

## 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

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<sup>(1)</sup> (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*<sup>(2)</sup>.
- (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.
- (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.

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ C 314, 21.12.2006, p. 78.

### 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 heat-treated 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 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.
- (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:

Company	Provisional dumping margin
Delta E.M.D. (Pty) Ltd	14,9 %

(34) As regards the countrywide dumping margin applicable to all other exporters in South Africa, the Commission first established the level of cooperation. A comparison was made between Eurostat data and the questionnaire reply received from the cooperating exporting producer in South Africa. This comparison showed that, from the information available, Delta's exports to the Community represented 100 % of the exports of the product concerned from South Africa. The level of cooperation found was thus very high and the countrywide dumping margin was set at the same level as the dumping margin calculated for Delta.

### D. INJURY

#### 1. Community production and Community industry

(35) The investigation established that in the beginning of the period considered the like product was manufactured by three producers in the Community. However, one of the producers ceased production in 2003; thus, in the IP, there were only two producers in the Community.

(40) On this basis, Community consumption decreased by 7 % over the period considered. A particularly steep increase occurred in 2003 and 2004, coinciding with the strongest increase in volume at very low prices (- 35 %) of EMD imported from South Africa and with the closure of a major Community producer. In 2005 consumption returned to its previous level and another significant decrease occurred in the IP. The trend in consumption seems to have been influenced by the closure in 2003 of a major producer accounting for one third of Community production.

	2002	2003	2004	2005	IP
Community consumption Index 2002 = 100	100	102	113	102	93

(36) The complaint was only lodged by one producer, which cooperated fully with the investigation. Although the other producer did not cooperate, it did not oppose the complaint either. Due to the fact that only one company submitted a full reply to the questionnaire, all data referring to the Community industry are either presented in index form or given as ranges in order to protect confidentiality.

(37) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding the production of the only cooperating Community producer to the volume of production of the other producer on the basis of the data supplied in the complaint. Total Community production in the IP was in the range of 20 to 30 thousand tonnes.

(38) The production of the cooperating Community producer represented more than 50 % of the EMD produced in the Community. It is therefore considered that this company constitutes the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

#### 2. Community consumption

(39) The apparent Community consumption was established on the basis of the sales volume on the EC market of the complainant producer, sales of the other Community producers established on the basis of the purchases reported by users and imports from the country concerned based on the verified reply to the questionnaire and other third countries obtained from Eurostat.

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

#### *Volume and market share of imports concerned*

- (41) The volume of imports from South Africa was based on verified figures supplied by the only exporting producer. As mentioned above, for reasons of confidentiality, as the analysis concerns a single company, most indicators are presented in index form or in ranges.
- (42) In terms of volume and market share the evolution of imports has been the following:

	2002	2003	2004	2005	IP
Import volumes from South Africa (tonnes), 2002 = 100	100	129	156	185	169
Market share South Africa	30-40 %	40-50 %	44-54 %	60-70 %	60-70 %
Market share South Africa, 2002 = 100	100	126	139	181	181

- (43) While consumption of EMD decreased by 7 % during the period considered, imports from the country concerned rose by 69 % during the same period. Consequently, the South African market share increased dramatically during the period considered by around 81 % from a range of 30 to 40 % to a range of 60 to 70 %.

#### *Prices of imports and undercutting*

- (44) Over the period considered the average import prices fell by 31 %, despite the increase in the price of the main raw material.

	2002	2003	2004	2005	IP
Import prices from South Africa, EUR/tonne, 2002 = 100	100	70	65	66	69

- (45) For the determination of price undercutting during the IP, the relevant sales prices of the Community industry were net prices to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the South African exporting producer, net of discounts and adjusted, where necessary, to cif Community frontier prices with an appropriate adjustment for customs clearance costs and post-importation costs.
- (46) The comparison showed that during the IP the weighted average price undercutting margin, expressed as a percentage of the Community industry's sales prices, was in the range of 11 to 14 %. There were even higher levels of underselling because the Community industry was suffering substantial losses during the IP.

### 4. Situation of the Community industry

- (47) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports from South Africa on the Community industry included an analysis of all economic factors and indices having a bearing on the state of the industry from 2002 to the IP. As mentioned above, for reasons of confidentiality, as the analysis concerns a single company, most indicators are presented in index form or in ranges.

*Production, production capacity and capacity utilisation*

- (48) The evolution of production, production capacity and capacity utilisation for the Community industry was as follows:

	2002	2003	2004	2005	IP
Production, 2002 = 100	100	87	128	135	130
Capacity, 2002 = 100	100	100	100	100	100
Capacity utilisation, 2002 = 100	100	87	128	135	130

- (49) Over the period considered, Community production increased by 30 %. However, the production capacity remained stable throughout the whole period considered. The level of production reached a peak in 2005 after a strong increase in consumption on the EC market in 2004, which was combined with the liquidation of a major producer and the increase in demand on the export market of the Community industry. From 2004 to the IP, when the raw material prices doubled, the Community industry attempted to achieve economies of scale and reduce the unit cost of production in the IP.

*Stocks*

- (50) Stocks increased by 32 % during the period considered, reflecting the Community industry's increasing difficulty in selling its products on the Community market due to the competition with dumped imports.

	2002	2003	2004	2005	IP
Stocks, 2002 = 100	100	71	48	113	132

*Sales volume, market shares, growth and average unit prices in the Community*

- (51) The figures below represent the Community industry's sales to independent customers in the Community.

	2002	2003	2004	2005	IP
Sales volume in the EC market, 2002 = 100	100	80	152	113	91
Market share, 2002 = 100	100	78	135	110	97
Average sales prices, 2002 = 100	100	76	71	75	75

- (52) Against the background of the 7 % decrease in EC consumption, the market share of the Community industry decreased by 3 %. In addition, in absolute terms, its overall sales volumes on the EC market declined significantly by 9 % during the period considered, with a particularly sharp decrease of 22 percentage points in the IP.

- (53) While in 2004 the Community industry was able to benefit briefly from the increase in consumption by increasing its sales volume by 52 % and market share by 35 % compared to 2002, in the following years its participation in the market decreased in parallel to the sharp increase in the volume of dumped imports from South Africa.

- (54) There was a downward trend in average sales prices to unrelated buyers on the Community market until 2004. This illustrates the Community industry's attempts to compete with the dumped imports and stay in the market. In 2004, however, prices reached an unsustainable low point. They then increased by four percentage points in 2005. However, despite this small increase in prices in 2005, which was confirmed in the IP, the Community industry was unable to reflect in its prices the development in the price of manganese ore, the main raw material, which rose sharply, by almost 100 %, between 2004 and 2005.

*Profitability and cash flow*

- (55) The levels of profits and cash flow from the sale of EMD by the Community industry were strongly negative.

	2002	2003	2004	2005	IP
Operating profit margin of product concerned (range, %)	0 to 20	0 % to - 20	0 to 5	0 to 3	0 to - 20
Operating profit margin of product concerned, index 2002 = 100	100	- 85	20	13	- 72

- (56) Profitability deteriorated significantly by minus 172 % over the period considered. It reached its lowest level in 2003 at the time of the strongest decrease in the prices of imports (- 30 %). It improved in 2004 and 2005, with an increase in quantities sold. In the IP profitability fell back to its lowest level due to price pressure and increasing cost of raw materials.

- (57) Cash flow also deteriorated over the period considered, in line with the decrease in profitability.

	2002	2003	2004	2005	IP
Cash Flow, index 2002 = 100	100	22	46	- 35	- 8

*Investments, return on investments, and ability to raise capital*

- (58) Investments increased by 7 % over the period considered. In the middle of this period the Community industry recorded a certain amount of investment in order to reduce the cost of production and for the maintenance of new machinery. In the following years investments continued but at a lesser level.

	2002	2003	2004	2005	IP
Investments, 2002 = 100	100	67	126	109	107

- (59) The return on investment from the production and sales of the like product followed the sales and profitability trend and was negative in 2003 and at the end of the period considered.

	2002	2003	2004	2005	IP
Return on investment, 2002 = 100	100	- 58	18	10	- 55

- (60) The Community industry's ability to raise capital was not found to be significantly affected during the period considered, given the size of investments, which were sufficient to cover the necessary capital investments.

*Employment, productivity and wages*

- (61) The evolution of employment, productivity and labour costs in the Community industry were as follows:

	2002	2003	2004	2005	IP
Number of employees, 2002 = 100	100	68	69	70	67
Productivity (tonnes/employee), 2002 = 100	100	129	184	192	195
Total labour cost, 2002 = 100	100	77	79	84	82
Labour costs per employee, 2002 = 100	100	115	114	119	123

- (62) The number of employees decreased by 33 % between 2002 and the IP. This was the result of both a decline in sales and the efforts by the Community industry to improve productivity. Indeed, the result of this rationalisation process within the Community industry was reflected in the rate of productivity, which showed a considerable upward trend during the period considered.

- (63) The total labour costs were reduced significantly, by 18 %. The average cost per employee increased relatively, taking into account the development of inflation. However, on the whole, the share of labour costs in total production costs was significantly reduced showing a clear improvement in efficiency.

*Magnitude of the actual margin of dumping and recovery from past dumping*

- (64) The dumping margin is specified above in the dumping section. This margin is clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered negligible.

- (65) There is no indication that the Community is recovering from the effects of past dumping or subsidisation.

**5. Conclusion on injury**

- (66) It is recalled that imports from South Africa increased considerably, both in absolute terms and in terms of market share. Indeed, over the period concerned the imports increased by 69 % in absolute terms and by around 81 % relative to Community consumption, reaching a market share of 60 to 70 %.

- (67) Moreover, in the IP, the sales prices of the Community industry were substantially undercut by those of the dumped imports of the product concerned. On a weighted average basis, price undercutting during the IP was in the range of 11 to 14 %.

- (68) While over the period considered the Community consumption decreased by 7 %, the sales volume of the Community industry decreased by 9 % and the market share by 3 %. A dramatic deterioration in these indicators occurred in the IP, with a fall of 22 percentage points in sales and 13 percentage points in market share compared with 2005.

- (69) With falling sales volume, market share and prices, the Community industry was unable to pass on the global increase in raw material prices to its customers. This resulted in a very negative profitability situation (loss).

- (70) Notwithstanding the Community industry's considerable investments during the period considered together with its continuing efforts to increase productivity and competitiveness, its profitability, cash flow and return on investment declined sharply, reaching strongly negative levels.
- (71) The deteriorating situation of the Community industry in the period considered is also confirmed by the negative development of employment.
- (72) In the light of the foregoing, it is provisionally concluded that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation.
- (75) The effects of dumped imports are clearly illustrated by the decision of several major users representing more than 60 % of total consumption, to switch their purchases from the Community industry to the South African product. While at the beginning of the period considered these users purchased only marginal quantities from South Africa, by the end of the period considered and in the IP, they were purchasing up to 70 to 100 % of their needs from South Africa.
- (76) At the same time, the Community industry had to drastically reduce its prices in order to keep its sales contracts with other users.
- (77) The Community industry's decreasing market share in the period considered has to be seen in correlation with the increase in volume and market share of the imports from South Africa. Moreover, in 2005 and the IP, when Community consumption fell by 18 % compared with its sharp rise in 2004, the imports from South Africa increased by 8 % in absolute terms and by around 31 % in market share. At the same time, the Community industry lost 28 % of market share and 40 % of sales.

## E. CAUSAL LINK

### 1. Preliminary remark

- (73) In accordance with Article 3(6) and (7) of the basic Regulation it was examined whether there was a causal link between the dumped imports from South Africa and the material injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.
- (78) It is therefore provisionally concluded that the pressure exerted by the dumped imports, which dramatically increased their volume and market share from 2002 onwards, and which were made at dumped prices and at significant levels of undercutting and underselling, played a determining role in the fall of the Community industry's sales and consequently in its profitability, cash flow development and negative situation in return on investment, employment and increase in stocks.

### 2. Effect of the imports from South Africa

- (74) As established in recitals 43 and 44, the imports increased steadily and significantly during the period considered, by 69 % in terms of volume and by 81 % in terms of market share. The unit selling price of the imports from South Africa decreased by 31 % over the period considered. In the IP the prices of the imports originating in South Africa undercut Community industry prices by 11 to 14 %.

### 3. Effect of other factors

#### *Imports from other third countries*

- (79) The development of imports from other third countries according to Eurostat data was as follows:

	2002	2003	2004	2005	IP
Imports from other third countries	5 541	4 677	5 992	2 876	2 878
Index, 2002 = 100	100	84	108	52	52
Market share	15 %	12 %	14 %	7 %	8 %
Index, 2002 = 100	100	82	96	51	56
Average prices of imports	1 527	1 204	1 226	1 550	1 537
Index, 2002 = 100	100	79	80	101	101

(80) At the beginning of the period considered EMD imports from other third countries represented 15 % of market share. In the following years these imports decreased significantly, representing only 8 % of market share by the end of the IP. The prices of those imports remained largely at a higher level than the South African prices and even increased by 1 %.

(81) Several submissions have alleged that the imports of EMD from China, which is not a country concerned by the investigation, have contributed significantly to the injury suffered by the Community producer. However, the imports from China in the IP, although at average prices lower than the South African product, represented only 0,6 % of all imports from third countries and can therefore not be considered to break the causal link between the dumped imports and the material injury suffered by the Community industry.

#### *Export performance of the Community industry*

(82) It was also examined whether or not the exports to non-EU countries may have contributed to the injury suffered during the period considered.

(83) It was found that the export volumes of the Community industry increased by 9 % over the period considered, and though the export price decreased by 14 %, it was well above the unit cost of production. Therefore, the export performance of the Community industry could not have contributed to the injury during this period.

#### *Other Community producers*

(84) As mentioned above, there were two other producers in the Community at the beginning of the period considered.

(85) One of the producers, located in Ireland, ceased production in 2003, because of financial difficulties due to important decrease in sales under strong price pressure from dumped imports. The other one, located in Spain, did not cooperate in the proceeding. As a result of this lack of cooperation, data on the sales by other producers on the Community market was obtained from user questionnaires. According to the findings of the investigation,

the latter company was involved both in battery and EMD production. The majority of the EMD produced by this company was apparently used in its own battery production. However, this company played an increasing role on the Community EMD market as well.

(86) It is clear that the general picture of other EC producers is influenced by the fact that one ceased its activities in 2003 and the other did not sell any substantial quantities on the EC market during the period considered. However, from the data obtained in the investigation it may be concluded that these Community producers were also affected by the pressure exerted on prices by South African imports and the developments on the market, since their market share decreased from a range of 10 to 25 % to a range of 4 to 10 %. Consequently, the sales of other Community producers cannot have been responsible for the injury suffered by the Community industry.

#### *Contraction in demand*

(87) It was also examined whether or not the contraction in demand on the Community market may have contributed to the injury suffered during the period considered. This was not found to be the case. As established in recitals 52 and 77, the Community industry's sales decreased by more than the total Community consumption while the corresponding market share held by the South African imports increased significantly.

#### *Increase in raw material prices*

(88) It was argued that injury had been caused mainly by the worldwide increase in the price of the basic raw material: manganese ore. Manganese ore prices which remained stable until 2004 suddenly doubled in 2005 and decreased slightly during the IP. This increased the Community industry's unit cost of production by 19 %.

(89) However, as the prices of imports from South Africa only increased by one percentage point during the same period (2004/05), the Community industry, which attempted to compete with dumped imports and stay in the market, could not pass on the total cost increase to downstream users. The Community industry was only able to increase its prices by four percentage points, which thus remained below the cost of production.

	2002	2003	2004	2005	IP
Total cost of production, 2002 = 100	100	89	103	110	119
Total unit cost per tonne, 2002 = 100	100	98	80	85	95
Unit sales price, 2002 = 100	100	76	71	75	75

- (90) In these circumstances, it was considered that the cost increase was not per se the factor causing injury but the fact that the Community industry was not able to pass on the cost increases to its customers due to the downward price pressure exerted by the dumped imports from South Africa, which did not reflect the rise in prices of raw materials. Therefore, this claim had to be rejected.

#### *Global oversupply of EMD*

- (91) It was argued by some parties that the global oversupply of EMD caused by the increased production capacity in China has depressed EMD prices and is thus the cause of the injury to the Community industry.
- (92) However, given the low volume of imports from China and despite their relatively low prices in the period considered, this allegation was found not to be valid.

#### *Increasing competition among battery producers*

- (93) It was further argued by some parties that the decrease in the Community industry's sales prices of EMD was the result of increasing competition among battery producers and the price pressure suffered by them rather than of dumped imports from South Africa.
- (94) The investigation showed that indeed battery producers in the EC were subject to price pressure resulting from global increase in the costs of raw materials and increased competition. However, it was found that given the low number of EMD producers operating on the Community market, they had a significant power to negotiate the prices of the product concerned with the battery producers. It is therefore considered that the decrease in the Community sales prices of EMD directly derives from the dumped imports and the undercutting practised by the South African exporting producer from the beginning of the period considered and not from the alleged price pressure exerted by the battery producers. In

light of the above, it was provisionally concluded that the increasing competition among battery producers did not break the causal link between dumped imports from South Africa and the injury suffered by the Community industry.

#### **4. Conclusion on causation**

- (95) The above analysis shows that there was a dramatic increase in the volume and market share of the imports originating in South Africa over the whole period considered, together with a considerable decrease in their prices coupled with a significant price undercutting during the IP. This increase in the market share of the dumped imports coincided with a significant decrease in the sales volume and market share of the Community industry. This, together with downward pressure on prices, resulted, inter alia, in substantial losses to the Community industry during the IP.
- (96) Furthermore, an examination of the other factors which could have injured the Community industry revealed that none of these could have had such a significant negative impact on the industry as the dumped imports from South Africa.
- (97) Based on the above, it is provisionally concluded that the dumped imports caused material injury to the Community industry in the meaning of Article 3(6) of the basic Regulation.

#### **F. COMMUNITY INTEREST**

##### **1. General considerations**

- (98) Pursuant to Article 21 of the basic Regulation, it has been examined whether, despite the conclusions on dumping, injury and causal link, compelling reasons exist that would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures on imports from the country concerned.

(99) The Commission sent a questionnaire to the sole importer of EMD from South Africa and all industrial users known or likely to be concerned by the measures. Replies to the questionnaire were received from the importer and from four major users of the product concerned in the Community.

## 2. Interest of the Community industry

(100) It is recalled that the Community industry consists of one producer with production facilities in Greece, whose sales and profitability deteriorated significantly during the period considered, with a consequent negative impact on its market share, employment, return on investment and cash flow.

(101) If measures are not imposed it is likely that, as a result of the price pressure from the dumped imports, the lack of profitability will force the Community industry to cease production of EMD in the Community. It is recalled that one of the Community producers ceased production during the period considered. This coincided with increased pressure from South African imports on the Community market. Moreover, the complainant Community producer was forced to temporarily cease production for one month in 2003, and has informed the Commission of a similar situation for a longer period in 2007.

(102) It is noted that, like the South African exporting producer, the Community industry produces only EMD and the production lines cannot be used to produce any other products.

(103) However, following the imposition of anti-dumping measures, it is expected that the sales volumes and prices of the Community industry on the Community market will rise, thus improving profitability of the Community industry and preventing closure.

(104) It is therefore clear that anti-dumping measures would be in the interests of the Community industry.

## 3. Interest of users

(105) The only industry that uses EMD is primary cell alkaline and carbon-zinc battery producers.

(106) As mentioned above, questionnaires were sent to all known battery producers in the Community. Replies

were received from four companies representing 93 % of the Community consumption; three of the replies were verified on the spot.

(107) As mentioned above, it was found that the battery producers in the EC were under considerable pressure resulting from global increases in prices of raw materials (zinc, nickel, copper and steel) and increased global competition on the battery market. They submitted that the imposition of anti-dumping measures on imports from South Africa would increase the existing price pressure and cause losses, since they would not be in a position to pass any price increases on to their clients. However, it was found that they were generally still in a good financial situation, with substantial pre-tax profits in the IP and they had increased their sales volume over the period considered thanks to the positive public image of their brands. Based on the information received, it was possible to verify that the cost of EMD for producing batteries can vary between 10 and 15 % (depending on the size of the battery) of the total costs and it was possible to estimate that the imposition of the anti-dumping duty at the proposed level should not increase the estimated level of the battery price by more than EUR 0,01 to EUR 0,02. The increase in battery prices which may result from the imposition of anti-dumping duties was obtained by applying the proposed level of duty to the costs of production for different sizes of batteries.

(108) While generally opposing the imposition of measures, several users admitted that disappearance of the Community industry would probably have a negative effect on their situation and competition on the EC market, as the Community industry is a producer of high quality EMD suitable for high-end battery production. Thus, if the Community industry were to disappear, users would run the risk of becoming dependent on EMD from South Africa alone.

(109) In the light of the above, it may be provisionally concluded that the imposition of any anti-dumping measures are unlikely to affect seriously the situation of the user industry.

## 4. Interest of unrelated importers/traders in the Community

(110) The sole Community importer of EMD from South Africa cooperated in the investigation. On the basis of the information submitted, it was found that this importer was Delta's exclusive and independent agent. All imports of EMD from South Africa were sold in the Community through this company. Its trading activities represented less than 20 % of its turnover. This importer expressed concerns about the possible

imposition of measures. However, even if its sales decreased after the imposition of measures and the agent's commissions were reduced, it is expected to remain financially healthy and it is unlikely that the importer would be significantly affected by the measures. Thus, it is clear that the impact of the anti-dumping duty would be borne by the users.

- (111) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is not likely to have a serious negative effect on the situation of importers in the Community.

### 5. Conclusion on Community interest

- (112) The effects of the imposition of measures can be expected to enable the Community industry to regain lost sales and market shares and to improve its profitability. In view of the deteriorating situation of the Community industry, there is a considerable risk that, in the absence of measures, the Community industry might have to close down its production facilities and layoff its workers.
- (113) Given the use of the product concerned in battery production, where the cost of EMD is not significant when compared with the value of the endproducts the impact for the users should not be significant, as explained in recital 107 above.
- (114) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of certain manganese dioxides originating in South Africa.

## G. PROVISIONAL ANTI-DUMPING MEASURES

### 1. Injury elimination level

- (115) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (116) The measures should be imposed at a level sufficient to eliminate the injury caused to the Community industry by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production

and obtain an overall profit on sales of the like product in the Community before tax that could be reasonably achieved by this industry under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation corresponded to the profit achieved by the Community industry at the beginning of the period considered, at a time when EMD prices from South Africa were at the same level as that of the like product sold by the Community industry.

- (117) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations (see recital 45), with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss/profit made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.
- (118) The injury margin was significantly higher than the dumping margin found.

### 2. Provisional measures

- (119) In the light of the foregoing, it is considered that in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed at the level of the dumping margin since it is lower than the injury margin calculated above.
- (120) On the basis of the above, the proposed provisional duty rates are:

Delta E.M.D (Pty) Ltd	14,9 %
All other companies	14,9 %

## H. FINAL PROVISION

- (121) In the interest of sound administration a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional 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 provisional 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	14,9 %	A828
All other companies	14,9 %	A999

3. The release for free circulation in the Community of the product referred to in Paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

*Article 2*

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 17 September 2007.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*