Commission Regulation (EC) No 1066/2007 of 17 September 2007 imposing a provisional anti-dumping duty on imports of certain manganese dioxides originating in South Africa

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 10 November 2006 the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by Tosoh Hellas AIC (the complainant) representing a major proportion, in this case more than 50 %, of the total Community production of certain manganese dioxides.

(2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 21 December 2006 the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the other Community producer, the exporting producer, the importer, users known to be concerned and representatives of South Africa of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The complainant producer, the exporting producer, the importer and users made their views known. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

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(6) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the exporting producer in South Africa, the complainant producer, the importer of the product concerned from South Africa and four users of the product concerned.

(7) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers*

— Tosoh Hellas AIC, Thessaloniki, Greece and its related sales agent Mitsubishi International GmbH, Düsseldorf, Germany

(b) *Exporting producer in South Africa*

— Delta E.M.D. (Pty) Ltd, Nelspruit, South Africa (Delta)

(c) *Related supplier of the exporting producer in South Africa*

— Manganese Metal Company (Pty) Ltd, Nelspruit, South Africa

(d) *Unrelated importer in the Community*

— Traxys France SAS, Courbevoie, France

(e) *Users in the Community*

— Panasonic Battery Belgium NV, Tessenderlo, Belgium

— VARTA Consumer Batteries GmbH & Co. KGaA, Sulzbach, Germany

— Duracell Batteries BVBA, Aarschot, Belgium.

3. Investigation period

(8) 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. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) The product concerned is manganese dioxides manufactured in an electrolytic process, which have not been heattreated after the electrolytic process (EMD), originating in South Africa. It is normally declared within CN code ex 2820 10 00.

(10) The product concerned comprises two main types: carbon-zinc grade EMD and alkaline grade EMD. Both types are produced through an electrolytic process, with an adaptation of certain parameters in the process to obtain either carbon-zinc grade EMD or alkaline grade EMD. They both normally have a high purity of manganese

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and are generally used as intermediate products in the production of drycell consumer batteries.

(11) The investigation has shown that, despite some differences in terms of certain specific physical and chemical characteristics such as density, mean particle size, Brunauer-Emmet-Teller (BET) surface area and alkaline potential, both types of the product concerned share the same basic physical, chemical and technical characteristics and are used for the same purposes. They are therefore considered to constitute a single product for the purpose of this proceeding.

(12) It should be noted that there exist other types of manganese dioxides which do not have the same basic physical, chemical and/or technical characteristics as EMD and have essentially different usages. They do not therefore form part of the product concerned. These distinct products include: (i) natural manganese dioxides which contain significant impurities and are normally classified under a different CN code, i.e. 2602 00 00; (ii) chemical manganese dioxides which are produced through a chemical process and have a significantly lower density as well as a significantly higher BET surface area than EMD; and (iii) heat-treated electrolytic manganese dioxides which, despite being manufactured through an electrolytic process like EMD, differ from EMD by a number of essential characteristics such as moisture content, crystal structure and alkaline potential, making them suitable for application in lithium batteries, which are based on non-aqueous systems and have lithium metal as the anode, but not in carbon-zinc or alkaline batteries, which are based on aqueous systems and have zinc metal as the anode, like EMD.

(13) It should also be noted that none of the interested parties has contested the above definition or the distinction between the two main types of the product concerned.

2. Like product

(14) The investigation showed that the EMD produced and sold by the Community industry in the Community and that produced and sold on the South African domestic market and/or imported into the Community from South Africa share the same basic physical, chemical and technical characteristics, and have the same uses.

(15) It was therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Normal value

(16) As far as the determination of normal value is concerned, the Commission first established whether Delta's total domestic sales of EMD were representative in relation to its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative, as the total domestic sales volume of the exporting producer was more than 5 % of its total export sales volume to the Community.

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(17) The Commission subsequently identified those product types sold domestically, having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(18) Domestic sales of a particular product type were considered to be sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(19) For all the product types sold for export to the Community, no product type identical or directly comparable and sold on the domestic market in representative quantities was found. Therefore, the normal value had to be constructed for all exported product types in accordance with Article 2(3) of the basic Regulation.

(20) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative costs (SG&A) and a reasonable amount for profit. The SG&A and the profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A costs incurred and the profit realised by Delta on its domestic market constituted reliable data.

(21) Actual domestic SG&A costs were considered reliable since the total domestic sales volume of the company concerned was representative when compared with the volume of export sales to the Community, as mentioned above.

(22) In order to assess whether the profit made by Delta on its domestic market constituted reliable data, the Commission first examined whether the domestic sales of each type of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market of the type in question.

(23) As there was no type for which the volume of profitable sales represented more than 10 % of the total sales volume of that type on the domestic market, it was considered that domestic prices could not provide an appropriate basis for the establishment of the profit margin to be used in the construction of the normal value.

(24) As Delta is the only known producer of EMD in South Africa, the reasonable profit needed to construct the normal value could not be based on actual profits determined for other exporters or producers subject to investigation in respect of production and sales of the like product on the domestic market as described in Article 2(6)(a) of the basic Regulation.

(25) Furthermore, as EMD is the only product made and sold by Delta, the reasonable profit needed to construct the normal value could not be based on actual profits applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporting producer in question as described in Article 2(6)(b) of the basic Regulation.

(26) The reasonable profit needed to construct the normal value was thus determined in accordance with Article 2(6)(c) of the basic Regulation.

(27) In this respect, information has been gathered on the profitability of all other known producers of EMD in other countries. Information was found from publicly available sources for one producer located in India, two in Japan and two in the USA. However, for one producer in the USA and for the two Japanese producers no information was available on profitability for EMD or for a division of the company where EMD would be significant.

(28) An average profit margin for the IP was calculated based on the publicly available sources for one Indian producer and the remaining producer in the USA as well as the information provided by Delta regarding the profitability of its related company Delta EMD Australia Proprietary Ltd, located in Australia, on its domestic market. The average profit margin calculated amounted to 9,2 %. The methodology, given the information available, was considered reasonable within the meaning of Article 2(6)(c) of the basic Regulation and the result conservative. Publicly available information showed that this profit margin was not exceeding the profit made by other known producers of the same general category of products (i.e. specialty chemicals) in South Africa during the IP.

2. Export prices

(29) Delta made export sales to the Community exclusively through an independent agent, Traxys France SAS.

(30) The export prices were based on the prices actually paid or payable for the product concerned when sold for export from South Africa to the Community, in accordance with Article 2(8) of the basic Regulation.

3. Comparison

(31) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning commissions, transport, insurance, handling and ancillary costs, packing, credit and bank charges were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

4. Dumping margins

(32) The weighted average normal value of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(33) On this basis, the provisional weighted average dumping margin expressed as a percentage of the cif Community frontier price, duty unpaid, is: