



**COUNCIL OF  
THE EUROPEAN UNION**

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**ANTIDUMPING 12  
COMER 39**

**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 February 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 50 final
Subject:	Proposal for a COUNCIL IMPLEMENTING REGULATION 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

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Delegations will find attached document COM(2014) 50 final.

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Encl.: COM(2014) 50 final



Brussels, 5.2.2014  
COM(2014) 50 final

2014/0025 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING REGULATION**

**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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the expiry review proceeding concerning the anti-dumping duty in force in respect of imports of electrolytic manganese dioxides originating in the Republic of South Africa ('South Africa').

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 221/2008 on imports of certain manganese dioxides originating in South Africa (OJ L69, 13.3.2008, p.1.).

- **Consistency with the other policies and objectives of the Union**

Not applicable.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 12 March 2013 the Commission initiated an expiry review of the anti-dumping measures applicable to imports of electrolytic manganese dioxides ('EMD') originating in South Africa.

Following imposition of measures, imports of EMD from South Africa virtually ceased. However, the investigation concluded that there was a likelihood of recurrence of dumping should the measures be allowed to lapse.

The Union industry was found to be still in a fragile and vulnerable situation and the likelihood of recurrence of injury was considered to be very high. The investigation further established that the continuation of measures would not be against the Union interest.

It is therefore proposed that the Council adopt the attached proposal for a Regulation in order to prolong the measures currently in force on imports of EMD from South Africa, which should be published in the *Official Journal of the European Union*.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the basic Regulation and leaves no scope for national decision.

Indication of how the financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason: The basic Regulation does not provide for alternative options.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

Proposal for a

## **COUNCIL IMPLEMENTING REGULATION**

**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**

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<sup>1</sup> (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 Regulation (EC) No 221/2008<sup>2</sup>, 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 of impending expiry<sup>3</sup> 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.

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 69, 13.3.2008, p. 1.

<sup>3</sup> OJ C 180, 21.6.2012, p. 15.

(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 injurious dumping to the Union industry.

3. Initiation of an expiry review

(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*<sup>4</sup>, ('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')

<sup>4</sup>

OJ C 72, 12.3.2013, p. 8.

*(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 responded to 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, 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), as Delta's sales were not in the ordinary course of trade and since both Article 2(6)(a) and (b) 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). 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 the same 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 EU 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 EU 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 EU market should measures lapse.
- (31) Delta, on the other hand, requested the Commission after disclosure to pay particular attention to the sales made to the USA, which represents the large majority of its alkaline grade exports and is the most comparable market to the EU.

- (32) The Commission analysed all export sales to all destinations, calculated an average weighted export price of Delta's exports to all other non-EU destinations but also looked into great detail at export prices to individual third countries. When looking at the question of the likelihood of recurrence of dumping, all export sales to all destinations were found to be relevant, in particular in view of the significant price differences found on different export markets.
- (33) The USA market has its own particular characteristics, allowing Delta to charge significantly higher prices there than elsewhere. In the USA demand significantly exceeds domestic supply. Also, high entry barriers exist for a large number of potential competitors as high anti-dumping duties are in force against imports from China and Australia.
- (34) In these circumstances there is no reason why the Commission should base its findings only on the average export price or only examine export sales to one country instead of analysing all export sales to all destinations.
- (35) Delta's price behaviour to other export markets than the EU shows that although their exports to their most important market (the USA) were not sold at dumped prices, sales to other destinations were dumped. Further indicators, as set out below, are therefore required to assess the likelihood of recurrence of dumping should the measures lapse.

### 3.2. Production capacity and spare capacity in South Africa

- (36) Delta has spare capacity to produce EMD that could allow it to resume exports to the Union in some significant quantity should the measures lapse. Delta has estimated, and the Commission has confirmed, that this spare capacity was between 4 000 to 6 000 MT per year. This calculation takes into account electricity shortages current in South Africa and volumes of waste. Given some difficulty in maintaining quality levels with a manually controlled plant, the Commission conservatively estimates that between 2 000 to 3 000 MT per year would be alkaline grade EMD whereas the rest would be carbon zinc grade EMD. Both grades would however be suitable for the EU market. Whereas part of the carbon zinc grade EMD quantity might be absorbed by other third country markets, there are no indications that other third country markets or the domestic market could absorb the significant spare capacity of alkaline grade EMD.
- (37) Delta stated during the verification that they are a long established "top-up" supplier for their customers on the US market, whereby they fill the gap when domestic producers cannot produce enough. Delta's exports to the USA have been stable over the last 4 years, which suggests that there was no possibility for Delta to increase its sales to the USA. If it was possible to increase exports to the USA, Delta would have done so already in order to benefit from the higher prices that prevail on the US market and also from the increased economies of scale arising from producing higher quantities.
- (38) Delta's sales to the Asian market were more focused on carbon zinc EMD. Delta's sales to Asia account for 50% of all of Delta's carbon zinc EMD sales. China has domestic EMD producers and Delta's exports to China during the IP remained limited to the very small quantity of alkaline EMD. As currently EMD exports to Japan are subject to anti-dumping measures and due to the fact that Japan has domestic EMD

producers, it is unlikely that this market would absorb Delta's spare capacity. Therefore it is unlikely that the Asian market could absorb Delta's spare capacity of alkaline EMD.

- (39) Following disclosure, the Union industry commented that Delta's spare capacity was much higher than that given above, and pointed to several factors that would suggest this to be the case. They also stated that all of Delta's spare capacity could be used to produce alkaline grade EMD of a quality to be sold to the EU market at dumped prices.
- (40) The Union industry also stated that Delta's exports to the USA would very likely diminish in the near future as one US producer had already announced increases in its production capacity and the very probable decrease in demand for EMD in the USA following the announced exit from the market of a user of EMD. In addition, the Union industry claimed that sales from South Africa to the USA after the end of the investigation period had already started to decline. This would mean that Delta potentially has additional quantities of alkaline EMD that would very likely be diverted to the EU market should measures lapse.
- (41) Delta's plant, capacity and capacity to produce were verified by the Commission during the investigation. As stated above, in its calculations the Commission based itself on conservative calculations, in particular the conservative estimate of the split between alkaline and carbon zinc production based on using its spare capacity. Even with this conservative estimate, a significant spare capacity, in view of the consumption in the EU of the product concerned, that can be used to produce alkaline grade EMD, was established.
- (42) As to the claim regarding the likely evolution of Delta's exports to the USA the evidence presented to the Commission suggests that these could come under pressure should USA EMD capacity continue to increase and demand continue to fall.
- (43) After disclosure, one user argued that Delta's spare capacity is low, given that Delta had a market share of 60-70% before measures were imposed. However, even by using a conservative estimate of Delta's spare capacity, if this spare capacity is used to export to the EU, Delta could easily significantly increase its market share without taking into account the possibility that exports to other destinations could be redirected to the EU. Such a development would result in a further increase of Delta's potential market share.

### 3.3. Attractiveness of the Union market and other third markets

- (44) Delta has a long-standing and profitable sales channel to the USA and no evidence was found that would suggest that it would be in the interests of the company to deliberately redirect any of these sales to the Union. However, the spare capacity identified during the investigation, or at least a substantial part of it, could likely only be directed to the Union for the reasons mentioned in the recitals above. Moreover, this is so because the Union market is among the largest in the world. In addition, before the anti-dumping measures in force were imposed, the Union market had been very attractive for Delta as it had a market share of between 60-70%.
- (45) If Delta was to compete on price with the Union producers, then it would be forced to reduce its export prices and thus to sell at dumped prices to match the prices charged

by one Union producer during the RIP. Delta could also redirect their exports of alkaline grade EMD that are currently sold to third countries (other than the USA) to the EU at dumped prices because the Union market is more attractive than other non-US markets due to its size and generally higher prices. Furthermore, if Delta in the future might have to reduce the quantities of EMD exported to the USA then the EU market would be the very likely destination of such additionally available quantities.

- (46) Following disclosure, Delta commented that their pricing policy was to sell on the EU market only if it could achieve a profitable price.
- (47) This may or may not be the case, but a profitable sale can still be a dumped one, if the export price remains lower than the normal value. In any case, no evidence could be provided to back up such a statement as Delta did not export significant quantities to the EU over the last five years. In addition, the Union industry claimed that the small quantities of EMD that were sold by Delta to the EU during the IP were done in order to maintain its certification with EU clients.
- (48) Delta also commented that the average import price into the EU of EMD during 2012 was EUR 1809 per MT, which was above their normal value, showing in Delta's view, that they could compete with other importers and not dump.
- (49) However this average figure is made up of some extremely expensive imports from the USA, and some much cheaper imports from China. The imports from the USA could not be included in this comparison as the extremely high price level, up to three or four times the normal prices charged on the EU market, shed doubt on the reliability of these prices and/or the imported product. If Delta was to compete on price with the Chinese imports, at around EUR 1200 per MT, then Delta would be dumping on the European market.

#### 4. Conclusion on the likelihood of recurrence of dumping

- (50) Given the above, there is a likelihood that if the measures were to lapse, dumping would reoccur. Alkaline grade EMD is the product type manufactured by Delta which would most likely be sold to the Union should measures lapse as this was the product type that was exported by Delta in the past. Also currently most demand in the EU is still for alkaline grade EMD. The investigation showed that sales of alkaline grade EMD to destinations such as South Korea, China and Brazil were found to be exported at dumped prices, with dumping margins from 2% to 21%.
- (51) In addition, Delta's spare capacity is of a significant quantity in comparison to the Union consumption during the RIP. If this capacity was used to export to the Union and to compete on price with the Union producers or on price with the major imports from third countries, then there is a strong likelihood that such exports would be made at dumped prices.

#### **D. DEFINITION OF THE UNION INDUSTRY**

- (52) During the RIP, the like product was produced by two producers in the Union, THA and Cegasa, who cooperated fully in the investigation. In the original investigation, Cegasa, which at that time did not produce for the open market but only for captive use, was not a complainant and did not cooperate but did not oppose the investigation.

- (53) Following disclosure, an interested party questioned the admissibility of Cegasa as applicant in the expiry review since it was not a complainant in the original investigation, was not producing for the open market and thus was not experiencing injury at that time. This claim was rejected as a request for an expiry review must be lodged by or on behalf of Union producers but not necessarily by (only) the original complainant(s).
- (54) The two Union producers account for all EMD production in the EU, and constitute the 'Union industry' within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (55) For the purpose of the injury analysis, due to cooperation of the entire Union industry, all injury indicators have been established at the microeconomic levels. To protect confidentiality, all data are presented in indexed form or given as ranges.

## E. SITUATION ON THE UNION MARKET

### 1. Consumption in the Union market

- (56) Union consumption was established on the basis of (i) the verified sales volumes of the Union industry on the Union market, (ii) verified import volumes from the sole South African producer and, (iii) imports from other countries based on Eurostat data.
- (57) Union consumption of EMD remained stable between 2009 and the RIP. It increased in 2010 and 2011 but in 2012 it went back to the levels of 2009.

Table 1

	2009	2010	2011	RIP
Index (2009 = 100)	100	102	108	100

### 2. Imports from South Africa

#### 2.1. Volume and market share

- (58) Following imposition of measures, imports from South Africa virtually ceased.

Table 2

	2009	2010	2011	RIP
Volume of imports subject to measures from South Africa	100	2	3	1
Market share of imports subject to measures from South Africa	100	2	4	1

#### 2.2. Prices and undercutting

- (59) The very few sales of EMD from South Africa to the Union during the RIP were not undercutting the Union industry prices. However, in view of their very small volume, they cannot be relied upon to draw any meaningful conclusion.
- (60) A comparison was therefore also made between the prices of EMD produced and sold by the Union industry and those of EMD produced in South Africa and sold to the rest of the world, based on two scenarios; including and excluding sales to the USA. The reason for carrying out an analysis excluding Delta's export price to the USA was based on the particular market situation in the USA resulting in very high prices as compared to Delta's export prices to other countries (see recitals above).
- (61) The comparison showed that, during the RIP, sales from South Africa to the rest of the world were not undercutting the Union industry's prices if sales to the USA were taken into account, but were undercutting the Union industry's prices if sales to the USA were excluded. In addition, excluding the sales to the USA, Delta's export prices were also underselling the Union industry's prices.
- (62) Following disclosure, the Union industry maintained that Delta's prices to the USA are not indicative of its future pricing to the EU and that due to structural differences between the EU and the US market, such prices should be disregarded. On the other hand, Delta reiterated that the US market is a mature EMD market where domestic producers and importers compete freely and where there are many users, including users which are also present in the EU. As a consequence, Delta's sales to the USA should not be excluded. In addition, Delta considered that for the purpose of underselling calculations, the Commission should have not used the target profit achieved by the Union industry in the absence of dumped imports in the original investigation.
- (63) In the present case where imports from the country concerned virtually ceased following imposition of original measures, the investigating authority has to carry out a forward-looking analysis based on a number of reasonable assumptions, including the likely price at which Delta would sell its EMD in the Union should the anti-dumping measures in force be allowed to lapse.
- (64) It is an undisputed fact that each EMD market (USA, EU, Asia) is different and EMD producers apply different pricing strategies bearing in mind not only their costs of production but also the production capacity in the target country, the need to (re)gain market shares and the local conditions of competition. It is also an undisputed fact that Delta is pricing its EMD sales to the US market significantly higher than in other markets. Therefore, it is expected that Delta's future prices to the EU will not be determined by its current prices to the USA but will follow the specific EU market conditions and realities.
- (65) In the disclosure document, for the purposes of dumping calculations, Delta's selling prices of only alkaline grade EMD to various markets were compared to the constructed normal value, whereas for the purpose of undercutting calculations also Delta's sales of one type of carbon zinc grade were taken into account. Following disclosure, the Union industry commented that all Delta's sales of alkaline and carbon zinc grade EMD should be taken into account for dumping and injury calculations. In contrast, Delta claimed that since the vast majority of Union consumption and Delta's

exports to the Union only consist of alkaline EMD, sales of carbon zinc grade EMD should not be taken into account at all.

- (66) The Commission has reached the conclusion that both alkaline and carbon zinc grade EMD, all types included, should be taken into account for both dumping and injury calculations, for the following main reasons: First of all, as mentioned above, there is also a market and consequently demand for carbon zinc grade EMD in the EU, albeit smaller than the market of alkaline grade EMD, and this market could also be of interest for Delta's exports to the Union. Secondly, alkaline grade and carbon zinc grade EMD are manufactured in the same plant and in the same production line using the same raw material and the same production process. Depending on the settings of the parameters in the electrolysis process (current density, temperature, electrolyte concentration etc.), EMD producers can choose to produce alkaline or carbon zinc EMD. Therefore, it is more appropriate to calculate the undercutting by comparing the average export price of Delta's EMD (both alkaline and carbon zinc) with the average selling price of the Union producers of EMD (both alkaline and carbon zinc).
- (67) As far as the underselling analysis is concerned, the Commission used as a reference the target profit achieved by the Union industry in the absence of dumped imports in the original investigation, which corresponds to the profit that a capital intensive industry such as the EMD manufacturers can expect to achieve in normal conditions of competition. However, the issue of the most appropriate target profit is irrelevant in the context of this particular expiry review. Indeed, the Commission acknowledges that there was no continuation of dumping and therefore there was no continuation of injury due to the undercutting. The focus of the analysis is therefore forward-looking and aims to predict the likelihood of recurrence of injury in case of likely recurrence of dumping.
- (68) Delta claimed that post-importation costs appeared to be underestimated because they did not take into account the transport costs for the product delivered to customers from the Antwerp port.
- (69) However, the Commission compared the Union industry's prices ex-work with the exporters' price at Union borders, and therefore post-importation costs only concerned handling and testing but not transportation costs. This claim was therefore rejected.

### 3. Imports from other third countries

- (70) The following table shows the development of imports from other third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 3

	2009	2010	2011	RIP
Volume of imports from other countries (tonnes)	5 000 – 10 000	10 000 – 15 000	5 000 – 10 000	5 000 – 10 000



Index 2009=100	100	113	92	88
Market share of imports from other third countries	25% - 30%	30% - 35%	20% - 25%	20% - 25%
Values of imports from other countries (EUR)	10m -15m	15m-20m	10m-15 m	10m -15m
Index 2009=100	100	113	93	102
Price of imports (EUR/tonne)	1 566	1 572	1 590	1 809

Source: Eurostat

- (71) The volume of imports from other third countries of EMD into the EU decreased in the period considered. Prices of these imports are above the average level of prices of the Union industry and Delta's prices to other markets excluding the USA during the RIP. As mentioned above, the value of 1809 euros per tonne is an average of very diverse import prices, ranging from low priced imports from China to very expensively priced imports from USA. In particular, recorded price levels of imports from the USA are extremely high compared to any other price ranges from the Union producers, Delta and other exporters, that they cannot be reasonably relied upon to carry out the analysis. Therefore, this average cannot be taken as such as a reference price for future imports from South Africa. Delta would not compete on price with the US imports but with the Union industry prices.

#### 4. Economic situation of the Union industry

- (72) Under Article 3(5) of the basic Regulation, all relevant economic factors and indices having a bearing on the state of the Union industry during the period considered were examined.

##### (a) Production

- (73) The Union production increased by 6% between 2009 and the RIP. More specifically, it increased by 7 percentage points between 2009 and 2011 and then declined by 1 percentage point during the RIP.

Table 4

	2009	2010	2011	RIP
Index 2009=100	100	102	107	106

e: Questionnaire replies, Review request

##### (b) Production capacity and capacity utilisation

- (74) The production capacity of the Union producers increased by 9% throughout the period considered, mainly due to minor improvements to the production process (i.e. no major investments in new plants or equipments).

- (75) Since the increase in capacity was higher than the increase in production, the capacity utilisation went down by 3 percentage points.

Table 5

	2009	2010	2011	RIP
Production Capacity Index 2009=100	100	103	108	109
Capacity Utilisation Index 2009=100	100	99	99	97

e: Questionnaire replies, Review request

(c) Stocks

- (76) Volume of stock remained stable during the period considered. It went down in 2011 but returned to 2009 levels during the RIP.

Table 6

	2009	2010	2011	RIP
Index 2009=100	100	103	86	100

Source: Questionnaire replies

(d) Sales volume

- (77) The sales volume of the Union producers to unrelated customers on the Union market increased by 10% between 2009 and the RIP. In 2011 it increased by 20% in comparison to 2009, but then decreased sharply by 10 percentage points during the RIP.

Table 7

	2009	2010	2011	RIP
Index 2009=100	100	103	120	110

e: Questionnaire replies, Review request

(e) Market share

- (78) Between 2009 and the RIP the Union producers gained 10 percentage points in market share. This increase in market share is explained by the decline in market share of imports into the EU.

Table 8

	2009	2010	2011	RIP
Market share of the Union industry	65% - 70%	65% - 70%	75% - 80%	75% - 80%

Index 2009=100	100	101	111	110
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e: Questionnaire replies, Review request and Eurostat

(f) Growth

- (79) Union consumption remained stable between 2009 and the RIP as set out in Table 1 above. All other indicators do not show any significant growth in the Union market for the product under review.

(g) Employment

- (80) The employment level of the Union industry shows a decrease of 9 percentage points between 2009 and the RIP.

Table 9

	2009	2010	2011	RIP
Index 2009=100	100	91	90	91

e: Questionnaire replies, Review request

(h) Productivity

- (81) Productivity of the Union industry workforce, measured as output (tonnes) per employee per year, increased by 18% in the period considered. This reflects that production increased by 6%, whilst employment levels decreased by 9%. This is particularly obvious in 2011, when production increased while the employment level continued to decrease and productivity was 20 percentage points higher than in 2009.

Table 10

	2009	2010	2011	RIP
Index 2009=100	100	112	120	118

Source: Questionnaire replies and Review request

(i) Factors affecting sales prices

- (82) The annual average sales prices of the Union industry on the Union market to unrelated customers decreased by 11% between 2009 and the RIP.

Table 11

	2009	2010	2011	RIP
Index 2009=100	100	95	93	89

e: Questionnaire replies, Review request

(j) Magnitude of dumping margin and recovery from past dumping

(83) As imports from South Africa virtually ceased after imposition of the anti-dumping measures in force, the magnitude of dumping margins cannot be assessed. However, in light of the key economic indicators referred to above as well as further below, the Union industry was found to be still in a fragile and vulnerable situation.

(k) Wages

(84) Despite the fact that the total labour cost decreased the average labour cost increased during the period considered as a consequence of the reduction of the overall workforce.

Table 12

	2009	2010	2011	RIP
Index 2009=100	100	102	103	103

Source: Questionnaire replies

(l) Profitability and return on investments

(85) During the period considered, the profitability of the Union industry's sales of the like product on the Union market to unrelated customers, expressed as a percentage of net sales, halved between 2009 and the RIP. The profitability during the RIP is significantly lower than the target profit established in the original investigation, which was set at the level of the profit achieved by the Union industry in the absence of injurious dumping.

(86) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend.

Table 13

	2009	2010	2011	RIP
Profitability of Union Industry	5% - 10%	5% - 10%	5% - 10%	0% - 5%
Index 2009=100	100	63	63	50
ROI (profit in % of net book value of investments)	15% - 20%	5% - 10%	10% - 15%	5% - 10%
Index 2009=100	100	64	84	51

Source: Questionnaire replies

(m) Cash flow and ability to raise capital

(87) The net cash flow from operating activities dropped considerably over the period considered, although it remained positive, except for the year 2010.

Table 14

	2009	2010	2011	RIP
Index 2009=100	100	- 34	71	10

Source: Questionnaire replies

- (88) There are no indications that the Union industry would have encountered difficulties in raising capital if it had tried to, but there were no significant investments during the period under consideration and therefore the Union industry was not ‘put to the test’.

(n) Investments

- (89) The Union industry annual investments in the production of the like product almost halved between 2009 and the RIP. More specifically, it decreased in 2010, increased in 2011 and decreased again during the RIP. The sharp drop in investments observed between 2011 and the RIP can be partially explained by the fact that the Union industry had already during the period considered achieved their necessary scheduled main investments.

Table 15

	2009	2010	2011	RIP
Index 2009=100	100	45	115	52

Source: Questionnaire replies

5. Conclusion on the situation of the Union industry

- (90) The analysis of the economic indicators shows that the Union industry increased its production and sales during the period considered. However, the observed increase in quantity, which was not significant as such, should be seen in the context of increased production capacity and decrease in selling prices, which resulted in the Union producers’ capacity utilisation and unit selling price dropping respectively by 3 and 11 percentage points.

- (91) At the same time the economic situation of the Union industry showed a deterioration in terms of profitability, return on investment, employment and cash flow. In particular, the profitability, which is an important indicator of the status of the Union industry, is still significantly below the target profit as established in the original investigation. The Union industry has not yet fully recovered from the effects of past dumping, and is still in a fragile situation, and thus very vulnerable to any recurrence of dumped imports. Average sales prices have decreased over the years and would in all likelihood decrease further if dumped imports from South Africa were to reoccur, thus exacerbating the already fragile situation of the Union industry.

- (92) Following disclosure, certain interested parties claimed that the current fragile and vulnerable situation of the Union industry was neither due to dumped imports from South Africa nor due to the effects of past dumping.

- (93) They noted that the trends of the key economic indicators shown above concerned a period (from 2009 to the end of the RIP) where: (i) the original anti-dumping measures had already been in force for a while; (ii) imports from South Africa had virtually

ceased; and (iii) a new player (Cegasa) entered the open Union market. Interested parties looked at the economic indicators of each of the two Union producers separately, instead of aggregating them, and concluded that the Union industry was in a difficult situation due to newly experienced internal competition among the only two Union producers in the market.

- (94) In particular, these interested parties claimed that the Commission had failed to acknowledge the fundamental changes occurred in the Union industry since 2009. They noted that following imposition of the anti-dumping measures in force the economic indicators of the original and only complainant (THA) improved dramatically, thus removing all negative effects of the past dumping. However, subsequently, the other Union producer, Cegasa, which was previously manufacturing EMD only for captive use, relocated its battery production facility outside the Union. As a consequence, it freed a significant amount of EMD for the open market, and started selling it at a low price, thus competing with the only other Union producer and exerting a strong downward pressure on prices, capacity utilisation and profitability.
- (95) In the disclosure document, the Commission had already acknowledged the change in the configuration of the Union industry compared to the original investigation. This has been a positive development which shows market openness and an increased level of competition among the various players including imports.
- (96) The Commission also agrees that under these circumstances and notably in the absence of imports from South Africa the current state of the Union industry cannot be due to the dumping from South Africa and should not be qualified as ‘continuation of injury’.
- (97) The Commission has examined the aggregate trends of both Union producers since 2009 and has concluded that the key economic indicators are not favourable and that the Union industry is in a fragile and vulnerable state. Clearly, in the absence of imports from South Africa the reason cannot be the dumping practices of Delta. However, in an expiry review where the focus is on the likelihood of recurrence of dumping and injury should the measures lapse, dumping, injury and causation during the RIP are not the determining factors of the analysis.
- (98) The Commission concludes that the Union industry is still in a fragile and vulnerable situation and its profitability is far from the levels that could be expected in such a capital intensive industry. A comparison with the original investigation can only be made for one Union producer, as the other did not sell on the open Union market at that time. For that Union producer, profits in the RIP were significantly lower than found in the original investigation in the absence of dumped imports.

## **F. LIKELIHOOD OF RECURRENCE OF INJURY**

1. Impact of the projected volume of imports and price effects in case of repeal of measures
- (99) The only known South African producer (Delta) of EMD has spare capacity and a potential to restart exporting to the Union market in significant quantities. During the original period considered (2002 to 2005/6) the market share of Delta increased strongly from around 30-40% to 60-70%. Delta has thus already shown its capability to rapidly increase export volumes to the Union.

- (100) The CIF export prices of Delta to the other markets, excluding the USA and including all types and all grades of EMD, were lower than the prices of the Union industry in the RIP and undercut them. Lower prices on the other markets could be an incentive for Delta to divert these exports to the EU market should the measures lapse.
- (101) Given the spare capacity identified during the investigation, the saturation of other export markets combined with the attractiveness of the Union market, Delta would in all likelihood try to regain its substantial market share in the Union which was lost after imposition of the measures in force. As concluded above, for Delta to regain market share it would need to export at dumped prices. Consequently, in the absence of anti-dumping duties on imports of EMD originating in South Africa, any recurrence of dumped imports would exercise an even stronger price pressure on the Union industry and in all likelihood cause material injury.

## 2. Conclusion on the likelihood of recurrence of injury

- (102) The repeal of the measures would in all likelihood result in a recurrence of dumped imports from South Africa resulting in a downwards pressure on Union industry prices and a worsening of its economic situation. The repeal of measures against South Africa would therefore likely result in a recurrence of injury due to the likely exacerbation of the already fragile and vulnerable situation in which the Union industry was currently found to be.

## **G. UNION INTEREST**

### 1. Introduction

- (103) Under Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures against South Africa would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests concerned.
- (104) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (105) In the original investigation the imposition of measures was considered not to be against the interest of the Union. As this investigation is a review, it analyses a situation in which anti-dumping measures have already been in place, thereby allowing the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (106) Despite the conclusions on the likelihood of recurrence of injurious dumping, the Commission examined whether compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures against imports of EMD originating in South Africa.

### 2. Interest of the Union industry and other Union producers

- (107) Although the anti-dumping measures in force prevented dumped imports from entering the Union market, the Union industry is still in a fragile and vulnerable situation, as confirmed by the negative trends of some key injury indicators.

- (108) Should the measures be allowed to lapse, it is likely that the current situation of the Union industry will continue and further deteriorate given the likely influx of substantial volumes of dumped imports from South Africa. This influx would cause, amongst others, loss of market share, decrease in sales price, decrease in capacity utilisation and in general a serious deterioration of the Union industry's financial situation.
- (109) It is therefore clear that the maintenance of anti-dumping measures against South Africa would not be against the interest of the Union industry.

### 3. Interest of importers

- (110) In the original investigation it was found that the impact of the imposition of measures was not likely to have a serious negative effect on the situation of importers in the Union. No traders/importers cooperated in the current investigation. Bearing in mind that there is no evidence suggesting that the measures in force have considerably affected importers, it can be concluded that the continuation of measures will not negatively affect the Union importers to any significant extent.

### 4. Interest of users

- (111) All known users of EMD in the Union (used by battery producers as raw material) were contacted. Replies were received from two companies belonging to the same multinational group. In the original investigation two additional battery producers cooperated, which opposed the imposition of measures.
- (112) The cooperating user explained the difficult economic situation faced by battery producers in the Union due to the downward pressure on prices exerted by their main customers (retailers), and the consequent risk of loss of jobs. However, it could not provide any explanations or arguments as to why and how the termination of the measures against imports of EMD from South Africa would improve the situation.
- (113) EMD accounts for only 10-15% of the total cost of production of batteries. This value decreased compared to the original investigation. In addition, following imposition of measures, the average sales price of EMD in the Union actually decreased. In reality, no evidence was provided that maintaining the measures in force would have a non-negligible influence on the costs of production of battery producers.
- (114) In the absence of such evidence, the Commission concludes that maintaining the measures would not unduly affect the EMD users.
- (115) Following disclosure, the same user disagreed with the Commission's assessment of the situation and commented that following imposition of measures one source of good quality EMD disappeared, prices for EMD increased and even if EMD accounts for only 10-15% of the production costs this has a significant impact on the already small profitability of EU battery producers.
- (116) Notwithstanding the claim, the evidence in the file shows that the user's choice not to make use of Delta's EMD was not linked to the imposition of anti-dumping duties and that the threat to the user's profitability and jobs is not an increase in EMD price but is in fact the downward pressure on price exerted by their main customers (multinational retailers with significant purchasing power) and by Chinese battery producers.



(117) The same user of EMD commented that the measures should not be maintained, as the investigation found no dumping to the EU during the RIP and that there was no risk of recurrence of dumping due to the small market share possible for Delta if all its spare capacity was directed to the Union.

(118) This argument was rejected as Delta's potential market share identified would clearly be significant and these exports to the Union would likely be made at dumped prices.

#### 5. Future developments

(119) The complainants mentioned in the request for an expiry review that if demand for electric cars increases in the EU in the future, there will be an upstream increase in demand for EMD which is said to be the raw material most frequently used in the production of lithium manganese oxide (LMO) which in turns serves as cathode material for rechargeable lithium ion batteries (LIB) used in many models of electric vehicles. They claim that if injury from dumped South African imports re-occurs, the Union EMD industry may not be around to service this potential future demand in new technologies.

(120) The investigation did not find conclusive evidence in support or against the claim that any future development in the electric car sector would significantly impact the EMD industry and the demand for EMD. However, it is a fact that the Union industry is testing the feasibility of manufacturing LMO using EMD, is able to obtain the know-how and the equipment to do so in the future and is participating in a number of EU funded projects related to the research and development of lithium-ion batteries.

(121) Following disclosure, this issue was briefly mentioned by some interested parties, but again no conclusive evidence was provided on the possible impact of any future development in the electric car sector in the Union and/or in other markets on the product concerned.

#### 6. Conclusion on Union interest

(122) Given the evidence above, there are no compelling reasons against the maintenance of the current anti-dumping measures.

(123) Therefore under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain electrolytic manganese dioxides originating in South Africa should be maintained for an additional period of five years,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. A definitive anti-dumping duty is imposed 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 (TARIC code 2820 10 00 10) and originating in the Republic of South Africa.

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

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*

This Regulation shall enter into force on the day following that of 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,

*For the Council*  
*The President*