



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 207 OF 2024.**

**SHP SONS UGANDA LIMITED .....APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: HON. CRYSTAL KABAJWARA, HON. WILLY NANGOSYAH,  
MS. CHRISTINE KATWE**

**RULING**

**I. Introduction**

1. This ruling is in respect of an application challenging an assessment of Shs. 384,354,709 arising from the reclassification of the Applicant's imported products for customs purposes.

**II. Background Facts**

2. The Applicant deals in the importation and distribution of industrial chemicals. The Respondent conducted a post-clearance audit from January 2019 to December 2023, resulting in a tax position of Shs. 338, 266,114 on the said products. The Applicant objected to the assessment and the Respondent upheld its position.
3. According to the Applicant, the product in contention is styrene acrylic emulsions, specifically Bondex 9299. The Respondent indicated that the

Applicant had misclassified Bondex 9299 under HS Code 3903.90.00, which attracts 0% import duty, rather than under HS Code 3906.90.00, which attracts 10% duty.

### III. Issues

4. The Tribunal framed the issues for determination as follows:
  - (i) Is the Applicant liable to pay the taxes assessed?
  - (ii) What remedies are available to the parties?

### IV. Representation and evidence

5. Mr. Jonathan Rukikaire, Ms. Tracy Ainebyona, and Ms. Belinda Nakiganda represented the Applicant, while Mr. Barnabas Nuwaha represented the Respondent.
6. Mr. Yogesh S. Punjabi, a Director in the Applicant company, was the Applicant's first witness (AW1). He stated in his witness statement that the Applicant is engaged in the business of importing and distributing industrial chemicals used in the paint and cosmetics industries.
7. He also stated that the Respondent conducted a post-clearance audit on the Applicant covering the period of January 2019 to December 2023. The Products included Bondex 9299, SONS STY 1000 and Prowess 1245 (Styrene acrylic copolymer emulsions), LABSA (Linear Alkyl Benzene Sulphonic Acid), Polytex 50 H and Xylenes. However, the dispute concerning SON STY100, LABSA, Polytex 50H and xyleness was amicably settled between the parties.
8. AW1 testified that the product in contention is styrene acrylic emulsions, specifically Bondex 9299. That the Respondent alleged that the Applicant misclassified Bondex 9299 under HS Code 3903.90.00 rather than HS Code

3906.90.00, which attracts a 10% duty on the basis that the products contained more of the acrylic polymer than styrene polymer.

9. AW1 testified that all the products for that period were sold and were no longer in the Applicant's possession at the time of the audit. Further, that the Applicant no longer imports Bondex 9299 from the manufacturers, Jesons Industries Limited and Prakash Chemicals Int. Pvt Ltd and the product could not be tested by either party. It's on this basis that the Respondent directly contacted Jesons, without the knowledge of the Applicant, to ascertain whether they actually had Bondex 9299 and for Jesons to clarify whether the base polymer in the Bondex 9299 is acrylic, styrene, or acetate.
10. AW1 further testified that Jesons confirmed that the major monomer in Bondex 9299 was the polymer of styrene. At the time the goods were originally imported, the Respondent queried the Applicant's declaration under HS Code 3903. Further, the customs team tested the products and accepted the declared HS Code 3903.90.00 as valid for the consignment.
11. Mr. Yogesh S. Punjabi testified that the Bills of Lading and IM4 Customs declarations also confirm that the products are classified under HS Code 3903.90.00. He further testified that the Applicant was already audited in 2023, covering the period January 2017 to December 2019, and no mention of tax exposure or risk was made. The witness testified that the Bondex 9299 contained more styrene than acrylic emulsions, as acknowledged by various manufacturers and therefore falls within the category of other polymers of styrene under HS Code 3903, attracting a 0% import duty.
12. Mr. Aman Gupta (AW2), the Applicant's Accountant, testified that the Applicant classified Bondex 9299, which contains styrene acrylic emulsions, under HS Code 3903.90.00. HS Code 3903.90.00 covers other polymers of styrene (in primary form), which are subject to a 0% import duty. The Applicant

imported the following consignments of Bondex 9299 from its suppliers, Jesons:

| No. | Entry No. | Exporter | Product Discription | Declared HS Code/Tariff | Duty Rate |
|-----|-----------|----------|---------------------|-------------------------|-----------|
| 1   | C29130    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 2   | C35454    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 3   | C39035    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 4   | C42894    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 5   | C44165    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 6   | C46512    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 7   | C5965     | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |
| 8   | C11213    | Jesons   | Bondex 9299         | 3903.90.00              | 0%        |

13. AW2 further testified that the shipping bills and IM4 customs declarations issued by the manufacturers reflect HS Code of 3903.90.00, attracting a duty rate of 0%. That each HS Code is product-specific and cannot be interchangeably applied to similar goods. The styrene acrylic copolymer emulsions in question were correctly classified under HS Code 3903.90.00.
14. Ms. Mugenyi Dennise Victoria (RW1), a Tax officer in the Customs Audit Section of the Respondent, testified that Bondex 9299, SONS STY 100 and Prowess 1245 are styrene acrylic copolymer emulsions generally categorised by the Applicant's suppliers, Jesons Techno Polymers LLP, Visen Industries Limited and Prakash Chemicals as acrylic emulsions.

15. She further stated that although the copolymer has both Styrene and Acrylic Polymers, the acrylic polymers are more by weight of the total polymer as compared to Styrene. Therefore, the products ought to have been classified under HS Code 3906.90.00 as other acrylic polymers, subject to duty at a rate of 10%, rather than under HS Code 3903.90.00, which relates to other styrene polymers, where the duty is 0%. Therefore, the additional tax of Shs. 338,266,114 was justified.
16. RW1 also testified that the Respondent reclassified the Styrene Acrylic Copolymer Emulsions using the Common External Tariff (CET) General Interpretative Rules, Rule 3.
17. The witness testified that Rule 3(a) is to the effect that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. Given that Styrene Acrylic emulsion is a mixture of 2 monomers, which would merit both HS Codes, 3906 and 3903, in the absence of weights per monomer, this rule does not apply because each HS Code applies only to part of the substances contained in the copolymer.
18. The witness testified that comparative data analysis of declarations in ASYCUDA against supporting documents and supplier websites showed that Bondex 9299, SONS STY100 and Prowess 1245 are styrene acrylic copolymer emulsions generally categorized by suppliers, Jesons Techno Polymers LLP, Vinen Industries Limited and Prakash Chemicals as Acrylic Emulsions, which categorisation is agreed to by the taxpayer based on their email of 14 March 2024 in Exhibit REX 3, in the Respondent's Trial Bundle.

This categorisation confirms that the emulsions are of acrylic nature modified with Styrene.

19. RW1 further testified that the Respondent reviewed Prakash Chemicals' website, which states that its styrene acrylic emulsions are classifiable under 3906. This, too, is indicated on the shipping bills.
20. RW1 testified that with regard to Bondex 9299 from Jesons Techno Polymers, the emulsion imported had identical chemical and physical properties as Bondex 5299 from the same supplier, per the certificates of analysis, even when the product codes are presented differently. The two products are identical in use and classifiable under HSC 3906.90.00.
21. Furthermore, RW1 testified that the team did not find this product name in the supplier's product list, but the emulsion had identical chemical and physical properties as well as usage as Bondex 5299. Therefore, the Respondent relied on the chemical and physical properties of Bondex 5299 to classify the product.

#### **V. The Submissions of the Applicant**

22. The Applicant submitted that the copolymer emulsions are a mixture of both styrene monomers and acrylic monomers. A copolymer such as styrene would consist of monomers, a dispersing medium (emulsifier), and water. The dispersing medium enables the monomer to mix well with the water, hence forming an emulsion.
23. The Applicant submitted that it is an agreed fact that the products are a mixture of both styrene and acrylic monomers. The contention concerned the relative weight of each monomer in all the products arises from the subheading notes to Chapter 39 under the EAC Common External Tariff, which state:

*"1(a)(2) The copolymers named in subheadings 3901.30, 3903.20, 3903.30 and 3904.30 are to be classified in those subheadings, provided that the comonomer units of the named copolymers contribute 95% or more by weight of the total polymer content".*

24. The Applicant contends, based on manufacturer confirmation and shipping documentation, that the styrene comonomer units predominate by weight over the acrylic comonomer units. The products were correctly declared under HS Code 3903.90.00, which covers styrene polymers in primary form, subject to an import duty rate of 0%.
25. The Applicant further stated that the Respondent's customs officers always test the codes to ensure that they are declared under the right code.

#### **Weights of the Polymers**

26. During an audit conducted by the tax investigations department, the Respondent reached out directly to the manufacturer without the Applicant's knowledge, and Jesons Industries responded, confirming that the major monomer of Bondex 9299 is a polymer of styrene.
27. The Applicant submitted that the Respondent's tax investigation officer responded to the manufacturer, stating:

*"I am most grateful for your responsiveness. I commend Jesons as a company for such a high level of professionalism. The information is going to be very useful to resolve the issue".* This clearly indicated that he was satisfied with the manufacturer's answers.

28. The Applicant submitted that it rightfully classified its imports of Bondex 9299 and Prowess 1245 under HS Code 3903, which covers polymers of styrene in primary forms at a rate of 0%. This is consistent with both the manufacturer's shipping bills and their written confirmations to the Respondent. The Applicant

submitted that Section VII of the EAC Common External Tariff, under Chapter Notes, paragraphs 3 and 4, provides for polymers. Note 4 provides that:

*"Copolymers cover all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content.*

29. The Applicant further submitted that HS Code 39.03 of the EAC-CET provides for polymers of styrene in primary forms (polystyrene) that attract an import duty rate of 0%, as styrene comonomer units dominate by weight.

### Documents

30. The Applicant submitted that during the audit process and at importation, they submitted invoices, packing lists, bills of lading, certificates of analysis, export entries (shipping bills), C36 forms, work sheets to the Respondent since the goods could not be cleared without these documents
31. The Applicant contended that RWI testified that in the absence of a technical analysis of the chemicals, the Respondent carried out an 'analysis of the shipping bills, certificates of analysis, manufacturer's website and industry practice and concluded that acrylic polymer weighed more than the styrene polymer.
32. The Applicant submitted that regarding the Certificates of Analysis, the Respondent established that these showed the acrylic comonomers to be greater by weight than styrene comonomers. The Respondent conceded that the specific products imported by the Applicant, namely Bondex 9299 and Prowess 1245, could not be traced. Instead, the Respondent relied on a different product, Bondex 5299, on the basis that it allegedly shared *"the same chemical properties"*.
33. The Applicant submitted that the suppliers could only confirm which polymer, namely, styrene or acrylic, was present in greater proportion by weight. The

Applicant argued that it is the only entity that imported the products from India and from the specific manufacturers. The Respondent's conclusions were based on assumptions and opinion, not on credible or objective evidence. The Applicant argued that the Respondent did not provide any technical data analysis report to the Applicant, or to the Tribunal, showing how the Respondent arrived at its weight.

34. The Applicant prayed for general damages amounting to Shs. 100,000,000 on the basis that they were unable to use 30% of the disputed tax, which affected their business and cash flow. The Applicant further prayed that the assessment be set aside, that a refund of 30% be granted, and that the costs of the application be recovered.

#### VI. The submissions of the Respondent

35. The Respondent submitted that it is not in dispute that the Applicant imported styrene acrylic emulsion (co-polymers); what is disputed is whether the styrene dominates the acrylic by weight. The Respondent stated that the disputed tax arose from a customs post-clearance audit and that the actual imported items were unavailable, having been utilised by the Applicant.
36. The Respondent cited the case of *Royal Electronics Assembling Group Limited v URA, TAT Application 37 of 2017*, as applied in *Elgon Hydro Siti v URA, TAT Application 125 of 2019*, where the Tribunal noted that the most reliable source of information on imports is the import documents. It is the task of the Tribunal to establish what the Applicant actually imported based on the documents declared to the Respondent.
37. The Respondent contended that the Applicant's certificate of analysis indicates a supplier who is quoted as a manufacturer of acrylic emulsion and not styrene emulsion. However, the documents that the Applicant submitted to the

Respondent merely show brand names, namely, Bondex 9299, a polymer, with no mention of which polymer or monomer was greater and by what percentage.

**Weight of polymers**

38. The Respondent argued that there was no information or document declared to the Respondent bearing relevant weights of the polymers/ styrene acrylic emulsion imported by the Applicant. The Respondent asserted that it was worth noting that the Applicant's objection was to the effect that the polymers were more by weight as a basis for their classification. However, the customs documents declared to the Respondent do not address that; rather, they are inconsistent.

**Bondex 5299**

39. The Respondent submitted that the official website of the manufacturer ([www.jcsons.net](http://www.jcsons.net)) contains a product called Bondex 5299. The Applicant imported this product and declared it under HSC 3906.90. Further, attached to the 5299 imported by the Applicant is a certificate of analysis, the composition and breakdown of which are analogous to those of Bondex 9299.

**Inconsistencies in documents declared by the Applicant**

40. The Respondent submitted that Entry C5965 of 13 February 2023, declared by the Applicant, bears attachments (commercial invoice, certificate of origin, packing list) with description of goods as Bondex 9299 vide Invoice No JTPSEZ/EX/23/706. However, the same entry had a certificate of analysis of Bondex 5299, an item declared by the Applicant under HSC 3906.90.
41. The Respondent further contended that drums 01 to 210 and 210 to 240 bore certificates of analysis of Bondex 5299, yet the packing list, commercial invoice and certificate of origin bore description of goods as Bondex 9299,

notwithstanding the fact that the invoice number quoted on the certificate of analysis was the same.

42. The Certificate of Origin bears a description of goods under that entry as 240 drums with the above-mentioned certificate of analysis for Bondex 5299, declared by the Applicant. Further, the certificate of analysis bears the words "THE ABOVE DECLARED ARE CORRECT", and as such, the said inconsistencies are proof that the name Bondex 9299 was one and the same as Bondex 5299.
43. The Respondent further submitted that the accuracy of documents cannot be underscored, as they are relied on by customs, and taxpayers have a duty to ensure that the documents are accurate. The obligation lies on the Applicant in case the shipper/supplier has erred to seek correction of the same before making declarations to customs.

#### **The certificate of analysis**

44. The Respondent submitted that the certificate of analysis declared to the Respondent by the Applicant bore the words THE ABOVE DECLARED ARE CORRECT. The certificates of analysis indicate that the appearance, density, solid content, pH, viscosity, and film properties of Bondex 5299 are identical to those of Bondex 9299. It would be wrong to conclude that Bondex 5299 and Bondex 9299 are different items in light of the fact that they bear the same chemical composition and description.
45. The Respondent submitted that Bondex is merely a brand name while the content is the same as 9299. Given that 5299 is declared and agreed by the Applicant as falling under 3906.90, the Respondent prayed that the same treatment be accorded Bondex 9299 given that both products have the same chemical properties.

**Reclassification of Styrene Acrylic Emulsions from HS Code 39039000 to 39069000**

46. The Respondent submitted that General Interpretative Rule (GIR) 2 requires that classification be determined according to the terms of the heading of the Tariff schedule and any relevant section or chapter notes. As per Item 5.6 and Notes to Chapter 39, Chapter Note 4 reads as follows:

*"The expression ' copolymers' covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content".*

47. The Respondent contended that since the Applicant had failed to provide relevant pertinent information concerning which polymer dominated the other, the chapter note above was not applied, and the Respondent proceeded to apply GIR 2(b).

48. The Respondent submitted that GIR 3 provides that when by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

*"The heading which provides the most specific description shall be preferred to headings providing a more general description".*

49. The Respondent argued that however, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

50. The Respondent submitted that, given that Styrene Acrylic emulsion is a mixture of two monomers, which would merit both HS Codes 3906 and 3903, this rule does not apply. The Respondent contended that no documents provided by the Applicant demonstrated that the Applicant's imports were

styrene in its primary form. Using this rule would, ideally, place the acrylic emulsions under Chapter 39.06.

51. However, the taxpayer did not agree with this approach, citing a lack of evidence and thus Rule 3(c) was applied. ("When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Bondex 9299, SONS STY100, and Prowess 1245 are styrene-acrylic copolymer emulsions, generally categorised by the Applicant's suppliers, Jesons Techno Polymers LLP, Visen Industries Limited, and Prakash Chemicals, as Acrylic Emulsions.
52. The Respondent argued that the products should have been classified under HS Code 3906.90.00 as Other Acrylic Polymers, paying duty at 10% instead of HS Code 3903.90.00 as Other Styrene Polymers, where duty is 0%, hence the additional tax of Shs. 338,266,114. The Applicant classified Bondex 9299 as a styrene polymer in primary form under heading 39.03, yet it does not dispute that it is a copolymer.
53. The Respondent further submitted that there was no reliance on the HS Codes declared on the Applicants' shipping bills, because different HS Codes were declared for the same products on these bills. However, consideration was given to the shipping bills to the extent that they bore the description of the goods. It was the Applicant's responsibility to declare the weights of the polymers/monomers.

#### **Remedies**

54. The Respondent submitted that at the time the Applicant filed their application, no prayers were made for a refund of the 30% deposit with interest and or costs, and a prayer for the same would amount to a departure from pleadings.

The Respondent prayed that the application be dismissed with costs to the Respondent.

## VII. The Applicant's submissions in rejoinder

55. In rejoinder, the Applicant submitted that it is not in dispute that the products in question, Bondex 9299 and Prowess 1248, are composed in part of a copolymer formed of styrene and acrylic monomers. The question to be resolved is which polymer component predominates by weight, as it determines the appropriate tariff classification for the products. The Applicant maintained that HS Code 39039000, which attracts a 0% duty rate, applies to the imported goods because the styrene polymer predominates in weight.

56. The Applicant submitted that the general rules of interpretation must be applied in a sequential order. Chapter 39 of the customs tariff provide under note 4, that:

*“The expression 'copolymers' covers all polymers in which no single monomer contributes 95% or more by weight to the total polymer content.*

*For purposes of this chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit”.*

57. Heading 39.03 of the EAC Common External Tariff provides polymers with higher styrene content, which attracts a duty rate of 0%. The Applicant submitted that the Respondent contacted the manufacturer, who confirmed that the styrene content in the said products exceeded that of acrylic. The applicable code was chapter 39, item 5.6, and not GIR 3 as quoted by the Respondent.

58. The Applicant submitted that the Respondent was in possession of all importation documentation, which was submitted at the time of the objection. The Applicant imported Bondex 9299, Bondex 5299 and Prowess 1248. The Respondent's assertion that Bondex 5299 and Bondex 9299 are the same product is unsupported. In the absence of chemical testing, the Respondent cannot rely on speculation to override the manufacturer's technical verification.
59. The Applicant further contended that the certificate of analysis stating Bondex 5299, but all standard specifications are of Bondex 9299, shows that there was a clerical mistake. The certificate maintains the same HS Code as the commercial invoice of HS Code 3903.
60. The Applicant submitted that the Respondent relied on a certificate of analysis for the Bondex 5299 and Bondex 9299 to conclude, without laboratory testing or expert verification, that two products share identical chemical composition. The Applicant prayed that the Tribunal set aside the reclassification and direct that Bondex 9299 be restored under HS Code 3903.90.00.

### VIII. The Determination

61. The dispute concerns whether the Applicant correctly classified its imported product, Bondex 9299 (a styrene acrylic copolymer emulsion), under HS Code 3903.90.00 for styrene polymers attracting 0% duty, or whether the Respondent (URA) was right to reclassify it under HS Code 3906.90.00 for acrylic polymers attracting 10% duty, resulting in an additional tax assessment of Shs. 338,266,114.
62. The Tribunal must determine the correct tariff classification and whether the resulting tax assessment is lawful. In the case of *Elgon Hydro Siti Limited v URA, App No. 125 of 2019*, the Tribunal highlighted 2 critical factors that must be considered in disputes concerning classification, namely;
- (i) The import documentation

- (ii) Interpretation must be guided by the General Rules of Interpretation.

### **The General Rules of Interpretation**

63. Article 3(a) of the International Convention on the Harmonised Commodity Description and Coding System provides:

*"1. Subject to the exceptions enumerated in Article 4:*

*(a) Each Contracting Party undertakes, except as provided in subparagraph*

*....*

*It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:*

*(i) it shall use all the headings and subheadings of the Harmonised System without addition or modification, together with their related numerical codes;*

*(ii) it shall apply the **General Rules for the interpretation of the Harmonised System** and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonised System; and*

*(ii) it shall follow the numerical sequence of the Harmonised System".*

64. Furthermore, the **East African Community Common External Tariff (EAC CET)** provides for the **General Interpretation Rules (GIR)** as follows:

*"1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

*3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

65. The Tribunal applied the General Interpretation Rules (GIRs) in sequential order when determining the tariff classification of the imported goods. The GIR rules require that, where a product is a mixture, it be classified on the basis of the material or component that gives it its essential character.

### **What is the essential character?**

66. To determine the essential character of this product, we were guided by note 4 to chapter 39 EAC CET, which covers polymers such as the goods in question. Note 4 to Chapter 39 provides:

*"The expression copolymers covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content".*

67. In this case, therefore, Note 4 sets out a clear test for determining whether the imported products fall under heading 39.03 or heading 39.06, depending on which monomer is greater in weight. If styrene is higher, the product falls under HS Code 3903 (styrene polymers) at 0% rate, and if acrylic is higher, it falls under HS Code 3906 (acrylic polymers) at 10% rate. This is a factual determination that requires review of the import documentation.

### **Import documentation**

68. The shipping bill (Exhibit A18 at page 39) in the Applicant's Trial Bundle indicates a code of 39039.090 and the certificate of conformity (Exhibit A16 at page 32 of the Applicant's trial bundle) indicates a product description of Bondex 9299.
69. The shipping bills further describe the products as styrene-acrylate copolymer emulsion, stabilised with emulsifier Bondex 9299. However, the documents do not indicate the percentages of each monomer by weight.
70. The Certificates of Analysis on Exhibits A12 at pages 21 - 26 of the Applicant's Trial bundle do not indicate the weight of the monomers in the product. The percentage composition of styrene and acrylic composition to demonstrate which monomer predominates in weight is not indicated.
71. Furthermore, the Tribunal noted that the Applicant's email to the Respondent dated 14 March 2024 in Exhibit REX 3, in the Respondent's Trial Bundle,

stated that acrylic emulsions follow polymers of styrene in primary form, which qualified the same to be classified under HS Code 3903.90.00 that attract 0% import duty. However, the Tribunal cannot determine from this email that styrene-dominated acrylic emulsions are in the product. As per the GIR rule, styrene would have to be of a higher composition than Acrylic, which the email does not address.

72. The Tribunal also noted that although the Certificate of Conformity and certificate of origin indicate the product as Bondex 9299, they do not indicate the composition of the product for purposes of classification.
73. The burden of proof lies with the Applicant, having alleged that Bondex 5299 and Bondex 9299 are not the same product and that the imported product's composition falls under a 0% rate for tax purposes. The Applicant had to prove that the component contained 95% styrene monomer, which the Applicant had not provided.
74. Section 19 of the Tax Appeals Tribunal Act provides that in any proceeding before the Tribunal for the review of a taxation decision, the Applicant has the burden of proving that the assessment is excessive or that the taxation decision should not have been made or should have been made differently. Furthermore, in the case of *Williamson Diamonds Ltd v Commissioner General [2008] 4 TTLR 167*, the Revenue Tribunal of Tanzania ruled that:  
*"The Burden of proving that the assessment issued by the Respondent is excessive or erroneous lies on the taxpayer (appellant) and in no way may it be shifted to the Respondent".*
75. The Applicant further failed to prove that Bondex 5299 is distinct from Bondex 9299 for purposes of classification. Without supporting evidence, we are unable to determine the composition of the products imported. The documents do not indicate whether the products were predominantly Acrylic or styrene.

76. They do not disclose the mixture or the percentages of each monomer, which would have enabled us to determine their essential character. The factual determination required under Note 4 cannot be established from the current evidence.

### **Sequential Application of the GIR**

77. Rule 3 (c) of the GIR provides:

*“When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”*

78. This provision requires that where imported goods cannot be classified using Rule 3(a), the most specific description or Rule 3(b) of essential character for mixtures, composite goods, or sets, they must be classified under the tariff heading that appears last in numerical order among the headings.

79. Having failed to categorise the Applicant’s Product under GIR 3 (a) and (b), the Tribunal moved to GIR (c), which provides for the heading which occurs last in numerical order.

The Headings appear as follows under Chapter 9 of the EAC CET:

**Heading 39.03 provides:**

***“Polymers of styrene, in primary forms***

|            |       |    |      |
|------------|-------|----|------|
| 3903.90.00 | other | Kg | 0%”. |
|------------|-------|----|------|

Further, heading 39.06 provides:

***“Acrylic polymers in primary forms***

|            |       |    |       |
|------------|-------|----|-------|
| 3906.90.00 | other | Kg | 10%”. |
|------------|-------|----|-------|

80. In light of the above, the Tribunal determined that the product is classifiable under subheading 3906.90.00 (“Other”) as it appears after heading 3903 in sequence.

81. In the circumstances, the Tribunal finds that the Applicant has failed to provide sufficient evidence to establish that styrene predominates in weight in the imported copolymers. Further, when applying the headings sequentially as per GIR Rule 3(c), the Applicant's goods fall under the heading for acrylics, which attract duty at a rate of 10%. Therefore, this application is dismissed and the Tribunal makes the following orders:

- (i) The Applicant is liable to pay Shs. 338,266,114 as assessed.
- (ii) Costs of this application are hereby awarded to the Respondent.

Dated at Kampala this 20<sup>th</sup> day of February 2026.



HON. CRYSTAL KABAJWARA  
CHAIRPERSON



HON. WILLY NANGOSYAH  
MEMBER



MS. CHRISTINE KATWE  
MEMBER