

DOC Position

We disagree with KKPC. The Department typically only includes foreign exchange gains and losses in a respondent's financial expense if such gains and losses are related to the cost of acquiring debt. Moreover, it is the Department's normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9181 (February 24, 1998) (*Steel Wire Rod from Trinidad and Tobago*). The Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing activities (*e.g.,* purchases of inputs). We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago,* 63 FR at 9181 and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31430 (June 9, 1998). Accordingly, for purposes of the final determination, we disallowed exchange gains and losses arising from sales transactions in the COP and CV calculation.

Alleged Clerical Errors Made in the Preliminary Determination Margin Calculation Program

Comment 8: Corrections to KKPC's Direct Labor Costs

In the preliminary determination, we recalculated KKPC's reported direct labor cost, because, based on information on the record at the time, we could not reconcile KKPC's reported direct labor costs to its total labor costs. KKPC notes that, subsequent to the Department's preliminary determination, the company provided a reconciliation of its direct labor costs to its total labor costs in its November 2, 1998, response to the Department's section D supplemental questionnaire. In addition, KKPC states that the Department verified that the direct labor costs were calculated correctly. Therefore, KKPC asserts that the Department should accept the reported direct labor costs and should, accordingly, correct the margin program.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

Comment 9: Product Characteristics Used for Purposes of Model Matching

The petitioners argue that, for purposes of the preliminary determination, the Department improperly excluded grade as one of the matching criteria in performing its model matching. In addition, the petitioners claim that by excluding grade, the Department assigned one control number to two different ESBR products (*i.e.,* ESBR grades 1502 and 1507).

KKPC asserts that the Department clearly stated its intention to not include grade as a matching criterion, and that by not doing so, two products are treated as one product. KKPC argues that these do not constitute inadvertent or clerical errors, and that there is no basis for changing the matching criteria.

DOC Position

We agree with both the petitioners and KKPC, in part. In response to our April 28, 1998, letter to interested parties, in which we requested information concerning the product characteristics, the petitioners stated that "* * * any product matching that relied simply on the IISRP grading system as product matching criteria, rather than on the essential physical characteristics of ESBR product, would necessarily fail to match certain product sales that properly should be included

in the Department's matching analysis.'' We, therefore, used the product characteristics attached to the petitioners' aforementioned response as our matching criteria, and did not include grade as a product characteristic. Excluding the grade from the matching criteria was, therefore, not an inadvertent or clerical error.

However, based on the arguments raised in this proceeding, we have reexamined our matching criteria. We note that indeed two of KKPC's reported products are assigned one control number based on our matching criteria, as verified. *Sales Verification Report* at page 6. Based on KKPC's written description of ESBR grades 1502 and 1507, as noted in its June 18, 1998, response to Section A of the Department's questionnaire, grade 1507 has a ''* * * lower mooney viscosity than the 1500 and 1502 grades.'' Based on our review of the record in this case, we find that the ranges for mooney viscosity, as defined by KKPC's standard specifications (and also reflected in the IISRP's *The Synthetic Rubber Manual*), are different for grades 1502 and 1507. In addition, there are cost and price differences between these two grades based on KKPC's submitted COPs and sales listings. Therefore, we recognize that mooney viscosity is an essential product characteristic that defines the grade, and conclude that KKPC's sales of grades 1502 and 1507 should be treated as two separate products for purposes of the final determination (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan,* 62 FR 60472, 60475 (November 10, 1997) (where the Department used additional product characteristics for the final results in order to prevent grouping of physically diverse chain as identical or similar merchandise)). In addition, for purposes of any future administrative reviews, the Department intends to include mooney viscosity as a product characteristic for matching purposes (*see Final Calculation Memorandum*).

Comment 10: Quantity Variable Used in the Margin Program

The petitioners argue that the Department made a certain inadvertent programming error in its preliminary margin calculation, and that the Department should correct this error for purposes of the final determination. Specifically, the petitioners note that the Department overstated the U.S. sales quantity by using an incorrect quantity variable.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination (*see Final Calculation Memorandum*).

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ESBR from Korea that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Korea Kumho Petrochemical Co., Ltd.	16.65
Hyundai Petrochemical Co., Ltd.	118.88
All Others	16.65

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7526 Filed 3–26–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–821]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration: Group II, Office V, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 351, 62 FR 27926 (May 19, 1997).

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from Mexico is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of