AD0092 – S-PVC (Chima, Mexico and Korea)

COMMENTS SUBMITTED BY LG CHEM

Request for Immediate Termination of the Investigation Against Imports Originating in the Republic of Korea Due to Negligible Import Volume

I. Introduction

LG Chem, Ltd. ("LG Chem", including its related companies, notably LG Chem Europe GmbH) respectfully submits these comments concerning the initiation of the anti-dumping investigation on Suspension Polyvinyl Chloride ("S-PVC") originating in China, Mexico and the Republic of Korea.

The investigation against Korea should be terminated immediately because imports originating in Korea constitute negligible imports within the meaning of Article 5.8 of the WTO Anti-Dumping Agreement and Regulation 4 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

INOVYN ChlorVinyls Limited's (the "Applicant") own evidence demonstrates that imports from Korea represented only 7,434 MT, accounting for approximately 2.65% of total UK imports during the Period of Investigation ("POI"). Accordingly, Korean imports fall below the statutory threshold of 3% established under both WTO law and UK domestic legislation.

The investigation against Korea therefore lacks a legal basis and should be terminated without delay.

These comments are submitted without prejudice to LG Chem's right to provide further observations and arguments following its detailed review of the Applicant and the evidence on the record.

II. WTO Law Requires Immediate Termination Where Import Volume Is Negligible

As is known, Article 5.8 of the WTO Anti-Dumping Agreement provides:

"An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case.

There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible.

The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

Article 5.8 establishes a mandatory legal obligation, not a discretionary power. Once the investigating authority determines that imports from a particular country are negligible, the investigation must be terminated immediately.

III. UK Domestic Law Implements the Same Rule

The United Kingdom has incorporated Article 5.8 of the WTO Anti-Dumping Agreement into its domestic legislation under Regulation 4 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, which mirrors the WTO language:

"For the purpose of these Regulations, the volume of dumped goods is negligible where the exporting country or territory accounts for less than 3 per cent. of imports of the like goods imported into the United Kingdom, except where the exporting countries or territories individually account for less than 3 per cent. of imports of the like goods imported into the United Kingdom but collectively account for more than 7 per cent. of imports of the like goods into the United Kingdom."

IV. The Applicant's Own Evidence Demonstrates That Korean Imports Are Negligible under WTO and EU law

In the Application, the Applicant submitted HMRC import statistics. According to those statistics:

- Total UK imports during the POI: 280,710 MT
- Imports from Korea: 7,434 MT

A simple calculation based on these figures shows that imports originating in Korea account for only approximately 2.65% of total UK imports during the POI, which is below the statutory threshold of 3%.

In this regard, LG Chem emphasizes that the Applicant's Appendix 2 incorrectly presents Korea's share of UK imports during the POI as amounting to "3%". Indeed, as indicated above, the underlying HMRC import statistics contained in the same Appendix demonstrate that Korea's actual share of total imports into the UK in the POI was 2.648%, which is below the statutory threshold of 3%.

Appendix 2 - HMRC Import Statistics

South Korea					
Value £	3,386,989	3,707,883	1,568,687	1,470,255	5,066,411
Quantity in MT	2238	2746	1907	1789	7,434
Average £/MT	1,513	1,350	822	822	682
% of Imports	1%	1%	1%	1%	3%

For completeness, the legal threshold established under Article 5.8 of the WTO Anti-Dumping Agreement and Regulation 4 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations

2019 is not an approximate benchmark but a mandatory legal criterion determining whether imports from a particular country are negligible. Whether imports account for 2.648% or 3%, therefore, has direct legal consequences for the lawfulness of initiating and continuing an anti-dumping investigation.

LG Chem is concerned that the Applicant presented Korea's import share simply as "3%", without indicating that this figure was derived by rounding an actual import share of 2.648%. Given that 3% is the precise legal threshold prescribed by both WTO and UK legislations, this raises serious questions as to whether the application accurately reflected the facts relevant to the application of Regulation 4.

While LG Chem does not suggest that rounding alone is improper for general statistical presentation, where a rounded figure coincides exactly with a statutory threshold that determines whether an investigation may lawfully proceed, the investigating authority should rely on the precise underlying data rather than a rounded percentage. In other words, a legal threshold cannot be circumvented or in any way altered by mathematical rounding.

Accordingly, LG Chem respectfully requests that the TRA carefully reconsider the data available in the Application and, in particular, determine whether the 3% threshold was actually reached as regards imports from Korea. This assessment should be based on the actual HMRC import statistics rather than the rounded percentage presented in the Applicant's Appendix.

The Applicant's own evidence already indicated at the time the Application was filed that Korean imports accounted for only 2.65% of total imports. Based on the underlying figures, Korea's actual import share was 2.648% and therefore fell below the 3% threshold under Regulation 4.

The TRA therefore had before it, prior to initiation, evidence indicating that imports from Korea were negligible within the meaning of Regulation 4. Accordingly, LG Chem respectfully submits that there was no legal basis for initiating the investigation against Korea and that its inclusion in the investigation was inconsistent with Regulation 4 and Article 5.8 of the WTO Anti-Dumping Agreement. The investigation against Korea should therefore be terminated immediately.

VI. Even If the Investigation Was Properly Initiated, It Must Now Be Terminated

Without prejudice to the foregoing, even assuming arguendo that the investigation was properly initiated, the TRA has a continuing legal obligation to terminate the investigation immediately once it determines that Korean imports are negligible.

Article 5.8 of the WTO Anti-dumping Agreement expressly mandates immediate termination if the 3% threshold is not exceeded. Likewise, Regulation 4 defines imports below 3% as negligible.

Neither provision grants discretion to continue investigating a country whose imports satisfy the legal definition of negligible imports.

Accordingly, once the TRA confirms that Korean imports account for less than 3% of total imports, it is legally obliged to immediately terminate the investigation against Korea.

VII. The Cumulative 7% Exception Does Not Apply

Regulation 4 contains a limited exception where countries individually accounting for less than 3% collectively account for more than 7% of total imports.

That exception is inapplicable here.

In fact, as the TRA knows, the investigation concerns imports from China, Mexico and Korea. However, according to the Applicant's own statistics:

- Mexico accounts for approximately 11% of total imports;
- China accounts for approximately 3.65% of total imports (10,242 MT out of 280,710 MT); and
- Korea accounts for approximately 2.65% of total imports.

Thus, Korea is the only investigated country whose imports fall below the 3% threshold. Because neither Mexico nor China individually account for less than 3% of imports, the cumulative 7% exception under Regulation 4 is not triggered.

Consequently, irrespective of whether the investigation targets different countries simultaneously, the 3% threshold is calculated based on the relevance of imports from each individual country. Thus, Korea must be treated as a country with negligible imports under WTO and UK laws.

VIII. Continuing the Investigation Would Frustrate the Object and Purpose of Article 5.8

The negligible import rule reflects a fundamental principle of WTO law.

Its purpose is to prevent anti-dumping investigations from being conducted against countries whose exports are too small to cause material injury.

Subjecting exporters to extensive questionnaires, verification visits and potential anti-dumping duties despite imports being legally negligible would defeat the very purpose of Article 5.8.

The WTO negotiators deliberately established an objective quantitative threshold of 3% in order to avoid unnecessary investigations against countries with insignificant import volumes.

The TRA should interpret and apply Regulation 4 consistently with that objective.

IX. Conclusion

Both Article 5.8 of the WTO Anti-Dumping Agreement and Regulation 4 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 require that imports representing less than 3% of total imports be regarded as negligible and any investigation concerning such imports being immediately terminated.

The Applicant's own evidence demonstrates that imports originating in Korea account for only 2.65% of total imports.

X. Conclusions

For the foregoing reasons, LG Chem respectfully requests that the TRA:

1. determine that imports originating in Korea constitute negligible imports within the meaning of Article 5.8 of the WTO Anti-Dumping Agreement and Regulation 4 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019;
2. determine that the investigation against Korea was initiated without satisfying the legal requirements for initiation;
3. immediately terminate the anti-dumping investigation with respect to imports originating in Korea and thus remove Korea from the scope of Investigation AD0092.