# 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

## 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

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 221/2008. (See end of Document for details)*

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.

(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

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 221/2008. (See end of Document for details)*

(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