

Case History

On March 26, 2008, the Department of Commerce (the Department) published its preliminary determination of sales at less than fair value in the antidumping duty investigation of electrolytic manganese dioxide (EMD) from Australia. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia*, 73 FR 15982 (March 26, 2008) (*Preliminary Determination*). On April 18, 2008, we postponed the deadline for the final determination under section 735 (a)(2)(A) of the Act by 60 days to August 8, 2008. See *Postponement of Final Determination of Antidumping Duty Investigation: Electrolytic Manganese Dioxide from Australia*, 73 FR 21108 (April 18, 2008).

We invited parties to comment on the *Preliminary Determination*. We received a case brief from the respondent, Delta EMD Australia Pty. Limited (Delta), on May 19, 2008; the petitioner, Tronox LLC, filed a rebuttal brief on May 27, 2008. At the request of Delta, we held a hearing on June 17, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Investigation of EMD from Australia for the Period of Investigation July 1, 2006, through June 30, 2007" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated August 8, 2008, which is hereby adopted by this notice. This Decision Memorandum is attached to this notice as an appendix and is on file in the Central Records Unit (CRU) in room 1117. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the

Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is from July 1, 2006, through June 30, 2007.

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Delta did not act to the best of its ability in responding to our requests for information. Thus, the Department continues to find that the use of adverse facts available is warranted for this company under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination*, 73 FR at 15983. As a result of our analysis of comments received, we have changed the adverse facts-available rate for the final determination. Specifically, we have assigned Delta a rate of 83.66 percent based on the rate alleged in the petition, as recalculated in this final determination. See Final Determination Analysis Memorandum (August 8, 2008). Further, pursuant to section 776(c) of the Act and as discussed in the *Preliminary Determination*, we corroborated the key elements of the export-price and normal-value calculation used in the petition to derive an estimated margin from which we have derived the adverse facts-available rate.

Termination of Critical Circumstances Investigation

On February 19, 2008, the petitioner in this investigation, Tronox LLC, submitted an allegation of critical circumstances with respect to imports of electrolytic manganese dioxide from Australia. On March 19, 2008, we issued the *Preliminary Determination*, stating that we had reason to believe or suspect critical circumstances exist with respect to imports of EMD from Australia. See *Preliminary Determination*, 73 FR at 15986-88. On July 17, 2008, the petitioner withdrew its critical circumstances allegation and requested that the Department terminate its critical circumstances inquiry. Therefore, we are terminating the critical circumstances investigation and we have not addressed any comments regarding critical circumstances for the final determination. We will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all imports of subject

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-602-806]

Notice of Final Determination of Sales at Less Than Fair Value and Termination of Critical- Circumstances Investigation: Electrolytic Manganese Dioxide from Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 14, 2008.

SUMMARY: The Department of Commerce determines that imports of electrolytic manganese dioxide from Australia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the section entitled "Final Determination of Investigation."

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3477 and (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

merchandise produced and exported by Delta entered, or withdrawn from warehouse, for consumption on or after December 27, 2007, which is 90 days prior to the date of publication of the *Preliminary Determination* (March 26, 2008), and entered before March 26, 2008. CBP shall refund any cash deposits and release any bond or other security previously posted in connection with merchandise produced and exported by Delta, the only known producer and exporter of EMD during this investigation.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight-averaging margins other than the zero, *de minimis*, or total facts available margins, the Department may use any other reasonable method. See also *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 873 (1994). As discussed above, Delta is the sole respondent in this investigation and has been assigned a margin based on total adverse facts available. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available for purposes of establishing an all-others rate. Therefore, with this final determination we are establishing 83.66 percent as the all-others rate.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Margin (percent)
Delta	83.66
All Others	83.66

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Australia entered, or

withdrawn from warehouse, for consumption on or after March 26, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) the rate for Delta will be 83.66 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 83.66 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 8, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix

Comment: Profit for Constructed Value
 [FR Doc. E8-18848 Filed 8-13-04; 8:45 am]

Billing Code: 3510-DS-S