Council Implementing Regulation (EU) No 191/2014 of 24 February 2014 imposing a definitive anti-dumping duty on imports of certain manganese dioxides originating in the Republic of South Africa following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 191/2014

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (the 'basic Regulation'), and in particular Article 11(2) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by Council Regulation (EC) No 221/2008[(2)], a definitive anti-dumping duty of 17,1 % on imports of electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, currently falling within CN code ex 2820 10 00 originating in the Republic of South Africa ('South Africa') ('the anti-dumping measures in force').

2. **Request for an expiry review**

(2) Following the publication of a notice[(3)] of impending expiry of the anti-dumping measures in force, the Commission received, on 11 December 2012, a request for the initiation of an expiry review of those measures under Article 11(2) of the basic Regulation. The request was lodged by the companies Cegasa Internacional SA and Tosoh Hellas A.I.C. ('the applicants'), the only two Union producers of EMD.

(3) The request was based on the grounds that the expiry of the anti-dumping measures in force would be likely to result in a recurrence of dumping injurious to the Union industry.

3. **Initiation of an expiry review**

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 191/2014. (See end of Document for details)*

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 12 March 2013 the initiation of an expiry review under Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union*[4], ('notice of initiation').

4. Investigation

4.1. *Review investigation period and the period considered*

(5) The investigation of likelihood of recurrence of dumping covered the period from 1 January 2012 to 31 December 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2009 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the investigation*

(6) The Commission officially advised the applicants, the exporting producer in South Africa, importers, users in the Union known to be concerned and their associations, and the representatives of the exporting country concerned, of the initiation of the expiry review.

(7) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) In view of the limited number of interested parties which made themselves known, sampling of interested parties was not necessary.

(9) Questionnaire replies were received from the exporting producer in South Africa, the two Union producers and two users belonging to the same group of related companies.

(10) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*:
- Cegasa Internacional SA ('Cegasa'),
- Tosoh Hellas A.I.C ('THA');

(b) *Exporting producers in South Africa*:
- Delta E.M.D. (Pty) Ltd;

(c) *Users*:
- Panasonic Energy Belgium NV.

(11) On 29 October 2013, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to propose maintaining the anti-dumping measures in force. Again, parties were given an opportunity to provide comments and those who so requested were granted a hearing in the presence of the Hearing Officer. The comments made by the interested parties were considered by the Commission and its responses are given below.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(12) The product concerned by this review is the same as the one defined in Regulation (EC) No 221/2008, namely electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process ('the product under review' or 'EMD'), originating in the Republic of South Africa, currently falling within CN code ex 2820 10 00. It comprises two main types, carbon zinc grade EMD and alkaline grade EMD.

(13) The review investigation confirmed that, as in the original investigation, the product under review imported into the Union market and the products manufactured and sold by the exporting producer on their domestic market, as well as those manufactured and sold in the Union by the Union Industry ('the like product'), have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF RECURRENCE OF DUMPING

1. Preliminary remarks

(14) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a recurrence of dumping.

2. Dumping of imports during the RIP

(15) Imports to the Union from South Africa dropped to almost zero after the imposition of measures, with only a very small quantity exported in 2010, in 2011 and during the RIP. To assess whether the sole known exporting producer Delta EMD (Pty) Ltd. ('Delta') was exporting to the Union at dumped prices during the RIP, the Commission sent a questionnaire to Delta. It received a reply including data on domestic sales, exports to the Union and exports to other destinations. The reply provided was verified as detailed below.

2.1. *Normal value*

(16) In accordance with Article 2(2) of the basic Regulation, Delta's domestic sales were examined to see whether the total volume of sales of the like product to independent customers was representative in comparison with its total volume of export sales to the Union, i.e. whether the total volume of such sales represented at least 5 % of the total volume of export sales of the product under review to the Union.

(17) While the domestic sales of the product under review were representative there were no sales in the ordinary course of trade as Delta's domestic sales of EMD were unprofitable. Normal value was therefore constructed under Article 2(3) of the basic Regulation.

(18) This was done on the basis of the actual cost of production of EMD, to which a reasonable amount for selling, general and administrative expenses (SG&A) and for profit was added in accordance with Article 2(6) of the basic Regulation.

(19) The SG&A was calculated using Article 2(6)(c) of the basic Regulation, as Delta's sales were not in the ordinary course of trade and since both Article 2(6)(a) and (b) of that Regulation were not applicable given that respectively there are no other exporters or producers subject to the investigation, and Delta does not have any other sales of products of the same general category. Using the SG&A of the original investigation, which gave an almost identical percentage as the actual SG&A, was therefore considered a reasonable method.

(20) After disclosure, Delta requested the Commission to calculate the constructed normal value by expressing the SG&A calculated above as a percentage of cost of manufacturing rather than as a percentage of turnover. Given that all domestic sales were unprofitable, the use of turnover would result in inflated SG&A costs. The Commission accepted Delta's claim and when constructing normal value, the Commission added SG&A as a percentage of the cost of manufacturing per kg from this review investigation.

(21) Profit was also calculated using the same methodology as in the original investigation, i.e. on the basis of long-term lending commercial interest rates in South Africa during the RIP under Article 2(6)(c) of the basic Regulation. Delta does not sell other products on the domestic market, and there are no other known producers of EMD or other producers of products of the same general category in South Africa from whom profit data could be taken.

(22) After disclosure the Union industry requested that the Commission use sales to the USA to determine normal value, as they perform the function of sales on the domestic market, under Article 2(3) of the basic Regulation.

(23) This was rejected as normal value was constructed under Article 2(3) of the basic Regulation using the same methodology as in the original investigation, and therefore in line with Article 11(9) of that Regulation.

2.2. *Export price*

(24) The very small quantity of EMD exported to the Union during the RIP was sold directly to an unrelated importer in the Union. In accordance with Article 2(8) of the basic Regulation, the export price was taken as the price paid by the importer to Delta.

2.3. *Comparison*

(25) A comparison was made between the export price and the constructed normal value by taking account of the claimed and verified adjustments under Article 2(10) of the basic Regulation, namely freight costs, insurance, credit costs and handling charges on the export side. The normal value was constructed on an ex-works basis by removing freight charges and credit costs. The costs of packaging and technical assistance were not removed as they were already accounted for in the cost of manufacturing and therefore included in both the export price and the constructed normal value.

2.4. *Dumping margin*

(26) The EMD sold to the Union by Delta during the RIP was found not to have been dumped. However the quantity involved was extremely small and thus this finding could not be fully relied upon to establish likelihood of recurrence of dumping, should the measures lapse.

3. **Evidence of likelihood of recurrence of dumping**

(27) Since no conclusions could be drawn from the sale to the Union during the RIP, the Commission analysed whether there was evidence of likelihood of recurrence of dumping should the measure lapse. When doing so, the following elements were analysed: the export price from South Africa to other destinations, the production capacity and spare capacity in South Africa and the attractiveness of the Union market and other third markets.

3.1. *Exports from South Africa to other destinations*

(28) Delta produces both alkaline grade EMD and carbon zinc grade EMD, and given that there is a market in the Union for the alkaline grade EMD and also (to a smaller extent) carbon zinc grade EMD, the Commission examined the export price of both grades to third countries during the RIP. These sales were compared to the constructed normal value as calculated above, taking into account differences which affect price comparability.

(29) Sales of alkaline grade EMD to the USA, Delta's most important export market, accounted for roughly two-thirds of Delta's total exports during the RIP and were not dumped. However sales of alkaline grade EMD to other destinations (such as Thailand, Korea, China and Brazil), sold in smaller quantities, were found to be exported at dumped prices, with dumping margins ranging from 2 % to 21 %. In addition, when looking at the export sales of carbon zinc grade EMD to other destinations, mainly sold at low prices and low quantities, the dumping margins were higher, ranging from 13 % to 66 %.

(30) Following disclosure the Union industry claimed that the Commission should ignore the sales made to the USA during the RIP as the prices to that market were not an appropriate guide as to the likely price level of sales to the Union market should measures lapse.