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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 221/2008

of 10 March 2008

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain manganese dioxides originating in South Africa

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1066/2007 [2] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of electrolytic manganese dioxides (EMD) (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, falling within CN code ex 2820 10 00 (TARIC code 2820 10 00 10) and originating in South Africa.

(2) It is recalled, as set out in recital 8 of the provisional Regulation, that the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of electrolytic manganese dioxides originating in South Africa, all interested parties received disclosure of the facts and considerations on which the provisional measures were based. They were also granted an opportunity to be heard. Some interested parties submitted comments in writing and one party which asked to be heard was granted a hearing.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the imposition of provisional measures, an on-spot verification visit was carried out at the premises of Delta EMD Australia Pty Ltd. in order to verify their profits on the domestic market.

(5) The oral and written comments submitted by the parties were considered and, where appropriate, the findings were modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(6) One user argued that because carbon zinc EMD cannot be used in alkaline batteries, alkaline and carbon zinc EMD are not interchangeable and therefore not a single product. It should be recalled that, unlike natural manganese dioxides, chemical manganese dioxides or heat-treated electrolytic manganese dioxides, the carbon zinc grade EMD and alkaline grade EMD share the same basic physical, chemical and technical characteristics. Though they are not interchangeable for alkaline battery production, they are both used for essentially the same purposes, i.e. in dry cell battery manufacture. Therefore, the above argument had to be rejected.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 243, 18.9.2007, p. 7.

(7) In the absence of any other comments and evidence, recitals 9 to 13 of the provisional Regulation are hereby confirmed.

2. **Like product**

(8) In the absence of any comments concerning the like product, recitals 14 and 15 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Normal value**

(9) In the absence of any comments concerning the methodology used to determine the normal value, recitals 16 to 26 of the provisional Regulation are hereby confirmed.

(10) Following comments received with regard to the establishment of profit as described in recitals 27 and 28 and further on-spot verification, the methodology has been revised. In particular, it was found that the profit achieved by the related company Delta EMD Australia Pty Ltd could not be used, since it did not relate to the product concerned. With regard to the USA, it was considered that the profit margin might be affected by other factors. In these circumstances, it has been considered more appropriate to base the profit margin on data relating to the country under investigation, and in particular the long-term lending commercial interest rate of 10,75 % applied in South Africa during the IP. In the absence of any other reliable data relating to the profit margin achievable for the product concerned this method was considered conservative, reasonable and the most appropriate within the meaning of Article 2(6)(c) of the basic Regulation. Furthermore, it is in the same range as the profit found in India for the like product.

(11) Following the provisional disclosure, the exporting producer claimed a number of adjustments related to the costs included in the normal value, in particular waste treatment, the purchase price of raw materials and some allocation in the SG&A reported for the group expenses. None of these claims were considered justified, since they were either unverifiable or in contradiction with the accounting.

(12) The company also claimed a reduction in the SG&A expenses used to construct normal value to remove a provision for a compensation claim made on a sale prior to the IP. This claim was verified based on evidence provided and the SG&A expenses were adjusted as claimed.

2. **Export prices**

(13) In the absence of any comments concerning the export prices, the export prices as set out in recitals 29 and 30 of the provisional Regulation are confirmed.

3. **Comparison**

(14) In the absence of any comments concerning the comparison, the comparison as set out in recital 31 of the provisional Regulation is confirmed.

4. **Dumping margin**

(15) In the light of the above, the definitive weighted average dumping margin expressed as a percentage of the cif Community frontier price, duty unpaid, is:

Company	Dumping margin
Delta E.M.D. (Pty) Ltd.	17,1 %

(16) In the absence of any comments concerning the countrywide dumping margin applicable to all other exporters in South Africa, the methodology for the determination of the countrywide dumping margin as set out in recital 34 of the provisional Regulation is confirmed.

E. **INJURY**

1. **Community production and Community industry**

(17) In the absence of any comments concerning the Community production and Community industry, recitals 35 to 38 of the provisional Regulation are confirmed.

2. **Community consumption**

(18) In the absence of any comments concerning the Community consumption, recitals 39 and 40 of the provisional Regulation are confirmed.

3. **Imports into the Community from the country concerned**

(19) In the absence of any comments concerning the imports into the Community from the country concerned, recitals 41 to 46 of the provisional Regulation are hereby confirmed.

4. **Situation of the Community industry**

(20) In the absence of any comments concerning the situation of the Community industry, recitals 47 to 65 of the provisional Regulation are hereby confirmed.

5. **Conclusion on injury**

(21) In the absence of any comments concerning this aspect, recitals 66 to 72 of the provisional Regulation are hereby confirmed.

F. **CAUSATION**

1. **Effect of the imports from South Africa**

(22) In the absence of new information or arguments in this respect, recitals 73 to 78 of the provisional Regulation are hereby confirmed.

2. **Effect of other factors**

Imports from other third countries

(23) Several parties argued that although the volume of EMD imports from the People's Republic of China (PRC) during the IP were negligible, their mere presence as a source of cheap EMD and the global oversupply of EMD in the world has put prices under pressure in the Community market and worldwide.

(24) It should be noted that the investigation also showed, as stated by some other parties in their submissions, that EMD imports from the PRC are currently not an alternative for users, especially in the small cell battery sector. Indeed, switching from one EMD source to another (qualification) is time- and finance-intensive. This prevents the users from being flexible in their choice of EMD source.

(25) It should be noted that this conclusion is confirmed by the low level of EMD imports from the PRC, which shows that this source of imports, despite prices much below the average import prices, has not been considered by users as an alternative during the IP and could not have contributed to the injury suffered by the Community industry. Therefore, the argument is rejected and the findings in recitals 79 to 81 are hereby confirmed.

Export performance of the Community industry

(26) It was argued by some parties that the decrease in domestic sales during the IP by the Community industry was due to the fact that the Community industry concentrated on the export market. This argument had to be rejected, since it was found that even though the export volume of the Community industry increased by 9 % during the whole period considered (2002 to IP), the export performance could in no way have contributed to the injury suffered by the Community industry, as explained below.

(27) Firstly, as established provisionally, the export sales of the Community industry were profitable throughout the period considered. Furthermore, the volume of exports decreased during the IP by 18 percentage points (compared to 2005), while the ratio of exports in the production volume of the Community industry remained constant throughout the period considered.

(28) In the absence of new information or other arguments in this respect, recitals 82 and 83 of the provisional Regulation are hereby confirmed.

Other Community producers

(29) After the provisional disclosure Delta argued that the non-cooperation of the other Community producer CEGASA was an indication that it was not injured. This argument was rejected as it is a pure allegation. Firstly, the aforementioned Community producer is primarily a captive user of EMD for its own battery production, hence the sales of EMD are not its primary business. Secondly, as this Community producer did not cooperate, no conclusions on the injury factors or motives for non-cooperation can be drawn. Moreover, from the user questionnaire replies, it could be established at the provisional stage that the sales of other Community producers decreased in parallel with the increased volume of dumped imports from South Africa.

(30) In the absence of new information in this respect, recitals 84 to 86 of the provisional Regulation are hereby confirmed.

Contraction in demand

(31) It was argued by some parties that the loss in sales volumes by the Community industry was caused by the offshoring of parts of production by one of the users that purchased from the Community industry. Thus the contraction in demand would have caused the loss in sales volumes.

(32) Although one of the main users did indeed relocate some parts of its production to the PRC in 2005 and 2006 and in parallel the Community industry's sales volumes to this user decreased in the IP, this loss accounted for a small part of the total loss in volume during the IP. Moreover, the volume sold by the Community industry to this user during the IP remained at the same level as two years before — in 2004 — and then increased in 2005, when offshoring started, while the total EC sales of the Community industry decreased dramatically by 61 percentage points from 2004 to the IP (39 percentage points in 2005 and 22 in the IP). Therefore the argument was rejected.

(33) In the absence of new information or other arguments in this respect, recital 87 of the provisional Regulation is hereby confirmed.

Increase in raw material prices

(34) It was argued by the exporting producer that due to its competitive advantage of being located close to the manganese ore mines and advantageous contractual conditions with the supplier, a related company, it did not have any difficulty absorbing the increase in the price of raw materials.

(35) This argument was rejected as irrelevant to the causality examination, as it has been established that despite its alleged competitive advantages, the exporting producer practiced dumped pricing.

(36) In the absence of new information or other arguments in this respect, recitals 88 to 90 of the provisional Regulation are hereby confirmed.

Global oversupply of EMD

(37) In the absence of new information or other arguments in this respect and taking into account the findings under recitals 23, 24 and 25 above, the recitals 91 to 92 of the provisional Regulation are hereby confirmed.

Increasing competition among battery producers

(38) After the provisional disclosure Delta contested the finding that the EMD producers had significant power to negotiate prices with the battery producers because of the limited uses of EMD, i.e. only in battery production. Thus it was alleged that due to competition pressure channelled through the negotiating power the battery producers imposed low prices on EMD producers.

(39) Though it cannot be denied that the limited use of EMD could to some extent restrict the price-setting power of the EMD producers, it is far from offsetting the power of EMD producers deriving from the EMD users' limited flexibility in switching the supply sources and the availability of high purity EMD (see recitals 23, 24 and 25 above). The only considerable power in negotiations for battery producers with regard to the price could come from the relative transparency of the EMD market, as they engage in annual supply negotiations with various EMD producers simultaneously. However, the benefits of transparency were again outweighed by the limited choice of EMD producers whose EMD was already qualified by battery producers — Delta and Tosoh. Therefore, the argument was rejected.

(40) Several users have argued that the prices Delta charged them were not dumped and that they did not exert pressure on the Community industry. In this regard it should be noted that the injury to the Community industry is assessed as a whole; particular companies cannot be singled out as their situation is outweighed by the others.

(41) In the absence of other arguments in this respect, recitals 93 and 94 of the provisional Regulation are hereby confirmed.

Self-inflicted injury

(42) It has been argued by Delta that the injury to the Community industry has been self-inflicted because of Tosoh's restructuring decisions and investments which led to a decrease in employment and profitability.

(43) It was established in the provisional Regulation that the decrease in employment was mainly due to Tosoh's restructuring. However, the allegation that profitability decreased because of investment has to be rejected. Firstly, most of Tosoh's restructuring and investment took place in 2004, a year which was accompanied by positive profitability and a good return on investment. As a result of these investments Tosoh considerably reduced its unit cost of production. However, despite these efforts Tosoh was unable to benefit from its investments in the following years. Due to increasing volume of dumped imports from South Africa made at prices below the cost of production Tosoh's profitability, return on investment and cash flow decreased, reaching strongly negative levels as established in the provisional Regulation.

(44) Delta has further argued that the injury to profit was self-inflicted because of the management decisions by the Community industry involving 'unusually long payment deferrals to the customers' and 'excessively high commissions to its agent'. These arguments were rejected on the following basis.

(45) It was not found that payment deferrals had a substantial impact on the liquidity or cash flow of the Community industry. Moreover, the extended payment deferrals were granted in an attempt to obtain slightly higher prices and therefore mitigate the impact of dumped imports on prices. Therefore, extended payment deadlines cannot be considered as causing self-inflicted injury.

(46) Furthermore, apart from the fact that the commission paid to the agent was not found to be unusual for the sector, this argument is not relevant since the cost of production and profitability of the Community industry was calculated on the basis of costs incurred by both Tosoh and its related companies receiving a commission. The commission itself is an intra-company payment and therefore its level has no impact on the consolidated profit which was used in the injury calculation.

3. **Conclusion on causation**

(47) In the absence of new information or other arguments in this respect, recitals 95 to 97 of the provisional Regulation are hereby confirmed.

G. **COMMUNITY INTEREST**

1. **Interest of the Community industry**

(48) In the absence of new information or other arguments in this particular respect, recitals 100 to 104 of the provisional Regulation are hereby confirmed.

2. **Interest of users**

(49) It has been argued by some parties that the disappearance of Tosoh will not harm the battery industry given Delta's existence as an alternative source and hence that the maintenance of a Community producer is not in the Community interest. This argument was rejected on the following grounds.

(50) Firstly, the low prices practiced by Delta cannot be regarded as sustainable, as they are below the cost of production. Secondly, taking into account the limited flexibility of the users to switch from one source of EMD to another as they have to test (qualify) the suitability of the 'new' EMD for their battery production, they have only a limited negotiating power against the EMD producers, which will be weakened even more should Tosoh disappear.

(51) It was established in the provisional Regulation that the cost of EMD constitutes 10 to 15 % of the total cost of battery production. Two out of three cooperating users contested this finding but no evidence was provided to support their claim. As the user who did not contest this figure was the only one whose data could be verified in this proceeding, the provisional findings in recital 107 of the provisional Regulation are hereby confirmed.

(52) The users of EMD have argued repeatedly that they will not be able to absorb the anti-dumping duty as an increase in the cost of EMD. They are under pressure because of increases in the costs of other important raw materials and claim they cannot afford further pressure from an increase in the cost of EMD.

(53) However, notwithstanding the findings in recital 107 of the provisional Regulation, the level of the anti-dumping duty does not seem to be even comparable to the cost increase in the other materials used in battery production which took place between January 2006 and January 2007 (the price of copper rose by 119,73 %, nickel 252,89 % and zinc 181,10 %). Therefore, it can be confirmed definitively that the measures will have little impact on the competitiveness of this industry.

(54) It was also argued that the financial situation of the Community users varies significantly. In this regard it should be noted that the situation of users in the Community interest test is assessed as a whole.

(55) Several users submitted that the battery producers employ far more people than the Community industry and that due to the anti-dumping measures they may be forced to lay off workforce and even to relocate the production plants. While it has been confirmed that the number of employees of battery producers is much larger than that of the Community industry, no evidence has been submitted that the imposition of duties would result in loss of employment. Therefore, against the background of findings under recital 52 and the provisional Regulation, that the duties will not have a significant impact on the users, the argument was rejected.

(56) It was argued by several parties that the Community industry could not meet the Community demand. This argument was rejected. Given the level of the duty proposed, imports from South Africa will continue to be able to enter the Community market, albeit at non-dumped prices.

(57) In the absence of other arguments in this particular respect, recitals 105 to 109 of the provisional Regulation are hereby confirmed.

3. **Interest of unrelated importers/traders in the Community**

(58) The importer Traxys France (agent of Delta) argued that the measures will force its supplier Delta out of business which will result in the loss of 5 to 25 % of profits and jobs. This argument was rejected on the grounds that, given the limited impact on the players (battery producers) the measures will not force Delta out of business but simply counteract the unfair competition, preserve Tosoh on the Community market and create a level playing field to the benefit of all EMD suppliers and the battery producers.

(59) In the absence of new information or evidence in this respect, recitals 110 and 111 of the provisional Regulation are hereby confirmed.

4. **Conclusion on Community interest**

(60) In the absence of new information or other arguments in this respect, recitals 112 to 114 of the provisional Regulation are hereby confirmed.

H. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(61) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, definitive measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.

(62) In the absence of new information or other arguments in this respect, recitals 115 to 117 of the provisional Regulation are hereby confirmed. The injury margin was significantly higher than the dumping margin found.

2. **Definitive measures**

(63) In the light of the foregoing, it is considered that, in accordance with Article 9 of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin since it is lower than the injury margin calculated above.

(64) In view of the magnitude of the dumping margin and in the light of the injury to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected.

(65) On the basis of the above, the proposed definitive duty rates are:

Delta E.M.D (Pty) Ltd.	17,1 %
All other companies	17,1 %

3. **Undertaking**

(66) Following the disclosure of essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, the exporting producer in South Africa offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The Community industry was informed about this offer and submitted its comments.

(67) The offer was examined and it has been decided to reject it on the following grounds.

(68) It is noted that there are only a limited number of suppliers in the Community EMD market and that the South African exporter holds a significant market share (60 to 70 %). This grew by 81 % during the period considered for injury assessment and was achieved by the aggressive pricing of exports at levels below the exporter's costs of production during the IP.

(69) Additionally, despite the volatility of the prices of the main inputs, such as manganese ore and energy, the prices of the product concerned and the like product were relatively stable. It is considered that due to the dumping practices, the volatility in the costs of production was not reflected in the prices of the product concerned.

(70) Therefore, measures based on a fixed minimum price may not be effective in addressing changes in the price of EMD that might result from changes in the prices of the main raw materials once the pressure exerted on prices by the dumped products is initially remedied by the measure itself. Moreover, as there is only a limited number of EMD buyers in the Community market, there is a risk that any measure based on a minimum price could become a reference price on the market and thereby reduce competition, which would not be in the Community interest,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, falling within CN code ex 2820 10 00 (TARIC code 2820 10 00 10) and originating in South Africa.

2. The rate of the definitive anti-dumping duty applicable to the net, free at Community frontier price, before duty, of the products manufactured by the companies below shall be:

Company	Anti-Dumping Duty	TARIC Additional Code
Delta E.M.D. (Pty) Ltd.	17,1 %	A828
All other companies	17,1 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1066/2007 on imports of electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, falling within CN code ex 2820 10 00 (TARIC code 2820 10 00 10) and originating in South Africa shall be definitively collected.

This Regulation shall enter into force on the next day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 March 2008.

For the Council
The President
D. RUPEL